

The Foreign Exchange Management (Establishment In India Of Branch Or Office Or Other Place Of Business) Regulations, 2000

UNION OF INDIA

India

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Rule

THE-FOREIGN-EXCHANGE-MANAGEMENT-ESTABLISHMENT-IN-INDIA of 2000

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The Foreign Exchange Management (Establishment In India Of Branch Or Office Or Other Place Of Business) Regulations, 2000 Published vide G.S.R. 408(E), dated 3.5.2000, published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 8.5.2000.

11.

/565 In exercise of the powers conferred by sub-section (6) of section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations to prohibit, restrict and regulate establishment in India of a branch or office or other place of business by a person resident outside India, namely:--

1. Short title and commencement .-(i) These regulations may be called the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000.

(ii) They shall come into force on 1st day of June, 2000.

2. Definitions .-In these regulations, unless the context otherwise requires,--

(a)"Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);(aa)["authorised dealer" means a person authorised as an authorised dealer under sub-section (1) of Section 10 of the Act.(b)"foreign company" means a body corporate incorporated outside India, and includes a firm or other association of individuals;(c)"branch" shall have the meaning assigned to it in sub-section (9) of section 2 of the Companies Act, 1956 (1 of 1956);(d)"Form" means a form annexed to these regulations;(e)"liaison office" means a place of business to act as a channel of communication between the principal place of business or head office by whatever name called and entities in India but which does not undertake any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel;(f)"project office" means a place of business to represent the interests of the foreign company executing a project in India but excludes a liaison office;(g)"site office" means a sub-office of the project office established at the site of a project but does not include a liaison office;(h)["stand alone basis" means such branch offices would be isolated and restricted to the Special Economic Zone alone and no business activity/transaction will be allowed outside the Special Economic Zones in India which includes branches/subsidiaries of its parent office in India;] [Inserted by G.S.R. 847(E), dated 3.10.2003 (w.e.f. 29.10.2003).](i)[[Clause (h) renumbered as Clause (i) by G.S.R. 847(E), dated 3.10.2003 (w.e.f. 29.10.2003).] the words and expressions used but not defined in these regulations, shall have the same meanings respectively assigned to them in the Act.

3. Prohibition against establishing branch or office in India .-No person resident outside India shall, without prior approval of the Reserve Bank, establish in India a branch or a liaison office [* * *] or any other place of business by whatever name called:

[Provided that no approval shall be necessary from RBI for a company to establish a branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities:Provided further that--(i)such units are functioning in those sectors where 100 per cent. FDI is permitted,(ii)such units comply with Part XI of the Companies Act (sections 592 to 602),(iii)such units function on a stand-alone basis,(iv)in the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an authorised dealer in Foreign Exchange with the documents except (A) listed in regulation 6(1)(iii) of Notification No. FEMA 13/2000-RB, dated 3rd May, 2000:][Provided that no approval shall be necessary for a banking company, if such company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949:-Provided further that no approval shall be necessary for an insurance company, if such company has obtained approval from the Insurance Regulatory and Development Authority, established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for establishing a liaison office in India.] [Added by G.S.R. 336(E), dated 7.5.2005 (w.r.e.f. 25.4.2000).]

4. Prohibition against establishing a branch or office in India by citizens of certain countries .-No person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China, without prior permission of the Reserve Bank, shall establish in India, a branch or a liaison office or a project office or any other place of business by whatever name called.

5. Application to Reserve Bank for opening branch or liaison office - [(i) A person resident outside India desiring to establish a branch or liaison office in India shall apply to the Reserve Bank through an Authorised Dealer, in Form FNC as amended by Reserve Bank of India from time to time.] [Added by G.S.R. 847(E), dated 3.10.2003 (w.e.f. 29.10.2003).]

(ia)[A person resident outside India pennitted by the Reserve Bank under this regulation to establish a liaison office in India, may apply to the authorised dealer concerned for, extension of the validity period of approval, and upon receipt of such an application, the authorised dealer concerned may extend the validity period of approval subject to such directions issued by the Reserve Bank in this regard, from time to time.] [Inserted by G.S.R. 200(E), dated 19.1.2011 (w.r.e.f. 1.2.2010) @ It is clarified that no person will be adversely affected as a result of retrospective effect being given to these regnulations.][(ii) A foreign company may open a project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and [Substituted by G.S.R. 698(E), dated 2.7.2003 (w.e.f. 1.9.2003).](a)the project is funded directly by inward remittance from abroad; or(b)the project is funded by a bilateral or multilateral International Financing Agency; or(c)the project has been cleared by an appropriate authority; or(d)a company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project.(iii)The foreign company shall furnish a report to the concerned regional office of Reserve Bank of India under whose jurisdiction the project office is set up, giving details as under:-(a)Name and address of the foreign company,(b)Reference No. and date of letter awarding the contract referred to in clause (ii) of regulation 5,(c)Total amount of contract,(d)Address and tenure of project office,(e)Nature of project undertaken.][* * *] [Omitted by G.S.R. 698(E), dated 2.7.2003 (w.e.f. 1.9.2003).]Explanation .-For the purpose of this regulation,-(i)"a bilateral or multilateral International Financing Agency" means the World bank or the International Monetary Fund or similar other body;(ii)"Public Financial Institution" is a public financial institution as defined in section 4-A of the Companies Act, 1956 (1 of 1956).

6. Activities which may be undertaken by the branch or office in India .--(i) A person resident outside India permitted by the Reserve Bank under regulation 5 to establish a branch or a liaison office in India may undertake or carry on any activity specified in Schedule 1 or, as the case may be, in Schedule II, but shall not undertake or carry on other activity unless otherwise specifically permitted by the Reserve Bank.

(ii)[Opening of project office under clause (ii) of regulation 5 is permitted in India and such project office shall not undertake or carry on any other activity other than the activity relating and incidental to execution of the project.]

7. Remittance of profit or surplus .-A person resident outside India permitted by the Reserve Bank under regulation 5, to establish a branch or project office in India may remit outside India the profit of the branch or surplus of the project on its completion, net of applicable Indian taxes, on production of the following documents, and establishing the net profit or surplus, as the case may be, to the satisfaction of the authorised dealer through whom the remittance is effected--

I. For remittance of profit of a branch--(a)certified copy of the audited balance-sheet and profit and loss account for the relevant year;(b)a Chartered Accountant's certificate certifying--(i)the manner of arriving at the remittable profit,(ii)that the entire remittable profit has been earned by undertaking the permitted activities, and(iii)that the profit does not include any profit on revaluation of the assets of the branch.II. For remittance of surplus on completion of the project--(a)certified copy of the final audited project accounts;(b)a Chartered Accountant's certificate showing the manner of arriving at the remittable surplus;(c)income-tax assessment order or either documentary evidence showing payment of income-tax and other applicable taxes, or a Chartered Accountant's certificate stating that sufficient funds have been set aside for meeting all Indian tax liabilities; and(d)auditor's certificate stating that no statutory liabilities in respect of the project are outstanding.[8. Transfer of assets of Liaison Office/Branch Office/Project Office to Joint Venture/Wholly Owned Subsidiary and any other entity in India. - A person resident outside India permitted under Regulation 5 to establish a Branch or Project or Liaison Office may, at the time of closure of said Branch or Project or Liaison Office, as the case may be, apply to the authorized dealer concerned for transfer of its assets to JV/WOS or any other entity in India.]

I

[See Regulation 6(i)]PERMITTED ACTIVITIES FOR A BRANCH IN INDIA OF A PERSON RESIDENT OUTSIDE INDIA(i)Export/Import of goods(ii)Rendering professional or consultancy services.(iii)Carrying out research work, in which the parent company is engaged.(iv)Promoting technical or financial collaborations between Indian companies and parent or overseas group company.(v)Representing the parent company in India and acting as buying/selling agent in India.(vi)Rendering services in Information Technology and development of software in India.(vii)Rendering technical support to the products supplied by parent/group companies.(viii)Foreign airline/shipping company.

II

[See Regulation 6(i)] PERMITTED ACTIVITIES FOR A LIAISON OFFICE IN INDIA OF A PERSON RESIDENT OUTSIDE INDIA (i) Representing in India the parent company/group companies. (ii) Promoting export import from/to India. (iii) Promoting technical/financial collaborations between parent/group companies and companies in India. (iv) Acting as a communication channel between the parent company and Indian companies. [[Substituted by Notification No. G.S.R. 200 (E) dated 19.1.2011 (w.e.f. 8.5.2000)]

| No. Details | Particulars |
|--|-------------|
| 1. Full name and address of the applicant. Date and Place of incorporation/registration Telephone Number(s) Fax Number(s) E-mail ID | |
| 2. Details of capital (i) Paid-up capital (ii) Free Reserves/Retained earnings as per last audited Balance Sheet/Financial Statement (iii) Intangible assets, if any | |
| 3. Brief description of the activities of the applicant | |
| 4. (i) Value of goods imported from and/or exported to India by the applicant during each of the last three years: (a) Imports from India (b) Exports to India (ii) Particulars of existing arrangements if any, for representing the company in India. (iii) Particulars of the proposed Liaison/Branch Office: (a) Details of the activities/services proposed to be undertaken/rendered by the office. (b) Place where the office will be located. (c) Phone number (d) E-mail ID (e) Expected number of employees (with number of foreigners) | |
| 5. (i) Name and address of the Banker of the applicant in the home country (ii) Telephone & Fax Number (iii) E-mail ID | |
| 6. Any other information which the applicant company wishes to furnish in support of this application. | |

7. For Non-profit/Non-Government Organisations:

- (i) Details of activities carried out in the host country and other countries by the applicant organisation.
- (ii) Expected level of funding for operations in India.
- (iii) Copies of the bye-laws, Articles of Association of the organisation.

DECLARATION We hereby declare that: (i) The particulars given above are true and correct to the best of our knowledge and belief. (ii) Our activities in India would be confined to the activities indicated in column 4 (iii) (a) above. (iii) If we shift the office to another place within the city, we shall intimate the designated AD Category-I bank and the Reserve Bank. In the event of shifting the Office to any other city in India, prior approval of the Reserve Bank will be obtained. (iv) We will abide by the terms and conditions that may be stipulated by the Government of India/Reserve Bank! designated AD Category-I bank from time to time. (v) We, hereby commit that we are agreeable to a report/opinion sought from our bankers abroad by the Government of India/Reserve Bank. (vi) We understand that the approval, if granted, is from FEMA angle only. Any other approvals, clearances, statutory or otherwise, required from any other Government Authority/Department/Ministry will be obtained before commencement of operations in India. (vii) We have no objection to the Reserve Bank placing the details of approval in public domain. (viii) We enclose the following documents:

1. Copy of the Certificate of Incorporation/Registration attested by the Notary Public in the country of registration

[If the original Certificate is in a language other than in English, the same may be translated into English and notarised as above and cross verified/attested by the Indian Embassy/Consulate in the home country].

2. Latest Audited Balance sheet of the applicant company

[If the applicants' home country laws/regulations do not insist on auditing of accounts, an Account Statement certified by a Certified Public Accountant (CPA) or any Registered Accounts Practitioner by any name, clearly showing the net worth may be submitted].

3. Bankers' Report from the applicant's banker in the host country/country of registration showing the number of years the applicant has had banking relations with that bank.

(Signature of Authorised Official of the Applicant Company) Name: Designation: Place: Date:] FORM FNC 1 (See regulation 5) A. General Instructions to Applicants The application form only should be completed and submitted to the Chief General Manager, Exchange Control Department (Foreign Investment Division), Reserve Bank of India, Central Office, Mumbai-400001. B.

Documentation (i) English version of the certificate of incorporation/registration or Memorandum & Articles of Association attested by Indian Embassy/Notary Public in the country of registration. (ii) Latest Audited Balance Sheet of the applicant company/firm.

1. (i) Full name and address of the applicant company/firm [State whether the applicant is a proprietary concern or partnership firm or limited company or public sector undertaking or any other organisation (Please specify)].

(ii) Date and Place of incorporation/registration.

2. Details of capital

(i) Paid-up capital _____ divided into _____ shares of _____
each (ii) Free Reserves as per last audited Balance Sheet

3. Brief description of the activities of the applicant.

4. For liaison/branch office

(i) Value of goods imported from and/or exported to India by the applicant during each of the last three years : (a) Imports from India (b) Exports to India (ii) Particulars of existing arrangements if any, for representing the company in India. (iii) Particulars of the proposed Branch/Liaison Office (a) Details of the activities/services proposed to be undertaken/rendered by the office. (b) Place where the office will be located.

5. Any other information which the applicant company wishes to furnish in support of this application.

We hereby declare that - (i) The particulars given above are true and correct to the best of our knowledge and belief; (ii) Our activities in India would be confined to the fields indicated in column 4 (iii) (a) or 5 (i) above; (iii) If we shift the office to another place, we shall intimate the Reserve Bank of India; and (iv) We will abide by the terms and conditions that may be stipulated by Reserve Bank of India if approval is given..... (Signature of Authorised Official of the Applicant Company) Name..... Designation..... Place.....