

## OPPORTUNITY TO COMPOUND OFFENCE FOR FOREIGN LIAISON AND BRANCH OFFICES

(INCLUDING DETAILED ANALYSIS OF LAW AS ON DATE)



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## INTRODUCTION

- 1.1.1 The Reserve Bank of India (RBI) has issued a circular RBI/2013-14/9 July 01, 2013, Master Circular No.9/2013-14 for all liaison and branch offices of foreign agencies working in India without having formal permission under Foreign Exchange Management Act (FEMA), 1999. **See Annexure 1**
- 1.1.2 This circular allows all such agencies to compound their offences and regularise their existence in India within a period of 12 months i.e. before 1st July 2014.
- 1.1.3 All such agencies who have not obtained approval under FEMA, 1999 should avail this opportunity. It may be noted that there are many liaison and branch offices of foreign agencies (particularly NGOs) which have not regularised their existence in India. As a matter of fact in the year 2011 RBI had issued a Circular no. RBI/2011-12/112, A.P. (DIR Series) Circular No. 02, dt.15.07.2011 wherein all the LO/BO in existence prior to enactment of FEMA were asked to approach the RBI for regularisation of their status under the FEMA within 90 days from the date of issue of the Circular. **See Annexure 2.**

## LEGAL ISSUES FOR FOREIGN NGOs WORKING IN INDIA

- 1.2.1 It is important to understand that a foreign NGO is a legal entity registered outside India, and therefore it cannot be considered as an Indian NGO. After the enactment of *Foreign Exchange Management Act, 1999* (hereinafter referred to as *FEMA*), all foreign NGOs are required to take permission from Reserve Bank of India (RBI) for operating in India. It may be noted that prior to the enactment of FEMA many foreign donor offices were granted 'No Objection Certificate' by RBI under the erstwhile *Foreign Exchange Regulation Act, 1973* (hereinafter referred to as *FERA*) as FERA did not prohibit or regulate the offices of foreign donors in India. Therefore, all permission for liaison office granted under *FERA* became invalid w.e.f. 1st June 2000 (the day of enactment of FEMA 1999).
- 1.2.2 Foreign NGOs having their branch/liaison offices in India are required to take approval from the RBI under the provisions of FEMA. FEMA was enacted in the year 1999 and it became effective from 1st June, 2000. Prior to that, all the foreign exchange matters were regulated under the *Foreign Exchange Regulation Act, 1973*.
- 1.2.3 Somehow under FERA there was no provision for a specific permission to be obtained by foreign NGOs to operate in India. Therefore, many foreign NGOs were having their branch/liaison offices without getting any formal permission from any authority.

Prior to the enactment of FEMA, many foreign NGOs sought permission from RBI to set up liaison offices. All such applications made prior to 1st June, 2000, were issued a 'letter of no objection' by RBI. Many foreign NGOs having their liaison offices/branch offices in India construed this 'letter of no objection' as an open-ended approval, which was not correct. The reality is that RBI was not regulating foreign NGOs prior to 1st June 2000. All foreign NGOs remained virtually unregulated by any specific law or regulation. However, after enactment of FEMA, the law is very categorical and clear about the legal formalities required to be complied by a foreign NGO. They have to seek permission for setting up liaison offices and the permission is generally granted for 3 years only. The liaison offices can be upgraded to branch offices at the discretion of RBI.

### **DOES FCRA APPLY TO LIAISON OR BRANCH OFFICE IN INDIA**

- 1.3.1** It should be noted is that the FCRA (Foreign Contribution Regulation Act, 2010) is an internal security legislation regulated by the Home Ministry unlike the FEMA which is a fiscal legislation regulated by the Finance Ministry. Both the Acts have their specific applicability and are not mutually exclusive. FCRA would generally not apply to liaison and branch offices of foreign agencies unless they receive foreign contribution from sources other than inward remittance from Head quarter.

### **OPPORTUNITY TO REGULARISE BY COMPOUNDING OF OFFENCE**

- 1.4.1** All the existing LO/BO prior to FEMA, 2000 which have not acted in response to the circular dt. 15/07/2011, their operations in India may be considered without the required mandate of RBI and therefore they should immediately take necessary steps for regularizing their status.
- 1.4.2** Such organisation should submit their application for regularizing in terms of above referred Circular together with condonation petition (one of the reason may be that the relevant circular has not come to their notices nor their AD (Authorised Dealer category) bank has informed them about the same.)
- 1.4.3** They should also file a compounding petition in terms of the Master Circular No.9/2013-14 dt. 01/07/2013.
- 1.4.4** The application is normally routed through the AD bank, however, a compounding of offence petition should be made to the following authority :

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To,  
The Compounding Authority,  
Cell of Effective Implementation of FEMA  
Foreign Exchange Department,  
Reserve Bank of India, 5th Floor,  
Amar Building, Sir P.M. Road, Fort,  
Mumbai – 400001

- 1.4.5** It is advisable to file the application form (discussed hereinunder) along with compounding of offence petition to the above authority.

### **GENERAL CONDITION FOR LIAISON & BRANCH OFFICES**

- 1.5.1** A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. The applications from such entities in **Form FNC** will be considered by Reserve Bank under two routes:

- **Reserve Bank Route**—Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.
- **Government Route** — Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations/Non - Profit Organisations/Government Bodies /Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

- 1.5.2** The following additional criteria are also considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

- **Track Record**

For Branch Office — a profit making track record during the immediately preceding five financial years in the home country.

For Liaison Office — a profit making track record during the immediately preceding three financial years in the home country.

- **Net Worth** [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name].

- ◆ For Branch Office — not less than USD 100,000 or its equivalent.
- ◆ For Liaison Office — not less than USD 50,000 or its equivalent.

**1.5.3** The application for establishing BO/LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents including

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
- Latest Audited Balance Sheet of the applicant entity.

**1.5.4** Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies can submit a **Letter of Comfort** from their parent company, subject to the condition that the parent company satisfies the eligibility criteria as prescribed above. The designated AD Category - I bank should exercise due diligence in respect of the applicant's background, antecedents of the promoter, nature and location of activity, sources of funds, etc. and also ensure compliance with the KYC norms before forwarding the application together with their comments/recommendations to the Reserve Bank.

**1.5.5** The Branch/Liaison offices established with the Reserve Bank's approval will be allotted a **Unique Identification Number (UIN)** ([www.rbi.org.in/scripts/Fema.aspx](http://www.rbi.org.in/scripts/Fema.aspx)).

**1.5.6** The BOs/LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

## DOCUMENTS TO BE FILED

**1.6.1** The following documents are required to be filed through the designated AD Category-I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investments Division, Central Office, Mumbai. The application should justify the need with comments of the designated AD Category-I bank :

- (1) Form FNC.
- (2) English version of the Certificate of incorporation/registration or memorandum or articles of association of the Foreign NGO. Either the Indian Embassy or a notary public of that country should attest this document.
- (3) Latest audited balance sheet of the foreign NGO.

- (4) Details of activities proposed to be supported by the foreign NGO.
- (5) Overview of the activities, mission and vision of the foreign NGO.
- (6) Power of the attorney in favour of the consultant, if any.

## **WHO SHOULD SIGN THE FORM FNC ?**

- 1.7.1** Form FNC should be signed by the Overseas authorized signatory of the Foreign NGOs and not the Indian representative.

## **WHO SHOULD SIGN THE POWER OF ATTORNEY?**

- 1.8.1** The power of attorney should be signed by the overseas authorized signatory of the Foreign NGOs and not the Indian representative.

## **TIME TAKEN FOR PROCESSING THE APPLICATION**

- 1.9.1** No time-limit has been prescribed in FEMA. We were told that the RBI normally takes 2-3 weeks for processing such applications. But in the case of charitable organisation, all applications are referred to the Finance Ministry, Government of India. It can be a time consuming process. It may take 6-12 months to get the first approval for liaison office, but renewal is done at the designated bank level only, which should not take more than 2-3 weeks.

## **DOCUMENTS TO BE FILED ANNUALLY**

- 1.10.1** Branch Offices/Liaison Offices have to file Annual Activity Certificates (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category I bank and a copy to the Directorate General of Income Tax (International Taxation), New Delhi.

- 1.10.2** The certificates are to be filed by the following offices as applicable:

- (a) In case of a sole BO/LO, by the BO/LO concerned;

- (b) In case of multiple BO/LO, a combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/LOs.

**1.10.3** The designated AD Category-I bank shall scrutinize the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank. In the event of any adverse findings being reported by the Auditor or noticed by the designated AD Category -I bank, the same should be reported immediately by the designated AD Category-I bank to the respective Regional Office of the Reserve Bank in respect of LOs and to the Central Office of the Reserve Bank in the case of BOs, along with the copy of the Annual Activity Certificate and their comments thereon.

### **SETTING UP OF ADDITIONAL LIAISON OFFICE**

- 1.11.1** Requests for undertaking activities in addition to what has been permitted initially by the Reserve Bank may be submitted through the designated AD Category -I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai, justifying the need with comments of the designated AD Category - I bank.
- 1.11.2** Requests for establishing additional BO / LOs may be submitted through fresh FNC form, duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India as explained above. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
- If the number of Offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s.
  - The applicant may identify one of its Offices in India as the Nodal Office, which will coordinate the activities of all Offices in India.

### **RENEWAL OF THE LIAISON OFFICE APPROVAL**

**1.12.1** The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval /extension granted by the Reserve Bank, if the applicant has complied with the following conditions and the application is otherwise in order.

- The LO should have submitted the Annual Activity Certificates for the previous years and
- The account of the LO maintained with the designated AD Category-I bank is being operated in accordance with the terms and conditions stipulated in the approval.

**1.12.2** Such extension has to be granted, as expeditiously as possible, within a period of one month from the receipt of the request under intimation to the Regional Office concerned of the Reserve Bank and to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, quoting the reference number of the original approval letter and the UIN.

**1.12.3** The application for extension of the validity period of the LOs of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank and Insurance Regulatory and Development Authority (IRDA), respectively as stipulated by them, as hitherto. Further, no extension would be considered for LOs of entities which are NBFCs and those engaged in construction and development sectors (**excluding infrastructure development companies**). Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

## **OTHER CONDITIONS APPLICABLE TO BRANCH/LIAISON OFFICES**

- 1.13.1**
- (i) Without prior permission of the Reserve Bank, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.
  - (ii) Partnership / Proprietary concerns set up abroad are not allowed to establish Branch /Liaison/Project Offices in India.
  - (iii) Entities from Nepal are allowed to establish only Liaison Offices in India.
  - (iv) Branch/Project Offices of a foreign entity are permitted to acquire immovable property by way of purchase **for their own use** to carry out permitted/incidental activities. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India for a Branch/Project Office without prior RBI approval.

All Branch/Project Offices, including Liaison Offices, have general permission

to carry out permitted/incidental activities from **lease** property subject to lease period not exceeding five years.

- (v) Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.
- (vi) Transfer of assets of Liaison/Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.
- (vii) Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected
  - a. 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
    - iii. that the profit does not include any profit on revaluation of the assets of the branch.
- (viii) Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.

## **CLOSURE OF BRANCH/LIAISON OFFICES**

**1.14.1** At the time of winding up of Branch/Liaison offices the company has to approach the designated AD Category-I bank with the following documents:

- a) Copy of the Reserve Bank's permission/approval from the sectoral regulator(s) for establishing the BO/ LO.
- b) Auditor's certificate- i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of

the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.

- c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.
- d) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.
- e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.
- f) Any other document/s, specified by the Reserve Bank while granting approval.

**1.14.2** The designated AD Category - I banks has to ensure that the BO / LOs had filed their respective Annual Activity Certificates with the Reserve Bank for the previous years, in respect of the existing Branch/Liaison Offices. Confirmation about the same can be obtained from the Central Office of the Reserve Bank in the case of BOs and from the Regional Office concerned in the case of LOs.

**1.14.2** Closure of such BO/LO has to be reported by the designated AD Category - I bank to the Reserve Bank (the Regional Office concerned for LOs and Central Office for BOs), along with a declaration stating that all the necessary documents submitted by the BO/LO have been scrutinized and found to be in order. If the documents are not found in order or cases are not covered under delegated powers, the AD Category-I bank may forward the application to the Reserve Bank, with their observations, for necessary action. All the documents relating to the BO/LO operations may be retained by the AD Category - I bank for verification by the internal auditors of the AD/inspecting officers of the Reserve Bank.

## **REGISTRATION WITH THE RoC, NEW DELHI FOR ALL LIAISON OFFICES**

**1.15.1** It may also be noted that after receiving an approval from RBI for setting up of liaison office, the foreign NGO is also required to register itself with the Registrar of Companies (RoC), New Delhi. The RoC, New Delhi keeps a register of branches and liaison offices of foreign entities. A foreign NGO is required to record its name in that register. **However, such law applies only to those foreign NGOs which are registered as companies in their country.**

## **CAN A LIAISON OFFICE SIGN MOUs WITH INDIAN PARTNERS**

- 1.16.1** This is a legally debatable issue and therefore divergent views are available. There are some foreign NGOs who sign MoUs in India through their liaison offices. On the other hand, there are some other foreign NGOs who send the documents to the head quarters for the purposes of signing.
- 1.16.2** In our opinion, this issue should not be confused with the liaison office. The issue is whether a representative of a foreign NGO can enter into a valid legal MoU by signing the document in India. In our opinion an authorised representative can enter into a valid MoU on behalf of its parent body provided he/she is properly authorised to do so. The authorisation to sign MoUs should be given to an individual rather than the liaison office. As a liaison office is not a separate legal entity, all valid legal documents, in any case, will be signed on behalf of the parent body. Further, signing of a document is not an activity, *per se*. The place of signing cannot change the activities embedded in the MoU. Therefore, more importantly it has to be ensured that the liaison office does not engage in any kind of prohibited activity. The moot point is that the character of a liaison office is of 'representative' in nature and, therefore, it has to confine to that only. Signing of MoU can be done in representative capacity without infringing the rules of FEMA, in our opinion.

## **CAN FUNDS BE TRANSFERRED TO FCRA PARTNERS**

- 1.17.1** A liaison office cannot receive funds on behalf of the partners and therefore it cannot transfer any funds to its partner NGOs having FCRA registration. Liaison office can receive funds only and to the extent of its administrative expenses. Further, all the administrative expenses should be made out of inward remittances only. However, if RBI specifically allows grant making then a liaison office may undertake grant making subject to FCRA laws.

## **CAN LIAISON OFFICE HOLD WORKSHOPS AND CONFERENCES WITH INTERNATIONAL PARTICIPANTS**

- 1.18.1** In our opinion liaison office cannot hold conferences or workshop with international or even local participants, going by the rules of FEMA. However, the FCRA department in its FAQ requires that all liaison offices should obtain prior permission from the FCRA Department for receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/ programmes, etc. in India.

**1.18.2** Therefore such activities will be possible only if permitted by RBI under FEMA.

### **ROLE OF LIAISON OFFICE IN TRAINING, EVALUATION, WORKSHOP, CONSULTANCY, ETC.**

**1.19.1** If the training, evaluation, workshop, consultancy etc. are conducted by third parties, then the liaison office can facilitate all such activities. All payments should be made directly to such third parties by the head office. The liaison office can only play a catalytic role in representative capacity. In this regard, it is important to note that the involvement of liaison office will be determined in terms of money spent from its account. Therefore, care should be taken to avoid monetary transactions.

### **DOES LIAISON OFFICE OF FOREIGN NGO NEED 12A REGISTRATION**

**1.20.1** The liaison office is not expected to have any income or activity in India. Therefore, 12A registration is not necessary. 12A registration is required by only those organisations which are generating taxable income in India including grants from other entities whether from India or abroad.

### **INCOME TAX REPORTING REQUIREMENT FOR LIAISON OFFICES**

**1.21.1** The Finance Act, 2011 has made a very significant amendment, by virtue of which all liaison offices of foreign NGOs working in India will have to report to the Assessing Officer within 60 days from the end of the financial year. The rules and forms in this regard will be notified later. It may be noted that liaison offices, currently, are not required to file any return/document, unless they have income in India. The proposed Section 285 is as under :

*“Every person being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.”*

This provision became effective from 01.06.2011.

## DOES BRANCH OFFICE OF FOREIGN NGO NEED 12A REGISTRATION

- 1.22.1** A branch office can have activities resulting in taxable income in India. However, it may apply for Income Tax exemptions on par with other Indian NGOs. Section 11 of the Income Tax Act does not require the NGO to be established or registered in India. Therefore, even a foreign NGO would be entitled to apply for registration under section 12A and 10(23C). Foreign NGOs can also avail exemptions on their income, if any, earned in India. Such exemptions shall be subject to having activities in India.
- 1.22.2** It may be noted that foreign NGOs will need exemptions under section 12A and 10(23C) only if they are collecting grant /donations from sources other than inward remittances from head quarters or they are having any income which is generated in India.
- 1.22.3** It may further be noted that foreign NGOs shall not be entitled for income tax exemptions if they are not having any considerable activity inside India. In other words, if the income is generated in India for the purposes of repatriation outside India, then such foreign NGOs shall not be entitled for income tax exemptions.

## CASE LAWS IN FAVOUR OF FOREIGN NGOs GETTING EXEMPTIONS

- 1.23.1** In *Educational Institute of American Hotel and Motel Association v. CIT* [1996] 219 ITR 183 (AAR), the issue of a foreign organisation came before the court of the authority for advance ruling. The issue was whether, the applicant would be entitled to exemption under section 10(22) of the Income-tax Act, 1961, in respect of its various amounts of income from the following sources in India : 1. Conducting various courses and certification programmes in hospitality management and operations. 2. Providing educational and training materials. 3. Conducting seminars, workshops and other programmes. 4. Providing training, course materials and instructional resources to the in-house faculty of various institutions. It was held that exemptions under section 10(22) will be available. It was observed that to avail exemption the conditions under section 10(22) required the following (a) the educational institution must actually exist (b) a society need not itself be imparting education and it is enough if it runs some schools or colleges (c) it should exist only for educational purposes and not for profit (d) the income would be entitled to exemption provided it is directly relatable to the educational activity. The AAR found that the assessee was satisfying all the above conditions, therefore exemptions under section 10(22) were available.

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- 1.23.2** The issue of eligibility of exemptions for foreign charities working in India also came up before the Supreme Court of India in *Oxford University Press v. CIT* [2001] 247 ITR 658. In this case though the ruling was against the assessee but the legal reasons on which the case was decided apparently was in favour of granting exemptions to foreign charitable institutions. The court found that the work of the Indian branch of Oxford University was not charitable in nature. It was engaged in publications, distribution and sales of books which could not be considered as an educational activity under section 2(15). It was observed that the label “university press” was not sufficient to establish that it was engaged in any educational activity. The purpose of the existence of the assessee in this country as appeared from the material on record, was possibly to earn profit.
- 1.23.3** Supreme Court clarified that if a foreign charity engaged in charitable activities in India is able to justify its activities are of charitable nature and it does not exist for profit, then there is no reason why exemption under section 11 should not be given.
- 1.23.4** The Supreme Court gave a landmark judgement in *American Hotel & Lodging Association Educational Institute vs. CBDT* (2006) 206 CTR (Del) 601 : (2007) 289 ITR 46 (Del). In this case the assessee NGO was a branch office of an American NGO. It was not doing any charitable activity in India and all its income in India was repatriated to USA.
- 1.23.5** The Supreme Court was of the opinion that exemptions under section 10(23C) was not available if all the activities were outside India though 10(23C) did not specifically make it mandatory for the activities to be done in India. In other words, Supreme Court opined that NGOs registered under section 10(23C) may have some activities outside India but to claim exemptions they should primarily be working in India, only.

**RBI MASTER CIRCULAR ON COMPOUNDING OF  
CONTRAVENTIONS UNDER FEMA, 1999**

**RBI/2013-14/9**

**July 01, 2013**

**Master Circular No.9 /2013-14**

To,  
All Authorised Dealer Category - I banks and Authorised Banks

Madam / Sir,

**Master Circular on Compounding of Contraventions under FEMA, 1999.**

The compounding of contraventions under Foreign Exchange Management Act (FEMA), 1999 is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the FEMA, 1999.

2. This Master Circular consolidates the existing instructions on the subject of “**Compounding of Contraventions under FEMA, 1999**” at one place. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2014 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

**(Rudra Narayan Kar)**  
**Chief General Manager-in-Charge**

## 1. General

- 1.1 In terms of Section 13(1) , Chapter IV of FEMA 1999, if any person contravenes any provision of FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where the amount is quantifiable or up to Rupees Two lakh, where the amount is not quantifiable and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues. The provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention. In terms of rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the powers to compound the contraventions have been prescribed for compounding authorities with regard to the sum involved in such contravention and no contravention shall be compounded unless the amount involved in the contravention is quantifiable.
- 1.2 The Government of India has, in consultation with the Reserve Bank placed the responsibility of administering compounding of contraventions with the Reserve Bank, except contraventions under Section 3(a) of FEMA, 1999. Accordingly, Foreign Exchange (Compounding Proceedings) Rules, 2000 have been framed by the Government of India empowering the Reserve Bank to compound contraventions under FEMA, 1999 with a view to provide comfort to individuals and corporate community by minimizing transaction costs, while taking severe view of willful, *malafide* and fraudulent transactions.

## 2. Compounding Powers

- 2.1 The compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE), respectively, are as under:
- (a) Reserve Bank has been empowered to compound the contraventions of all the Sections of FEMA, 1999, except clause (a) of Section 3 of the Act, *ibid*.
  - (b) Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA, 1999 (dealing essentially with Hawala transactions).
- 2.2 For effective implementation of compounding process under FEMA, 1999, the Government of India has framed the procedure for compounding of contraventions. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener.

## 3. Delegation of Powers

- 3.1 As a measure of customer service and in order to facilitate the operational convenience, compounding powers were delegated to the Regional Offices of the Reserve Bank of India mentioned below to compound the contraventions of FEMA involving (i) delay in

reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 and as amended from time to time:

- a) Paragraphs 9 (1) (A) and 9 (1) (B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Bhopal, Bhubaneshwar, Chandigarh, Guwahati, Jaipur, Jammu, Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees One hundred lakh only (Rs. 1,00,00,000 /-).
- b) Paragraphs 9 (1) (A), 9 (1) (B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

#### **4. Process of Compounding**

- 4.1 An application for compounding of a contravention under FEMA, 1999 may be submitted to the Compounding Authority (CA) on being advised of a contravention under FEMA, 1999, either through a memorandum or *suo moto* on being made or on becoming aware of the contravention. The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Annex-I).
- 4.2 Along with the application in the prescribed format, the applicant may also furnish the details as per the enclosed Annexes (Annex-II) relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame.
- 4.3 All applications for compounding whether on the advice of the Regional Office concerned or *suo-moto*, relating to the contraventions mentioned at paragraph 3.1 (a) and (b) above and up to the amount of contravention stated therein, may be submitted by the companies/individuals falling under the jurisdiction of the aforesaid Regional Offices directly to the Regional Office concerned, together with the prescribed fee of Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the concerned Regional Office. Applications for compounding of all other contraventions together with the prescribed fee of Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at Mumbai may be submitted to: The Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 5th floor, Amar Building, Sir P.M. Road, Fort, Mumbai- 400001.
- 4.4 On receipt of the application for compounding, the proceedings would be concluded and an order issued by the CA within 180 days from the date of the receipt of the application for compounding. The time limit for this purpose would be reckoned from

the date of receipt of the completed application for compounding by the Reserve Bank.

- 4.5 The CA may call for any additional information, record or any other document relevant to the compounding proceedings. Such additional information/ documents are required to be submitted within the period as may be specified by the CA and the application may be rejected if such information/documents are not submitted within the prescribed time.
- 4.6 The application will be examined in terms of sub rule (1) of rule (4) of the Foreign Exchange (Compounding Proceedings) Rules, 2000 to assess whether the contravention is compoundable and the amount of contravention is accordingly quantified.
- 4.7 The nature of contravention is ascertained keeping in view, inter alia, the following indicative points :
- a. whether the contravention is technical and / or minor in nature and needs only an administrative cautionary advice;
  - b. whether the contravention is serious in nature and warrants compounding of the contravention; and
  - c. whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringement of the regulatory framework.

However, the Reserve Bank reserves the right to classify the contraventions as stated above and neither the contravener nor others have any right to classify any contravention as technical suo moto.

- 4.8 It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.
- 4.9 The disposal of the compounding application is made by issue of a Compounding Order specifying the provisions of FEMA, 1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999, in respect of which contravention has taken place.
- 4.10 Where there is sufficient cause for further investigation, the Reserve Bank may refer the matter to the Directorate of Enforcement for further investigation and necessary action

under FEMA, 1999, or to the Anti-Money Laundering Authority instituted under the Prevention of Money Laundering Act (PMLA), 2002 or to any other agencies, as deemed fit. Such applications will be disposed of by returning the application to the applicant.

## **5. Scope and Manner of Compounding**

5.1 The CA will exercise jurisdiction in respect of the contraventions admitted to have been committed in relation to any of the provisions of the FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999.

5.2 The application for compounding will be disposed of on merits, upon consideration of the records and submissions and at the absolute discretion of the CA. The following factors, which are only indicative, may be taken into consideration for the purpose of passing the Compounding Order and for arriving at the quantum of sum on payment of which contravention shall be compounded:

- (i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- (ii) the amount of loss caused to any authority /agency / exchequer as a result of the contravention;
- (iii) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- (iv) the repetitive nature of the contravention, the track record and / or history of non-compliance of the contravener;
- (v) contravener's conduct in undertaking the transaction and disclosure of full facts in the application and submissions made during the personal hearing; and
- (vi) any other factor considered relevant and appropriate.

## **6. Issue of the Compounding Order**

6.1 An opportunity for personal hearing is given to the applicant for further submission of documents in person in support of the application within a specified period. The contravener or its authorized representative can choose not to appear in person or make any submissions before the CA for personal hearing. The CA will proceed with the processing of the compounding application on the basis of information and documents available in the application for compounding.

6.1.1 It is clarified that appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. The applicant may enclose full information relating to the case as prescribed in AP (Dir series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011 respectively, with the application or thereafter and may exercise his discretion with regard to appearing for hearing. Further, if the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented/ accompanied by legal experts/consultants, as compounding is only for admitted

contraventions. (as amended vide Press release no. 2012-2013/1215 dated January 18, 2013)

- 6.2 The Compounding Authority will pass a compounding order on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings, if any.
- 6.3 Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of FEMA, 1999 as the case may be, one copy of the compounding order made under sub rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 will be provided to the applicant (the contravener) and also to the Adjudicating Authority.

## **7. Post-compounding procedure**

- 7.1 The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 is payable by way of a demand draft in favour of the "Reserve Bank of India" within fifteen days from the date of the order of compounding of such contravention. The demand draft has to be deposited in the manner as directed in the compounding order.
- 7.2 On realization of the demand draft for the sum for which contravention is compounded, a certificate in this regard shall be issued by the Reserve Bank subject to the specified conditions, if any, in the order.
- 7.3 The provisions of the Rules do not confer any right on the contravener, after a compounding order is passed, to seek to withdraw the order or to hold the compounding order as void or request a review of the order passed by the CA.
- 7.4 In case of failure to pay the sum compounded within the time specified in the compounding order, it shall be deemed in terms of Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, that the contravener had never made an application for compounding of any contravention under these Rules.
- 7.5 In respect of the contraventions of FEMA, 1999 (as defined in section 13 of the FEMA, 1999), which are not compounded by the Compounding Authority, other relevant provisions of FEMA, 1999, including reference to the Directorate of Enforcement shall apply.

## **8. Pre-requisites for compounding process**

- 8.1 In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded. Such contravention would be dealt with under relevant provisions of the FEMA, 1999 for contravention. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

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- 8.2 Contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the authorities concerned.
- 8.3 Cases of contravention, such as, those having a money laundering angle, national security concern and/or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999 or to the authority instituted for implementation of the Prevention of Money Laundering Act 2002, (PMLA) or to any other agencies, for necessary action, as deemed fit.
- 8.4 The Reserve Bank generally advises the persons concerned of their choice and option to make an application for compounding as and when such contraventions come to its notice. The facts constituting such contraventions will be brought to the notice of the Directorate of Enforcement in case no application for compounding is made within the time indicated by the Reserve Bank.

Authorised Dealers may take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions to Reserve Bank so that contraventions of provisions of FEMA, 1999 due to the acts of omission and commission of the Authorised Dealers do not occur. In terms of Section 11(3) of FEMA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank. (as amended vide AP DIR Circular No.76 dated January 17, 2013)

### Foreign Exchange (Compounding Proceedings) Rules, 2000

Notification No. G.S.R.383(E) dated 3rd May 2000

As amended vide

G.S.R.443(E) dated November 2, 2002 G.S.R. 609 (E) dated September 13, 2004 and G.S.R. 613 (E) dated August 27, 2008

In exercise of the powers conferred by section 46 read with sub-section (1) of section 15 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Central Government hereby makes the following rules relating to compounding contraventions under chapter IV of the said Act, namely:-

1. Short title and commencement –
  - (1) These rules may be called the Foreign Exchange (Compounding Proceedings) Rules 2000.
  - (2) They shall come into force on the 1st day of June, 2000.
2. Definitions - In these rules, unless the context otherwise requires -
  - (a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
  - (b) 'authorised officer' means an officer authorised under sub-rule (1) of rule 3;
  - (c) 'applicant' means a person who makes an application under section 15 (1) of the Act to the compounding authority;
  - (d) 'Compounding Order' means an order issued under sub-section (1) of Section 15 of the Act;
  - (e) 'Form' means a form appended to these rules;
  - (f) 'section' means a section of the Act;
  - (g) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.
3. (1) 'Compounding Authority' means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely;
  - (a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA).
  - (b) An officer of the Reserve Bank of India not below the rank of the Assistant General Manager.
4. Power of Reserve Bank to compound contravention -
  - <sup>1</sup> [(1) If any Person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of the Act.]

<sup>1</sup> GSR 613(E) dated August 27, 2008

- (a) in case where the sum involved in such contravention is ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;
- (b) in case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;
- (c) in case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees hundred lakhs by the General Manager of Reserve Bank of India;
- (d) in case the sum involved in such contravention is rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India;

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

- (2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

*Explanation:* For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

- (3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.
- (4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai along with a fee of Rs. 5000/- by Demand Draft in favour of compounding authority.

#### 5. **The Power of Enforcement Directorate to compound contraventions -**

<sup>2</sup> [(1) If any Person contravenes provisions of Section 3(a) of Foreign Exchange Management Act.]

- (a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;
- (b) in case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;
- (c) in case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;

<sup>2</sup> GSR 609 (E) dated September 13, 2004

(d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;

(e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

**Explanation:** For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer of the Directorate of Enforcement specified under sub-rule (1) of this rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Director of Enforcement.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000 by DD in favour of the Compounding Authority.

6. Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

7. Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

8. **Procedure for Compounding -**

(1) The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.

(2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application.

**9. Payment of amount compounded -**

<sup>3</sup> The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, shall be paid by demand draft in favour of the Compounding Authority within fifteen days from the date of the order of compounding of such contravention.

10. In case a person fails to pay the sum compounded in accordance with the rule 9 within the time specified in that rule, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.

11. No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

**12. Contents of the order of the Compounding Authority -**

(1) Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contravention.

(2) Every such order shall be dated and signed by the Compounding Authority under his seal.

13. **Copy of the order** - One copy of the order made under rule 8(2) shall be supplied to the applicant and the Adjudicating Authority as the case may be.

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<sup>3</sup> GSR 443(E) dated November 2, 2002

## **Format of Application**

### **Form** (See Rule 4 or 5)

(To be filled in duplicate and shall be accompanied by certified copy of the Memorandum issued)

1. Name of the applicant (in BLOCK LETTERS)
2. Full address of the applicant (including Phone and Fax Number and email id)
3. Whether the applicant is resident in India or resident outside India [Please refer to Section 2(v) of the Act]
4. Name of the Adjudicating Authority before whom the case is pending
5. Nature of the contravention [according to sub-section (1) of Section 13]
6. Brief facts of the case
7. Details of fee for application of compounding
8. Any other information relevant to the case

I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief and that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/our case.

Dated :

(Signature of the Applicant)

Name

**Annex-II- FDI**

Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India

- Name of the applicant
- Date of incorporation
- Nature of activities under taken
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

**TABLE A**

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Reported to RBI on*	Delay if any
Total					

\* date of reporting to RBI and not AD

**TABLE B**

Name of Investor	Date of allotment of shares	Number of shares allotted	Amount for which shares allotted	Date of reporting to RBI*	Delay if any
Total					

**TABLE C**

In case there is excess share application money

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Excess share application money	Date of refund of share application money	Amount in forex	RBI approval letter and date
Total							

**TABLE D**

Authorised Capital

Sl. No.	Date	Authorised Capital	With effect from	Date of Board meeting	Date of filing with ROC

A= B+C Please give supporting documents Table A- Copies of FIRC with date stamp of receipt at RBI Table B- Copies of FCGPR with date stamp of receipt at RBI Table C – letter seeking refund/ allotment of shares- approval letter from RBI A2 form

- Copies of Balance Sheet during the period of receipt of share application money and allotment of shares
- Nature of contravention and reasons for the contravention
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc

Details to be furnished along with application for compounding of  
contravention relating to External Commercial Borrowing

• Name of the applicant	
• Date of incorporation	
• Nature of activities under taken	
• Brief particulars about the foreign lender	
• Is the applicant an eligible borrower?	
• Is the lender eligible lender?	
• Is the lender an equity holder?	
• What is the level of his holding at the time of loan agreement?	
Details of ECB	
• Date of Loan agreement	
• Amount in Foreign Currency and Indian Rupee	
• Rate of interest	
• Period of loan	
• Repayment particulars	
• Details of draw down	Date of draw down      Amount in Foreign Currency      Amount in INR
• Details of LRN Number- application and receipt	
• Details of ECB 2 returns submitted; Period of return: Date of submission	
• Details of Utilization of ECB in Foreign Currency and Indian Rupee	
• Nature of contravention and reasons for the contravention	
• All supporting documents may be submitted	
• A declaration that they are not under investigation of any agency such as DoE, CBI, etc.	

**Details to be furnished along with application for compounding  
of contravention relating to Overseas Investment**

- Name of the applicant
- Date of incorporation
- Nature of activities under taken
- Name of Overseas entity
- Date of incorporation of overseas entity
- Nature of activities under taken by overseas entity
- Nature of entity- WOS/JV
- Details of remittance sent- Date of remittance; Amount in FCY and in INR
- Details of other financial Commitment
- Details of UIN applied and received
- Date of receipt of share certificate
- Approval of other regulators if required
- Details of APRs submitted: For the period ended; date of submission
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc.

## **Annex II- Branch Office / Liaison Office**

### **Details to be furnished along with application for compounding of contravention relating to Branch/Liaison Office in India**

- Name of the applicant
- Date of incorporation
- Date of approval for opening of Liaison Office/ Branch Office
- Validity period of the approval
- Nature of activities under taken
- income and expenditure of the LO/BO
- Dates of submission of Annual activity Certificates
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc.

**List of Rules/ A.P. (DIR Series) Circulars consolidated in the  
Master Circular Compounding of contraventions of FEMA, 1999**

<b>Rules SI No.</b>	<b>Rules No.</b>	<b>Date</b>
1	Foreign Exchange (Compounding Proceedings) Rules, 2000	May 3, 2000
2	Foreign Exchange (Compounding Proceedings) Rules, 2002 (Amendment)	November 2, 2002
3	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	September 13, 2004
4	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	August 27, 2008

A.P.(DIR Series) Circular No. 56 dated June 28, 2010.

A.P.(DIR Series) Circular No. 57 dated December 13, 2011.

A.P.(DIR Series) Circular No. 11 dated July 31, 2012.

A.P.(DIR Series) Circular No. 76 dated January 17, 2013.

Press release no. 2012-2013/1215 dated January 18, 2013.

**RBI CIRCULAR FOR REGULARISATION  
OF REGISTRATION OF LO/BO****RBI/2011-12/ 112  
A.P. (DIR Series) Circular No. 02****July 15, 2011**

To

All Authorised Dealer Category - I banks

Madam / Sir,

**Regularization of Liaison / Branch Offices of foreign entities  
established during the pre-FEMA period**

1. Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to Notification No. FEMA 22/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, as amended from time to time, read with A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009, in terms of which a person resident outside India requires the prior approval of the Reserve Bank of India for establishing a Liaison Office (LO) /Branch Office (BO) in India. Further, attention of the AD Category - I banks is invited to A.P. (DIR Series) Circular No. 23 dated December 30, 2009 in terms of which applications from foreign Non-Government Organisations (NGOs) / Non-Profit Organisations (NPOs) / Government bodies / Departments for establishing BO / LOs in India are considered by the Reserve Bank in consultation with the Government of India, Ministry of Finance.
2. It has come to the notice of the Reserve Bank that certain BOs / LOs established by the foreign NGOs, NPOs, news agencies and other foreign entities are continuing to function in India, without the approval of the Reserve Bank, after the Foreign Exchange Management Act (FEMA), 1999 came into force from June 1, 2000. Under the provisions of FEMA, 1999, *ibid*, the request of such entities to open an office in India is considered by the Reserve Bank in consultation with the Government of India, wherever required.
3. Accordingly, the foreign entities who have established LO or BO in India and continuing to function without obtaining permission from the Reserve Bank of India should approach the Reserve Bank within a period of 90 days from the date of issue of this circular for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

4. The foreign entities who may have established LO or BO with the permission from the Government of India may also approach the Reserve Bank along with a copy of the said approval for allotment of a Unique Identification Number (UIN) by the Reserve Bank of India.
5. All such applications/ requests should be submitted to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai – 400 001 in form FNC and should be routed through the AD Category – I bank where the account of such LO /BO is maintained.
6. AD Category - I banks may bring the contents of this circular to the notice of their constituents/ customers concerned and forward such application/ request to the Reserve Bank, after complying with the instructions contained in A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009. Further, they may also ensure that their constituents operating LO/ BO in India have valid approval from the Reserve Bank for the same and that a copy of such approval is kept on record.
7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(Meena Hemchandra)**  
**Chief General Manager-in-Charge**

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