RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
CENTRAL OFFICE
MUMBAI 400001

Notification No. FEMA 22(R) /RB-2016 **March 31, 2016**

Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016

In exercise of the powers conferred by sub-section (6) of Section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 22/2000-RB dated May 3, 2000, as amended from time to time, the Reserve Bank of India makes the following regulations to prohibit, restrict and regulate establishment in India of a branch office or a liaison office or a project office or any other place of business by a person resident outside India:-

1. Short title and commencement

a. These Regulations may be called the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

b. They shall come into force from the date of their publication in the Official Gazette.

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2. Definitions

In these regulations, unless the context otherwise requires –

a. 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999).

b. ‘Authorised Dealer’ means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act.

c. 'Foreign company' means a body corporate incorporated outside India and includes a firm or other association of individuals.

d. 'Branch Office' in relation to a company, means any establishment described as such by the company.

e. 'Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office or 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 in India 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.

i. 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 opening a branch office or a liaison office or a project office or any other place of business in India

No person resident outside India shall without prior approval of the Reserve Bank open in India a branch office or a liaison office or a project office or any other place of business by whatever name called except as laid down in these Regulations.

Provided that

a. A banking company resident outside India shall not require any approval under these Regulations for establishing any office in India if such company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949.

b. An insurance company resident outside India shall not require any approval under these Regulations for establishing any office in India 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.

c. A company resident outside India shall not require any approval under these Regulations to establish a branch office in the Special Economic Zones (SEZs) to undertake manufacturing and service activities, subject to the conditions that:

i) such branch offices are functioning in those sectors where 100% FDI is permitted;

ii) such branch offices comply with Chapter XXII of the Companies Act, 2013; and

iii) such branch offices function on a stand-alone basis.

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4. Approval for opening a branch office or a liaison office or a project office or any other place of business in India

a. **Eligibility**

A person resident outside India can establish a branch office or a liaison office in India provided it meets the following criterion:

i. For Branch Office — a profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent.

ii. For Liaison Office — a profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.

Provided that a person resident outside India that is not financially sound and are subsidiaries of other companies may submit a Letter of Comfort (Annex A) from their parent company subject to the condition that the parent company satisfies the prescribed criterion for net worth and profit.

b. **Permissible activities**

A person resident outside India permitted by the Reserve Bank under these Regulations to establish a branch or liaison office in India may undertake or carry on any activity specified in Schedule I or II (Annex B), as the case may be, but shall not undertake or carry on any other activity unless otherwise specifically permitted by the Reserve Bank.

c. **Application form**

A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC (Annex C) to an Authorised Dealer Category-I bank who may, subject to the provisions of Regulation 5, grant approval as per the directions and/or guidelines issued by the Reserve Bank in this regard. In case no office is opened by the person resident outside India within six months from the date of approval letter, the approval for establishing the office in India shall be cancelled. In cases where the person resident outside India is not able to open the office within the stipulated time frame due to reasons beyond their control, the Authorised Dealer Category-I bank may consider granting extension of time for setting up the office by a further period of six months. Any further extension of time shall require the prior approval of the Reserve Bank in this regard.

d. **Extension of the validity period for liaison office**

I. A person resident outside India may establish in India under these Regulations a liaison office for a period of three years subject to the provisions of Regulation 4 d (III). The non-resident entity may apply to the Authorised Dealer Category-I bank concerned for extension of the validity period of approval, and upon receipt of such an application, the Authorised Dealer Category-I bank concerned may extend the validity period of approval for a period of three years from the date of expiry of the original approval / extension granted, subject to such directions issued by the Reserve Bank in this regard.

II. The application for extension of the validity period of the liaison office of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Regulation (DBR), Reserve Bank and the Insurance Regulatory and Development Authority (IRDA) respectively.

III. Entities engaged in construction and development sectors and which are Non-Banking Finance Companies are permitted to open a Liaison Office for two years only. No further extension would be considered for liaison offices of entities which are Non-Banking Finance Companies and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, the offices shall have to either close down or be converted into a Joint Venture / Wholly Owned Subsidiary in conformity with the extant Foreign Direct Investment policy.

e. **Additional offices**

A person resident outside India desiring to establish additional branch office or liaison office may submit to the Authorised Dealer Category-I bank a fresh FNC Form along with the justification for the need for additional office/s.

f. **Project office**

I. A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

   i. the project is funded directly by inward remittance from abroad; or

   ii. the project is funded by a bilateral or multilateral International Financing Agency; or

   iii. the project has been cleared by an appropriate authority; or

   iv. 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.

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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 4A of the Companies Act, 1956.

II. A person from any country other than Pakistan who has been awarded a contract for a project by a Government authority/ Public Sector Undertaking may open a bank account with an Authorised Dealer Category-I bank without any prior approval from the Reserve Bank.

g. **Registration with State Police Authorities**

A person from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau opening a branch office or a liaison office or a project office or any other place of business in India shall have to register with the concerned State Police Authorities. Copy of approval letter for 'persons' from these countries shall be marked by the AD Category-I bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi.

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h. **Fund/non-fund based facilities**

Authorised Dealer Category-I bank may extend fund and/or non-fund based facilities to branch office and project offices based on the guidelines issued by the Reserve Bank in this regard.

i. **Remittance of profit or surplus**

I. Branch office may 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 Category-I bank through whom the remittance is effected:

i. A certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year.

ii. A Chartered Accountant's certificate certifying

1. the manner of arriving at the remittable profit;
2. that the entire remittable profit has been earned by undertaking the permitted activities and
3. that the profit does not include any profit on revaluation of the assets of the branch.

II. Authorised Dealer Category – I bank may permit intermittent remittances by project offices pending winding up / completion of the project subject to submission of the following:

i. certified copy of the final audited project accounts;

ii. the statutory auditor's certificate showing the manner of arriving at the remittable surplus and confirming that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.; and

iii. An undertaking from the project office that the remittance will not, in any way, affect the completion of the project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

j. **Acquisition of property**

Acquisition of property by branch office/project office shall be governed by the guidelines issued under Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations.

k. **Transfer of assets**

A person resident outside India permitted under these Regulations to establish a branch office or liaison office or project office may apply to the concerned Authorised Dealer Category-I bank for transfer of its assets to a Joint Venture/Wholly Owned Subsidiary or any other entity in India. Authorised Dealer Category-I bank shall be guided by the instructions laid down by Reserve Bank in this regard.

l. **Annual Activity Certificate (AAC)**

The branch office/liaison office may submit the Annual Activity Certificate (Annex D) as at the end of March 31 along with the audited financial statements including receipt and payment account on or before September 30 of that year. In case the annual accounts of the office are finalized with reference to a date other than March 31, the AAC along with the audited financial statements may be submitted within six months from the due date of the Balance Sheets to the Authorised Dealer Category-bank and the Director General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002.

AAC from a Chartered Accountant showing the project status and certifying that the accounts of the project office have been audited and the activities undertaken are in conformity with the general/ specific permission given by the Reserve Bank may be submitted by the project office to the designated Authorised Dealer Category-I bank.

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m. **Closure of office and remittance of winding up proceeds**

I. Requests for closure of the branch office/liaison office may be submitted to the Authorised Dealer Category - I bank along with the following documents:

i. Copy of the Reserve Bank's/Authorised Dealer Category-I bank’s approval for establishing the office.

ii. Auditor's certificate :

1. 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;
2. 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;
3. confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.

iii. Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the office and there is no legal impediment to the remittance.

iv. A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the branch office/liaison in India.

v. Any other document/s, specified by the Reserve Bank/Authorised Dealer Category-I bank while granting approval.

II. Remittance of winding up proceeds of branch or liaison office established in India shall be governed by the guidelines issued under Foreign Exchange Management (Remittance of assets) Regulations.

5. Approval of the Reserve Bank in certain cases for establishment of branch office, liaison office or project office or any other place of business in India

Any application from a person resident outside for opening of a branch office or a liaison office or a project office or any other place of business in India shall require prior approval of Reserve Bank in the following cases where

a. the applicant is a citizen of or is registered/incorporated in Pakistan;
b. the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a liaison, branch or project office in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
c. the principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting:

Provided that in the case of proposal for opening a project office relating to defence sector, no separate reference or approval of Government of India shall be required if the said non-resident applicant has been awarded a contract by/ entered into an agreement with the Ministry of Defence or Service Headquarters or Defence Public Sector Undertakings.

d. The applicant is a Non-Government Organisation, Non-Profit Organisation, Body/ Agency/ Department of a foreign government.

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Such applications shall be forwarded to the Reserve Bank, Foreign Exchange Department, Central Office Cell, New Delhi by the Authorised Dealer Category-I bank and be considered in consultation with the Government of India.

(Indira Nanu)
Chief General Manager

Annex A

Format of the Letter of Comfort

[See Regulation 4 (a)]

The Authorised Signatory,

(Address of the Authorised Dealer Category-I bank)

Dear Sir,

Sub: Application for establishment of branch / liaison office in India by our subsidiary / group company, M/s_____

You may kindly refer to the application made by our subsidiary / group company, M/s_____to your office for establishing branch / liaison office in India.

2. In this connection, we, _____(the parent company/group company) undertake to provide the necessary financial support for our subsidiary / group company's operations as a branch / liaison office in India. Any liability that may arise due to the functioning of the branch/liaison office in India will be met by us (the parent company/group company), in case of inability on part of the branch/liaison office to do so.

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3. We are also enclosing the financial background of our company in the form of our latest Audited Balance Sheet / Account Statement certified by a Certified Public Accountant.

Yours faithfully,

( )

Authorised Representative of the parent company

Annex B

Schedule I

[See Regulation 4 (b)]

Permitted activities for a branch office 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. Representing a foreign airline/shipping company.

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Schedule II

[See Regulation 4 (b)]

Permitted activities for a liaison office in India of a person resident outside India

i. Representing the parent company / group companies in India.

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.

Annex C

Form FNC

[See Regulation 4 (c)]

[This application form shall be completed and submitted to the AD Category-I bank designated by the applicant along with the documents mentioned in item (viii) of the Declaration.]

Part I

No.	Details	Particulars
1.	i. Full name and address of the applicant ii. Date and Place of incorporation / registration iii. Telephone Number(s) iv. Fax Number(s) v. E-mail ID	
2.	i. Details of capital ii. Paid-up capital iii. Free Reserves/Retained earnings as per last audited Balance Sheet/Financial Statement iv. 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)	

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5.	i. Name and address of the banker of the applicant in the home country ii. Telephone & Fax Number iii. E-mail ID	
6.	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 organization	
7.	For project offices: i. Reference no. and date of letter awarding the contract ii. Particulars of authority awarding the project/contract iii. Total amount of contract iv. Address/e-mail/telephone number/fax number of the project office v. Tenure of project office vi. Nature of project undertaken	
8.	Any other information which the applicant company wishes to furnish in support of this application.	

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Part II- Additional information to be submitted by applicants where Reserve Bank's approval is necessary under Regulation 5 of Notification No. FEMA 22 (R)/2016-RB dated March 31, 2016

I. Details in respect of Company/ Firm

Sr. No.	Full name of the company	Date of registration of the company	Address of Head Office, Regional Office and Registered Office	Previous name of the company if any	Details of earlier approvals or rejections, if any, (ref. no. and date)	Enclosed application for branch office/liaison office/project office prescribed by DEA

II. Details in respect of Directors/Key Executives

Sr. No.	Full name of Board of Directors and Key Executives (wherever applicable)	Present position held with date (since when)	Date of Birth	Parentage	Present and permanent address	Nationality	Passport Nos. and issue date	Contact address and telephone number

III. Details of shareholders of applicant company (all firms/companies/entities/individuals having shareholding more than 10 %)

Sr. No.	Full name	Parentage Father/ Mother	Date of birth	Permanent address	Present address	Present position held	Nationality (if holding dual nationality, both must be clearly mentioned)	% of shares held in the company

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IV. Details of criminal cases, if any, against the company / Director (s) for which security clearance is sought

a. Name, address and registration number of the company :

b. Name and address of owners, promoters and directors of the company :

1. _____
2. _____
3. _____
4. _____

c. Are the company owners, promoters or directors listed above, the subject of any

1. Preventive detention proceedings : Yes/No
2. Criminal proceedings : Yes/No

d. If, Yes, please provide the following details

1. Detention/case/FIR/warrant number:
2. Police station/District/Agency :
3. Section of law :
4. Name and place of the court :

e. The above mentioned details are in respect of both India and any foreign country.

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)/7 (vi) above.

iii. If we shift the office to another place within the city, we shall intimate the designated AD Category - I bank. In the event of shifting the office to any other city in India, prior approval of the AD Category-I 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:

a. Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association 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 notarized as above and cross verified/attested by the Indian Embassy/ Consulate in the home country*].

b. Audited Balance sheet of the applicant company for the last three/ five years in case of branch office/liaison office respectively.

[*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*]

c. 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.

d. Power of Attorney in favour of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.

(Signature of Authorised Official
of the Applicant Company)

Name:
Designation:
Place:
Date:

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Annex D

Annual Activity Certificate

(See Regulation 4(l))]

To whomsoever it may concern

This is to certify and confirm that during the period from _____ to _____, the branch office/liaison office/ project office/s with PAN No. ---------- (wherever applicable) of M/s_____ , UIN-_____ (wherever applicable) has/ have undertaken only those activities that have been specifically permitted by the Reserve Bank/ Authorised Dealer Category-I bank vide its approval letter/s No/s. _____dated _____and has/have complied with the terms and conditions specified in the above mentioned letter/s. If there is any change in address and other contact details, the same has been brought to the notice of the Authorised Dealer Category-I bank.

For Project Office only

2. Project status: _____

_____

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3. This is to certify that during the period from _____ to _____, no inter-project funds transfer has been carried out without prior approval of the Reserve Bank.

_____
(Signature of the Statutory Auditor/s)

(Name of the Chartered Accountant)
ICAI Membership No.:
Address:

Place:
Date:

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