

FOREIGN EXCHANGE MANAGEMENT (ESTABLISHMENT IN INDIA OF BRANCH OR OFFICE OR OTHER PLACE OF BUSINESS) REGULATIONS, 2000

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FOREIGN EXCHANGE MANAGEMENT (ESTABLISHMENT IN INDIA OF BRANCH OR OFFICE OR OTHER PLACE OF BUSINESS) REGULATIONS, 2000

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

1. Short title and commencement :-

(i) These Regulations may be called the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000.

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

2. Definitions :-

In these regulations, unless the context otherwise requires,-

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

of 1999);

(b) 'foreign company' means a body corporate incorporated outside India, and includes a firm or other association of individuals;

(c) 'branch' shall have the meaning assigned to it in sub-section (9) of Sec. 2 of the Companies Act, 1956 (1 of 1956),

(d) 'form' means a form annexed to these Regulations;

(e) 'liaison office' means a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel;

(f) 'project office' means place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office;

(g) 'site office' means a sub-office of the Project office established at the site of a project but does not include a Liaison Office;

(h) the words and expressions used but not defined in these Regulations, shall have the same meanings respectively assigned to them in the Act.

3. Prohibition against establishing branch or office in India

:-

1- No person resident outside India shall, without prior approval of the Reserve Bank, establish in India a branch or a liaison office ² [*****] or any other place of business by whatever name called:

Provided that no approval shall be necessary for a banking company, if such company has obtained necessary approval under the provisions of the Banking Regulation Act, 1949.

'Provided further that no approval shall be necessary for an insurance company, if such company has obtained approval from the Insurance Regulatory and Development Authority established under Sec. 3 of the Insurance Regulatory and Development Authority Act. 1999. for establishing a Liaison Office in India'.

1. Regulation 3 after existing proviso may be added by the Foreign Exchange Management (Establishment in India for branch or office

or other place of business) (Amendment) Regulations, 2005.

2. THE WORDS DELETED BY "The Foreign Exchange Management (Establishment in India of Branch or Office or other place of Business) (Amendment) Regulations, 2003" [Noti. No. F. No. 1/23/EC/2000-Vol. II, {No. FEMA 95/2003-R.BJ, dt. 2.7.2003 Gaz. of India, Exty., Pt. II-Sec. 3(0, No. 417, dt. 1.9.2003, p. 3.]

4. Prohibition against establishing a branch or office in India by citizens of certain countries :-

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

5. Application to Reserve Bank for opening branch or liason office :-

(i) A person resident outside India desiring to establish a branch or liason office in India shall apply to the Reserve Bank, in Form FNC 1.

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(ii) A foreign Company may open a Project Office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and

(a) the project is funded directly by inward remittance from abroad; or

(b) the project is funded by a bilateral or multilateral international Financing Agency; or

(c) the project has been cleared by an appropriate authority; or

(d) a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

(iii) The Foreign Company shall furnish a report to the concerned Regional Office of Reserve Bank of India under whose jurisdiction the Project Office is set up, giving details as under :

(a) Name and address of the foreign company

(b) Reference No. and date of letter awarding the contract referred to in clause (ii) of Regulation 5

(c) Total amount of contract

(d) Address and tenure of Project Office

(e) Nature of Project undertaken.

Explanation.- For the purpose of this Regulation, (i) 'a bilateral or multilateral Industrial Financing Agency' means the World bank or the International Monetary Fund or similar other body; (ii) 'Public Finance Institution' is a public financial institution as defined in Sec. 4-A of the Companies Act, 1956.

1. SUBSTITUTED BY The Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) (Amendment) Regulations, 2003

6. Activities which may be undertaken by the branch or office in India :-

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

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

1. SUBSTITUTED BY The Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) (Amendment) Regulations, 2003

7. Remittance of profit or surplus :-

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

I. For remittance of profit of a branch- (a) certified copy of the audited balance-sheet and profit and loss account for the relevant year; (b) a Chartered Accountant's certificate certifying- (i) the

manner of arriving at the remittable profit, (ii) that the entire remittable profit has been earned by undertaking the permitted activities , and (iii) that the profit does include any profit on revaluation of the assets of the branch.

II. For remittance of surplus on completion of the project- (a) certified copy of the final audited Project accounts;

(b) a Chartered Accountant's certificate showing the manner of arriving at the remittable surplus;

(c) income tax assessment order or either documentary evidence showing payment of income tax and other applicable taxes, or a Chartered Accountant's certificate stating that sufficient funds have been set aside for meeting all Indian tax liabilities; and

(d) auditor's certificate stating that no statutory liabilities in respect of the Project are outstanding.

SCHEDULE 1

Permitted activities for a branch in India of a person resident outside India

(i) Export/import of goods. (ii) Rendering professional or consultancy services. (iii) Carrying out research work, in which the parent company is engaged. (iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company. (v) Representing the parent company in India and acting as buying/selling agent in India. (vi) Rendering services in Information Technology and development of software in India. (vii) Rendering technical support to the products supplied by parent/group companies. (viii) Foreign airline/shipping company.

SCHEDULE 2

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

(i) Representing in India the parent company/group companies (d) 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.