



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

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**CS UPDATE**

**Jan 05, 2010**

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# MCA Updates

- **Corporate Governance Voluntary Guidelines 2009**  
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## **CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009**

**[Issued by the Ministry of Corporate Affairs]**

### **PREAMBLE**

Good corporate governance practices enhance companies' value and stakeholders' trust resulting into robust development of capital market, the economy and also help in the evolution of a vibrant and constructive shareholders' activism. The Ministry of Corporate Affairs has examined committee reports as well as suggestions received from various stakeholders on issues related to corporate governance. Keeping in mind that the subject of corporate governance may go well beyond the Law and that there are inherent limitations in enforcing many aspects of corporate governance through legislative or regulatory means, it has been considered necessary that a set of voluntary guidelines called "Corporate Governance -Voluntary Guidelines 2009" which are relevant in the present context, are prepared and disseminated for consideration and adoption by corporates.

These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines. The guidelines are not intended to be a substitute for or addition to the existing laws but are recommendatory in nature.

While it is expected that more and more corporates should make sincere efforts to consider adoption of the guidelines, there may be genuine reasons for some companies in not being able to do so completely. In such a case it is expected that such companies should inform their shareholders about the reasons for not adopting these guidelines either fully or partially. It is hoped that "India Inc" would respond to these guidelines with keen interest. It is also hoped that by following good governance practices, the Indian corporate sector would be in a better position to enhance not only the economic value of enterprise but also the value for every stakeholder who has contributed in the success of the enterprise, and while doing so, it would be setting the global benchmarks for good corporate governance.

After taking into account the experience of voluntary adoption of these guidelines by the corporates and consideration of relevant feedback, the Government would initiate the exercise for review of these guidelines for further improvement after one year.

### **GUIDELINES**

#### **I. BOARD OF DIRECTORS**

##### **A. APPOINTMENT OF DIRECTORS**

###### **A.1 Appointments to the Board**

- (i) Companies should issue formal letters of appointment to Non-Executive Directors (NEDs) and Independent Directors - as is done by them while appointing employees and Executive Directors. The letter should specify :

The term of the appointment;

The expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;

The fiduciary duties that come with such an appointment along with accompanying liabilities;

Provision for Directors and Officers (D&O) insurance, if any,;

The Code of Business Ethics that the company expects its directors and employees to follow;

The list of actions that a director should not do while functioning as such in the company; and

The remuneration, including sitting fees and stock options etc, if any.

- (ii) Such formal letter should form a part of the disclosure to shareholders at the time of the ratification of his/her appointment or re-appointment to the Board. This letter should also be placed by the company on its website, if any, and in case the company is a listed company, also on the website of the stock exchange where the securities of the company are listed.

#### **A.2 Separation of Offices of Chairman & Chief Executive Officer**

To prevent unfettered decision making power with a single individual, there should be a clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/Chief Executive Officer (CEO). The roles and offices of Chairman and CEO should be separated, as far as possible, to promote balance of power.

#### **A. 3 Nomination Committee**

- (i) The companies may have a Nomination Committee comprising of majority of Independent Directors, including its Chairman. This Committee should consider :
  - proposals for searching, evaluating, and recommending appropriate Independent Directors and Non-Executive Directors [NEDs], based on an objective and transparent set of guidelines which should be disclosed and should, inter-alia, include the criteria for determining qualifications, positive attributes, independence of a director and availability of time with him or her to devote to the job;
  - determining processes for evaluating the skill, knowledge, experience and effectiveness of individual directors as well as the Board as a whole.
- (ii) With a view to enable Board to take proper and reasoned decisions, Nomination Committee should ensure that the Board comprises of a balanced combination of Executive Directors and Non-Executive Directors.
- (iii) The Nomination Committee should also evaluate and recommend the appointment of Executive Directors.
- (iv) A separate section in the Annual Report should outline the guidelines being followed by the Nomination Committee and the role and work done by it during the year under consideration.

#### **A.4. Number of Companies in which an Individual may become a Director**

- (i) For reckoning the maximum limit of directorships, the following categories of companies should be included:
  - public limited companies,
  - private companies that are either holding or subsidiary companies of public companies.
- (ii) In case an individual is a Managing Director or Whole-time Director in a public company the maximum number of companies in which such an individual can serve as a Non-Executive Director or Independent Director should be restricted to seven.

### **B. INDEPENDENT DIRECTORS**

#### **B.1 Attributes for Independent Directors**

- (i) The Board should put in place a policy for specifying positive attributes of Independent Directors such as integrity, experience and expertise, foresight,

managerial qualities and ability to read and understand financial statements. Disclosure about such policy should be made by the Board in its report to the shareholders. Such a policy may be subject to approval by shareholders.

- (ii) All Independent Directors should provide a detailed Certificate of Independence at the time of their appointment, and thereafter annually. This certificate should be placed by the company on its website, if any, and in case the company is a listed company, also on the website of the stock exchange where the securities of the company are listed.

## **B.2 Tenure for Independent Director**

- (i) An Individual may not remain as an Independent Director in a company for more than six years.
- (ii) A period of three years should elapse before such an individual is inducted in the same company in any capacity.
- (iii) No individual may be allowed to have more than three tenures as Independent Director in the manner suggested in 'i' and 'ii' above.
- (iv) The maximum number of public companies in which an individual may serve as an Independent Director should be restricted to seven.

## **B.3 Independent Directors to have the Option and Freedom to meet Company Management periodically**

- (i) In order to enable Independent Directors to perform their functions effectively, they should have the option and freedom to interact with the company management periodically.
- (ii) Independent Directors should be provided with adequate independent office space and other resources and support by the companies including the power to have access to additional information to enable them to study and analyze various information and data provided by the company management.

## **C. REMUNERATION OF DIRECTORS**

### **C.1 Remuneration**

#### **C.1.1 Guiding Principles-Linking Corporate and Individual Performance**

- (i) The companies should ensure that the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully. It should also be ensured that relationship of remuneration to performance is clear. Incentive schemes should be designed around appropriate performance benchmarks and provide rewards for materially improved company performance. Benchmarks for performance laid down by the company should be disclosed to the members annually.
- (ii) Remuneration Policy for the members of the Board and Key Executives should be clearly laid down and disclosed. Remuneration packages should involve a balance between fixed and incentive pay, reflecting short and long term performance objectives appropriate to the company's circumstances and goal.
- (iii) The performance-related elements of remuneration should form a significant proportion of the total remuneration package of Executive Directors and should be designed to align their interests with those of shareholders and to give these Directors keen incentives to perform at the highest levels.

#### **C.1.2 Remuneration of Non-Executive Directors (NEDs) :**

- (i) The companies should have the option of giving a fixed contractual remuneration, not linked to profits, to NEDs. The companies should have the option to:

- (a) Pay a fixed contractual remuneration to its NEDs, subject to an appropriate ceiling depending on the size of the company; or
- (b) Pay upto an appropriate percent of the net profits of the company.
- (ii) The choice should be uniform for all NEDs, i.e. some should not be paid a commission on profits while others are paid a fixed amount.
- (iii) If the option chosen is 'i(a)' above, then the NEDs should not be eligible for any commission on profits.
- (iv) If stock options are granted as a form of payment to NEDs, then these should be held by the concerned director until three years of his exit from the Board.

#### **C.1.3 Structure of Compensation to NEDs**

- (i) The companies may use the following manner in structuring remuneration to NEDs:

**Fixed component** : This should be relatively low, so as to align NEDs to a greater share of variable pay. These should not be more than one-third of the total remuneration package.

**Variable component** : Based on attendance of Board and Committee meetings (at least 75% of all meetings should be an eligibility pre-condition)

**Additional variable payment(s)** for being:

- the Chairman of the Board, especially if he/she is a non-executive chairman
- the Chairman of the Audit Committee and/or other committees
- members of Board committees.

- (ii) If such a structure (or any similar structure) of remuneration is adopted by the Board, it should be disclosed to the shareholders in the Annual Report of the company.

#### **C.1.4. Remuneration of Independent Directors (IDs)**

- (i) In order to attract, retain and motivate Independent Directors of quality to contribute to the company, they should be paid adequate sitting fees which may depend upon the twin criteria of Net Worth and Turnover of companies.
- (ii) The IDs may not be allowed to be paid stock options or profit based commissions, so that their independence is not compromised.

#### **C.2 Remuneration Committee**

- (i) Companies should have Remuneration Committee of the Board. This Committee should comprise of at least three members, majority of whom should be non executive directors with at least one being an Independent Director.
- (ii) This Committee should have responsibility for determining the remuneration for all executive directors and the executive chairman, including any compensation payments, such as retirement benefits or stock options. It should be ensured that no director is involved in deciding his or her own remuneration.
- (iii) This Committee should also determine principles, criteria and the basis of remuneration policy of the company which should be disclosed to shareholders and their comments, if any, considered suitably. Whenever, there is any deviation from such policy, the justification/reasons should also be indicated/disclosed adequately.
- (iv) This Committee should also recommend and monitor the level and structure of pay for senior management, i.e. one level below the Board.



- (v) This Committee should make available its terms of reference, its role, the authority delegated to it by the Board, and what it has done for the year under review to the shareholders in the Annual Report.

## **II. RESPONSIBILITIES OF THE BOARD**

### **A. Training of Directors**

- (i) The companies should ensure that directors are inducted through a suitable familiarization process covering, inter-alia, their roles, responsibilities and liabilities. Efforts should be made to ensure that every director has the ability to understand basic financial statements and information and related documents/papers. There should be a statement to this effect by the Board in the Annual Report.
- (ii) Besides this, the Board should also adopt suitable methods to enrich the skills of directors from time to time.

### **B. Enabling Quality Decision making**

The Board should ensure that there are systems, procedures and resources available to ensure that every Director is supplied, in a timely manner, with precise and concise information in a form and of a quality appropriate to effectively enable/discharge his duties. The Directors should be given substantial time to study the data and contribute effectively to Board discussions.

### **C. Risk Management**

- (i) The Board, its Audit Committee and its executive management should collectively identify the risks impacting the company's business and document their process of risk identification, risk minimization, risk optimization as a part of a risk management policy or strategy.
- (ii) The Board should also affirm and disclose in its report to members that it has put in place critical risk management framework across the company, which is overseen once every six months by the Board. The disclosure should also include a statement of those elements of risk, that the Board feels, may threaten the existence of the company.

### **D. Evaluation of Performance of Board of Directors, Committees thereof and of Individual Directors**

The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. The Board should state in the Annual Report how performance evaluation of the Board, its committees and its individual directors has been conducted.

### **E. Board to place Systems to ensure Compliance with Laws**

- (i) In order to safeguard shareholders' investment and the company's assets, the Board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems.
- (ii) The Directors' Responsibility Statement should also include a statement that proper systems are in place to ensure compliance of all laws applicable to the company. It should follow the "comply or explain" principle.
- (iii) For every agenda item at the Board meeting, there should be attached an "Impact Analysis on Minority Shareholders" proactively stating if the agenda item has any impact on the rights of minority shareholders. The Independent Directors should discuss such Impact Analysis and offer their comments which should be suitably recorded.

### **III. AUDIT COMMITTEE OF BOARD**

#### **A. Audit Committee – Constitution**

The companies should have at least a three-member Audit Committee, with Independent Directors constituting the majority. The Chairman of such Committee should be an Independent Director. All the members of audit committee should have knowledge of financial management, audit or accounts.

#### **B. Audit Committee – Enabling Powers:**

- (i) The Audit Committee should have the power to
  - have independent back office support and other resources from the company;
  - have access to information contained in the records of the company; and
  - obtain professional advice from external sources.
- (ii) The Audit Committee should also have the facility of separate discussions with both internal and external auditors as well as the management.

#### **C. Audit Committee -Role and Responsibilities**

- (i) The Audit Committee should have the responsibility to -
  - monitor the integrity of the financial statements of the company;
  - review the company's internal financial controls, internal audit function and risk management systems;
  - make recommendations in relation to the appointment, reappointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
  - review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process.
- (ii) The Audit Committee should also monitor and approve all Related Party Transactions including any modification/amendment in any such transaction.
- (iii) A statement in a prescribed/structured format giving details about all related party transactions taken place in a particular year should be included in the Board's report for that year for disclosure to various stake holders.

### **IV. AUDITORS**

#### **A. Appointment of Auditors**

- (i) The Audit Committee of the Board should be the first point of reference regarding the appointment of auditors.
- (ii) The Audit Committee should have regard to the profile of the audit firm, qualifications and experience of audit partners, strengths and weaknesses, if any, of the audit firm and other related aspects.
- (iii) To discharge its duty, the Audit Committee should :
  - discuss the annual work programme and the depth and detailing of the audit plan to be undertaken by the auditor, with the auditor;
  - examine and review the documentation and the certificate for proof of independence of the audit firm, and
  - recommend to the Board, with reasons, either the appointment/re-appointment or removal of the statutory auditor, along with the annual audit remuneration.

#### **B. Certificate of Independence**

- (i) Every company should obtain a certificate from the auditor certifying his/its independence and arm's length relationship with the client company.



- (ii) The Certificate of Independence should certify that the auditor together with its consulting and specialized services affiliates, subsidiaries and associated companies or network or group entities has not/have not undertaken any prohibited non-audit assignments for the company and are independent vis-à-vis the client company.

**C. Rotation of Audit Partners and Firms**

- (i) In order to maintain independence of auditors with a view to look at an issue (financial or non-financial) from a different perspective and to carry out the audit exercise with a fresh outlook, the company may adopt a policy of rotation of auditors which may be as under:-

Audit partner -to be rotated once every three years

Audit firm -to be rotated once every five years.

- (ii) A cooling off period of three years should elapse before a partner can resume the same audit assignment. This period should be five years for the firm.

**D. Need for clarity on information to be sought by auditor and/or provided by the company to him/it**

- (i) With a view to ensure proper and accountable audit, there should be clarity between company management and auditors on the nature and amount of information/documents/records etc and periodicity/frequency for supply/obtaining such information/documents/records etc.
- (ii) In any case the auditor concerned should be under an obligation to certify whether he had obtained all the information he sought from the company or not. In the latter case, he should specifically indicate the effect of such non receipt of information on the financial statements.

**E. Appointment of Internal Auditor**

In order to ensure the independence and credibility of the internal audit process, the Board may appoint an internal auditor and such auditor, where appointed, should not be an employee of the company.

**V. SECRETARIAL AUDIT**

Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.

**VI. INSTITUTION OF MECHANISM FOR WHISTLE BLOWING**

- (i) The companies should ensure the institution of a mechanism for employees to report concerns about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct or ethics policy.
- (ii) The companies should also provide for adequate safeguards against victimization of employees who avail of the mechanism, and also allow direct access to the Chairperson of the Audit Committee in exceptional cases.

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## **CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES 2009**

[Issued by the Ministry of Corporate Affairs]

### **PREAMBLE**

The 21st century is characterized by unprecedented challenges and opportunities, arising from globalization, the desire for inclusive development and the imperatives of climate change. Indian business, which is today viewed globally as a responsible component of the ascendancy of India, is poised now to take on a leadership role in the challenges of our times. It is recognized the world over that integrating social, environmental and ethical responsibilities into the governance of businesses ensures their long term success, competitiveness and sustainability. This approach also reaffirms the view that businesses are an integral part of society, and have a critical and active role to play in the sustenance and improvement of healthy ecosystems, in fostering social inclusiveness and equity, and in upholding the essentials of ethical practices and good governance. This also makes business sense as companies with effective CSR, have image of socially responsible companies, achieve sustainable growth in their operations in the long run and their products and services are preferred by the customers.

Indian entrepreneurs and business enterprises have a long tradition of working within the values that have defined our nation's character for millennia. India's ancient wisdom, which is still relevant today, inspires people to work for the larger objective of the well-being of all stakeholders. These sound and all-encompassing values are even more relevant in current times, as organizations grapple with the challenges of modern-day enterprise, the aspirations of stakeholders and of citizens eager to be active participants in economic growth and development.

CSR is not philanthropy and CSR activities are purely voluntary- what companies will like to do beyond any statutory requirement or obligation. To provide companies with guidance in dealing with the abovementioned expectations, while working closely within the framework of national aspirations and policies, following Voluntary Guidelines for Corporate Social Responsibility have been developed. While the guidelines have been prepared for the Indian context, enterprises that have a trans-national presence would benefit from using these guidelines for their overseas operations as well. Since the guidelines are voluntary and not prepared in the nature of a prescriptive road-map, they are not intended for regulatory or contractual use.

While it is expected that more and more companies would make sincere efforts to consider compliance with these Guidelines, there may be genuine reasons for some companies in not being able to adopt them completely. In such a case, it is expected that such companies may inform their stakeholders about the guidelines which the companies have not been able to follow either fully or partially. It is hoped that "India Inc." would respond to these Guidelines with keen interest.

After considering the experience of adoption of these guidelines by Indian Corporate Sector and consideration of relevant feedback and other related issues, the Government may initiate the exercise for review of these Guidelines for further improvement after one year.

### **GUIDELINES**

#### **Fundamental Principle**

Each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The policy should be

framed with the participation of various level executives and should be approved by the Board.

**Core Elements :**

The CSR Policy should normally cover following core elements:

**1. Care for all Stakeholders :**

The companies should respect the interests of, and be responsive towards all stakeholders, including shareholders, employees, customers, suppliers, project affected people, society at large etc. and create value for all of them. They should develop mechanism to actively engage with all stakeholders, inform them of inherent risks and mitigate them where they occur.

**2. Ethical functioning :**

Their governance systems should be underpinned by Ethics, Transparency and Accountability. They should not engage in business practices that are abusive, unfair, corrupt or anti-competitive.

**3. Respect for Workers' Rights and Welfare :**

Companies should provide a workplace environment that is safe, hygienic and humane and which upholds the dignity of employees. They should provide all employees with access to training and development of necessary skills for career advancement, on an equal and non-discriminatory basis. They should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour, have an effective grievance redressal system, should not employ child or forced labour and provide and maintain equality of opportunities without any discrimination on any grounds in recruitment and during employment.

**4. Respect for Human Rights:**

Companies should respect human rights for all and avoid complicity with human rights abuses by them or by third party.

**5. Respect for Environment :**

Companies should take measures to check and prevent pollution; recycle, manage and reduce waste, should manage natural resources in a sustainable manner and ensure optimal use of resources like land and water, should proactively respond to the challenges of climate change by adopting cleaner production methods, promoting efficient use of energy and environment friendly technologies.

**6. Activities for Social and Inclusive Development:**

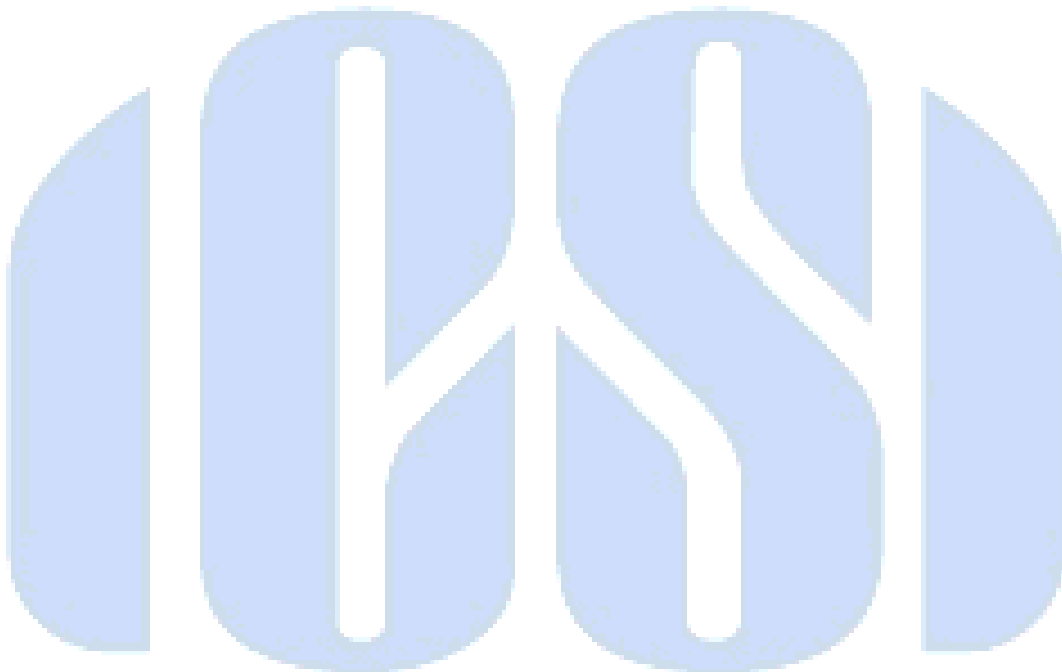
Depending upon their core competency and business interest, companies should undertake activities for economic and social development of communities and geographical areas, particularly in the vicinity of their operations. These could include: education, skill building for livelihood of people, health, cultural and social welfare etc., particularly targeting at disadvantaged sections of society.

**Implementation Guidance :**

1. The CSR policy of the business entity should provide for an implementation strategy which should include identification of projects/activities, setting measurable physical targets with timeframe, organizational mechanism and responsibilities, time schedules and monitoring. Companies may partner with local authorities, business associations and civil society/non-government organizations. They may influence the supply chain for CSR initiative and motivate employees for voluntary effort for social development. They may evolve a system of need assessment and impact assessment while undertaking CSR activities in a particular area. Independent evaluation may also be undertaken for selected projects/activities from time to time.

2. Companies should allocate specific amount in their budgets for CSR activities. This amount may be related to profits after tax, cost of planned CSR activities or any other suitable parameter.
3. To share experiences and network with other organizations the company should engage with well established and recognized programmes/platforms which encourage responsible business practices and CSR activities. This would help companies to improve on their CSR strategies and effectively project the image of being socially responsible.
4. The companies should disseminate information on CSR policy, activities and progress in a structured manner to all their stakeholders and the public at large through their website, annual reports, and other communication media.

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# RBI Updates

- Establishment of Branch (BO) / Liaison Offices (LO) in India by Foreign Entities — Delegation of Powers

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**RESERVE BANK OF INDIA  
Foreign Exchange Department  
Central Office  
Mumbai - 400 001**

**RBI/2009-2010/279 A. P. (DIR Series) Circular No.24  
December 30, 2009**

To

All Authorised Dealers Category - I Banks

Madam / Sir,

**Establishment of Branch (BO) / Liaison Offices (LO) in India by  
Foreign Entities — Delegation of Powers**

Attention of Authorised Dealer 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, in terms of which a person resident outside India requires prior approval of the Reserve Bank for establishing Branch (BO)/ Liaison Offices (LO) in India. As announced in the Mid-term Review of the Annual Policy Statement for the Year 2008-09 ([para 143](#)), the draft circulars regarding delegation of powers to Authorised Dealers for extension of the validity period of LOs, closure of BO / LOs of foreign entities in India and the eligibility criteria and procedural guidelines for BO / LOs of foreign entities in India were placed on Reserve Bank's website for public comments. On the basis of the feedback received from the public, the final guidelines have been issued vide our [A. P. \(DIR Series\) Circular No.23](#) dated December 30, 2009.

2. As indicated therein, the application in form FNC by the foreign entity (other than those engaged in insurance and banking) for opening of BO / LO in India should be routed through a designated AD Category - I bank. The designated AD Category - I bank is required to forward the application/s, along with the relevant documents and their comments / recommendations, to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai- 400 001. 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.

3. Applications from banks and insurance companies for opening of BO/LO will continue to be received and examined directly by the Department of Banking Operations and Development of the Reserve



Bank and the Insurance Regulatory and Development Authority (IRDA) respectively, as hitherto. Approval of the Reserve Bank is not required to establish a branch/unit in Special Economic Zones for undertaking manufacturing and service activities, subject to compliance with the conditions specified in [Notification No. FEMA 102/2003-RB](#) dated October 3, 2003 read with [A.P. \(DIR Series\) Circular no. 58](#) dated January 16, 2004.

4. In order to provide a uniform framework, a Unique Identification Number (UIN) will be allotted to both the existing as well as new BO / LOs. This UIN is required to be quoted in all future references made to the Reserve Bank by the BO / LO / designated AD Category – I bank. Consequent upon delegation of powers from February 01, 2010 existing BO / LO will also have to necessarily approach the Reserve Bank through their designated AD Category -I bank for their requests/references.

5. With a view to liberalizing the existing procedure in respect of BO/ LOs, it has been decided to delegate the powers to the designated AD Category - I banks, as under :

**i) Submission of Annual Activity Certificate**

At present, BO/ LOs are required to submit Annual Activity Certificate ([Annex](#)) from their Auditors to the Central Office / Regional Office of the Reserve Bank, certifying that the BO / LO has carried out only those activities which are approved by the Reserve Bank. With effect from February 01, 2010, the Annual Activity Certificate as at the end of March 31 shall be submitted, on or before April 30, to the designated AD Category – I bank and a copy to the Directorate General of Income Tax (International Taxation), Drum Shape Building, I.P. Estate, New Delhi 110002, by the following :

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

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.

**ii) Extension of validity period of Liaison Offices**

The designated AD Category - I bank may, with effect from February 01, 2010, 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 and the application is otherwise in order.

- The LO has submitted the Annual Activity Certificates for the previous years (initially, for existing LO, the designated AD Category-I banks may obtain confirmation from the Regional Office concerned about timely submission of the Certificate for 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.

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

It may be noted that in the case of LOs of banks and entities engaged in insurance business, the application has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank of India 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). 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.

**iii) Closure of Branch / Liaison Office/s**

With effect from February 01, 2010, the work related to closure of Branch / Liaison Offices, hitherto being done by the Reserve Bank (Central Office in the case of Branch Offices and Regional Office in the case of Liaison Offices), shall be handled by the designated AD Category - I bank. The closure formalities shall be dealt with in accordance with Regulation 6 (1) (iii) of [Notification No. FEMA 13/2000-RB dated May 3, 2000](#) viz. Foreign Exchange Management (Remittance of Assets) Regulations 2000, as amended from time to time. In terms of the aforementioned Regulation, following documents are required to be obtained by the designated AD Category – I bank, while considering the closure of the BO/ LO and permitting the remittance of winding up proceeds :

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 unrepatriated 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.

In addition to the above, any other document/s, specified by the Reserve Bank while granting approval may be obtained and verified. The designated AD Category - I banks may also 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 may 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.

On receipt of the documents as mentioned above, the AD Category - I bank may, after satisfying themselves about the bonafides, allow closure of the Office by closing the account maintained with them and remit the proceeds to the overseas entity.

Closure of such BO / LO should 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, the AD Category - I bank may forward the application to the Reserve Bank, with their observations, for necessary action.

6. 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.

7. Cases which are not covered under the delegated powers will continue to be referred to the Reserve Bank, by the designated AD Category – I bank.

8. Necessary amendments to the Foreign Exchange Management (Remittance of Assets) Regulations, 2000 notified vide [Notification No.FEMA.13/2000-RB dated May 3, 2000](#) and the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 notified vide [Notification No.FEMA.22/2000-RB dated May 3, 2000](#) are being issued separately.

9. AD Category - I banks may bring the contents of this Circular to the notice of their constituents/customers concerned.

10. 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 is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(D. Mishra)**

Chief General Manager

**Annex**

[Annex to A. P. (DIR Series) Circular No.24 dated December 30, 2009]

**Annual Activity Certificate**

(To be submitted as on March 31,.....on or before April 30,.....).

**To whomsoever it May Concern**

This is to certify and confirm that during the period from \_\_\_\_\_ to \_\_\_\_\_, the Branch/Liaison Office/s with PAN No. ----- of M/s \_\_\_\_\_ (UIN- ) has/ have undertaken only those activities that have been specifically permitted by the Reserve 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.

\_\_\_\_\_  
(Signature of the Auditor/s)

(Name of the Chartered Accountant)

ICAI Membership No.:

Address:

Place:

Date:

**BACK**