

IndianOil Corporation Limited
Marketing Division, Head Office

21st May, 2013

Sub: Additional Guidelines for Reconstitution of RO / SKO-LDO Dealerships

Policy guidelines with respect to reconstitution of dealership have been issued vide policy circular no. 140-12/2008 dtd. 01/12/2008. Further, following scenarios with approach have been envisaged to avoid delay in approval.

1.0 Scenarios

1.1.(i) Copy of dealership agreements not available with dealer / Corporation where dealers / partners are alive.

Approach:

- (a) Dealership status should be ascertained by IOC from any type of record which is available like copy of LOA / Selection panel / copy of previous reconstitution approval/ copy of income tax return / sales tax registration and returns or any other record/ correspondence which can prove name of proprietor / partner. However, the basic documents like copy of LOI / LOA, selection panel / approvals of previous reconstitutions should be treated as primary documents. Only if these are not available, the secondary documents like income tax returns, sales tax registration / returns, Retail Selling Licence given by State Govt. (with any name for selling petroleum products – as applicable), other statutory licenses and official correspondence etc. should be taken into account for consideration.
- (b) An indemnity / affidavit should be taken from the claimant / prospective dealer indemnifying Corporation against claim on dealership if the information is found incorrect. In cases, where the primary documents are available, the concerned competent authority will accord approval and sign the new agreement.
- (c) All other cases, where secondary documents are to be relied upon, the proposal shall be initially processed / scrutinized and processed for approval of competent authority. After approval a new dealership agreement will be signed with dealers.

1.1.(ii) There are cases which otherwise are covered in the above scenario and can be decided based on the given criteria, but for the fact that proprietor/ partners are not alive. In such cases where proprietor/ partners are not alive, reconstitution should be approved as under:

Approach:

- (a) In principle approval of competent authority is to be taken based on nature of documents and process detailed in scenario (1.1.(i)). This approval will be taken as a reference point for reconstitution to be approved by competent authority as per existing policy of 1.12.08.

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- (b) Such proposals will be approved by competent authority after following due process.

Explanation:

This scenario will be useful in carrying out reconstitutions (in line with reconstitution policy dt. 1.12.2008) in cases where based on primary or secondary document {as per para 1.1(i)}, a set up has been formally recognized and there is a need/ request for further reconstitution which otherwise is meeting prevailing norms more specifically as explained in para 3.0.

Application from the legal heirs is to be taken and based on the nature of document the approval is to be given by competent authority for completion of steps as enumerated in the approach given in 1.1.(i).

The proposal should be further processed for reconstituting the dealership by scrutinizing and processing the case as per extant policy guidelines wherein application is received for reconstitution in case of death of dealer(s).

- 1.2 **Copy of dealership agreements not available with dealers / Corporation where any / one of the dealers / partners are not alive.**

Approach :

- (a) Dealership status should be ascertained by IOC from any type of record which is available like copy of LOA / Selection panel / copy of previous reconstitution approval/ copy of income tax return / sales tax registration and returns or any other record/ correspondence which can prove name of proprietor / partner. However, the basic documents like copy of LOI / LOA, selection panel / approvals of previous reconstitutions should be treated as primary documents. Only if these are not available, the secondary documents like income tax returns, sales tax registration / returns, Retail Selling Licence given by State Govt. (with any name for selling petroleum products – as applicable), other statutory licences and official correspondence etc. should be taken into account for consideration.
- (b) An indemnity / affidavit should be taken from the dealer / firm indemnifying corporation against claim on dealership if the information is found incorrect.
- (c) All such cases shall be initially processed / scrutinized by IOC's concerned office for seeking approval of competent authority as per procedure given in Scenario 1.1(i) (b) & (c).
- (d) After the above approval of competent authority, reconstitution can be done as per existing procedures in favour of surviving partners / legal heirs, as the case may be.

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1.3 Reconstitution proposal approved in past but dealership agreements not yet executed.

Approach :

- (a) If, the reconstitution proposal has been approved in past with some allied conditions (like B to A conversion of site, achievement of Lube sales etc.) but the dealership agreement has not been signed due to condition that RO should be converted from "B" to "A" site and this condition could not be complied with, a fresh feasibility should be conducted to satisfy the eligibility conditions and financial justification for investment (IRR) for conversion of site. If the proposal is found feasible, action for conversion of RO from B to A site should be taken after necessary approvals followed by execution of agreement. However, if as per existing guidelines, site does not qualify for conversion from "B" to "A" or cannot be converted for any other reason, then approval for reconstitution (as B site) from competent authority should be obtained and the agreement should be executed after following procedure as mentioned in Scenario (1.2) (b) above.
- (b) If the reconstitution proposal was approved but subsequently, one or more partners has expired before signing the agreement, legal heirs of the deceased partner may be inducted in the same percentage share, as approved in the reconstitution proposal subject to their meeting the eligibility norms. The proposal should be processed by concerned Divisional Office for examination and approval of competent authority.

1.4 Reconstitution not done due to non-availability / authenticity of legal heirs but are being operated by proclaimed legal heirs.

Approach :

- (a) Legal heirs of signatories of last agreement should be identified as per policy. Legal heirs from "outside family" (excluding son and daughter, even if married), will be considered only if the Will made by deceased signatory has been probated by the competent court. In case of SC/ST candidates, the legal heirs will be considered only if they are SC/ST respectively. After identification of legal heirs, all legal heirs will be invited by way of notice to reconcile and apply for dealership in prescribed format. The notice should also contain copy of application form and dealership selection criteria. The proposal received from the legal heirs will be examined, the suitability of candidates should be evaluated by interview based on norms for selection of dealers by a designated committee. After interview the proposal will be processed for approval of competent authority.
- (b) In cases where there are no legal heirs, there is no Will, legal heirs are not found eligible and suitable, action for termination of dealership should be taken as per provisions of appointment and agreement, in line with policy and with approval of competent authority.

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1.5 Reconstitution within family - not done due to lack of consensus among legal heirs (i.e; cases where no signatory is alive)

Approach :

- (a) Legal heirs of signatories of last agreement should be identified as per policy. After identification of legal heirs, all legal heirs will be invited by way of notice to reconcile and apply for dealership in prescribed format. The notice should also contain copy of application form and dealership selection criteria. The proposal received from the legal heirs will be examined, the suitability of candidates should be evaluated by interview based on norms for selection of dealers by a designated committee. After interview the proposal will be processed for approval of competent authority.
- (b) In cases where Legal heirs fail to come to a common understanding in the given time or fail to submit a suitable proposal to the satisfaction of IOC, further action should be initiated as enumerated in Scenario (1.4) above.

1.6 Reconstitution not done due to dispute among partners after the death of one or more partner/s (cases where at least one signatory is alive)

Approach :

- (a) Legal heirs of deceased partner/s of last agreement should be identified as per policy. After identification of legal heirs, all legal heirs will be invited by way of notice to reconcile and apply for respective share of dealership in prescribed format alongwith proposed setup and other formalities. The notice should also contain copy of application form and dealership selection criteria. The proposal received from the legal heirs will be examined, the suitability of candidates should be evaluated by interview based on norms for selection of dealers by a designated committee. After interview, the proposal will be processed for approval of competent authority.
- (b) In cases where surviving partners **and / or** legal heirs of deceased partners fail to submit a common and acceptable proposal, possibility for reconstituting the dealership in favour of surviving partners may be examined in line with provisions of partnership agreement of the old firm. If no other option is available, further action on termination as enumerate in Scenario (1.4) (b) may be taken.
- (c) There are cases where partnership deeds, duly approved by the Corporation, contain a clause of arbitration in case of disputes. The arbitration award in such cases may also be considered by IOC.

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2.0 Additional Scenarios:

2.1 Constitution is currently in line with approved set up and past deviations have been rectified.

Approach :

- (a) Take undertaking from the dealer requesting for condoning the past actions and confirming understanding of the provisions of agreement for compliance in future.
- (b) Competent authority will approve with letter of warning.

Explanation:

Dealer(s) to provide complete details of the case along with an undertaking (as per Appendix I) requesting for condoning the past actions and confirming understanding of the provisions of agreement for compliance in future.

The same would be processed ensuring that all the past deviations have been rectified and is in line with the approved set up, which should meet the extant guidelines of dealership agreement.

IOC will approve the same and will issue a Letter of Warning.

In such cases as there is no reconstitution being done hence no application fee / reconstitution fee to be charged and if required fresh dealership agreement may be executed.

2.2 Proposed constitution requires recognition of induction of a minority partner.

Approach :

- (a) In such cases, majority shareholding will continue to be in the hands of the last approved set up. This would require recognition for change made in past by accepting a minority partner in dealership.
- (b) Competent authority will approve based on recommendations of a designated committee.

Explanation:

Dealer(s) to provide complete details of the case along with Undertaking (as per Appendix II) requesting for condoning the past actions and confirming understanding of the provisions of agreement for compliance in future.

It has to be ensured that majority shareholding, as per proposal, will continue to be in the hands of the last approved set up. This may also require

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recognition for changes made in past by accepting a minority partner in dealership. Proposal to be processed as per guidelines for reconstitution dtd. 01.12.2008.

Competent authority will approve the proposal based on recommendations of the committee.

Subsequent to the approval the same would be conveyed to the dealer along with Letter of Warning by concerned official.

- 2.3 Cases requiring approval for reconstitution in past with total change over where new proprietor/ partner(s) are otherwise eligible for being inducted in dealership as per current guidelines of MOP&NG and subject to other general conditions of Ministry guidelines.**

This will also include cases where signatories (including legal heirs) are part of set up but not holding majority.

- 2.3.(i) Where proposed constitution requires approval for induction of "family" member or blood relative of approved signatory.**

List of blood relatives will be defined as per Section-56(2)(v) (Explanation) of Income Tax Act 1961 (permitting receipt of any sum of money from any "relative"), as under :

- Spouse of the individual
- Brother or Sister of the individual
- Brother or Sister of the spouse of the individual
- Brother or Sister of either of the parents of the individual
- Any lineal ascendant or descendant of the individual
- Any lineal ascendant or descendant of the spouse of the individual
- Spouse of the persons referred in above six categories

Approach:

- (a) Approval will be based on recommendations of a designated committee.
- (b) The committee needs to confirm that the proposal meets specific conditions mentioned at para 2.4. and general condition mentioned at para 3.0.
- (c) Proposal will be approved by competent authority.

Explanation:

Applicant(s) to make an application and provide complete details of the case requesting for condoning the past actions and confirming to abide by the provisions of dealership agreement for compliance in future.

The same would be processed at the concerned Divisional Office of IOC and evaluated by a committee.

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The committee will confirm that the proposed constitution consists of "family" members or blood relative of past signatory and meets specific conditions mentioned at para 2.4. and general conditions mentioned in para 3.0. The proposal to be processed as per guidelines for reconstitution dtd. 01.12.2008.

Competent authority will approve the proposal based on recommendations of the committee.

- 2.3.(ii) Where no signatory (including legal heir/ family member) is part of set up, nor induction of one of such members is possible.

Under this scenario, only those cases will be considered where existing unauthorized set up came into existence on or before 1st January 2003.

Approach:

- (a) Approval will be based on recommendations of a designated committee.
- (b) The committee needs to confirm that the proposal meets specific conditions mentioned at para 2.4. and general condition mentioned at para 3.0.
- (c) Competent authority will approve the proposal.

Explanation:

Applicant(s) to make an application and provide complete details of the case requesting for condoning the past actions and confirming to abide by the provisions of dealership agreement for compliance in future.

The same would be processed by concerned Divisional Office of IOC after confirming that existing unauthorized set up came into existence on or before 1st January 2003 and that any signatory (including legal heir / family member) is not part of set up.

The committee besides confirming that any signatory (including legal heir / family member) is not part of set up needs to ensure that induction of one of such member is not possible. For this, the committee may rely upon (i) Relinquishment deed, if any, given by the signatories of the dealership. OR (ii) In case signatory(s) of the dealership agreement have expired then NOCs from their legal heirs OR (iii) if the same is not possible then a suitable notice in the newspaper in this regard may be considered.

This would also require recognition for changes made in past.

It will be ensured that the proposal meets specific conditions mentioned at para 2.4. and general conditions mentioned in para 3.0. The proposal to be processed as per guidelines for reconstitution dtd. 01.12.2008.

Competent authority will approve the proposal based on recommendations of the committee.

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2.4 Specific conditions applicable to scenario 2.3:

- i. Where IOC by its conduct has recognized the current set up
- ii. Only in cases where performance of dealership has been satisfactory and/or continuation of dealership is in commercial interest.
- iii. An indemnity bond, will be taken from new proprietor/ partner(s) indemnifying Corporation against any claim from any other party.
- iv. This will be subject to higher applicable reconstitution fee.

Explanation of specific conditions

- i. *Where IOC by its conduct has recognized the current set up by supplying product to the firm and the changeover is established to have taken place before 01.01.2003 as can be ascertained through documents like Income Tax Returns, Balance Sheet, Bank account, Selling License, Sales tax Returns, etc. **In other words each case to be properly checked to avoid any possibility of post 01/01/2003 total changeover case being processed and approved under the garb of being pre 2003 case.***
- ii. *Only in cases where performance of dealership has been satisfactory and/or continuation of dealership is in commercial interest.*
- iii. *An indemnity bond (as per Appendix – III), will be taken from the prospective proprietor/ partner(s) indemnifying Corporation against any claim from any other party.*
- iv. *This will be subject to higher applicable reconstitution fee.*

3.0 General Conditions applicable in all the cases:

- i. **New proprietor/ partner(s) should be otherwise eligible for induction in dealership as per prevailing MOP&NG guidelines for reconstitution.**
- ii. **This will also be subject to compliance of other Ministry guidelines for reconstitution.**

Explanation of general conditions:

- i. *New proprietor/ partner(s) should be otherwise eligible for induction in dealership as per prevailing guidelines for reconstitution vide letter dtd. 01/12/2008 (based on MOP&NG guidelines dtd. 16/10/2008).*
- ii. *This will also be subject to compliance of other Ministry guidelines for reconstitution. In other words:*
 - *No reconstitution within 5 years.*

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- *No retirement before 10 years.*
- *In case of SC/ST dealerships no other category induction beyond 25%*
- *Majority shareholding (more than 50%) to stay with original set-up (except for cases under scenario 2.3).*

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Undertaking to be given by the dealer(s) under scenario 2.1, excuted on Non-judicial stamp paper of appropriate value as applicable in the concerned state).

Appendix – I

UNDERTAKING

This is to confirm that M/s. _____, location, district, has been operating as a duly approved dealership of IOCL since _____. As per the dealership agreement executed with the Corporation on _____ (date of effect of dealership agreement) we are the approved proprietor/ partners in the above mentioned dealership as per the following approved constitution:

(100% in case of proprietorship and specified ratio in case of partnership firm).

The constitution of the dealership was changed by me/us on _____ without approval of the Corporation, however subsequently I/we have restored the constitution of the firm to its last approved setup as per dealership agreement effected on _____.

Indian Oil Corporation Limited is requested to take cognizance of the above and condone the mistake committed by us and subsequent rectification / restoration of the earlier approved constitution (set-up) of the dealership.

I/we further confirm to have gone through and fully understood various clauses of the dealership agreement and would fully comply by the same in future.

I/we undertake to take full responsibility of our actions in the past and to indemnify the Corporation for any contingency/ liability arising out of our actions in the past.

(Deponent)
Signatory/(s) to earlier approved set up of the dealership

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(Undertaking to be given by the dealer(s) under scenario 2.2, executed on Non-judicial stamp paper of appropriate value as applicable in the concerned state).

Appendix – II

UNDERTAKING

This is to confirm that M/s. _____, location, district, has been operating as a duly approved dealership of IOCL since _____. As per the dealership agreement executed with the Corporation on _____ (date of effect of dealership agreement) I/we are the approved proprietor/ partners in the above mentioned dealership as per the following approved constitution:

(100% in case of proprietorship and specified ratio in case of partnership firm).

The constitution of the dealership was changed by me/us on _____ without approval of the Corporation, and we have inducted Shri.(s) _____ as minority partner in the firm as per the aforesaid arrangement.

Original / Approved partners _____ % share (more than 50%)
Incoming partner(s) _____ % share (less than 50%)

Indian Oil Corporation Limited is requested to take cognizance of the above and condone the mistake committed by us and very kindly approve the above setup of the dealership.

I/we further confirm to have gone through and fully understood various clauses of the dealership agreement and would fully comply by the same in future.

I/we undertake to take full responsibility of our actions in the past and to indemnify the Corporation for any contingency/ liability arising out of our actions in the past.

(Deponent)
Signatory/(s) to earlier approved set up of the dealership

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(Indemnity to be given by the applicant(s) under scenario 2.3 on Non-judicial stamp paper of appropriate value as applicable in the concerned state).

Appendix III

INDEMNITY

DEED OF INDEMNITY is made at _____ this day _____ of _____ between Shri. _____ son of _____ resident of _____ hereinafter referred to as 'the Party of the First Part of the One Part and M/s. Indian Oil Corporation Limited, a Company registered under the Companies Act, 1956 and having its registered office at _____ hereinafter referred to as 'the Corporation' of the Other Part

WHEREAS party of the first part has applied for the dealership M/s. _____, (location, District) of the Corporation vide application no. _____ dtd. _____.

WHEREAS party of the first part have submitted in their application that they have been operating the aforesaid dealership M/s. _____ since (date/period) _____ till date, without any approval from the Corporation.

WHEREAS party of the first part have submitted that the aforesaid dealership has been operated by them with full knowledge of the obligation and duties that are expected from a dealer by the Corporation and have operated the dealership accordingly during this period of unauthorized set-up.

NOW THIS DEED WITNESSETH that pursuant to the aforesaid submission and in the premises the Party of the First Part hereby through himself and his legal heirs, executors, successors, and assigns and agree to fully and effectively indemnify and keep indemnified the Corporation, its successors and assigns, against any liability, loss, costs, charges, damages, court order/decrees and expenses that have accrued or may accrue in future against the said dealership or which the Corporation may suffer or incur on account of any claim being made by any Government Authority / any party / any person, be put to by reason of operation of the aforesaid dealership earlier and presently being operated by themselves, for which they have now applied for assigning the dealership in their name/s, to the Corporation.

IN WITNESS WHEREOF the Party of the First Part has put his hand the day and year first hereinabove written

Signed and delivered by

Within named party of the First part in presence of