



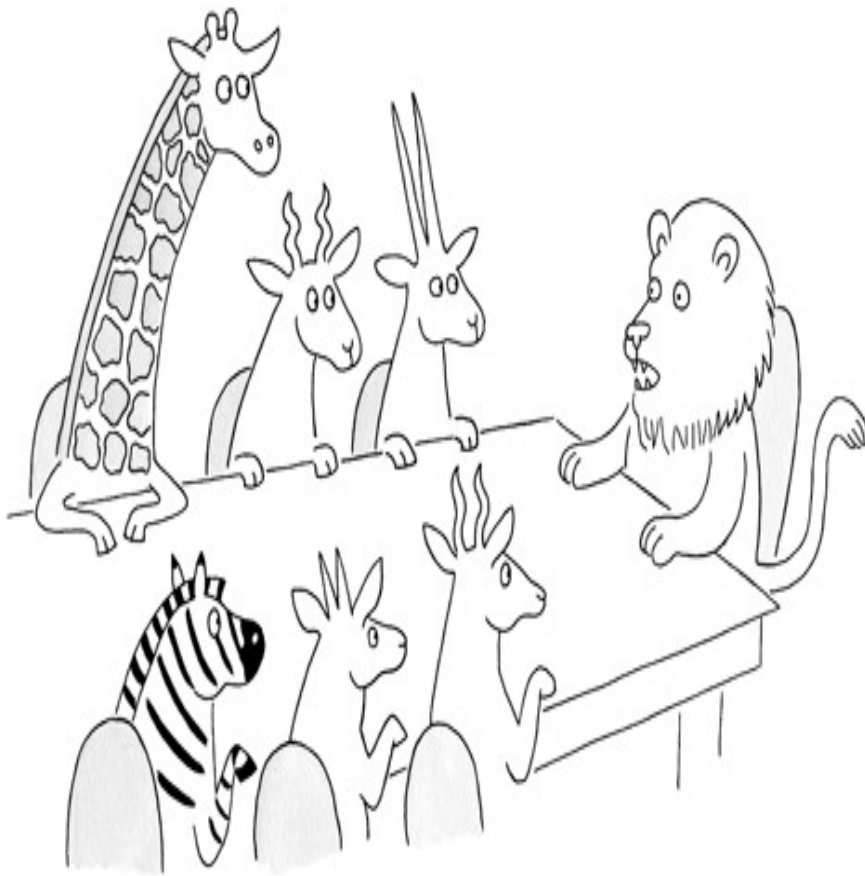
**WESTERN INDIA  
REGIONAL COUNCIL  
OF  
THE INSTITUTE OF  
CHARTERED  
ACCOUNTANTS OF INDIA**

**Establishment of  
Branch/ Liaison Office/  
Project Office in India  
&  
Office outside India**

**CA Natwar G. Thakrar**



# Agenda



**Introduction & important definitions**

**Establishment of a Branch / LO in India**

**Establishment of a Project Office in India**

**Establishment of a Branch Outside India**

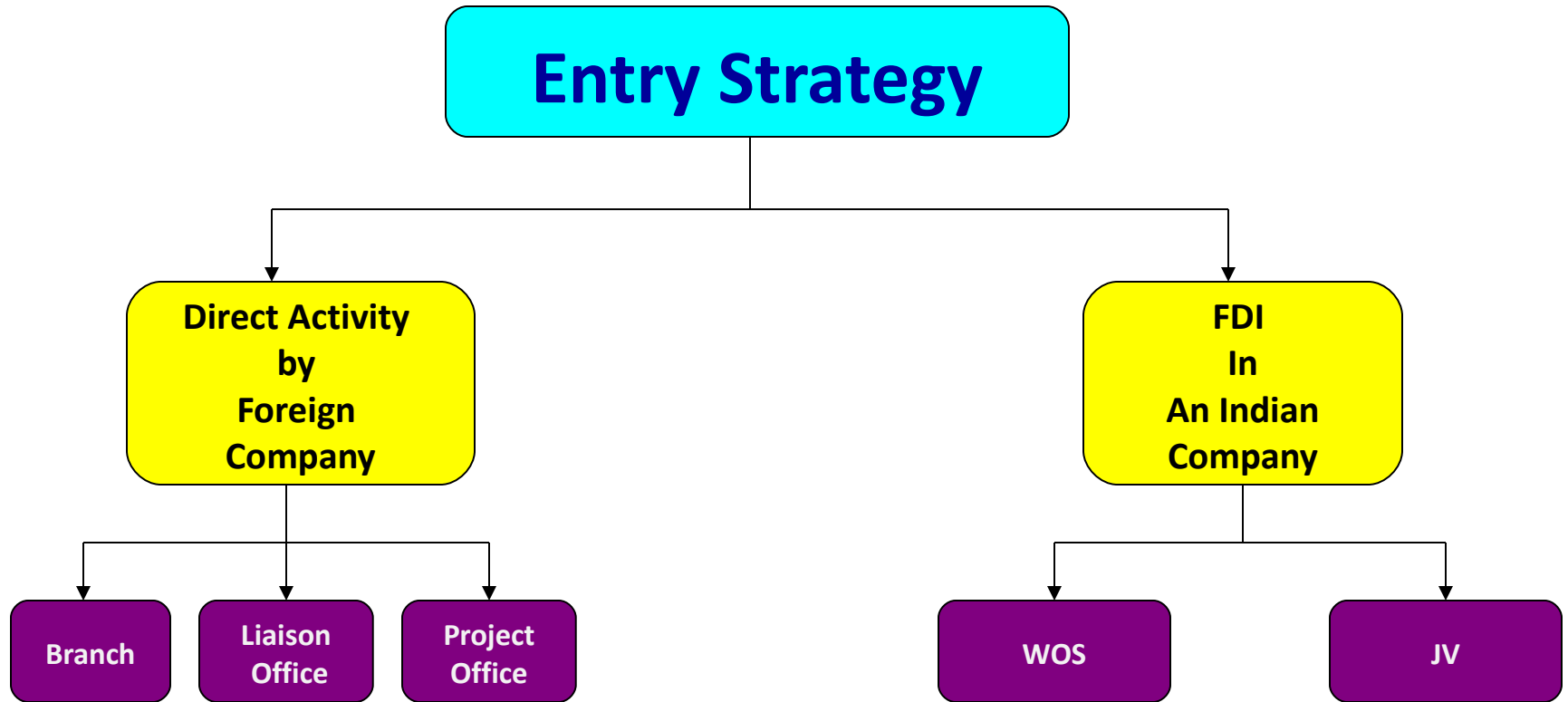
**Provisions under Companies Act, 1956**

**Q&A**

# Introduction & Important Definitions



# Introduction



# Introduction

- FEMA extends to the whole of India – [s. 1\(2\)](#)
- It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies- [s. 1\(3\)](#)
- A “Person resident in India” under [s. 2\(v\)](#) of FEMA means -
  - (i) ....
  - (ii) ....
  - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
  - (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
- Hence FEMA extends to branch, agency or office in India as well as outside India and also to any contravention thereunder committed.

# Introduction

- RBI through Notification No. 22 “**Establishment in India of branch or office or other place of business**” regulates establishment of a branch, office or other place of business in India by a person resident outside India.
- Setting-up a branch, office or other place of business outside India by a resident of India is governed by the laws/ regulations of the host countries. Hence no procedures are prescribed under FEMA.
- However, RBI regulates opening of foreign currency accounts outside and it has issued Notification No. 10 “**Foreign currency accounts by a person resident in India**” in this regard. (Dealt with separately)

# Important Definitions

- **'Branch' (BO)** shall have the meaning assigned to it in sub-section (9) of Section 2 of the Companies Act, 1956 (1 of 1956) - [Reg.2(c) of Notification No. 22] . s 2(9) of the Companies Act, 1956 defines the same to mean –
  - (a) any establishment described as a branch by the company ; or
  - (b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company ; or
  - (c) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under section 8
- **'Liaison Office' (LO)** 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 – [Reg.2(e) of Notification No. 22]
- **'Project Office' (PO)** means a place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office – [Reg 2(f)

# Important Definitions

- **'Site Office'** means a sub-office of the Project Office established at the site of a project but does not include a Liaison Office – [Reg.2(g) of Notification No. 22]
- **'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



# Establishment of a Branch / LO in India



11.05.2013

# Basic Criterion

- **Track Record**

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

- **Net Worth \***

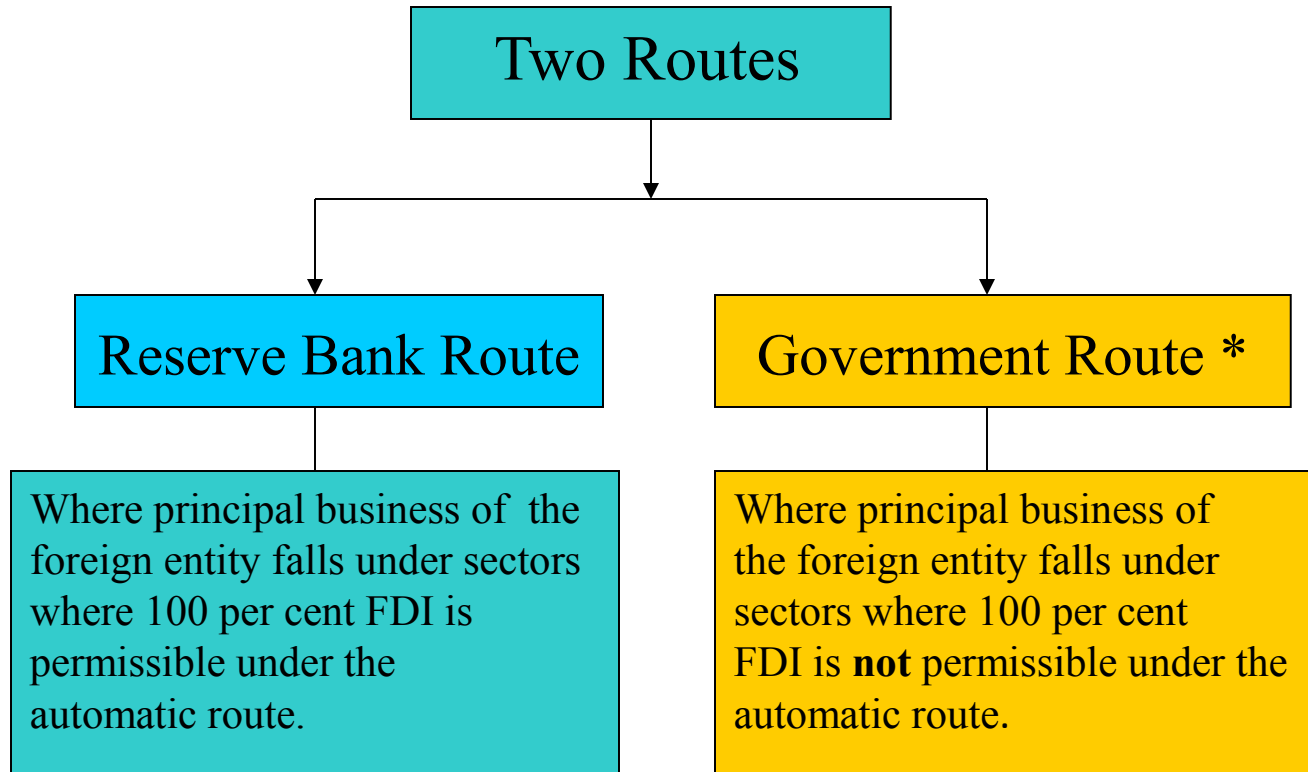
- For Branch Office — not less than USD 100,000 or its equivalent.

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

\*= Paid-up capital + free reserves - less intangible assets as per the latest Audited Balance Sheet/ Account Statement certified by a CPA or its equivalent Registered Accounts Practitioner

- Applicants subsidiary companies and not satisfying the eligibility criteria can submit **Letter of Comfort from their parent company** in

# Approval Policy



\*Applications from entities falling under Government route and those from Non - Government Organisations / Non - Profit Organisations / Government Bodies / Departments are considered by the RBI in consultation with the Ministry of Finance.

# Exceptions\* from RBI approval

- A banking company holding approval under the Banking Regulation Act, 1949
- An insurance company holding approval by the IRDA for establishing a Liaison Office in India.
- Branch/unit in Special Economic Zones (SEZs) by a company to undertake manufacturing and service activities provided -
  - Such units are functioning in sectors where 100% FDI is permitted.
  - Such units comply with part XI of the Companies Act (Section 592 to 602).
  - Such units function on a **stand-alone** basis.
  - in the event of winding-up of business and for remittance of winding-up proceeds, the company shall comply with the Foreign Exchange with

**\* Excluding citizens / entities of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan who will always require prior RBI approval**

# Set-up Procedure For New LO/ BO

- The application for establishing BO /LO shall be submitted to RBI through **designated AD Category- I Bank** (applicant's potential banker) along with –
  - Application in **Form FNC** duly signed by a Director authorized by the Board.
  - Board Resolution authorising establishment of a BO/ LO and appointment of a Country Manager in India.
  - Report from applicant's Bankers showing No. of years the foreign company is banking with them.
  - English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy /

# Branch Offices (BOs)

- Normally, the BO should be engaged in the activity in which the parent company is engaged.
- BO is **not allowed to carry out manufacturing or processing activities** in India, directly or indirectly (except BO's in SEZs complying prescribed conditions)
- Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

# Liaison Offices (LOs)

- A LO (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India.
- It is not allowed to undertake any business activity in India and cannot earn any income in India.
- Expenses of such offices are to be met entirely through inward remittances in foreign exchange from the HO.
- The role of LO is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers.

# Extension of Validity Period for LOs

- Designated AD Banks are empowered to extend validity period of LO/s for a further period of 3 years subject to following compliances –
  - Annual Activity Certificates for the previous years have been submitted and
  - The account of the LO is being operated in accordance with the terms and conditions stipulated in the approval letter.



# Permitted Activities At a Glance

	<b>Branch Office</b> Schedule -1	<b>Liaison Office</b> Schedule -2
1	Export/Import of goods	Representing in India the parent company/group companies
2	Rendering professional or consultancy services	Promoting export import from/to India
3	Carrying out research work, in which the parent company is engaged	Promoting technical/financial collaborations between parent/group companies and companies in India.
4	Promoting technical or financial collaborations between Indian companies and parent or overseas group company.	Acting as a communication channel between the parent company and Indian companies.
5	Representing the parent company in India and acting as buying/selling agent in India.	
6	Rendering services in Information Technology and development of software in India.	
7	Rendering technical support to the products supplied by parent/group companies.	
8	Foreign airline/shipping company	

# Immovable Properties by BO/LO

- Non-residents who have permission to set up branch or office or other place of business (excluding a liaison Office) in India, can buy immovable property, which is necessary & incidental to carrying out the activities.
- A declaration has to be filed in form **IPI** within **90 days**.
- Mortgage of property can be done for taking a loan from a bank.
- For sale, RBI approval is required.
- Remittance of sale proceeds are allowed subject to payment of taxes.
- Liaison office cannot buy immovable property. However, it can acquire property by way of lease up to 5 years.

# Reporting to Designated ADs

- **Filing of Annual Activity Certificates (AAC) Given as Annex to A. P. (DIR Series) Circular No.24 dated December 30, 2009]**
  - by LO/ BO (or combined AAC by the nodal office in case of multiple BO/LOs) alongwith audited balance sheet within six months from the due date of finalisation of Balance Sheet
- A copy of the report in **Annex** [filed alongwith Annual Activity Certificate (AAC )] filed with the DGP concerned on annual basis. [amended vide AP (DIR) No.35 dated September 25, 2012 ]

## Responsibility of the Designated ADs

- To scrutinize the AAC 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 RBI.
- To report immediately any adverse findings reported by the Auditor or noticed by it to RBI along with the copy of the Annual Activity Certificate and their comments thereon.

# Reporting to DGIT- International Taxation

- a copy AAC along with the audited Balance Sheet shall be submitted within six months from the due date of the Balance Sheet to the Directorate General of Income Tax (International Taxation) - New Delhi.

# Reporting to DGP

- LO/BO shall report information contained in prescribed **Annex** within five working days of becoming functional to the Director General of Police (DGP) of the state concerned [amended vide AP (DIR) No.35 dated September 25, 2012 ]
- A copy of the report in **Annex** alongwith AAC shall also be filed with the DGP concerned on annual basis. [amended vide AP (DIR) No.35 dated September 25, 2012 ]

# Closure/ Winding-up of BO/LO

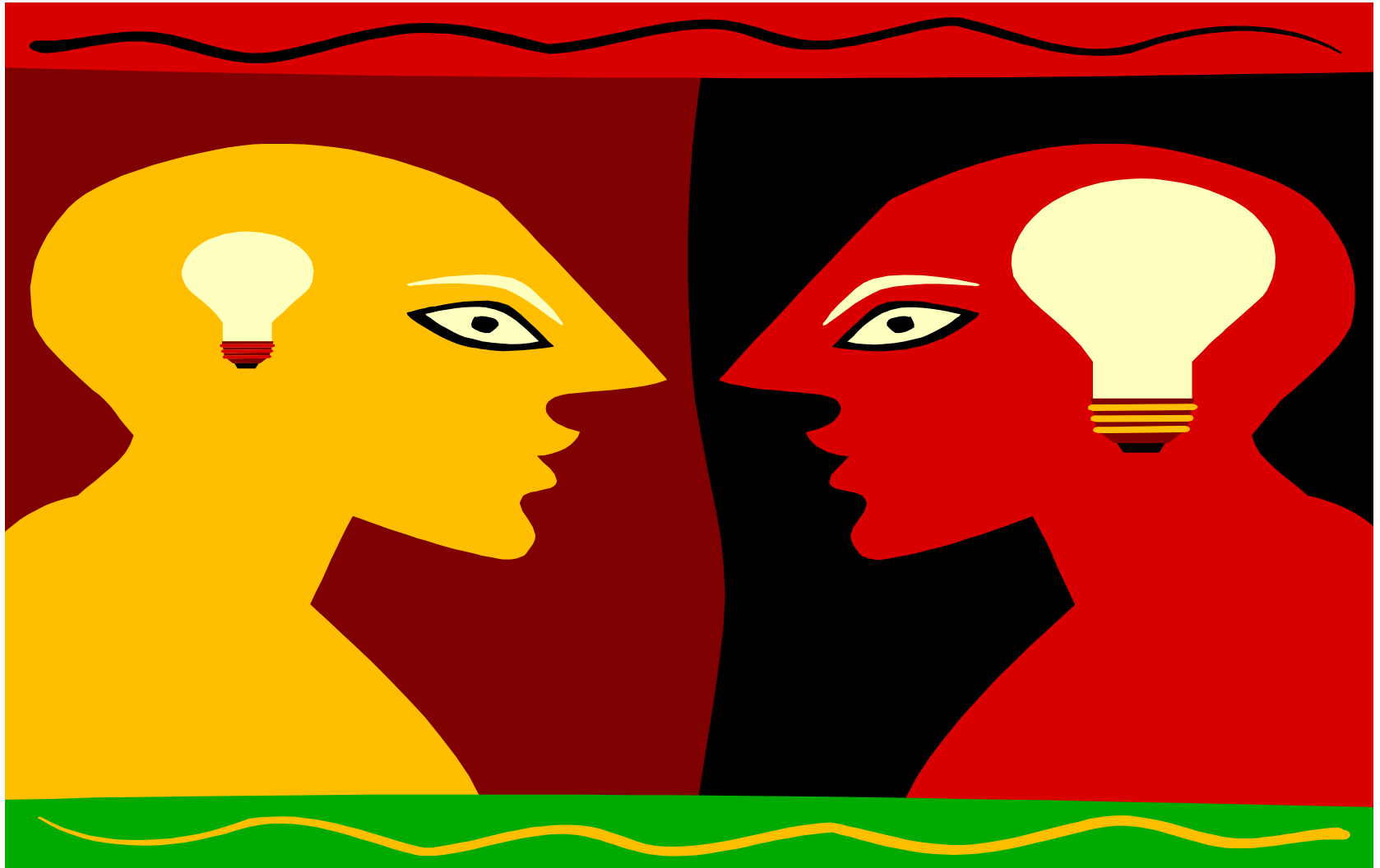
- Following documents should be submitted for closure/ winding up:
  - Copy of RBI's permission/ approval from the sectoral regulator(s) for establishing the BO / LO. (except BO/ LO in SEZs)
  - Auditor's certificate-
    - indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
    - 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
    - confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.
  - No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.
  - 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.

# Responsibility of AD on Closure/ Winding up of BO/LO

- Ensure that the BO / LOs has filed their Annual Activity Certificates **(AAC)** with the RBI for the previous years\*, in respect of the existing Branch/Liaison Offices.
- Report closure/ winding up to the RBI along with a declaration stating that all the necessary documents submitted by the BO / LO have been scrutinized and found to be in order.
- Forward documents which are not found in order or cases which are not covered under delegated powers with their observations, if any, for necessary

**\*Confirmation about filings of AACs for earlier years can be obtained from the Central Office of the RBI**

# Establishment of Project Office in India





# Set-up Criterion

- No permission is required to establish POs for persons who have secured a contract from an Indian company to execute a project in India provided -
  - the project is funded directly by inward remittance from abroad; or
  - the project is funded by a bilateral or multilateral International Financing Agency; or
  - the project has been cleared by an appropriate authority; or
  - 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.
- Foreign entity not meeting the prescribed criterion will require RBI approval.
- POs by foreign Non-Government Organisations/Non-Profit Organisations/Foreign Government Bodies/Departments, by whatever name called, will also require prior approval from the RBI.

# Initial Reporting

- The foreign company establishing a PO in India is required to furnish report to-
  - The Director General of Police (DGP) containing information in **Annex** within **five working days** of the PO becoming functional (**AP Dir. Cir. 35 dt. 25.09.2012**).
  - **RBI through the designated AD branch** within 2 months containing following details.
    - Name and address of the Foreign Company
    - Reference Number and date of letter awarding the contract referred to in clause (ii) of Regulation 5 of Notification No. FEMA 22/2000-RB dated May 3, 2000
    - Particulars of the authority awarding the projects / contract
    - The total amount of contract
    - Address / e-mail address / telephone number / fax number of the Project Office
    - Tenure of the Project Office
    - Brief details of the Project undertaken

# Foreign Currency Account

- POs are allowed to open non-interest bearing Foreign Currency Account with AD-Category I Banks subject to the following:
  - The PO is established with the general / specific permission of RBI & is having the requisite approval from the concerned Project Sanctioning Authority.
  - The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- Each PO can open 2 (two) Foreign Currency Accounts, usually one denominated in USD and other in home currency, provided both are maintained with the same AD category–I bank.
- The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, remittances from parent/group company abroad or

# Foreign Currency Account

- The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the branch concerned of the AD. The Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor.
- The Foreign Currency accounts have to be closed on completion of the Project.

# Intermittent Remittances

- ADs are allowed to permit Intermittent remittances by POs for bonafide transactions pending winding up / completion of the project, subject to the following:
  - Submission of Auditors' / CAs' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax.
  - An undertaking from the PO 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.
- Inter-Project transfer of funds requires prior RBI permission.

# Annual Reporting

- The PO shall submit to the AD branch on an annual basis, a Certificate from a CA showing the Project Status and certifying that the accounts of the Project Office has been audited and the activities undertaken are in conformity with the General / Specific permission given by the RBI.
- A copy of the report in **Annex** shall be filed with the DGP concerned on annual basis along with a copy of the annual certificate. [amended vide AP (DIR) No.35 dated September 25, 2012 ]

# Reporting Provisions at a glance

Particulars	Liaison Office	Branch Office	Project Office
Reporting to Director General of Police (DGP)	Report in <u>Annex</u> ( format provided in AP. Dir. Series Circular No. 35 dated September 25, 2012 ) <b>within 5 working days</b> of becoming operational and <b>on Annual basis</b> alongwith AAC	Report in <u>Annex</u> ( format provided in AP. Dir. Series Circular No. 35 dated September 25, 2012 ) <b>within 5 working days</b> of becoming operational and <b>on Annual basis</b> alongwith AAC	Report in <u>Annex</u> ( format provided in AP. Dir. Series Circular No. 35 dated September 25, 2012 ) <b>within 5 working days</b> of becoming operational and <b>on Annual basis</b> alongwith Annual Report
Reporting to RBI through the designated AD Category – I bank	<ul style="list-style-type: none"> <li>• Copy of the report filed with DGP as mentioned above</li> <li>• Annual Activity Certificate (AAC) <b>within 6 months</b> of closure of annual accounts</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of the report filed with DGP as mentioned above</li> <li>• Annual Activity Certificate (AAC) <b>within 6 months</b> of closure of annual accounts</li> </ul>	<ul style="list-style-type: none"> <li>•Reporting prescribed information <b>within 2 months</b> of the establishment of PO</li> <li>•Copy of the report filed with DGP as mentioned above</li> <li>• Certificate from a CA showing the Project Status and certifying that the accounts of the PO has been audited and the activities are in conformity with the RBI permission.</li> </ul>
Reporting to Directorate General of Income Tax (International Taxation) – New Delhi	•Annual Activity Certificate (AAC) with audited Balance Sheet <b>within 6 months</b> of closure of annual accounts	•Annual Activity Certificate (AAC) with audited Balance Sheet <b>within 6 months</b> of closure of annual accounts	

# Snapshot of provisions relating to BO/ LO/

**PO**

<b>Particulars</b>	<b>Liaison Office</b>	<b>Branch Office</b>	<b>Project Office</b>
<b>Setting-up</b>	Prior RBI Approval	Prior RBI Approval	General Permission subject to certain conditions and reporting within 2 months
<b>Track Record/ Net worth criterion</b>	Profit making track record in immediately preceding 3 years & Net worth of not less than USD 50,000	Profit making track record in immediately preceding 5 years & Net worth of not less than USD 1,00,000	-
<b>Validity Period</b>	Approval for a period of 3 (three) years which can be further renewed	Generally does not have time limit	Timeline as per Contract
<b>Permitted Activities</b>	4 (Four) Activities Permitted. Information collection, market Survey, communication, etc.	8 (Eight) Activities permitted. Local manufacturing or processing (except units in SEZs) & retail trading are not permitted	Execution of Projects only
<b>Funding for local operations</b>	Only out of inward remittances from HO	Out of inward remittances and local earnings	Out of inward remittances and local earnings
<b>Permanent Establishment (PE) exposure</b>	Not regarded as PE under DTAA subject to liaison activities only	Regarded as PE of the Foreign Company under DTAA	Regarded as PE of the Foreign Company under DTAA if activities in India exceeded threshold no of days
<b>Income-tax Act</b>	Not liable to tax. Required to file prescribed particulars - S. 285	Income liable to tax. Required to file Return of Income	Income liable to tax. Required to file Return of Income
<b>Immovable Property</b>	Acquire on lease not exceeding 5 years	Acquire on lease / ownership basis	Acquire on lease / ownership basis



# Establishment of Office Outside India



# Introduction

- RBI does not regulate establishment of a branch, office or other place of business by a person resident outside India as the same shall be governed by the laws/ regulations of the respective host country.
- However, opening of foreign currency accounts outside India is regulated by RBI through Notification No. 10 **“Foreign currency accounts by a person resident in India”**
- Regulation 7(4A) of Notification No. 10 **grants general permission** to a firm, a company, a body corporate registered or incorporated in India **to open, hold and maintain in the name of its office** (trading or non-trading) or its branch set up outside India or its representative posted outside India, **a foreign currency account with a bank outside** India by making remittances from India for the purpose of normal business operations of the office/branch or representative **subject to certain conditions**.

# Bank Account Abroad & Remittances

- The overseas branch/office is set up or representative is posted overseas for conducting normal business activities of the Indian entity.
- The details of the bank account opened in the overseas country should be promptly reported to the AD.

## Restrictions / conditions

- The overseas office (trading/ non-trading)/ branch/ representative should not create any financial liabilities contingent or otherwise for

# Restrictions / conditions

- The overseas office/branch of software exporter company/ firm can retain contract value of `off-site' & `on-site' contracts for contract related expenses including office/branch expenses abroad. The company should, however, repatriate the profits of on-site contract after the completion of the said contract.
- A duly audited yearly statement showing receipts under `off-site' and `on-site' contracts undertaken by the overseas office, expenses and repatriation thereon should be sent to the AD.

# Company Law Provisions

- Part XI of the Companies Act, 1956 containing Section 591 to 608 deals with the Companies incorporated outside India i.e. a "Foreign

# Thank You

**N. G. Thakrar & Co**

**Chartered Accountants**

4, Big Three Building, 1st Floor,

88, Anandilal Poddar Marg,

Mumbai- 400 002

Tel: 2201 8184/ 2207 9094

Mobile: 98210-21841



# Relevant Notifications/ Circulars

	Notification/ Circulars	Particulars
1	Sections 1, 2(v)(iii) & 6(6) of FEMA, 1999	Scope, Person resident in India & Power of RBI
2	Notification No. FEMA 22/2000-RB dated May 3, 2000	Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business), Regulations, 2000
3	Notification No. FEMA 95/2003-RB dated July 2, 2003	Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) (Amendment) Regulations, 2003
4	Notification No. FEMA 102/2003-RB dated October 3, 2003	Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) (Second Amendment) Regulations, 2003
5	A.P. (DIR Series) Circular No. 37 dated November 15, 2003	Permission to open Project Office in and Remittance of Assets
6	A.P. (DIR Series) Circular No. 58 dated January 16, 2004	Establishment of Branch Offices/Units in Special Economic Zones
7	A.P. (DIR Series) Circular No. 44 dated May 17, 2005	Project Offices—Intermittent remittances and Foreign Currency Accounts in
8	A.P. (DIR Series) Circular No. 2 dated July 31, 2008	Project Offices—Foreign Currency Accounts in



# Relevant Notifications/ Circulars

	Notification/ Circulars	Particulars
9	A. P. (DIR Series) Circular No. 23 dated December 30, 2009	Eligibility criteria and procedural guidelines for establishment of Branch / Liaison Office in by foreign entities
10	A. P. (DIR Series) Circular No. 24 dated December 30, 2009	Establishment of Branch/Liaison Offices in by foreign entities - Delegation of powers
11	A. P. (DIR Series) Circular No. 39 dated April 25, 2005	Establishment of Liaison Offices in India by foreign Insurance companies
12	A. P. (DIR Series) Circular No. 6 dated August 9, 2010	Establishment of Branch Offices (BO) / Liaison Offices (LO) in India by Foreign Entities - Delegation of Powers
13	A. P. (DIR Series) Circular No. 2 dated July 15, 2012	Regularization of Liaison / Branch Offices of foreign entities established during the pre-FEMA period
14	A. P. (DIR Series) Circular No. 76 dated February 9, 2012	Clarification regarding Project Office by Foreign Entities-General Permission
15	A. P. (DIR Series) Circular No. 31 dated September 17, 2012	Establishment of Liaison Office (LO) / Branch Office (BO) / Project Office (PO) in India by foreign Non-Government Organisations/Non-Profit Organisations/ Foreign Government Bodies/Departments - Clarification
16	A. P. (DIR Series) Circular No. 35 dated September 25, 2012	Reporting to DGP in the prescribed Annex
17	A. P. (DIR Series) Circular No. 35 dated November 26, 2012	Reporting to Income-tax Authorities