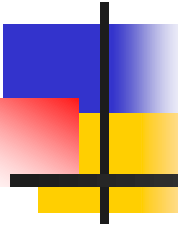


BOMBAY CHARTERED ACCOUNTANTS' SOCIETY

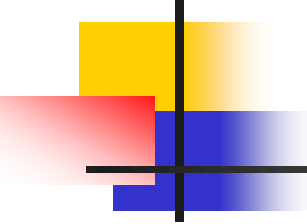
Four day Study Course on FEMA



Establishment of Branch/Liaison/Project Office in India

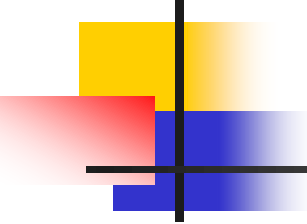
Presented by:
Mr. Paresh P. Shah

P.P. Shah & Associates
Chartered Accountants
Email: ppshahandassociates@gmail.com



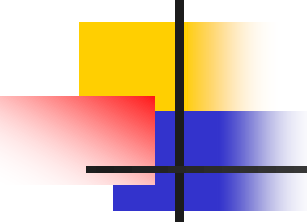
Overview of Presentation

- Introduction & Overview – Provisions of FEMA
- Entry into India, Application Procedure, Approvals & Eligibility criteria
- Post Approval Procedure
- Opening of Bank Accounts
- Activities Permitted for Liaison/Branch/Project Office
- Validity & Extension for Liaison/Branch/Project Office
- Remittance of Profit/Surplus by Branch/Project Office
- Acquisition of Immovable Property & Winding up
- Reporting Requirement as per FEMA, Companies Act & Income Tax
- Conversion of Branch office into Company
- Donations by Liaison/Branch/Project Office
- Shifting & Opening Additional Offices
- Comparison between Liaison/Branch/Project Office



Provisions of Notification FEMA 22(R)

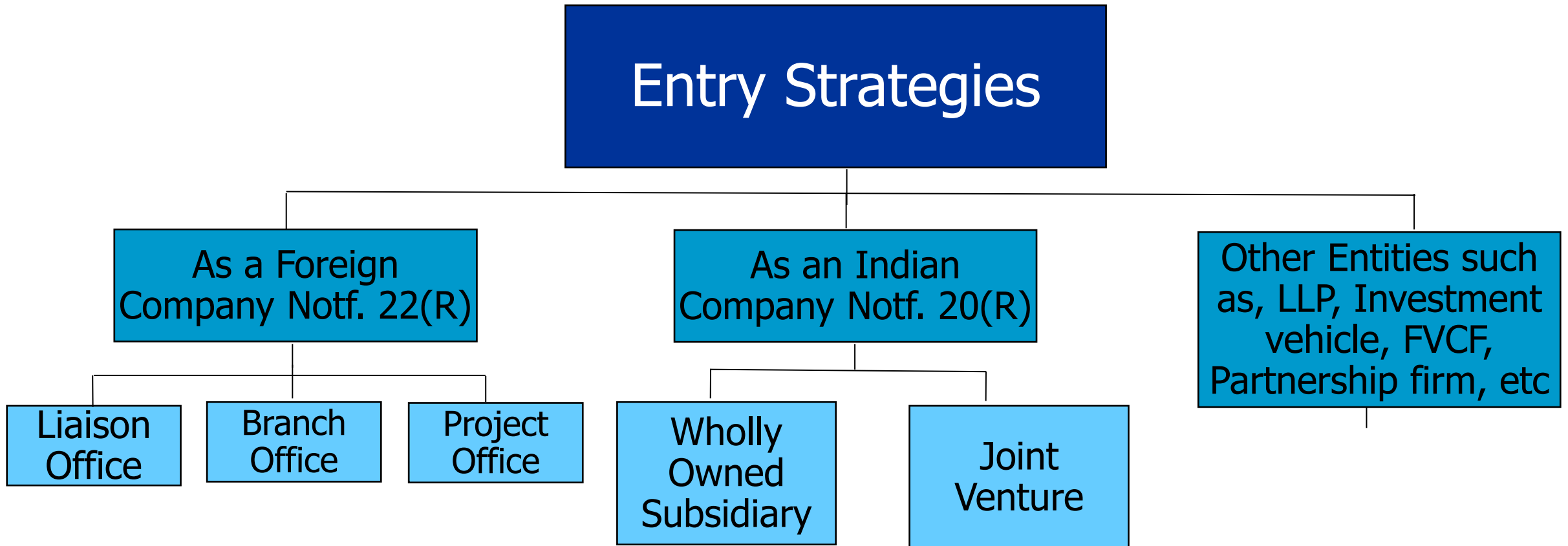
- Regn.2: Definitions
- Regn.3: Prohibitions
- Regn. 4(a) to (d): Eligibility criteria for Automatic Route, Permissible activities, Application Form, Validity period and its extension, Additional offices (LO / BO) [Form FNC is same for PO]
- Regn. 4(f): Project office criteria
- Regn. 4(g): Registration with State Police authorities
- Regn. 4(h): Fund based & non-fund based facilities (BO / PO)
- Regn. 4(i): Remittance of surplus (BO), Intermittent remittance by PO
- Regn. 4(j): Property (BO / PO)
- Regn. 4(k): Transfer of Assets to JV / WOS / Third parties (LO / BO / PO)
- Regn. 4(l): Annual Activity Certificate
- Regn. 4(m): Closure of Office (LO / BO)



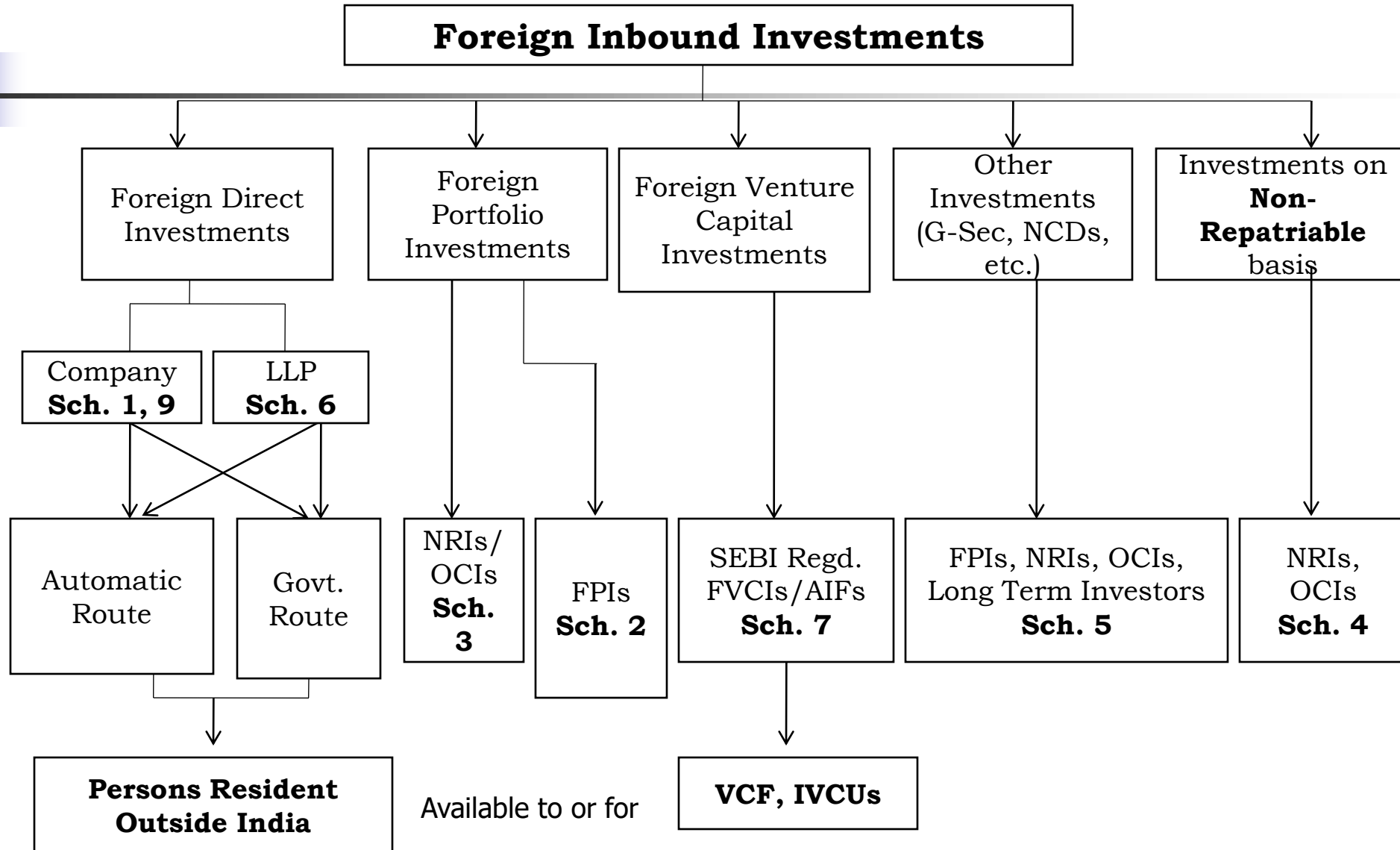
Provisions of Notification FEMA 22(R) (con't)

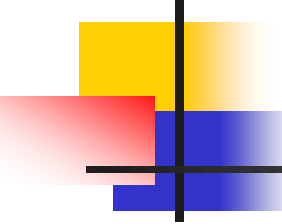
- Regn. 5: Approval in certain cases – Citizen of & Country of Incorporation, Foreign Govt, agency, etc.
- Annexure to Notification:
 - Annexure A: Letter of comfort in certain cases
 - Annexure B: Permitted activities of BO & LO
 - Annexure C: Form FNC

Business in India – Entry Options



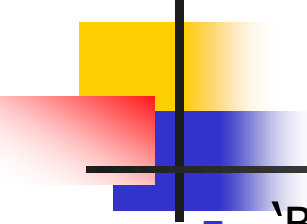
Foreign Investment in India- Schematic Representation





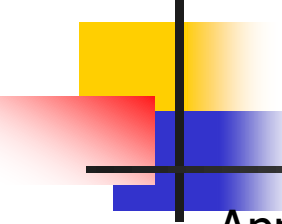
LO / BO / PO in India

- Establishment of Branch Office/Liaison Office/Project Office or any other place of business in India by foreign entities is regulated in terms of Section 6(6) of FEMA, 1999 read with Notification No. FEMA 22(R)/2016-RB dated March 31, 2016 ("Ntf. FEMA 22(R)").
- Section 6(6) of FEMA: "Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business".
- According to section 2(v)(iii) of FEMA , "Person resident in India means an office, branch or agency in India owned or controlled by a person resident outside India". This implies that Branch or Project Office in India owned or controlled by a person resident outside India shall become persons resident in India.



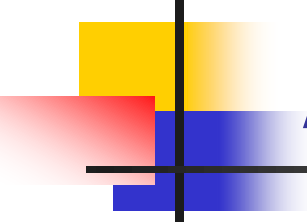
Meaning of BO/LO/PO

- 'Branch Offices' (referred to as "BO") in relation to a company; means any establishment described as such by the company. A branch can be opened for specific purposes;
"it should be engaged in the same activities as the parent company."
- 'Liaison Office' (referred to as "LO") means a place of business to act as a channel of communication between the principal place of business or Head Office or by whatever name called and entities in India but which **"does not undertake any commercial /trading/ industrial activity, directly or indirectly,"** and maintains itself out of inward remittances received from abroad through normal banking channel.
- 'Project Office' Foreign Companies planning to execute EPC/turnkey projects in India can set up **"temporary project/site offices"** (referred to as "PO") in India. Project office is a place of business to represent the interest of the foreign company executing a project in India.
- Site Office means a sub-office of the Project Office established at the site of the project but does not include a LO



Application Procedure - FEMA

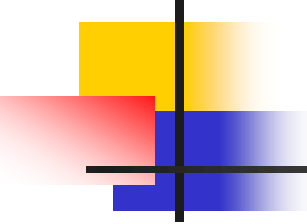
- Application to establish LO/BO/PO is to be submitted by PROI in Form FNC to an AD bank along with:
- Copy of the Certificate of Incorporation / Registration; Memorandum of Association and Articles of Association attested by the Notary Public in the country of registration
- Audited Balance sheet of the applicant for the last 3/5 years in case of LO/BO respectively (not required for PO)
- Bankers' Report from the applicant's banker in the country of registration showing the number of years the applicant has had banking relations with that bank
- Background of the Promoter, Sources of Funds, location of the applicant & KYC norms
- Power of Attorney in favor of signatory of Form FNC in case the Head of the overseas entity is not signing the Form FNC.



Application Procedure - FEMA

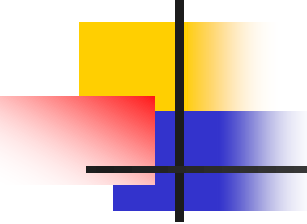
- Summary of Documents to be submitted for Application

Particulars	LO	BO	PO
Formation / Incorporation documents (notarized in home country)	✓	✓	✓
Financial Statements	✓	✓	✗
Banker's Report	✓	✓	✓
Power of Attorney	✓	✓	✓



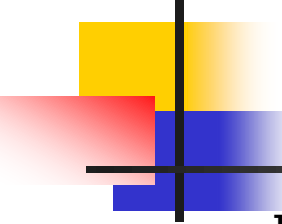
Criteria – Auto Route

- LO / BO: Principle Business of the foreign entity falls under sectors where 100% Foreign Direct Investment (FDI) is permissible under the automatic route
- Financial track record for BO: Profit making track record of immediately preceding 5 financial years in the home country and Networth $\geq$ USD 1,00,000 or its equivalent.
- Financial track record for LO: Profit making track record of immediately preceding 3 financial years in the home country and Networth $\geq$ USD 50,000 or its equivalent.
- A letter of Comfort of Foreign Parent company (applicant is one of Parent's subsidiaries) may be submitted by its subsidiary/ies provided the Parent company satisfies one of the prescribed criterion i.e. of profit and net worth
- Prior information to General Manager, RBI Company Cell, New Delhi for obtaining UIN for each LO / BO and then only issue of approval letter
- ELSE: RBI route



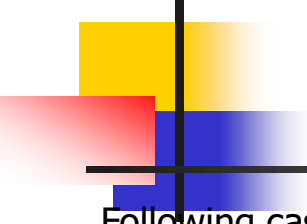
Criteria – Auto Route for PO

- PO has secured from Indian company a contract in India , AND
- Project funded by inward remittances from abroad , OR
- Project funded by bilateral or multilateral International Finance Agency , OR
- Project cleared by appropriate authority , OR
- Company in India been granted Term Loan by PFI or bank for the project
- ELSE: RBI route



Standard conditions of Establishment

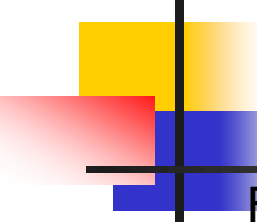
- In case the BO/LO/PO for which approval has been granted is not opened within 6 months from the date of the approval letter, the approval shall lapse.
- In cases where the non-resident entity is not able to open the office within the stipulated time frame due to reasons beyond its control, the AD Category-I bank may consider granting extension of time for a further period of six months for setting up the office.
- Any further extension of time shall require prior approval of Reserve Bank of India.
- ODI Enterprise cannot establish BO / LO / PO in India (FAQ 10)
- No Retail trading for BO
- Additional Place of Business: Prior intimation
- More than 4 places of Business (one for each region): Prior approval of RBI



Prior Approval Of RBI

Following cases need Prior Approval of RBI to open a LO/BO/PO in India in consultation with Govt. of India

- Applicant is a citizen of or registered/incorporated in Pakistan
- Applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening an LO/BO/PO in Jammu and Kashmir, North East region & Andaman - Nicobar Islands;
- Principal business is in one of the four sectors ie Defense, Telecom, Private Security or Information & Broadcasting. However, RBI approval is not required in case where Govt approval or license/permission by the concerned Ministry/Regulator has been granted.
- Applicant is a NGO, Not-for-profit organization / Body / Agency / Dept. of Foreign Govt.
- No separate approval of GOI shall be required to open a PO in Defence sector if the said non-resident applicant has been awarded a contract by/entered into an agreement with the Ministry of Defence/Service Headquarters/Defence Public Sector Undertakings." All other provisions under Notification No 22(R) of FEMA shall be applicable to such a company
- Prior approval for immovable properties for applicants in point (2) above and also for LO / BO / PO in these cases
- Prior approval for PO of Company incorporated in Pakistan for opening Bank account for PO in India

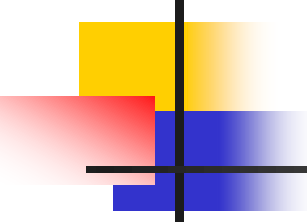


Exemption from RBI Approval

Following cases do not need Prior Approval of RBI (including generation of UIN) to open a LO/BO/PO in India:

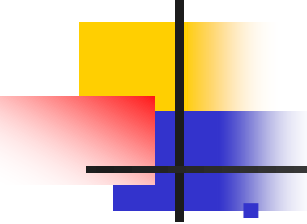
Entity	Pre requisite for Exemption from RBI Approval
NGO, NPO, Body/ Agency/ Department of a foreign govt. Engaged Partly or wholly in activities covered under Foreign Contribution Regulation Act(FCRA)	Obtained Registration under FCRA
Foreign Insurance companies	Obtained Approval from IRDA
Foreign banks	Obtained Approval under Banking Regulation Act

- A company resident outside India does not require any approval under Ntf. FEMA 22 to establish a branch office in the Special Economic Zones (SEZs) to undertake **manufacturing & service activities**, subject to the conditions that such Branch Offices,
 - a) are functioning in those sectors where 100% FDI is permitted;
 - b) function on a **stand alone basis** (no activities in DTA or affiliates in DTA) & comply with Chapter XXII of the Companies Act, 2013;



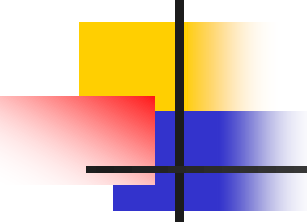
Post Approval Procedure – Co's Act

- Applicable provisions of Companies Act, 2013: Chapter XXII, Sections 379 to 393 [corresponding to Part XI, Sections 591 to 608 of the Companies Act, 1956]
- Foreign Companies Registration Rules issued vide GSR 266(E) dt. 31st March, 2014 w.e.f. 1st April, 2014
- Once a Foreign Company/Entity establishes a BO/LO/PO or any place of business in India by whatever name called is required to register with the Registrar of Companies within 30 days of establishment of place of business in India in Form FC-1, along with other prescribed Documents.
- Where any alteration is made or occurs in the document delivered for registration, the foreign company shall file such alterations in Form FC-2 along with the prescribed fees with the Registrar within a period of thirty days from the date on which the alteration was made or occurred.
- List of all the places of Business in India to be filed in Form FC-3



Post Approval Procedure – Co's Act (con't)

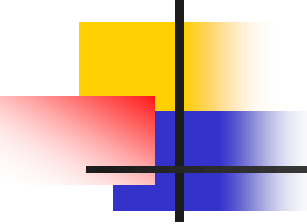
- Annual Return in Form FC-4 to be filed within 60 days of the financial year.
- Indian Depository Receipts (IDR) documents as per Rule 13 of the Company's Rules including details in Form FC-5
- Other business licenses which are applicable and are required to be obtained by a BO/LO are, Permanent account number (PAN); Tax deduction number (TAN); Shop and Establishment Certificate and GST no if required
- Note: Charter Documents as referred is required to be authenticated as specified in the Rules for (a) Common wealth & Non-common wealth countries of Incorporation; (b) Non-common wealth countries but a party to the Hague Apostille Convention, 1961. They are also required to be translated in English language to be authenticated by these Rules (Rule 9 & 10 of the above Rules)



Registration with Police Authorities

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

[In any case, the above are under prior approval route]



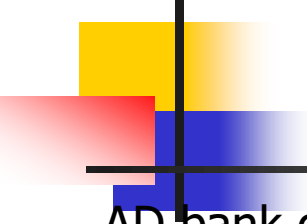
Opening of Bank Account – LO & BO

- Liaison offices (only one bank account):

LO may open an account with the designated AD category I Bank in India for receiving remittances from its Head Office outside India. **LO shall not maintain more than one bank account** at any given time without the prior permission of RBI.

- Branch offices:

BO may open an account with the designated AD category I Bank in India for its business operations in India.

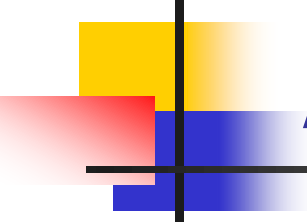


Opening of Bank Account - PO

AD bank can open non-interest bearing Foreign Currency Account for PO in India subject to the following:

- The PO has been established in India, with General/Specific permission of RBI, having the requisite approval from the concerned Project Sanctioning Authority.
- The contract governing the project specifically provides for payment in foreign currency.
- Each PO can open 2 Foreign Currency Accounts – usually one denominated in USD and the other one in home currency provided both are maintained with the same AD bank.
- The accounts shall be closed at the completion of the Project & the account is subject to 100 per cent scrutiny by the Concurrent Auditor of the respective Bank.
- Each PO is required to transact through one designated AD bank only who shall be responsible for the due diligence and KYC norms of the PO. PO, present in multiple locations, is required to transact through their designated AD.

An Applicant registered/Incorporated in Pakistan will require prior approval of RBI to open a bank account for its PO in India (no such requirements for LO / BO)

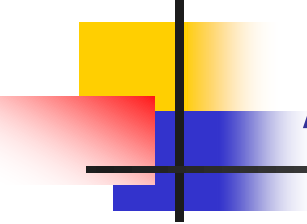


Activities Permitted For Liaison Office

Following are the Activities permitted for a Liaison Office in India of a person Resident outside India:

- Representing in India the parent company / group companies.
- Promoting export / import from / to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

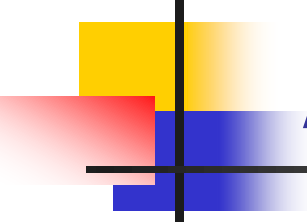
A Liaison Office cannot earn any Income in India & cannot engage in any kind of Business Activity. They have to meet expenses from inward remittances



Activities Permitted For Branch Office

- Export/Import of goods
- Rendering professional or consultancy services.
- Carrying out research work, in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/selling agent in India.
- Rendering services in Information Technology and **development of software in India.**
- Rendering technical support to the products supplied by parent/group companies.
- Foreign airline/shipping company.

A Branch Office is not allowed to engage in Manufacturing, Processing or any Retail Trading activities of any nature in India directly or indirectly, except BO in SEZ

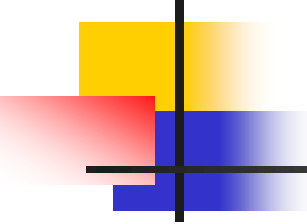


Activities Permitted For Project Office

Project Office can consider following activities:

- To execute a contract/project in India secured from an Indian company and activities related to execution of the project.
- To render service during the warranty period and after sales service as per the Contract terms.

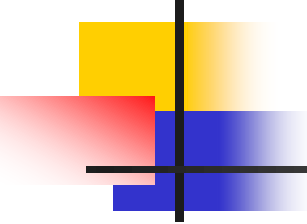
A project Office can only engage in activities for the execution of the Project, which is for a fixed duration till the contract is fully executed



Remittance of Profit by BO

BO may remit outside India profit of the branch net taxes, on production of the following documents

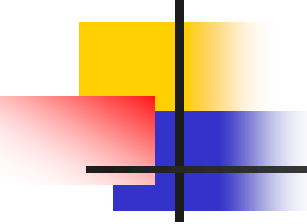
- A certified copy of the audited P&L and B/sh account for the relevant year.
- A Chartered Accountant's certificate certifying
 - i. Manner of arriving at the remittable profit;
 - ii. Profits have been earned by undertaking permissible activities and
 - i. Profit on revaluation of the assets of the branch is excluded



Remittance of Surplus by PO

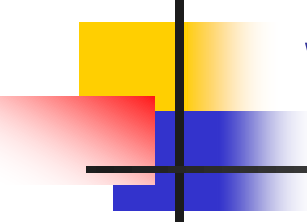
AD bank may permit intermittent remittances by PO pending winding up / completion of the project subject to submission of the following:

- Certified copy of the final audited project accounts;
- The statutory auditor's certificate showing the manner of arriving at the surplus & confirming that sufficient provisions have been made to meet the liabilities in India including I.T, etc.; and
- 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.



Acquisition/Transfer of Immovable Property

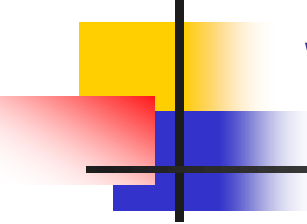
- A branch or office in India (except LO) established by a PROI, can acquire any immovable property in India for their own use only for permitted/incidental activities subject to filing of declaration in Form IPI within 90 days from the date of such acquisition. (Refer to Notification FEMA 21(R) / 2018-RB dt. 26th March, 2018)
- As per Section 6(3)(i) of FEMA, 1999 PROI India have general permission to acquire & transfer immovable property in India under lease subject to lease period ≤ 5 years.
- Such acquired property can be transferred by way of mortgage to an AD bank as a security for any borrowings.
- However, acquisition of immovable property in India by a branch, office or other place of business, of entities of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan origin/ nationality/ ownership requires the prior approval of the Reserve Bank.



Winding Up – LO/BO

Request for closure of BO/LO may be submitted to AD bank along with following documents:

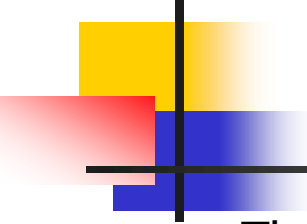
- RBI/AD bank approval for establishing BO / LO
- Auditor's certificate for:
 - i. calculation of remittable amount, supported by a statement of assets & liabilities. Manner of disposal of assets
 - ii. confirmation for all liabilities in India have been fully met/provided for
 - iii. confirmation that no income accruing outside India has remained unrepatriated to India
- Confirmation from Parent Co that no legal proceedings are pending in any Court in India
- Report from ROC regarding compliance with provisions for winding up of BO / LO
- Any other documents specified by RBI/AD while granting Approval



Winding up - PO

PO may remit surplus/Profit outside India net of Taxes on completion of the Project, subject to submission of following documents with AD

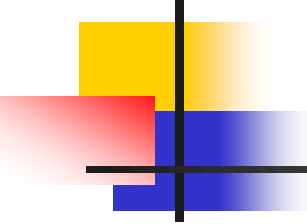
- Certified copy of the final audited project accounts;
- Chartered Accountant's certificate showing the manner of arriving at the remittable surplus;
- Documentary evidence showing payment of all taxes due, or a Chartered Accountant's certificate stating that sufficient funds are set aside for meeting all Indian tax liabilities;
- Auditor's certificate stating that no statutory liabilities in respect of the project are pending.



Reporting Requirements as per FEMA

The following documents need to be submitted for BO/LO to AD and Director General of Income Tax

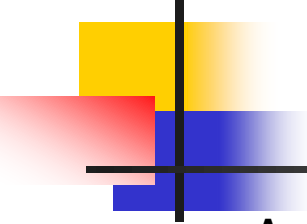
- Annual Activity certificate (AAC) within 6 months of Balance sheet due date.
- Audited Financial Statements for BO
- Receipt and Payments Account
- Following documents need to be submitted for PO to AD-Bank only (not to DG, Intl. Taxation)
 - AAC from a Chartered Accountant showing Project Status and certifying that the accounts of the Project Office have been audited and the activities undertaken are in conformity with the General/Specific permission by RBI



Reporting Requirements as per FEMA

Summary of reporting Requirements as per FEMA

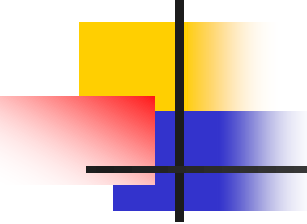
Particulars	LO	BO	PO
AAC to AD	✓	✓	
Financial statements	✓	✓	
Receipt & Payment A/c	✓	✓	
AAC to show Project Status			✓



Reporting Requirements as per Co's Act

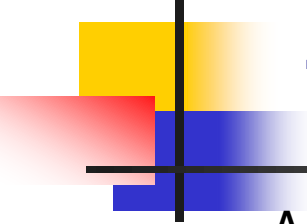
As per Companies Act, 2013, every foreign Company must file the following documents with ROC:

- Balance sheet, P&L Account, Annual Return, Compliance certificate, statement of related party transactions, statement of repatriation of profits, statement of transfer of funds (including Dividend, if any) along with the e-form.
- Documents relating to latest consolidated financial statements of the parent foreign company, Where the Central Government has specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted
- A copy of a list in form FC.3 of all places of business established by the company in India as at the date of the Balance sheet.
- Receipt and Payments Account



Reporting Requirements as per I.T Act

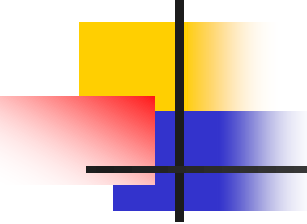
- As per Sec 139 of I.T Act, every company (including a foreign company) is required to file tax returns in India. This would be applicable to a Branch and Project office.
- AAC also needs to be filed with DGIT (Intl Tax), New Delhi
- As per Sec 285, read with rule 114DA it is mandatory for the Los only to file an annual statement of their activities in India within 60 days from the end of the financial year. The Annual statement is required to be filed in form No 49C
- Above form shall be duly verified by the Chartered Accountant, and uploaded in e-form



Transfer of Asset/Conversion of BO into Co.

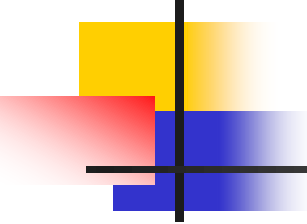
A PROI who has been granted the permission to establish a BO/LO/PO may apply to the concerned AD bank for transfer of assets to JV or wholly owned subsidiary in India. Such transfer of assets may be permitted subject to following conditions:

- Submission of AACs (up to the current financial year) at regular annual intervals;
- Obtained PAN from IT Authorities
- Registered with ROC under the Companies Act 2013, if necessary.
- Non-resident entity intends to close their BO/LO/PO operations in India.
- Submission of statutory auditor certificate furnishing details of assets to be transferred with relevant particulars.
- The assets should have been acquired by the BO/LO/PO from inward remittances or profit/surplus generated in case of BO/PO and no intangible assets such as good will, pre-operative expenses should be included.
- Revenue expenses such as lease hold improvements incurred by the BO/LO cannot be capitalised and transferred to JV/WOS.
- Payment of applicable taxes



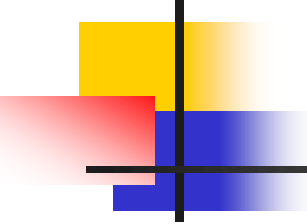
Donation by LO/BO/PO

- Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD Category-I banks after satisfying themselves about the bonafides of the transaction.



Shifting of LO/BO

- The shifting of existing BO/LO to another city in India shall require prior approval from the AD Category-I bank. However, no permission is required if the LO/BO is shifted to another place in the same city subject to the condition that the new address is intimated to the designated AD Category-I bank.



Opening of Additional Offices

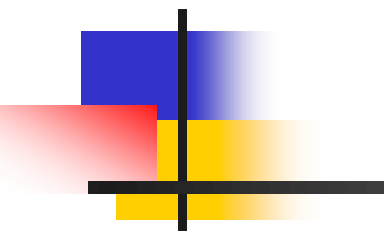
- The Additional BO/LO may be permitted to be opened by tendering fresh Form FNC. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier. The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
- If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of the Reserve Bank.

Comparison – LO/BO/PO

	Liaison Office	Branch Office	Project Office
Eligibility	FDI sectors, Network, Country of Incorporation / registration, NGO, Foreign Govt., etc.		
Documents	Charter documents, POA, Certificate of network / Letter of Comfort (other than for PO)		
Activities/Purpose	Only liaison activities i.e. act as channel of communication between head office abroad and parties in India	▪ Export / Import ▪ Render professional / consulting services ▪ Conduct research ▪ Render technical support to products supplied by F.Co. ▪ Acting as buying/selling agent of parent Co. Can earn income in India	▪ Execution of project involving ▪ Onshore supply of goods and / or services ▪ Offshore supply of goods and / or services Can earn income in India
Bank accounts	Only one	Only one	Max. two
Prohibited Activities	▪ No Commercial Activities ▪ Meet Expenses through inward remittance	Manufacturing & Processing except in SEZ	Can only engage in execution of Project

Comparison (Contd)

	Liaison Office	Branch Office	Project Office
Acquire Immovable Property	Cannot acquire, hold, transfer any property in India without RBI prior approval	Yes for their own use and to carry out permitted / incidental activities	Yes for their own use and to carry out permitted / incidental activities
Track Record & Net worth	3 yrs - US\$ 50,000	5 yrs - US\$ 100,000	No stipulation
Taxability	Not Liable to Tax	- Taxable as Non-resident - Can qualify as PE under tax treaties and claim treaty benefits	- Taxable as Non-resident - Can qualify as PE under tax treaties and claim treaty benefits
Reporting for LO / BO	To AD Bank, Tax authorities, Registrar of Companies for AAC, additional places of Business, change of place of business within city		
Prior approval	Change of activity, more than 4 offices, more than specified Bank accounts, change of office outside the city, purchase of immovable properties by companies incorporated / registered in specified countries, Banking account of PO of company incorporated in Pakistan, establishment of BO/LO/Po by companies of specified countries, etc.		



Thank You
