

LIAISON OFFICE/ BRANCH OFFICE/ PROJECT OFFICE

Intensive Study Course on FEMA

The Chamber of Tax Consultants

23rd March, 2018



HINESH R. DOSHI & CO. LLP
Chartered Accountants

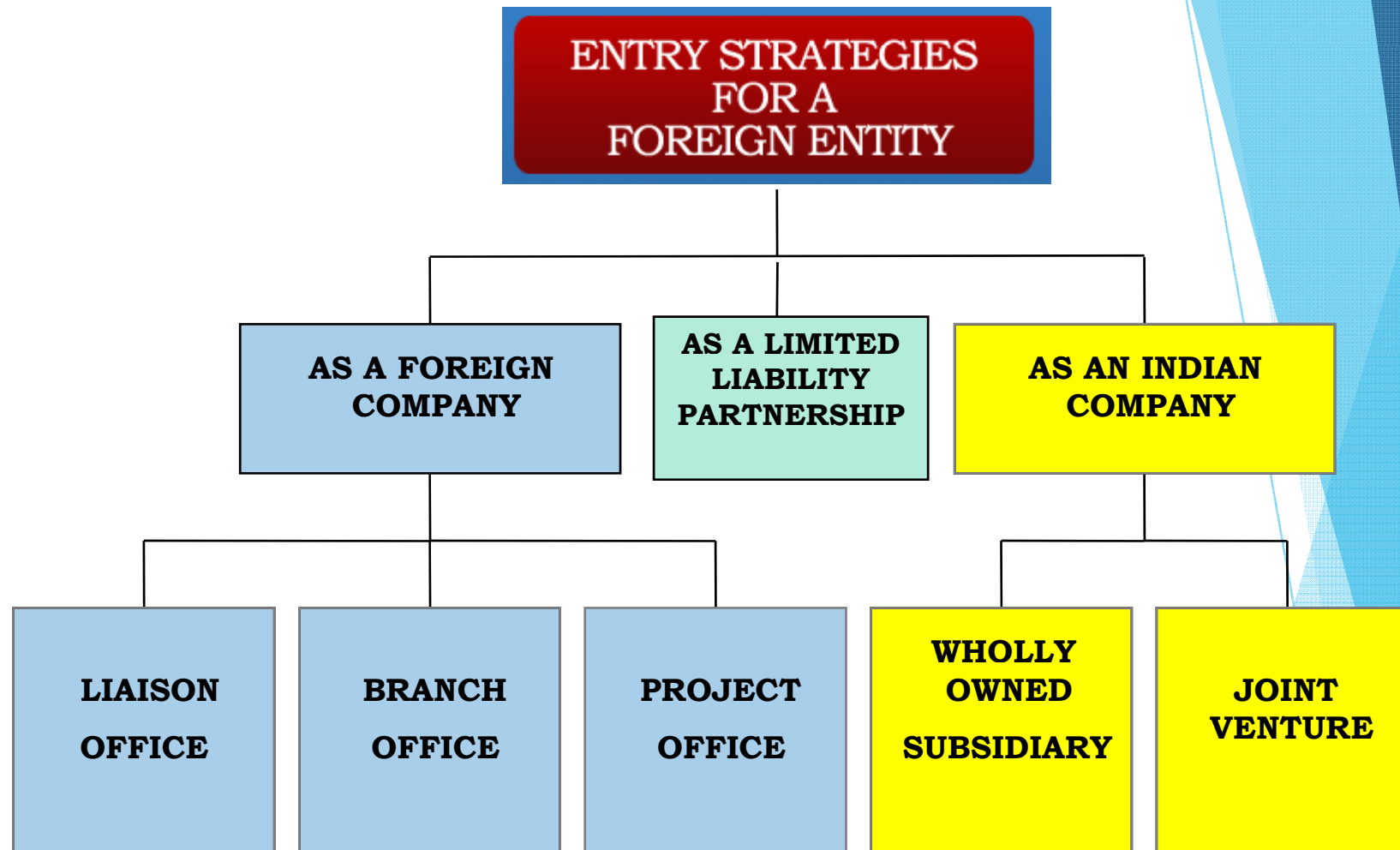
CONTENTS

**PART A : Establishment of Liaison/Branch/Project Office by
Non- Residents in India**

PART B : Procedures with RBI, ROC, Income Tax, FRRO

PART A : Establishment of Liaison/Branch/ Project Office by Non- Residents in India





OVERVIEW

- Section 6(6) of FEMA, 1999 read with Not.no. FEMA 22(R)/RB-2016 dt. 31/03/2016*, AP-DIR Series, Master Direction No.10 & 18 governs & regulates Establishment of LO/BO/PO in India and other place of Business
- As per section 2(v)(iii) of FEMA, Branch, Liaison Office or any other office in India owned /controlled by person resident outside India shall become person resident in India

**** Notification no. FEMA 22/ 2000-RB dated May 3, 2000 replaced by current notification***

**** Frequently Asked Questions (FAQ's) as on 26th December, 2016 (Liaison/Branch/Project Offices of foreign entities in India)***

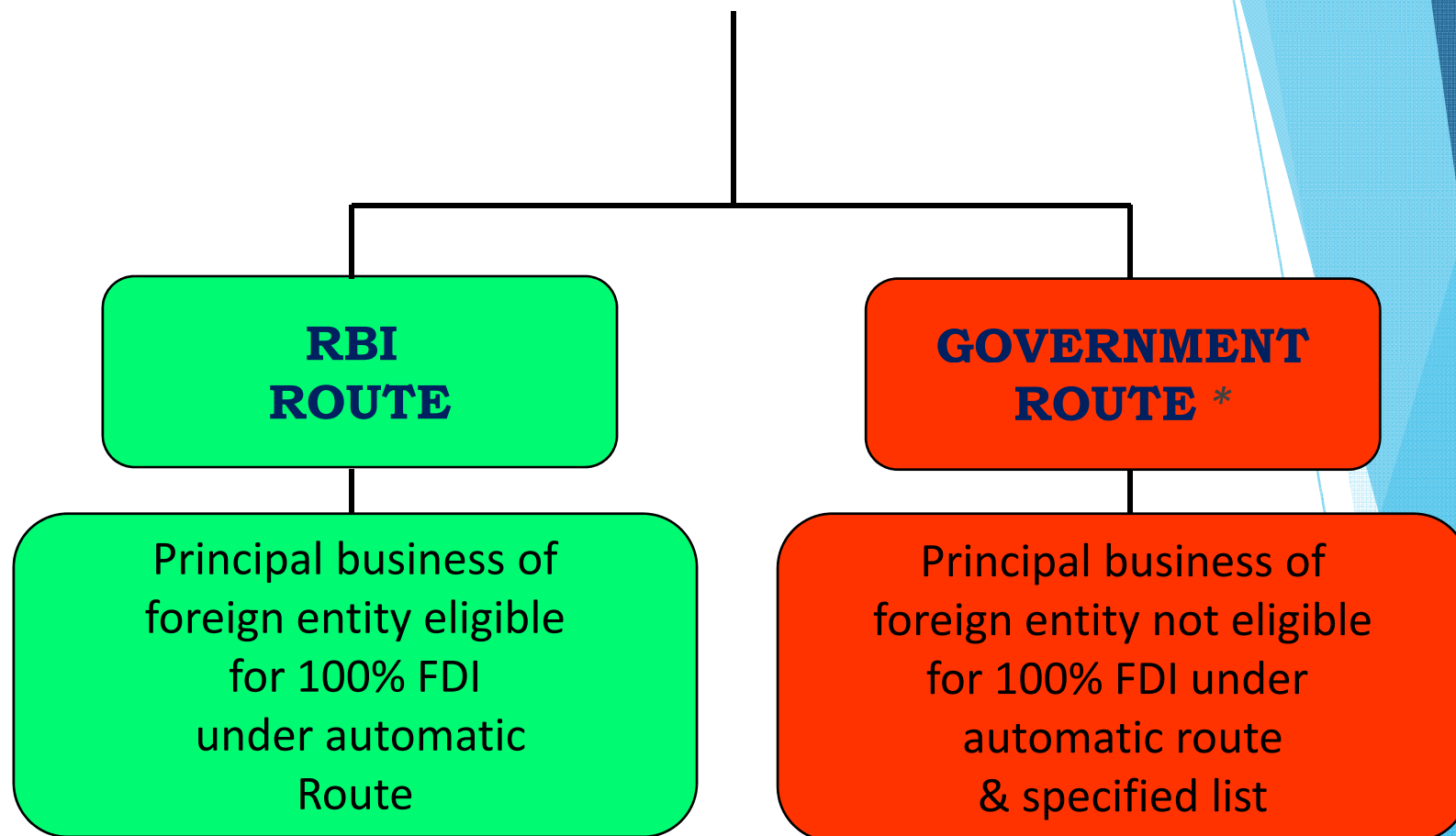
ACTIVITIES PERMITTED FOR LO

- Representing parent company/group companies
- Promoting export & import
- Promoting technical / financial collaborations between parent / group companies & companies in India
- Acting as communication channel between parent company & Indian companies

ACTIVITIES PERMITTED FOR BO

- Export/Import of goods
- Rendering professional / consultancy services
- Research work, in which parent company is engaged
- Promoting technical / financial collaborations
- Representing the parent company in India and acting as buying/selling agent
- Rendering services in IT & software
- Rendering technical support to products supplied by parent/group companies
- Representing a foreign airline/shipping company

ESTABLISHMENT OF LO & BO IN INDIA



** Applications from entities falling under Government route and those from NGOs/ NPOs/Government Bodies& Departments considered by RBI in consultation with the Minister of Finance*

ELIGIBILITY CRITERIA FOR ESTABLISHMENT OF LO & BO

Criteria

Track Record -

Profit making track record of immediately preceding 3 F.Y. in home country for LO and 5 F.Y. in case of BO

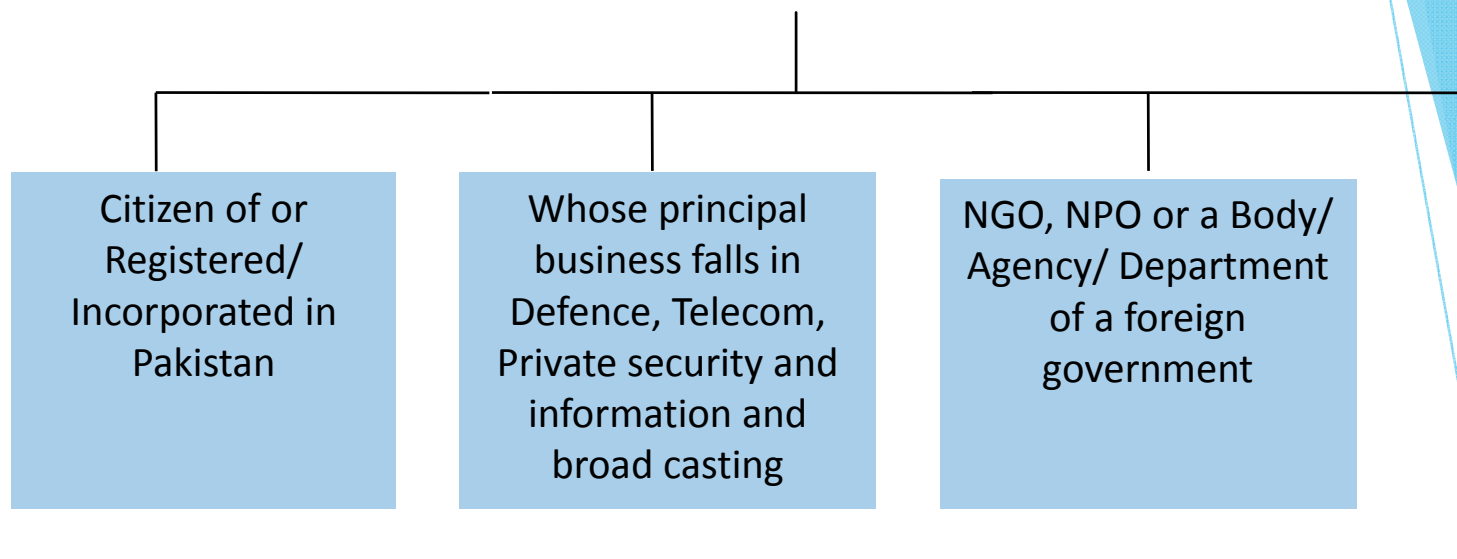
Net Worth -

BO - not less than USD 100,000 or it's equivalent

LO - not less than USD 50,000 or it's equivalent

Net Worth criteria for Non-corporate entities like Firm or other association of individuals?

PRIOR APPROVAL FOR LO/BO



Citizen of or Registered/Incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau **and** application for opening LO/BO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands
(i.e. AD bank can permit to open office without referring matter to RBI if application is in other cities/states excluding Jammu and Kashmir, North East region and Andaman and Nicobar Islands- FAQ No.13)

ESTABLISHMENT OF BO / UNITS IN SEZ

General permission to establish branch/unit in SEZ to undertake manufacturing & service activities provided such units:

- Function in sectors where 100% FDI permitted
- Comply with Chapter XXII of Companies Act, 2013
- Function on stand-alone basis
- Winding-up and for remittance of proceeds, file documents with AD Category – 1 Bank

DOCUMENTS TO BE FILED FOR OPENING LO / BO

- Application by LO, BO (other than entities in insurance and Banking) in Form FNC, with other documents to AD Category - I Bank
- Application by opening of LO/BO by foreign Banks to DBR, RBI and Application by insurance companies to IRDA in Form IRDA–FIC-1



PROCESS TO SET UP LO & BO

- Prior Approval of AD Bank to set up liaison office(LO) & Branch Office (BO) followed by registration with Register of Companies (ROC)
- LO/BO to be opened within 6 months of the approval. One time extension for further 6 months may be considered by the AD Bank. Any further extension of time shall require prior approval of RBI
- AD Bank forwards letter with recommendation & copy of FNC to RBI for allotting UIN to LO/BO. After allotment of UIN, AD Bank forwards approval letter to applicant
- Foreign Insurance companies to obtain prior approval from IRDA & Foreign Banks to obtain prior approval from RBI, Department of Banking Regulations (DBR) followed by registration with Registrar of Companies.
- No UIN is required for Banks and Insurance Companies

ADDITIONAL OFFICES & UNDERTAKING ADDITIONAL ACTIVITIES

- Requests for additional LO/BO - submit to AD Bank in same manner in Form FNC
- Requires RBI approval if additional office exceeds 4 in case of LO/BO i.e. one LO/BO in each zone viz. East, West, North and South.
- One Office identified as Nodal Office to coordinate activities of all other Offices
- If existing LO/BO is shifting to another city in India, prior approval from the AD Category-I bank is required
- Requests for additional activities for BO- submit through AD Category-I Bank to RBI with justification

DO'S & DONT'S OF LO

- Cannot undertake any commercial/business activity directly or indirectly
- Cannot earn any income in India except interest on fixed deposit
- All expenses to be met by Inward remittances
- Cannot have any signing/commitment powers on behalf of HO
- Can place fund in FD for period not exceeding 6 months
- LO can open only one bank account.
- LO can be upgraded under automatic route to BO under AD approval if overseas entity is eligible to open the BO under general permission. Continue to have same PAN provided the bank account is re-designated as a BO Account (FAQ No.5&10)

DO'S & DONT'S OF BO

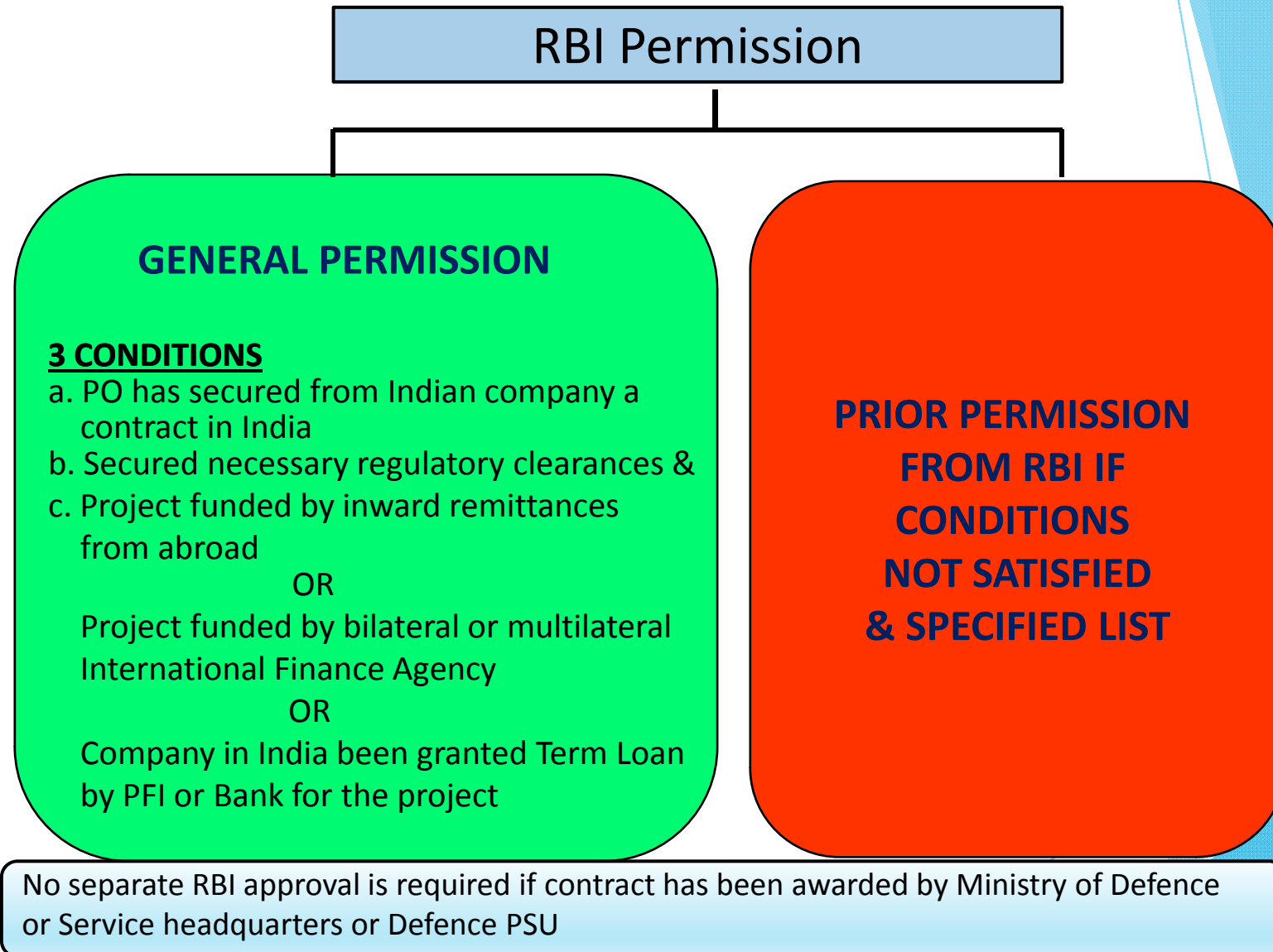
- Permission required for new activities of trading, commercial or industrial nature
- Required to transact through one AD bank only who shall be responsible for the due diligence and KYC norms
- All expenses from inward remittances or through income from permitted activities
- Income earned from parties abroad to be repatriated to India
- Subsidiary of Indian Co. abroad cannot open BO in India under automatic route (FAQ No.15)
- Can place fund in FD for period not exceeding 6 months
- Retail trading, manufacturing or processing activities not permissible
- BO cannot open Foreign Currency account for normal business transaction (FAQ No.18)
- Letter of Credit (LC) can be opened for BO in India for export/import of goods (FAQ No.21)

REMITTANCES OF BO PROFIT

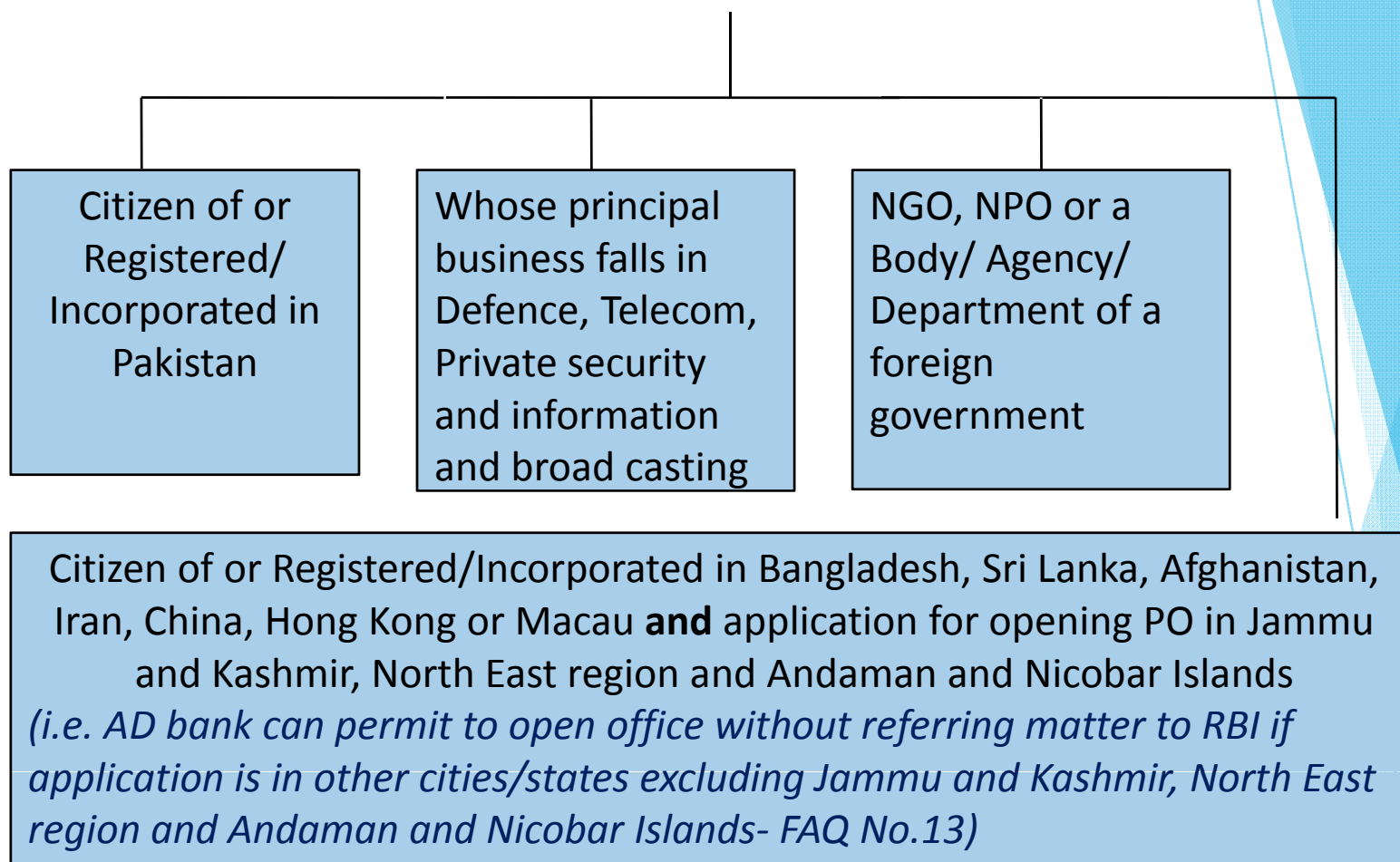
BO are allowed to remit outside India net of applicable Indian taxes on production of below documents to AD Bank :

- A certified copy of audited balance sheet & Profit & loss account for relevant year
- CA Certificate for manner of arriving remittable profit, entire remittable profit earned out of permissible activities & profit does not include profit on revaluation of branch assets

OPENING OF PROJECT OFFICE (PO)

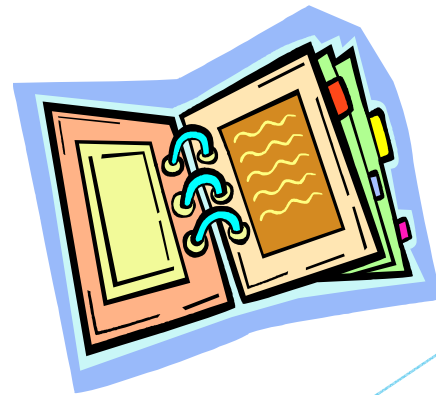


PRIOR APPROVAL FOR PO



ACTIVITIES PERMITTED FOR PO

- Execute a contract/ project in India & activities relating to execution of project
- Render service during warranty period and after sale service as per Contract terms



PROCESS TO SETUP PO

- Application by Project office (PO) in Form FNC, with other documents to AD Category - I Bank
- PO to be opened within 6 months of the approval. One time extension for further 6 months may be considered by the AD Bank. Any further extension of time shall require prior approval of RBI
- No approval from RBI to open PO in most cases, except intimation within 2 months to AD Bank *
* A P (DIR series) Circular no.44 dated 17th May, 2005
- AD Bank need not obtain UIN from RBI for PO (FAQ No.12)



DO'S & DONT'S OF PO

- Cannot ***lend any money*** to any person in India
- Cannot undertake any activity other than execution of project
- Cannot transfer funds inter-se projects without RBI permission
- Acquisition of property by BO/PO governed by FEM (Acquisition and transfer of immovable property outside India) Regulations
- Each PO can open 2 non-interest bearing foreign currency accounts one with USD and other in Home Currency. FC accounts to be closed on completion of project
- Responsibility of AD to ensure that only permissible debits and credits are allowed which shall be subject 100% scrutiny by Concurrent Auditor

DO'S & DONT'S OF PO

- Each project to have separate Bank account and site office
- No Equity Participation required for PO
- PO can open term deposit for period not exceeding 6 months out of temporary surplus funds upon furnishing an undertaking that maturity proceeds will be utilized within 3 months of the maturity.
- Local Letter of Credit (LC) can be opened in case of PO for purchase of goods locally in India to execute a project (FAQ No.21)
- The permissible debits to the account are project related expenditure and credits shall be FC receipts from project authority, remittances from parent/group company abroad or bilateral/multilateral international financing agency

VALIDITY & EXTENSION

- Validity : LO in NBFC / Construction & Development sector -2 years for other LO- 3 years
PO- till tenure of the project
BO- no such validity period
- Extension for LO – granted by AD Bank for 3 years subject to conditions. No extension for LO in NBFC / construction & Development sector
- AD bank after intimation to RBI may approve extension of the project account after the tenure of the project for genuine reasons like completion of warranty period, statutory works like tax assessments, to make arrangements for the sale of assets etc. (FAQ No.17)

INTERMITTENT REMITTANCES

Banks to remit funds pending winding up, if satisfied with bona fide of the transaction and submission of the following ([FAQ No.20](#))

- CA Certificate that sufficient provisions made to meet the liabilities in India including Income-Tax, etc.
- File Form 15CB Certificate from CA and 15CA to bank
- Undertaking from PO that remittance will not affect completion of Project & any shortfall of funds to be met by inward remittance

LO/BO/PO ACQUIRING PROPERTY FOR ITS OPERATION

(FAQ No.4)

- The BO /PO excluding an LO, permitted to acquire property for their own use and permitted/incidental activities but not for leasing or renting out the property.
- Entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Nepal, Bhutan, China, Hong Kong and Macau require prior approval of RBI to acquire immovable property for BO/PO.
- LOs/BOs/POs have general permission to carry out permitted/ incidental activities from leased property subject to lease period not exceeding five years.

TRANSFER OF ASSETS OF LO/BO/PO DURING OPERATIONS IN INDIA

- Transfer of assets proposals may be considered by the AD bank only if
 - LOs/BOs/POs have submitted AACs at regular annual intervals with copies endorsed to DGIT (International Taxation);
 - LOs/BOs/POs have obtained PAN from Income Tax Authorities and
 - LOs/BOs/POs have got registered with ROC under the Companies Act 2013, if necessary.
- AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of assets
- AD Bank can also approve transfer of assets of LO/BO/PO to third resident party (FAQ No.14)

TRANSFER OF ASSETS OF LO/BO/PO DURING OPERATIONS IN INDIA

- Credits to the bank accounts of LO/BO/PO of such transfer of assets will be treated as permissible credits
- A certificate from the Statutory Auditor furnishing details of assets to be transferred, giving date of acquisition, original price, depreciation till date, written down value (WDV) value and sale consideration to be obtained
- Auditor should also confirm that assets were not re-valued. The sale consideration should not be more than the book value in each case

TRANSFER OF ASSETS OF LO/BO/PO DURING OPERATIONS IN INDIA

- The assets should have been acquired by the LO/BO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included
- No revenue expenses such as lease hold improvements incurred by the LO/BO can be capitalised and transferred to JV/WOS
- Donation of old furniture, vehicles, computers and other office items etc. to NGOs or NPOs permitted by the AD Bank after satisfying about the bonafides of the transaction

PART B: Procedures with Bank, ROC, Income Tax, FRRO

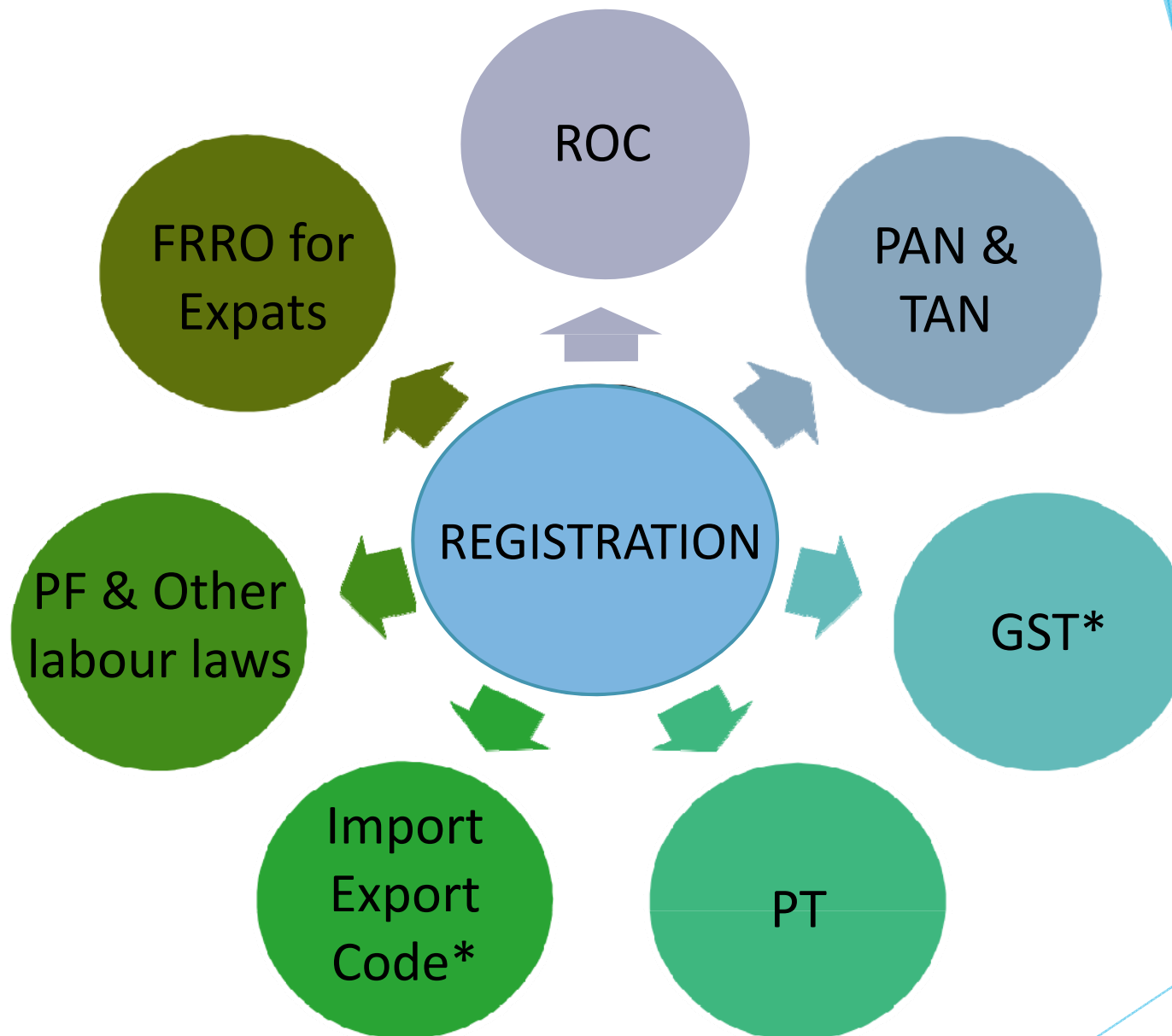


POST FORMATION FORMALITIES FOR LO/BO/PO

- **Open Bank Account**
 - If LO/BO wants to open more than one bank account it has to obtain prior permission of the RBI through its AD Category I bank justifying the reason for additional account (FAQ No.2)
 - LO/BO/PO can have more than one bank account with another AD bank (Agency bank for tax payment) for statutory payments when AD with whom the account is maintained is not the agency bank (FAQ No.19)
- **ROC Formalities:** Register documents with ROC in Form FC -1 within 30 days of establishment
- **Apply for PAN based Digital Signature Certificate (DSC) :** authorized signatory/Chief representative/POA holders of Branch/Liaison/Project office

REGISTRATION WITH STATE POLICE AUTHORITIES BY LO/BO/PO

- Applicants from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong, Macau or Pakistan to submit report as per Annexure prescribed within 5 working days of the LO/BO/PO becoming functional to the DGP of the Concerned state and also to register with the concerned State Police Authorities.
- Copy of approval letter shall be marked by the AD bank to the Ministry of Home Affairs, Internal Security Division-I, Government of India, New Delhi. (FAQ No.3)
- All other countries are exempt from registering with state police authorities.



**Applicable to BO & PO. In case of liability under RCM (eg. Services received from advocates, GTA etc), LO shall also require GST registration.*

ANNUAL COMPLIANCE FOR LO/BO/PO

Form Name	Description	Due date	Authority
Form 49C*	Annual Statement under section 285 of the IT Act	30 th May every year	Income Tax
FC-4	Annual return of foreign company	30 th May every year	ROC
FC-3	Annual accounts with list of principal places in India by foreign companies	30 th Sept every year	ROC
AAC, Annual Accounts	Annual activity certificate along with annual accounts	30 ^{th**} Sept every year	AD Bank, DGIT, DGP
DGP Annexure (applicable to entities from specified countries)	Various information	Not yet prescribed	DGP, AD Bank
ITR-6	Income tax return filing by companies	30 th Sept /30 th Nov ***every year	Income Tax

* Applicable to LO Only

** No due date prescribed for PO

*** For BO & PO if Transfer Pricing is applicable

WINDING UP OF LO/BO/PO

- Application for closure of LO/BO/PO with remittance of winding up proceeds along with necessary documents to be submitted to AD Bank
- Application for closure for liaison office set up by insurance co. in Form IRDA/FIC-2 with copy of IRDA's permission for establishing LO/BO & supported by necessary documents
- Application for closure in Form FC-2 to ROC

DOCUMENTS ON WINDING UP OF LO/BO/PO

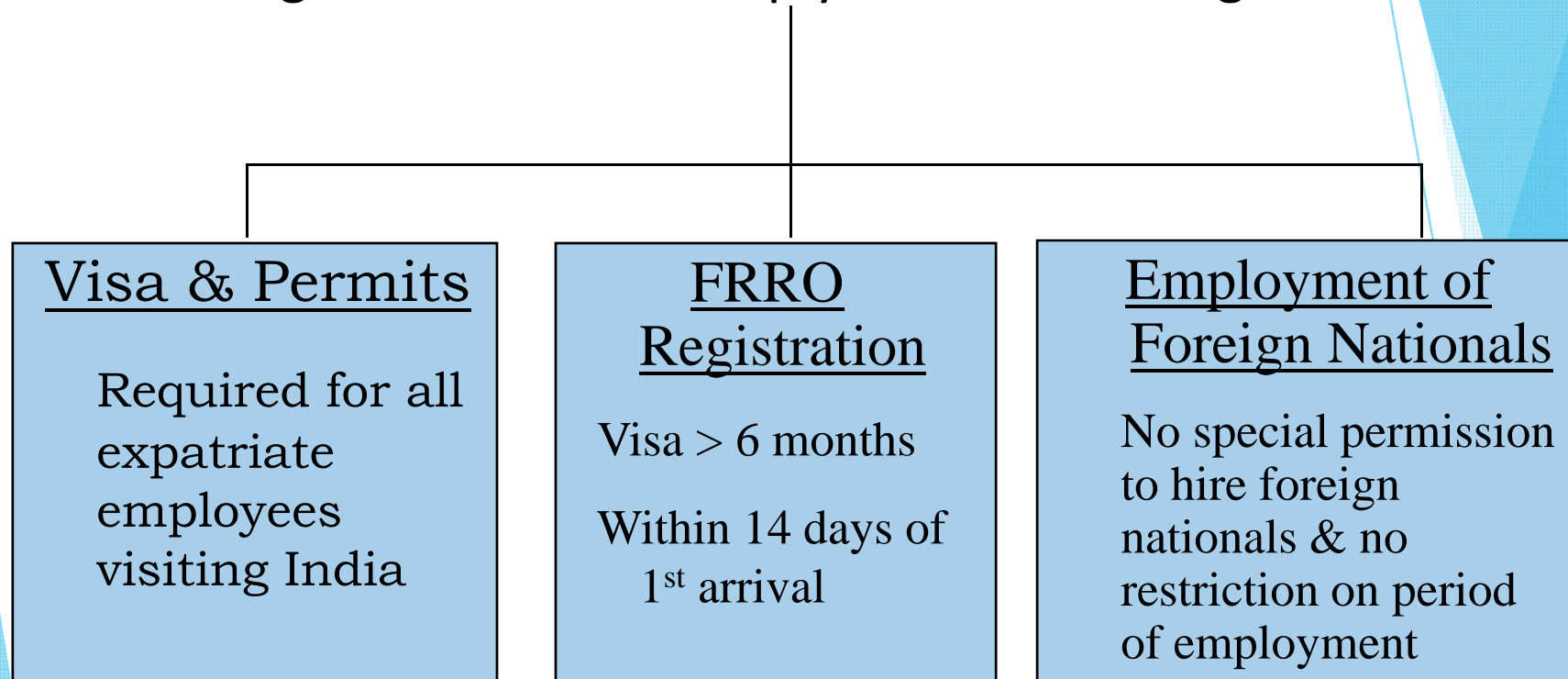
- RBI /AD Bank's approval for establishing LO / BO/PO
- Auditor's certificate for:
 - i. calculation of remittable amount & of disposal of assets
 - ii. confirmation for all liabilities in India have been fully met
 - iii. confirmation that no income accruing outside India has remain unrepatriated to India
- Confirmation for no legal proceedings are pending in any Court in India
- Report from ROC regarding compliance with provisions for winding up of LO / BO/PO
- Any other document prescribed by RBI/AD Bank while granting approval

TRANSFER OF ASSETS OF LO/BO/PO ON CLOSURE OF BUSINESS OPERATIONS IN INDIA

- Transfer of assets by way of sale to the JV/WoS be allowed by AD Category-I bank only when the non-resident entity intends to close their LO/BO/PO operations in India
- Other conditions like certificate from statutory auditor, credits to bank accounts etc. are same as applicable for transfer of assets during operations in India

REGISTRATION OF FOREIGN NATIONALS

Foreign nationals to comply with certain registrations



Thank You

Hinesh R. Doshi & Co. LLP
Chartered Accountants

PALAI PLAZA, 3RD FLOOR,
9, KOHINOOR ROAD,
OPP. PRITAM HOTEL,
DADAR (EAST),
MUMBAI – 400 014
INDIA

TEL : +91-22-66008100/8111

EMAIL ID: hinesh@hineshdoshi.com;
info@hineshdoshi.com

