

SETTING UP OF LIAISON OFFICE/ BRANCH OFFICE/PROJECT OFFICE IN INDIA

THE CHAMBER OF TAX
CONSULTANTS

INTENSIVE STUDY COURSE ON
FEMA

14TH DECEMBER 2019

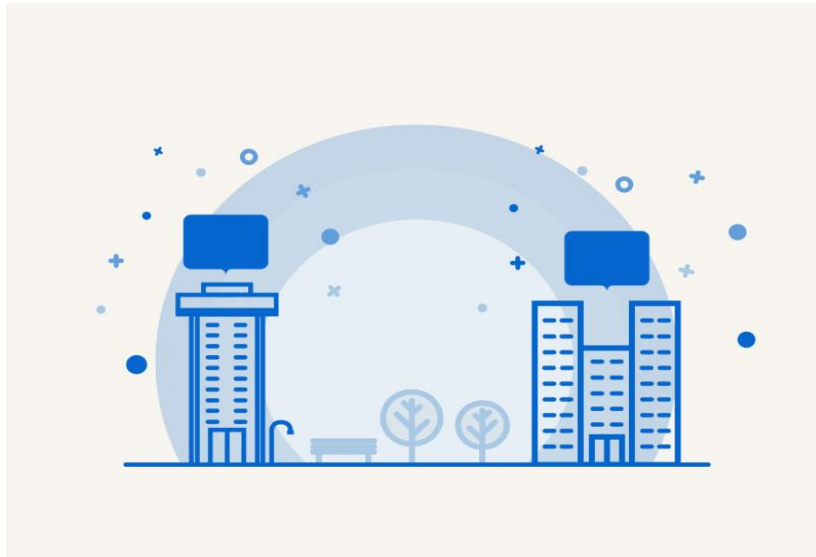


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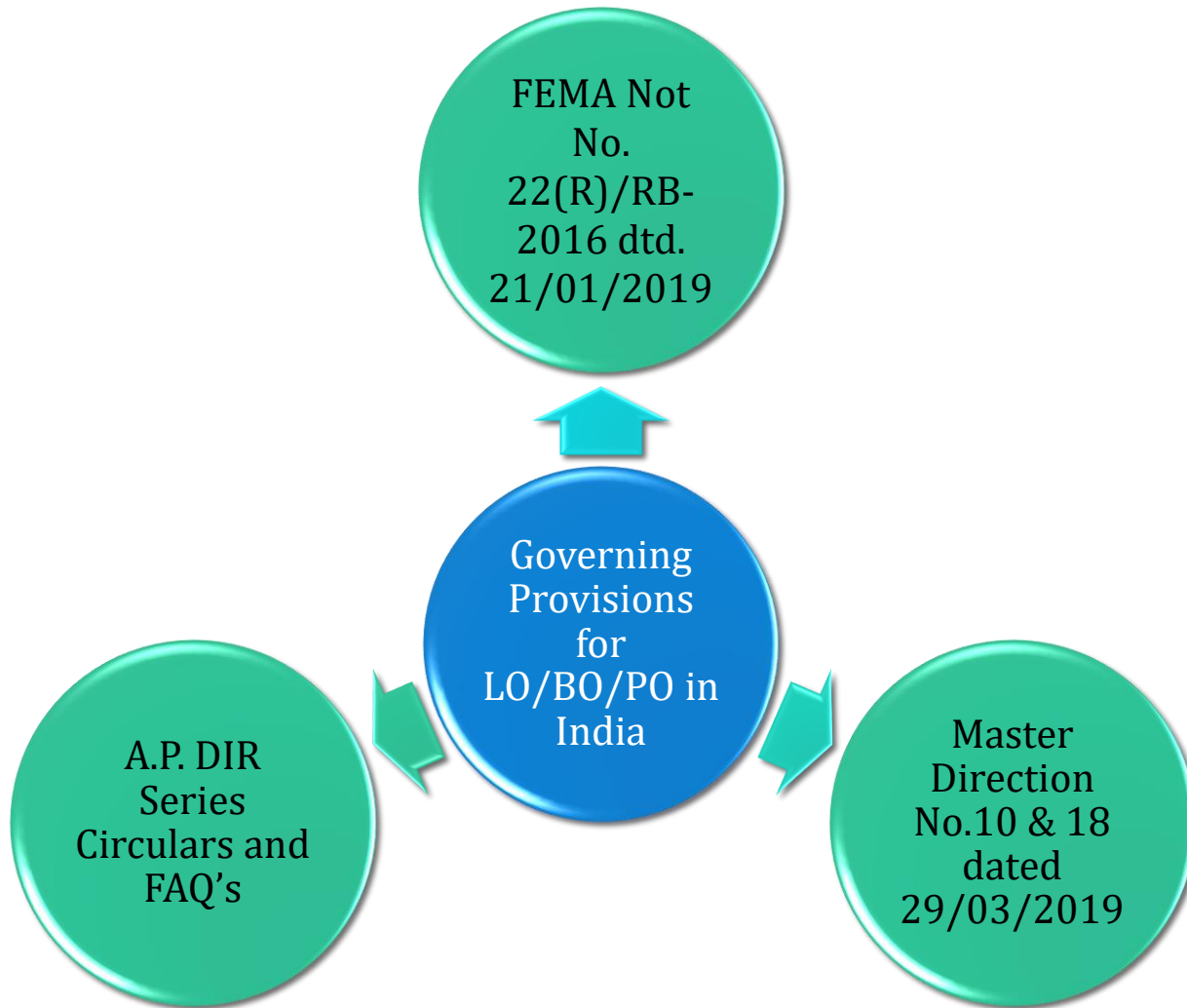
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OVERVIEW



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

PART A

Establishment of Liaison/Branch/ Project Office by in India



Entry Strategies for a Foreign Entity

AS A FOREIGN COMPANY

AS A LIMITED LIABILITY PARTNERSHIP

AS AN INDIAN COMPANY

Liaison Office

Branch Office

Project Office

Wholly Owned Subsidiary

Joint Venture

ACTIVITIES PERMITTED



LIAISON OFFICE

- 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



BRANCH OFFICE

- 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 & development of software
- Rendering technical support to products supplied by parent/group companies
- Representing a foreign airline/shipping company

ESTABLISHMENT OF LO & BO IN INDIA



RBI Route

Principal business of foreign entity eligible for 100% FDI under automatic route

Government Route*

Principal business of foreign entity not eligible for 100% FDI under automatic route & specified list

** 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*

PRIOR GOVT APPROVAL FOR LO/BO



Citizen of or
Registered/
Incorporated in
Pakistan

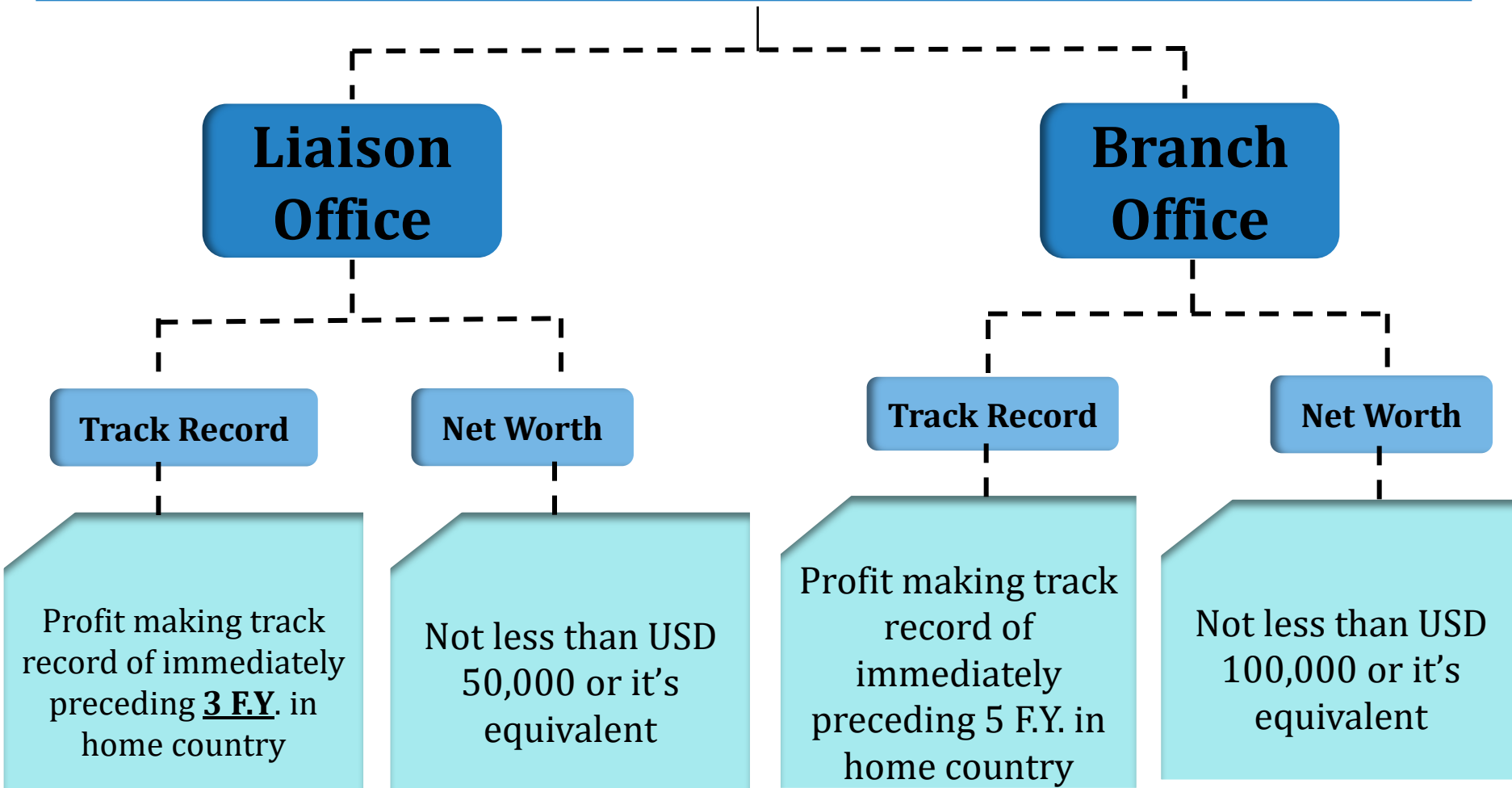
Whose principal
business falls in
Defence, Telecom,
Private security and
Information and
Broad casting*

NGO, NPO or a Body/
Agency/ Department
of a foreign
government, except
cases covered under
FCRA

Citizen of or Entities 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*)

**Prior approval not required where Government approval or license/permission by concerned Ministry/Regulator has already been granted (AP (DIR Series) Circular No. 27 dated March 28, 2019)*

ELIGIBILITY CRITERIA FOR ESTABLISHMENT



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



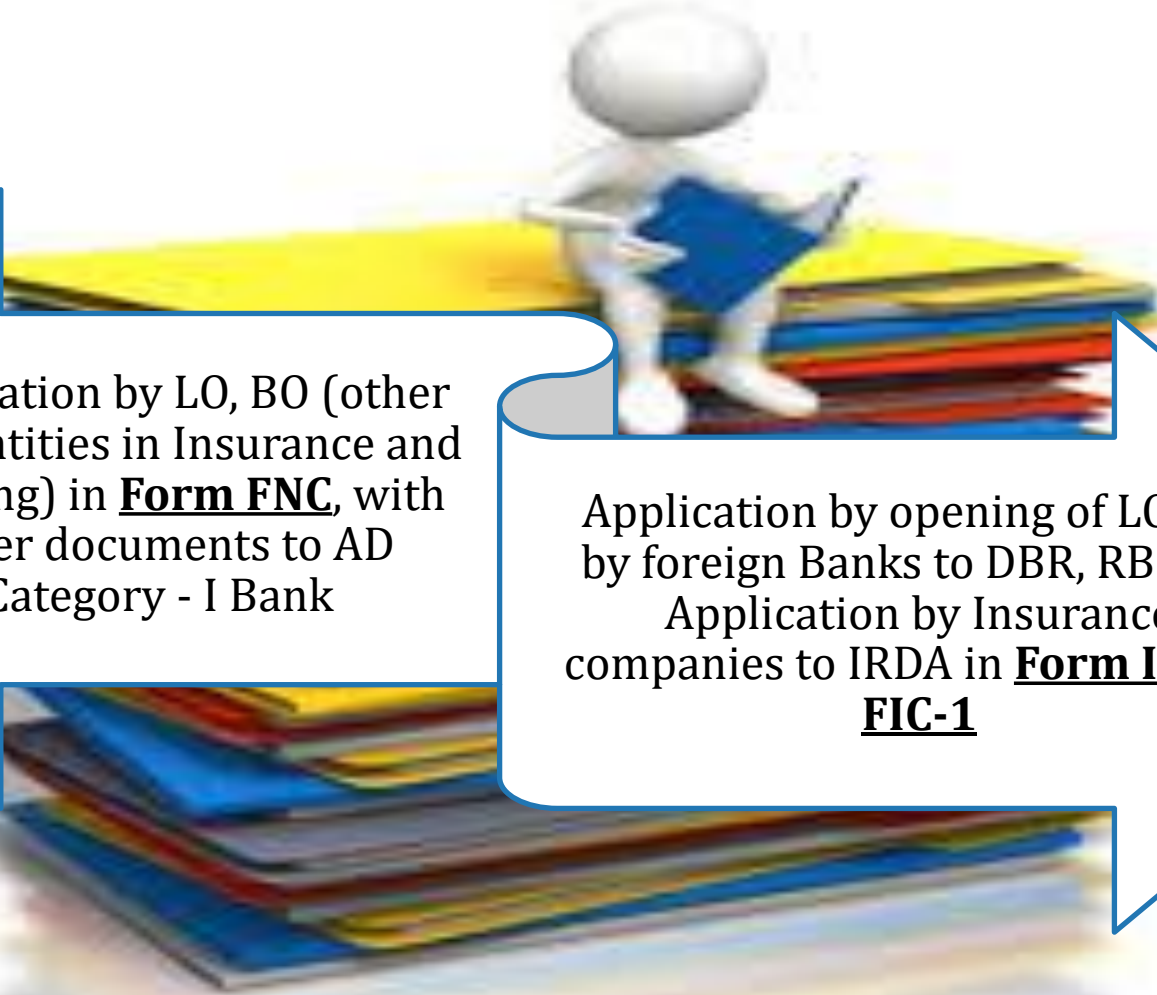
ESTABLISHMENT OF BO/UNITS IN SEZ

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.
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. Before allotting UIN, RBI reviews Form FNC from AD Bank and other parameters of Not. 22(R)

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



Additional
LO/BO

- Submission to AD Bank - 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.

Nodal
Office

- One Office identified as Nodal Office to coordinate activities of all other Offices

Shifting to
another city
in India

- If existing LO/BO is shifting to another city in India, prior approval from the AD Category-I bank is required

Additional
activities
for BO

- Requests for additional activities for BO- submit through AD Category-I Bank to RBI with justification

VALIDITY & EXTENSION



VALIDITY

LO (NBFC / Construction & Development Sector)

2 years

For other LO

3 years

BO

No such validity period



EXTENSION

LO (NBFC / Construction & Development Sector)

No extension

For other LO

3 years subject to conditions

DO'S & DONT'S OF LO



LO



- All expenses to be met by Inward remittances
- 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)
- No Foreign Law firm can open a LO in India (*FED Master Direction No.10/2015-16*)



- Cannot undertake any commercial/business activity directly or indirectly
- Cannot earn any income in India
- Cannot have any signing/commitment powers on behalf of HO

DO'S & DONT'S OF BO



BO



- Permission required for new activities of trading, commercial or industrial nature
- Required to transact through one (FAQ No.21) 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
- Can place fund in FD for period not exceeding 6 months
- Letter of Credit (LC) can be opened for BO in India for export/import of goods



- Subsidiary of Indian Co. abroad cannot open BO in India under automatic route (FAQ No.15)
- Retail trading, manufacturing or processing activities not permissible (except BO's in SEZ)
- BO cannot open Foreign Currency account for normal business transaction (FAQ No.18)

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)

RBI Permission

General Permission

3 Conditions:

- a) PO has secured from Indian company a Contract in India
- b) Secured necessary regulatory clearances &
- c) Project funded by inward remittances from abroad
OR
Project funded by bilateral or multilateral International Finance Agency
OR
Company in India been granted Term Loan by PFI or Bank for the project



Prior Permission

**IF
CONDITIONS
NOT SATISFIED
& SPECIFIED LIST**

No separate RBI approval is required if contract has been awarded by Ministry of Defence or Service headquarters or Defence PSU

PRIOR APPROVAL FOR PO



Citizen of or Registered/
Incorporated in
Pakistan

Whose principal
business falls in
Defence, Telecom,
Private security and
Information and
Broad casting

NGO, NPO or a
Body/ Agency/
Department of a
foreign
government, except
cases covered
under FCRA

Citizen of or Entities registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and application for opening PO 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)

**Prior approval not required where Government approval or license/permission by concerned Ministry/Regulator has already been granted (AP (DIR Series) Circular No. 27 dated March 28, 2019)*

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

- Application by Project office (PO) in Form FNC, with other documents to AD Category - I Bank
- AD Bank need not obtain UIN from RBI for PO (FAQ No.12)

PROCESS TO SET UP PO

DO'S & DONT'S OF PO

Do's



- Responsibility of AD to ensure that only permissible debits and credits are allowed.
- 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.
- Acquisition of property by BO/PO governed by FEM (Acquisition and transfer of immovable property outside India) Regulations
- Each project to have separate Bank account and site office
- 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.

DO'S & DONT'S OF PO



Do's



- 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.

Don'ts



- 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
- No Equity Participation required for PO

VALIDITY & EXTENSION OF PO



VALIDITY

Till tenure of the project



EXTENSION

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)

LO/BO/PO ACQUIRING PROPERTY FOR ITS OPERATION

(FAQ No.4)

The BO /PO (excluding an LO) is 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.

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



TRANSFER OF ASSETS OF LO/BO/PO DURING OPERATIONS IN INDIA (1/2)

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 AD & 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.

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).

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.

TRANSFER OF ASSETS OF LO/BO/PO DURING OPERATIONS IN INDIA (2/2)

Auditor should also confirm that assets were not re-valued. The sale consideration should not be more than the book value in each case.

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, FRR0



POST FORMATION FORMALITIES FOR LO/BO/PO

Open Bank Account

- If LO/BO wants to open more than one bank account, obtain prior permission of RBI 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

- Section 380 to 383 in Chapter XXII of Companies Act, 2013, deals with the Companies incorporated outside India i.e. a “Foreign Company”.

POST FORMATION FORMALITIES FOR LO/BO/PO

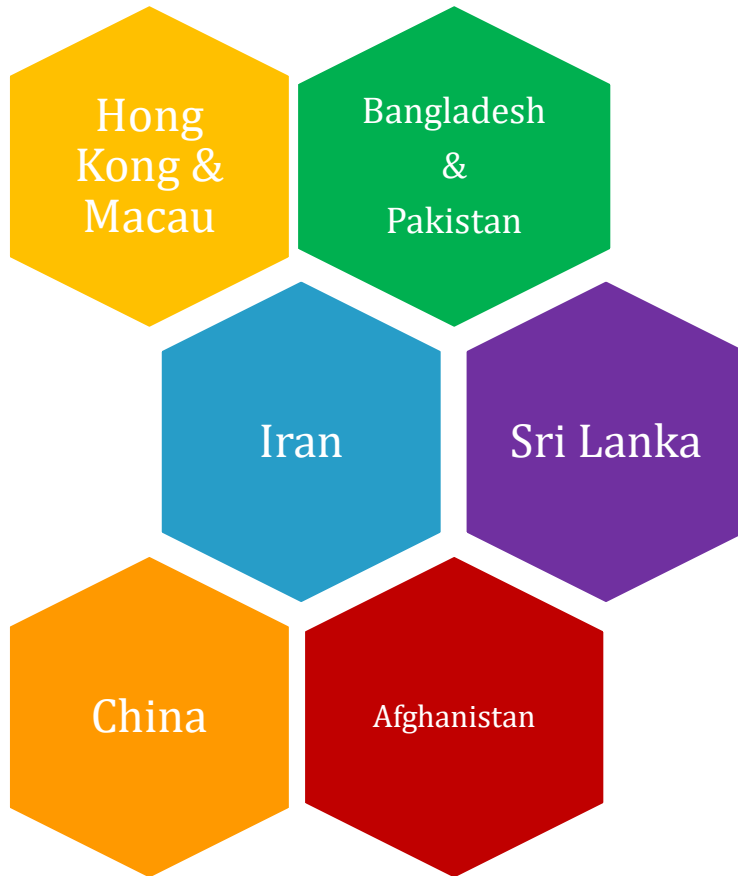
Register documents
with ROC in Form
FC -1 within 30
days of
establishment

Apply for PAN based
Digital Signature
Certificate (DSC) of
Authorized signatory
/Chief
representative/POA
holders

FORMALITIES



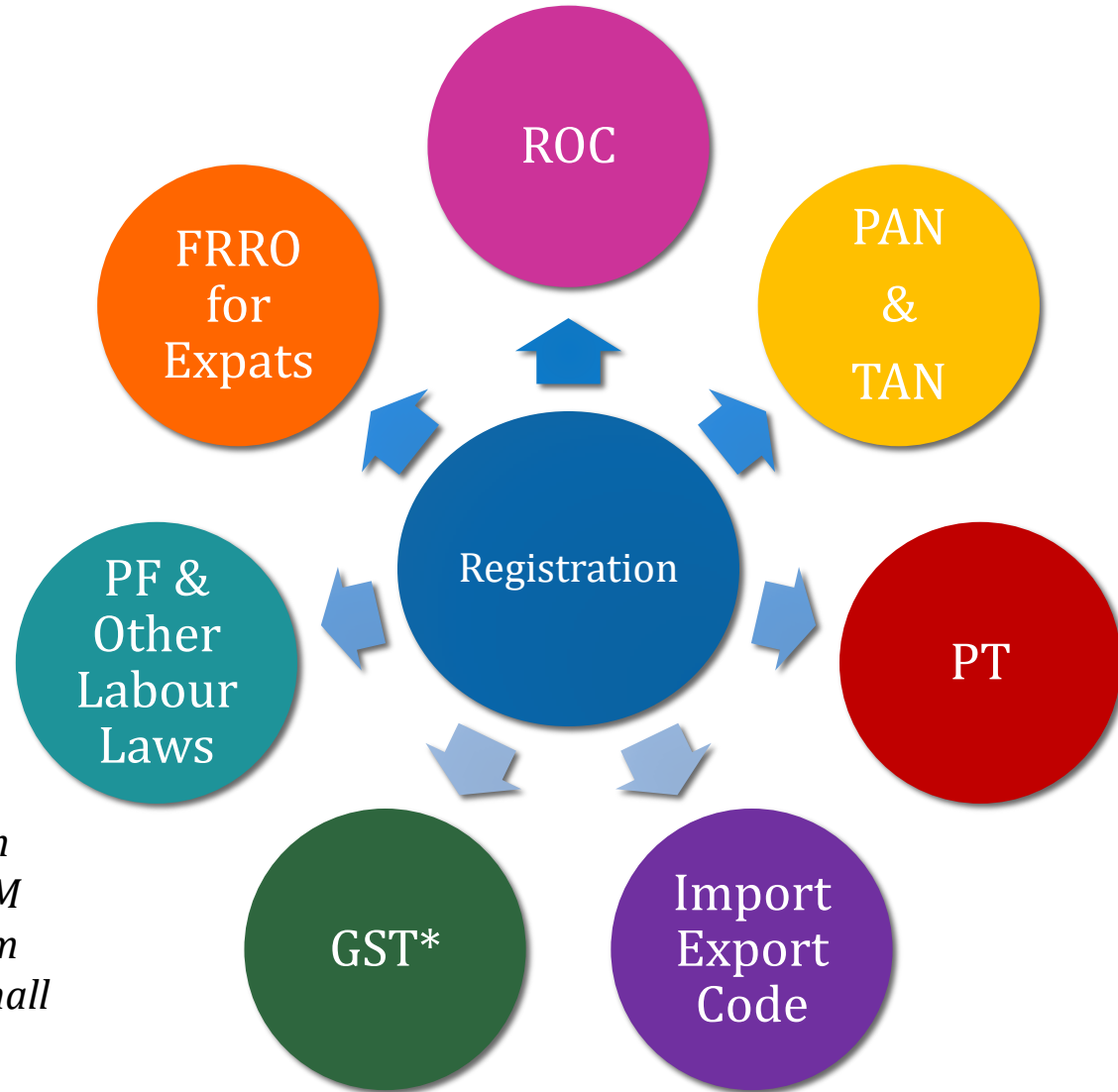
REGISTRATION WITH STATE POLICE AUTHORITIES BY LO/BO/PO



- Submit report as per Annexure in 5 working days of becoming functional to the DGP of the Concerned state and to register with the concerned State Police Authorities.
- Copy of approval letter to 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.

REGISTRATION REQUIREMENTS FOR LO/BO/PO



**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

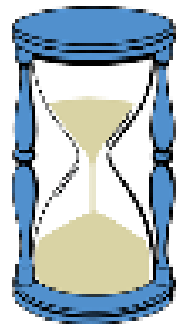
Form Name	Description	Due date	Authority
Form 49C*	Annual Statement under section 285 of the IT Act	30 th May every year	Income Tax
FC-4	Annual return of foreign company	30 th May every year	ROC
FC-3	Annual accounts with list of principal places in India by foreign companies	30 th Sept every year	ROC
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

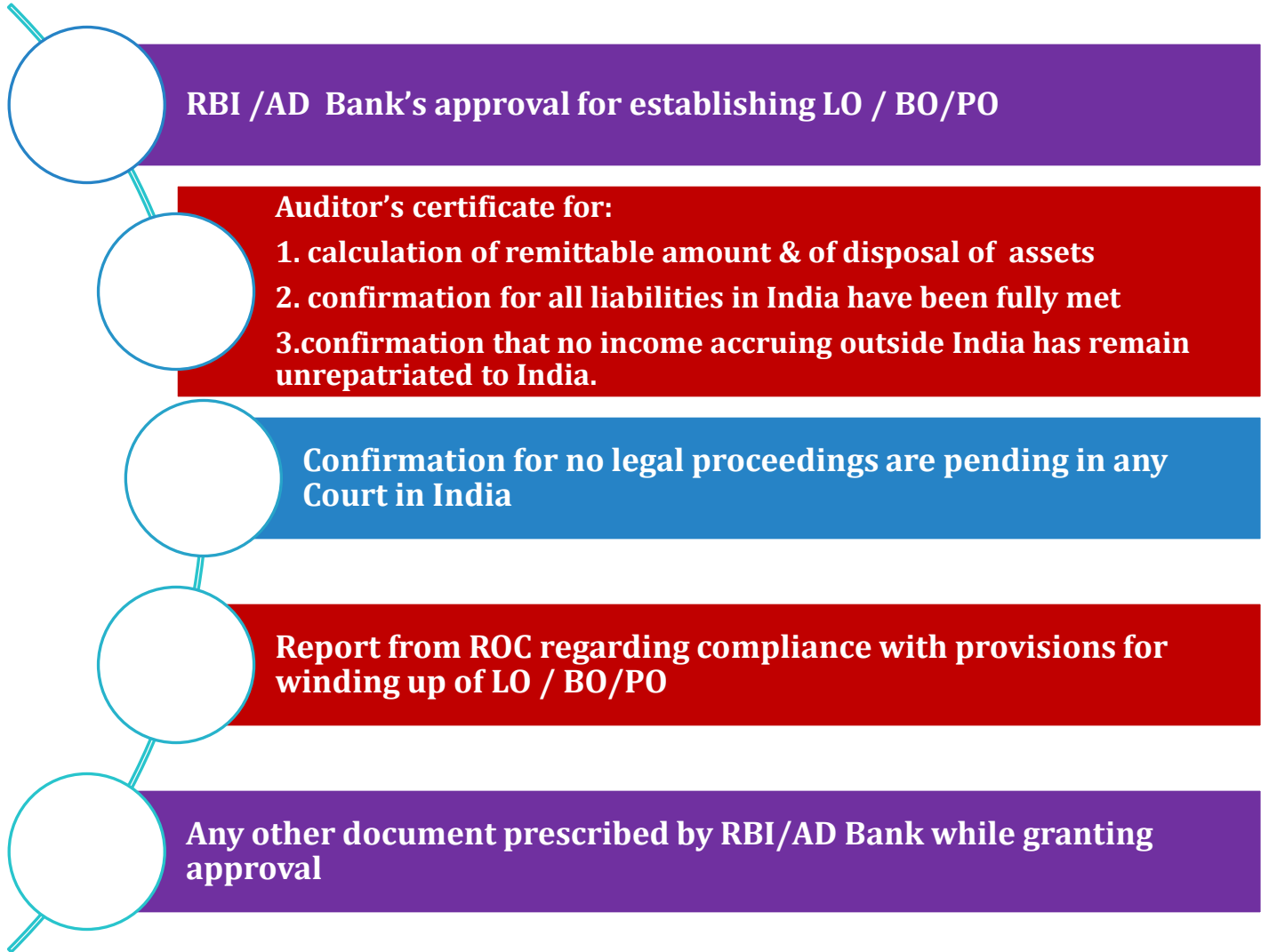


Application for closure of LO/BO/PO with remittance of winding up proceeds along with necessary documents to be submitted to AD Bank

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



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



Thank
you

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