

**Western India Regional Council of
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

VIRTUAL REFRESHER COURSE ON FEMA

*ESTABLISHMENT OF BRANCH OFFICE/ LIAISON
OFFICE/ PROJECT OFFICE IN INDIA*

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14th May, 2021



CONTENTS

PART-A

Establishment of
Liaison/Branch/Project
Office in India

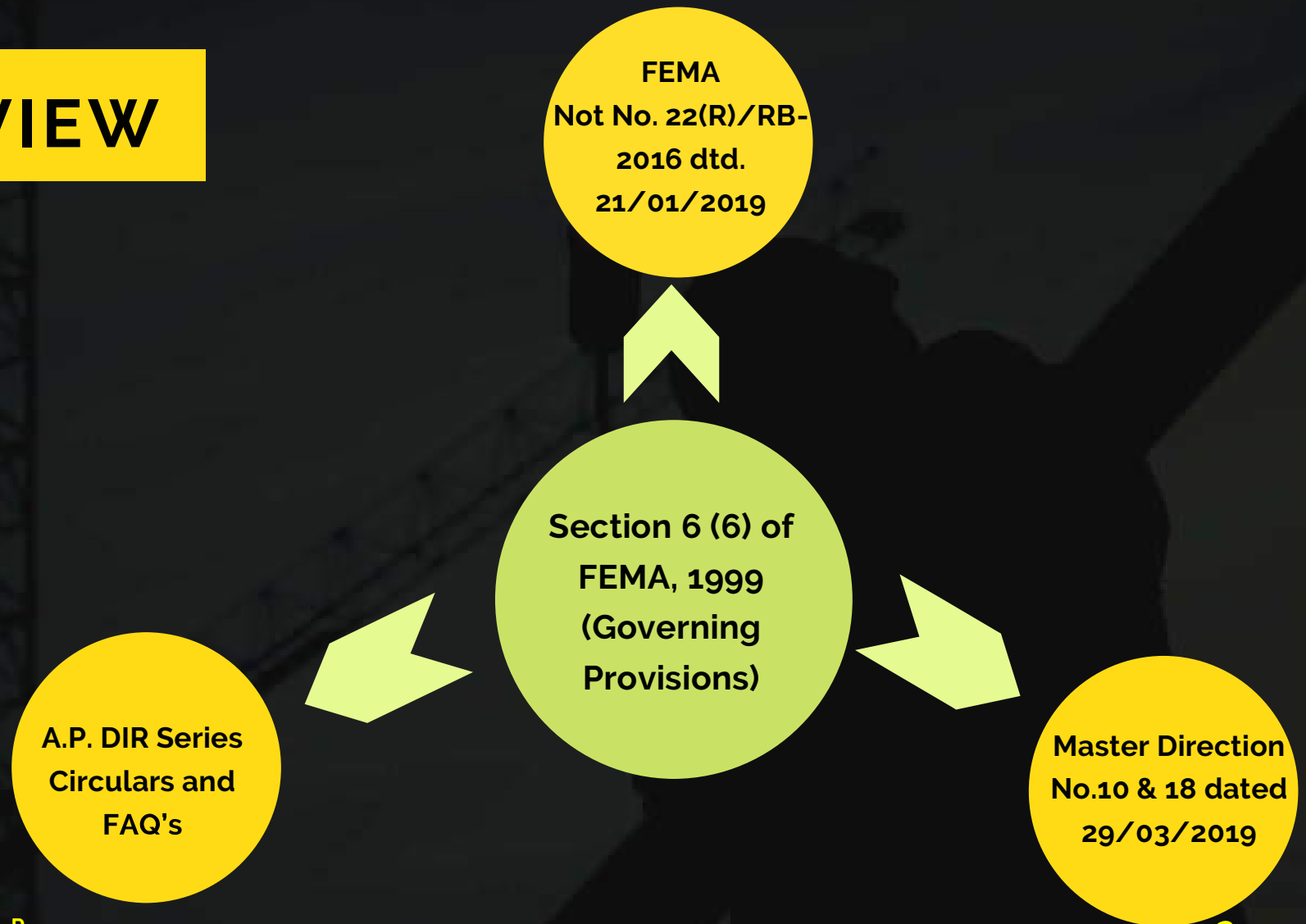
PART-B

Procedures with RBI, ROC,
Income Tax, FRRO

PART-C

Winding up/
Closure

OVERVIEW



A hand in a suit shaking hands over a city skyline at night. The background shows a city with many skyscrapers, some of which are lit up. The foreground shows a hand in a suit, with the fingers interlocked, suggesting a firm handshake. The overall scene is set against a dark, blue-tinted background, likely representing a city at night.

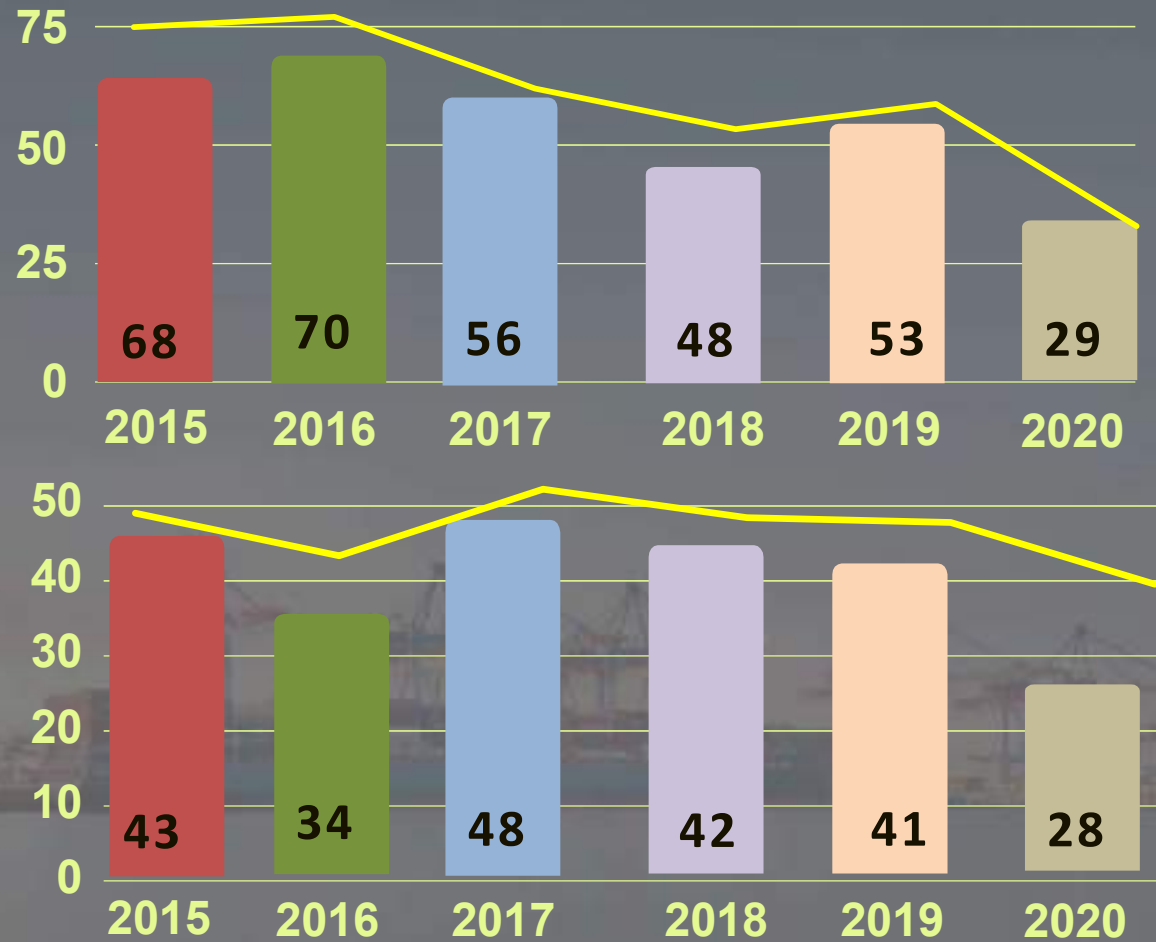
PART A
ESTABLISHMENT OF LIAISON/BRANCH/ PROJECT
OFFICE IN INDIA

Liaison office

STATISTICAL
REPRESENTATION
OF
LO/BO
ESTABLISHED

Branch office

Total number as on
31st December 2020



LIAISON OFFICE : 2628

BRANCH OFFICE: 1547

<https://www.rbi.org.in/scripts/Fema.aspx>

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 (with an Indian Partner)

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**

BRANCH OFFICE

- Export/Import of goods**
- Rendering professional/ consultancy services**
- Carrying 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 product 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 & Dept approved by RBI in consultation with the Dept of Economic Affairs, Ministry of Finance*



PRIOR 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)*

Q) Why reference of "Citizen criteria" given in above case & Taiwan not

included? DOSHI & CO. LLP



ELIGIBILITY CRITERIA FOR ESTABLISHMENT

Liaison Office

Track Record



Net Worth

* Profit making track record during the immediately preceding 3 F.Y. in home country

Not less than USD 50,000 or it's equivalent

Branch Office

Track Record



Net Worth

Profit making track record during the immediately preceding 5 F.Y. in home country

Not less than USD 100,000 or it's equivalent

** If Track record not met, Parent/group company (which satisfies prescribed condition of net worth and profit) may submit Letter of Comfort*



Q) 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 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 be submitted to AD Bank

Application by opening of LO/BO by Foreign Banks to DBR, RBI and by Insurance companies to be submitted to IRDA in Form IRDA-FIC-1

PROCESS TO SET UP LO & BO

- AD Bank to forward Recommendation letter with Form FNC to RBI for allotting UIN.

- RBI reviews Form FNC and other parameters of Not. 22(R)

- Open office in 6 months of the approval and intimate AD Bank

- One-time extn for 6 months to be considered by the AD.

- Any further extn of time requires prior approval of RBI.

- Foreign Insurance companies to obtain prior approval from IRDA

- Foreign Banks to obtain prior approval from RBI, Department of Banking Regulations (DBR)

No UIN is required for Banks and Insurance Companies

ADDITIONAL OFFICES & UNDERTAKING ADDITIONAL ACTIVITIES

Additional LO/BO

- ❑ Submission to AD Bank- File 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 bank is required

Additional activities for BO

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

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



- 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 to BO with AD approval, if overseas entity is eligible to open the BO under general permission. BO to continue with 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



- 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 (*FAQ No.21*)
- 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*)



EXTENSION OF FUND BASED AND NON FUND BASED FACILITIES

AD Bank may extend fund/non-fund based facilities to BOs/POs only, based on their business prudence, Board approved policy and compliance to extant rules/regulations stipulated by DBR, RBI



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

CHANGE OF NAME FOR LO/BO

Change in name of the existing LO/BO may be permitted by AD Bank only if:

- Non-resident entity changes its name without change in ownership
- The application to this effect is received with the Board resolution for change of name and certificate from ROC incorporating change of name

The change in name of BO/LO should be reported to FED, CO, New Delhi

Change in name of the existing LO/BO in case of change in Ownership / M&A of foreign entities:

- The acquired or new entity to apply afresh by closing the existing entity
- RBI/AD Bank will scrutinize as per guidelines and FDI policies and then accord approval

OPENING OF PROJECT OFFICE

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 and
specified list

No separate RBI approval is required if contract 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
Defense, 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

PROCESS TO SET UP PO




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

DO'S & DONT'S OF PO

- AD to ensure that only permissible debits/credits are allowed.
- Each PO can open two non-interest bearing foreign currency accounts, in USD and in Home Currency. FC accounts to be closed on closure 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

-  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
-  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

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 activities like tax assessments, to make arrangements for the sale of assets etc.(FAQ No.17)

LO/BO/PO ACQUIRING PROPERTY FOR ITS OPERATION

- 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.

(FAQ No.4)

INTERMITTENT REMITTANCES

Banks to remit funds pending winding up/ completion of the project, 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 (1/2)

- ❑ Transfer of assets proposals during operations is permitted only with the specific approval of the Central Office of the Foreign Exchange Department, Reserve Bank of India, subject to:
 - 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 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

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

- A Certificate from the Statutory Auditor furnishing details of assets to be transferred, date of acquisition, original price, depreciation till date, written down value (WDV) value and sale consideration to be obtained
- Auditor should 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, Tax, FRRO etc.



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 RBI justifying the reason for additional account (FAQ No.2)
- ❑ LO/BO/PO can have more than one bank account with another AD bank for statutory payments, if required (FAQ No.19)
- ❑ AD Bank can open non-interest bearing foreign currency account for PO's in India (subject to conditions prescribed).

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".
- ❑ Apply for PAN based Digital Signature Certificate (DSC) of Authorized signatory /Chief representative/POA holders
- ❑ Register documents with ROC in Form FC -1 within 30 days of establishment

REGISTRATION WITH STATE POLICE AUTHORITIES BY LO/BO/PO



- LO to register with the concerned State Police Authorities and submit Annual Report as per Annexure III to the DGP of the concerned State.
- 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.

REGISTRATION REQUIREMENTS FOR LO/BO/PO



ROC

PAN & TAN

PT / Local
License

Import
Export Code

GST *

PF & Other
labour laws

FRRO for
Expats

*Applicable to BO & PO. In case of liability under RCM (e.g., 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	Income Tax
FC-4	Annual return of foreign company	30 th May	ROC
FC-3	Annual accounts with list of principal places in India by foreign companies	30 th Sept	ROC
AAC, Annual Accounts**	Annual activity certificate along with annual accounts	30 th Sept	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	Income Tax

* Applicable to LO Only ** No due date prescribed for PO *** For BO/PO if Transfer Pricing is applicable



PART C: WINDING UP / CLOSURE

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

- ❑ Transfer of assets by way of sale to the JV/WoS be allowed by AD 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**

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 and remittance of proceeds for offices set up by banks and insurance co. after obtaining copies of permission of closure from sectoral regulators & 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:
 1. calculation of remittable amount & of disposal of assets
 2. confirmation for all liabilities in India have been fully met
 3. 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

Generally Committed Contraventions In LO

- 
- Establishment in India of additional Liaison Office without RBI permission
 - Transferring the assets between the Liaison Office and subsidiary without obtaining prior permission of the Reserve Bank
 - Transferring the surplus funds of the Liaison Office to subsidiary without obtaining prior permission of the Reserve Bank
 - Operating beyond the validity period without taking prior approval of the Reserve Bank
 - Annual Activity Certificate not representing a factual position of the operations
 - Maintenance of two bank accounts with two different AD banks by the Liaison Office in India without obtaining prior permission of the Reserve Bank

Generally Committed Contraventions In BO

- 
- Establishment of additional branch office without taking prior permission of the Reserve Bank
 - Carrying on activities other than as specified in Schedule I or Schedule II
 - Intermittent transfer between PO and BO without RBI approval
 - Transfer of assets by a Branch Office (prior to its closure)

Generally Committed Contraventions In PO

- 
- Establishing a branch/ office in India by citizens of certain countries without prior permission of RBI
 - Delayed submission of Chartered Accountant certificates with the AD Bank
 - Inter project transfer of funds/ assets without RBI approval
 - Sale/ Transfer of assets before closure of project without prior RBI permission
 - Not obtaining prior approval of Reserve Bank of India for maintaining a single bank account in respect of multiple contracts undertaken
 - Delayed reporting of additional contracts undertaken by the project office to the AD Bank and the concerned Regional Office of the Reserve Bank