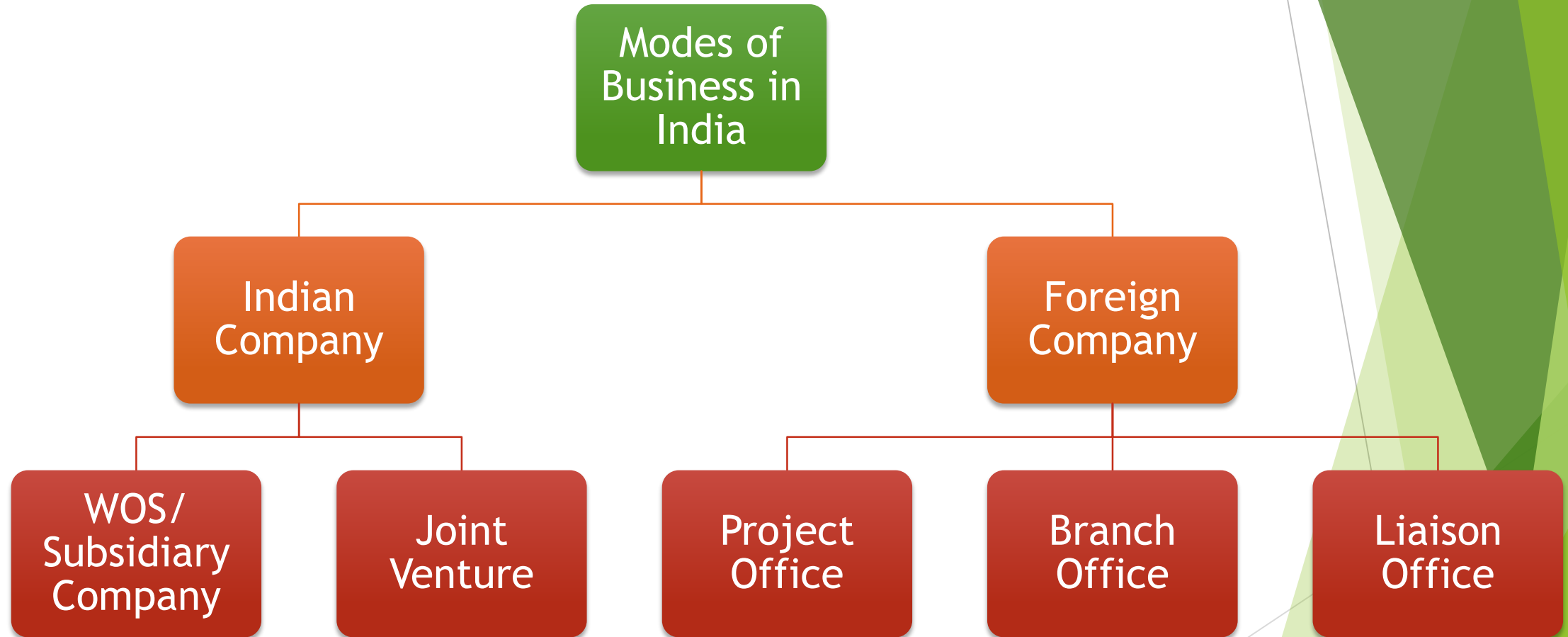


- 
- ▶ **Establishment of Project/Branch and Liaison Office**
  - ▶ **Compounding of Contravention under FEMA**

CS Devender Suhag

# VARIOUS MODES FOR FOREIGN COMPANIES BUSINESS IN INDIA



# FEM (Establishment in India of a Branch Office or Liaison Office or a Project Office or any other Place of Business) Regulations, 2016

Branch office any establishment described as such by the company. [*Schedule 1*]

Liaison office place of business to act as channel of communication between Head Office and Indian entities. [*Schedule 2*] does not undertake any commercial/ trading/ industrial activity, directly or indirectly.

Project office place of business in India to represent interests of a foreign company executing a project in India excludes a liaison office.

Site office sub-office of project office established at the site of project excludes liaison office

LIAISON OFFICE	BRANCH OFFICE	PROJECT OFFICE
Represent parent company in India	Export/import of goods	PO shall not undertake or carry on any other activity other than the activity relating and incidental to execution of the project.
Promote export import from/to India	Rendering professional or consultancy services(AD Category - I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. NOV 23 Circular 07 RBI)	
Promote technical / financial Collaborations between parent/group companies and companies in India	Carrying out research work in which the parent company is engaged	
Act as a communication channel between the parent company and Indian Entities.	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	
	Representing a foreign airline/ shipping company	



## Prohibition for BO/LO/ PO

- Prior approval BO/LO/PO
- Except
- A Banking Company
- Insurance Company
- PROI in SEZ

## Approval for BO/LO/PO

- Eligibility
- Profit track record and Net worth
- Permissible Activities
- Validity

## Steps need to follow for establishment of LO/BO/PO

**APPLICANT AND  
AUTHORISED  
REPRESENTATIVE**

**SUBMISSION THE  
DOCUMENTS WITH AD**

**AFTER RECEIVING  
UIN/INTIMATION FROM AD,  
REGISTRATION WITH ROC  
in FC1, POLICE AUTHORITY  
AND OTHER DEPT.**



LO

- **Credit-** Fund from parent company/head office and sale proceeds of assets etc.
- **Debit-** Only for meeting local expenses in order to run the office.

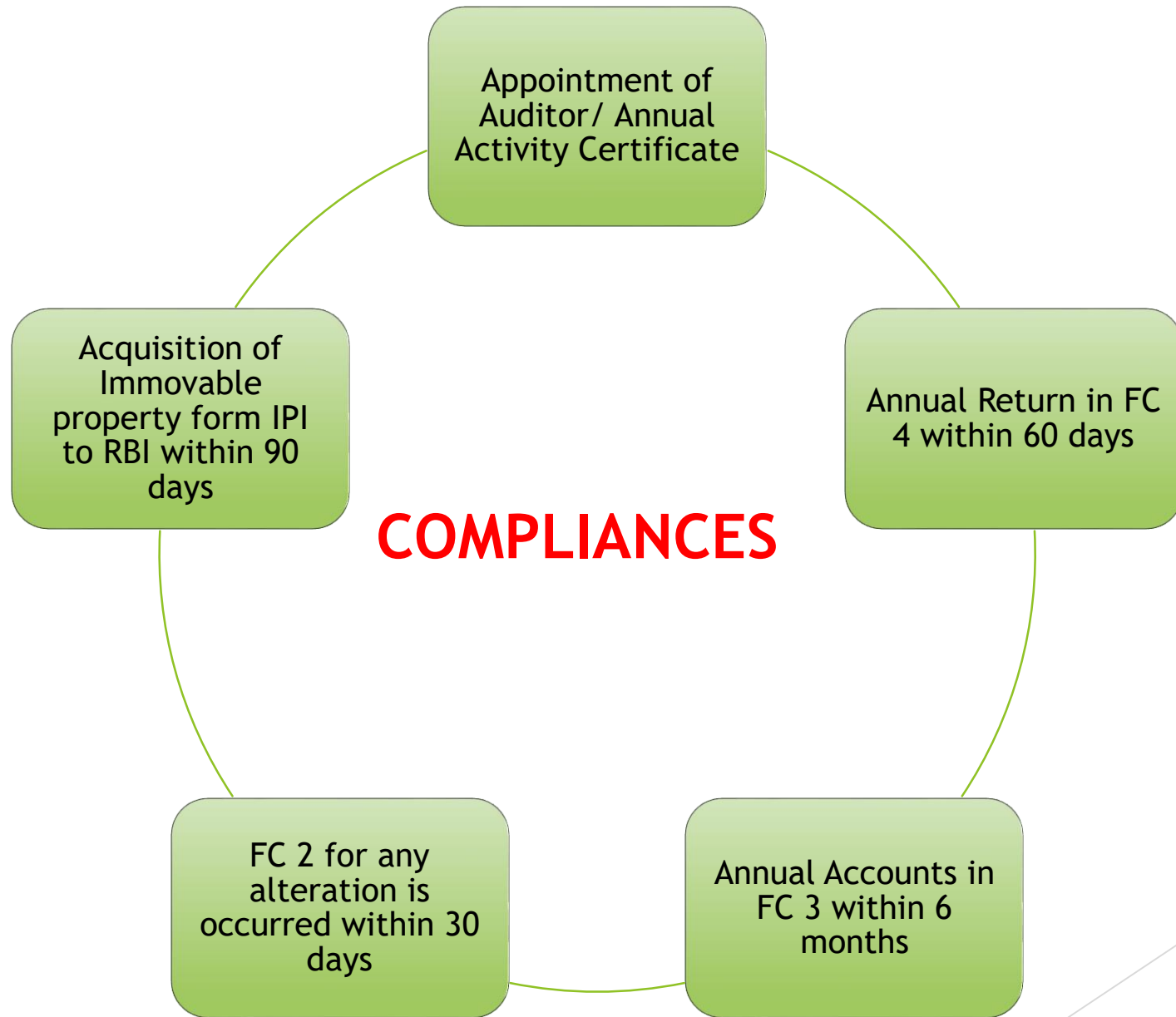
BO

- **Credit-** Fund received from parent co. and legitimate receivables process of its business operations
- **Debit-** Meeting the local expenses

PO

- **Credit-** Fund received from parent co. and amount received from client for execution of project
- **Debit-** Meeting the local expenses





A close-up, high-angle shot of an hourglass. The hourglass is made of clear glass and is filled with a fine, green-colored sand. The sand is in the process of flowing from the upper bulb to the lower bulb, creating a thin, steady stream that catches the light. The background is a soft, out-of-focus light gray, which makes the green sand stand out. The lighting is bright and even, highlighting the texture of the sand and the smooth curves of the glass.

**Contravention under FEMA,  
1999**

**Late Submission Fees ('LSF')  
&  
Compounding**

# What is Compounding?

It is voluntary admission on a violation under FEMA

It refers to admitting a Contravention, pleading guilty and seeking remedy

The provisions of section 15 of FEMA, 1999 permit compounding of contravention

The offence must be compounded within 180 days of the date of receipt of the application

All contraventions of FEMA except clause (a) of section 3 of the Act, dealing essentially with hawala transactions.

# Compounding

## Power of the Reserve Bank of India to compound contravention under FEMA

### Regional Office of RBI

- Delay in reporting inward remittance received for issue of shares.
- Delay in filing form FC(GPR) after issue of shares.
- Delay in filing the Annual Return on Foreign Liabilities and Assets (FLA).
- Delay in issue of shares/refund of share application money beyond 60/180 days, mode of receipt of funds, etc.
- Violation of pricing guidelines for issue/transfer of shares.
- Issue of ineligible instruments.
- Issue of shares without approval of RBI/FIPB or Government, wherever required.
- Delay in submission of form FC-TRS
- Taking on record transfer of shares by investee company.
- Delay in reporting the downstream investment to Secretariat for Industrial Assistance, DPIIT.
- Delay in reporting receipt of amount of consideration for capital contribution and acquisition of profit shares by Limited Liability Partnerships (LLPs)/ delay in reporting disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice-versa) in case of LLPs.
- Gift of capital instruments by a person resident in India to a person resident outside India without seeking prior approval of the Reserve Bank of India.

### FED CO Cell, New Delhi

- Contraventions relating to acquisition and transfer of immovable property outside India;
- Contraventions relating to acquisition and transfer of immovable property in India;
- Contraventions relating to establishment in India of Branch office, Liaison Office or project office;
- Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000



Compounding of  
Contraventions

### **Note:**

Kochi and Panaji Regional offices can compound the contraventions for an amount of below INR 1,00,00,000/-. The contraventions for amounts of INR 1,00,00,000/- or more under the jurisdiction of Panaji and Kochi Regional Offices shall be compounded at Mumbai RO and Thiruvananthapuram RO respectively.

# Pre-requisite for Compounding Process and Indicative Factors for CA



## Pre-Requisite

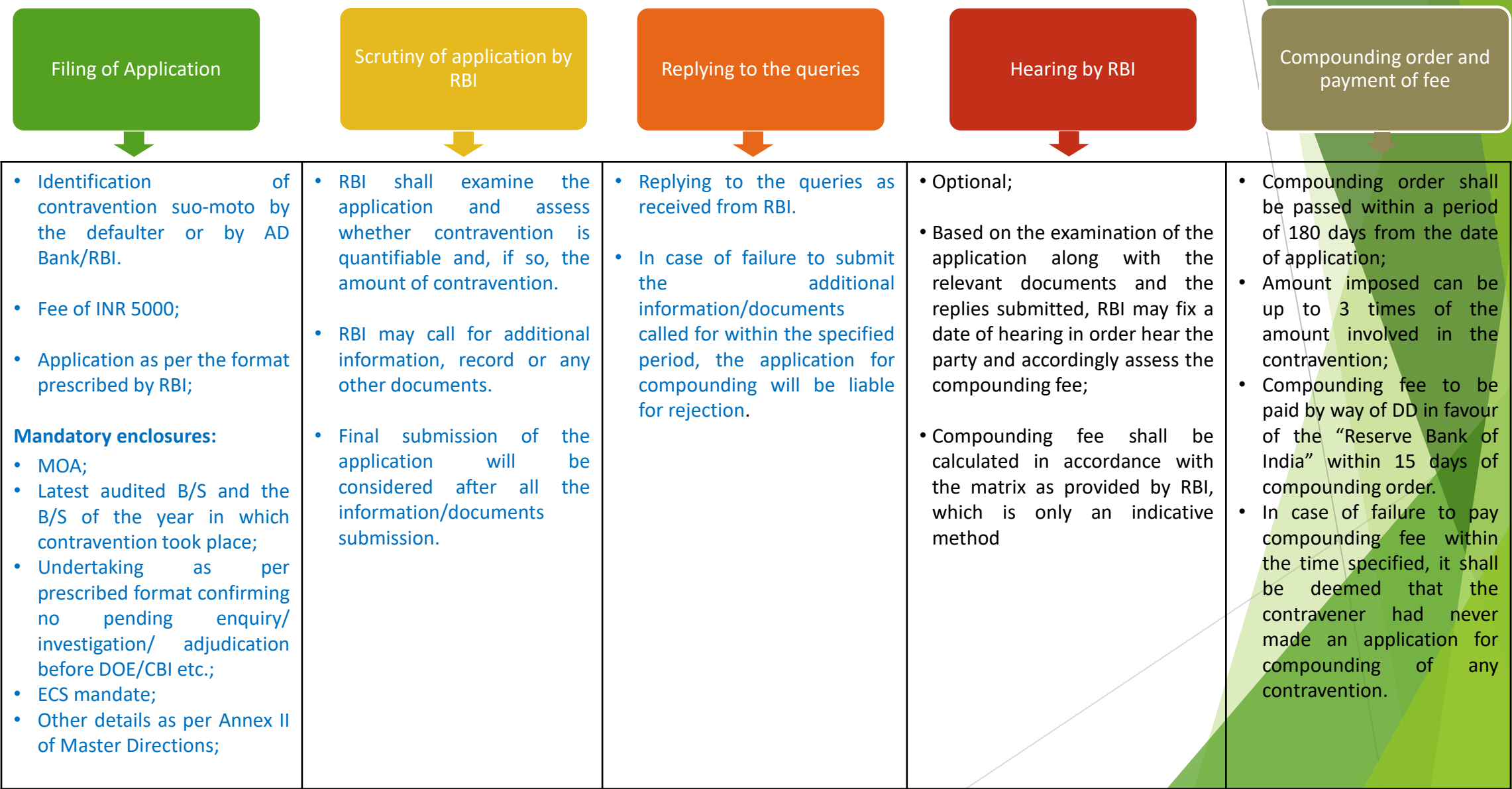
- No compounding for similar contravention before expiry of 3 years;
- Post facto approval from RBI/GOI/Concerned authority or unwinding of transaction is must before considering compounding;
- DOE to compounding relating to: a. Suspected Money Laundering, b. Terror financing, affecting sovereignty and integrity of the nation; and  
c. non-payment of compounding sum within time limit,



## Indicative Factors for consideration

- Gain/ unfair advantage, wherever quantifiable, made as a result of the contravention;
- Loss caused to any authority/ agency/ exchequer as a result of the contravention;
- Economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- Contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and
- any other factor as considered relevant and appropriate

# Compounding Process





## Guidance Note on Computation Matrix

Type of contravention	Existing Formula
<b>1] Reporting Contraventions</b> A) FEMA 20 Para 9(1)(A), 9(1)(B), part B of FC(GPR), FCTRS (Reg. 10) and taking on record FCTRS (Reg. 4) B) FEMA 3 Non submission of ECB statements C) FEMA 120 Non reporting/delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries /changes in the shareholding pattern D) Any other reporting contraventions (except those in Row 2 below)	Fixed amount : Rs10000/- (applied once for each contravention in a compounding application) + Variable amount as under: Up to 10 lakhs: 1000 per year Above Rs.10 lakhs & below Rs. 40 lakhs: 2500 per year Rs.40 lakhs or more and below Rs. 100 lakhs: 7000 per year Rs.1-10 crore: 50000 per year Rs.10 -100 Crore: 100000 per year Above Rs.100 Crore : 200000 per year
<b>E) Reporting contraventions by LO/BO/PO</b>	As above, subject to ceiling of Rs.2 lakhs. In case of Project Office, the amount imposed shall be calculated on 10% of total project cost.
<b>2] AAC/ APR/ FLAR/ Share certificate delays</b> In case of non-submission/ delayed submission of APR/ share certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) 4or FLA Returns - FEMA 20 / FEMA 20 (R) / FEMA 120/ FEMA 395	Rs.10000/- per AAC/APR/FCGPR (B)5/FLA Return delayed. Delayed receipt of share certificate - Rs.10000/- per year, the total amount being subject to ceiling of 300% of the amount

## Guidance Note on Computation Matrix

Type of contravention	Existing Formula
3]A] Allotment/Refunds Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/ refund after the stipulated 180 days)  B] LO/BO/PO (Other than reporting contraventions)	Rs.30000/- + given percentage: 1st year : 0.30% 1-2 years : 0.35% 2-3 years : 0.40% 3-4 years : 0.45% 4-5 years : 0.50% >5 years : 0.75% (For project offices the amount of contravention shall be deemed to be 10% of the cost of project).
4] All other contraventions, - including all contraventions of FEMA20(R)/2017/NDIR, 2019/FEMA 395/ 2019/, except contraventions	Rs.50000/- + given percentage: 1st year : 0.50% 1-2 years : 0.55%

The contraventions of FEMA 20 existing and continuing as on November 07, 2017 (i.e. the starting date of contraventions prior to November 07, 2017) will be compounded as per 1(A) above.

## Penalty to Compounding and appeal

The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on “Reserve Bank of India” and payable at the Regional office/Sub-office/Central Office Cell, New Delhi which has issued the compounding order and at Mumbai if the order is issued by CEFA, Central Office, Mumbai

### Appeal against the order of the Compounding Authority?

There is no provision under the of FEMA (Compounding Proceedings) Rules, 2000, for an appeal against the order of the Compounding Authority or for a request for reduction of amount imposed or extension of period for payment of the amount imposed.

## Late Submission Fee (LSF)

The Late Submission Fee (LSF) was introduced for reporting delays in Foreign Investment (FI), External Commercial Borrowings (ECBs) and Overseas Investment related transactions with effect from November 07, 2017, January 16, 2019 and August 22, 2022 respectively. It has now been decided to bring uniformity in imposition of LSF across functions

### Appeal against the order of the Compounding Authority?

There is no provision under the of FE (Compounding Proceedings) Rules, 2000, for an appeal against the order of the Compounding Authority or for a request for reduction of amount imposed or extension of period for payment of the amount imposed.

# LSF Calculation- FDI

- LSF for reporting delays shall be calculated as per the following matrix:

Type of Reporting delays	LSF amount (INR)
Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500/-
FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$

- “A” is the amount involved in the delayed reporting;
- “n” is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
- Period of contravention shall be considered proportionately:
  - *(approx. rounded off to next higher month /12) \* amount for 1 year*
- Months shall include Sundays/Holidays.
- The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.
- In case of incomplete reporting form, the delay will continue till such time the form is received complete in all respects.
- LSF may be paid by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at the Regional Office concerned.
- The facility for opting LSF shall be available up to 3 years from the due date of reporting or submission.

Compounding	Late Submission Fees (LSF)
<b><u>Purpose:</u></b> Compounding is a process by which contraventions of FEMA provisions can be regularized or condoned by the Reserve Bank of India (RBI).	<b><u>Purpose:</u></b> Late submission fees are imposed for delays in submitting required documents or information under FEMA.
<b><u>Completion of proceedings:</u></b> within <b>180 Days</b>	<b><u>Completion of proceedings:</u></b> Immediate
<b><u>Maximum Penalty:</u></b> 300% of Amount Involved	<b><u>Maximum Penalty:</u></b> 100% of Amount Involved
Payment within <b>15 Days</b> of order	Payment within <b>30 Days</b> from the issuance of LSF payment advice.
In case of non payment within 15 days such case shall be referred to DoE	In case of non payment within 30 days such case shall be considered null and void and any LSF received beyond this period shall not be accepted.



# *Thank You*

*CS Devender Suhag  
SMD & CO.*

*Company Secretaries  
Immediate Past Chairman of NIRC of ICSI*

*8130586611*

*[dsuhag@smdandco.in](mailto:dsuhag@smdandco.in)*

*[www.smdandco.in](http://www.smdandco.in)*