

REGULATORY COMPLIANCES IN INDIA

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Sunil Arora FCA, Director

Himanshu Srivastava ACA, Manager

Corporate Catalyst India

PRESENTATION OUTLINE

- ❑ REGULATORY COMPLIANCES - *Himanshu Srivastava*
- ❑ TAX COMPLIANCES - *Sunil Arora*

INDIA STORY & SET-UP COMPLIANCES

Overview

THE INDIA STORY

- ❑ The 2nd **most attractive investment destination**
(source UNCTAD World Investment Report 2007)
- ❑ Advantage - **low cost of production, large size domestic market**
- ❑ **Growth rate at 9%** considered sustainable
- ❑ Besides a robust service industry now evolving into a **manufacturing hub**
- ❑ India figures in the **Research and Development** strategy of global corporate

FDI INFLOW

Top Investing Countries

US\$ Million

Ranks	Country	2004-05	2005-06	2006-07	Oct 2007	Cumulative
1	Mauritius	1,129	2,570	6,363	3,942	18,481
2	USA	669	502	856	458	3902
3	UK	101	266	1,878	203	3390
4	Netherlands	267	76	644	214	2214
5	Singapore	184	275	578	925	2209
6	Japan	126	208	85	588	1899
7	Germany	145	303	120	268	1298
8	France	117	18	117	46	661
9	Switzerland	77	96	56	207	629
10	Cyprus	3	70	58	411	562
	Total	3,754	5,546	15,726	9,277	47,206

INDIA STORY

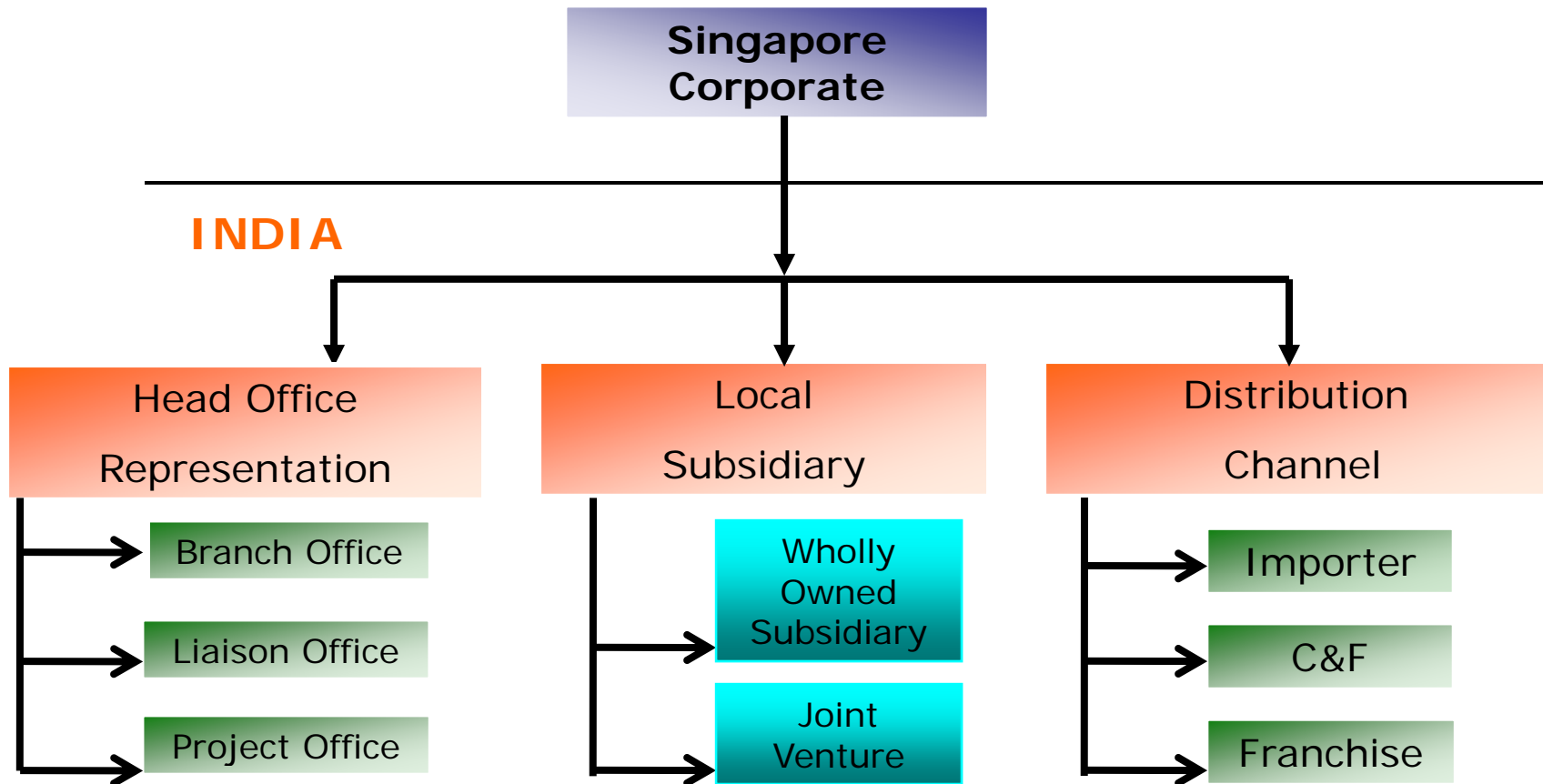
Understanding Regulatory Compliances



- ▲ Most laws, as in Singapore, originate from British Laws
- ▲ Procedure Driven
- ▲ Failures to comply usually leads to penalty and sometimes prosecution
- ▲ Stacked in favor of labour (*blue collar staff*)
- ▲ Fine reading and interpretation is the norm

INDIA ENTRY

Mode of Investment



INDIA ENTRY

Alternate Entity Comparison

	Corporate [CO]	Liaison Office [LO]	Project Office [PO]	Branch Office [BO]
Characteristics	Share capital owned by parent company	No commercial activities allowed	Temporary site office, specific projects	Commercial activities allowed
Status	Shareholders	Foreign Company	Foreign Company	Foreign Company
Tax Rate	30% +	Non Taxable	40% +	40% +
Control	Board of Directors	Parent Company	Parent Company	Parent Company
Set-up	FIPB Approval / Automatic Route (4-6 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)
Closure	ROC (6-9 months)	RBI (3 months)	RBI (3 months)	RBI (3 months)

RBI – Reserve Bank of India
FIPB – Foreign Investment Promotion Board
ROC – Registrar of Companies

CORPORATE SET-UP

Key Considerations

- ❑ **Negative List** - Gambling & Betting, Lottery business, Atomic Energy, Retail trading (except 'Single Brand' product retailing)
- ❑ Analysis of **Sectoral Caps** - Investment Allowed Under Automatic or Approval Route
- ❑ Investment where a Joint Venture or Technology Collaboration Exists –Specific Approval (*Press Note 1 of 2005*)

CORPORATE SET-UP

Sectoral Caps (illustrative list)

SECTOR	FDI LIMITS (%)
Manufacturing	100
Drug, Pharmaceutical, Hotels & Tourism Courier Services	100
Airports	74-100
Infrastructure (marketing of petroleum products)	100
Explorations/ mining (coal, diamonds and precious stones)	74
Road, Highways, Ports, Pipeline	100
Power generation (Non nuclear)	100
Banking, Telecom, Civil Aviation	74-100
Insurance	26

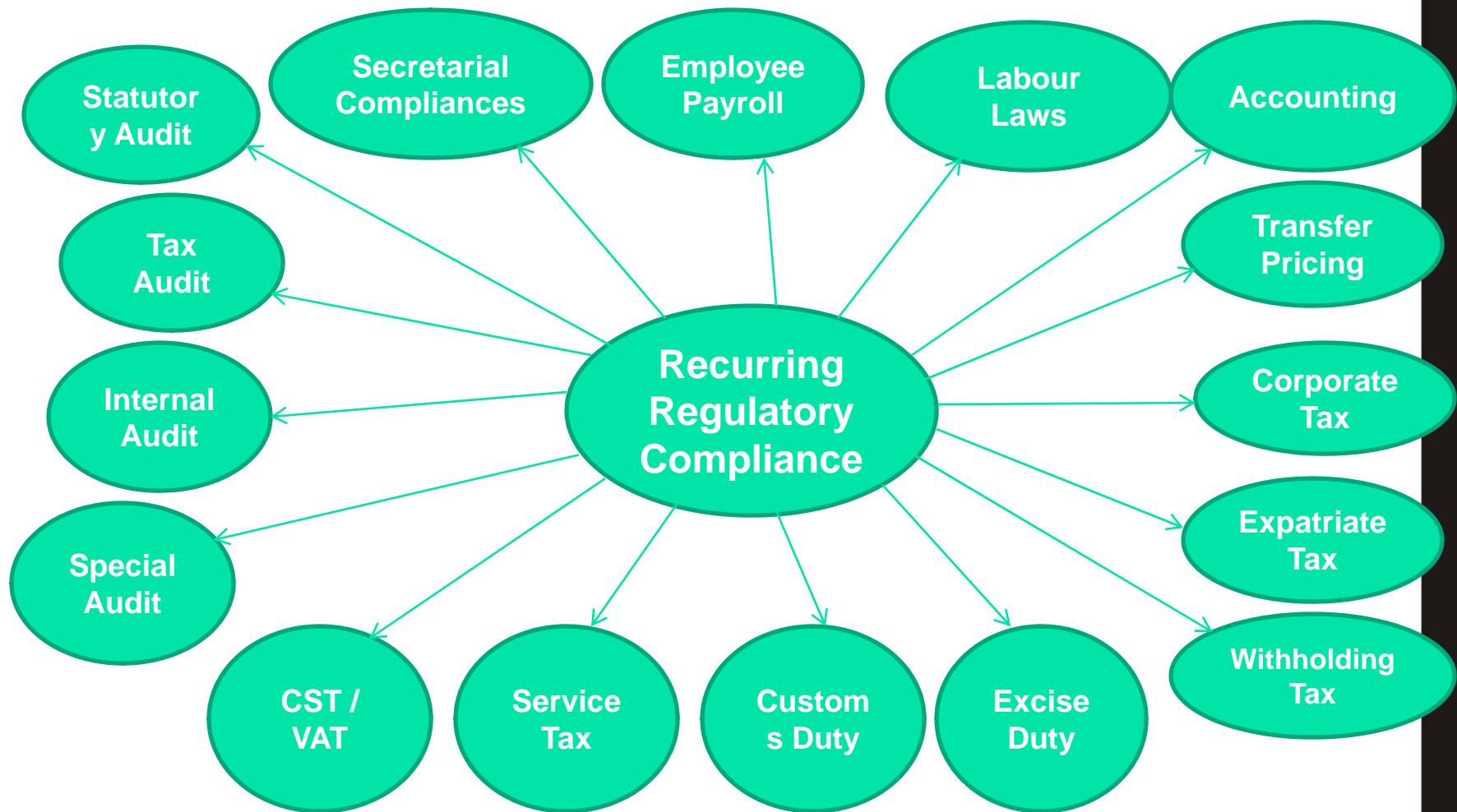
CORPORATE SET-UP (PTE LTD)

Initial Compliance Matters

- ❑ Required - 2 corporate shareholders
- ❑ 2 directors
- ❑ Determine location of Registered Office
- ❑ Name for Indian Corporate
- ❑ Authorized Capital
- ❑ Paid up Capital
- ❑ First Board Meeting – Initial appointments, Ratify pre-incorporation contracts, expenses

RECURRING REGULATORY COMPLIANCES

COMPLIANCES *Overview*



REGULATORY MATTERS

Key Authorities

- ▲ Reserve Bank of India ('RBI')
- ▲ Registrar of Companies ('ROC')
- ▲ Income Tax Authorities
- ▲ Central Board of Excise and Customs ('CBEC')
- ▲ Labour Commissioner

ACCOUNTING

Key Laws in Focus

- ❑ Company Law
- ❑ Tax Laws (*Income tax including tax treaties, Customs, Excise, VAT/Service Tax*)
- ❑ Indian Generally Accepted Accounting Policies ('Indian GAAP')
- ❑ Labour Laws (*Factories Act, Industrial Dispute Act, etc.*)
- ❑ Employment Regulation (*Social Security Regulations*)

ACCOUNTING

Key Issues

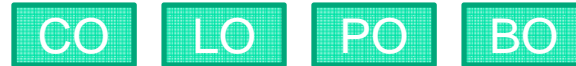
- ❑ Financial Year - April 1st to March 31st
- ❑ Recording of transactions - per Indian GAAP
- ❑ Adequate provisioning and appropriate disclosure
- ❑ Compliances - Daily, Monthly, Quarterly, Annual

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PAYROLL MANAGEMENT

Key Issues

Employment Contracts



- ❖ Regulated under labour laws
- ❖ Income Tax Issues
- ❖ Corporate Laws

AUDITS

Overview

□ **Statutory Audits**

CO LO PO BO

- ❖ Annual Review and Reporting by an Indian firm of Chartered Accountants
- ❖ Indian Generally Accepted Accounting Policies ('Indian GAAP')
- ❖ Annual Reporting to Government Authorities

□ **Tax Audits**

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- ❖ Applicability – Annual Turnover INR 4 Million (USD 90,000 approx)
- ❖ Certification by an Indian firm of Chartered Accountants

□ **Internal Audits**

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- ❖ Applicability – Turnover INR 50 Million or Paid-up Capital INR 5 Million
- ❖ In-house Team or Outsource to Indian firm of Chartered Accountants

DIRECT TAXES

Overview

- ❑ Corporate Tax
- ❑ Transfer Pricing
- ❑ Withholding Tax
- ❑ Fringe Benefit Taxation
- ❑ Expatriate Taxation



INDIRECT TAXES

Overview

Excise Duty

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Customs Duty

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Service Tax

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Central Sales Tax

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Value Added Tax


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INDIRECT TAXES

Excise Duty

- ❖ Applicability 
- ❖ Definition of Goods
- ❖ Concept of Manufacture
- ❖ Proper Recoding of transactions
- ❖ Inspection by Excise Inspectors
- ❖ Complex Duty Structure and Calculation Mechanism
- ❖ Developed Case Laws




INDIRECT TAXES

Customs Duty

- ❖ Applicability    
- ❖ To regulate imports of foreign goods into India
- ❖ Regulate supply of goods into domestic market
- ❖ Additional Duty of Customs – protective shield to domestic industry
- ❖ Methods of Valuation
- ❖ Classification of Goods – *99 Chapters*

INDIRECT TAXES

Service Tax

- ❖ Applicability   
- ❖ Voluntary compliance
- ❖ Services defined – *Over 100 categories*
- ❖ Services provided from outside of India and received in India
- ❖ Proper Recording of transactions
- ❖ Developed Case Laws

INDIRECT TAXES

Central Sales Tax/ VAT

Central Sales Tax

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- ❖ Non Vatable
- ❖ Under phase out by 2010

Value Added Tax

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- ❖ Includes goods sold within a particular Indian state
- ❖ Goods sold from outside of India and title transferred in India
- ❖ Proper Recording of transactions
- ❖ Developed Case Laws

INDIRECT TAXES

VAT Case Study

Purchase Price	Rs 100
Tax paid on purchase	Rs 10 (input tax)
Sale price	Rs 120
Tax payable on sale price	Rs 12 (output tax)
Input tax credit	Rs 10
VAT payable	Rs 2

INDIRECT TAXES

Flag This

Central Sales Tax/ VAT & Service Tax – to be merged into a single Goods & Service Tax ('GST') by 2010

SECRETARIAL COMPLIANCE

Overview



EVENT	Applicability			
Office shifting	CO	LO	PO	BO
Change in Director / Authorised Representative	CO	LO	PO	BO
Board Meetings & Annual Shareholders Meeting	CO			
Maintain Statutory Records	CO			
Annual Return to ROC	CO	LO	PO	BO
Annual Return to RBI		LO	PO	BO

SECRETARIAL COMPLIANCE

Key Dates



REGULATORY MATTER	DUE DATE
CORPORATE LAW	
Board Meeting	Quarterly (calendar year basis)
Annual General Meeting	Within 180 days of closing the accounts
INCOME TAX	
Corporate Tax Return	October 31 st
Tax Audit Report	October 31 st
Fringe Benefit Tax Return	October 31 st
Transfer Pricing Report	October 31 st
TDS Returns (<i>Tax Withholding</i>)	Quarterly
Employee Tax Return	July 31 st
SERVICE TAX	September 30 th & March 31 st

Thank You