

# Seminar on New Direct Tax Code and Recent FDI Guidelines in India

Organiser  
**Singapore Business Federation**

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*presented by*

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## Outline

- ❑ Major Regulatory Changes
- ❑ Mode of Investment
- ❑ Planning India Investment

# **ON THE ANVIL**

## **Major Regulatory Changes**

## Understanding Regulatory Environment

- ❑ Most laws 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

## Policy Framework – In the horizon

- ❑ Direct Tax Code **(April 1, 2011)**
- ❑ New Companies Law Amendment Bill **(awaited)**
- ❑ Indirect Taxes - Goods & Services Tax **(April 1, 2011)**
- ❑ International Financial Reporting Standards (IFRS) **(April 1, 2011)**
- ❑ Insurance Laws (Amendment) Bill
- ❑ Banking Regulations (Amendment) Bill

## Direct Tax Code (DTC)

- ❑ **Tax rates** rationalized - corporate to pay a reduced tax of 25 per cent
- ❑ Tax on **royalties** enhanced - 20 per cent on gross payment
- ❑ Domestic companies to still pay a *dividend distribution tax* at 15 per cent. Similarly, foreign companies to pay **branch profits tax** at 15 per cent of post tax profits
- ❑ Fresh tax **exemptions** to be 'investment linked' rather than 'profit linked'

## Direct Tax Code (DTC)

- Introduction of **General Anti Avoidance Rule** ('GAAR') wherein commercial expediency of international transactions can be challenged by the authorities; primarily to check contentious issues viz. check round trip financing, lifting of corporate veil etc
- Provisions of DTC to have overriding effect over past **tax treaties** signed by India

## New Companies Law Amendment Bill 2008

- ❑ Introduction of **One Person Company (OPC)**

OPC can be formed for charitable purpose as well

- ❑ Companies can be struck off if **business not commenced** within 180 days of incorporation
- ❑ One **Resident Director** mandatory for all companies
- ❑ A **Whole-Time Director** not to hold office in more than one company unless permitted by the company

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## Indirect Taxes

- Central Sales Tax/ VAT & Service Tax – to be merged into a single **Goods & Service Tax** ('GST') by April 1, 2011

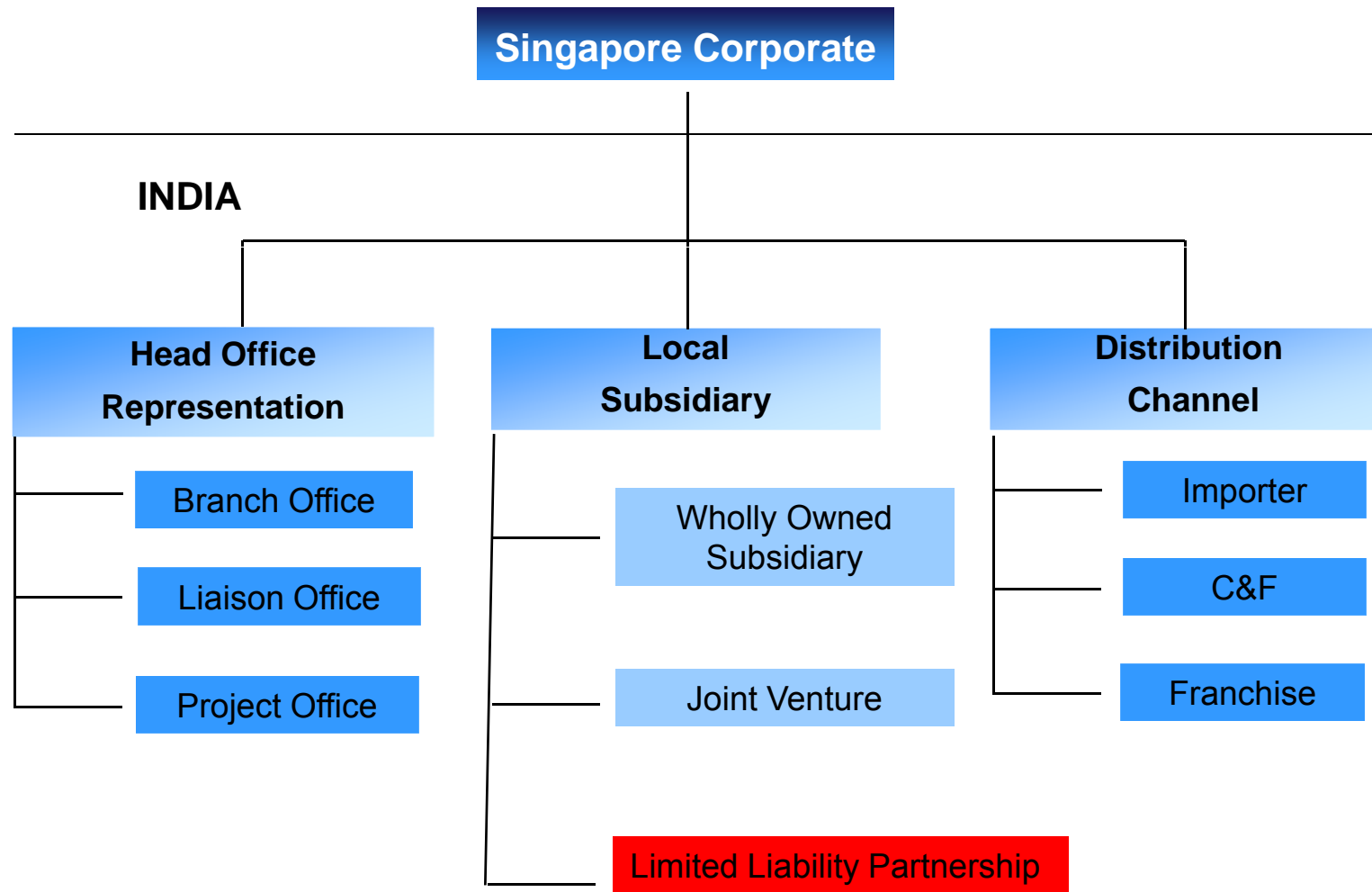
## International Financial Reporting Standards (IFRS)

- India to fully converge with IFRS by **April 1, 2011**
  
- Will apply to all **public listed companies** and those with turnover exceeding USD 25 million
  
- Paradigm shift in the basis of recording transactions
  - Impresses substance over form
  - Adequacy of disclosures

# **INDIA ENTRY**

## **Mode of Investment**

# INDIA ENTRY - Mode of Investment



## INDIA ENTRY - Alternate Entity Comparison

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

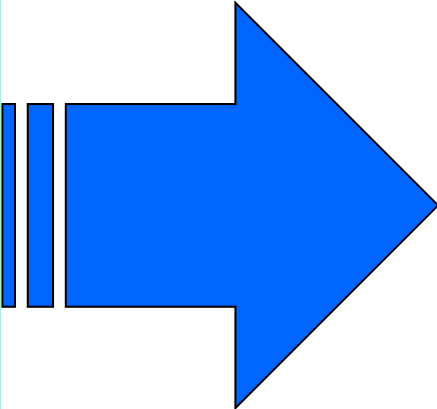
RBI – Reserve Bank of India  
FIPB – Foreign Investment Promotion Board  
ROC – Registrar of Companies

## Joint Venture Project vs Wholly Owned Subsidiary

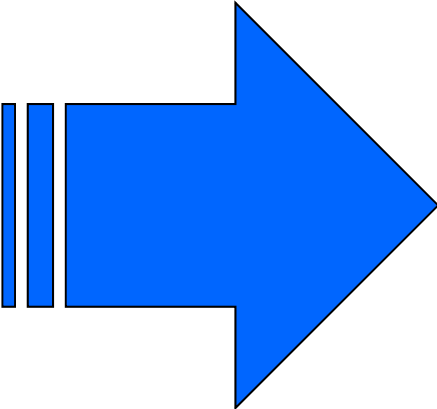
- ❑ PROS
  - Operating Infrastructure
  - Ready Distribution Channel
  - Government Dealing
  - Labor Management
- ❑ CONS
  - Management and Control
  - Dilution of Profits
  - Protection of Technology, Trademarks and Trade Names

# **Significant Issues & Changes Planning India Investment**

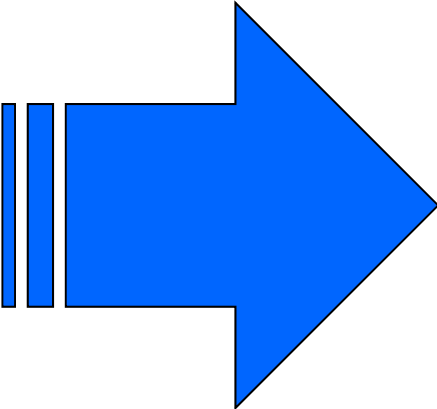
## LO/BO – Change in Regulatory Compliance

Permission	Existing Rules		New Policy
<b>Applications for Setting-up a BO/LO In India</b>	Submit with RBI		submit with your banker who shall verify, recommend and forward to the RBI.
<b>Extension of LO</b>	LO which are initially allowed for a period of 3 years, to seek RBI approval for further extension.		Your banker can verify and directly permit an extension.
<b>Closure of LO/BO</b>	Approval from RBI to repatriate funds		Your banker can permit repatriation of funds
<b>Activity Report</b>	submitted with RBI		submitted with your banker <b>and</b> with Directorate General of Income Tax (International Taxation)

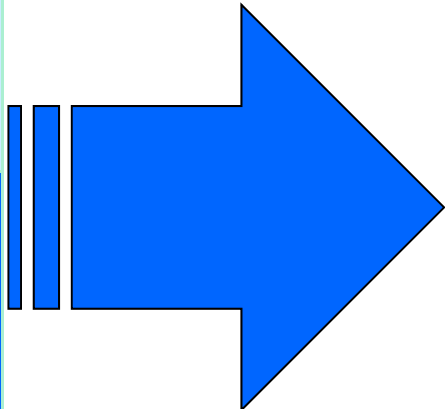
## Royalty / Fee for Technology / Trademark

Royalty Payment	Under existing rules, prior approval required		New Policy
Recurring royalty payments	in excess of 5% on domestic sales and 8% on exports		No approval required for one time lumpsum fee or recurring royalty payments
Lumpsum fee for transfer of technology	in excess of USD 2 million		Subject to FEMA (Current Account Transaction) Rules, 2000; Post-reporting system
Payments for use of trademark/brand name	in excess of 1% on domestic sales and 2% on exports		

## Direct Receipt / Remittance of Salary

Procedure	Existing Rules		New Policy
<b>Foreign national Resident in India / India citizen employed with foreign companies on deputation to India</b>	Permitted to open, hold and maintain a foreign currency account with an overseas bank and receive 75% of his salary by credit to such account subject to tax. The balance salary was required to be paid in rupees in India		RBI has now permitted receipt of full salary subject to payment in taxes in India
<b>Foreign national Resident in India</b>			RBI has now permitted remittance of full salary subject to payment in taxes in India

## Prior Approval For Foreign Investment

Foreign Investment	Existing Rules		New Policy
Where total project cost < / = Rs 6 billion and sectoral caps apply	Foreign Investment Promotion Bureau ('FIPB') approval		FIPB Approval still needed
Where total project cost > Rs 6 billion upto Rs 12 billion	Cabinet Committee on Economic Affairs ('CECA') approval		Only FIPB Approval would be required upto USD 261 million
Investment in any sector / activity earlier under approval route and approval granted	Further investment required FIPB / CECA approval		No approval from FIPB / CECA
Investment in sector / activity where prior approval already granted (Press Note 18/98 or 1/2005)	Further investment still required prior approval from FIPB / CECA		No approval needed from FIPB/ CCEA for additional foreign investment into the same entity

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## INVESTMENT STRATEGY

### Existing Collaboration(s) in India can restrict your entry plans

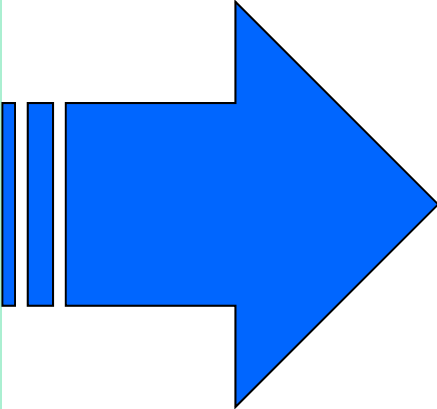
- ❑ Do you have an existing joint venture with an Indian partner for the very field in which you now intend to set-up business in India?
- ❑ Do you have an existing technology collaboration with an Indian partner for the same field in which you intend to do business in India?

Press Note 1 (2005 ) / Press Note 1 (2010)

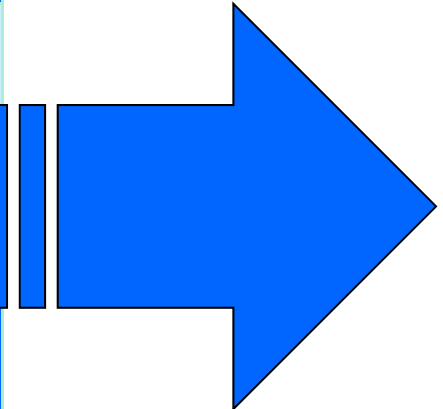
If yes, a 'No Objection Certificate' is mandatory from the existing Indian Partner and prior approval is required from the Foreign Investment Promotion Board of India

# TRANSFER OF SHARES

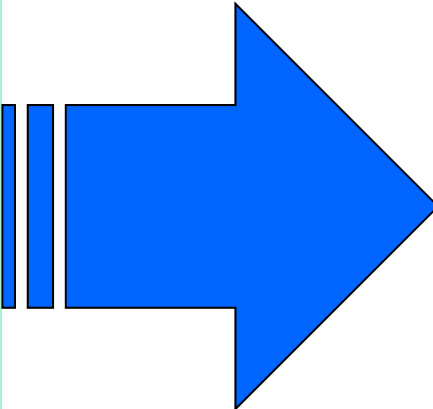
Resident to Non Resident	Existing Provisions	New Provisions
<b>Definition - Non Resident</b>	Incorporated entity ONLY	Incorporated entity and FII & NRI
<b>Listed Companies</b>	Price not less than ruling Market Price	Price not less than price as per preferential allotment under SEBI guidelines
<b>Unlisted Companies</b>	Fair Valuation done by CA in compliance with CCI* Guidelines  *Comptroller of Capital Issue	Fair Valuation by CA as per Discounted free cash flow method or Merchant Banker



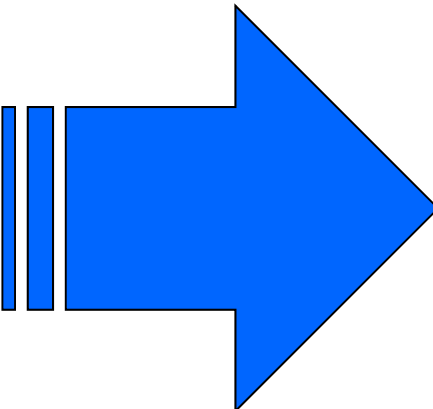
# TRANSFER OF SHARES

Non Resident to Resident	Existing Provisions		New Provisions
<b>Listed Companies</b>	Prevailing Market price or Price arrived at by taking average quotations		Price not be less than price for preferential allotment under SEBI guidelines
<b>Unlisted Companies</b>	Consideration < 2 MN price as mutually agreed		Price shall not be less than fair value determined by SEBI
<b>Unlisted Companies</b>	consideration > 2 MN Price as per - NAV / PE - Valuation by CA or Merchant Banker		Category I- Merchant Banker or C.A as per Discounted Cash Flow Method

## Sector Specific Changes

Foreign Investment	Existing Guidelines		New Guidelines
<b>Cigars &amp; Cigarettes Manufacture</b>	100 % FDI Permitted		FDI prohibited
<b>Lottery, Gambling &amp; Betting activities</b>	Prohibited but No clarity for foreign technology collaboration including licensing for franchise, trademark, brand name		FDI, foreign technology collaboration, licensing for franchise, trademark have been expressly prohibited

## Sectoral Caps

FDI In Trading	Existing Guidelines		New Guidelines
<p>Cash &amp; Carry Wholesale Trading / Wholesale Trading (WT)</p>	<p>WT not defined</p>		<p>WT defined as retailers, industrial, commercial, institutional or business users or other wholesalers, related service providers</p> <p>Type of customers to whom the sale is made to be the yardstick to determine WT</p>

## INVESTMENT STRATEGY

### Wholesale Trading - Restricted

- ❑ WT of goods would be permitted among companies of the same group. Aggregate WT to group companies should not exceed 25% of the total turnover of the wholesale venture and the wholesale made to the group companies should be for their internal use only.
- ❑ A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly

Balance 75 per cent WT to unrelated buyers such as existing retail shops

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*(in joint venture with SCS Global)*

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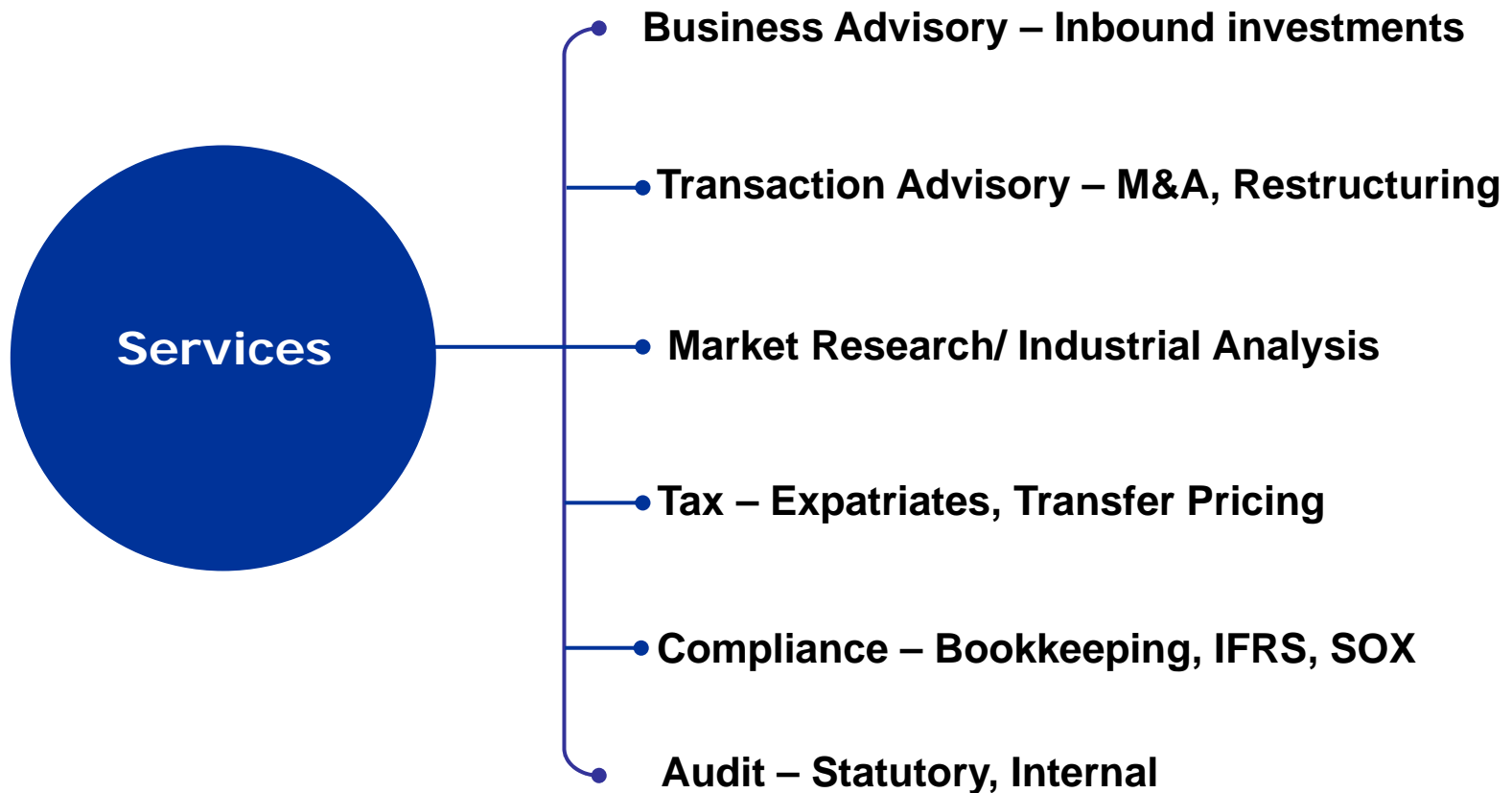
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- ❑ **CCI** – joint venture with **SCS Global**
- ❑ **ASA** - member of **NIS Global**, an international association of independent accounting firms
- ❑ Approximately 70 per cent are **Japanese Corporates**
- ❑ Offices across India and affiliations worldwide
- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of over 150 in India & 1500 through associate network

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