

Preface

1. **Author has felt when he qualified as Chartered Accountant (CA) in Year 1985 that legal provisions' interpretations are big challenge for legal professionals, govts' officials and public at large in India and outside India.**
2. **Author has realized that something should be developed to resolve this challenge in India and outside India.**
3. **Author has started compiling Frequently Asked Questions (FAQs) on many subjects where his 100% answers are precisely based on Yes or No i.e. white or black nothing is grey**
4. **Author has compiled approximately 150 +(plus) research papers / books with 25 thousand +(plus) pages on many prevailing subjects / acts in India and outside India.**
5. **Author's 1st paper book is now being published under head FAQs on Enforcement Directorate (ED) where 571 FAQs are replied based on Yes or No i.e. white or black nothing is grey**
6. **This book is also containing**
 - (i) Foreign Exchange Management Act (FEMA) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (PMLA) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (FEOA) 2018 and rules / regulations
7. **This book is published with Sai Kripa and dedicated to my father (late) Mr. M.R. Agarwal, Mother Mrs. R.D. Agarwal, wife Mrs. Snigdha Agarwal, daughter Ms. Soumya Agarwal, daughter Ms. Sanya Agarwal and dedicated team headed by Rajat Kumar**

● **I trust that you will be enriched by reading this book**

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

www.femainindia.com

Few out of abovementioned Research papers / books are as under:

1. *Book on Enforcement Directorate (ED) in India- (Book with 617 pages)*
2. *Director of Revenue Intelligence (DRI) in India*
3. *Central Bureau of Investigation (CBI) in India*
4. *National Investigation Agency (NIA) in India*
5. *Serious Fraud Investigation Office (SFIO) in India*
6. *Financial Intelligence Unit (FIU-IND) in India*
7. *Central Vigilance Commission (CVC) in India*
8. *Narcotics Control Bureau (NCB) in India*
9. *Research & Analysis Wing (R&AW) in India*
10. *Economic Offence Wing (EOW) in India*
11. *Intelligence Bureau (IB) in India*
12. *Director General of Income Tax Criminal Investigation (DGITCI) in India*
13. *National Company Law Tribunal (NCLT) in India*
14. *Security Exchange Board of India (SEBI) in India*
15. *Prevention of Corruption (PC) Act,1988 in India*

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
27. *Statutory Obligations for Companies Operating in India*
28. *Significant Beneficial Owners (SBO) in India*
29. *Significant Economic Presence (SEP) in India*
30. *Place of Effective Management (POEM) in India*
31. *Liberalized Remittance Scheme (LRS) for residents of India*
32. *Foreign Liability and Asset (FLA) return in India*
33. *FATCA agreement with USA*
34. *Double Taxation Avoidance Agreement (DTAA) with USA*
35. *Foreign Tax Credit (FTC) in India*
36. *Corporate Frauds (CFs) in India*
37. *Export of Goods and Services under FEMA, 1999 in India*
38. *Imports of Goods and Services under FEMA, 1999 in India*
39. *External Commercial Borrowings (ECBs) in India*
40. *Overseas Direct Investments (ODIs) under FEMA, 1999 in India*
41. *Acquisition of Immovable Properties by Non-residents under FEMA, 1999 in India*
42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*

Establishment of Branch office (BO), Liaison office (LO) or Project office (PO) in India

1. Introduction on the Establishment of BO/LO/PO in India

(i) Eligible Foreign entities are permitted to establish BO, LO (Commonly known as Representative office) and PO in India under general or specific 'approval' route

(ii) **Eligible Foreign Entities Includes 5 followings entities**

(a) **Foreign Companies**

(b) **Foreign Non Govt. Organizations (NGOs)**

(c) **Foreign Non Profit Organizations (NPOs)**

(d) **Foreign Govt. Bodies**

(e) **Foreign Govt. Departments**

2. Permission for the Establishment of the BO/LO in India

(i) **General Approval by the RBI** (Commonly known as the 'RBI' Route)

• **Foreign** eligible entities are required to file an application with the RBI through designated AD Category-I bank for establishing BO/LO in India in Form FNC under **general** approval route if foreign entity is engaged in the sector where 100% FDIs are permitted in India

(ii) **Specific Approval by the Govt. of India** (Commonly known as 'Govt.' Route)

• **Foreign** entities are required to file an application with the RBI through designated AD Category-I bank for establishing BO/LO in India in Form FNC under **specific** approval route where the RBI is required specific approval from the concerned Ministry or deptt. of Govt. of India in the following circumstances.

(a) Establishment of BO/LO by the **foreign** NGOs, NPOs, Govt. bodies or Govt. deptt

(b) Applicant is registered/incorporated in **Pakistan** for establishing at 'any' place in India

(c) Applicant is registered/ unregistered entity in **7 Countries** for establishing a BO/LO in J&K/ North East /Andaman and Nicobar Island

(ca) **Bangladesh**

(cb) **Sri Lanka**

(cc) **Afghanistan**

(cd) **Iran**

(ce) **China**

(cf) **Hong Kong**

(cg) **Macau**

(d) **Principal** business of the applicant is in **5 following Sectors**

(da) **Defense**

(db) **Telecom**

(dc) **Private Security**

(dd) **Information and Broadcasting**

(de) **Foreign entity is engaged in the sector where 100% FDIs are 'not' permitted in India**

(iii) Establishment of the BO/LO by other Foreign Entities 'Not' Permitted in India

(a) **Other** Foreign entities Include the followings

- (aa) Partnership firm
- (ab) Association of Individuals (ac)
- Proprietary Concern

(b) Hence 'other' **Foreign** entities are **not** permitted to establish a BO/LO in India

(iv) Mandatory Conditions for Approval under the RBI Route

(a) **The RBI** is required to consider **2** criteria's

- (aa) Track record
- (ab) Net worth

(b) **Track Record for established of BO/LO in India**

(ba) **For BO**

- Foreign entity should have **profit making track** record during immediate preceding **5** financial years in home country (bb)

For LO

- Foreign entity should have **profit making track** record during immediate preceding **3** financial years in home country

(c) **Net Worth for establishment of BO/LO in India**

- Net worth to includes total paid up capital+ Free Reserves - Intangible Assets as per latest audited balance sheet or account statement as certified by Certified Public Account (**CPA**) or any Registered Account Practitioner

(ca) **For BO**

- Minimum net worth should be **USD 1 Lac** in home country

(cb) **For LO**

- Minimum net worth should be **USD 50 thousands** in home country.

3. Application for Establishment of the BO/LO in India

(i) Submission of Application for Establishment of BO/LO in India

(a) (aa) Application for establishment of BO/LO should be forwarded by foreign entity to the **RBI** through designated **AD Category-I** bank for approval

(ab) Designated **AD Category-I** bank is required to obtain Unique Identification Number (**UIN**) from General Manager in charge, Foreign Exchange Department, Central office Cell, the **RBI**, New Delhi, Regional office, 6 Parliament Street, New Delhi- 110001 along with prescribed documents

(b) **List of the Documents**

• **English** version of

(ba) Certificate of incorporation or registration and Memorandum and Article of Association (**M&A**) and also

(bb) Audited Balance Sheet as attested by Indian Embassy or notary public in country of registration **Outside India**

(c) Letter of the Comfort

- Letter of Comfort (LOC) from parent company is to be submitted where applicant **not** satisfying the eligibility criteria like track record and/or net worth.

(d) Due Diligence

- Designated AD category-I bank is required to do due diligence relating to the followings
 - (da) Applicant background
 - (db) **Antecedents** of the promoter
 - (dc) Nature and location of activity
 - (dd) Source of fund
 - (de) Compliance with KYC norms **before** forwarding application along with comments or recommendations to the RBI for obtaining **UIN** number and approval.

(ii) Allotment of the UIN

- The **RBI** is required to allot a unique Identification Number (**UIN**) to the BO/LO

(iii) Allotment of the PAN

- BO/LO is required to obtain a **PAN** from the Income Tax Authorities in India

4. Permitted and Not Permitted (Prohibited) Activities for the LO in India

(i) Permitted Activities for the LO in India

- (a) **Representing** in India on behalf of parent company or the group companies
- (b) **Promoting** the export or import from India
- (c) **Promoting** technical or financial collaborations between parent or group companies and entity in India
- (d) **Acting** as communication channel between parent entity and entity in India

(ii) Not Permitted (Prohibited) Activities for the LO in India

- (a) **Not** permitted to undertake any **business** activity in India
- (b) **Not** permitted to earn any **income** in India
- (c) **Not** permitted to incur any **expenses** other than through direct inward **remittances** in foreign exchange from Head office as located outside India

5. Foreign Insurance Company, Foreign Bank or Foreign Law Firm for establishing LO

(i) LO of the Foreign Insurance Company in India

- Foreign Insurance company is permitted to establish a LO after obtaining of approval from Insurance Regulatory and Development Authority (**IRDA**) as set-up in India in addition to the **RBI**.

(ii) LO of the Foreign Bank in India

- Foreign bank is permitted to establish a LO after obtaining of approval from department of Banking Operations and Development (**DBOD**) of the **RBI** in India

(iii) LO of the Foreign Law Firm in India

- Fresh permission or renewal for LO of Foreign law firm is **not** permitted. However already approved are permitted to continue till date of its **expiry**.

6. Extension of Approval of a LO Permitted in India

(i) Designated AD Category - I bank is permitted to extend the validity of LO for maximum period of 3 years from the date of expiry of original or extension where applicant has also complied the following terms and conditions

(a) LO should have submitted the Annual Activity Certificates (AACs) for 'all' previous year

(b) LO should have maintained an account with designated AD Category -I bank is in accordance to terms and conditions as stipulated in approval

(ii) Extension is to be granted by AD Category-I bank within 1 month from date of request under intimation to the RBI along with reference number of original approval letter and UIN

(iii) Extension of Validity of the LO of Insurance entity and Bank in India

- Application for extension of validity of period of LO of insurance entity and bank is to be submitted to **IRDA** and **DBOD** respectively

7. Permitted and Non-Permitted (Prohibited) Activities for the BO in India

(i) Manufacturing or Trading Activities Permitted for the Parent Entity/Group Companies 'Outside' India

• Companies incorporated **outside** India and also **engaged** in manufacturing or trading activities 'Outside' India are permitted to set up BO in India to **represent** the parent or group companies and also to undertake following 'business' activities in India. Hence BO is 'not' permitted for manufacturing or trading activity in India.

(a) **Export** or **Import** of goods and procurement of goods for export and sale of goods after import is permitted on **wholesale** basis

(b) **Rendering** of professional or consultancy services

(c) **Carrying out** research work in which parent company is 'already' engaged

(d) **Promoting** for technical or financial collaborations between Indian companies and parent company or group companies

(e) **Representing** the parent company or group companies in India

(f) **Rendering** of Services for information technology and development of software in India

(g) **Rendering** of technical support to the products as supplied by parent company or group companies

(h) **Operating** the foreign airline or shipping activities in India.

(ii) Retail Trading Activities 'Not' Permitted in India

- Retail trading activities are **not** permitted by a BO in India

(iii) Manufacturing or Processing Activities 'Not' Permitted for the BO in India

(a) Manufacturing or processing activities are **not** permitted for BO in India

(b) However **permitted** through incorporation of a **subsidiary** company in India

(iv) **Remittances against Profits by the BO**

- (a) BO is permitted to remit Outside India against profits 'after' payment of taxes
- (b) Following **documents** are to be submitted for the remittances
 - (ba) **Certified** copy of audited balance sheet and profit and loss account of the BO in India (bb) **Certificate** from Chartered Accountant certifying the manner of arriving **remittable** profit and also entire remittable profit is earned from 'permitted' activities by BO and also profit **not** include a profit on **revaluation** of assets of the BO in India

8. Establishment of the Project Office (PO) Permitted in India

(i) **Project Office (PO) by the Foreign Entities**

- (a) The RBI has granted **general** or specific 'approval' route to the foreign companies to establish a PO in India
- (b) However PO should secure a contact from **Indian** entity to execute a project in India
- (c)(ca) Project should be funded by inward **remittance** from Outside India 'or'
 - (cb) Project should be funded by bilateral or multilateral **International Financing Agency** 'and' also
 - (cc) Project should be cleared by an **appropriate** authority in India 'and' also
 - (cd) The **Indian** Entity as awarding the contract should obtain a **term loan** from Public Financial Institution or bank for the project in India
- (d) In absence of the above mentioned, under the para (a) to (c) foreign entity is required to obtain a **specific** permission from the RBI through designated AD Category - I bank in India.

(ii) **Bank Account for the PO**

- Designated AD category I bank can open 'non' interest bearing foreign currency account for the PO in India 'after' **satisfaction** of the followings terms and conditions
 - (a) PO should be established with general or specific 'approval' route from the RBI 'and' also from appropriate project sanctioning Authority
 - (b) Contract should be specifically provides for the **payment** in foreign currency only.
 - (c) PO is permitted to open **2** foreign currency accounts only with the same designated AD category-I bank one in **USD** and other in **non USD**
 - (d) Permissible **debits** to the account are to be project related **expenditures** and permissible **credits** to the account are to be foreign **currency** receipts from foreign entity only.
 - (e) Designated AD Category-I bank is required to ensure that **permissible** debits and credits are allowed in the Foreign currency account and also account should be **100% scrutinized** by Concurrent Auditor of bank
 - (f) Foreign currency account should be **closed** at time of completion of project

(iii) **Remittances by the PO**

- Designated AD Category-I bank is permitted to remit by the PO as **pending** winding up or completion of project after **satisfaction** of the followings terms and conditions
 - (a) PO should obtain an auditor **certificate** relating to payment of all liabilities including income tax etc.

(b) PO should submit an **undertaking** as remittance will not affect the completion of project in India and also shortfall of fund to complete the project 'if any' will be received through inward **remittance** from outside India

(iv) Inter Project Transfer of the Fund

- **Prior Approval** from the RBI is required for inter project transfer of fund in India

(v) Reporting to the RBI by PO in India

(a) Foreign entity is required to furnish the following details within 2 months from the date of establishment of PO to the RBI through Designated AD Category -I bank in form **FNC**

- (aa) Name and address of the foreign entity
- (ab) Reference number and date of letter against the contract awarded in accordance to Regulation No. 5(ii) of Notification No. FEMA 22/2000-RB, dated May 03, 2000
- (ac) Particulars of **authority** as awarding the project or contract to the PO
- (ad) Total **amount** of the contract
- (ae) Address, e-mail and telephone number of the PO
- (af) **Tenure** of the PO
- (ag) Brief **detail** of the project undertaken
- (ah) Name of designated AD Category - I bank for the **opening** of foreign currency account in USD and 'non' USD
- (ai) **Undertaking** that the PO is eligible to avail **General Permission** in accordance to Regulation No. 5(ii) of Notification No. 22 dated May 03, 2000 read with Notification No. 95 dated July 02, 2003.

(b) PO is required to submit a **certificate** from Chartered Accountant showing the status of the project and also confirming that the accounts of PO are audited and activities as undertaken are in accordance to general or **specific** permission by the RBI

9. Special Provisions for the BO/LO/PO in India

(i) Purchase of the Immovable Property in India by BO/LO/PO

- (a) BO or PO in India is permitted to purchase of immovable property if **necessary** or incidental to carry on the activities of the BO/PO as case may be
- (b) Payments for the purchase of immovable **property** are to be made out of the foreign inward **remittance** through normal banking channel only
- (c) **Declaration** is to be submitted to the RBI in Form IPI within **90** days from the date of acquisition of the immovable property
- (d) This property can be **mortgaged** with a bank as security for the borrowings.
- (e) **Sale proceeds** of the property on winding up are to be repatriated with **approval** from the RBI
- (f) However an **approval** from the RBI is also required for acquisition of immovable property by an entity incorporated in the **10** countries
 - (fa) Pakistan
 - (fb) Bangladesh
 - (fc) Sri Lanka
 - (fd) Afghanistan

- (fe) China
- (ff) Iran
- (fg) Nepal
- (fh) Bhutan
- (fi) Hong Kong
- (fj) Macau
- (g) (ga) **LO** from 'any' country is **not** permitted to acquire an immovable property in India
- (gb) However **LO** from 'any' country is permitted to acquire immovable property **on lease** 'not' exceeding 5 years

(ii) General Conditions for the BO/LO

- (a) Entities from **Nepal** is permitted to establish a **LO** but not permitted to establish a **BO** in India
- (b) **BO/LO** is required to open **non-interest bearing INR** current account in India
- (c) **Approval** from the **RBI** is required to **transfer** of assets to subsidiaries or other **BO**
- (d) Term deposit exceeding **6 months** are **not** permitted against **temporary** surplus funds of the **BO/LO**
- (e) However term deposits are **not** permitted to a shipping or airline Company working in India
- (f) **Regularization** of **BO/LO** is required if established pre **FEMA** i.e **before 1999**

(iii) Additional Reporting to Police for New Setting up BO/LO

- Following 'additional' reporting's are required for setting up of **BO/LO**
- (a) Submit a **report** containing certain information's within **5** working days of **BO/LO** become functional to the **Director General of Police (DGP)** of the State/Union Territory
- (b) Same **report** is to be submitted on **annual** basis to **DGP** along with **AAC** in India

10. Miscellaneous Provisions for the BO/LO in India

(i) Establishment of a BO in SEZs

- (a) The **RBI** has granted **general** permission to the foreign companies for establishing of a **BO** or unit in **SEZ** area to undertake the manufacturing and service activities
- (b) General permission is available after satisfaction of the followings terms and conditions
 - (ba) Unit should be functioning in sector where **100% FDIs** are permitted
 - (bb) Unit should comply provisions under the Section 380 to 386 of the **Companies Act, 2013** (bc) Unit should function on standalone basis only.

(ii) Winding up of a BO in India

- **BO** is required to approach **AD Category-I bank** along with documents mentioning under **closure** of the **BO** for remittance of winding up proceeds **Outside India**

(iii) Application for Additional establishment of BO/LO in India

- (a) Application for **additional** **BO/LO** is to be submitted to the **RBI** through designated **AD Category-I Bank** where **specific** approval is required for establishing of a **BO/LO**
- (b) **Fresh FNC form** is to be submitted for an additional **BO/LO**

- (c) However documents are **not** to be re-submitted where there is **no** change in 'already' submitted documents
- (d) **Justification** for the additional BO/LO is to be submitted where BOs/LOs are exceeding by **4** in number in India
- (e) Applicant is to be required to identify one office as **nodal** office to coordinate the activities of all offices in India

(iv) Submission of Annual Activity Certificate (AAC) for BO/LO in India

- (a) BO/LO is required to submit an AAC as on March 31 up to **September 30** of each year to the followings
 - (b) (ba) Designated AD Category-I bank in India (bb) **DGIT** (International Taxation) New Delhi (bc) **DGP** of the State/Union Territory
 - (c) (ca) AAC is also to be submitted by the BO/LO or (cb) By the **Nodal** office where multiple BO/LO are existed in India
- (d) Designated AD Category -I bank is required to **scrutinize** the AAC to ensure that activities undertaken by BO/LO are in accordance to terms and conditions of the RBI
- (e) Designated AD Category -I bank is required to report to the RBI where statutory auditors have given the **negative** comments / reports

(v) Closure of the BO/LO

- BO/LO is required to submit the following **documents** at time of closure of the BO/LO
 - (a) Copy of **approval** for establishing of the BO/LO in India
 - (b) **Certificate** from the statutory auditors for computation of remittable amount
 - (c) **NOC** from the Income Tax authority for remittance
 - (d) **Undertaking** from the applicant that **no** legal proceeding is pending in any court in India
 - (e) **Report** from the ROC relating to compliance of provisions of the Companies Act, 2013
 - (f) Any **other** document as specified at time of granting an approval

(vi) Role of Designated AD Category - I Bank at time of Closure of the BO/LO

- (a) Designated AD Category- I bank is required to ensure that the BO/LO has submitted all the **AACs**
- (b) Also to **report** to the RBI along with a **declaration** stating that all necessary documents as submitted by the BO/LO are scrutinized and found in order.

(vii) Approval by the RBI for establishment of a LO

- (a) Generally the RBI is taking approximately **40** days in granting a permission for establishment of a LO in India
- (b) Generally the RBI is granting a permission for maximum period of **3 years**
- (c) Generally the RBI is permitting an extension for maximum period of **3 years 'each'** time
- (d) LO is required to close the establishment in India once original or extended approval is expired. However LO is permitted to convert the establishment into a Joint venture or wholly owned subsidiary company in India

(viii) Registration and Annual filings for the BO/LO with the MCA

- (a) BO/LO is required to register with the ROC within 30 days from the day of its establishment through filing of e-form **FC-1**
- (b) BO/LO is required to file e-form **FC-3** and **FC-4** for reporting the financial statement and annual return respectively.

11. Conclusion on Establishment of BO/LO/PO in India

(i) Establishment of a BO/LO is permitted under the head

- (a) General permission ('RBI' approval route) and specific permission ('Govt.' approval route)

(ii) Hence certain restrictions are existed where specific permission is required like

- (a) Parent entity is located in 8 countries i.e. Pakistan and China 'etc.'

- (b) 4 Sensitive sectors i.e. defense 'etc.'

- (c) NGOs and NPOs

- (d) Sector where **100% FDIs** are 'not' permitted in India

(iii) BOs/LOs are 'not' permitted for carrying 'many' activities in India. Hence establishment of **Domestic (subsidiary) company in India is a solution for the 'not' permitted activities in India.**

(iv) Establishment of a PO is permitted in India 'after' satisfaction certain terms and conditions

(v) BOs/POs are permitted to purchase the **immovable properties for necessary purposes only. Hence LOs are 'not' permitted to purchase the immovable properties in India. However LO is permitted to take on lease for a maximum period of 5 years**

(vi) BOs/LOs/POs are permitted to **close their establishment 'after' satisfaction of the certain terms and conditions**

(vii) BOs/LOs are required to submit **AAC 'annually' to the following offices. Hence PO is not required to submit AAC**

- (a) Designated AD Category- I Bank

- (b) **DGIT**

- (c) **DGP**

● Disclaimers:

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