



DAY 9 || Comprehensive Course on
Foreign Exchange Management, 1999

Faculty: CA. Sudha G. Bhushan
Sudha@taxpertpro.com || 09769033172

A modern, minimalist desk setup with a laptop, smartphone, and books. The desk is light-colored and features a laptop with a silver finish, a smartphone, and a stack of books. A pair of black headphones is also visible on the desk. The background is bright and out of focus, suggesting a clean, professional workspace.

Regulations Governing Foreign investment in India

Governing Regulations

Foreign Exchange
Management Act, 1999
("FEMA")

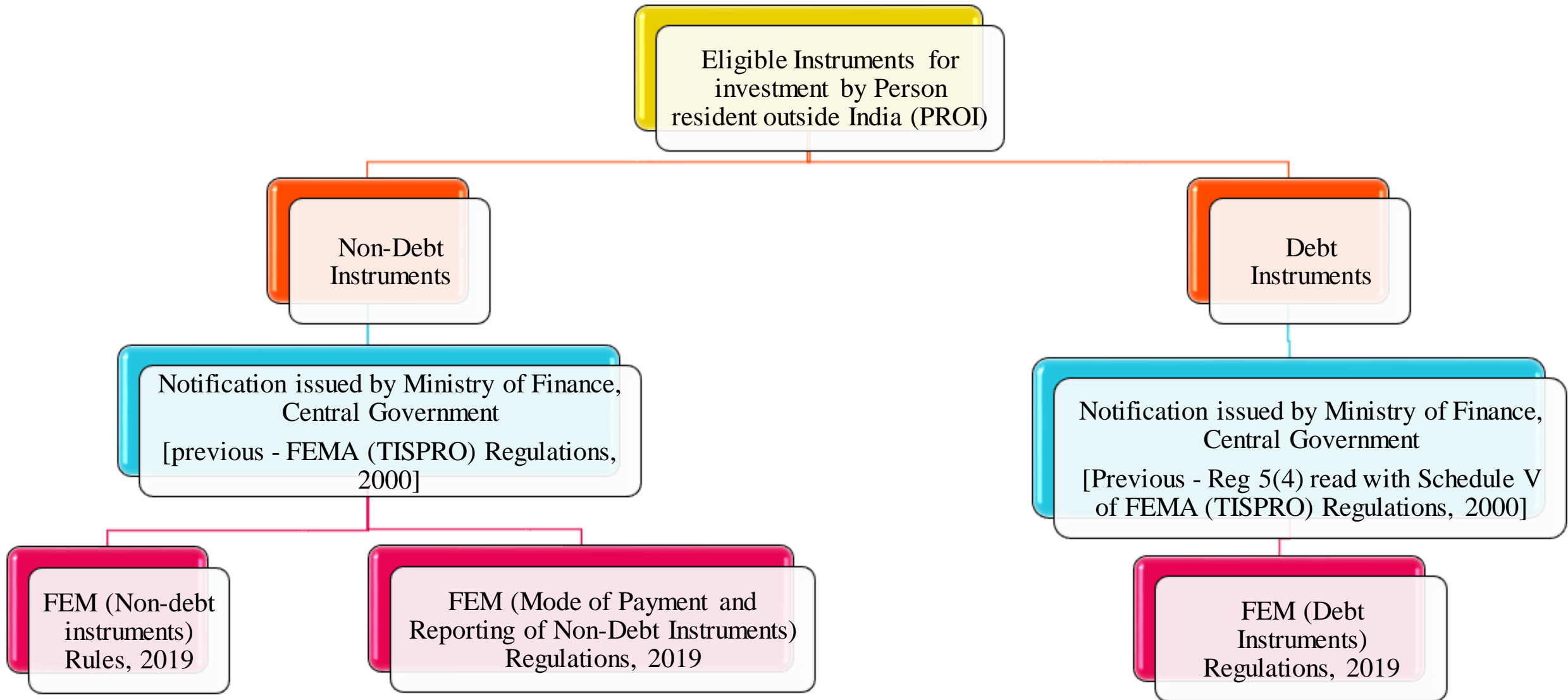
Foreign Exchange
Management (**Non Debt
Instruments**) Rules,
2019 (**NDI Rules**)

Foreign Exchange
Management (Mode of
Payment and Reporting
of Non-Debt
Instruments)
Regulations, 2019

Master Directions (as
TISPRO regulations has
been repealed, cannot
be relied upon)

Consolidated Foreign
Direct Investment
POLICY, 2020

Press notes issued by
DPIIT



Eligible Instruments for investment by Person resident outside India (PROI)

Non-Debt Instruments

Notification issued by Ministry of Finance, Central Government
[previous - FEMA (TISPRO) Regulations, 2000]

FEM (Non-debt instruments) Rules, 2019

FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Debt Instruments

Notification issued by Ministry of Finance, Central Government
[Previous - Reg 5(4) read with Schedule V of FEMA (TISPRO) Regulations, 2000]

FEM (Debt Instruments) Regulations, 2019

Non –Debt Instruments

All investment in equity in incorporated entities (public, private, listed and unlisted)

Capital participation in Limited Liability partnership (LLP)

All instruments of investment as recognized in the FDI policy as notified from time to time

Investment in units of Alternative Investment Funds (AIFs) and Real Estate Investment Trust (REITs) and infrastructure investment Trust (InVITs)

Investment in units of mutual funds and Exchange traded Funds (EITs) which invest more than 50% in equity.

Non –Debt Instruments

```
graph LR; A[Non –Debt Instruments] --- B[The junior most layer(i.e. equity tranche) of securitization structure]; A --- C[Acquisition, sale or dealing directly immovable property.]; A --- D[Contribution to trusts]; A --- E[Depository receipts issued against equity instruments]
```

The junior most layer(i.e. equity tranche) of securitization structure

Acquisition, sale or dealing directly immovable property.

Contribution to trusts

Depository receipts issued against equity instruments

Ministry of Finance, Vide
notification dated 16th Oct 2019

All other documents which are not Non debt instruments shall be deemed as debt instruments

Reporting and Mode of Payment

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

Notified by
RBI on 17th
Oct 2019

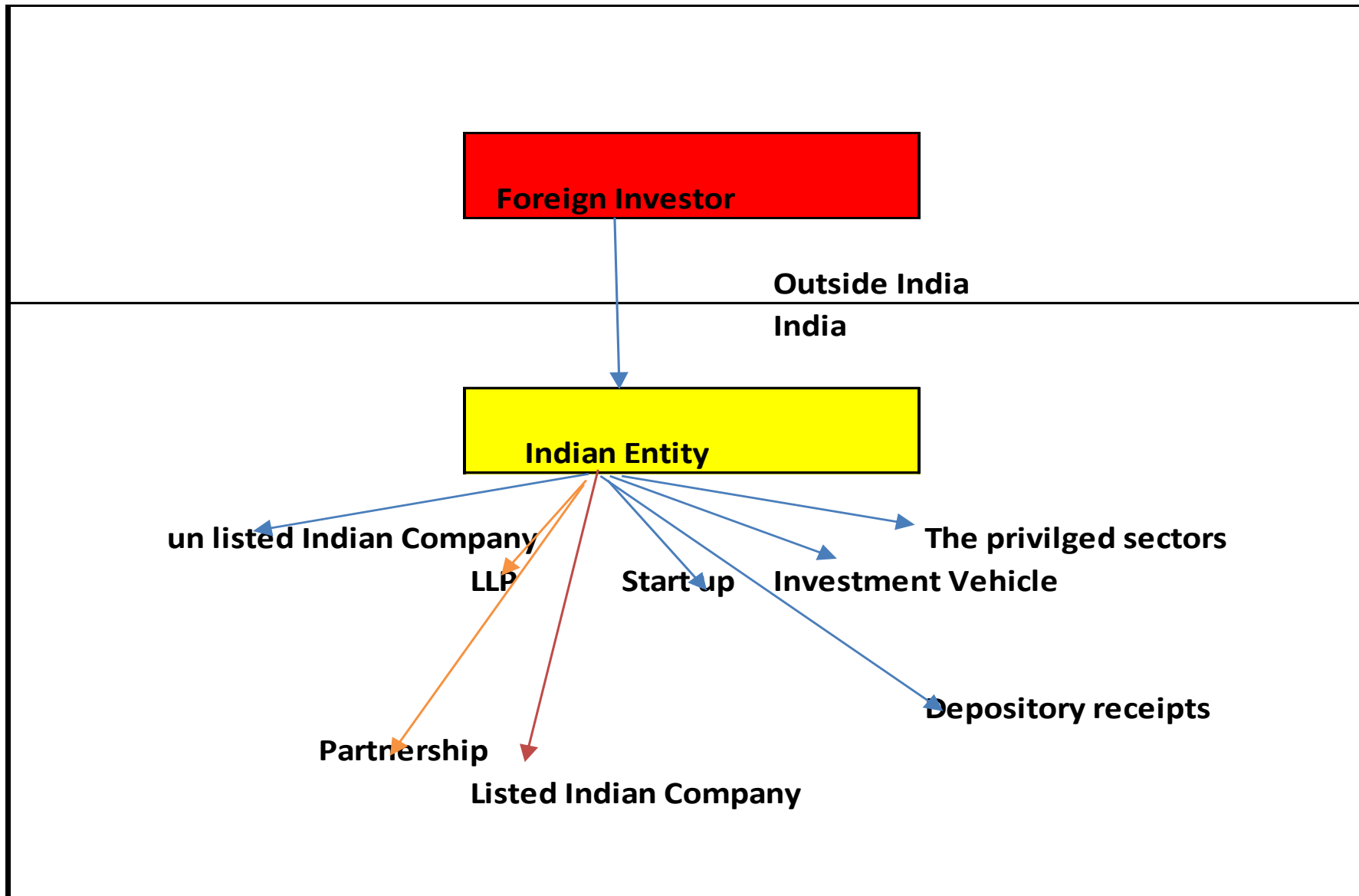
Who can invest

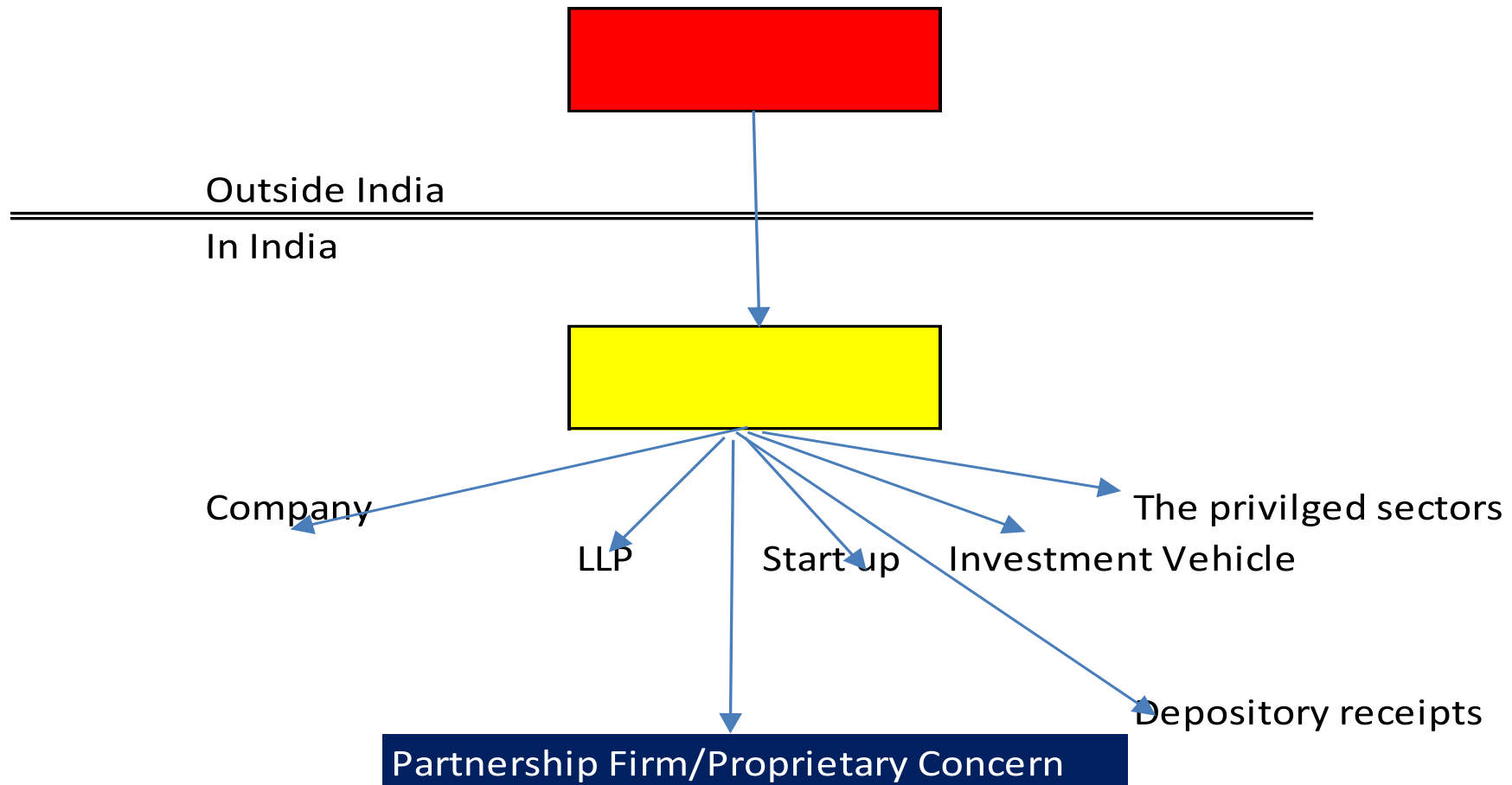
How he can invest

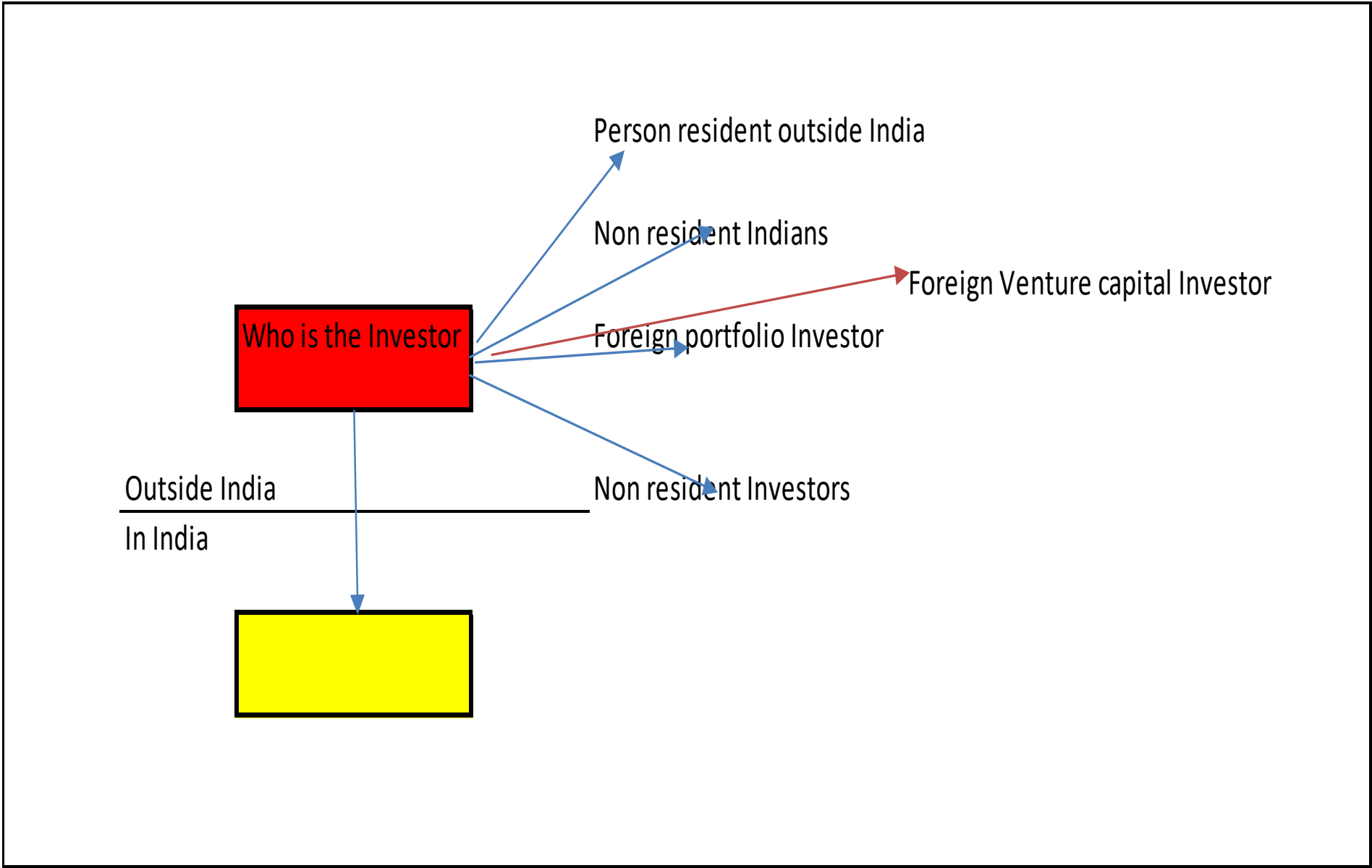
How the money shall come?

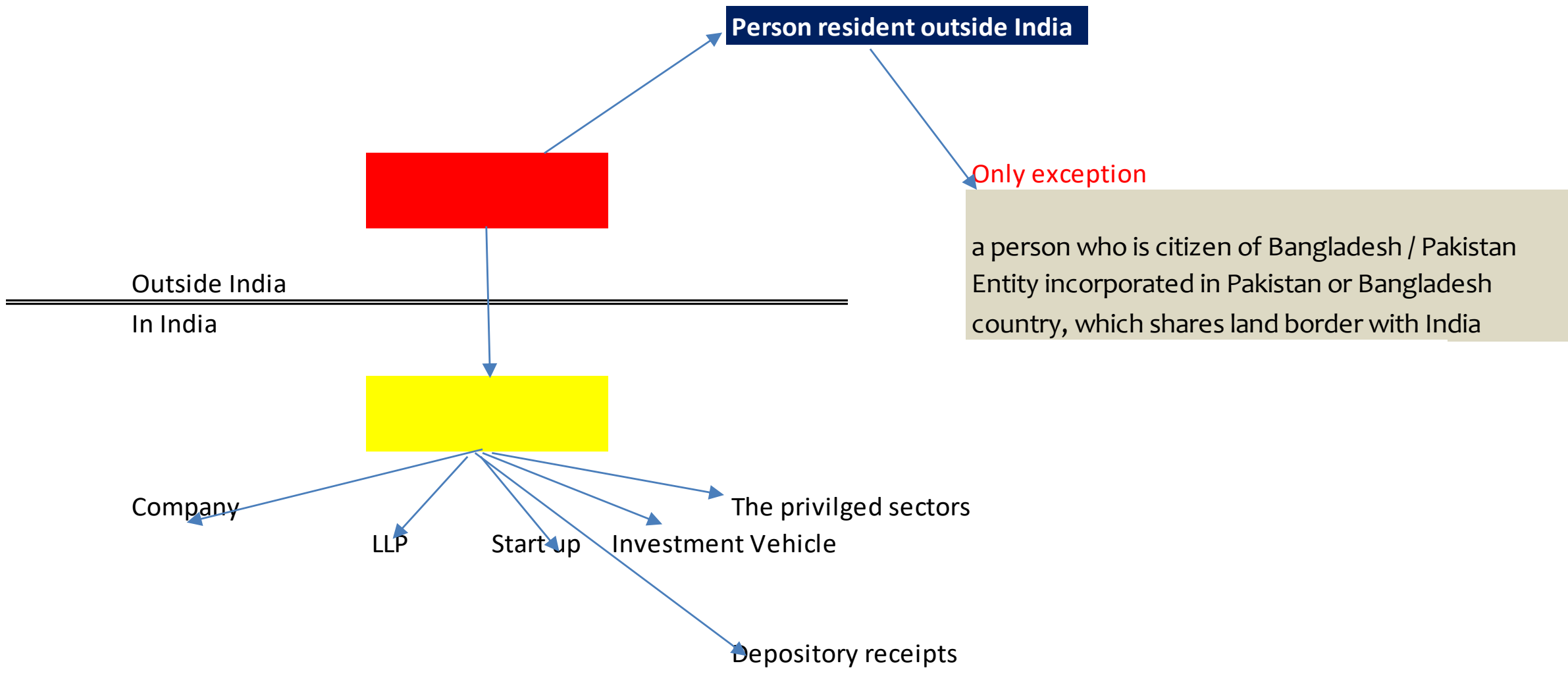
At what price can he invest

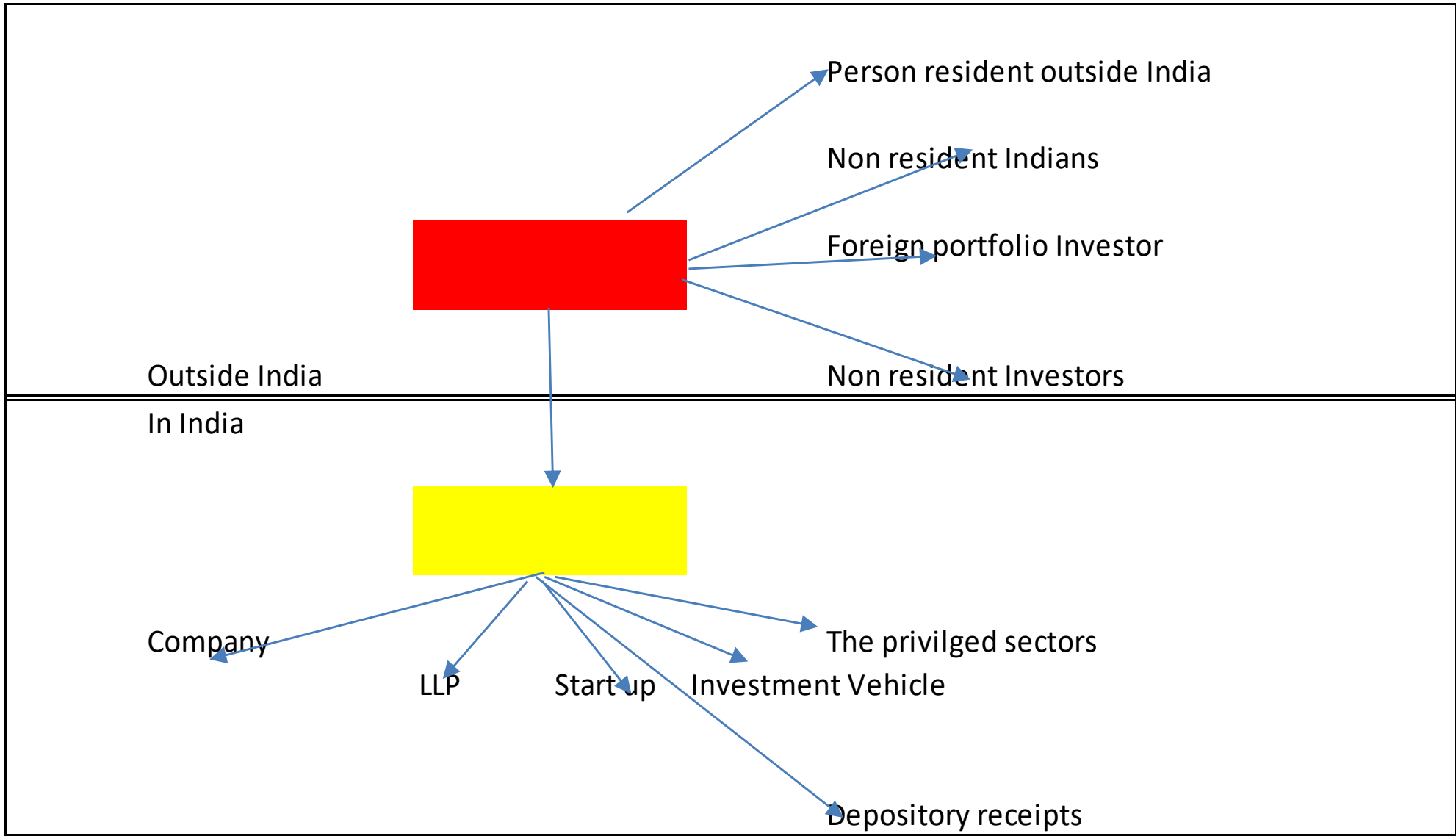
In which all mode can the investment be done?













Framework of the NDI Rules, 2019

Chapters

Preliminary

General condition applicable to all investors

Investment by person resident outside India.

Investment under Schedule I, Schedule VI, Schedule VIII, Schedule IX

Investment by foreign portfolio investor (FPI)

Investment under Schedule II

Investment by non-resident Indian on an oversea citizen of India

Investment under Schedule III and IV and X

Investment by other non-resident investors.

Investment under Schedule V

Investment by foreign venues capital investor

Investment under Schedule VII

General provisions

Acquisition and transfer of immovable property in India

Schedules

Schedule I

- Purchase or sale of equity instruments of an Indian company by a person resident outside India

Schedule II

- Investment by foreign portfolio investor

Schedule III

- Investment by non-resident Indian or an overseas citizen of India on repatriation basis

Schedule IV

- Investment by NRI or OCI on non-repatriation basis

Schedule V

- Investment by other non resident investors

Schedule VI

- Investment in Limited liability partnership (LLP)

Schedule VII

- Investment by Foreign venture capital Investor (FVCI)

Schedule VIII

- Investment by a person resident outside India in an investment vehicle

Schedule IX

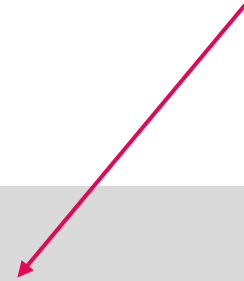
- Investment in depository receipts by a person resident outside India

Schedule X

- Issue of Indian Depository Receipts.



Investment by PROI Schedule 1



Person who is not resident in India



Foreign Investment

2(s) “Foreign investment” means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP;

Explanation: - If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;

Note: - A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company;

Foreign Investment

Investment	Made by person resident outside India	On repatriable basis	Beneficial interest held by PROI	Manner of investment
<ul style="list-style-type: none">• In equity instruments of an Indian company• or to the capital of a LLP	<ul style="list-style-type: none">• Means a person who is not resident in India• Certain exceptions are there	<ul style="list-style-type: none">• Investment on repatriation basis' means an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated out of India, and the expression 'Investment on non repatriation basis', shall be construed accordingly;	<p>If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;</p>	<ul style="list-style-type: none">• A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company

Example

Mr. A

Mr. B

15%

85%

AND Inc

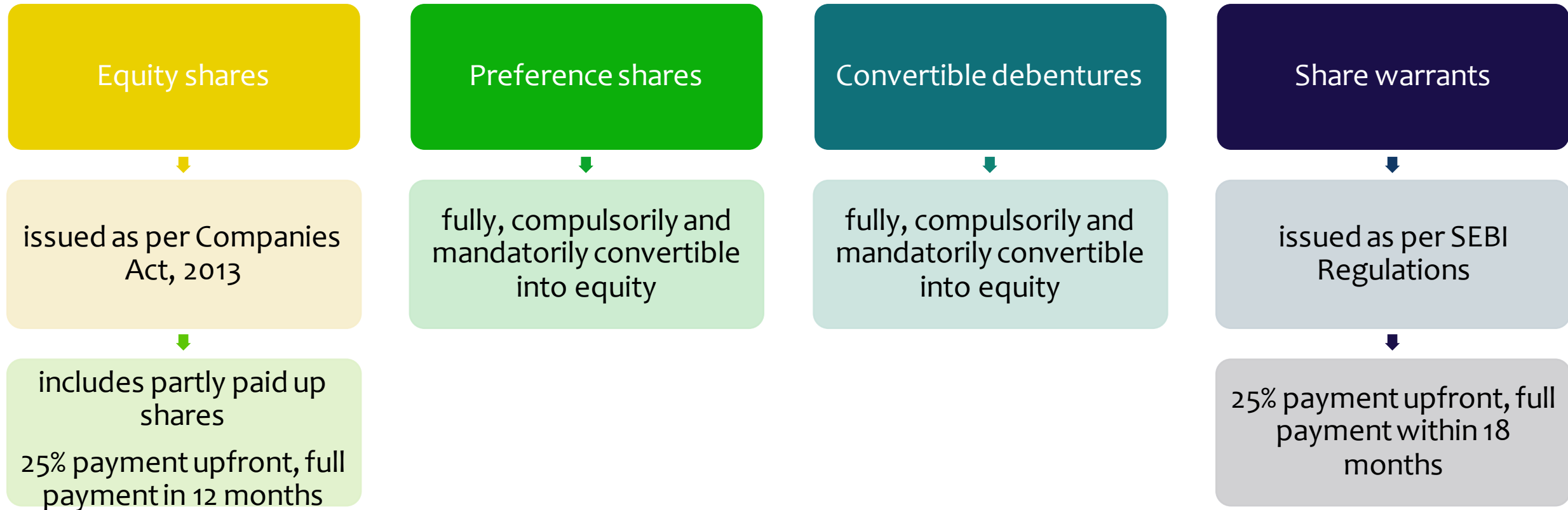
Management
control

C Pvt Ltd, India

Mr. A and Mr. B are person resident in India and they hold the shares of C private limited company, India in the beneficial capacity. And Inc. is ultimate beneficiary.

The Investment of Mr. A and Mr. B is an Indian investment or FDI?

Equity Instruments under Non-Debt Instrument Rules



Formerly regarded as Capital Instruments under TISPRO Regulations, 2017

Foreign Direct Investment

(r) “FDI” or “Foreign Direct Investment” means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company;

Note:- In case an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below ten percent, of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI;

Explanation:

Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised;

Foreign Direct Investment

investment through equity instruments

- by a person resident outside India
- in an unlisted Indian company;
- or in **10% or more**
- of the post issue paid-up equity capital
- on a fully diluted basis of a listed Indian company;

In case an existing investment

- by a person resident outside India
- in equity instruments
- of a listed Indian company falls
- to a level below ten percent,
- of the post issue paid-up equity capital
- on a fully diluted basis, the investment shall continue to be treated as FDI;

Fully Diluted basis

Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised

- Example

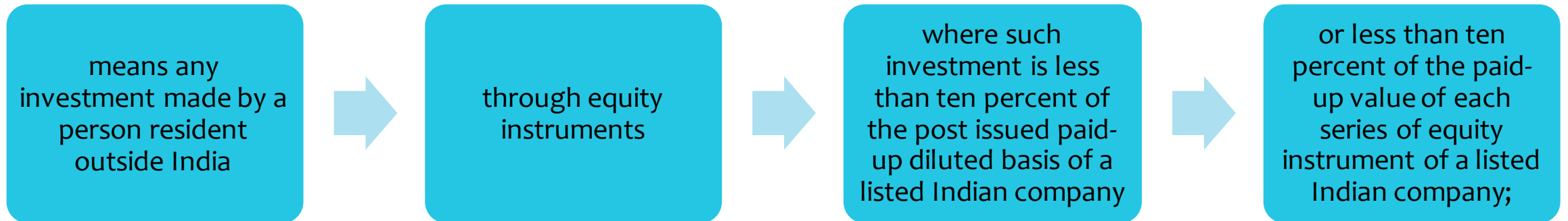
- No. of equity shares outstanding **50,00,000**

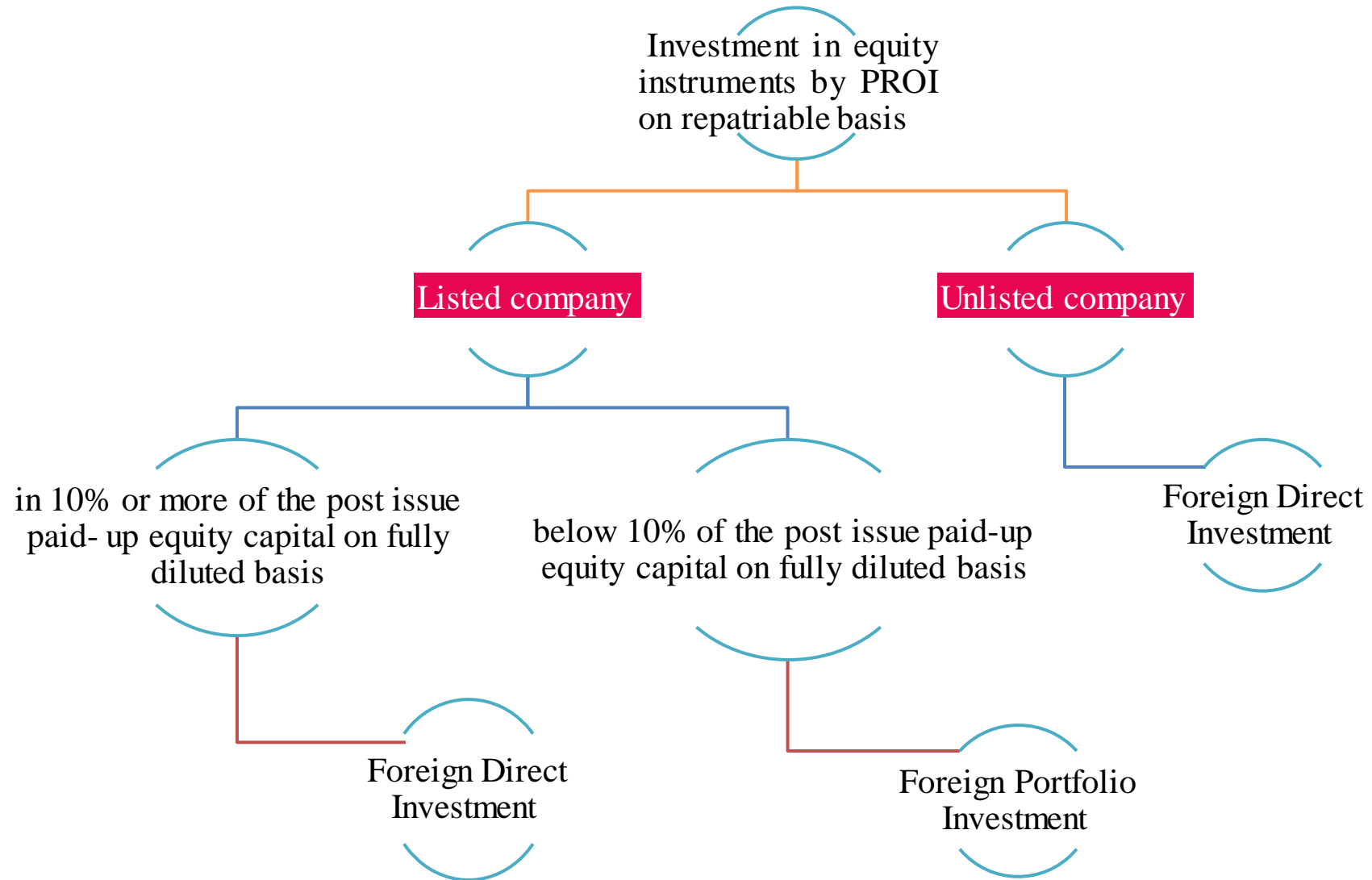
- No. of 12% convertible debentures of Rs. 100 each debenture is convertible into 10 equity shares - **100000**

- No. of equity shares to be taken for calculation of 10% = **$50,00,000 + 100000 * 10 = 60,00,000$**

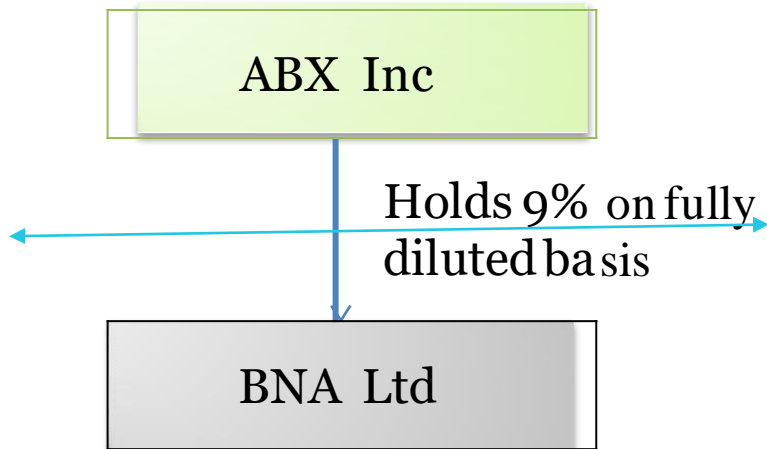
Foreign Portfolio Investment

(t) “Foreign portfolio investment” means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issued paid-up diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of equity instrument of a listed Indian company;





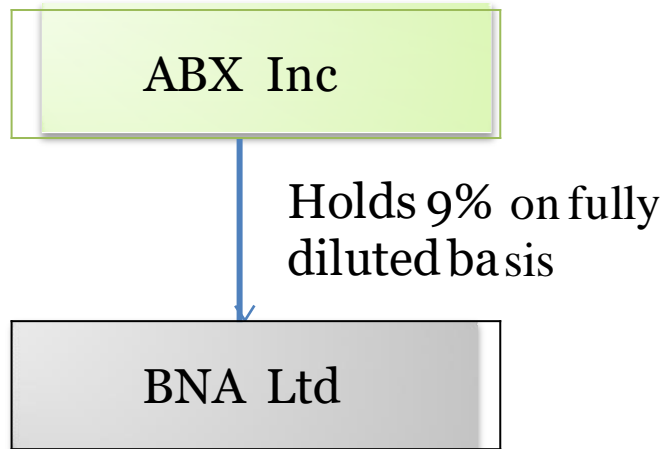
Example



Facts of the case

- ❖ BNA Ltd is an unlisted Indian Company.
- ❖ ABX Inc. is a company incorporated in USA
- ❖ ABX inc. holds 9% shares in BNA Limited in India
- ❖ What shall be holding of ABX Inc. shall be considered?

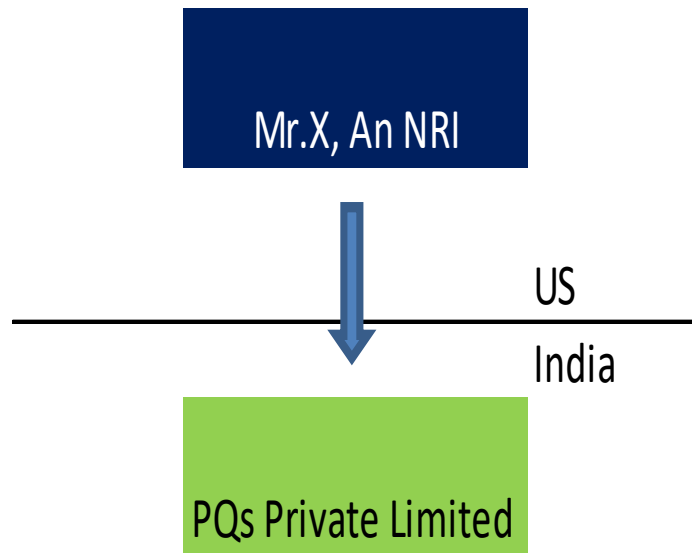
Example



Facts of the case

- ❖ BNA Ltd is an listed Indian Company.
- ❖ ABX Inc. is a company incorporated in USA
- ❖ ABX inc. holds 9% shares in BNA Limited in India
- ❖ What shall be holding of ABX Inc. shall be considered ?

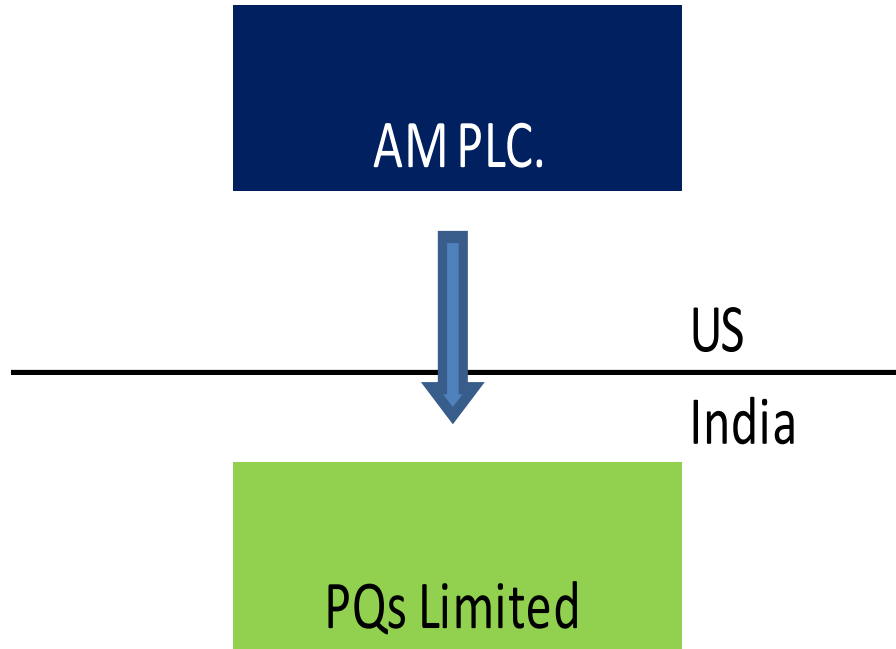
Example



Facts of the case

- Mr. X, an NRI
- PQs Limited is an Private limited Company
- NRI has made investment in PQS

Example

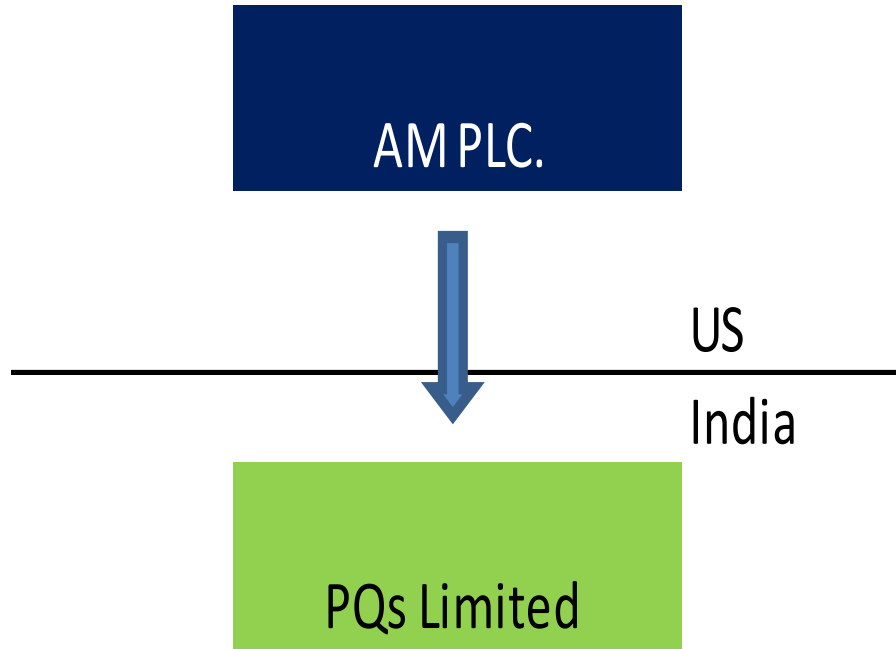


Facts of the case

- ❖ AMC PLC. is an US based co.
- ❖ PQs Limited is an Indian listed Company
- ❖ AMC PLC had 9% investment in PQS limited
- ❖ Subsequently AMC introduced another 2% in the company

- ❖ What are the consequences ?

Example

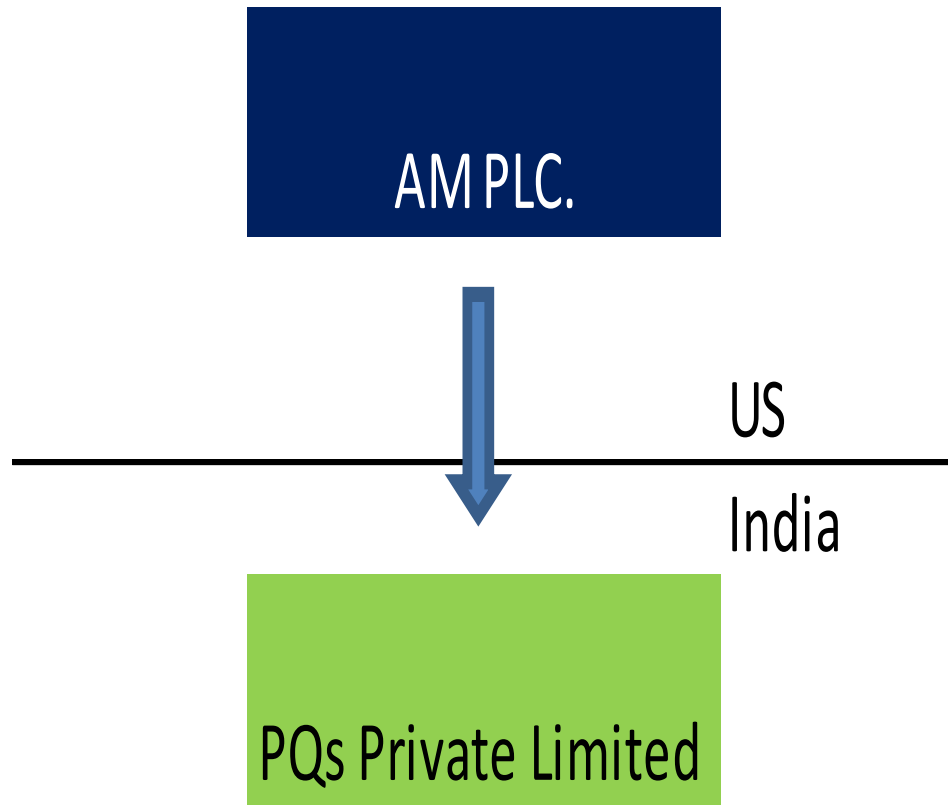


Facts of the case

- AMC PLC. is an US based co.
- PQs Limited is an Indian listed Company
- AMC had 9% investment
- Subsequently AMC introduced another 2% in the company

What is after one month the AMC Plc. Disinvests?

Example

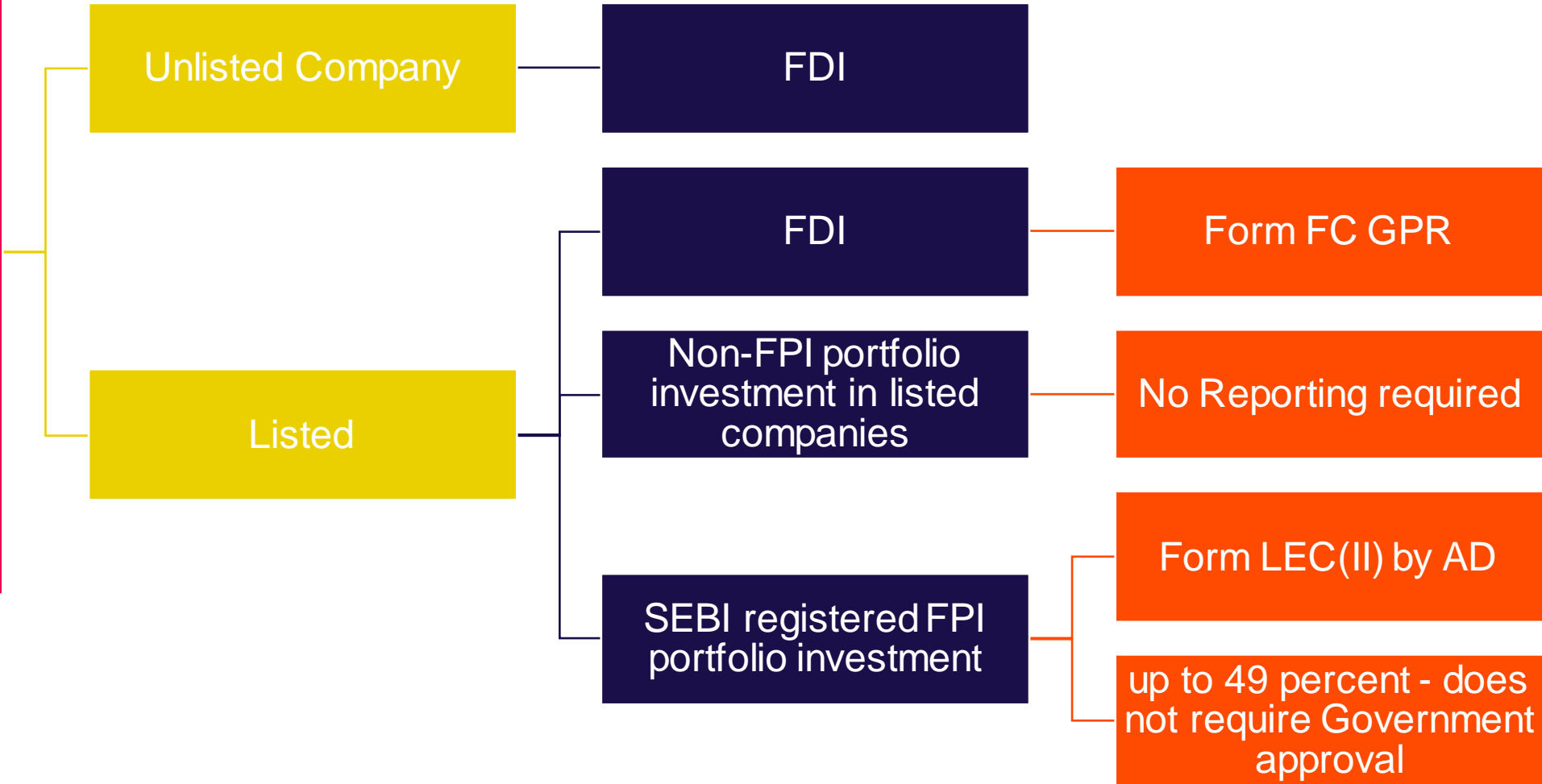


Facts of the case

- AMC PLC. is an US based co.
- FPI had 9% investment
- Subsequently AMC introduced another 2% in the company

What if PQs is a private Limited company?

Investment



Equity Instruments with optionality clause

Equity instruments can contain an optionality clause

subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher,

but without any option or right to exit at an assured price.

FAQs

Whether the foreign investment will be classified as FDI or FPI based on the schedule under which the investment is being made.

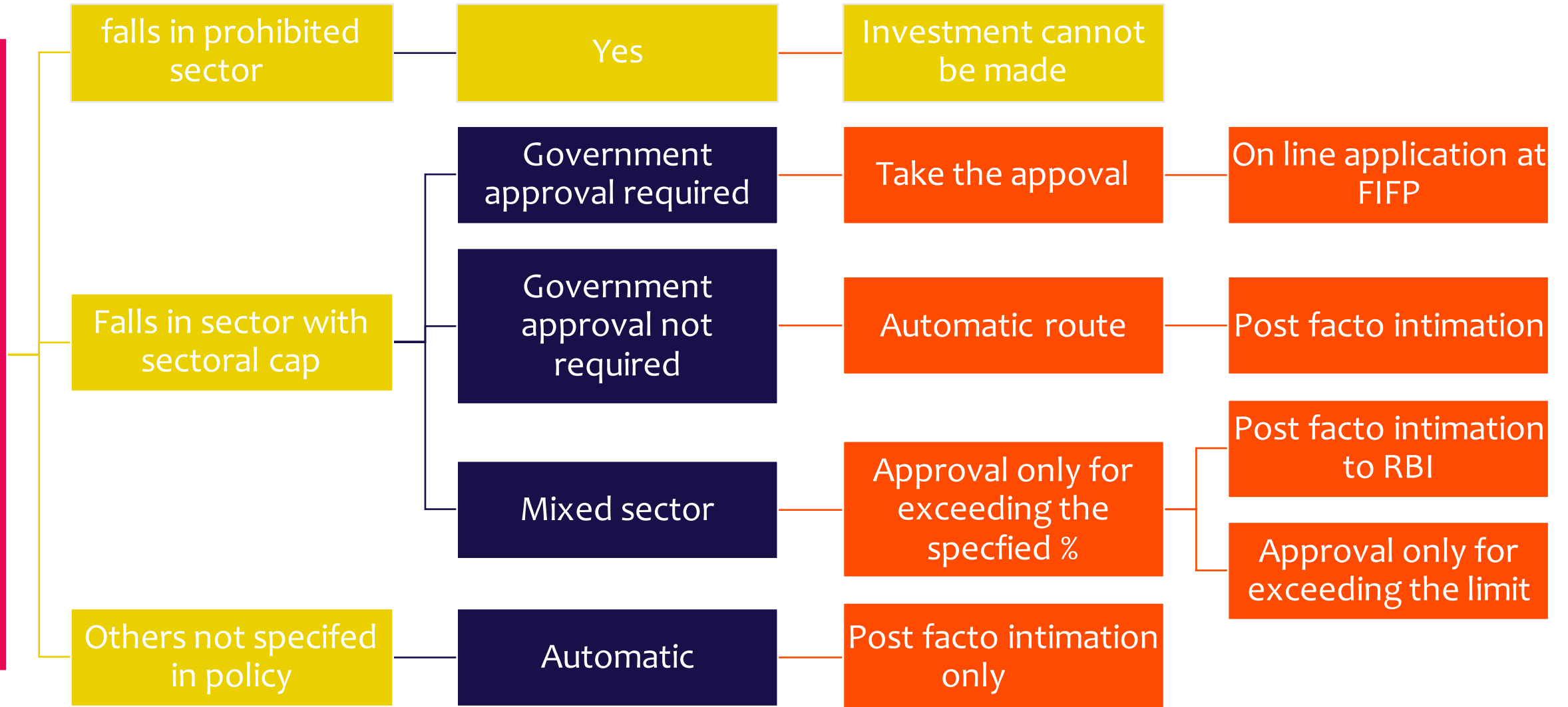
Answer: No, FDI and FPI are agnostic from the point of view of the schedule under which investment has been made. It is the percentage which defines whether it is direct or portfolio investment.

Whether any approval is required for an entity which has received foreign investment under automatic route and subsequently the sector was brought under approval route

Answer: As long as the foreign shareholding in the entity remains the same and there is no corporate action pursuant to the sector being brought under approval route, approval is not required.

Sectoral Cap

Investment in India



Prohibited Sectors

- Lottery business (including government/private lottery, online lotteries, etc.)
- Gambling and betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real estate business** or construction of farm houses
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business, gambling and betting activities.

**'Real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

Permitted Sectors

Sector #	% of Equity / FDI Cap ##	Entry Route
Agriculture & Animal Husbandry	100%	Automatic
Plantation (tea, coffee, rubber, cardamom, palm oil tree and olive tree)	100%	Automatic
Mining and exploration of metal and non-metal ores	100%	Automatic
Coal and Lignite	100%	Automatic
Mining and mineral separation of titanium bearing minerals and ores, its value additions and integrated activities	100%	Government
Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies	100%	Automatic

In that particular sector only certain type of activity/ies are allowed, subject to provisions of the FDI policy and conditions.

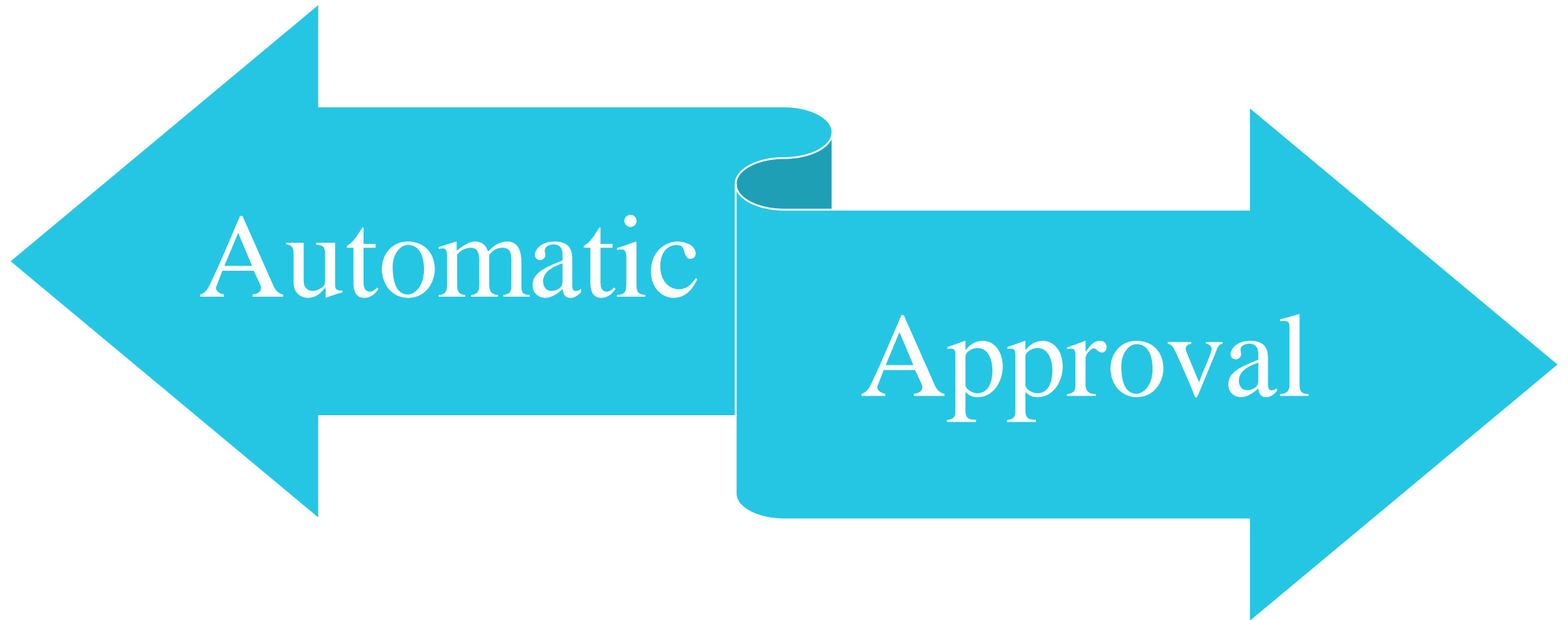
% of Equity / FDI Cap indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities.

Sector #	% of Equity / FDI Cap ##	Entry Route
Telecom Services	100%	Automatic upto 49% Beyond 49% - Government route
E-commerce activities	100%	Automatic
Single Brand Product Retail Trading	100%	Automatic
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway infrastructure	100%	Automatic
Asset Reconstruction Company	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
Banking- Public Sector subject to Banking Companies Act, 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government

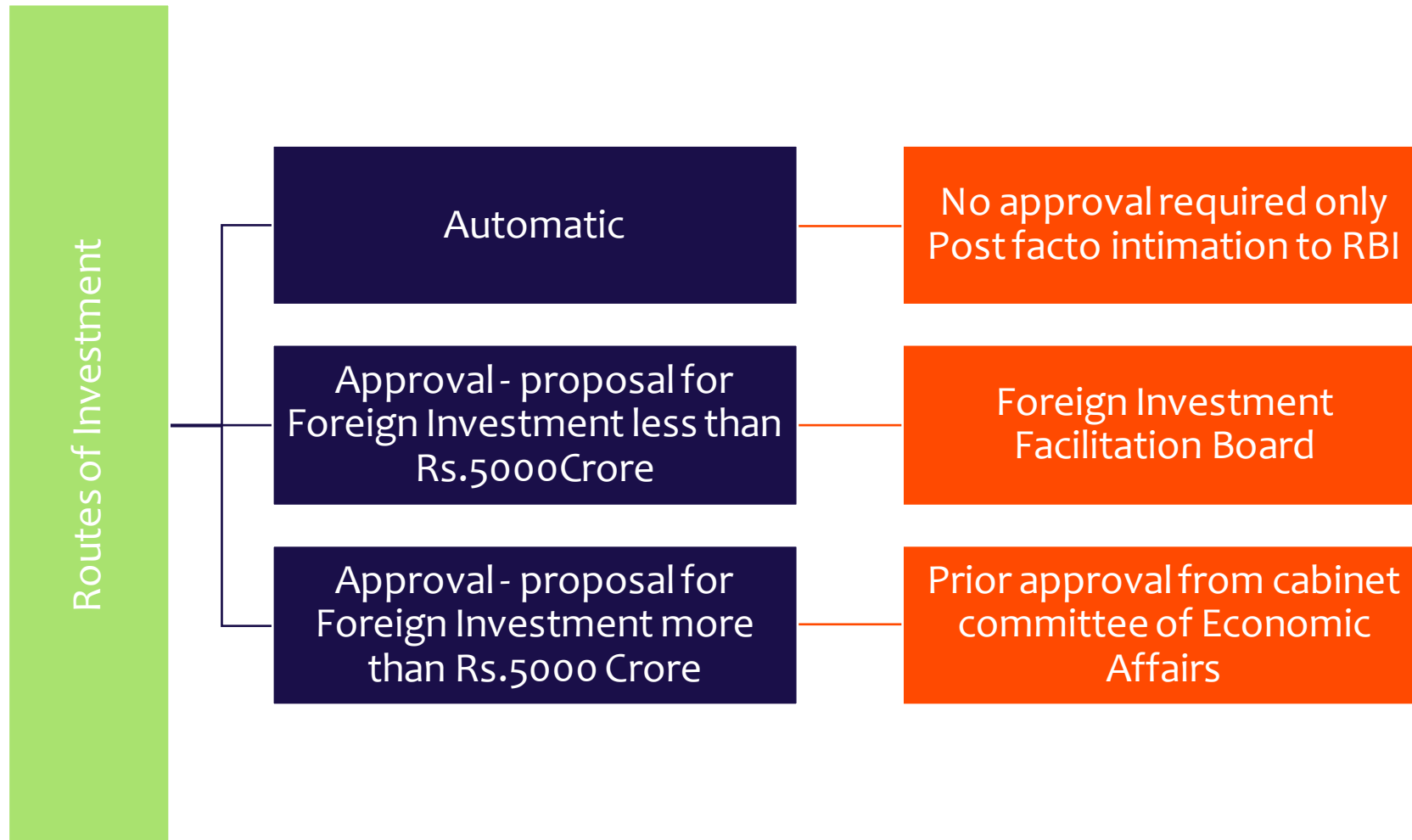
Sectoral Caps

- There are 3 categories with different sectoral caps –
 - upto 26%, upto 49% and upto 74%.
 - For multi-brand retail trading, the sectoral cap is 51%.
 - For Public sector banks, the sectoral cap is 20%.

Sector #	% of Equity / FDI Cap ##	Entry Route
Telecom Services	100%	Automatic upto 49% Beyond 49% - Government route
E-commerce activities	100%	Automatic
Single Brand Product Retail Trading	100%	Automatic
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway infrastructure	100%	Automatic
Asset Reconstruction Company	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.
Banking- Public Sector subject to Banking Companies Act, 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20%	Government



Entry routes



Government Route

“Government approval” means the approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and / or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be;

Reporting requirements in case of Issue

Form	Purpose	To be filed with	Timeline
Advance Remittance Form (ARF):	Reporting of amount of consideration received for issue of capital instruments and where such issue is reckoned as Foreign Direct Investment.	Discontinued. Merged with FC-GPR	N.A
Form Foreign Currency-Gross Provisional Return (FC-GPR):	Reporting of equity instruments issued to a person resident outside India and where such issue is reckoned as Foreign Direct Investment. Issue of 'participating interest/ rights' in oil fields shall be reported Form FC-GPR	Single Master Form	Within 30 days from date of issue of equity instruments/ participating interest/ rights' in oil fields

Announcements

FAQs. All AD banks are as well instructed to advise their clients to ensure correctness of entity master details.

New All applicants before raising any queries to RBI, may contact the respective AD bank as per the contact details provided under Contact Us. It may be noted that all Business user registrations as well as forms in SMF are processed at AD level. AD shall always be the first point of contact. All AD banks shall ensure that the queries from the applicants are answered correctly and in the timely manner.

New It has been observed that many entities have not provided correct details in the Entity Master. It is responsibility of the entity to provide correct details and is liable for the same. Every entity shall check their entity master and correct the same before making any filing in SMF. The change request for the same can be made as per Q9 of FAQs. If the forms are approved with incorrect details, the entity shall be responsible for the same.



Captcha Code is case sensitive

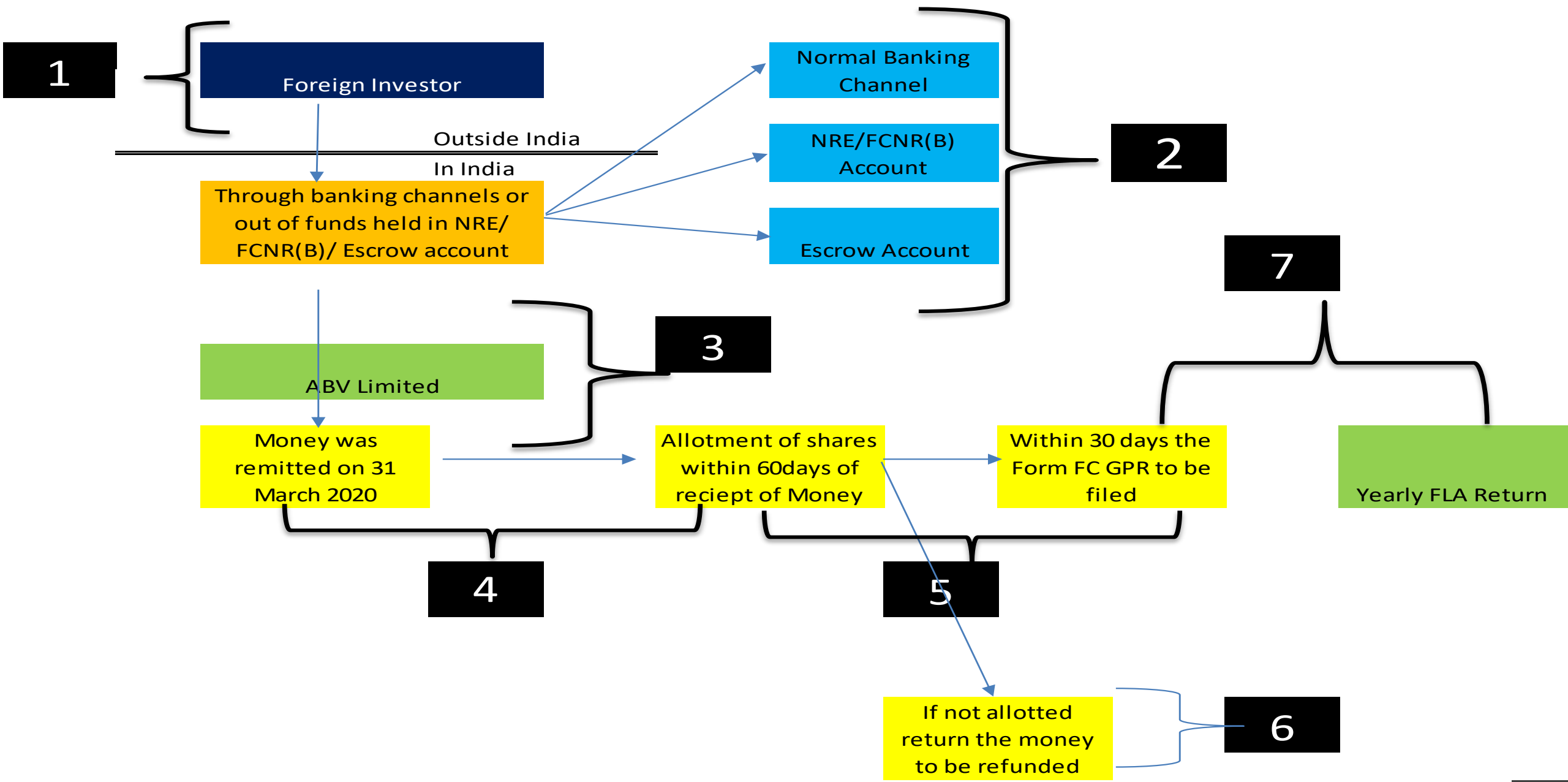
btv0xw

Login

Registration Form for [New Business User](#)

Registration Form for [New Entity User](#)

[Forgot Password ?](#)



Who cannot invest?

a person who is citizen of Bangladesh / Pakistan

Can invest in Indian Company only under Government route

Entity incorporated in Pakistan or Bangladesh

Can invest in Indian Company only under Government route

Cannot invest in following sectors

- defence, space, atomic energy
- Lottery, gambling, betting, casino;
- including foreign technology collaboration in any form.
- to ensure foreign companies do not maintain their trade interests in India through the trademark or licensing route.
- chit funds, nidhi company;
- TDRs, real estate business or construction of farm house;
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes;
- Activities/ sector not open for private investment
- Atomic energy, Railways.

Who cannot invest?

The Government of India has reviewed the Foreign Direct Investment (FDI) policy for decreasing opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 pandemic and amended existing FDI policy as contained in Consolidated FDI Policy, 2017.

Present Position

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

A citizen/entity of Bangladesh can invest only under the Government route.

A citizen/entity of Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

Revised Position

A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.

Further, a citizen/entity of Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

In the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the above, such subsequent change in beneficial ownership will also require Government approval.

Case Study

- XYZ LLC wants to enter the Indian economy in the agriculture sector i.e. to grow wheat. After studying the state wise agricultural output, they decided to do business in Punjab.
- Can they make such an investment in India

Case Study

- XYZ LLC wants to enter the Indian economy in the agriculture sector i.e. to grow wheat. After studying the state wise agricultural output, they decided to do business in Punjab.

They can bring 100% FDI through the Automatic route and do not need the prior approval of the govt.

Case Study

- RMT is a weapon manufacturer and after doing a trade worth billion in Russia, wish to enter the Defence industry in India. The company is evaluating the options in India.

Case Study

- RMT is a weapon manufacturer and after doing a trade worth billion in Russia, wish to enter the Defence industry in India. The company is evaluating the options in India.
- **They can invest fully in**
 - **but only up to 74% through Automatic route**
 - **and beyond 74%, they would have to require the approval of the government.**



**Relevant part of
Form FC GPR**

Reserve Bank of India
 Foreign Currency Convertible Bonds (FCCBs)

100% 95% 90% 85% 80% 75% 70% 65% 60% 55% 50% 45% 40% 35% 30% 25% 20% 15% 10% 5% 0%

Whether the foreign investment is made by a quality person/manufacturing unit/merchandise/technology based? Yes No

FC-QPR Form

New Issue Foreign Investment Renewal of Issue Extension of Issue

Year of Issue Value of Issue Industry/QPR Reference Number (or Name of Subsequent FDI)

Whether the change in the shareholding pattern during the transaction is reported for already been accounted in the previous issue shareholding pattern? No Yes

Issue details

- Preferential allotment/ Private placement
- Rights
- Bonus
- Merger/ demerger /Amalgamation
- Subscription to Memorandum of Association
- Conversion of Convertible notes
- Capital Instruments issued to FVCIs
- Shares issued upon exercise of ESOPs/ sweat equity shares
- Issue of participating interest /rights in oil fields



Type of Capital Instrument

Particulars Of Issue/Allotment to Each Investor

Particulars of issue (Capital instrument as issued to that foreign investor)

Type Of Capital Instrument *

Number of Instruments *

Conversion Ratio (Number of equity shares per CCPS/CCDs) *

 :

Number of Equity Shares on fully diluted basis *

Face Value *

Premium *

Issue Price per instrument *

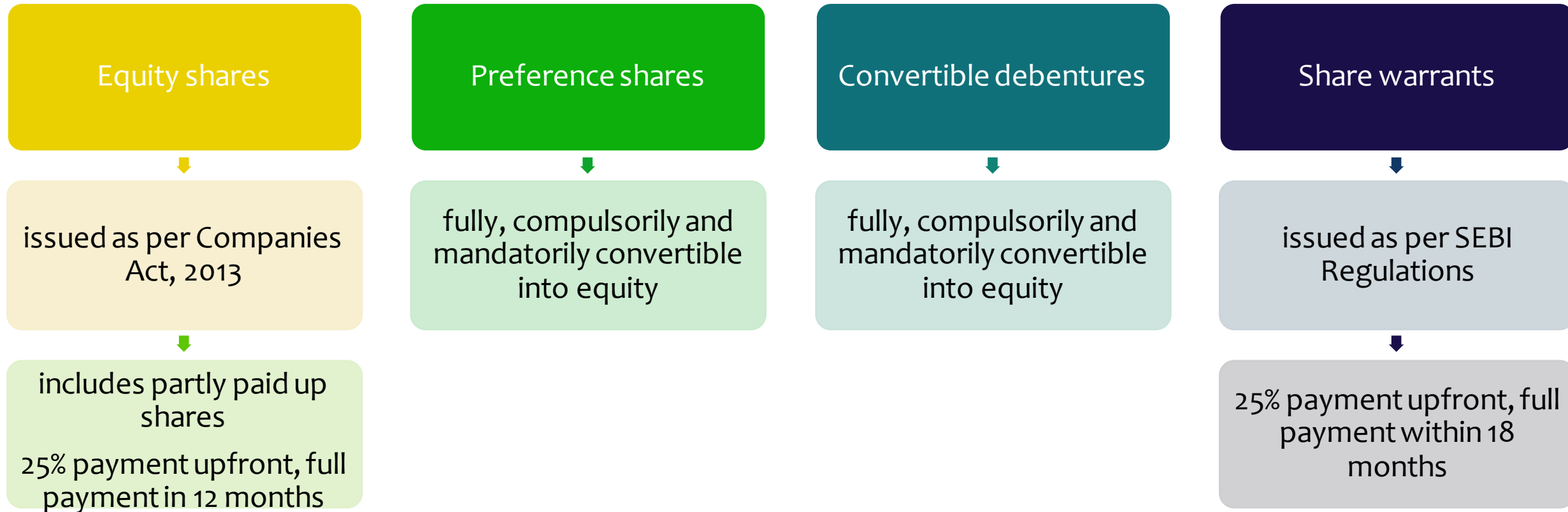
Amount Of Consideration *

+ Add Issue Particular

Type Of Capital Instrument	Number of Instruments	Conversion Ratio(Applicable in case of CCPS/CCD/Share Warrants)	Number of Equity Shares on fully diluted basis	Face Value	Premium	Issue Price per instrument	Amount of Consideration	Edit/Update
----------------------------	-----------------------	---	--	------------	---------	----------------------------	-------------------------	-------------

No records found.

Equity Instruments under Non-Debt Instrument Rules



Formerly regarded as Capital Instruments under TISPRO Regulations, 2017



Valuation Considerations

Particulars Of Issue/Allotment to Each Investor

Particulars of issue (Capital instrument as issued to that foreign investor)

Type Of Capital Instrument *

Number of Instruments *

Conversion Ratio (Number of equity shares per CCPS/CCDs) *

 :

Number of Equity Shares on fully diluted basis *

Face Value *

Premium *

Issue Price per instrument *

Amount Of Consideration *

+ Add Issue Particular

Type Of Capital Instrument	Number of Instruments	Conversion Ratio(Applicable in case of CCPS/CCD/Share Warrants)	Number of Equity Shares on fully diluted basis	Face Value	Premium	Issue Price per instrument	Amount of Consideration	Edit/Update
----------------------------	-----------------------	---	--	------------	---------	----------------------------	-------------------------	-------------

Remittance Details

Name of the AD Bank through whom remittance is received

Address of the AD Bank

Town/City

Pin Code

State

Mode of Payment *

Whether the remitter is different from the foreign investor *

Yes No

Mode of Payment

Investment Details

Total Amount of Inflow (Rs)

Total Amount for which Capital Instruments has been issued (Rs)

Mode of Payment

Cash

By way of inward remittance

By debit to NRE/FCNR account

Debit to Escrow Account

Non Cash

Conversion of paybles

Share SWAP

Pre-operative / pre-incorporation expenses

Import of capital goods

Royalty / lump sum / technical know-how

Any other legitmiate dues

External Commercial Borrowings

Not specified specifically in NDI Rules, 2019

- What about the mode of payment where there is no remittance

- If the allotment is of Rs 10 crores and the investor, lets say is an NRI, has paid the same as, Rs 5 crore through inward remittance and Rs 5 crore as NRE/FCNR.

Format of the declaration :

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY:

We hereby declare that:

1. We comply with the procedure for issue of capital instruments as laid down under Foreign Exchange Management (Transfer or issue of security by person resident outside India) Regulations, 2017 notified vide [Notification No. FEMA 20\(R\)/2017-RB dated November 07, 2017](#), as amended from time to time.

2. The investment is within the sectoral cap / statutory ceiling permissible under the regulations, ibid and in compliance with the attendant conditions.

3. The capital instruments issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of de-merger or otherwise of an Indian company is duly approved by a court in India. *(strike- out if not applicable)*

4. The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations

5. We enclose the following documents in compliance with these regulations:

5. We enclose the following documents in compliance with these regulations:

(i) A certificate from our Company Secretary as in the specified format.

(ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant / cost accountant or any other person as authorized under FEMA 20 (R) indicating the manner of arriving at the price of the shares issued to the persons resident outside India *(wherever applicable)*

(iii) All other necessary documents as applicable to the issue.

(Signature of the Applicant)* : _____

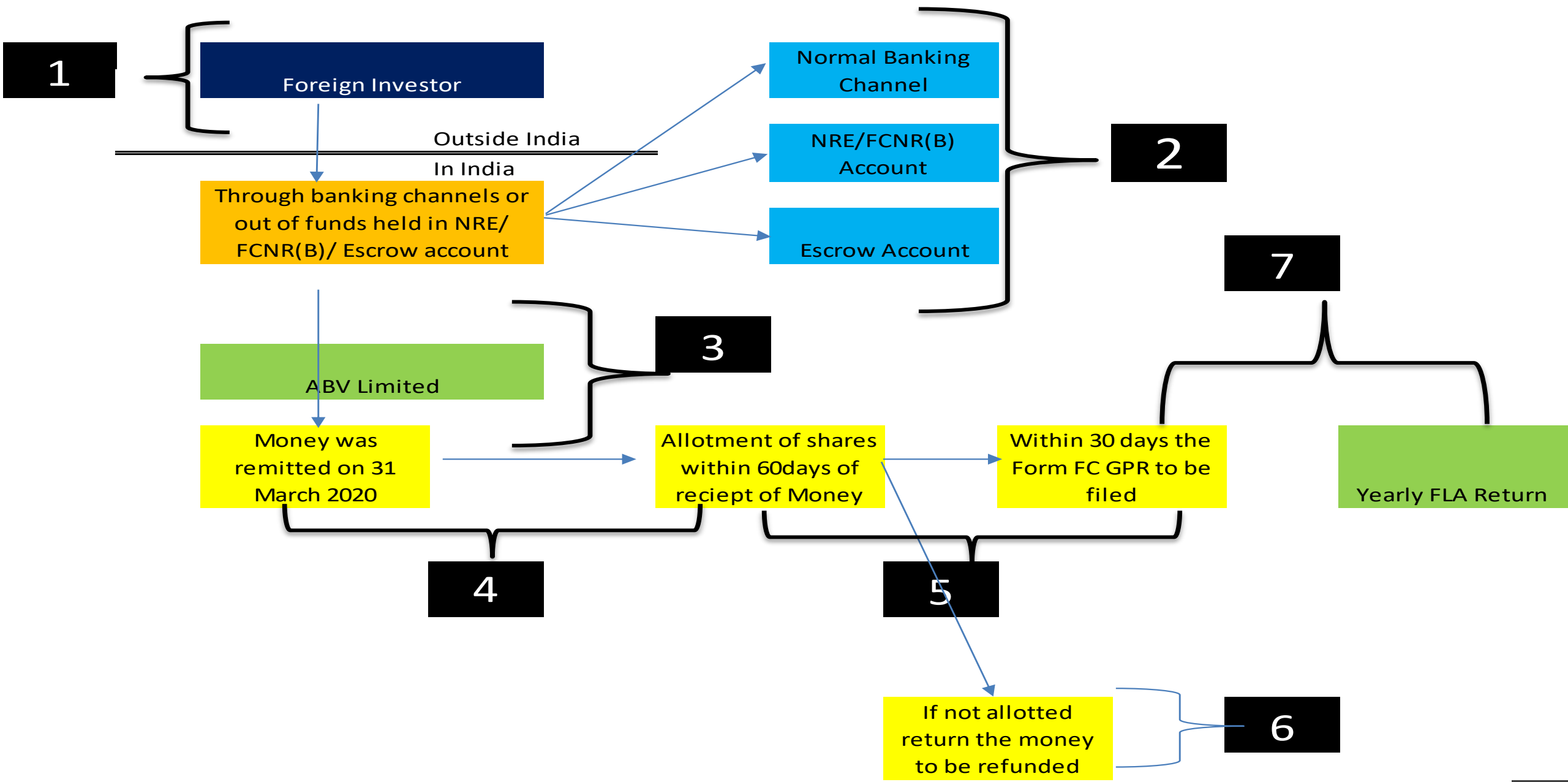
(Name in Block Letters) : _____

(Designation of the signatory) : _____

Place:

Date:

(* To be signed by Managing Director/Director/Secretary of the Company



Annual Return on Foreign Liabilities and Assets (FLA):

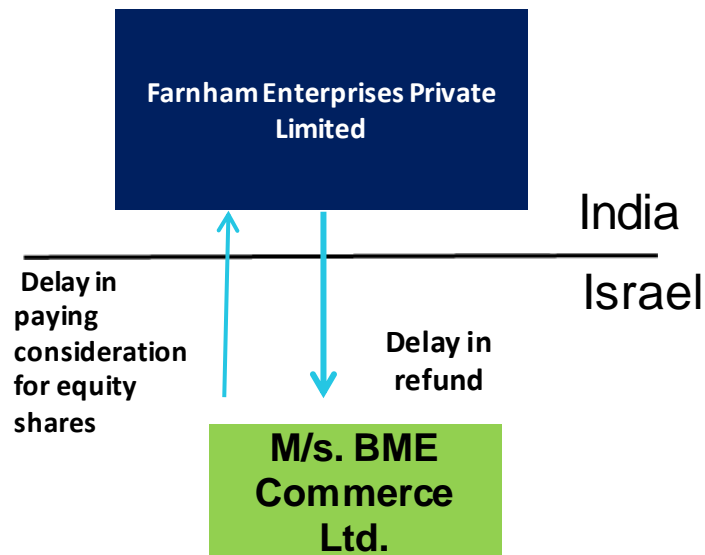
to be filed by Indian company/LLP
with RBI

which has received FDI/ capital
contribution in the previous year(s)
including the current year;

On or before July 15, every year;

Online on RBI flair portal
(<https://flair.rbi.org.in/fla/>)

CA No NDL 526/2019- Farnham Enterprises Private Limited



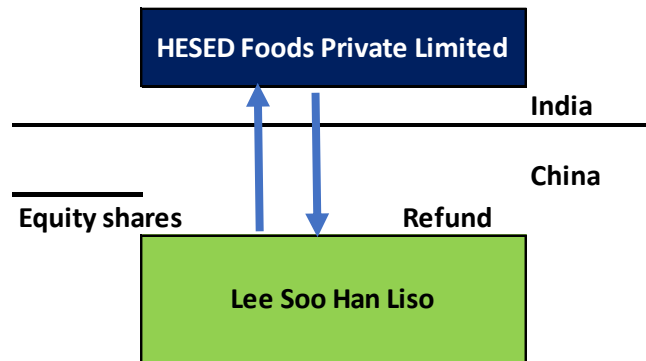
- (a) The applicant company, incorporated on January 16, 2018, is engaged in the business of other non-specialised wholesale trade n.e.c..
- (b) The applicant issued 1,48,500 equity shares on January 17, 2018 to the subscriber to its Memorandum of Association, M/s B.M.E. Commerce Ltd., Israel. The consideration for the said shares amounting to ₹14,85,000/- was received in two tranches with delay of 1 month & 6 days and 7 months & 19 days, beyond the prescribed period, as detailed below, in contravention of paragraph 2(2) of Schedule 1 to FEMA 20(R)/2017-RB, as then applicable.

Sl.No.	Date of issue	Amount (₹)	Date of receipt
1	17.01.2018	7,66,610.02	23.02.2018
2	17.01.2018	7,18,389.98	05.09.2018

• **Total 14,85,000.00**

- Contravened the provisions of paragraph 2(2) of schedule 1 to FEMA 20[®]/2017-RB, as then applicable.
- Contravened paragraph 2(3) of schedule 1 to FEMA 20[®]/2017-RB.

CA NO 111/2019 HESED FOODS PRIVATE LIMITED

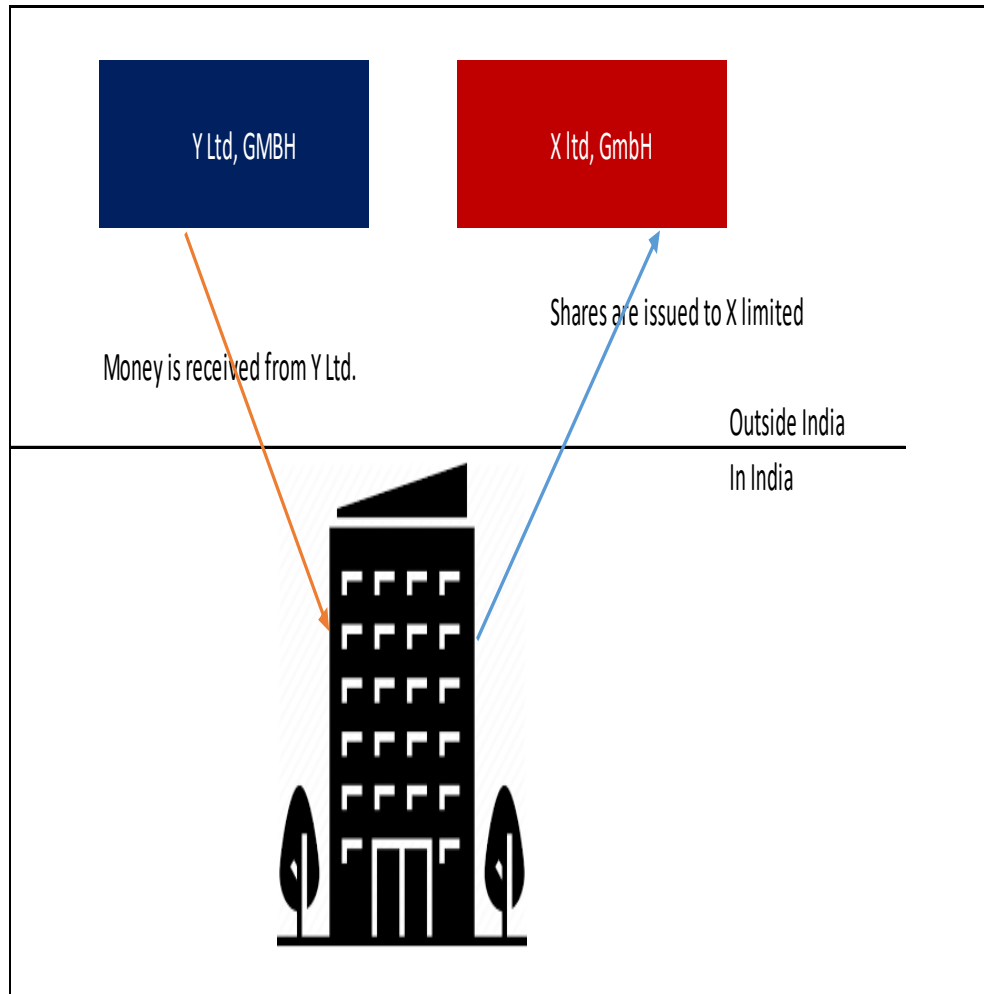


- The company had received one foreign inward remittances towards subscription to equity shares from a foreign investor, Lee So Han Liso, Hong Kong but the company had not allotted any share to the foreign investor and returned the money as given in Table 1 below:

Table 1: Allotment of shares/refund of share application money

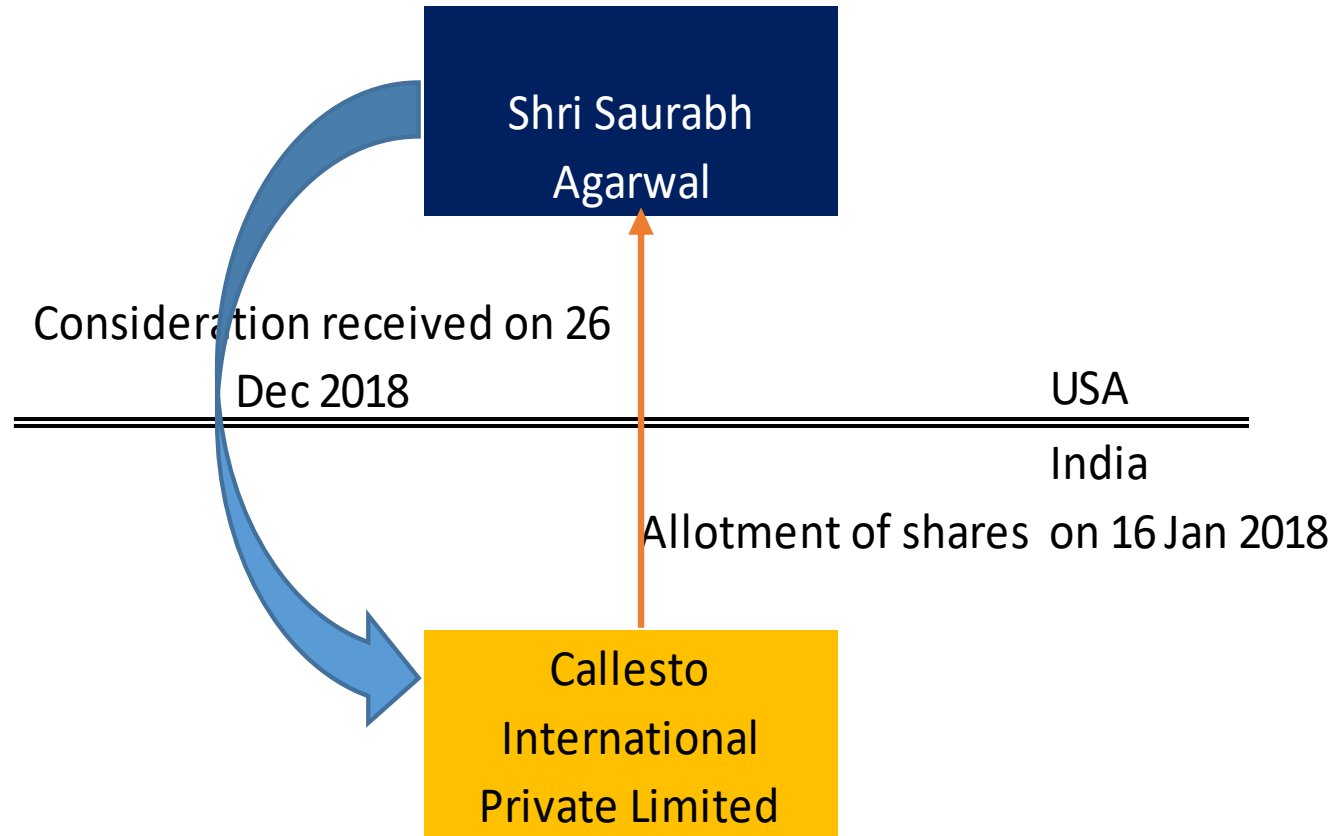
S. No.	Name of Investor	Inflow (INR)	Date of inflow	Date of allotment of shares	Amount for which shares issued (INR)	Refund Amount (INR)	Date of refund	Delay in refund beyond 75 days
1	Lee So Han Liso, Hong Kong	1,92,863.00	19-Jul-18	N.A	N.A	1,92,863.00	07-May-19	217

Issuance of shares to third party

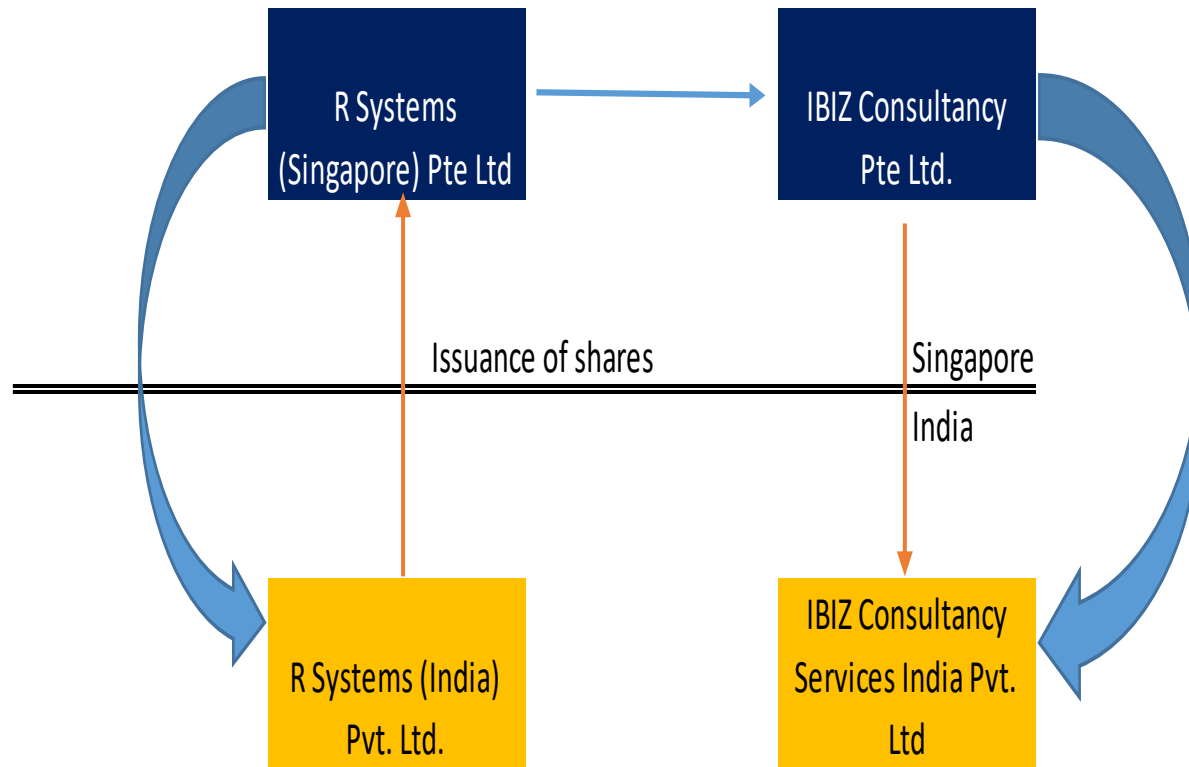


- In case the Indian company issues shares to a person resident outside India other than to the person resident outside India from who the inward remittance has been received, the form FC-GPR has to be filed along with the following documents:
- (a) KYC reports of both the remitter and the beneficial owner.
- (b) A no-objection certificate (NOC) from the remitter for issuing capital instruments to the beneficial owner mentioning their relationship.
- (c) A letter from the beneficial owner explaining the reason for the remitter making remittance on its behalf.
- (d) A copy of agreement / board resolution from the investee company for issuing capital instruments to a person other than from who the remittance has been received.

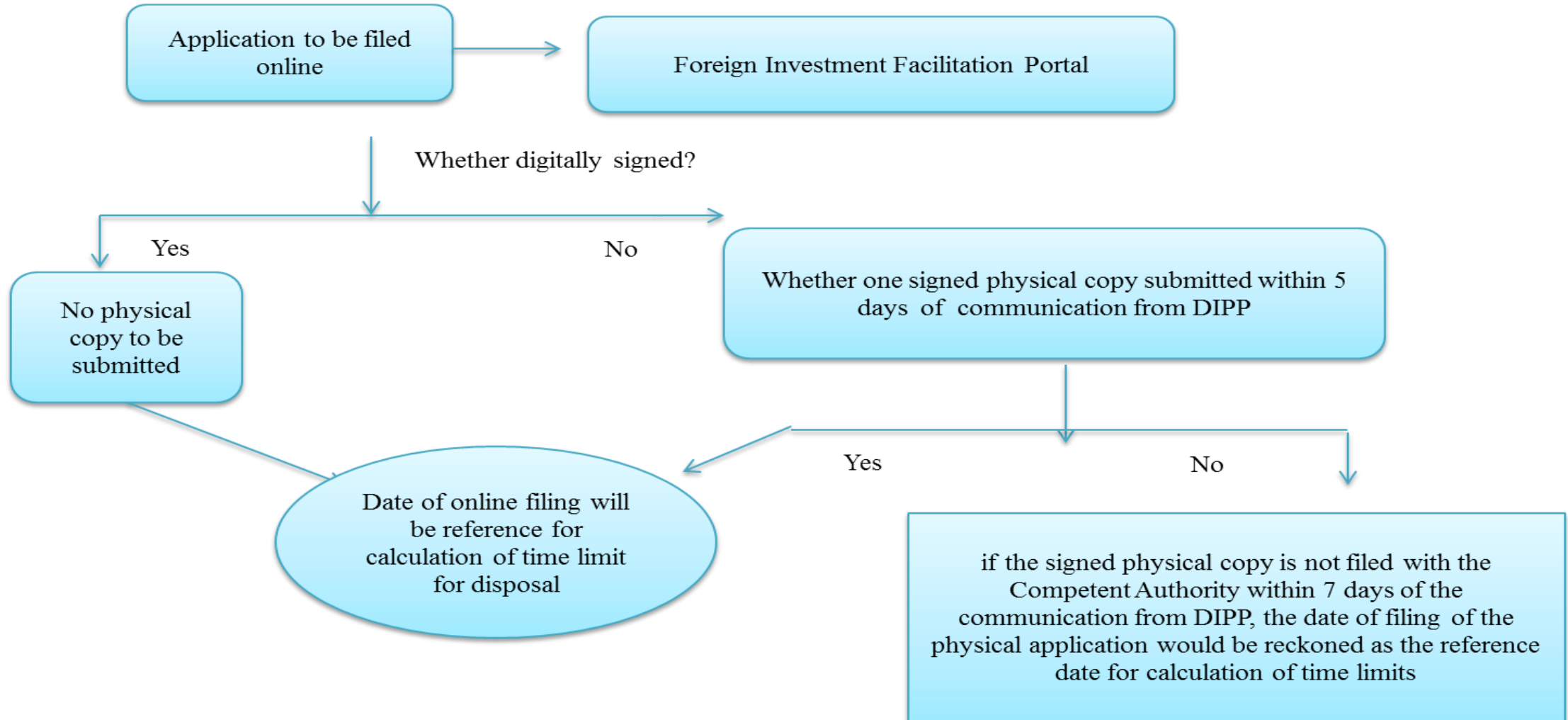
Case Study



Case Study



Procedure under Approval Route

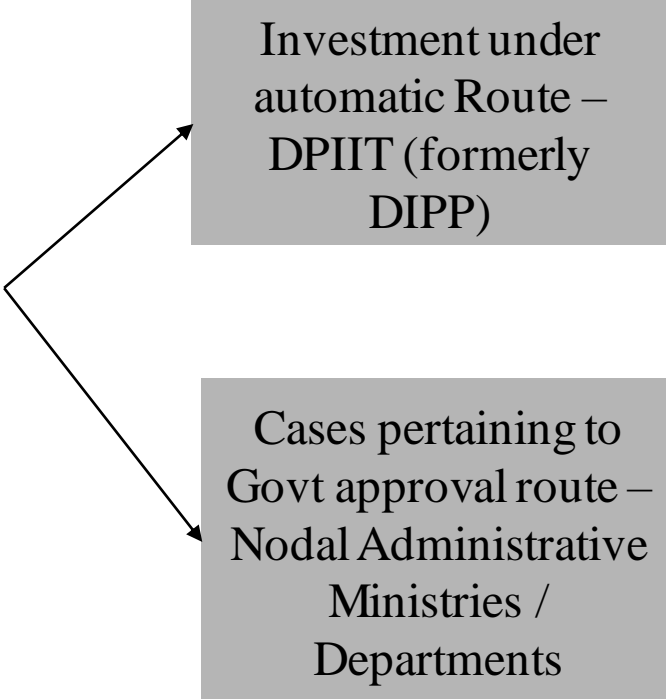


Competent Authorities

Sr.No	Activity / Sector	Administrative Ministry / Department
1	Mining	Ministry of Mines
2	Defence	
	a) Items requiring Industrial Licence under the industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP	Department of Defence Production, Ministry of Defence
	b) Manufacturing of small Arms and Ammunitions covered under Arms Act 1959	Ministry of Home Affairs
3	Broadcasting	
4	Print Media	Ministry of Information & Broadcasting
5	Civil Aviation	Ministry Of Civil Aviation
6	Satellites	Department of Space
7	Telecommunication	Department of Telecommunications

Sr. No	Activity / Sector	Administrative Ministry / Department
8	Private Security Agencies	
9	Applications involving investments from countries of concern which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time	Ministry of Home Affairs
10	Trading (Single, Multi brand and Food Product Retail Trading)	
11	FDI proposals by Non-Resident Indians (NRIs) / Export Oriented Units (EOUs) requiring approval of the government	Department of Industrial Policy & Promotion

Amended vide P.N. 01/2018 (not effective yet)



Proposals requiring security clearance

Investments in

- Broadcasting
- Telecommunication
- Satellites - establishment and operation
- Private Security Agencies
- Defence
- Civil Aviation
- Mining & mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.

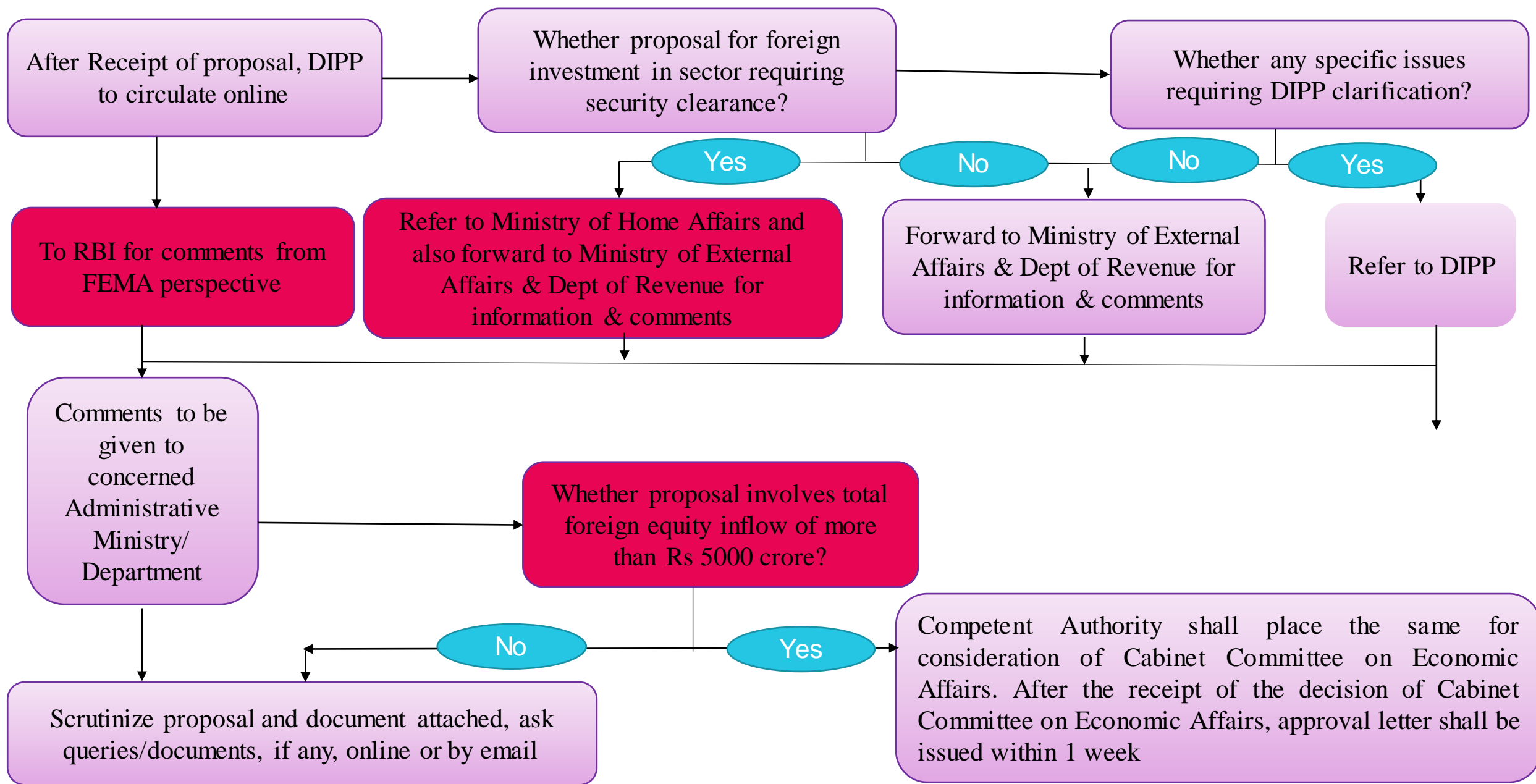
Investments from Pakistan and Bangladesh

In respect of applications in which there is a doubt about the Administrative Ministry/Department concerned, DPIIT shall identify the Administrative Ministry/Department where the application will be processed.

Security clearance and comments from Ministry of Home Affairs (MHA)

within 6 weeks of online receipt of the proposal

If not in position to revert in 6 weeks, will inform concerned administrative Ministry/Department of the expected time frame



Approval/rejection letters will be sent online by the Competent Authority to the applicant, consulted Ministries/Departments and DIPP.

Timelines for approval

Sr. No	Action Points	Time Period	Cum Time Period
1	Dissemination of Investment Proposal by DIPP to Concerned Ministry/Department	2 days	
2	Time for submission of signed physical copy of the proposal to the Competent Authority, if needed	5 days	1 Week
3	Initial scrutiny of the proposal and documents attached therewith, and seeking relevant additional information/documents from the applicant	1 Week	2 Week
4	Submission of clarification by DIPP on specific issues of FDI policy	2 Weeks	4 Week
5	Submission of comments by Consulted Ministry/ Department/ RBI/ Any Other Stakeholder	4 Weeks	6 Week
6	Submission of Comments by Ministry of Home Affairs on proposals requiring security clearance	6 Weeks	8 Week
7	Approval on proposals by Competent Authority for grant of approval	2 Weeks	
	Proposals not requiring security clearance		8 Week
	Proposal Requiring security clearance		10 Week

Note:

- i) Additional time of 2 weeks will be given to DIPP for consideration of those proposals which are proposed for rejection or where additional conditions which are not provided in the FDI policy are proposed to be imposed by the Competent Authority.
- ii) Time limits allocated exclude the time taken by applicants in removing deficiencies in the proposals/supplying additional information as may be required by the Competent Authority.

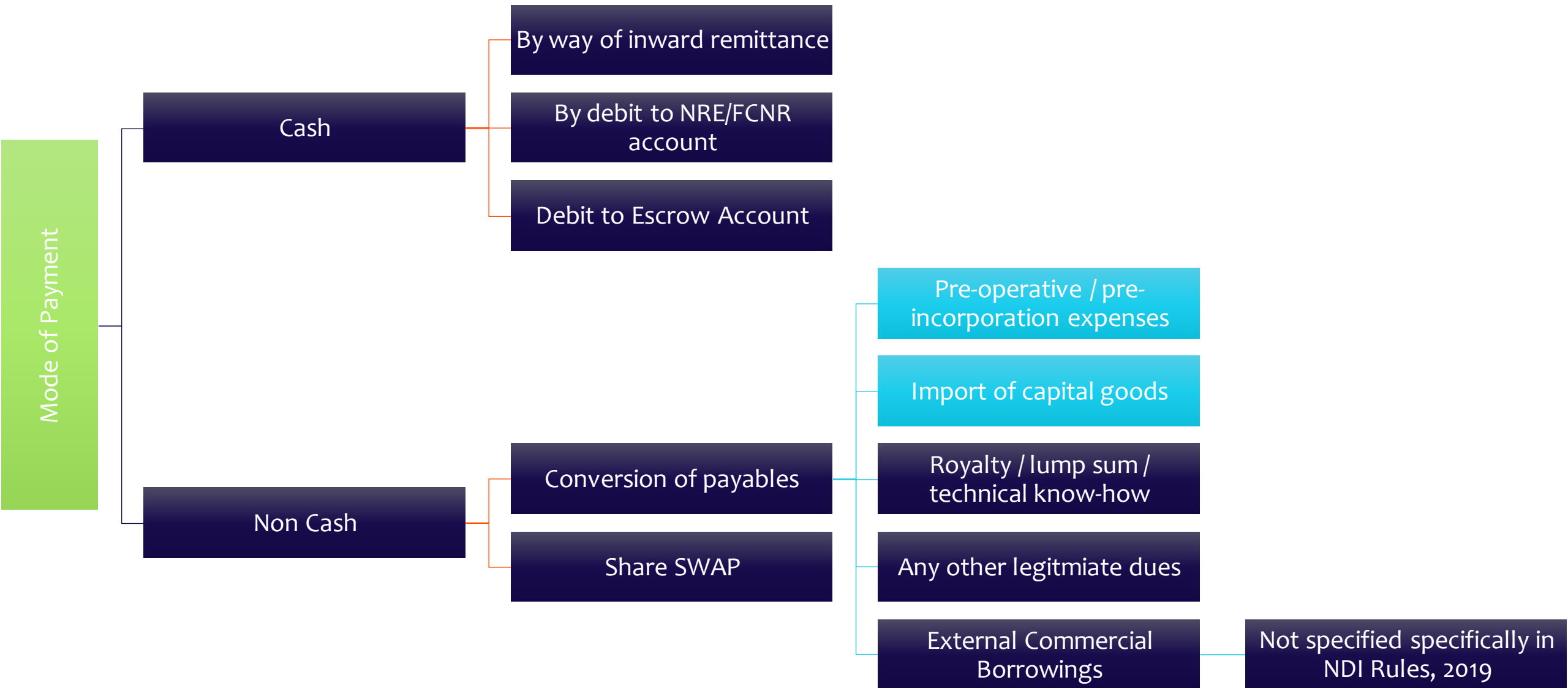
Rejection of proposal

In respect of proposals where the Competent Authority proposes to reject the proposals or in cases where conditions for approval are stipulated in addition to the conditions laid down in the FDI policy or sectoral laws/regulations, concurrence of DPIIT shall compulsorily be sought by the Competent Authority.

The monitoring of the compliance of conditions under the FDI approvals, including the past cases approved by the Government, shall be done by the concerned Administrative Ministries/Departments.

A modern office meeting room with a large window, a white table, and a TV. The room is bright and airy, with a large window on the left side. The window has a grid pattern and offers a view of a cityscape. A white table is in the foreground, with two small potted plants on it. A black TV is mounted on the wall to the right. The ceiling has exposed pipes and a light fixture.

Mode of payment



Pre-incorporation/ preoperative expense

WOS of non-resident entity

Engaged in sector under 100% automatic route; and
No FDI linked performance conditions

May issue equity instruments

Upto 5% of its authorised capital; or
USD 500000
Whichever is less

Against Pre-incorporation/ preoperative expenses

for expenditure relating to incorporation or necessary for commencement of operations

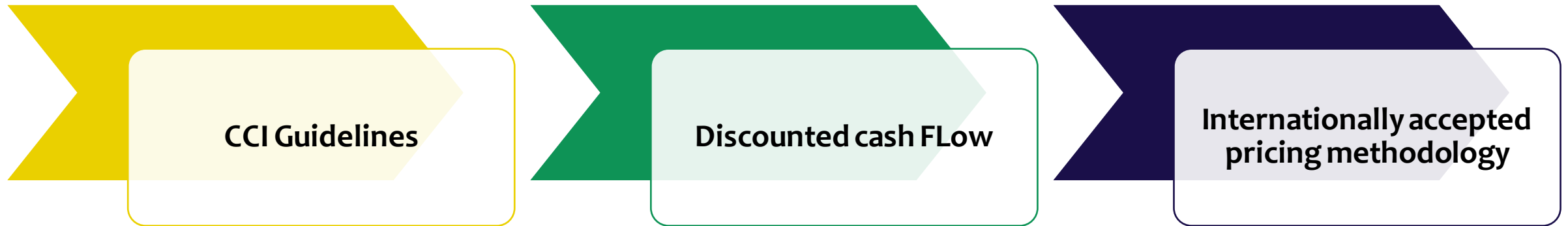
Conditions

WOS shall report in FC-GPR to RBI
Within 30 days from date of issue,
Cannot be issued later than 1 year from date of incorporation



At what price

Progress



Pricing Guidelines

Particulars	Listed Company	Un-Listed Company
Issue by an Indian company or transferred from a resident to non-resident- Price should not be less than	The price worked out in accordance with the relevant SEBI guidelines	The fair value worked out as per any internationally accepted pricing methodology for valuation on an arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant.
Transfer from a non-resident to resident- Price should not be more than	The price worked out in accordance with the relevant SEBI guidelines	The fair value as per any internationally accepted pricing methodology for valuation on an arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker.

Pricing Guidelines

Company going through delisting process

- as per SEBI (Delisting of Equity Shares) Regulations, 2009.

Swap of equity instruments

- valuation by SEBI registered Merchant Banker; or
- Investment Banker outside India

Shares by way of subscription to MOA

- at face value
 - subject to entry route & sectoral caps.

Share warrants

- pricing and price/conversion formula shall be determined upfront.

CCPS / CCDs

- Issue Price / Formula to be specified upfront at time of issue
- Price @ Conversion Date > FMV @ Issue Date

Pricing guidelines not applicable for investment in equity instruments by PROI on non-repatriation basis.

Pricing in case of Convertibles || Example

- CCD was issued in July 2019 when environment was good and hence the fair value was INR 100 at the date of issuance.
- The conversion is due in October 2020. Due to Covid the fair value in October is INR 40 at the time of conversion.
- However, due to the floor price being price at time of issue of convertibles, i.e. INR 100, the Investor will have to still accept the shares at a higher fair value being INR 100 and cannot be issued the shares at INR 40 thus limiting the benefit of convertible instruments

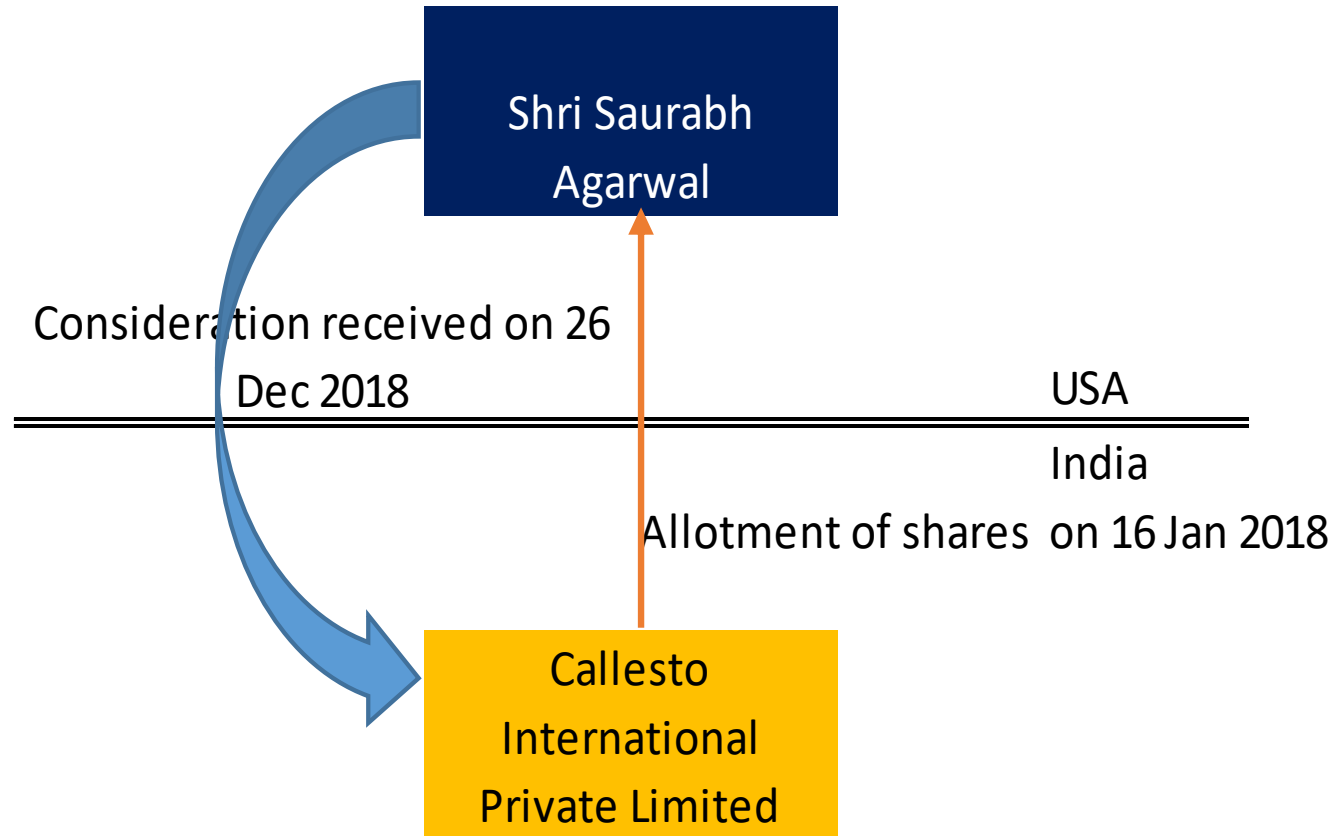
Deferred Consideration


- Rule 9(6)
- Not to exceed 25% of the total consideration
- Not exceeding 18 months from the date of transfer agreement
- Can be settled through escrow account or Indemnity

Indemnity

- 25% of the consideration
- Seller can indemnify
- Only if total consideration has been paid
- Not exceeding 18 months

Case Study





**Your Queries Please
Thankyou !!**

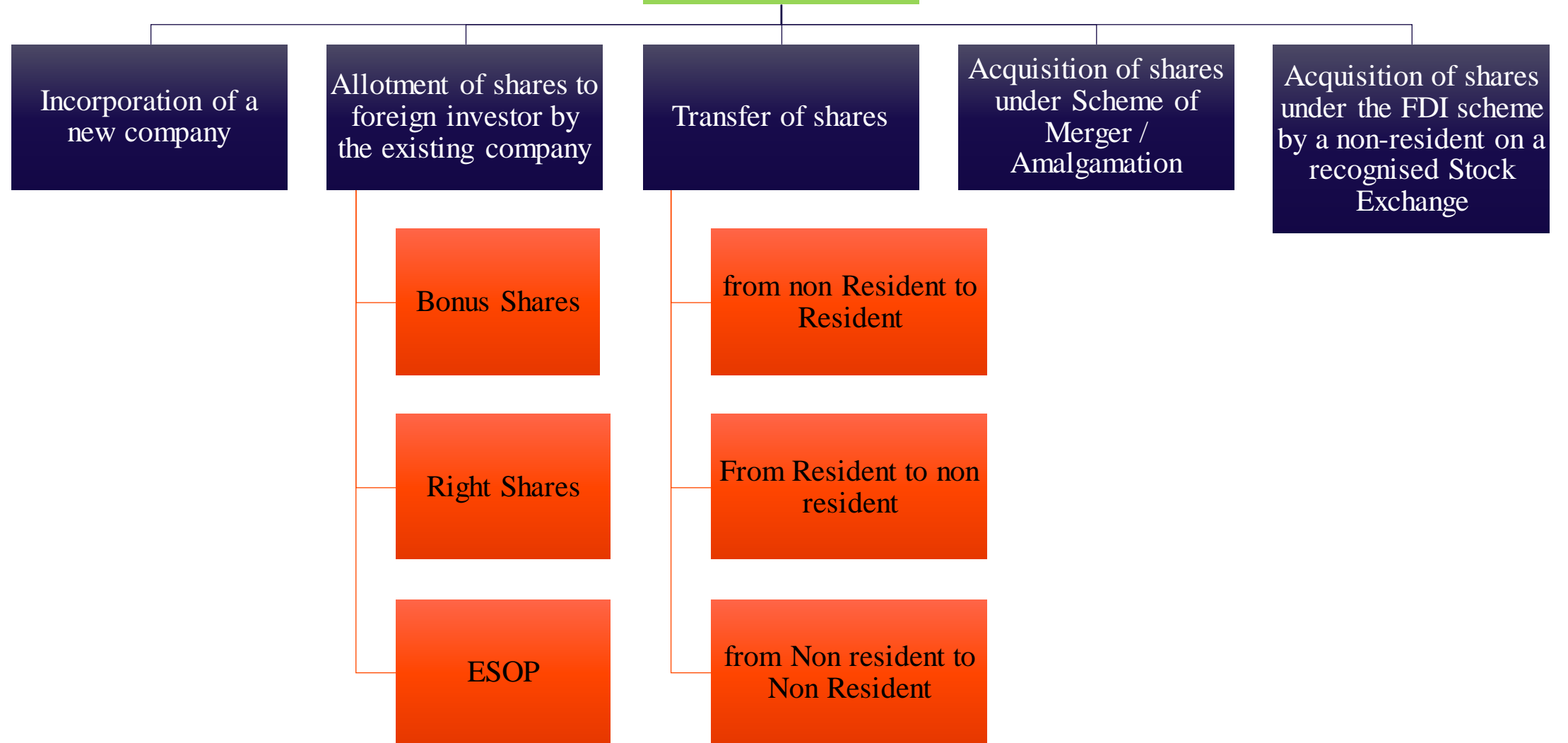
Sudha@taxpertpro.com

+91 9769033172

A modern office meeting room with a large window, a white conference table, and a TV. The room is bright and airy, with a white wall and ceiling. The window is large and multi-paned, offering a view of a city skyline. The conference table is long and white, with several black chairs around it. A small potted plant sits on the table. A large TV is mounted on the wall to the right. The text "MODES OF INVESTMENT" is overlaid on the right side of the image.

MODES OF INVESTMENT

Mode of Investment



Rights issue [Rule 7]

Sectoral cap

Offer made by Indian company is in compliance with the provisions of Companies Act, 2013

Initial acquisition as per Rules

Rights issue [Rule 7]

Rights issued when shareholder was PRII shall hold equity instruments on non-repatriation basis

Rights renounced by a resident shareholder in favor of PROI shall hold equity instruments on non-repatriation basis

Rights issue [Rule 7]

Pricing for rights issue Listed company – price determined by company

Unlisted company – shall not be less than the price offered to Person resident in India

The Department of Economic Affairs, Ministry of Finance, on **April 27, 2020** notified the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020,

a new Rule 7A has been introduced which states that

'a person resident outside India who has acquired a right from a person resident in India who has renounced it may acquire equity instruments (other than share warrants) against the said right as per pricing guidelines specified under Rule 21 of the NDI Rules'

Valuation || Rule 21

- As per Rule 21(2)(a)(ii) of the NDI Rules, unless otherwise prescribed in the NDI Rules, the price of equity instruments of an unlisted Indian company issued by such company to a person resident outside India shall not be less than the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant. Further, in case of equity instruments of a listed company, the price of such instruments has to be worked out in accordance with the guidelines prescribed by the Securities and Exchange Board of India or as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 in case of a company going through the delisting process.

ESOP || Rule 7

stock options/ sweat equity shares	Scheme	Sectoral cap	Government approval	employee was PRII at the time of grant
to employees/ directors resident outside India of the company, holding company, JV, WOS, subsidiaries	as per Act, 2013 or SEBI (SBEB) Regulations, 2014	As applicable	if investment by PROI in company is under approval route employee is citizen of Bangladesh/ Pakistan	Shares acquired on exercising shall be held on non- repatriation basis.

Mode of Investment

Transfer of shares

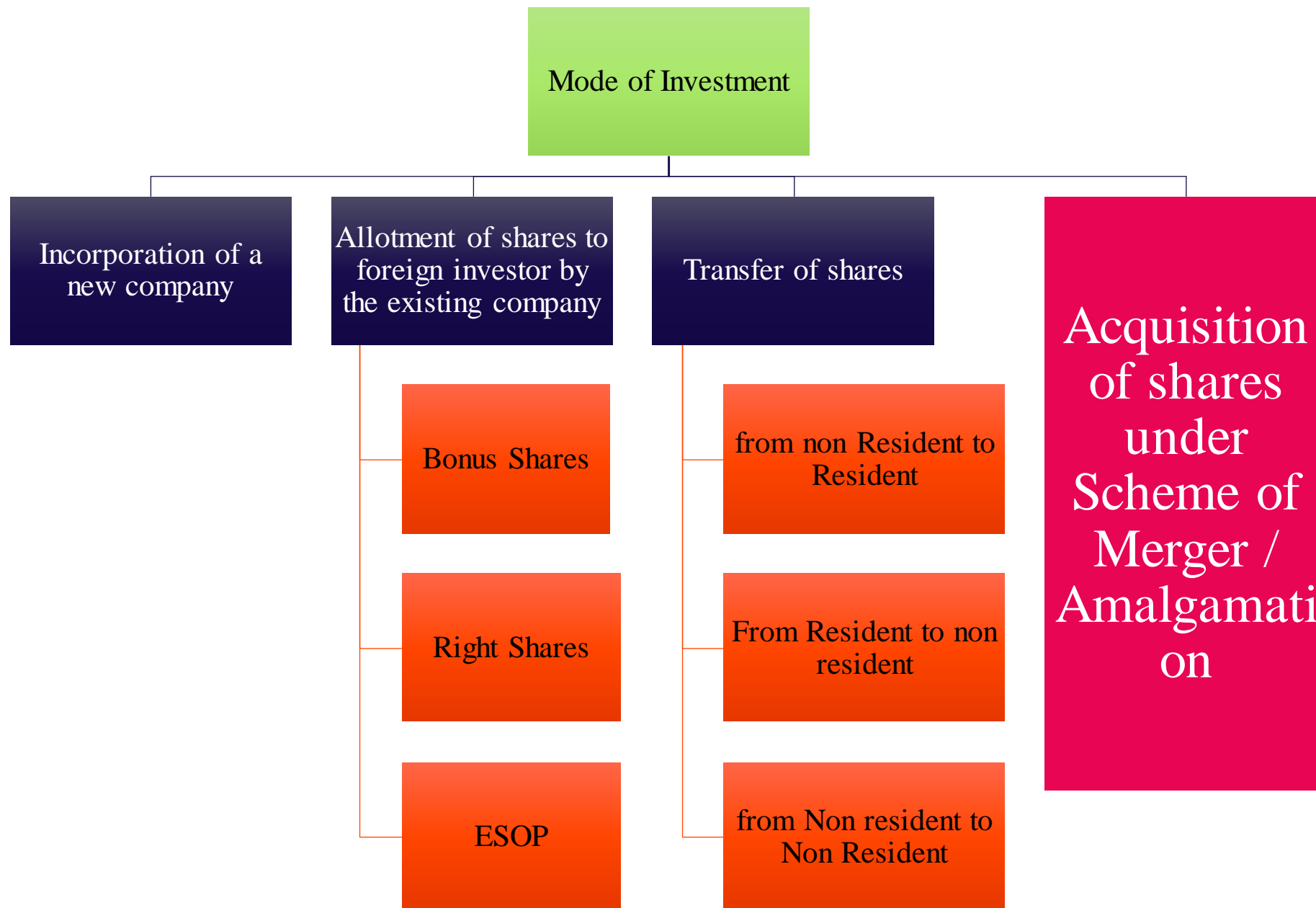
from non Resident to Resident

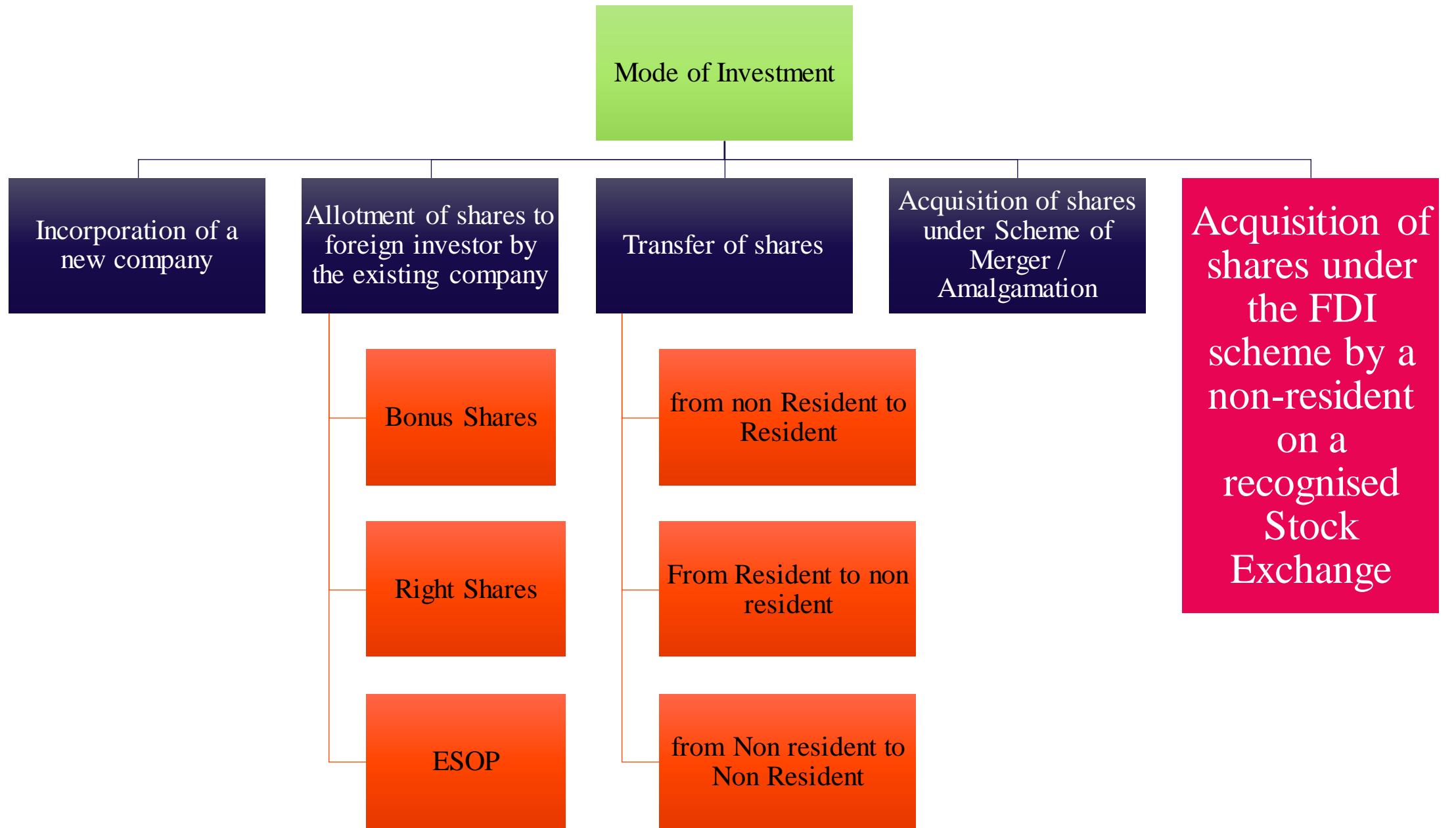
From Resident to non resident

from Non resident to Non Resident

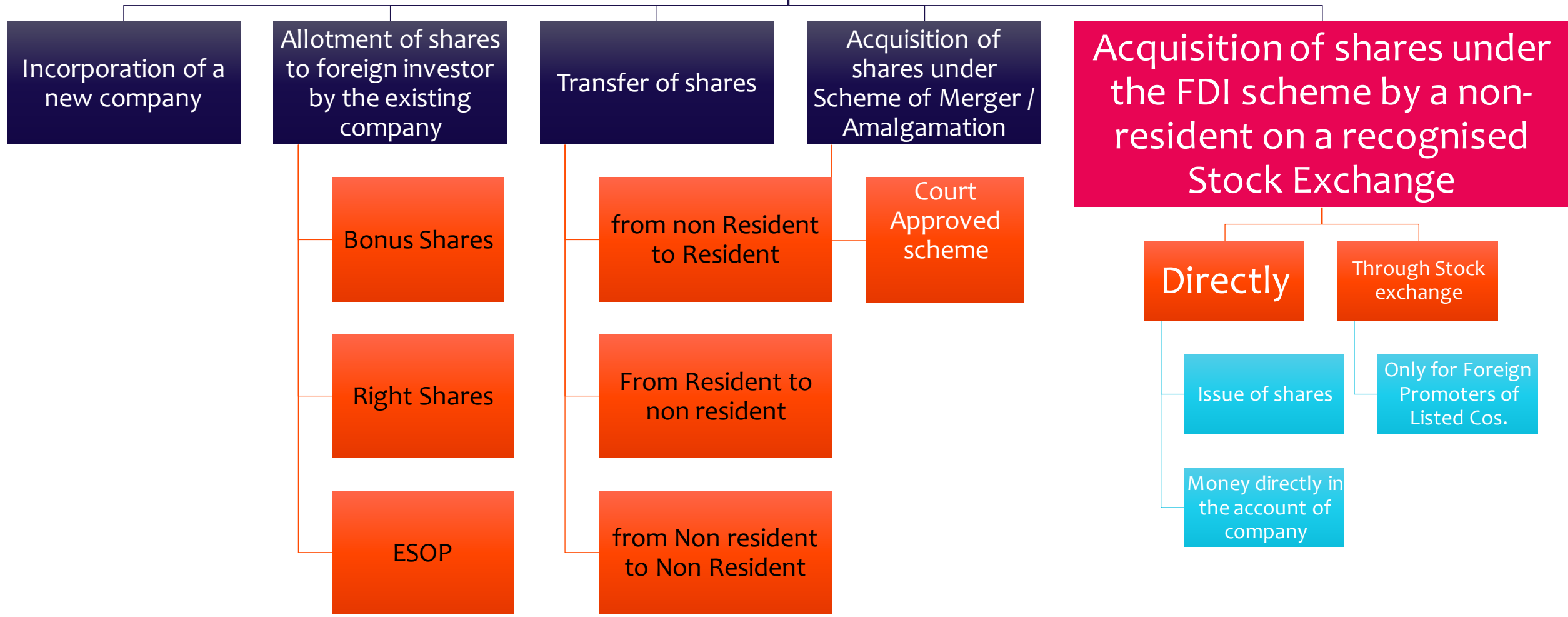
Sl. No.	Transferor	Transferee	Compliance/Conditions
1	PROI other than NR/OCB/OCI	PROI	<ol style="list-style-type: none"> 1. Transfer of equity instruments/units by sale/gift allowed; 2. Includes transfer pursuant to liquidation/merger/demerger and amalgamation of entities/companies incorporated or registered outside India; 3. Prior approval required for companies under approval route.
2	NRI/OCI holding capital instrument on repatriation basis	PROI	<ol style="list-style-type: none"> 1. Transfer of Capital instruments/units by sale/gift allowed; 2. Prior approval required for companies under approval route. 3. In case NRI/OCI breaches the aggregate NRI/OCI limit or sectoral limits, the NRI/OCI may sell capital instrument to PRI within limit as stipulated by RBI and such breach shall not be reckoned as a contravention of FEMA 20.
3	PROI	PRI	<ol style="list-style-type: none"> 1. Transfer of equity instruments/units by way of sale/gift or by way of sale on stock exchange; 2. Sale on Stock exchange shall be as per the manner as specified by SEBI; 3. Transfer and pricing shall be in compliance with RBI Guidelines; 4. Where Equity Instrument is held on non-repatriation basis aforementioned conditions shall not apply;
4	PRI Holding Equity Instruments	PROI	<ol style="list-style-type: none"> 1. Transfer by way of Sale; 2. Adherence of entry route/Sectoral cap/Investment limits/pricing guidelines and other attendant conditions; 3. Documentation and reporting requirements as specified by RBI;
5	PRI Holding equity instruments/units on non repatriation basis	PROI	<ol style="list-style-type: none"> 1. Transfer by way of gift; 2. Prior Approval of RBI required; 3. Donee is eligible to hold such security under relevant schedule; 4. Gift does not exceed 5% of the paid up share capital of Indian company or each series of debenture/Mutual Fund scheme; 5. Adherence of sectoral cap; 6. Donor and donee shall be relative as per Companies Act, 2013; 7. Value of security transferred together with transferred to any other PROI in a FY does not exceed USD 50,000

Sl. No.	Transferor	Transferee	Compliance/Conditions
6	NRI/OCI Holding equity instruments or units on repatriation basis	PROI	<ol style="list-style-type: none"> 1. Transfer by way of sale/gift 2. Prior approval of Government is required If company engaged in approval route Sector; 3. If acquisition by NRI/OCI has resulted in a breach of the applicable aggregate sectoral limit, the NRI/OCI shall sell such equity instruments to a PRI eligible to hold such instruments within the time stipulated by the RBI. If the sale is within the prescribed time, shall not be reckoned as a contravention under these rules.
7	NRI/OCI or an eligible investor holding equity instruments or units on non repatriation basis	PROI	<ol style="list-style-type: none"> 1. Transfer by way of sale. 2. Adherence of entry route/Sectoral Cap/Investment Limit/pricing guidelines and other attendant conditions. 3. Documentation and reporting requirements as specified by RBI;
8	NRI/OCI or an eligible investor holding equity instruments or units on non repatriation basis	PROI	<p>Transfer by way of gift with the prior approval of RBI:</p> <ol style="list-style-type: none"> 1. Gift does not exceed 5% of the paid up share capital of Indian company 2. Applicable Sectoral cap in the Indian Company is not breached; 3. Donor and donee shall be relative as per Companies Act, 2013; 4. Value of security transferred together with transferred to any other PROI in a FY does not exceed USD 50,000
9	NRI/OCI or an eligible investor holding equity instruments or units on non repatriation basis	NRI/OCI/eligible Investor	Transfer by way of gift and the transferee shall hold it on non repatriable basis.





Mode of Investment



A photograph of a modern, minimalist desk setup. In the foreground, a white desk holds a silver laptop, a white smartphone, and a stack of papers. In the background, a black laptop is open, and a pair of black headphones is visible. The scene is brightly lit, suggesting a clean, professional workspace.

Investment in Start ups

Startup Company

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

Definition of Startup Company - Private company incorporated under the Companies Act, 2013 and identified under G.S.R. 180(E), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Definition of Convertible Note - Instrument issued by a startup company acknowledging receipt of money initially as debt, repayable at the option of the holder, or which is convertible into such number of equity shares of that company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per other terms and conditions agreed and indicated in the instrument.

Issue of Convertible Notes by an Indian startup company

1. A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.
2. A startup company, engaged in a sector where investment by a person resident outside India requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.

Startup Company – Contd.

Foreign Exchange Management (Non-debt Instruments) Rules, 2019

Issue of Convertible Notes by an Indian startup company – Contd.

3. The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.
4. A NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with Schedule IV of these rules (mentioned in detail in next slide).
5. A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.

Startup Company – Contd.

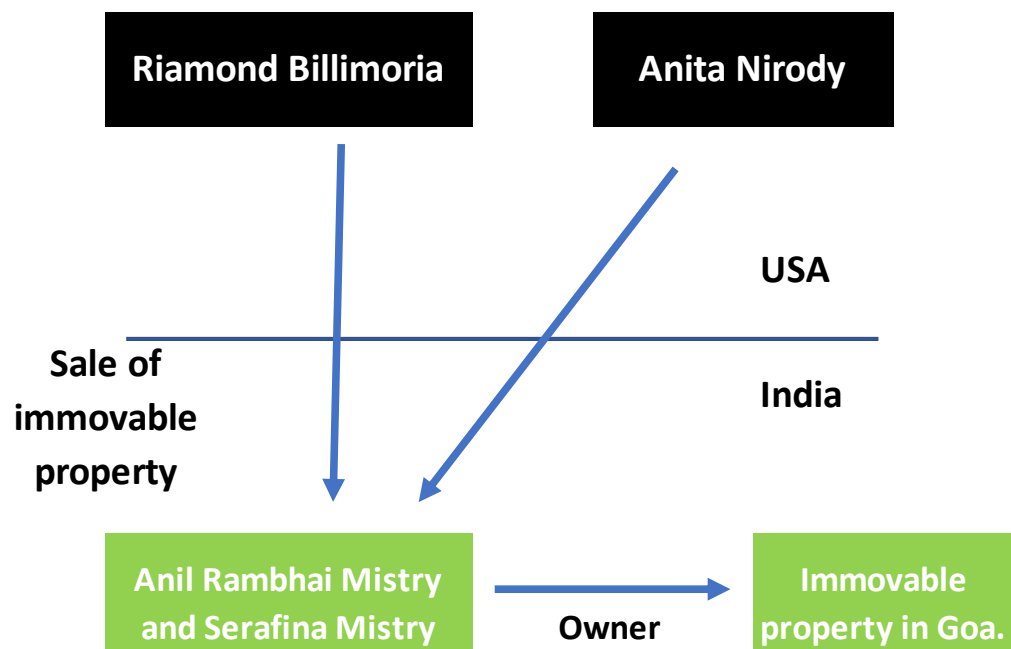
Foreign Exchange Management (Non-debt Instruments) Rules, 2019

Investment by NRI or OCI on non-repatriation basis (Schedule IV)


Purchase or sale of equity instruments or convertible notes or units or contribution to the capital of a LLP

- A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, may purchase or contribute, as the case may be, the convertible notes issued by a startup company on non-repatriation basis.
- The said investment shall be deemed to be domestic investment at par with the investment made by residents.
- The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

CA No.97/2019 - Mr Raiomand Billimoria and Mrs Anita Nirody.



- Applicants, Mr. Raiomand Billimoria and Mrs. Anita Nirody, are Person of Indian Origin (PIOs) and citizens of United States.
- Applicants purchased an immovable property in Goa, India.
- Applicant made the payment for the immovable property from its NRE Account.
- The immovable property purchase by the applicants was an agricultural land.
- Applicant were advised that since the property is considered as agricultural land and that a Sanad is required to be procured from the Deputy Collector.
- Deputy collector advised the applicants to inform the RBI about the purchase.
- Contravened the provisions of Regulation 8 FEMA.21/2000-RB dated May 3, 2000 for acquiring immovable property in India without the prior approval of RBI.



**Your Queries Please
Thankyou !!**

Sudha@taxpertpro.com

+91 9769033172