

# Foreign Investment in India – ways and procedures

CA. Sudha G. Bhushan

[Sudha@taxpertpro.com](mailto:Sudha@taxpertpro.com) || 09769033172

# Ways of entering India

Incorporated

Unincorporated

A blurred background image of a modern desk. On the desk, there is a laptop with a white top and a dark screen, a smartphone, a stack of books, and a pair of headphones. The desk is light-colored, and the background is bright and out of focus.

# Unincorporated Entities

Unincorporated place of business of foreign company in India/LO, BO, PO

Companies Act 2013

FEMA/RBI

Provisions of Chapter XXII

Companies (Registration of Foreign Companies) Rules 2014

FEM (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016

## Branch office

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

## Liaison office

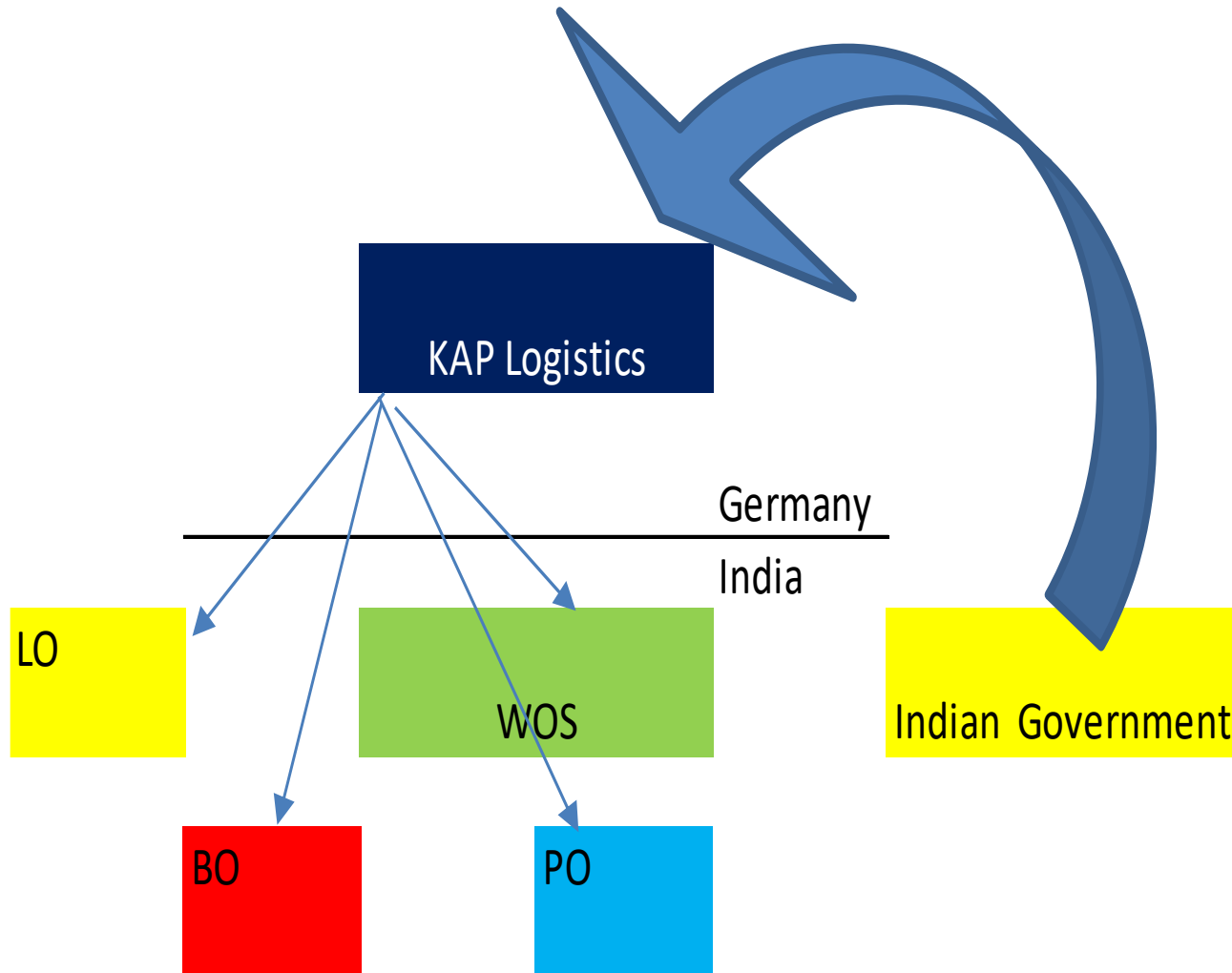
place of business to act as channel of communication between Head Office and Indian entities. [Schedule 2]  
does not undertake any commercial/ trading/ industrial activity, directly or indirectly.

## Project office

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

## Site office

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



## Facts of the case

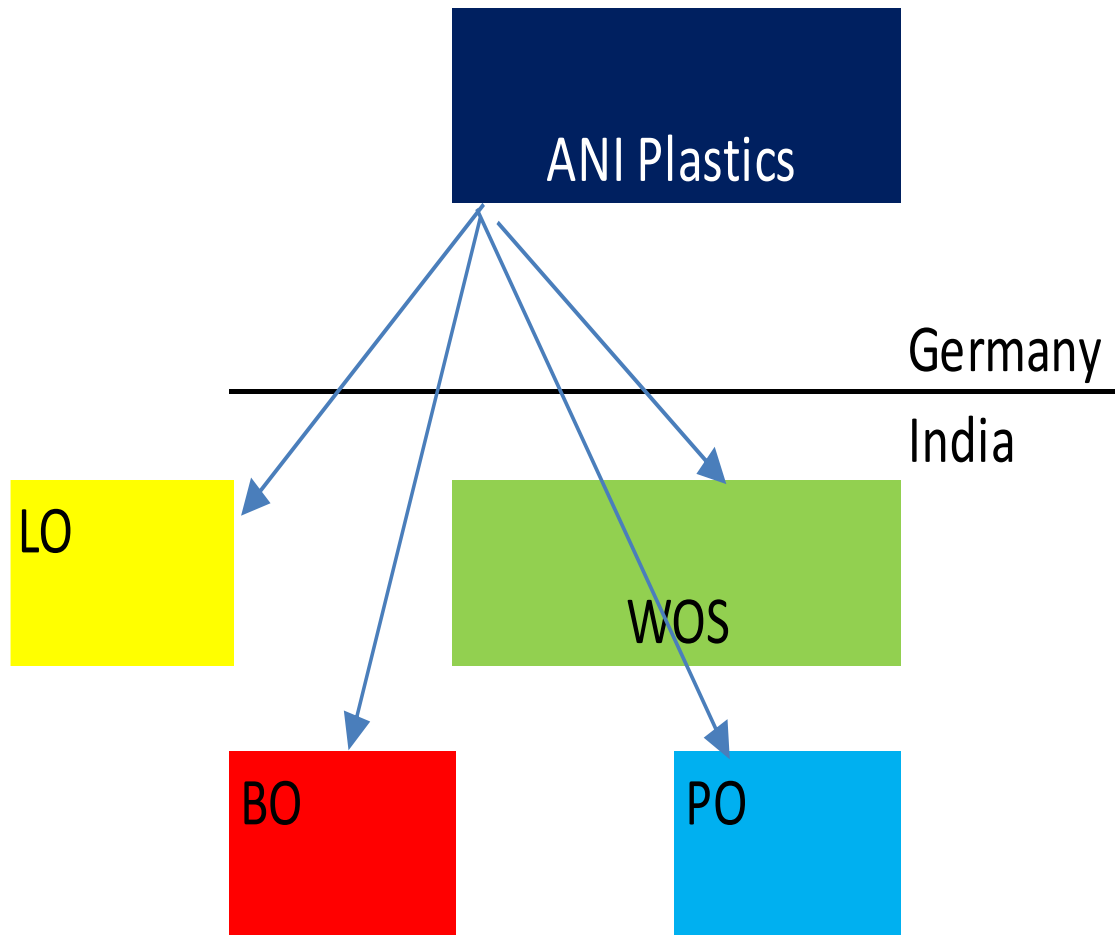
Indian Government awarded the contract to company in Japan

KAP logistics shall be executing that contract in India

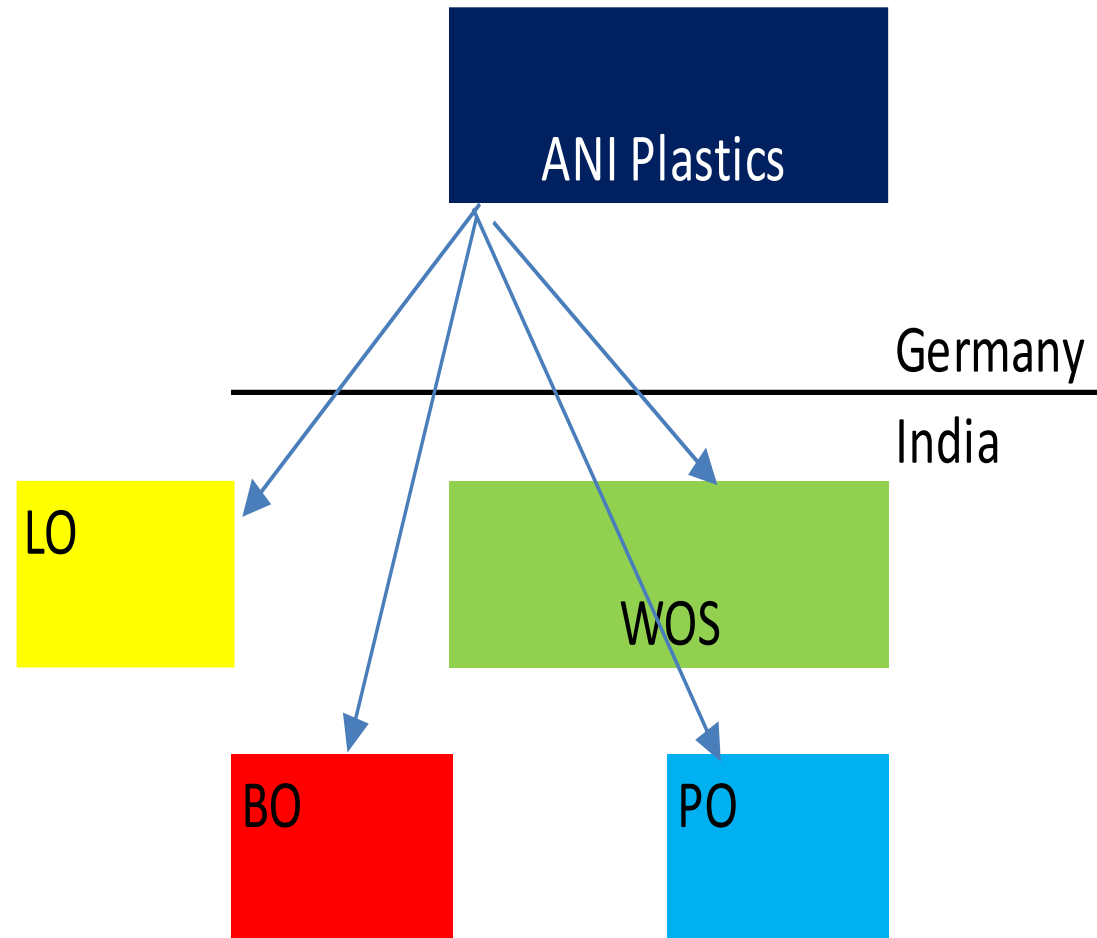
The length of the project is two years

To execute the project to automation of Indian Railways

What is the entity that KAP logistics should have in India



Objective of ANI is look for business partners in India.  
Look for probable export to India partners



## Objective of ANI plastics

- To serve Indian customers from India
- It believes in India growth story
- Want to manufacture in India and sell in India



Particulars	Liaison Office	Branch Office	Project Office	Joint Venture/ Wholly Owned Subsidiary
<b>Incorporated</b>	Unincorporated Entity which represents the foreign parent company only	Unincorporated Entity which is an extension of its foreign company	Unincorporated Entity which is an extension of its foreign company	Incorporated Entity (Separate legal entity)
<b>Permission Required</b>	Prior approval of RBI/AD Bank is required	Prior approval of RBI/AD Bank is required	Prior approval of RBI /AD Bank is required	Automatic/ Approval route based on sector
<b>Annual Filing (with RBI)</b>	Annual activity certificate	Annual activity certificate	Annual activity certificate	Annual return on foreign liabilities and assets
<b>Activities allowed to be undertaken</b>	Only the activities as permitted by RBI	Only the activities as permitted by RBI	Only the activities as permitted by RBI	Subject to Object clause of Memorandum of Association of company, FDI Policy and the sectoral restrictions if any
<b>Repatriation of profits</b>	Not allowed to earn profits in India	Profits are repatriable after payment of taxes at the rate at which foreign company is required to pay taxes	AD Bank can permit intermittent remittances of Profits/Surplus.	Profits are fully repatriable after payment of taxes

<b>Mode of Funding</b>	<b>Can maintain itself only out of funds from the head office received through normal banking channels</b>	<b>Expenses to be met from funds from head office or profits from permitted activities</b>	<b>Expenses to be met from funds from head office or profits from permitted activities</b>	<b>Profits earned in India/Share capital/External Commercial borrowing, etc</b>
<b>Liability</b>	Not an incorporated entity, Unlimited	Not an incorporated entity, Unlimited	Not an incorporated entity, Unlimited	Limited liability
<b>Exit Options</b>	Permission by RBI is for three years only	Permission by RBI is for three years only	PO is for the specified project	Winding up/sale of shares in company
<b>Repatriation of assets</b>	By prior approval from RBI	By prior approval from RBI	By prior approval from RBI	On winding up
<b>Income Tax Return</b>	Required, but not allowed to earn any profits	Required, Profit taxed at the rate at which foreign company is taxed	Required, Profit taxed at the rate at which foreign company is taxed	Required, Global Income taxable in India being resident of India



# Incorporated Entities

Who can invest

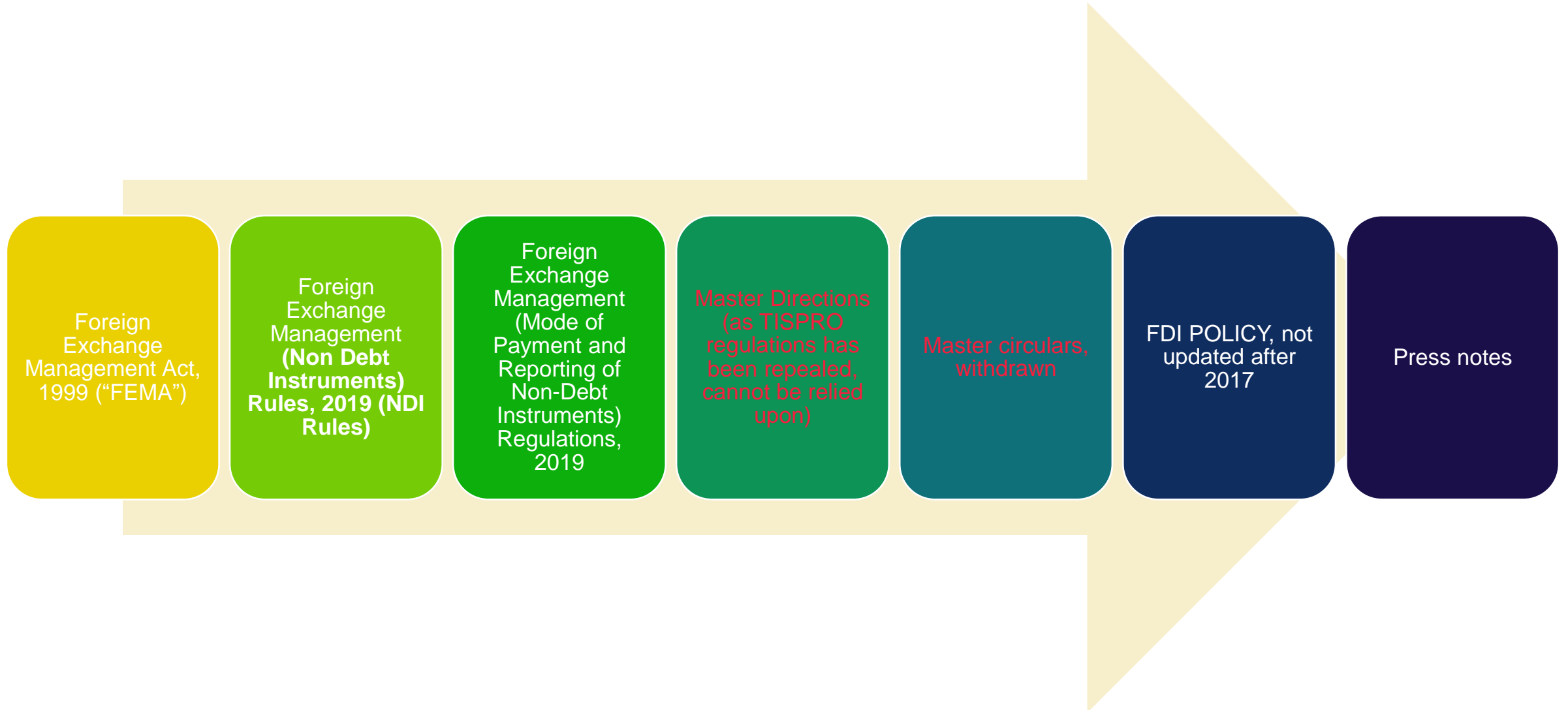
How he can invest

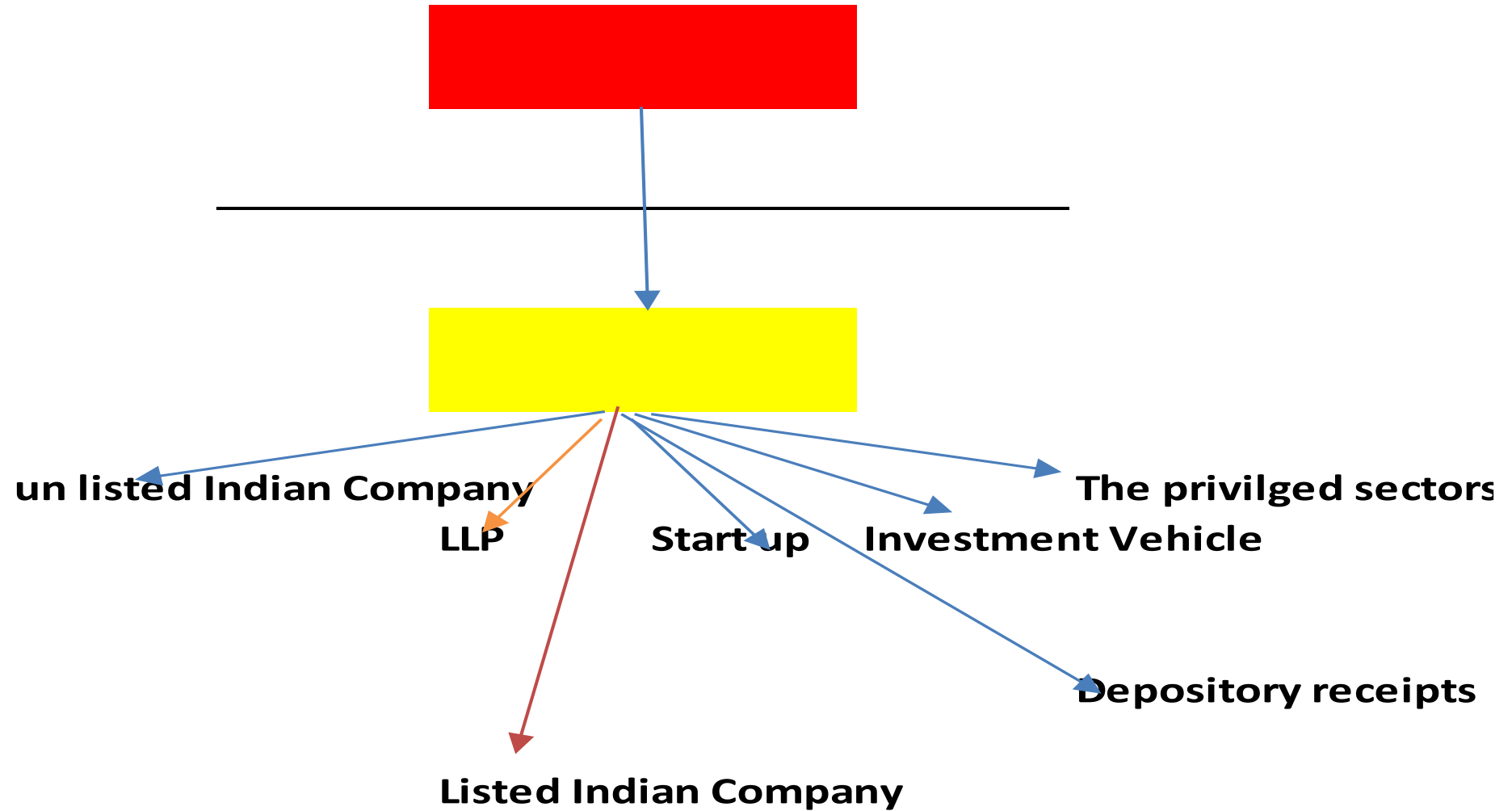
How the money shall come?

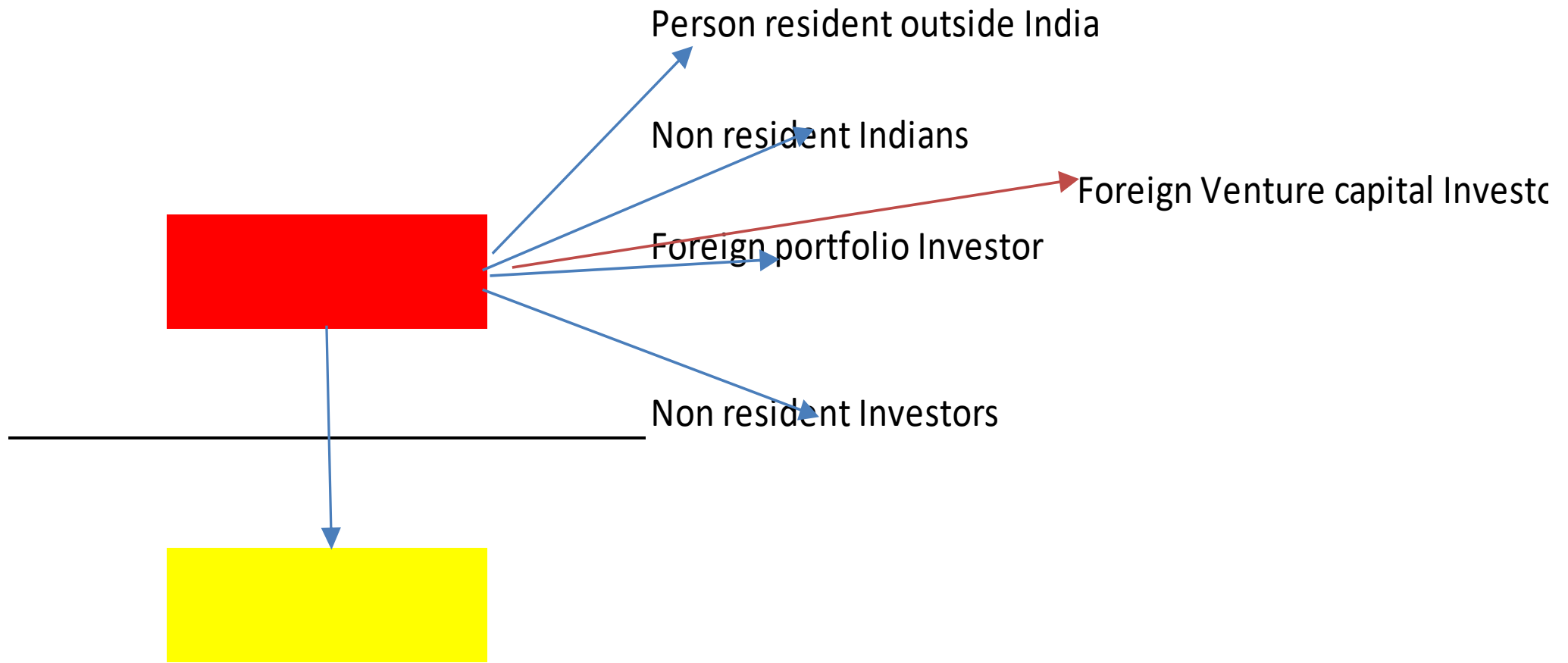
At what price can he invest

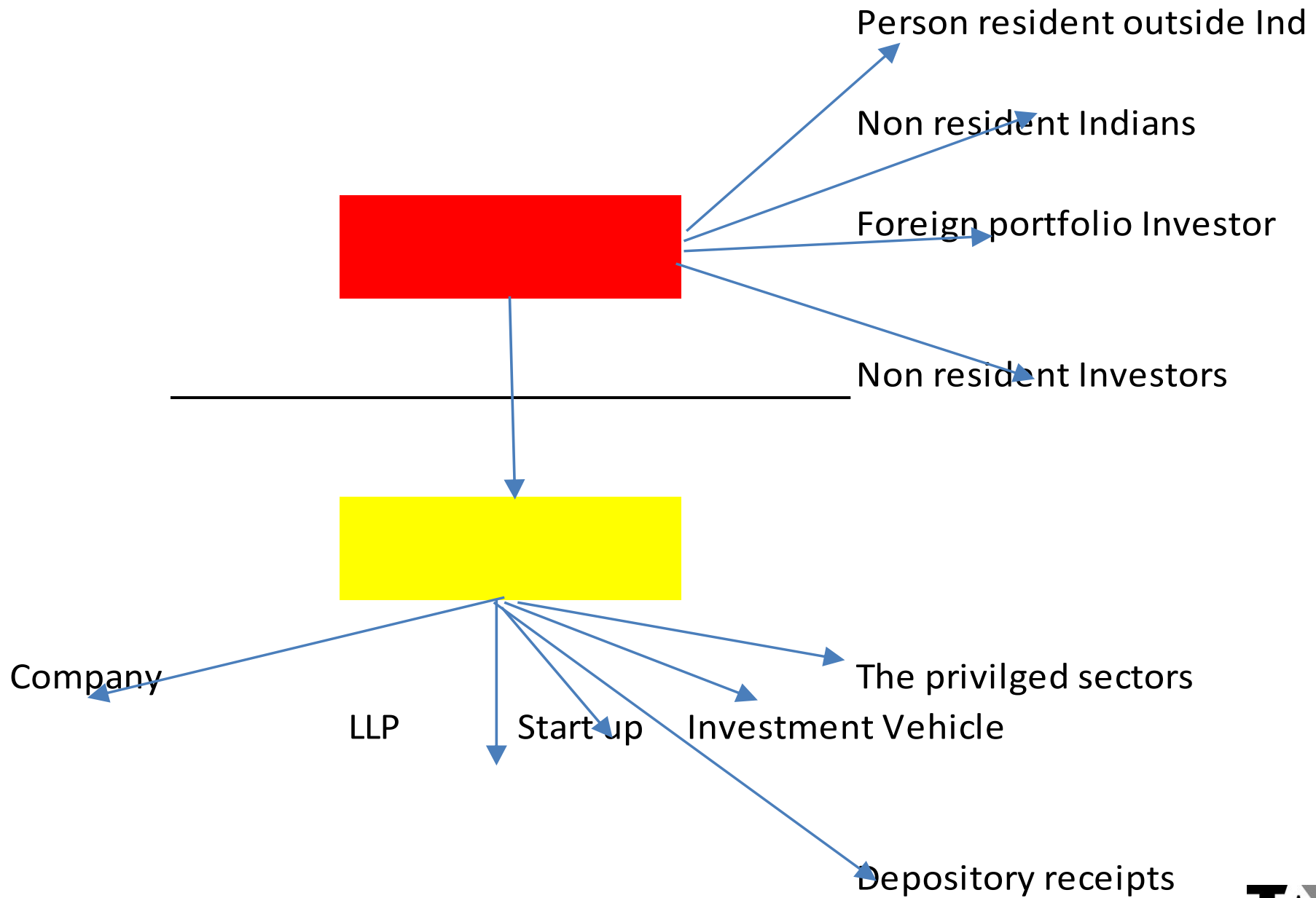
In which all mode can the investment be done?

# Governing Regulations











### 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 on 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.



# **Regulations Governing Foreign investment in India**

# The progress

Finance Act  
2015

15<sup>th</sup> Oct  
2019

17<sup>th</sup> Oct  
2019

First  
Amendment  
Rule  
December 5,  
2019

Notification  
dated April  
22, 2020

Second  
Amendment  
Rule dated  
27<sup>th</sup> April  
2020

On October 15, 2019, The Ministry of Finance, had proposed certain amendments to Foreign Exchange Management Act, 1999

These amendments resulted in a power shift from the RBI to the Central Government (CG), enhancing the CG involvement in the foreign exchange transactions a bifurcation of instruments into debt instruments and non-debt instruments has been introduced

The Central Government notified the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("NDI Rules") on October 17, 2019 superseding the erstwhile Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 ("TISPRO") and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

The RBI also notified the Foreign Exchange Management (Debt Instruments) Regulations, 2019 superseding TISPRO, and the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

The Central Government has also Further notified the Foreign Exchange Management (Non-Debt Instruments) (Amendment) Rules, 2019 ("Amendment Rules") on December 5, 2019 primarily incorporates the provisions of the Press Note 4 of 2019, recently announced by the Department for Promotion of Industry and Internal Trade ("PN4"), which were not reflected in the NDI Rules

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

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FEM (Debt Instruments) Regulations, 2019

Ministry of Finance, Vide notification dated 16<sup>th</sup> Oct 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 (AFIs) 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

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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]
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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 16<sup>th</sup> 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 17<sup>th</sup>  
Oct 2019



# Framework of the NDI Rules, 2019

Sr.no	Name of the Chapter	Rule No.	Rule Name
1	Preliminary	1	Short title and commencement
		2	Definations
2	General conditions applicable to all investors	3	Restriction on investment in India by a person resident outside India
		4	Restriction on receiving investment
		5	Permission for making invesment by the person resident outside India
3	Investment by the person resident outside India	6	investment by the person resident outside India
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		8	Issue of employees Stock options and wseat equity shares to person resident outside India
		9	Transfer of equity instruments of an Indian company by or to a person resident outside India.
4	Investment by foreign portfolio investor	10	Invesment by FPI
		11	Transfer of equity instruments of an Indian company by FPI
5	Investment by Non- Resident Indian or Oversea Citizen of India	12	Investment by NRI or OCI
		13	Transfer of equity instruments by NRI or OCI
6	Investment by other non-resident investors	14	Investment in section by other non-resident investors
		15	Transfer of securities by other non-resident investors

# 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

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

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- Issue of Indian Depository Receipts.

## General Conditions applicable to all investors

### Rule 3

- No Person resident outside India ( PROI) shall make investment in India
- Save as other provided in the Rules/regulations
- RBI along with CG may allow specific investment even if not falling under the Rules/regulations



### Rule 4

- No entity in India shall receive any investment from PROI otherwise as mentioned in the Rules/regulations
- No entity in India shall record any investment from PROI otherwise as mentioned in the Rules/regulations



### Rule 5

- entry routes,
- sectoral caps
- Investment limits,
- Attendant conditionalities

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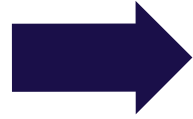


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# Rule 6 : Investment by person Resident Outside India

- Investment by person resident outside India:- a person resident outside India may make investment as under:
  - ❑ (a) may subscribe, purchase ,or sell entity instruments of Indian company in the manner and subject to the terms and conditions specified in Schedule I:
- Provided that a person who is a citizen of Bangladesh and Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot equity instruments without the prior government approval:
- Further, a citizen of Pakistan or an entity incorporated in Pakistan cannot invest in defense, space, atomic energy and sectors or activities prohibited for foreign investment even through the government route.
- ❑ (b) A person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest either by way of capital contribution or by a way of acquisition or transfer of profit shares of an LLP, in the manner and subject to the terms and conditions specified in Schedule VI.
- ❑ A person resident outside india, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an investment vehicles, in the manner or subject to the term and conditions specified in Schedule VIII.
- ❑ A person resident outside India may invest in the depository receipts (DRs) issued by the foreign depositories against eligible securities in the manner and subject to the terms and conditions specified in Schedule XI.

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## Rule 7

- Acquisition through right share/Bonus share

## Rule 8

- Issue of ESOP/Sweat equity shares

## Rule 9

- Transfer of Equity Instruments

## Rule 10

- Investment by FPI
- Schedule II

## Rule 11

- Transfer of equity instruments

**(u) “FPI” or “Foreign portfolio Investor” means a person registered in accordance with the provision of the Securities and Exchange Board of India (Foreign portfolio Investor) Regulations, 2014.**

# Other Rules

Chapter	Description	Rule	Description
5	Investment by Non-Resident Indian or Oversea Citizen of India	12	Investment by NRI or OCI
6	Investment by other non-resident investors	13	Transfer of equity instruments by NRI or OCI
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8	General provisions	17	Transfer of equity instrument of an Indian company by or to a FVCI
		18	Issue of convertible notes by an Indian startup company
		19	Merger or demerger or amalgamation of Indian company
		20	Reporting requirement
		21	Pricing guidelines
		22	Taxes and remittance of the sale proceeds
		23	Downstream investment
		24	Acquisition and transfer of property to Indian by a NRI or an OCI
		25	Joint acquisition by the spouse of an NRI or an OCI
		26	Acquisition of immovable property for carrying on a permitted activity
9	Acquisition and transfer of immovable property in India	27	Purchase or sale ,of immovable property by Foreign Embassies or Diplomats or Consulate Generals
		28	Acquisition by a long term visa holder
		29	Repatriation of sale proceeds
		30	Prohibition on transfer of immovable property in India
		31	Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries
		32	Miscellaneous
		33	Savings

# Other Rules

Chapter	Description	Rule	Description
5	Investment by Non-Resident Indian or Oversea Citizen of India	12	Investment by NRI or OCI
6	Investment by other non-resident investors	13	Transfer of equity instruments by NRI or OCI
6	Investment by other non-resident investors	14	Investment in section by other non-resident investors
6	Investment by other non-resident investors	15	Transfer of securities by other non-resident investors
7	Investment by Foreign Venture Capital Investors	16	Investment by FVCI
7	Investment by Foreign Venture Capital Investors	17	Transfer of equity instrument of an Indian company by or to a FVCI
7	Investment by Foreign Venture Capital Investors	18	Issue of convertible notes by an Indian startup company
7	Investment by Foreign Venture Capital Investors	19	Merger or demerger or amalgamation of Indian company
8	General provisions	20	Reporting requirement
8	General provisions	21	Pricing guidelines
8	General provisions	22	Taxes and remittance of the sale proceeds
8	General provisions	23	Downstream investment
8	General provisions	24	Acquisition and transfer of property to Indian by a NRI or an OCI
8	General provisions	25	Joint acquisition by the spouse of an NRI or an OCI
8	General provisions	26	Acquisition of immovable property for carrying on a permitted activity
8	General provisions	27	Purchase or sale ,of immovable property by Foreign Embassies or Diplomats or Consulate Generals
9	Acquisition and transfer of immovable property in India	28	Acquisition by a long term visa holder
9	Acquisition and transfer of immovable property in India	29	Repatriation of sale proceeds
9	Acquisition and transfer of immovable property in India	30	Prohibition on transfer of immovable property in India
9	Acquisition and transfer of immovable property in India	31	Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries
9	Acquisition and transfer of immovable property in India	32	Miscellaneous
9	Acquisition and transfer of immovable property in India	33	Savings

# Other Rules

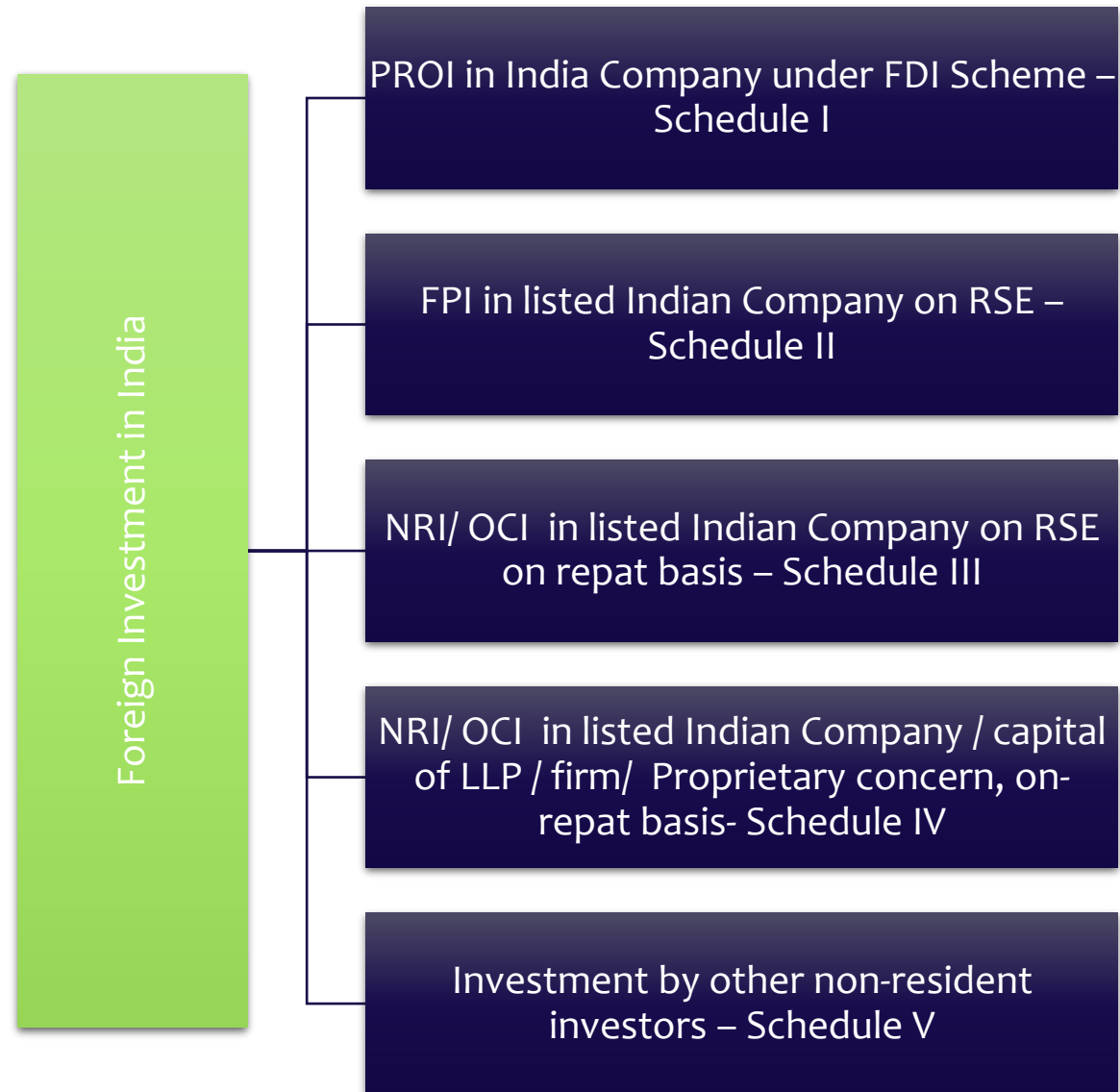
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# Other Rules

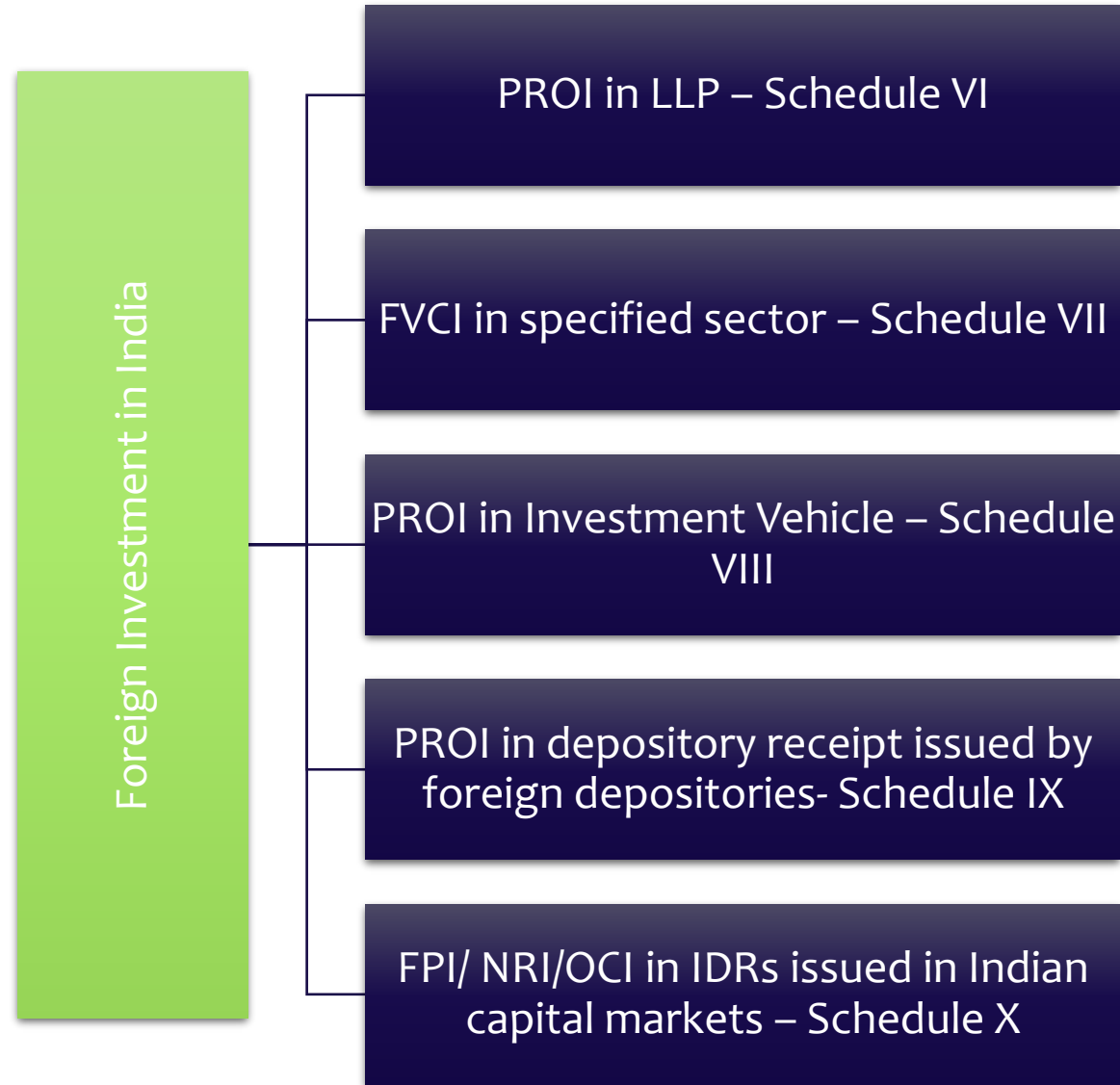
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# Who Can Invest







# 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.

The above decision will take effect from the date of FEMA notification.

# 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



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;

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;

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(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;

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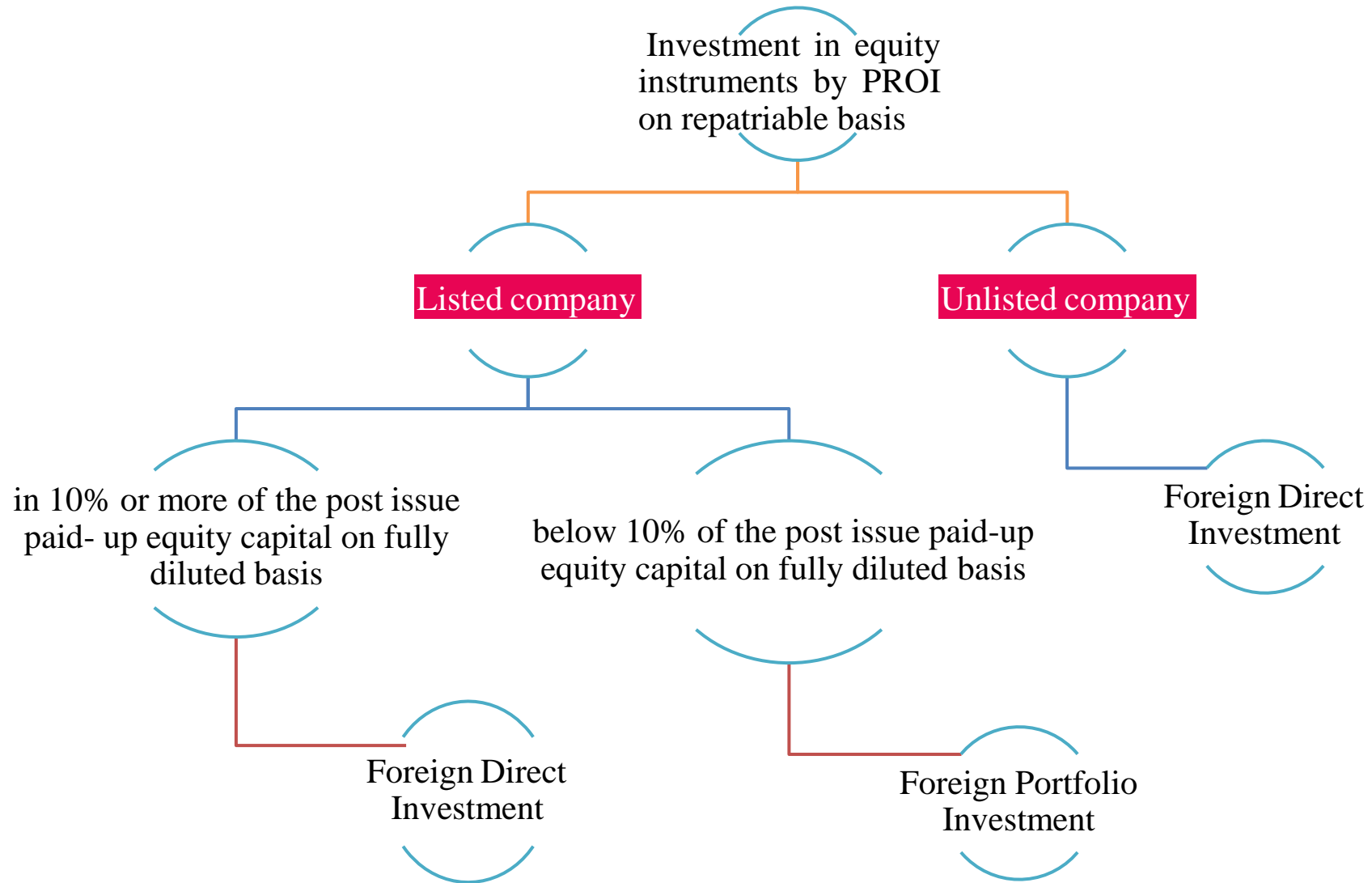
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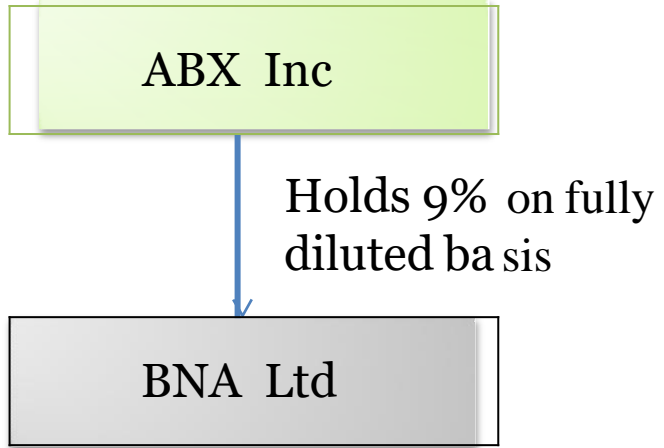
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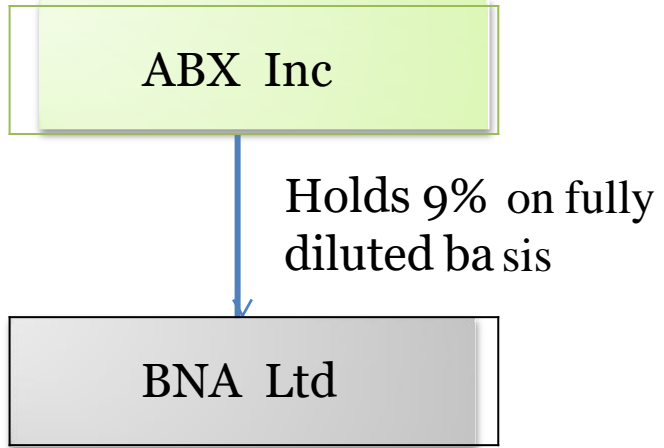
(t) “Foreign portfolio investment” means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issued paid-up diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of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





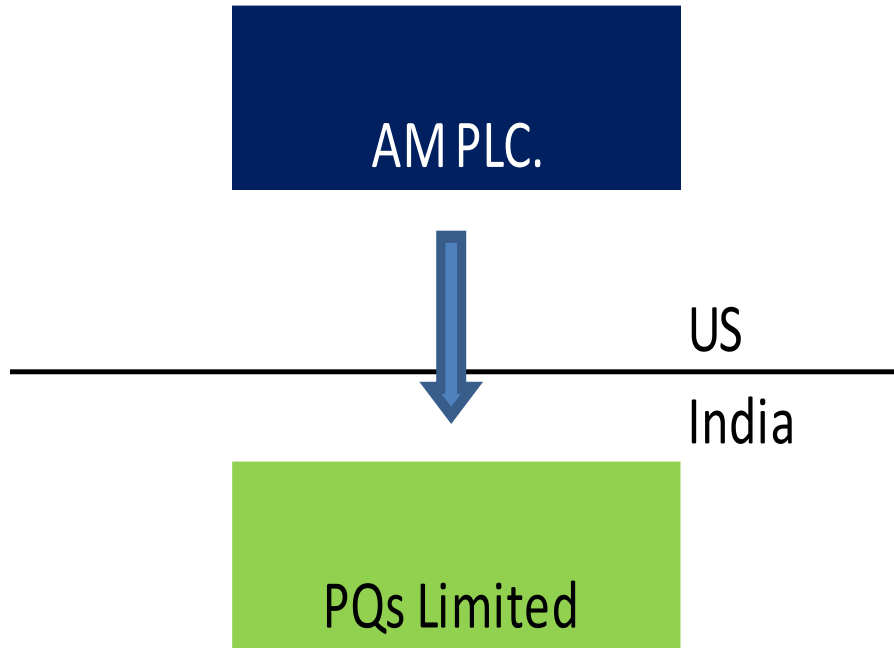
BNA Ltd is an unlisted Indian Company.

What shall be holding of ABX Inc. shall be considered ?



BNA Ltd is a Listed Indian Company.

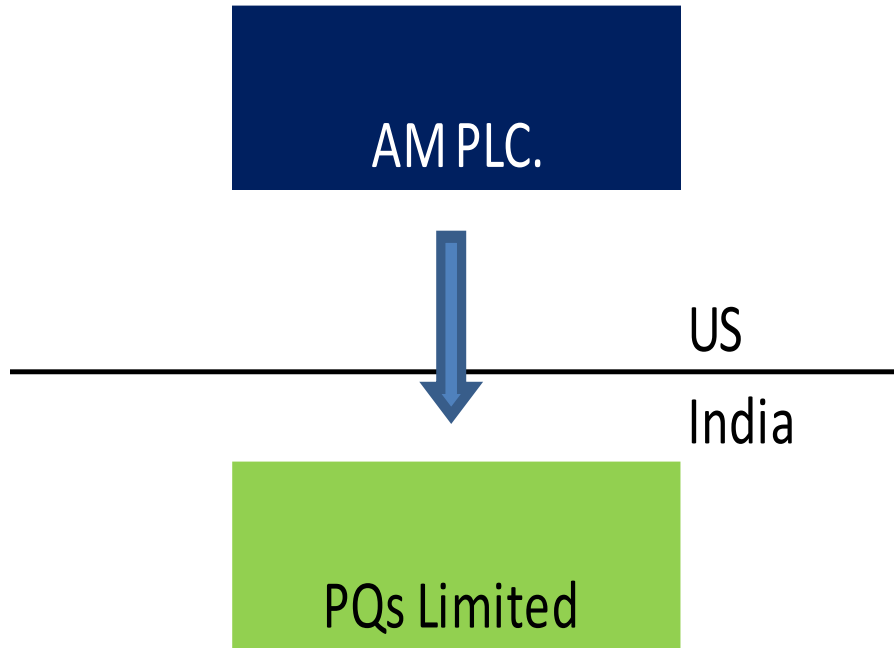




### Facts of the case

- AMC PLC. is an FPI registered with SEBI
- PQs Limited is an Indian listed Company
- FPI had 9% investment
- Subsequently FPI introduced another 2% in the company

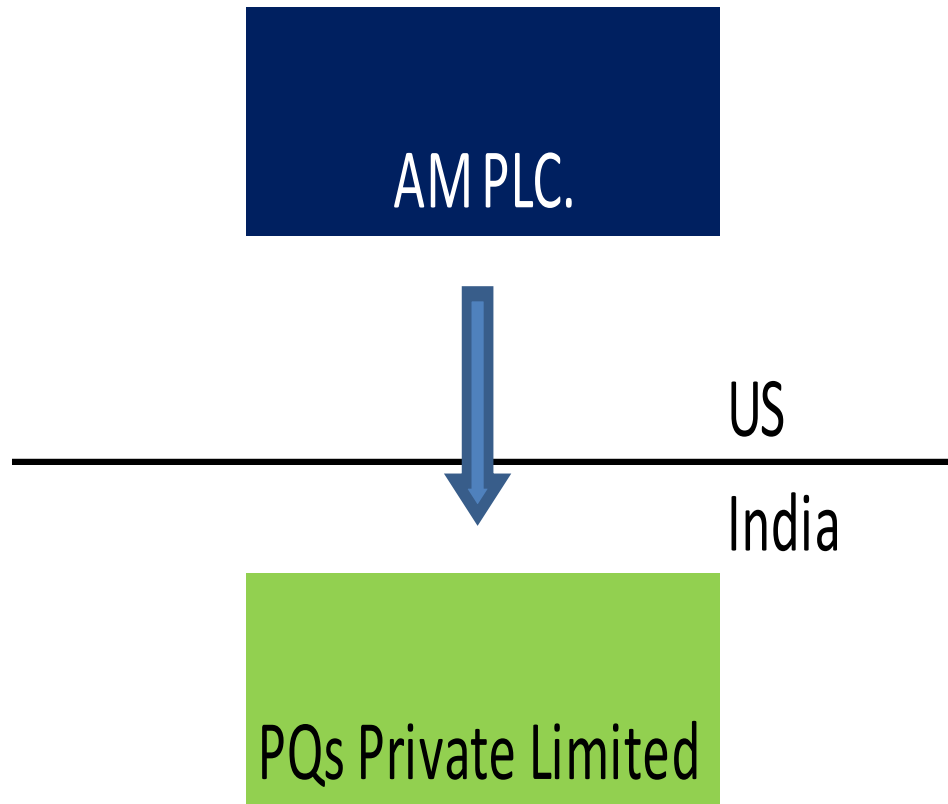
What are the consequences ?



### Facts of the case

- AMC PLC. is an FPI registered with SEBI
- PQs Limited is an Indian listed Company
- FPI had 9% investment
- Subsequently FPI introduced another 2% in the company

What is after one month the AMC Plc. Disinvests??



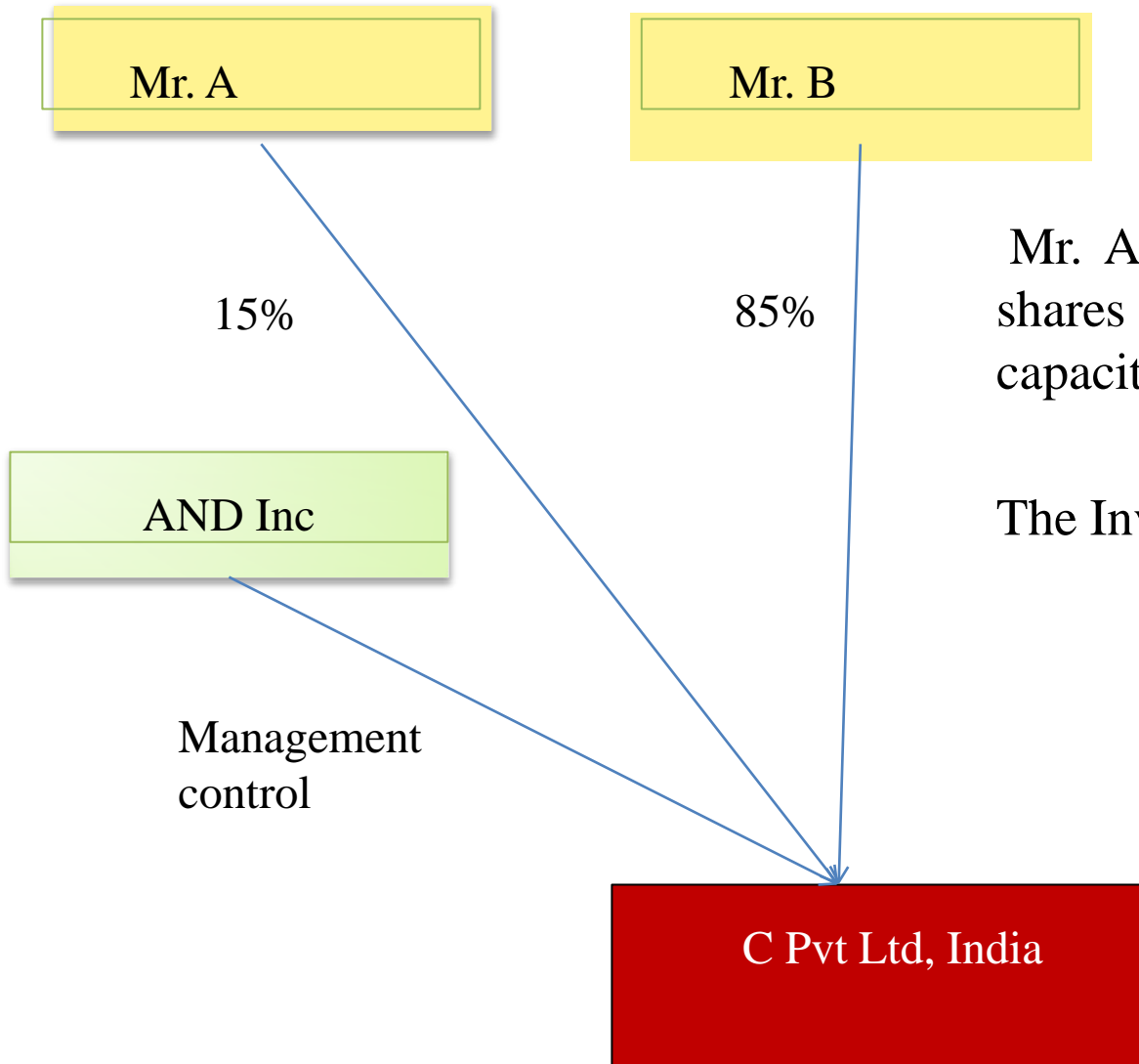
### Facts of the case

- AMC PLC. is an FPI registered with SEBI
- FPI had 9% investment
- Subsequently FPI introduced another 2% in the company

What if PQs is a private Limited company?

For an FPI investment, once the investment is classified as FDI (basis total holding), if the FDI holding comes back to <10%, will the holdings be classified as FPI again?

Answer: Once an FDI always an FDI



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?

2(K) “Equity instruments” means equity shares, convertible debentures. Preference shares and shares warrants issued by an Indian company:

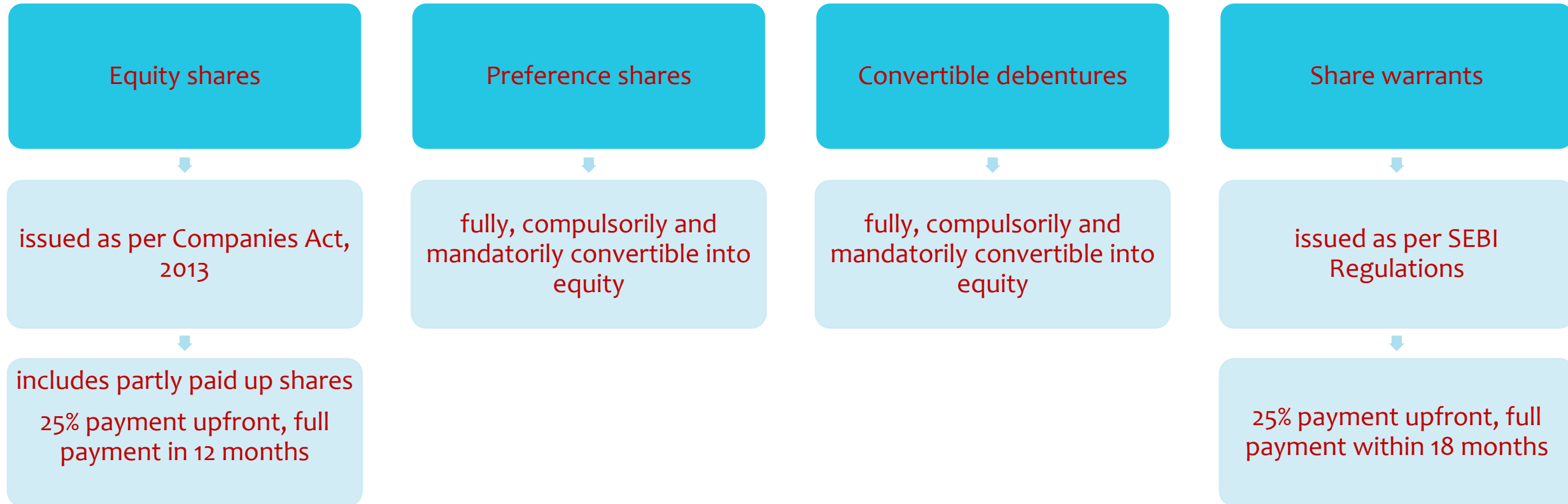
Explanation:

(i) Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid. "Convertible debentures" means fully, compulsorily and mandatorily convertible debentures. "Preference shares" means fully, compulsorily and mandatorily convertible preference shares. Share Warrants are those issued by an Indian company in accordance with the regulations by the Securities and Exchange Board of India. 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.

(ii) Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue or as may be specified by the Reserve Bank from time to time. Twenty-five per cent of the total consideration amount (including share premium, if any) shall be received upfront.

(iii) In case of share warrants, at least twenty-five per cent of the consideration shall be received upfront and the balance amount within eighteen months of the issuance of share warrants.

# Equity Instruments under Non-Debt Instrument Rules



Formerly regarded as Capital Instruments under TISPRO Regulations, 2017

# 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.



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

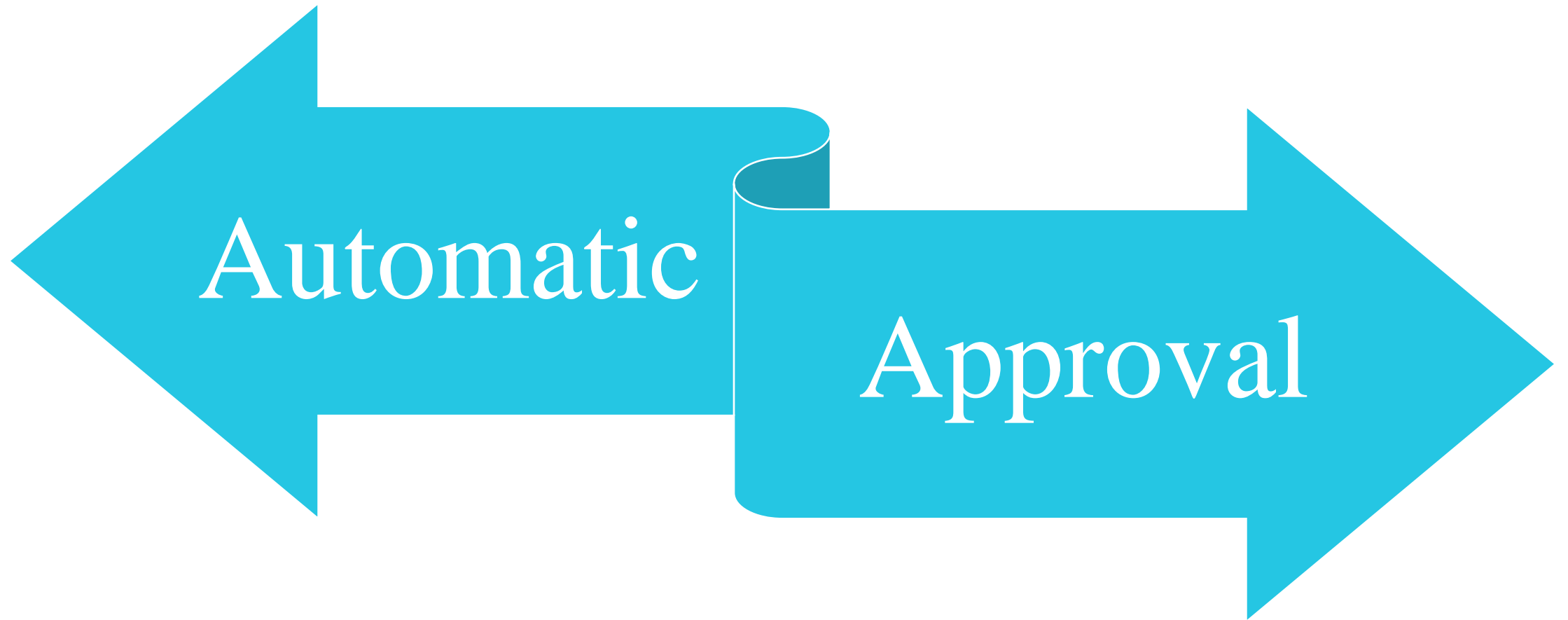
Answer: No, FDI and FPI are agnostic from the point of view of the schedule under which investment has been made. It is the percentage which defines whether it is direct or portfolio investment.

**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**

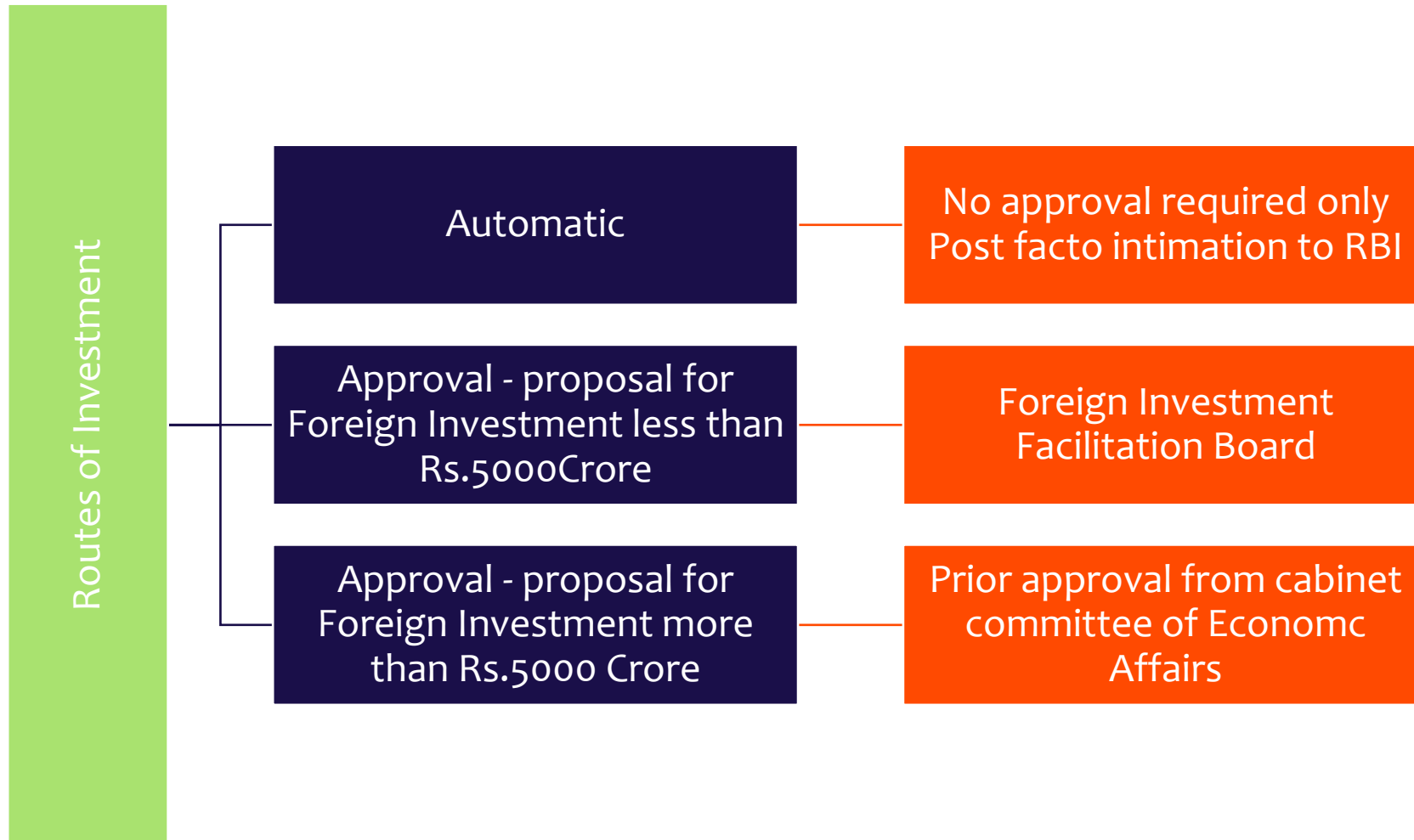
Answer: As long as the foreign shareholding in the entity remains the same and there is no corporate action pursuant to the sector being brought under approval route, approval is not required.



# How he can Invest



# Entry routes

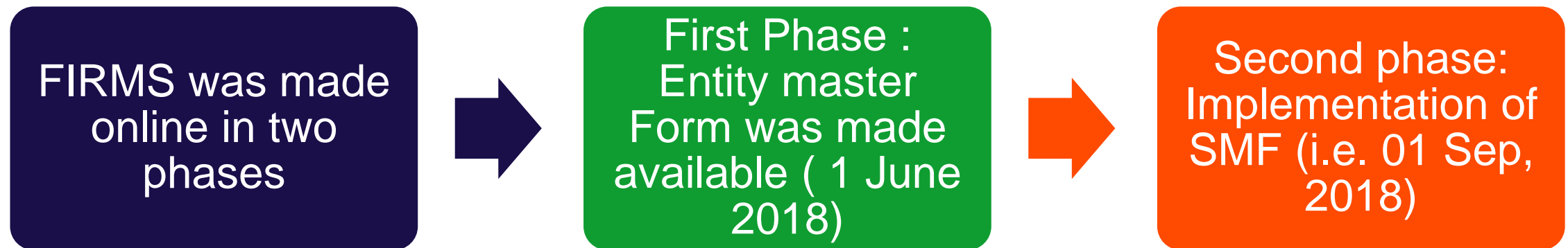


“government approval” means the approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and / or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India,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

# Foreign investment in India - Reporting in Single Master Form

Foreign Investment Reporting and Management System

<https://firms.rbi.org.in/firms/faces/pages/login.xhtml>



## 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.



User Name

Password

Captcha Code is case sensitive

**btv0xw**

Type the characters shown above

Login

Registration Form for [New Business User](#)

Registration Form for [New Entity User](#)

[Forgot Password ?](#)

# Foreign investment in India - Reporting in Single Master Form

With effect from September 01, 2018, five forms viz., FC-GPR, FC-TRS, LLP-I, LLP-II and CN were being made available for filing in SMF

With effect from October 23, 2018 the other three forms viz., ESOP, DI, and DRR were made available for filing.

With effect from September 01, 2018 all new filings for FC-GPR, FC-TRS, LLP-I, LLP-II and CN will be in SMF only. FC-GPR and FC-TRS shall not be filed on ebiz.

The Login credentials for Entity Master cannot be used to make filing in Single Master Form. Please obtain registration as Business User .

Pre transaction values in the shareholding pattern in single master form is fetched from the entity master details. Please verify the details in the entity master, before making any filing in single master form.



# 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

# 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;

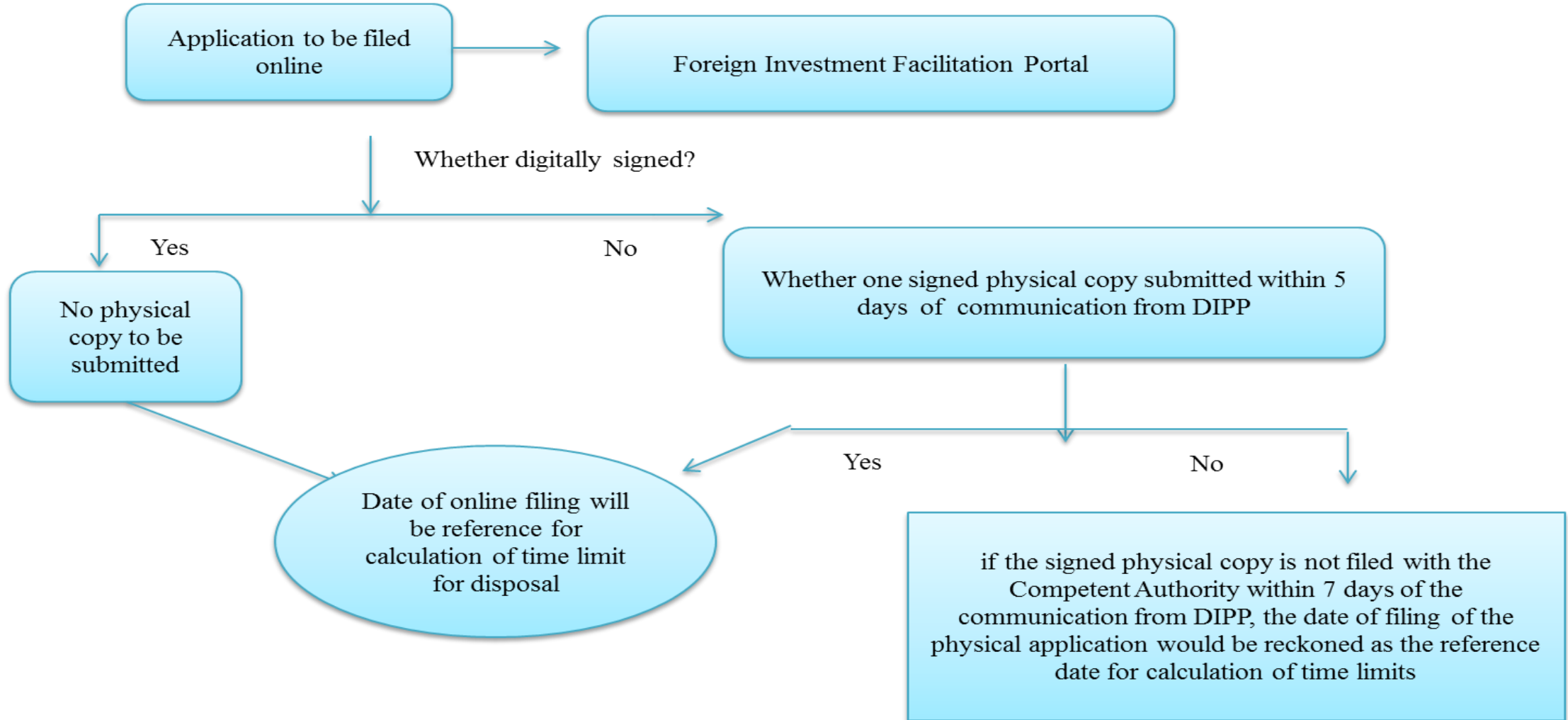
Online on RBI flair portal  
(<https://flair.rbi.org.in/fla/>)



# APPROVAL ROUTE



# Procedure under Approval Route





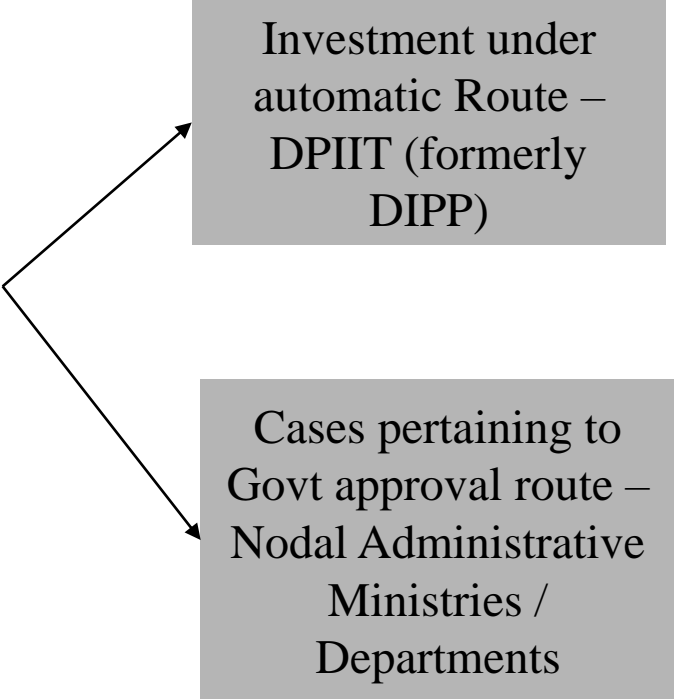
# Competent Authorities



Sr.No	Activity / Sector	Administrative Ministry / Department
1	Mining	Ministry of Mines
2	<p style="text-align: center;">Defence</p> <p>a) Items requiring Industrial Licence under the industries (Development &amp; Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP</p> <p>b) Manufacturing of small Arms and Ammunitions covered under Arms Act 1959</p>	<p>Department of Defence Production, Ministry of Defence</p> <p>Ministry of Home Affairs</p>
3	Broadcasting	Ministry of Information & Broadcasting
4	Print Media	
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	Ministry of Home Affairs
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	
10	Trading (Single, Multi brand and Food Product Retail Trading)	Department of Industrial Policy & Promotion
11	FDI proposals by Non-Resident Indians (NRIs) / Export Oriented Units (EOUs) requiring approval of the government	

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.

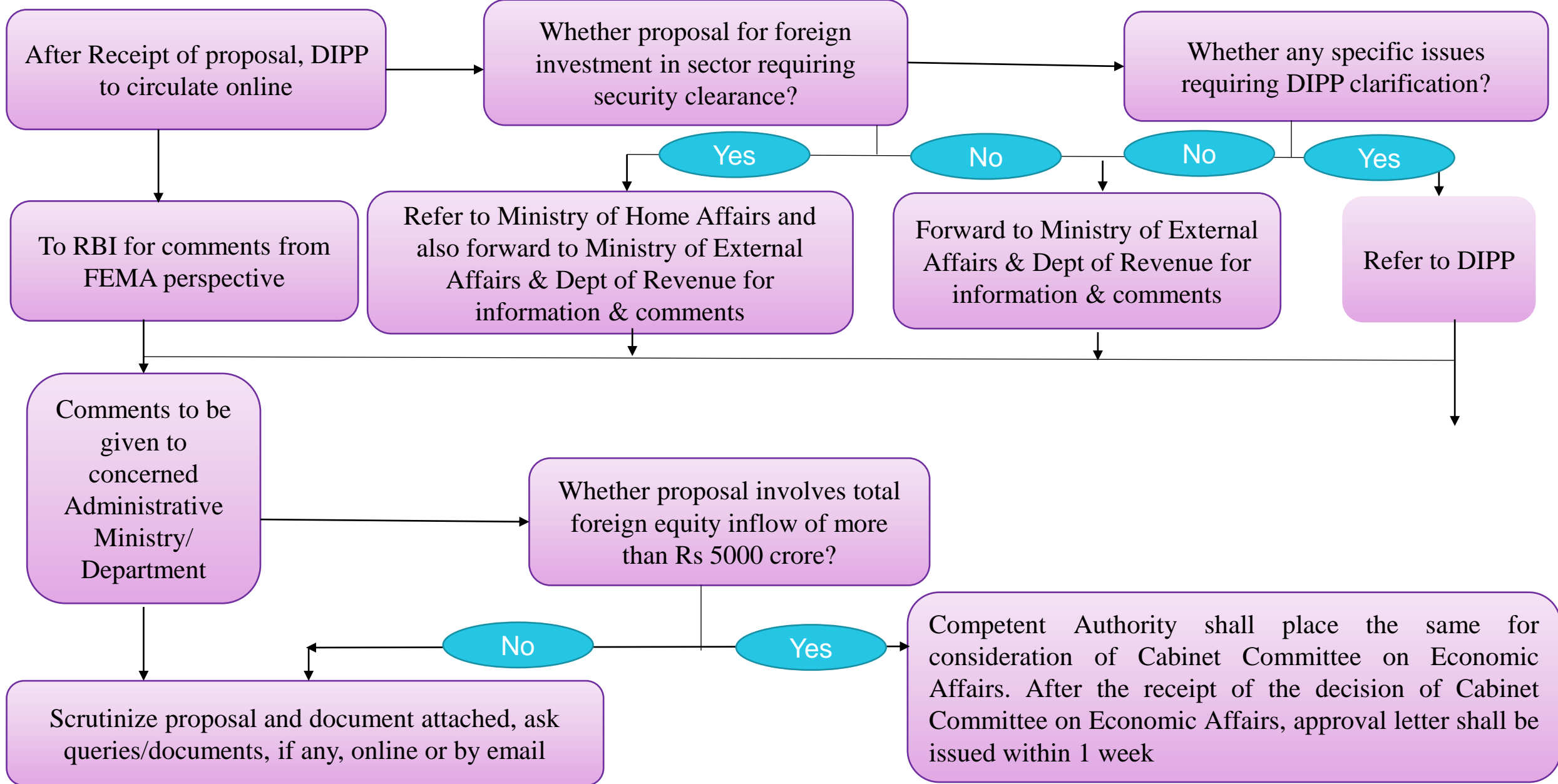
## Investments from Pakistan and Bangladesh

## 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

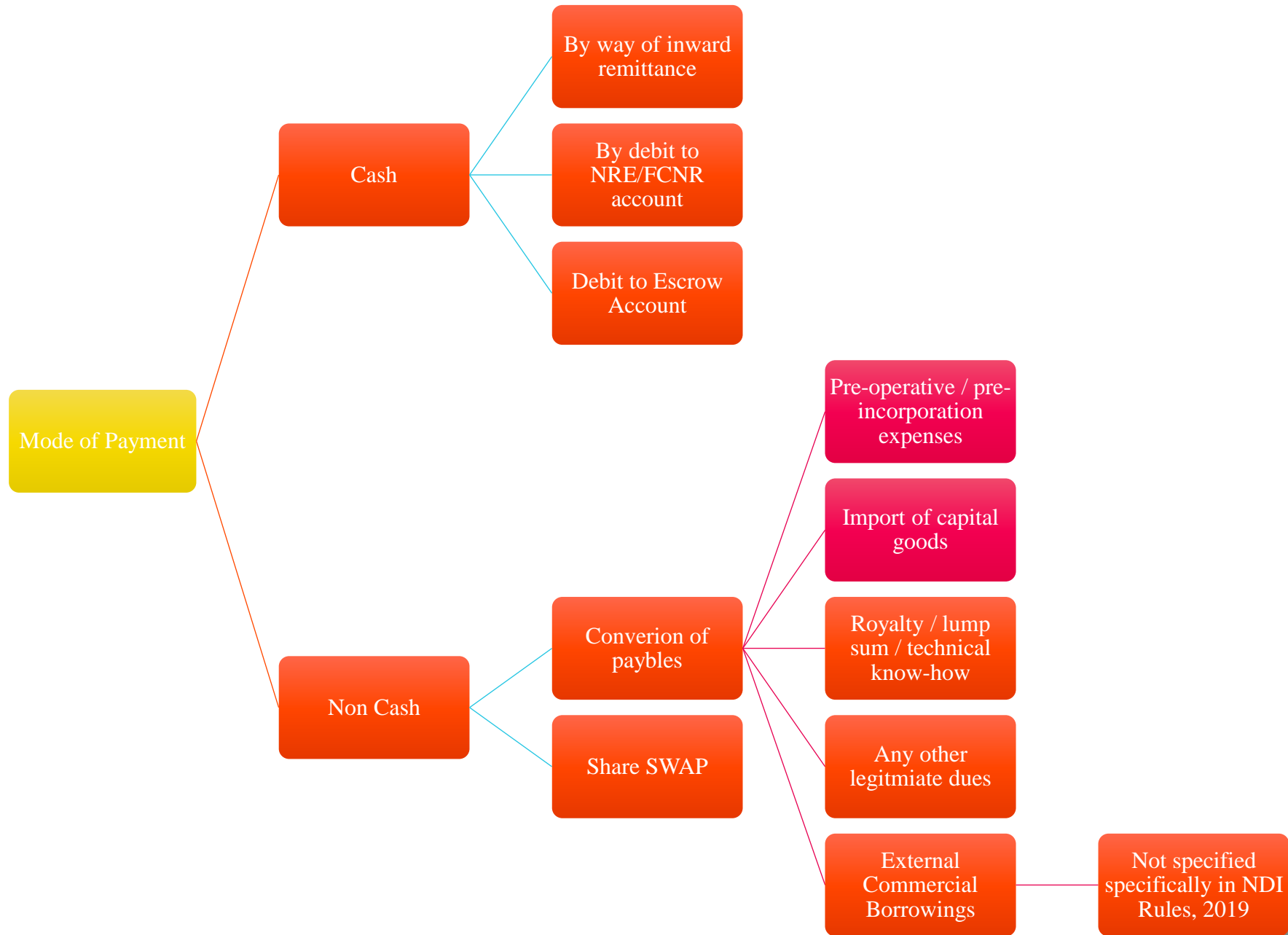
Sr. No	Action Points	Time Period	Cum Time Period
1	Dissemination of Investment Proposal by DIPP to Concerned Ministry/Department	2 days	
2	Time for submission of signed physical copy of the proposal to the Competent Authority, if needed	5 days	1 Week
3	Initial scrutiny of the proposal and documents attached 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.

A modern meeting room with a large window, a white table, and a TV. The room is bright and airy, with a white wall and ceiling. A large window with a black frame provides a view of a cityscape. A white table is set up with two small potted plants. A TV is mounted on the wall. The text "Mode of payment" is overlaid on the image.

# 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

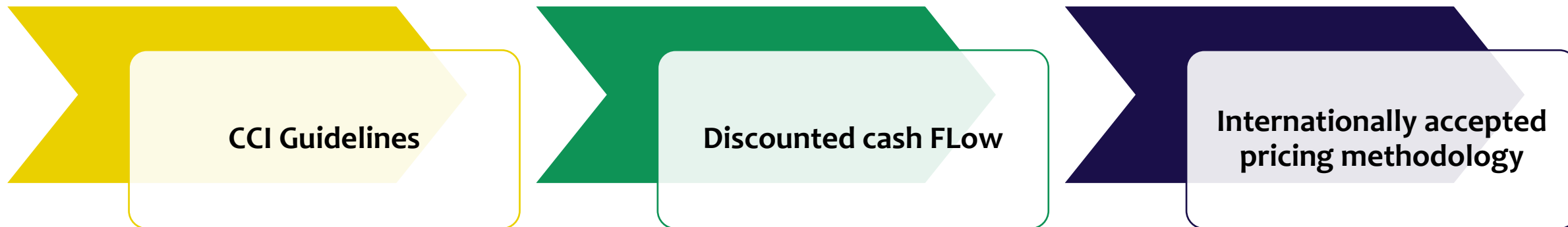
# Issue of equity shares in certain cases

- Swap of shares
  - If Indian investee company is engaged in sector under Automatic Route.
- Against Import of capital goods/ machinery/ equipment (excluding second-hand machinery)/ any amount payable





**At what price**





# 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.

- 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% from the date of transfer agreement
- Can be settled through escrow account or Indemnity

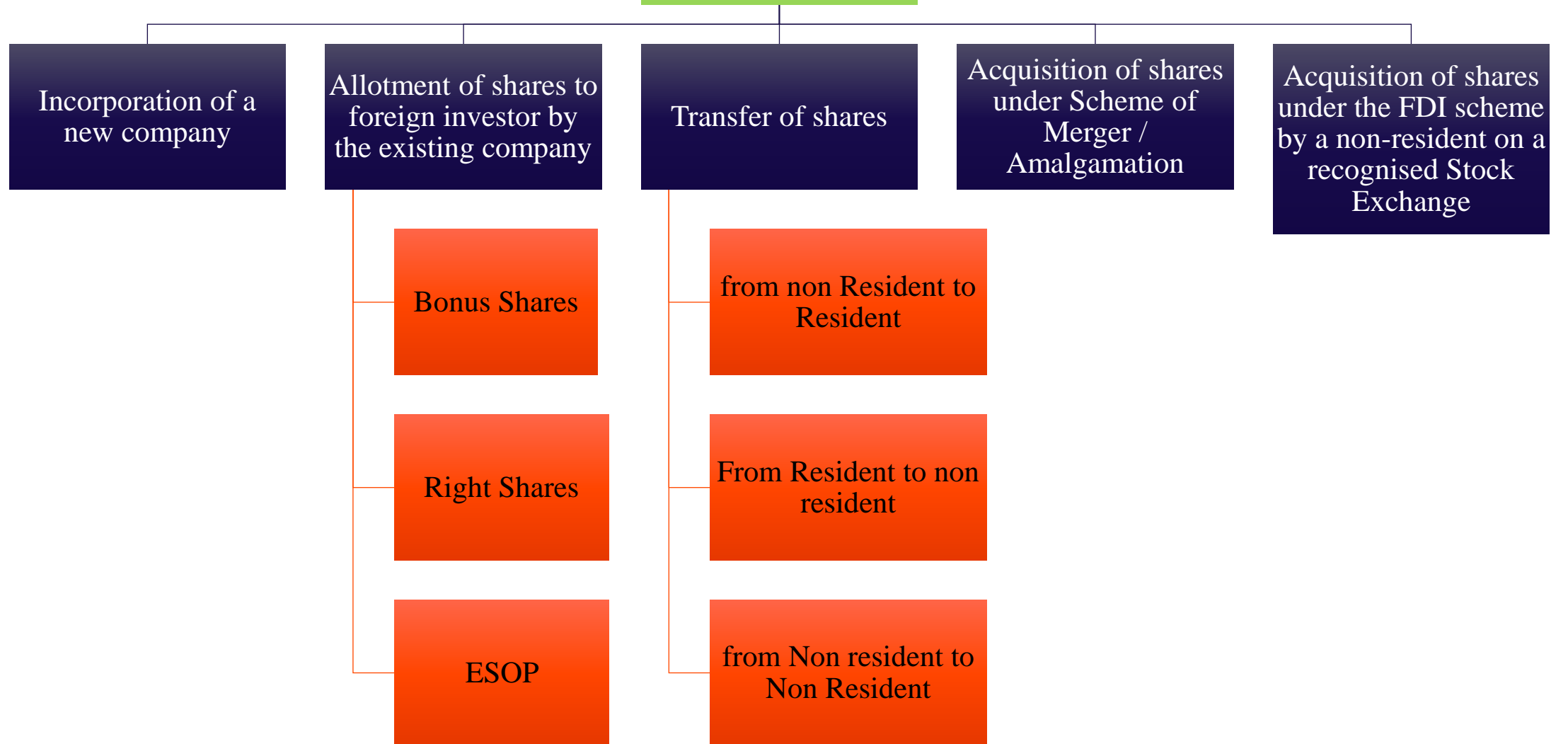
## Indemnity

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

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/ Bonus 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

Pricing for rights issue

- Listed company – price determined by company
- Unlisted company – shall not be less than the price offered to PRII

Rights issued when shareholder was PRII

- shall hold equity instruments (other than share warrants)
- on non- repatriation basis

rights renounced by a resident shareholder in favor of PROI

- shall hold equity instruments (other than share warrants) on non- repatriation basis

# Rights issue/ Bonus issue [Rule 7]

Rule 7 also had an explanation stating that the provisions of Rule 7 will also apply in case of subscription to rights shares by a person resident outside India which were renounced by the person to whom they were originally offered. Therefore, the pricing guidelines stipulated in Rule 7 were also applicable in all such cases.



The Department of Economic Affairs, Ministry of Finance, on April 27, 2020 notified the Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2020, which omitted the above mentioned explanation and 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' ("Amendment").



# ESOP || Rule 7

stock options/  
sweat equity  
shares

to employees/  
directors resident  
outside India of  
the company,  
holding company,  
JV, WOS,  
subsidiaries

Scheme

as per Act, 2013 or  
SEBI (SBEB)  
Regulations, 2014

Sectoral cap

As applicable

Government  
approval

if investment by  
PROI in company  
is under approval  
route

employee is  
citizen of  
Bangladesh/  
Pakistan

employee was  
PRII at the time of  
grant

Shares acquired  
on exercising shall  
be held on non-  
repatriation basis.

# Merger or demerger or amalgamation of Indian companies || Rule 19

Transferee or new company may issue equity instruments to existing holders of transferor company resident outside India subject to

- Scheme being approved by NCLT
- Sectoral cap
- New company or transferee company shall not be engaged in sectors prohibited for receiving foreign investment.

# FDI via Stock Market also permissible

- Only for Foreign Promoters of Listed Cos.
- Company can issue shares in lieu of dividend payable to promoter



## **Investment by FPIs – Schedule II**

# Investment by FPIs – Schedule II

## FPI can purchase/sell

- equity instruments of India Company –
- listed
- /to be listed on recognized stock exchange

## Total holding of each FPI/ investor group

- Less than 10% of total paid-up equity (fully diluted basis); or
- Less than 10% of paid up value of each series
  - of debentures or preference shares or share warrants.

## If limit is breached, the investment shall classify as FDI

- Reporting requirement to be complied.

# Investment by FPIs – Schedule II

## Total holding of all FPIs

- Shall not exceed 24% of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants.

w.e.f.: April 1, 2020 aggregate limit

- shall be the sectoral caps applicable as laid out in subparagraph (b) of paragraph 3 of Schedule I.

Aggregate limit may be decreased to a lower limit of 24% or 49% or 74% as deemed fit;

- With Board resolution and Shareholders' approval (SR) before 31st March, 2020; Once the aggregate limit increased to higher threshold then Indian Company cannot reduce it to lower threshold.

# Investment by FPIs

- Total holding of all FPIs
  - Shall not exceed 24% of
    - paid-up equity capital on a fully diluted basis or
    - paid up value of each series of debentures or preference shares or share warrants.
  - w.e.f.: April 1, 2020 aggregate limit shall be the sectoral caps applicable as laid out in sub-paragraph (b) of paragraph 3 of Schedule I.

Aggregate limit may be decreased to a lower limit of 24% or 49% or 74% as deemed fit;

With Board resolution and Shareholders' approval (SR) before 31st March, 2020;

Once the aggregate limit increased to higher threshold then Indian Company cannot reduce it to lower threshold.

# Investment by FPIs

- Total holding of all FPIs
  - The aggregate limit w.r.t Indian Company in a sector where FDI is prohibited shall be 24%.
- Breach of caps
  - The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within 5 trading days from the date of settlement of the trades causing the breach.
  - In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned.



# Investment by FPIs

- Pricing
  - Through public offer
    - Price of shares not less than what is offered to residents
  - Through private placement
    - Price is as per SEBI guidelines; or
    - Fair value as per any internationally accepted pricing methodology for valuation of shares on arm's length basis
      - [certified by SEBI registered Merchant Banker or CA or practicing Cost Accountant.
- May undertake short selling as well as lending and borrowing of securities
  - In the manner provided in Para 1.7 of Annex 2 of MD-FDI
- Investments shall be subject to limits and margin requirements prescribed by SEBI and RBI



## **Investment by NRIs – Schedule III and Sch IV**

# Investment by NRI/OCI on Repat basis – Schedule III

- NRI/OCI can purchase/ sell equity instruments of listed Indian company on stock exchange, on repatriation basis:
    - Through a branch designated by AD for the purpose
    - Total holding of any NRI/ OCI
      - Less than 5% of total paid-up equity (fully diluted basis); or
      - Less than 5% of paid up value of each series
- ☐ of debentures or preference shares or share warrants.

# Investment by NRI/OCI

- Total holding of all NRI/OCI
  - Shall not exceed 10% of
    - paid-up equity capital on a fully diluted basis or
    - paid up value of each series of debentures or preference shares or share warrants
  - Aggregate limit of 10% may be increased to 24%
    - With shareholders' approval by SR
  - May purchase equity instruments, subject to individual and aggregate limits

# Investment on non-repatriation basis – Schedule IV

➤ Investment can be made into

- Equity instruments, units, contribution to capital of an LLP
  - Without any limit
- Convertible notes by Start up
  - means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument;
- By NRI, OCI or company, a trust and a partnership firm incorporated outside India, owned and controlled by NRIs or OCIs.

# Investment on non-repatriation basis

- Deemed to be domestic investment
  - At par with investment by residents.
  - Investment cannot be made in equity instruments or units of
    - Nidhi company or
    - a company engaged in
      - agricultural/ plantation activities or
      - real estate business or
      - construction of farm houses or
      - dealing in Transfer of Development Rights.
- Investment can be made by contribution to capital
  - of a firm or a proprietary concern
    - Not engaged in
      - plantation activity or
      - print media or
      - real estate business.



# **Investment in LLP Schedule VI**

# FDI in LLP – Schedule VI

- Who can invest
  - PROI
    - Other than citizen of Pakistan or Bangladesh
  - Entity incorporated outside India
    - Other than an entity incorporated in Pakistan or Bangladesh
    - Not being FPI or FVCI
- Invest in which LLP
  - Operating in sectors where
    - 100% FDI permitted under automatic route;
    - No FDI linked performance conditions
    - if both aforesaid conditions met, then
      - such LLP can be converted in to company and vice versa.



# FDI in LLP - contd

- Manner of investing
  - Either by capital contribution; or
  - acquisition/ transfer of profit shares
- Pricing requirement
  - Fair value as per any internationally accepted/ adopted as per market practice
    - by CA or practicing Cost Accountant or approved valuer from the panel maintained by the CG.
- Pricing for transfer of contribution/ profit share
  - P<sub>RII</sub> to P<sub>ROI</sub>
    - Consideration not less than fair price of share
  - P<sub>ROI</sub> to P<sub>RII</sub>
    - Consideration not more than fair price.



## **Investment by FVCI Schedule VII**

# Investment by FVCI – Schedule VII

## ➤ FVCI may purchase

- Securities (not listed on a recognised stock exchange at the time of issue) issued by Indian company engaged in
  - Biotechnology
  - IT related to hardware and software development
  - Nanotechnology
  - Seed research and development
  - Research and development of new chemical entities in pharmaceutical sector
  - Dairy industry
  - Poultry industry
  - Production of bio-fuels
  - Hotel-cum-convention centres with seating capacity of more than 3000.
  - Infrastructure sector
    - Meaning as given in [Harmonised Master List of Infrastructure](#).

# Investment by FVCI

- FVCI may purchase
  - equity /equity linked instrument/debt instrument by a start up;
  - Units of VCF or Cat I AIF or
  - Units of scheme/ fund set up by a VCF or CAT I AIF.
- Investment in equity instrumentsto be
  - As per sectoral caps, entry routes and attendant conditions.



## **Investment in Investment Vehicles Schedule VIII**

# FDI in Investment Vehicles – Schedule VIII

- Investment Vehicles
  - AIFs; REITs; INViTs; MFs that invest more than 50% in equity
- Who can invest
  - PROI (including FPI and NRI)
    - Other than citizen of Pakistan or Bangladesh
  - Entity incorporated outside India
    - Other than an entity incorporated in Pakistan or Bangladesh
- May issue units against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle
- Sale/ Transfer
  - As per SEBI regulations/ RBI directions.



# FDI in Investment Vehicles

- Downstream investment by IV shall be regarded as indirect foreign investment, if
  - Sponsor or the Manager or the Investment Manager
    - is not owned and not controlled by resident Indian citizens; or
    - is owned or controlled by persons resident outside India.
  - Extent of foreign investment in the corpus of the Investment Vehicle will not be a factor;
  - AIF Cat III, with foreign investment, shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest.

# Investment in DRs by PROI – Schedule IX

- Eligible instruments for issue of DRs
  - Any security or unit in which PROI can invest
- Who can issue or transfer
  - A person eligible to issue or transfer eligible instruments to a foreign depository
    - Under DR Scheme, 2014
    - at a price not less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors.
  - Domestic custodian may purchase on behalf of PROI



# Issue of IDRs – Schedule X

- Who can issue
  - Companies incorporated outside India
    - Through domestic depository
      - ☐ To PRII and PROI
- Conditions for issue
  - Issue is in compliance with Rule 13 of Companies (Registration of Foreign Companies) Rules, 2014 and SEBI (ICDR) Regulations, 2009.
- IDR by financial/ banking companies having presence in India
  - Through branch or subsidiary
    - Will require prior approval of sectoral regulator

# Issue of IDRs

- Conditions for issue
  - Shall be denominated in Indian Rupees only
  - Proceeds of issue shall be immediately repatriated outside India by companies issuing IDR
- Who can invest
  - FPI or NRI or OCI
- IDR shall not be redeemable into underlying equity shares before expiry of 1 year from date of issue
- Redemption/ conversion shall be in compliance of
  - FEM(Transfer or Issue of any Foreign Security) Regulations, 2004

# 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.



# Remittance

# Remittance of sale proceeds

- As per Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019
  - Sale proceeds, net of taxes, may be remitted outside India or
    - Schedule 1 (FDI Scheme)– be credited to NRE/ FCNR(B);
    - Schedule 2 (FPI) -
      - The sale proceeds (net of taxes) of equity instruments and units of domestic mutual fund may be remitted outside India or be credited to foreign currency a/c or SNRR of the FPI.
      - The sale proceeds (net of taxes) of units of investment vehicles other than domestic mutual fund may be remitted outside India
    - Schedule 3 (NRI/ OCI – repat) - credited to NRE (PIS) a/c;
    - Schedule 4 (non-repat) – credited only to NRO a/c.
      - No repatriation outside India

# Remittance of sale proceeds

- As per Regulations and Schedule
  - Sale proceeds, net of taxes, may be remitted outside India or
    - Schedule 6 ( LLP) - credited to NRE or FCNR(B) account of the person concerned.
    - Schedule 7 (FVCI) – credited to foreign currency account or SNRR account
    - Schedule 8 (Investment vehicle) - credited to the NRE or FCNR(B) account;
    - Schedule 10 (IDRs)- Redemption/conversion of IDRs into underlying equity shares of the issuing company shall be a compliance the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.
- AD Bank may allow remittance to seller who is PROI provided
  - security was held on repatriation basis;
  - security has been sold in compliance with pricing guidelines or RBI approval has been obtained.

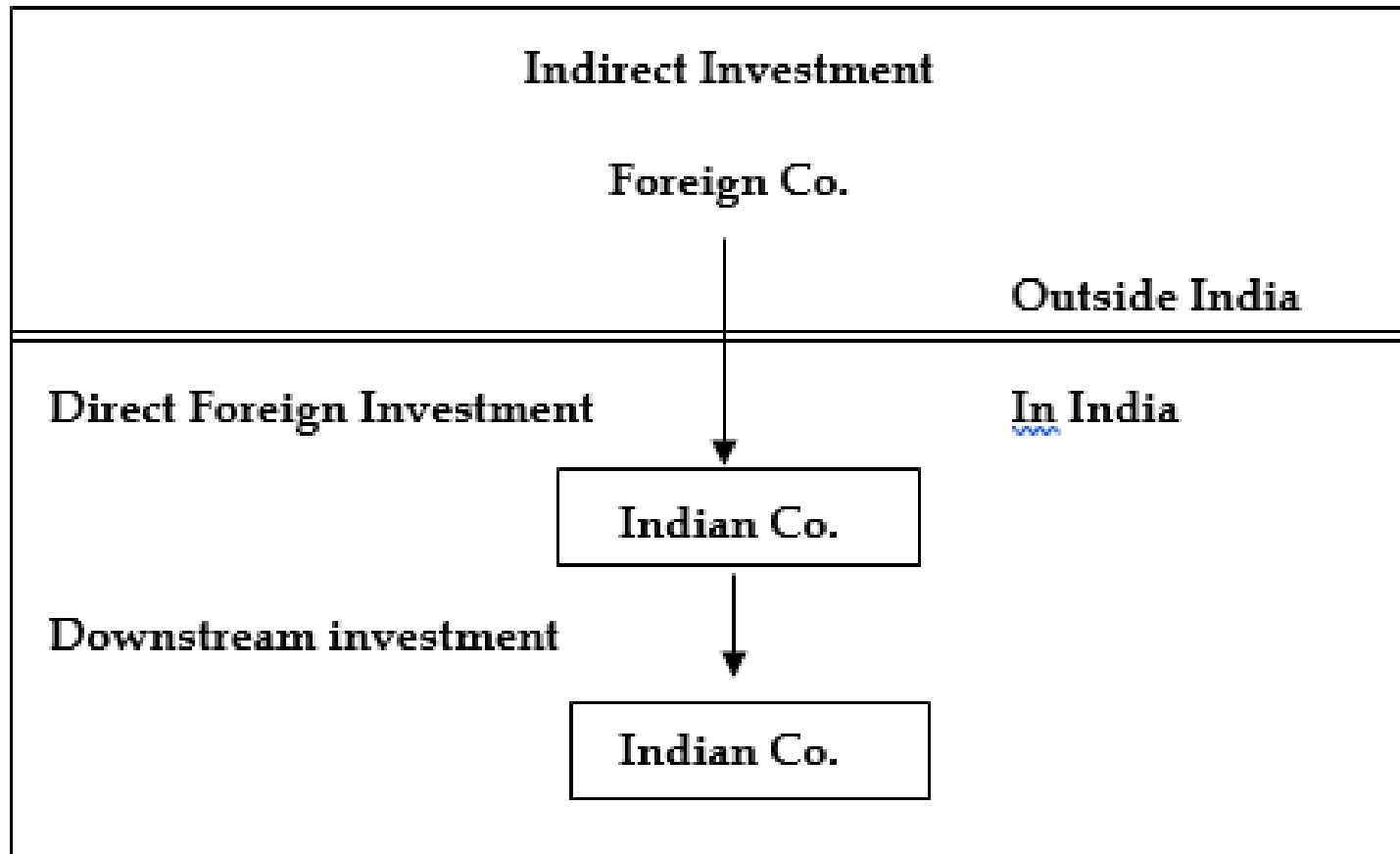


# Reporting Requirements in case of Transfer

- FC-TRS shall be filed for transfer in following cases:
  - PROI (R) and PROI (NR);
  - PROI (R) and PRII;
  - Transfer of ‘participating interest/ rights’ in oil fields
    - in respect of each Party constituting the Contractor, the undivided share expressed as a percentage of such Party’s participation in the rights and obligations under this Contract
  - Indian company buying back shares
    - in a scheme of merger/ de-merger/ amalgamation of Indian companies approved by NCLT/ competent authority.
- Onus on
  - resident transferor/ transferee
    - consideration payable on deferred basis
      - reporting on receipt of every tranche of payment.
  - PROI (acquiring on non-repatriation basis)
  - PROI
    - in case of sale on recognised stock exchange
- within 60 days of
  - transfer of equity instruments;
  - Receipt/remittance of funds
  - whichever is earlier.



# Downstream Investment



Indian entity which has received Indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as are applicable for foreign investment

# Conditions of Downstream Investments (DI)

Approval of Board and also shareholder's agreement, if any.

## Funds for making DI

- From abroad;
- Through internal accruals
  - Profits transferred to reserves account after payment of taxes.
- Not use funds borrowed in domestic markets

Transfer of equity instruments held by Indian company as DI may be transferred to

- PROI, subject to reporting specified by RBI;
- PRII, subject to pricing guidelines adherence;
- Another FOCC Indian entity.

# Important definitions – contd...

‘Ownership of an Indian company’ shall mean

- beneficial holding of more than 50 percent
- of the equity instruments of such company.

Company owned by resident Indian citizens shall mean an Indian company

- where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

‘Company owned by persons resident outside India’

- shall mean an Indian company that is owned by persons resident outside India.

# Important definitions – contd...

## 'Control' shall mean

- the right to appoint majority of the directors or
- to control the management or policy decisions
- including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

## 'Company controlled by persons resident outside India'

- shall mean an Indian company that is controlled by persons resident outside India.

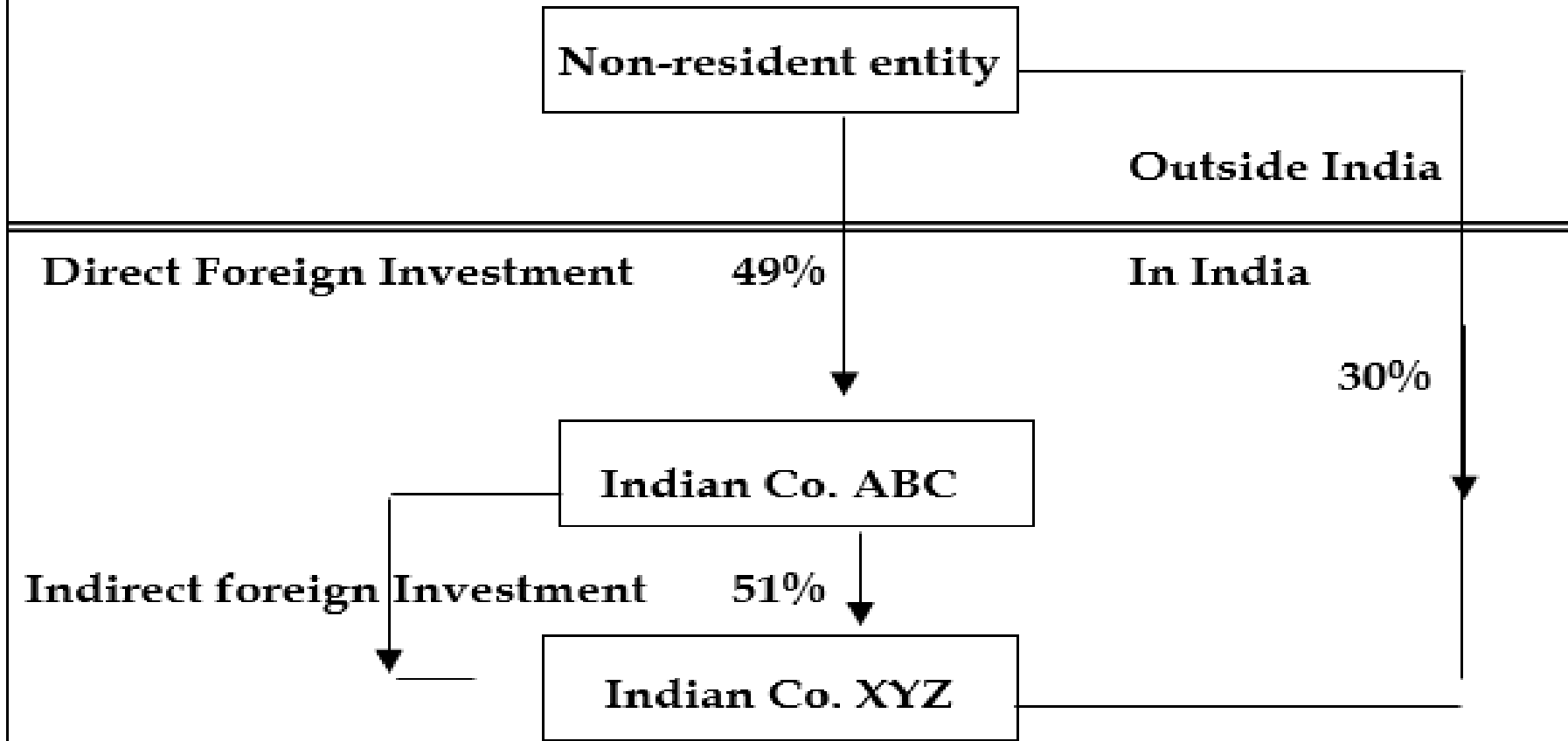
# Manner of computing indirect foreign investment

To illustrate, if the indirect foreign investment is being calculated for Company X which has investment through an investing Company Y having foreign investment, the following would be the method of calculation:

- (A) where Company Y has foreign investment less than 50% - Company X would not be taken as having any indirect foreign investment through Company Y.
- (B) where Company Y has foreign investment of say 75% and:
  - (I) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X;
  - (II) invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%;
  - (III) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company X would be computed in the ratio of 75:25 in the total investment of Company Y in Company X.

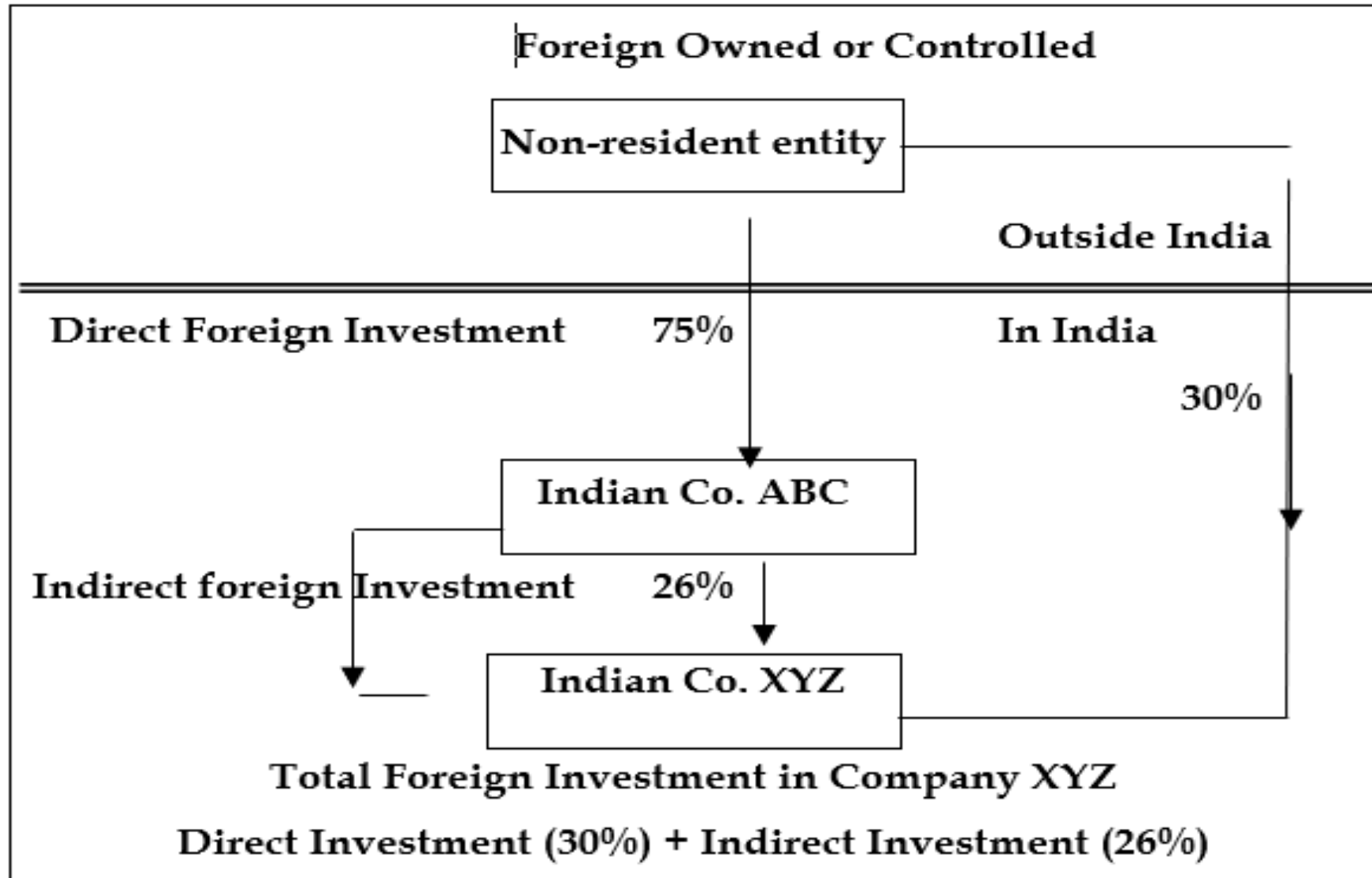


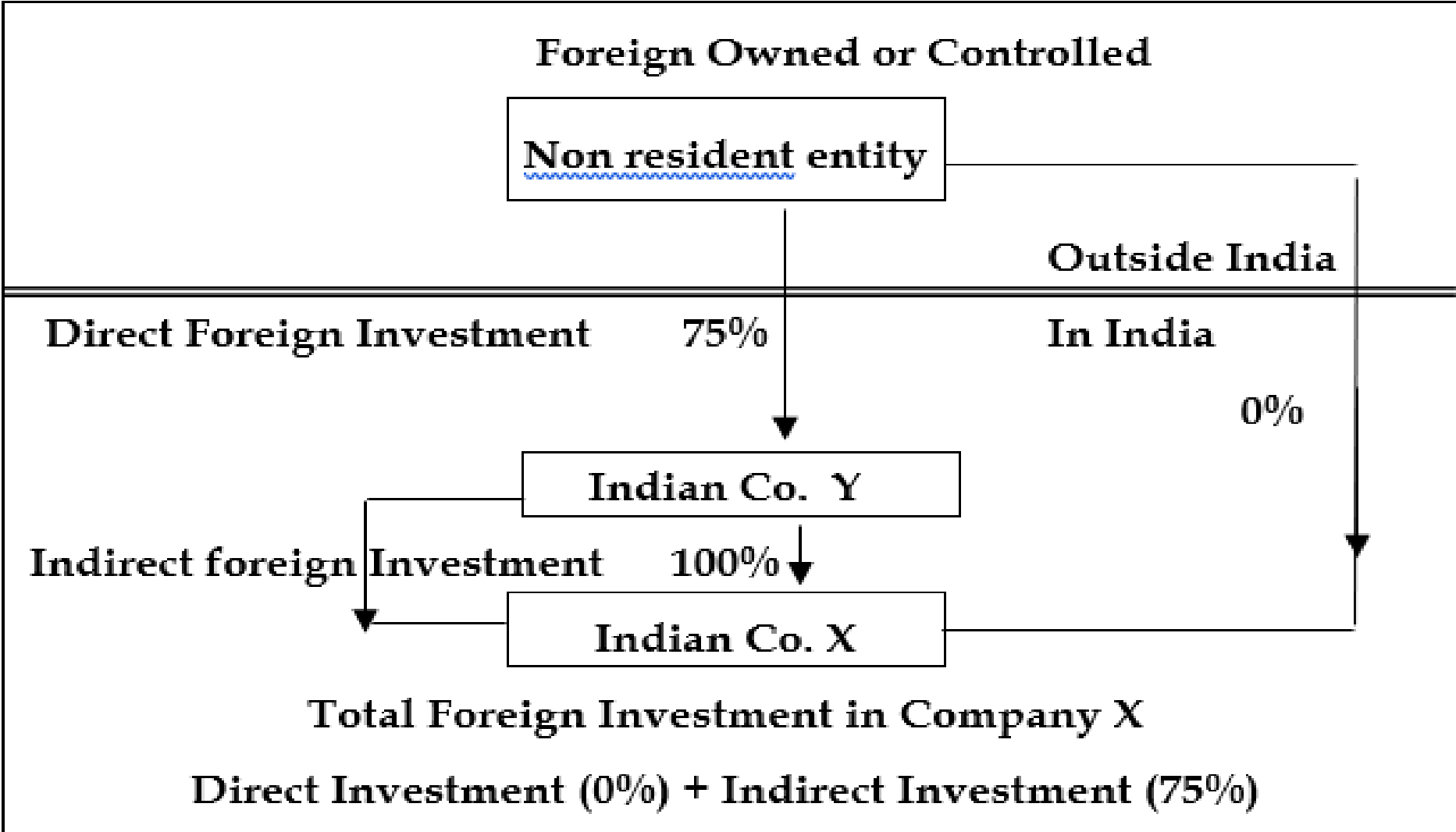
**Where Indian Co. is not owned or controlled by Non-resident entity**



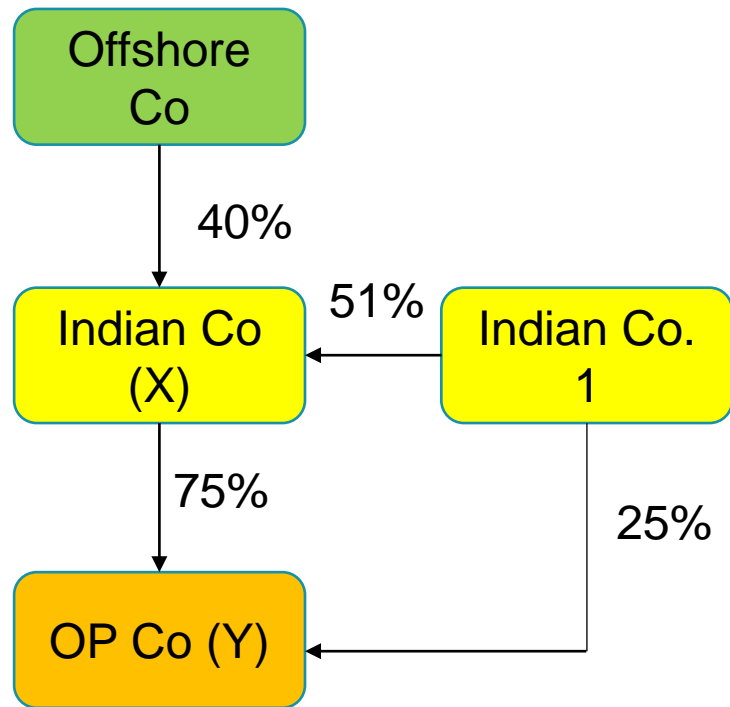
**Total Foreign Investment in Company XYZ**

**Direct Investment (30%) + Indirect Investment (0%)**

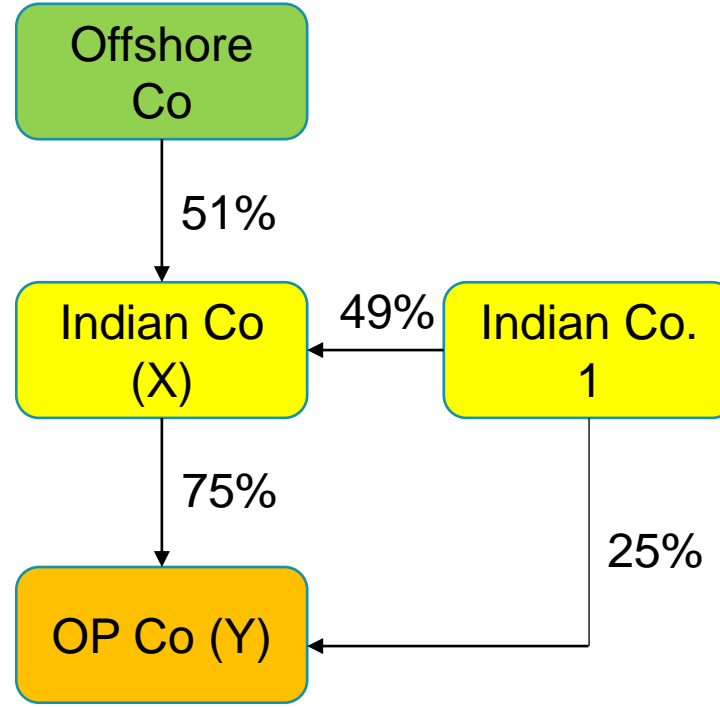




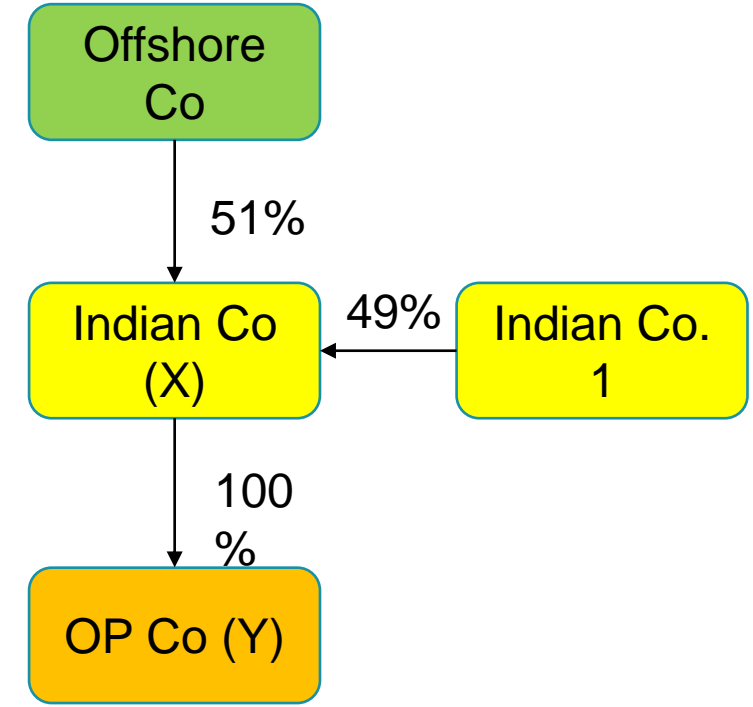
# COMPUTATION OF DOWNSTREAM INVESTMENT



Foreign investment in Y = zero



Foreign investment in Q = 75%

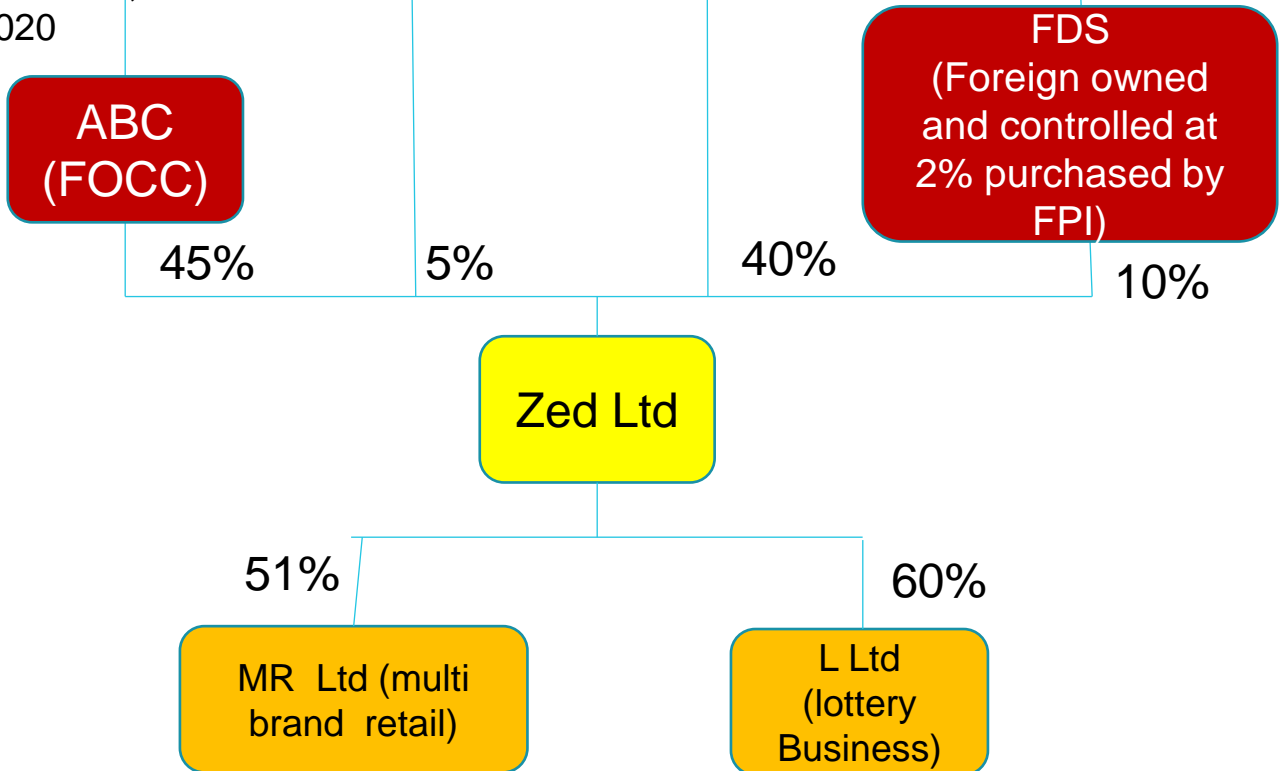


Foreign investment in X = 51%

December 01, 2019



March 01, 2020



## Shareholder Pattern of – “Zed Ltd”

Name of Indian Shareholder	% equity	Status – 1 <sup>st</sup> December, 2019	Change – 1 <sup>st</sup> march, 2020
ABC	45%	IOCC	FOCC
You	5%	FOCC	FOCC
Me	40%	Resident Indian	Resident Indian
FDS	10%	Indian owned and controlled 49% non-resident shareholder	51% foreign owned as 2% purchase by FPI

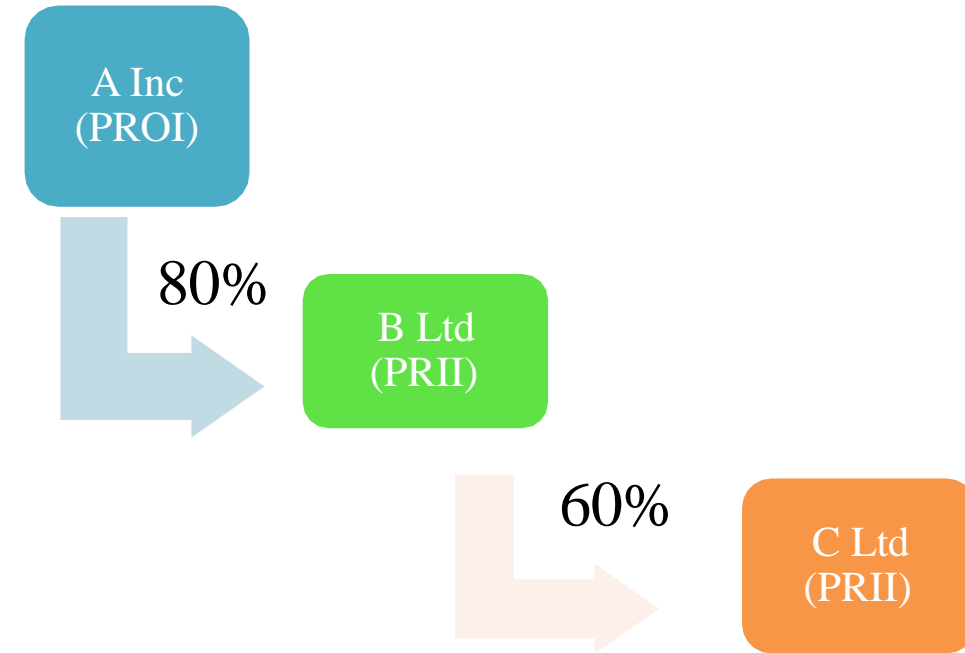
## Illustration 2

Case 1: A Inc hold shares in B ltd (i.e. 80%), what will be extent of indirect foreign investment in C Ltd?

- 80%
- 60%
- 48%
- None of above

Case 2: What will be extent of indirect foreign investment in C Ltd if 100 % is held by B Ltd?

- 80%
- 100%
- None of above



# Reporting in case of DI

## Form DI

- within 30 days of such investment on Foreign Facilitation Portal Investment

## To notify Secretariat for Industrial Assistance, DIPP

- Within 30 days of investment;
- even if equity instruments have not been allotted
  - along with the modality of investment in new/existing ventures

## Submit form DI on SMF portal

- Within 30 days of investment.

## Onus of compliance

- First level Indian company making DI

## Annual compliance

- Certificate from statutory auditors;
  - In case of qualified report, information to be reported to regional office of RBI
- Acknowledgement to be obtained from RBI.
- Same to be stated in the Director's Report.

## Delay in Reporting

- ✓ The LSF shall be applicable for the transactions undertaken on or after November 7, 2017.
- ✓ The payment of LSF is an option for regularising reporting delays without undergoing the compounding procedure.
- ✓ For calculating the LSF amount, the period of contravention shall be considered proportionately {(approx. rounded off to next higher month ÷ 12) X amount for 1 year}.
- ✓ The date of reporting to the AD bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.

Amount involved in reporting (in INR)	Late Submission Fee (LSF) as % of amount involved*	Maximum amount of LSF applicable
Upto 10 million	0.05%	INR 1 million or 300% of the amount involved, whichever is lower.
More than 10 million	0.15%	INR 10 million or 300% of the amount involved, whichever is lower.

□ The % of LSF will be doubled every twelve months



A blurred office desk with a laptop, smartphone, and stacks of papers. The background is a bright, out-of-focus office space.

**Thankyou !!**  
**Sudha@taxpertpro.com**