

FEMA

Inbound & Outbound Investments

CA Chintan Gandhi

Partner

Viren Gandhi & Co
Chartered Accountants

Tel - + 91 22 25903597 / +91 9920818466

Website: www.cavirengandhiandco.com

Email: chintan@cavirengandhiandco.com

Agenda

I FEMA – Introduction & Definitions

II Inbound Investment

- i. Statutes for FDI
- ii. Sectoral Routes
- iii. Eligible Instruments & Pricing
- iv. Consideration
- v. Transfer of shares
- vi. Other Aspects
- vii. Calculation of Foreign Investment & Downstream Investments
- viii. Investment in Other entities
- ix. Compliances

III Outbound Investment

- i. Statutes of ODI & Important Definitions
- ii. Permissible Routes & Conditionalities
- iii. Transfer of shares
- iv. ODI by other entities
- v. Other Aspects
- vi. ODI by Individuals / LRS
- vii. Compliances



FEMA – Basic Aspects

FEMA 1999

- The Foreign Exchange Regulation Act ,1973 was repealed and replaced by The Foreign Exchange Management Act, 1999 (Appointed date 1 June 2000)

Aims of FEMA

- Facilitate external trade and payments
- Promotion of orderly development of foreign exchange markets

FEMA Rules / Regulations

- Rules notified by Central Government
- Regulations notified the by Reserve Bank of India (RBI)

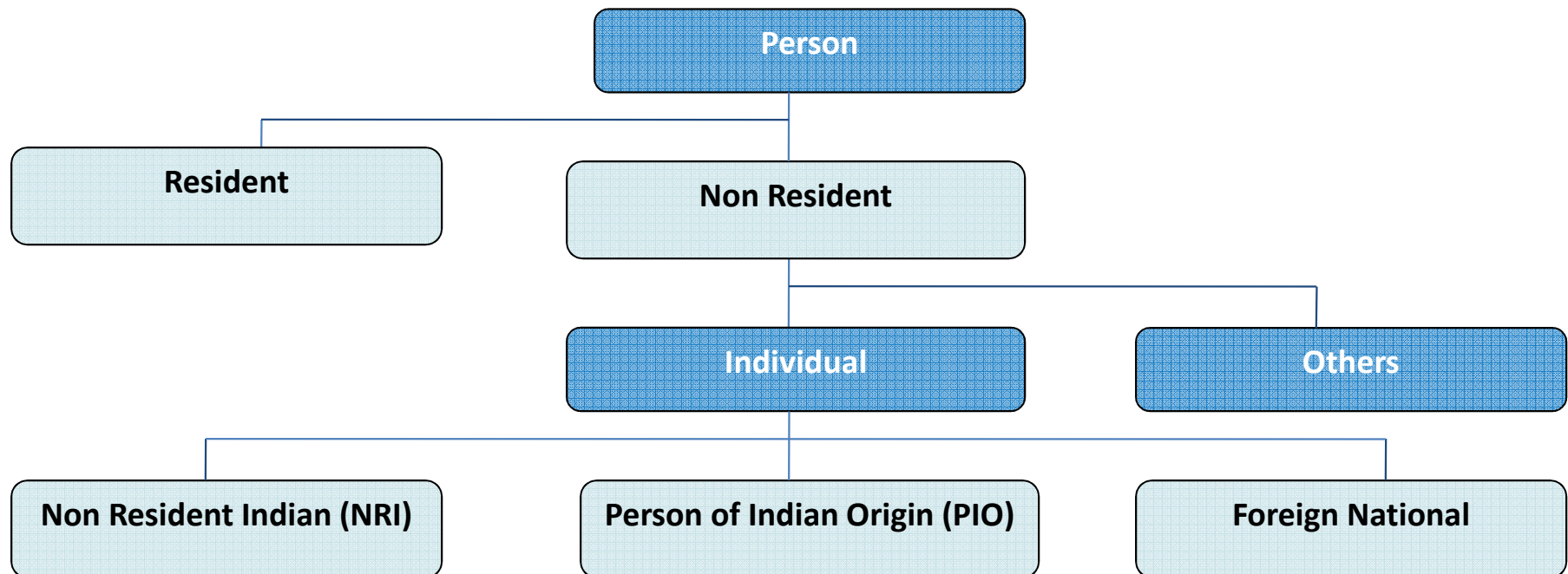
RBI

- A.P. (Dir Series) – issued from time to time
- Notifications issued by RBI
- Master Circulars – one in a year (July)
- F.A.Qs (updated available on <http://www.rbi.org.in>)

FEMA – Basic Aspects

Person

- Individual, HUF , Company, Firm, AOP or BOI (whether incorporated or not), Artificial Juridical Person and
- Agency, Office or Branch owned or controlled by such persons




FEMA - Basic Concepts

Resident in India

- Individuals
 - Physical stay for more than 182 days during **preceding financial year**
 - Exclusions
 - Gone out of India for
 - Taking up employment outside India
 - Carrying on business or vocation outside India
 - Any purpose with intention to stay out for uncertain period
 - Comes to India, **otherwise than** for
 - Taking up employment in India
 - Carrying on business or vocation in India
 - Any purpose with intention to stay in India for uncertain period
- Persons other than individuals
 - Any person or body corporate registered or incorporated in India
 - Office, branch or agency in India owned / controlled by a person resident outside India
 - Office, branch or agency outside India owned / controlled by a person resident in India



Indian office of
foreign company -
FEMA Resident



Unlike IT
Act

Residency test linked to stay in Previous Year

FEMA - Basic Concepts

Non Resident Indian (NRI)

- NRI has been defined under FEMA Regulation 2(vi) of the FEMA - 5 (Deposit) Regulations 2000 as follows:
- NRI is a person resident outside India who is a citizen of India or is a Person of Indian Origin”
- It is possible that **you may be an NRI under FEMA, yet you may be a resident under the Income tax laws.**

Person of Indian Origin (PIO)

PIO is defined differently in various regulations :

- FEMA - 5 (Deposit) Regulations, 2000
- FEMA- 21 (Acquisition and Transfer of Immovable Property in India) Regulations, 2000
- FEMA - 24 (Investment in a Firm or Proprietary concern in India)
- Most other notifications follow the FEMA (Deposit) Regulations definition of PIO as below -
PIO means a citizen of any country other than Bangladesh or Pakistan, if
 - a. he at any time held Indian passport; or
 - b. he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);or
 - c. the person is a spouse of an Indian citizen or a person referred to in (a) or (b);

Inbound Investments

Statutes for FDI

Foreign Exchange Management Act, 1999

FEMA 20 – FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 as amended from time to time, read with Schedules

RBI Notifications and Circulars

Frequently Asked Questions on FDI

Master Circular on Foreign Direct Investment

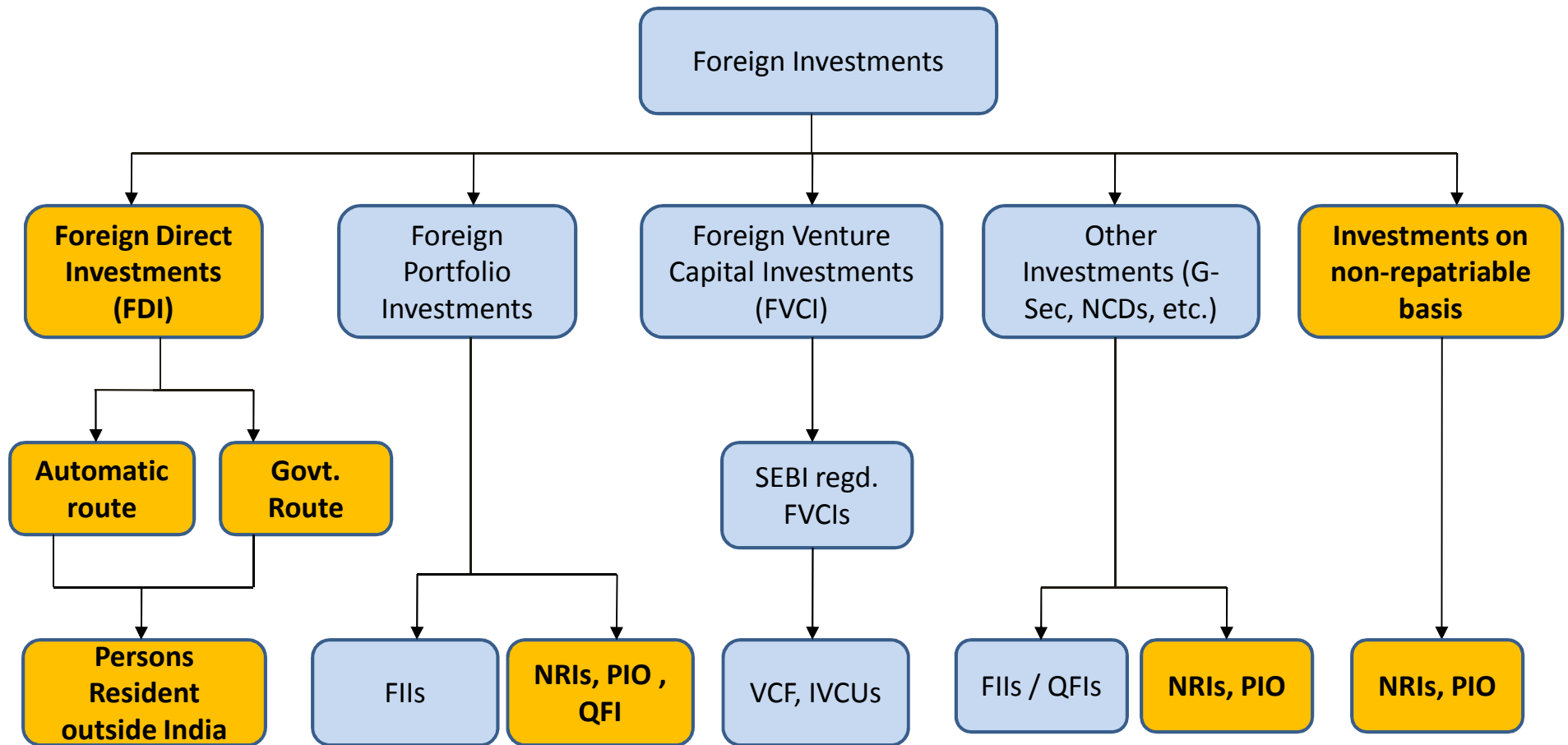
Foreign Direct Investment Consolidated Policy - DIPP

Press Notes - DIPP

In case of any conflict between FDI Policy and FEMA 20, FEMA 20 will prevail

Subject to frequent amendments

Foreign Investment Framework



Foreign entity may also commence business in India by opening Branch / LO

Overview of FEMA 20 – Schedules

- Schedule 1
 - FDI Scheme for Foreign Investors
- Schedule 2
 - FII Investment under PIS
- Schedule 3
 - NRIs Investment on Indian Stock Exchange on repatriation / non-repatriation basis under PIS
- Schedule 4
 - NRI Investment on non-repatriation basis
- Schedule 5
 - Purchase and sale of securities other than shares or convertible debentures by Non-Resident (FIIs and NRIs)
- Schedule 6
 - Foreign Venture Capital Investors Investment Scheme
- Schedule 8
 - Qualified Foreign Investors (QFI) Investment Scheme

Citizens / Entities of Bangladesh / Pakistan (Now allowed subject to FIPB approval)

Sectoral Policy of FDI into an Indian company

Approval route

- Approval from SIA - FIPB
- Activities in Annex B - where 'entry route' is FIPB
- Investments beyond sectoral caps
- Investments in Holding Companies
- Investment in companies with no operations
- Capitalization of import of capital goods / pre-operative / pre-incorporation expenses / share swap
- Issue of warrants / partly paid shares (as per FDI Policy)

Automatic Route

- Almost all activities / sectors except a small controlled and negative / restricted list
- Investment to fall within prescribed sectoral caps and stipulated guidelines
- Post facto filings with RBI
- Issue of shares against conversion of ECBs, Royalty, Technical know-how fees etc

Prohibited Activities / sectors

- Small controlled and negative / restricted list specified in Annexure A of Schedule I of FEMA 20

...Sectoral Policy of FDI into an Indian company

Automatic Route (Illustrations)

- Manufacturing sector 100% (except items of MSE sector – 24% cap)
- Cash & carry / Wholesale Trading 100% (a)
- NBFC – 100% (a)
- Insurance (26 percent cap) (a)
- Courier Services (100%)
- Development of Hsg, etc. 100% (a)
- Broadcasting (a) upto 49%
- Hotels and Tourism
- Ecommerce activities (a)
- Telecommunications (49%)
- Banking Pvt Sector (upto 49%)

Approval route (Illustrations)

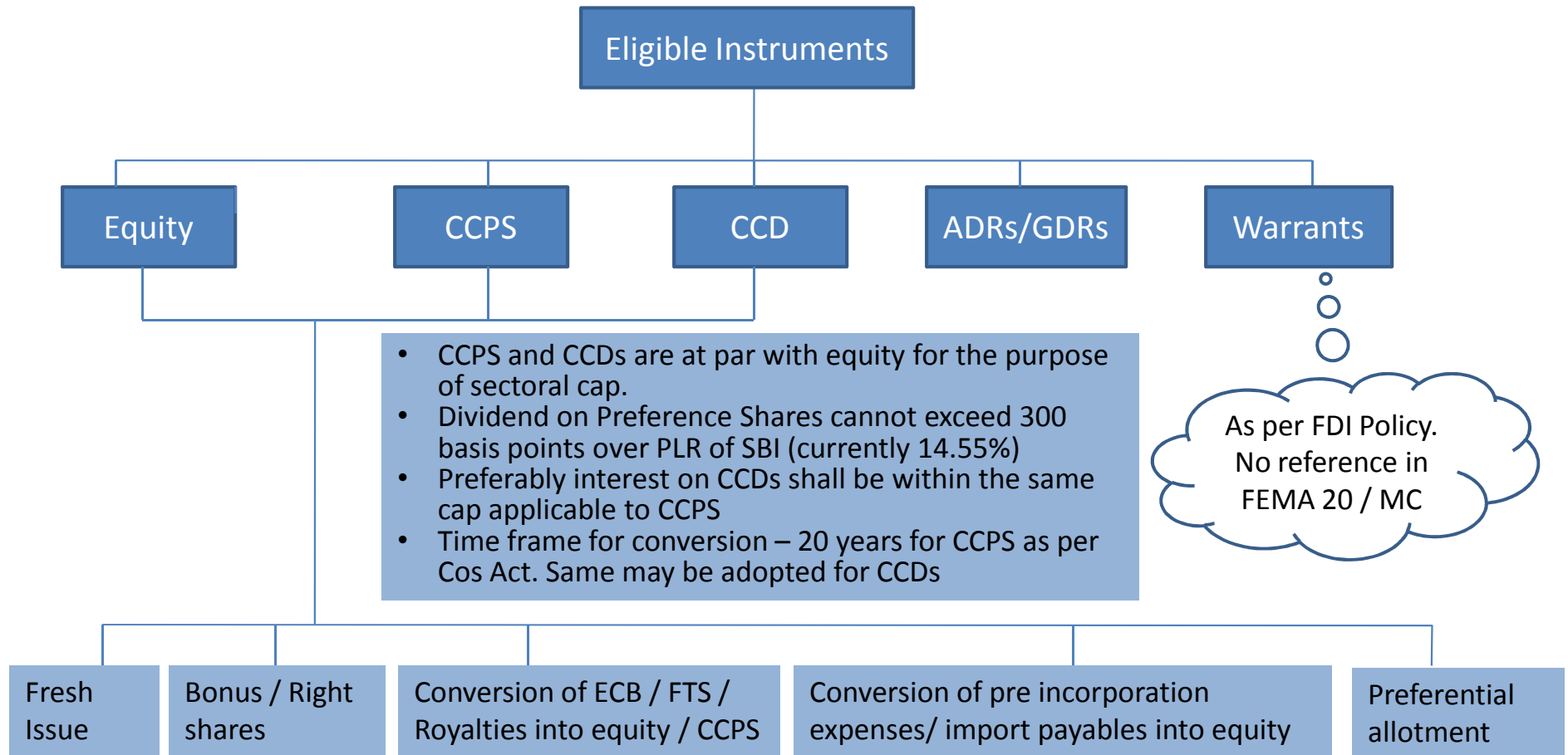
- Existing Airports beyond 74 percent
- Asset Reconstruction Companies beyond 49 percent
- Broadcasting (a) (49% to 74%)
- Print Media 26% (a)
- Single brand retailing (100%)
- Multi brand (51%)
- Telecommunication (49% to 74%)

Prohibited Activities / sectors (Illustrations)

- Sectors not open to private sector investment e.g. Atomic energy, Railway Transport , (Other than Mass Rapid Transport Systems)
- Lottery, betting and gambling
- Cigars & cigarettes
- Real Estate business
- Chit Funds / Nidhi Companies
- Trading in Transferable Development Rights (TDRs)

Note: (a) Sector specific, capitalization and other applicable guidelines

Eligible Instruments that would be reckoned as part of Equity under FDI Policy



Put and Call Options now open to Foreign Investors

Non / Partially / Optionally Convertible Debentures or Preference Shares shall be treated as ECB

Pricing Guidelines (1/2)

- **Listed Equity (fresh issue to NR/ transfer to from R to NR):**
 - In accordance with SEBI guidelines ([Pricing as per SEBI Guidelines](#))
- **Unlisted Equity (fresh issue to NR / transfer from R to NR):**
 - Not less than fair valuation done by SEBI Category – I Merchant Banker or CA as per DCF method
- **Rights issue (Issue to NR) :**
 - At a price determined by the company (listed securities)
 - Not less than the price issued to resident shareholders (unlisted securities)

Price determined upfront at the time of issue

Pricing norms inapplicable to inter se transfer between two non-residents

In case of subscription of MOA, pricing can be at face value subject to compliance with Cos Act.

Pricing Guidelines (2/2)

- **Convertible Instruments (R to NR) :**

- No requirement of upfront determining the fixed conversion price of CCPS/CCD at the time of issue
- Only the conversion formula to be determined upfront
- However, price on conversion should not be lower than fair value worked out at the time of issue of the convertible instruments as per FEMA guidelines

Pricing guidelines applicable both at the time of investment as well exit

Transfer of existing shares / CCDs by NR to R shall not be more than the minimum price at which the transfer of shares can be made from R to a NR as given above.

Pricing Guidelines also applicable for issue of shares / CCDs for consideration other than cash (i.e. against lump-sum technical knowhow fee/ royalty , ECB , pre incorporation expenses, import payables)

Consideration for issue of shares

Cash Consideration

- Inward remittance through normal banking channels
- NRE / FCNR account
- Debit to non interest bearing Escrow A/c in Indian Rupees

Non Cash Consideration

- General permission for conversion of ECB into Equity / Preference subject to certain conditions
- Conversion of lump sum /technical know-how fee and Royalties receivables can also be converted into Equity / Preference as above
- Conversion of import payables/pre incorporation expenses/share swap (with approval of FIPB)

If Shares or CCDs are not issued within 180 days, the amount of consideration shall be refunded.
However RBI shall extend it for sufficient reasons on an application.

Share Swap

- Valuation of the shares by Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.
- Government Approval through Foreign Investment Promotion Board (FIPB) required

Inbound and Outbound Regulations simultaneously apply

A blue tilted rectangle with a thin dark blue border, containing white text. The rectangle is tilted clockwise and is positioned on the left side of the white background.

**General Permissions -
RBI**

General Permission

- **Rights Shares / Bonus Shares**
 - Right / Additional Rights / Bonus issues are under general permission subject to compliance with Sectoral Cap under FDI policy, reporting requirements, approval granted under existing FIPB approval etc.
 - Issue of Right / Bonus shares to be in compliance with other laws / statues like Companies Law / SEBI regulations etc
- **Issue & acquisition of shares after merger / amalgamation / de-merger of Indian Companies**
 - General permission subject to compliance with Sectoral Cap under FDI policy and reporting requirements.
 - The transferor co., transferee co. or the new co. not engaged in prohibited sectors under FDI policy
- **ESOP**
 - Scheme has been drawn in terms of SEBI regulations (in case of listed cos) and compliant with Companies Act (for unlisted cos) and subject to other reporting requirements under FEMA
 - Face value of the shares to be allotted under the scheme to the NR employees does not exceed 5 % of the paid-up capital of the issuing company in case of listed companies.

General Permission by RBI - Transfer of securities between R and NR

Following permitted under automatic route

Transfer by Non-resident (pricing guidelines under FEMA are not met) (Regulation 9)

- NR (other than NRI and OCB) can sell/ gift to other NR
- NRI can sell / gift to other NRI only
- NR can gift to R
- NR can sell on Recognized stock exchange through registered broker

Non-resident to Resident (Regulation 10(B))

- NR can **sell** to R subject to parties adhere to the pricing guidelines, documentation and reporting requirements for such transfers, stipulated by the Reserve Bank from time to time

Transfer of shares by a NR to an Indian company under buyback and / or capital reduction scheme of the company are also permissible under automatic route subject to pricing guidelines

General Permission by RBI - Transfer of securities between R and NR

Following permitted under automatic route

Resident to Non-resident: (Regulation 10(A))

Transfer of shares

- Parties adhere to the pricing guidelines, documentation and reporting requirements for such transfers, stipulated by the Reserve Bank from time to time
- In case sector under FIPB approval route, approval has been obtained

Where investee company is in the financial service sector

- The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities, reporting requirements, documentation etc., are complied with.
- Fit and proper due diligence requirements of NR as stipulated by respective financial regulator

General Permission by RBI - Transfer of securities by R and NR

Following permitted under automatic route

Transaction falling under SEBI Regulations (either R to NR / NR to R)

Pricing guidelines under FEMA not met

- Original and resultant investments are in line with FDI policy ,within the sectoral caps, conditionalities and reporting requirements are complied with
- Pricing for the transaction is compliant with SEBI guidelines [such as IPO, book building, block deals, delisting, open / exit offer, substantial acquisition / SEBI(SAST)]
- CA certificate to the effect that the pricing norms have been complied with has been attached with Form FC-TRS

Pricing guidelines under FEMA met

- Resultant investments are in line with FDI policy ,within the sectoral caps, conditionalities and reporting requirements are complied with
- Adherence with pricing guidelines
- Documentation requirements

RBI Approval- Transfer of securities by R and NR

Following permitted under Approval route

Gift by Resident to Non Resident (Regulation 10(A))

- RBI Approval subject to specified conditions
 - Donee is eligible to hold such a security
 - Gift does not exceed 5 % of the paid up capital / debenture of the Indian Co
 - Within sectoral cap/foreign direct investment limit (Certificate from Indian Co)
 - Relatives u/s 6 of the Companies Act, 1956 and reason for gift.
 - Valuation as specified
 - Value of security to be transferred as gift does not exceed the rupee equivalent of US \$ 50,000 per FY.

Transaction by Resident / Non Resident (Regulation 10(A) / (B))

- Subject of RBI approval if transfer is not in compliance with RBI pricing guidelines (other than cases falling within SEBI regulations and meeting SEBI pricing guidelines) or
- Transfer of shares from NRI to NR
- Deferment of payment of consideration to NR in relation to sale to NR

Optionality Clause - Transfer of securities by R and NR

Securities with Optionality clause

Transfer of shares or CCDs (with optionality clause) by NR

- Minimum lock-in period of 1 year or as per sectoral guidelines, whichever is higher
- No assured return on exit by NR
- Pricing at the time of exit shall be
 - In case of listed securities – Market price at the recognized stock exchange
 - In case of unlisted securities – Not exceeding price on the basis of Return on Equity (RoE) as per latest audited balance sheet.
 - In case of convertibles, price as per any internationally accepted pricing methodology at the time of exit, duly certified by a CA or a SEBI registered Merchant Banker.

Guiding principle – NR is not guaranteed any assured exit price at the time of making such investment/agreements

Pledge of Shares

By Promoter of Indian borrowing company for raising ECB:

- Pledge shares of Borrowing Co or Associated Co
- AD to issue no objection in connection to compliance with ECB regulation
- Security clause in the Loan Agreement requiring the borrower to create charge on financial securities
- Other specified conditions (eg. obtaining LRN, certificate from auditor for ECB utilization etc.)

By Non Resident Holder in favor of AD bank in India

- Pledge of shares of Borrowing Co
- To secure credit facilities being extended to the resident investee company for bonafide business purposes

By Non Resident Holder in favor of an overseas bank

- Pledge of shares of Indian Co
- Credit facilities extended to the NR investor / promoter of the Indian Co or Overseas Group Co for bonafide business purposes and not for investments in India
- Overseas investment should not result in any capital inflow into India

In case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy

Certificate from Statutory Auditor for utilization of loan proceeds for permitted purposes

**Calculation of Foreign
Investment
&
Downstream Investment**

Calculation of foreign investment and downstream investments

Company Owned by resident Indian citizens

50% of the capital of Indian company beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens

Company Owned by non-residents

An Indian company where more than 50% of the capital in it is beneficially owned by non-residents

Control

Right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements

Downstream Investment

Indirect foreign investment, by one **Indian company** into another **Indian company**, by way of subscription or acquisition

Calculation of foreign investment and downstream investments

Direct Foreign Investment

Investment received by an Indian company from NR entities regardless of whether the said investments have been made under Schedule I, II, III, VI and VIII of FEMA 20.

Indirect Foreign Investment

Entire investment in other Indian companies by an Indian company (IC), having foreign investment in it provided

(a) IC is not "owned and controlled" by resident Indian citizens and/or Indian Companies which are owned and controlled by resident Indian citizens **or**

(b) where the IC is owned or controlled by non-residents.

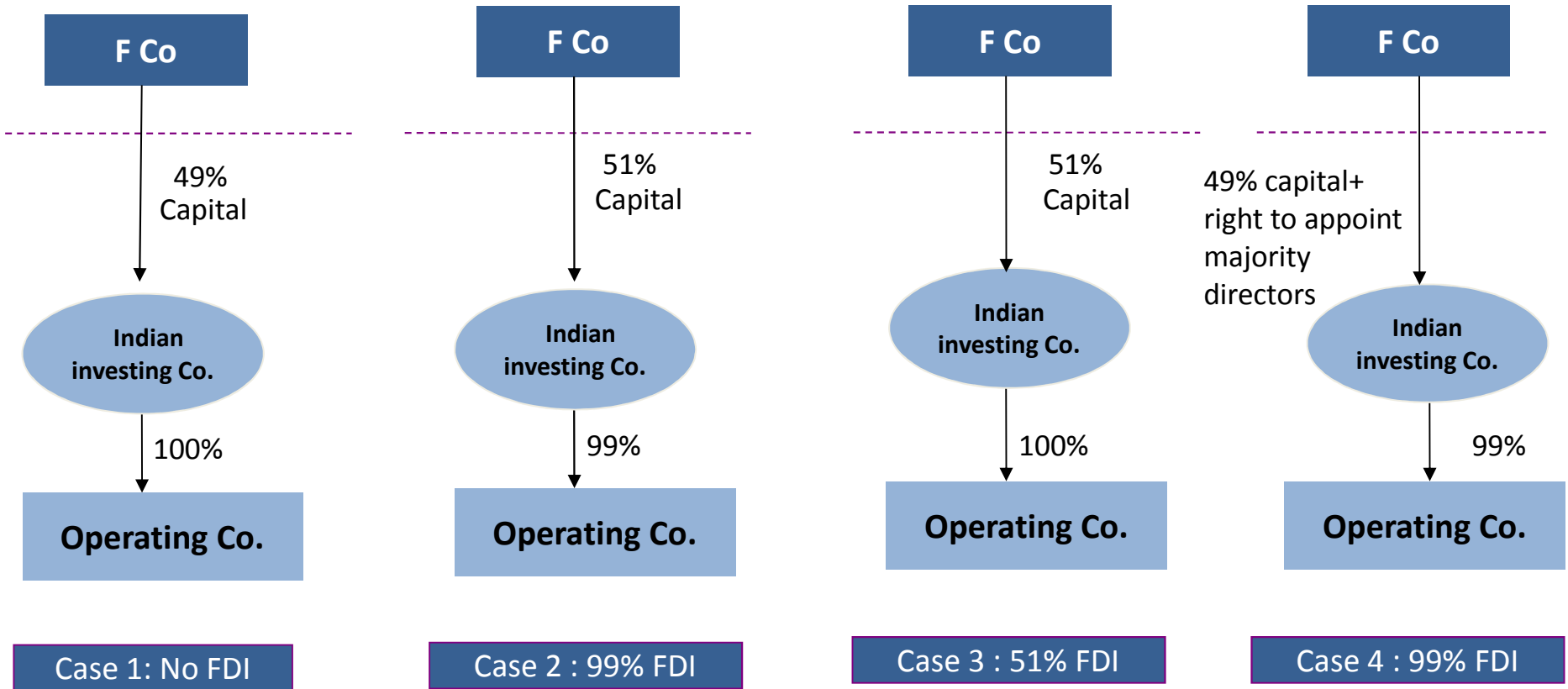
Investment Company

An Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings/securities

Total Foreign Investment

Sum total of direct and indirect foreign investment.

Calculation of foreign investment and downstream investments



Investing company “owned” or “controlled” by non-resident / Not owned & controlled by Resident Indian Citizens, entire downstream investment considered as FDI

Above calculation methodology would not apply to insurance sector / other sectors where it is specified in a statute or rule there-under.

Downstream investment conditions

Foreign owned Indian company permitted to make downstream investment subject to below

- Requisite funds brought from abroad for making investment
- No leverage taken domestically for making investment
- Downstream investments through internal accruals is permissible
- Issue/pricing/transfer/valuation guidelines complied
- Possible view that downstream investment can be made only in equity / CCPs and CCDs
- Sectoral conditions on entry route, caps and other conditionalities are complied with
- Supported by a Board of Director's resolution, and also shareholder's agreement if any
- Reporting requirements complied with
 - Online filing of intimation of downstream investment on www.fipbindia.com within 30 days
 - Manual submission of the e-filed application to FIPB, SIA and DIPP (New Delhi)

Downstream investment conditions

Sector	Operating cum Investment Co. (Owned & controlled by Non-resident)	Operating cum Investment Co. (Owned & controlled by Resident)	Investment Co. / Company with no operations (with foreign investment)
Automatic Sector	Permissible	Permissible	Government / FIPB approval required
Approval Route	FIPB approval required	Permissible	Government / FIPB approval required
Prohibited Sector	Prohibited	Should be permissible	Government / FIPB approval required

Downstream Investment by Indian Company not counted as FDI if such Indian Company is 'owned and controlled' by residents

Investing Company to obtain a certificate from statutory auditor on annual basis for compliance with FEMA provisions in relation to downstream investments

A blue tilted rectangle with a thin dark blue border, containing white text. The rectangle is positioned on the left side of the page and is tilted slightly to the right.

**Investment by NRI &
Other Entities**

NRI Portfolio Investment Scheme (PIS)

- **Permissible Investment**

- NRIs can invest in Shares / Convertible Debentures through registered stock broker on a recognized Stock Exchange on delivery basis (Repatriation & Non-repatriation basis). No short selling allowed.
- Investment through designated branch of AD Category - I bank to conduct business under PIS
- NRIs can invest in Exchange Traded Derivative from Rupee funds held in India (Non-repatriation basis)

- **Ceilings**

- Holding in Shares / CDs of each NRI (Rep + Non-Rep) not to exceed 5% of the paid up value of shares / CD
- Aggregate holding subject to a ceiling of 10%
- Limit can be increased to 24% by passing special resolution by Indian Company & intimated to RBI with prescribed documentation

- **Repatriation basis**

- Inward remittance / NRE / FCNR account

- **Non-repatriation basis**

- Inward remittance / NRE/FCNR/NRO account

- **Transfer subject to RBI approval if:**

- Sale under private placement
- Gift to person other than relative

Prohibited sectors – Real Estate/ Nidhi / Chit fund / TDR/ Agriculture /Plantation

NRI (other than PIS)

- **Schedule 4 of FEMA 20** – Investment by NRI on Non-repatriation basis
 - NRI can purchase Shares / Convertible debentures without any limit in any company other than
 - Public issue, private placement, rights offer, etc permitted
 - Inward remittance / NRE / NRO / FCNR / NRNR / NRSR Accounts
- **Schedule 5 of FEMA 20** – Securities other than Shares / CDs
 - NRI investment without any limit
 - Government Securities (other than bearer securities) or treasury bills or units of domestic mutual funds (repatriation & non-repatriation basis)
 - Bonds in PSU and Shares in PSU being disinvested (repatriation)
 - Shares in Public Sector Enterprises subject to certain conditions (repatriation)
 - Bonds/ Units issued by Infrastructure Debt Funds (repatriation)
 - Units of Money Market Mutual Funds or National Plan/Savings Certificates (non repatriation)
 - Inward remittance / NRE / FCNR Accounts (& NRNR / NRSR / NRO if non-repatriation basis)

Prohibited sectors – Real Estate/ Nidhi / Chit fund / TDR/ Agriculture /Plantation

NRIs are not permitted to make Investments in Small Savings Schemes including PPF

Investment in Firm / Proprietary Concern (FEMA 24)

- FEMA 24 governs foreign investment in Firm / Proprietary Concern in India
- NR other than NRIs / PIO shall seek prior approval of RBI for investment in the capital of a firm or a proprietorship concern or any AOP.
 - Application will be decided in consultation with the Government of India
- NRIs / PIOs can invest in a Firm / Proprietary Concern on non-repatriation basis
 - Entity shall not engage in Agriculture / Plantation Activity / Print Media
- NRIs /PIO can seek prior permission from RBI for investment on repatriation basis
 - Application to be decided in consultation with Government of India

FDI in LLP

FDI now permitted in LLPs with prior FIPB approval – FDI Policy

What is permitted

- Allowed in open sectors where 100% FDI is permitted under the automatic route with no FDI linked performance conditions.
- Downstream investments allowed by Indian Companies in LLPs if the Indian company and the LLP both are operating in sector where 100% FDI is permitted under the automatic route with no FDI linked performance conditions.

Conditions

- FDI not permitted in sectors with FDI linked performance conditions (NBFC, development of townships, etc)
- Investments in LLPs by FII / FVCI not permitted
- Indian Designated Partner required
- Capital contribution by way of cash consideration by inward remittances
- Downstream investments by LLPs with FDI not permitted
- ECB not allowed
- LLP with FDI shall not be allowed to operate in agricultural/plantation activity, print media or real estate business

Conversion of a company with FDI, into LLP, shall require FIPB approval & subject to above conditions

RBI completely silent on LLPs

Qualified Foreign Investors ('QFIs') ...

Definition

- Persons resident in a country (other than Residents in India)
 - that is a member of FATF or a member of a group which is a member of FATF; and
 - that is a signatory to IOSCO's MMOU or a signatory of a bilateral MOU with SEBI
 - Not resident in country with AML / CFT deficiencies as per FATF
 - Not a SEBI regd. FII / Sub-Account / FVCI

Permitted investments

- Equity Shares on Listed Indian Cos on Stock Exchanges / Public offers as per SEBI guidelines
 - Eligible to acquire on rights / bonus / stock spilt / other corporate actions
 - Sell on stock exchanges / other SEBI guidelines
 - Individual and aggregate investment limits 5% and 10% respectively
- MF units, Corporate debt securities / CPs / listed or to be listed NCDs / G-Secs / IDF

Benefit

- No SEBI registration required – easy access to Indian markets

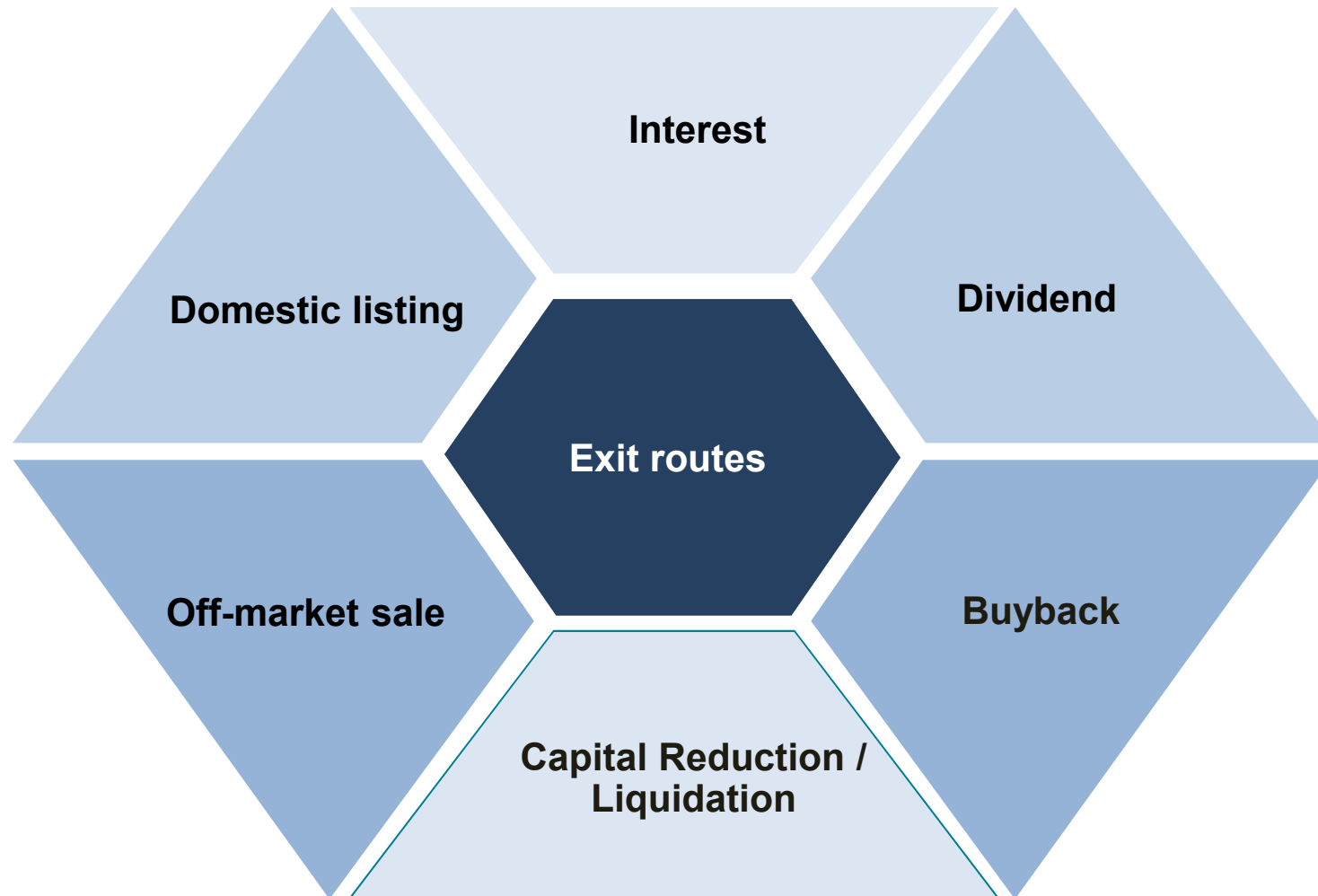
Challenges

- QFI route not useful for fund groups with existing Sub-account / FVCI registration/ FII registration
- Tax rates higher than those applicable to FIIs

Route not available to existing FIIs/sub-accounts, FVCIs and NRIs

Open Single non-interest bearing rupee account with AD for above

Exit Routes





Compliances

Procedure – Foreign Direct Investment

Issue of Shares to NR

Step 1	Receipt of Inward Remittance through AD
Step 2	Intimation to RBI within 30 days (of receipt of money) in Advance Reporting form, along with the KYC & copy of FIRC (Annexure 5 and 6)
Step 3	Allotment of Unique Identification Number (UIN) within 15 days of reporting
Step 4	Valuation: (i) As per SEBI guidelines (if listed) (ii) As per the DCF Method, done by a Chartered Accountant ('CA') / Merchant Banker (if unlisted) (iii) MOA value (if subscription money received)
Step 5	Issue / allotment of shares after a board resolution within 180 days of receipt of money
Step 6	Intimation to the RBI in form FC-GPR within 30 days (of issue) through AD.
Step 7	Acknowledgement from RBI containing Registration Number (to be referred in subsequent correspondences)

Auto-Route -- Form FC-GPR

Documents to be annexed to the Form

- ▶ Form FC-GPR duly signed by the Director / Managing Director / Company Secretary ('CS') of the Company
- ▶ Certificate from the CS of the Company / independent practicing CS
Certificate from the Statutory Auditor / independent practicing CA / Merchant Banker indicating the manner of calculating the valuation of equity shares
- ▶ Copy of Intimation filed along with copy of the Foreign Inward Remittance Certificate (FIRC)
- ▶ Copy of the Board Resolution for issue of shares
- ▶ The letter from RBI for the allotment of Unique Identification Number (UIN) for Foreign Inward Remittance



Approval Route

-- FIPB

How to apply ?

- ▶ A Mandatory Preliminary Application ('MPA') has to be made to FIPB online
 - Register on website in any of the five categories available
- ▶ On submission of the MPA, a computer generated unique FC Registration number shall be allotted
- ▶ Thereafter the applicant may proceed for Online application / Manual application
- ▶ Practically, after e-filing, manual application is also done - 15 sets of application form and relevant documents (details of Foreign Investor / Group, COI, MOA / AOA, past approvals, proposed business activity, proposed foreign investment) to be submitted
- ▶ Forms available on website (www.dipp.nic.in / www.fipbindia.com)
- ▶ Status of application – www.finmin.nic.in / www.fipb.nic.in
- ▶ No filing fees

Approval Route

-- RBI



Process of RBI Approval

▶ Application to be filed on a plain paper / letterhead generally through AD

▶ Generally filed by the Foreign Investor / the Indian investee company

– Letter of Authority in favor of CA, Lawyers, consultants

▶ 2 sets of application and relevant documents

▶ No filing fees

▶ AD expected to verify the factual accuracy and completeness in line with extant guidelines / circulars

▶ RBI processes on merits



Transfer of Shares

Step 1

Resident to Non-resident:

Valuation of Shares shall not be less than :

- (i) the price at which the preferential allotment can be made under SEBI guidelines (if listed)**
- (ii) as per DCF method (if unlisted)**

Non-resident to Resident:

Valuation of shares shall not be more than the above limits

Step 2

Receipt of Consideration

Step 3

Filing of Form FC-TRS within 60 days of receipt of consideration

Step 4

Transfer in the company's record

Onus of submission of FC TRS on the Indian Party

Transfer of Shares

-- Key documents to be annexed

Key documents to be annexed

- ▶ **Consent letter from both parties**
- ▶ **Share-holding pattern – post acquisition**
- ▶ **Valuation Certificate from a CA**
- ▶ **Copy of broker's note, if sale on stock exchange**
- ▶ **Undertaking from the buyer that sectoral limits and pricing guidelines are complied with**
- ▶ **Tax clearance certificate from Chartered Accountant**

Not required in case of gift / NR to NR transfers



Annual Return

Filing of Annual Return – Key points for Consideration

- ▶ **Details of all investments by way of FDI/portfolio investments/reinvested earnings/other capital in the Indian company made during the previous years up to 31st March of previous year which is outstanding as on the balance sheet date**

- ▶ **Foreign assets / liabilities of the investor to be disclosed as per equity participation i.e. more than or less than 10 percent**

- ▶ **Payables to Indian parties even in Foreign currency not required to be disclosed**

- ▶ **To be filed by 15th July every year of the following year on annual basis by the Indian company, directly with the Reserve Bank**



Outbound Investments

Statutes for ODI

Foreign Exchange Management Act, 1999

FEMA 120 – FEM (Transfer or Issue of any Foreign Security) Regulations, 2004 as amended from time to time, read with Schedules

RBI Notifications and Circulars

Frequently Asked Questions on FDI

Master Circular on Direct Investment by Residents in JV / WOS Abroad

Direct Investment outside India –Important Definitions

Direct investment outside India

Means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by:

- Investment through stock exchange or
- Private placement in that entity or
- Market purchase

but does not include Portfolio Investment

Indian party

Indian party means the following:

- a company incorporated in India; or
- a body created under an Act of Parliament; or
- a partnership firm registered under the Indian Partnership Act, 1932
- includes any other entity in India as may be notified by the RBI
making investment in a JV or WOS abroad

Direct Investment outside India –Important Definitions

Joint Venture (JV)

JV means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment

Real estate business

Real estate business means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges;

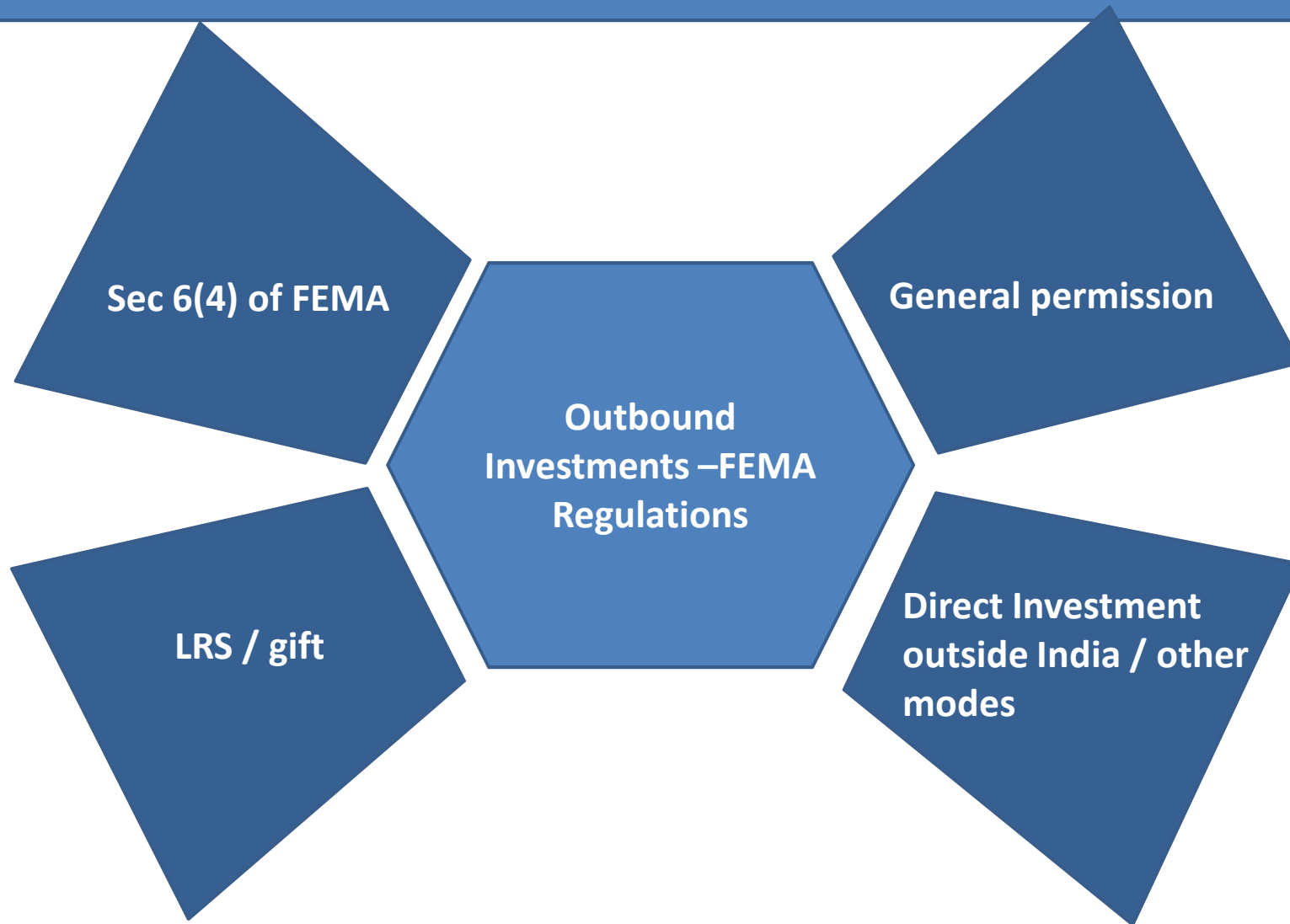
Net worth

Net worth means paid up capital and free reserves;

Wholly Owned Subsidiary (WOS)

WOS means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party;

Permissible Routes



Routes for ODI by Indian Parties

Automatic route

- Generally, applicable in following cases:
 - Non-Financial Services Sector
 - Investment in unincorporated entities (for oil & gas sector)
 - Portfolio Investments by listed companies

Semi-automatic

- Financial Services Sector
- Energy & Natural Resources sector -investment exceeding 100% of net-worth
- Mutual Funds (registered with SEBI)

Approval route

- Not complying with conditions specified under automatic route
- Registered Trusts / Societies
- Proprietorship Concerns / unregistered partnership firms

Prohibited sectors -Real estate (excludes development) and banking business

ODI under Automatic Route

Total Financial Commitment

- Total financial commitment not to exceed 100% of the net worth as on last audited balance sheet date
- Investment can be made by way of equity or equity and debt / guarantee
 - Only debt not permitted

Limitations

- Must be engaged in bonafide business activity
- Investment in un-incorporated entities –not permitted)

Other Aspects

- Investment in shares of **existing company** - mandatory valuation -> more USD 5 mn ----> SEBI registered merchant banker (India or overseas) else by CA / CPA
- Mandatory valuation by Merchant Banker (SEBI regd. or overseas) in case of swap of shares (Prior FIPB approval)

General

- All transactions relating to JV / WOS should be routed through one branch of AD (different AD in case of different JV / WOS)
- Indian party not on RBI's exporters / CBI caution list.
- Reporting in Form ODI Part I within 30 days
- Reporting of overseas investments (APR Part III)

Investment through SPV also permitted for investment in JV / WOS
Investment in Pakistan - RBI approval
Special provisions for investment in Oil / Gas / Energy / Natural Resources

Calculation of Financial Commitment

Financial Commitment shall not exceed 100% of net-worth -

- **Financial Commitment is defined as**

Amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees] issued by an Indian party to or on behalf of its overseas JV Company or WOS

- Financial Commitment shall include

- 100% of Equity shares / CCPS / Other Preference shares /
- 100% of Loan
- 100% of value of guarantees (directly or through Indian banks backed by counter guarantee issued by Indian party to or on behalf of JV or WOS
- Investment in agricultural operations through overseas office / directly
- 50% of **performance guarantees** issued by Indian party to or on behalf of JV or WOS

Investment through EEFC account shall not be reckoned for the purpose of 100%

In case of invocation of performance guarantee, breach the above ceiling, prior RBI approval required before remittance of funds

Funding Options

1. Out of Balance of EEFC Account of the Indian Party
2. Indian Party may make direct investment in any foreign security without any limit out of the proceeds of international offering of shares through ADG / GDR mechanism
 - ADR / GDR issue in accordance with Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued thereunder from time to time by the Central Government;
 - Indian Party files with the designated authorized dealer in Parts I and II of Form ODI full details of the investment proposed.]
3. Drawal of foreign exchange from an AD bank in India not in excess of 100% of the net worth;
 - For the purpose of above **Net worth** on last audited Balance Sheet date
 - Net worth means paid up capital and free reserves
 - Net worth of holding company (holding at least 51% stake) or subsidiary company (in which at least 51% stake is held) includible if not availed of by such holding or subsidiary company

Investment through EEFC account shall not be reckoned for the purpose of 100% of Financial Commitment

Funding Options

- For the purpose of determining 100% limit, following shall be reckoned
 - Cash remittance by market purchase
 - Capitalization of export proceeds and other dues
 - 100% of value of guarantees (directly or through Indian banks backed by counter guarantee issued by Indian party to or on behalf of JV or WOS (including guarantee by promoter / sister concern etc.) [Open ended guarantees not allowed])
 - 50% of performance guarantees issued by Indian party to or on behalf of JV or WOS
 - Proceeds of ECB / Foreign Currency Convertible Bonds („FCCBs“)
 - Utilization of amount raised by issue of ADR / GDR
 - ADR / GDR stock swap (subject to valuation norms and sectoral cap)
 - Swap of shares

Limit of 400% retained for ODI funded by ECB - RBI FAQs & Circular

Maximum limit would be:

100% of Net worth



Balance in EEFC



ADR / GDR proceeds

Other Permissions

No Loan or a guarantee without equity participation in the JV or WOS , else under Approval route

Corporate guarantee on behalf of its first generation step down operating company permitted

Corporate guarantee to second level / subsequent level step down operating subsidiaries under the Approval Route, provided the Indian Party indirectly holds 51% or more stake.

Indirect resident individual promoters of the Indian party may issue personal guarantee subject to :

- Total FC including all forms of guarantees remains within the overall ceiling
- No guarantee is 'open ended' i.e. period and amount shall be specified

Reporting of corporate guarantee extended by Indian Party to RBI

CCPS shall be treated at par with Equity

All above FC under ODI limit of 100%

ODI in Financial Service Sector

Additional conditions to be satisfied for ODI in Financial Services Sector

- Registration with appropriate regulatory authority in India for conducting financial services activities
- Track record of net profits in preceding 3 years from financial services activity
- Approval from concerned regulators in India and abroad for such investment
- Compliance with prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India

The above conditions must be complied by

- Step down JV/WOS making investment in financial services sector
- Regulated entities in the financial services sector investing in non-financial sectors

Financial services sector not defined

Unregulated financial services sector entities can invest in non-financial sectors subject to compliance with general ODI regulations (Regulation 6)

General Permission

Persons residents in India shall purchase / acquire securities

- Out of funds held in RFC Account
- As bonus shares on existing holding of foreign currency shares
- Out of their foreign currency resources outside India when not permanently resident in India
 - Not permanently resident means a resident person employed in India for a specific duration(irrespective of length) or specified job the overall duration of which does not exceed 3 years
- General permission has also been granted to persons residents in India to sell the securities purchased by way of above modes

Section 6(4) of FEMA – Resident may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if acquired when he was NR or inherited from a NR

ODI under Approval Route

- Cases not covered under Automatic route
- Specific application to RBI with necessary documents in Form ODI Part I through the AD (Category I Bank) along with share valuation report as per previous regulations.
- RBI would inter alia consider the following factors:
 - Prima facie viability of JV/WOS outside India
 - Contribution to external trade and other benefits which will accrue to India through such investment
 - Financial position and business track record of the Indian party and foreign entity
 - Expertise and experience of the Indian Party in the same or related line of activity of the JV/WOS outside India

Portfolio Investments by Listed Companies

A **Listed Indian Co.** under general permission may invest in :

- the shares of an overseas company which is listed on a recognised stock exchange
- the rated bonds/fixed income securities issued by companies at (a) above:

Provided that—

- Investment shall **not exceed 50%** of its net worth as on the date of **its last audited balance sheet**
- Every transaction of shares or bonds/securities of the overseas company shall be routed through designated branch of an AD in India.

Whether the 50% limit available to List Cos. for PIS is over and above the 100% limit available?

Overseas Investment by Capitalization

- Investment outside India by way of capitalization in full or part of
 - payment for export of plant, machinery, equipment and other goods/software
 - fees, royalties, commissions or other entitlements due to the Indian Party for the supply of technical know-how, consultancy, managerial or other services :
- Prior RBI approval in case export proceeds remaining unrealized beyond prescribed period / fees, royalties, commissions or other entitlements remaining unrealized beyond due date
- Software exporter may receive shares upto 25% of the value of exports to an overseas software start up company without entering into JV agreement with prior RBI approval
- Submit to the share certificate/ any document issued by the JV or WOS within 6 months
- Reporting in specified forms while exporting goods/ software/ plant & machinery

Other conditions for ODI shall apply (reporting / pricing / investment cap etc)

ODI by Other Entities

Registered Partnership Firms

- Same conditions and limits as applicable to corporate entities
- However, cannot take into account net worth of other partnership firm in which it has 51% or more interest
- Individual partners may hold shares on behalf of the firm subject to the host country regulations or operational requirements, subject to the condition that the entire funding done by the firm.

Registered Trusts / Society

- Trust / Society engaged in manufacturing / educational / hospital sector, **with prior approval from RBI** are allowed to set up JV / WOS outside India subject to following conditions:
 - engaged in manufacturing / educational / hospital sector respectively
 - Trust / Society should be registered under Indian Trust Act / Societies Registration Act
 - Trust deed / MOA permits proposed investment
 - Proposed investment approved by trustees / governing body of the Trust / Society
 - AD is satisfied that the Trust / Society is KYC compliant and engaged in bonafide activity
 - Trust / Society has been in existence atleast for a period 3 years
 - Not come under adverse notice of Regulatory / Enforcement agency like DoE / CBI etc

Special license / permission to be obtained by the applicant in case the activities require special license / permission

Obligations of the Indian Party

Receive share certificates or any other document within 6 months or such further period as RBI may permit

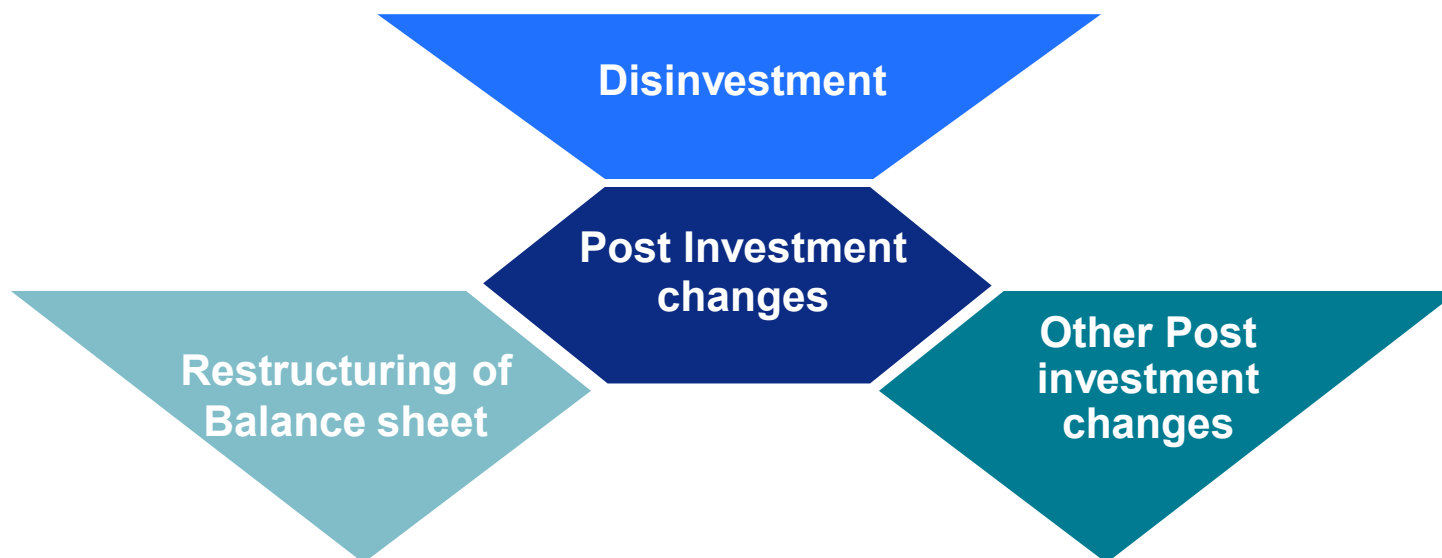
Repatriate all dues receivable like dividend, royalty, technical fees etc., **within 60 days** of its falling due, or such further period as the RBI may permit

Submit to RBI , through the AD, annually on or before a 3 months from closing of accounts of JV / WOS, **Annual Performance Report (APR) in Part III of Form ODI** in respect of each JV or WOS based on audited accounts for the preceding year, unless specifically exempted by RBI

- In case host country's law does not mandatorily require auditing , Un-audited annual accounts to be certified by Statutory Auditors of the Indian party that accounts of the JV/WOS reflect the true and fair picture the same has been adopted and ratified by the Board of the Indian party.

Submit an '**Annual Return on Foreign Liabilities and Assets**'

Post Investment Changes



JV / WOS may diversify its activities / set up step down subsidiaries / alter shareholding pattern of the overseas entity

- To be reported by Indian Party to RBI within 30 days from approval of those decisions by the relevant competent authority of JV / WOS in terms of local laws of the host country
- To be mentioned in APR

Transfer by way of sale of shares of JV / WOS outside India

- Transfer of any share or security by an Indian party to another Indian Party or to a NR without RBI approval subject to the following conditions:
 - a) Sale does not result in any write-off of the investments made
 - b) Shares of the overseas JV / WOS listed - sale should be through a stock exchange;
 - c) Unlisted shares disinvested by private arrangement - Share price is not less than value certified by CA / CPA
 - d) No O/s dues like dividend, technical know-how fees, royalty, consultancy, commission export proceeds etc.
 - e) Overseas concern in operation for atleast 1 full year & APR and accounts for that year submitted to the RBI
 - f) Indian party not under investigation by CBI/ DoE/ SEBI/ IRDA or any other regulatory authority in India
- Disinvestment resulting in write –off without prior approval of the RBI
 - JV/WOS is listed in the overseas stock exchange
 - Indian party listed & net worth of atleast Rs. 100 crore
 - Investment does not exceed USD 10 mn (unlisted or listed with less than 100cr networth)
 - Compliance of conditions (b) to (f) above
- Sale proceeds to be repatriated immediately (in no case later than 90 days) & evidence to be submitted to RBI
- Report disinvestment details to the AD within 30 days

Cases other than above – Require RBI approval

Restructuring of Balance Sheet

- Indian parties having overseas WOS / or at least 51% stake in JV, may write off capital (equity / preference shares) or other receivables such as loans, royalty, technical know-how fees and management fees in respect of such JV / WOS, even while such JV / WOS continue function as under:
 - Listed Indian Companies - upto 25% of the equity investment in JV/WOS under the Automatic Route;
 - Unlisted Indian Companies - upto 25% of the equity investment in JV/WOS under the Approval Route
- Reporting to RBI within 30 days of such restructuring / write-off:
 - Certified copy of Balance Sheet showing the loss in JV/WOS
 - Projections for next 5 years indicating consequential benefit of such restructuring / write-off

Finance against security – by Indian Party

Pledge of Shares

- Indian party can pledge shares of overseas JV / WOS with AD or a public financial institution in India for availing credit facilities for itself or for the JV/WOS
- Indian party can also pledge shares of overseas JV/WOS with an overseas lender provided
 - Lender is regulated and supervised as a Bank and
 - Overall financial commitments are within the limits of overseas investment prescribed by RBI

Creation of charge on immovable/movable property and other financial assets (Prior RBI Approval)

- Indian party can mortgage/pledge/hypothecate any immovable/movable property and other financial assets (except shares of JV/WOS) of the Indian party and its group companies as a security for availing credit facilities for its JV / WOS from an AD or a public financial institution in India
- Indian party can also mortgage/pledge/hypothecate any immovable/movable property and other financial assets with an overseas lender provided
 - Lender is regulated and supervised as a Bank and
 - Overall financial commitments are within the limits of overseas investment prescribed by RBI
 - 'No Objection' is submitted by the Indian party and its group companies from their resident lenders.

Investment by Other Entities

Overseas Investment by Other Entities...

Proprietorship concerns / Unregistered Partnership Firms

- Proprietary concerns and unregistered partnership firms, **with prior approval from RBI**, are allowed to set up JV / WOS outside India subject to following conditions:
 - DGFT Recognized star export house (t/o exceeding 15 cr p.a) with proven track record i.e. export o/s does not exceed 10% of average export realization of preceding three years
 - AD is satisfied that the exporter is KYC compliant and engaged in proposed business
 - Exporter is not on the caution list of RBI / adverse notice from any Government agency like Directorate of Enforcement („DoE“) and CBI or in the list of defaulters to the banking system in India.
 - Amount of proposed investment outside India does not exceed:
 - 10% of the average of 3 financial years export realization or
 - 200% of net owned funds of the firmwhichever is lower

...Overseas Investment by Various Entities...

- Proprietary concerns **with prior approval from RBI**, are allowed to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company subject to following conditions:
 - Value of the shares shall not exceed 50 % of the fees receivable
 - Indian concern's shareholding in any one company outside India by virtue of above shall not exceed 10% of the paid-up capital of the company outside India, whose shares are accepted.

Acquisition or Setting up of a JV or WOS abroad by resident individual.

- ODI in the equity shares and CCPs of a JV or WOS outside India that is **engaged in bona fide business activity** by Resident individual (single or in association with another resident individual or Indian Party)
- Resident individual not on RBI caution list/ adverse notice from any Government agency like DoE, CBI or in the list of defaulters to the banking system in India.
- Permissible ceiling within the prescribed limit under LRS (currently USD 75,000)
- JV or WOS to be an operating entity and no step down subsidiary permitted
- Valuation shall be done as per ODI regulations
- Financial Commitment in form of Equity shares / CCPS only. Others prohibited.
- Prohibited to make direct investment in a JV or WOS –
 - Countries identified by FATF as "non-co-operative countries and territories"
 - Real estate business or banking business or in the business of financial services activity

Investment out of balances in EEFC/RFC account shall also be restricted to limit under LRS

Funding methods not specified... ? Possibly only by way of outward remittance

...Acquisition or Setting up of a JV or WOS abroad by resident individual

- **Post Investment Changes**

Any alteration in shareholding pattern of the JV or WOS may be reported to the designated AD within 30 days including reporting in the APR in part III of ODI

- **Disinvestment by Resident Individuals**

- Allowed only after one year from the date of making first remittance for setting / acquiring the JV / WOS
- Disinvestment proceeds to be repatriated immediately and in no case later than 60 days & reported to AD.
- No write off shall be allowed in case of disinvestments

- **Reporting Requirements**

- Investment, as made by a resident individual, shall be reported by the designated AD to the RBI in Form ODI Part I within 30 days of making the remittance.
- Obligations similar to obligations under ODI regulations applicable to Indian party
- Disinvestment to be reported by the designated AD to the RBI in Form ODI Part IV within 30 days of receipt of disinvestment proceeds.

Setting up of JV / WOS as per FEMA 20, would qualify as an LRS remittance – RBI FAQs on LRS

...Overseas Investment by Various Entities...

Individuals

- Acquisition of shares of Foreign Co in lieu of professional services / director's remuneration subject to LRS limits
- Gift from person resident outside India
- Inheritance
- Right shares provided original holding is as per the law
- Qualification shares on becoming director of overseas company
 - Extent of acquiring the qualification shares is as per the law of the host country
 - Limit of remittance for acquiring such qualification shares shall be within the overall ceiling

Resident person, who has acquired foreign securities as per law, may pledge them for obtaining credit facilities in India from an AD

Qualification/rights shares may be sold without prior approval, provided the sale proceeds are repatriated to India & documentary evidence is submitted to the AD

RBI approval in case of acquisition of shares beyond LRS limit, wherever applicable

...Overseas Investment by Various Entities...

- Employee / director of the Indian promoter company, acquire shares of JV / WOS of the Indian promoter company, in the field of software
 - Consideration for purchase does not exceed USD 10,000 per employee in the block of 5 calendar year, up to 5% of the paid up capital of JV/WOS abroad and
 - Shares so acquired do not exceed 5% of the paid-up capital of the JV / WOS
 - Post-allotment shareholding percentage of Indian promoter company together with shares allotted to its employees is not less than the pre-allotment percentage held by Indian promoter company
- Purchase of securities under ADRs/GDRs linked stock option scheme by resident employee of Indian Co of knowledge based sector where consideration must not exceed USD 50,000 or equivalent in a block of 5 years provided
 - ESOP by listed Co. is governed by SEBI
 - ESOP by unlisted Co. is governed by guidelines issued by GOI for issue of ADR/GDR linked stock options.
- To acquire shares under cashless ESOS / under ESOPs (see next slide)

ESOPs to Indian Residents

- No permission required for cashless ESOS provided there is no remittance from India
- **ESOP Scheme** - AD may allow remittance for acquiring equity shares of F Co
 - F Co can issue shares to employee / directors of Indian office/branch/subsidiary of F Co./Indian Company in which F Co. has direct or indirect holding
 - Shares offered under ESOP is offered by F Co globally on uniform basis
 - Specified compliances
- Individuals to repatriate sales proceeds within 90 days from the date of sale of shares acquired under ESOP scheme
- F Co can repurchase shares offered under ESOP Scheme provided:
 - Shares issued in accordance with FEMA Rules and Regulations
 - Repurchase in terms of initial offer document
 - Annual return submitted by I Co

Indirect means indirect foreign equity holding through a trust/SPV a step down subsidiary

**Compliances
– Overseas Direct
Investment**

Overseas Direct Investment

All transactions relating to investment in WOS to be routed through one branch of AD
Form ODI is divided into following :

Part I - includes the following:

- Section A - Details of Indian Party
- Section B - Details of Investment in New Project
- Section C - Details of Investment in Existing Project
- Section D - Funding for JV / WOS
- Section E - Declaration by Indian Party
- Section F - Certificate by the Statutory Auditors of the Indian Party

Part II - Reporting of Remittances (by AD)

Part III - Annual Performance Report (APR) - to be certified by Statutory Auditors
and filed with 3 months of closing of Annual Accounts

**Part IV - Report on Closure / Disinvestment / Voluntary Liquidation / Winding
up of JV / WOS (by AD)**

Annual reporting - As per the “Annual return on Foreign Liabilities and Assets”

Overseas Direct Investment

-- Broad steps

Step 1

Certified copy of the Board Resolution for proposed acquisition / investment abroad

Step 2

Obtaining valuation certificate from:

- (i) Merchant Banker / Investment Banker (if investment > USD 5mn)
 - (ii) CA / CPA (if investment < USD 5mn)
- } in/out of India

Step 3

Remittance along with Form ODI / Form ODI to be filed (with AD) within 30 Days from date of transaction

Step 4

Allotment of UIN

Step 5

Receipt of share certificate / proof of allotment within 6 months

Post investment changes /
Disinvestment / write-off

Report within 30 days of such decisions, through AD

Practically documentation may be checked with the AD Banker

Overseas Direct Investment -- Procedure for Approval

Approval Route

- ▶ **Plain paper application with Form ODI through AD (next slide for documents to be annexed)**

- ▶ **Factors, *inter alia*, considered by RBI**
 - **Prima facie viability**
 - **Contribution to external trade and other benefits accruing to India**
 - **Financial Position and business track record of both the parties**
 - **Expertise and experience of the Indian party in same or related line of activity**



Overseas Direct Investment -- Procedure for Approval

Documentation*

- ▶ **Annual Accounts of Indian company along with director's report for 3 preceding years**

- ▶ **If acquisition of existing foreign company following additional documents**
 - **Copy of certificate of incorporation of foreign entity**
 - **Latest Annual Accounts of foreign entity along with Director's Report**
 - **Valuation certificate for the shares of the foreign entity**

- ▶ **Certified copy of the Board Resolution of Indian company**

- ▶ **If investment is in Financial Service sector – Certificate from Statutory Auditors / independent practicing CA for Compliance of the specified additional conditions**
 - **Approval from concerned onshore and offshore regulatory authorities to be obtained**

* In consultation with the AD Banker – Practical Aspect



Thank You

Viren Gandhi & Co

Chartered Accountants

103, Vikas Commercial, Bhakti Marg,

Mulund (West), Mumbai 400080,.

Board: + 91 22 25903597

Fax: +91 22 25916926

Website: www.cavirengandhiandco.com

Email: cavirengandhi@gmail.com,

chintan@cavirengandhiandco.com

Viren Gandhi & Co.
Chartered Accountants

Pricing as per SEBI Guidelines – Preferential Issue / Transfer

Equity shares listed on recognized stock exchange for 6 months or more , than higher of :

- a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognized stock exchange during the preceding 6 months or
- b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognized stock exchange during preceding 2 weeks

Equity shares listed on a recognized stock exchange for a less than 6 months , the higher of :

- a) Price at which equity shares were issued by the issuer in IPO or the value arrived in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or
- b) Average of the weekly high and low of the closing prices of the related equity shares quoted on the recognized stock exchange for preceding period when shares have been listed; or
- c) Average of the weekly high and low of the closing prices of the related equity shares during preceding the 2 weeks

In case of fresh issue by means of IPO / FPO – Book building process and other relevant guidelines as per SEBI ICDR guidelines

Liberalized Remittance Scheme

Liberalized Remittance Scheme (LRS)- US \$ 75,000 per FY for Resident individuals (including minors)

- Available for any permissible current or capital account transaction (include acquisition of shares of foreign companies)
- Banks prohibited from extending credit facilities for this scheme
- Transactions not permitted under LRS
 - Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of FEMA (Current Account Transactions) Rules, 2000;
 - Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
 - Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;
 - Remittance for trading in foreign exchange abroad;
 - Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;
 - Remittances directly or indirectly to countries identified by the FATF as “non co-operative countries and territories”, from time to time;
 - Remittances to those individuals / entities identified as posing risk of committing acts of terrorism by RBI
 - With effect from August 14, 2013, the scheme is not available for remittances for acquisition of immovable property directly or indirectly outside India.