

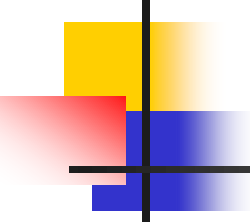
ICAI-WIRC CONFERENCE ON FEMA

19th August, 2011

NEW CONSOLIDATED FDI POLICY : A COMPREHENSIVE
ANALYSIS

Presented by:
Mr. Paresh P. Shah

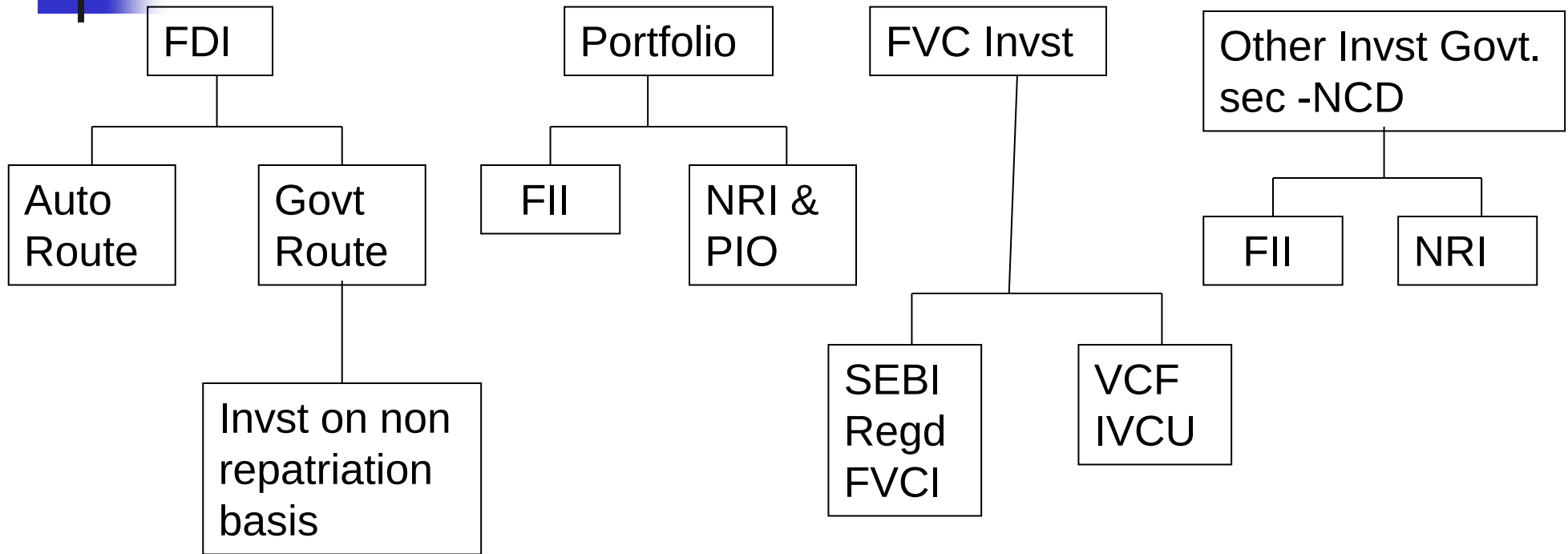
P.P. Shah & Associates
Chartered Accountants
Email: ppshahandassociates@gmail.com

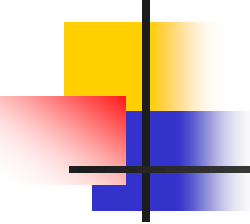


Overview of Presentation

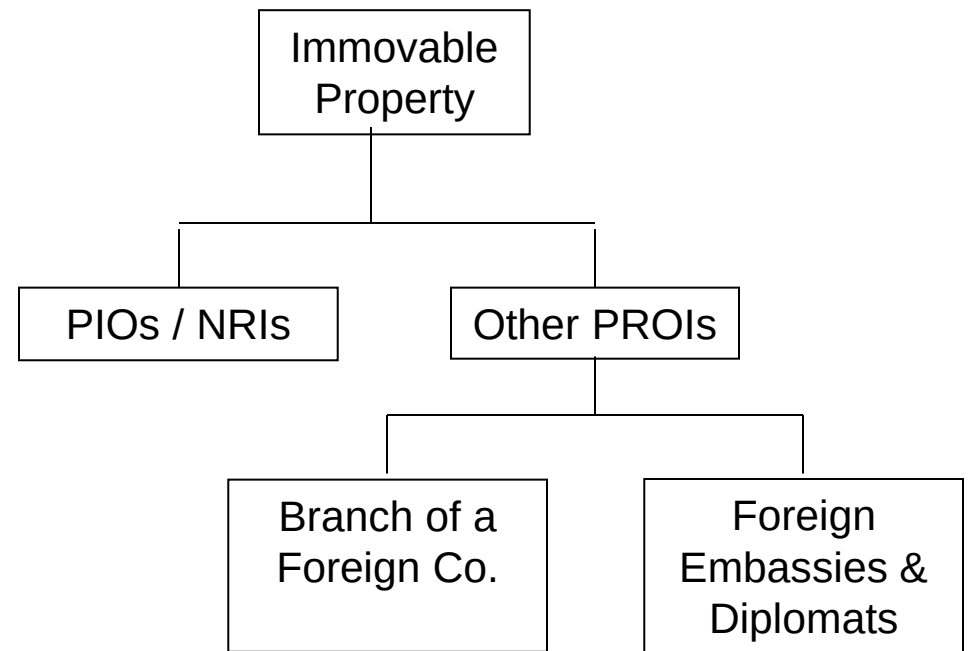
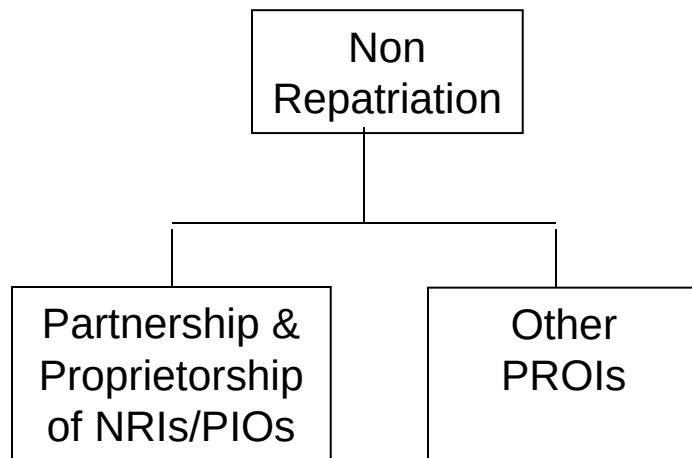
- Investment in India
- Foreign Direct Investment Policy
- Automatic Route of Investment in India
- FIPB Approval - Guidelines
- Recent changes in Consolidated FDI Policy effective 1 April 2011
- Investment in LLPs
- Downstream Investments through Holding Companies
- Recent DIPP discussion papers
- Analysis of Sectoral Caps
- Different modes of Issue of Shares
- Documentation and Reporting of Investments
- Framework for investments by FVCI

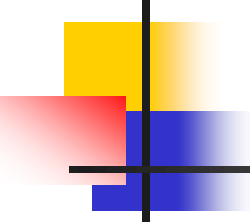
Overview of scheme of Investment by PROI





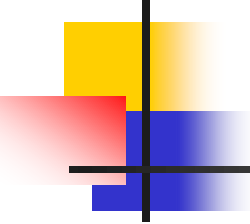
Overview of scheme of Investment by PROI





Investment in India

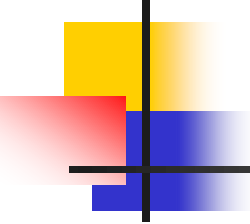
- Regulatory & Legal Framework
Industrial Development (Regulation) Act, 1951 & FEMA 1999.
- Overall Policy of Government, mainly focusses on
 - Public Sector
 - Compulsory Licensing
 - Small Scale Sector – Micro, Small & Medium Enterprises (Development) Act, 2006.
 - Locational Restriction.
- Prohibitions.
- FDI policy, Sector Specific Guidelines, Automatic route & Procedures
- FEMA provides for Rules/ modes of investment, manner of receipts, Valuations and reporting procedures.



Investment in India

Legal Framework

- Section 6(2) of the FEMA empowers, RBI to frame regulations in respect of permissible capital Account transactions.
- Notification No. FEMA 1/2000 RB dt. 3rd May 2000 specifies permissible capital account transactions.
- Notification No FEMA 20/2000 RB dt. 3rd May 2000 specifies regulations for issue or transfer of securities by Person Resident in India (PRII).
- FDI (Schedule 1) Portfolio Investment by FII, (Schedule 2) Portfolio Investment by NRI (Schedule 3), Investment on Non Repatriation basis (Schedule 4) Investment in securities other than shares & convertible debentures (Schedule 5) and Investment by FVCI (Schedule 6)[These are Schedule containing rules and regulations for investment under FEMA 20.]
- Master Circular 15/2011-12 dt. July 1 2011.
- Government FDI Policy Circular No. 1 w.e.f. April 1, 2011.

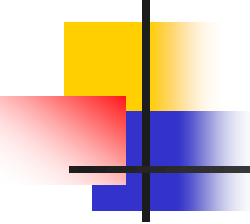


Investment in India

Legal Framework

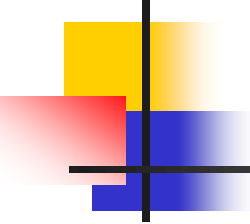
contd.

- Activity of Liaison office, Branch and Project office, Notification No 22/2000-RB dt. 3rd May 2000.
- Investment in Partnership Firm by PROI, Notification No 24/2000-RB dt. 3rd May 2000.
- Investment in Immovable property by PROI, Notification No 21/2000-RB dt. 3rd May 2000.



Foreign Direct Investment Policy

- Consolidated FDI Policy dt. 01.04.2011 of Ministry of Commerce & Industry (MOC & I), Department of Industrial Policy and Promotion (DIPP), Government of India (GOI) (Consolidated FDI Policy (CFDIP))
- Investment by PROI with approval of FIPB/ SIA- Guidelines of FIPB, MOC, GOI. (Para 2.1.17 of Policy)
- Investment under Automatic Route (Notification No. FEMA 20/2000-RB dated May 3, 2000)(Para 4.2 of the Policy.)

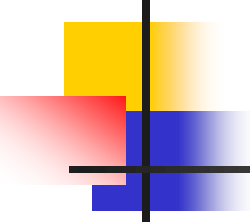


Foreign Direct Investment Policy

– Important Definitions

- FDI

'FDI' means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM(Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000 (Para 2.1.12 of FDI Policy)

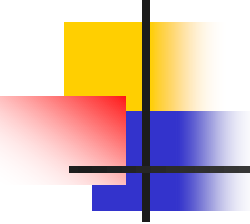


Foreign Direct Investment Policy

– Important Definitions contd.

- Investment on Repatriable Basis

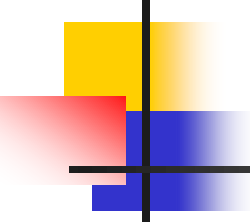
‘Investment on repatriable basis’ means investment, the sale proceeds of which, net of taxes, are eligible to be repatriated out of India and the expression ‘investment on non-repatriable basis’ shall be construed accordingly (Para 2.1.22 of FDI Policy)



Foreign Direct Investment Policy

– Important Definitions contd.

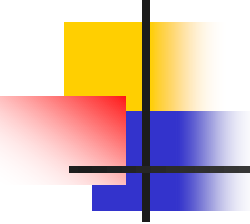
- Controlled Company / Entity
 - A company is considered as “Controlled” by resident Indian citizens if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company (Para 2.1.7 of FDI Policy)
 - An entity is considered as ‘Controlled’ by ‘non resident entities’, if non-residents have the power to appoint a majority of its directors (Para 2.1.8 of FDI Policy)



Foreign Direct Investment Policy

– Important Definitions contd.

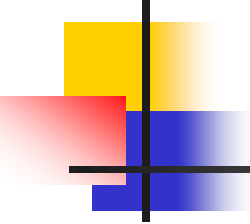
- Owned Company / Entity
 - A company is considered as 'Owned' by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens (Para 2.1.26 of FDI Policy)
 - An entity is considered as 'Owned' by 'non resident entities', if more than 50% of the capital in it is beneficially owned by non-residents (Para 2.1.27 of FDI Policy)



Foreign Direct Investment Policy

– Important Definitions contd.

- Resident Entity and Resident Indian Citizen
 - 'Resident Entity' means 'Person resident in India' excluding an individual (Para 2.1.34 of FDI Policy)
 - 'Resident Indian Citizen' shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship 13 Act, 1955 (Para 2.1.35 of FDI Policy)



Foreign Direct Investment Policy

– Important Definitions contd.

- Person of Indian Origin

‘Person of Indian Origin’ (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

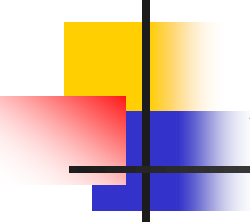
(i) he at any time held Indian Passport

(ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);

or

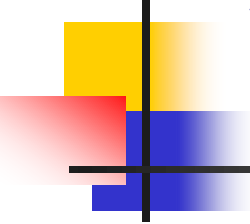
(iii) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii)

(Para 2.1.30 of FDI Policy)



Automatic Route of Investment to PROI

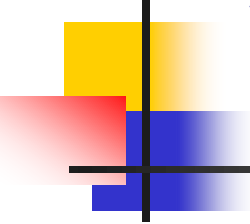
- Main Conditions of issue of Shares (Reg. 5, Schedule 1, Notification No. FEMA 20/2000-RB dated May 3, 2000).
- Eligible Persons:
 - PROI other than citizen of Pakistan, entities of Pakistan.
 - Bangladesh Citizens & entities only with prior approval of FIPB.
 - Erstwhile OCB: Bonus Shares permitted, Right Shares with RBI Approval.
- Eligible Instruments.
 - Equity Shares, Compulsorily Convertible Preference Shares (CPS), Compulsorily Convertible Debentures (CDS).
 - As per FDI Policy 2011, companies have option of prescribing conversion formula for pricing of convertible instruments, subject to FEMA / SEBI valuation guidelines
 - Issue of Warrants and Partly paid Shares now permitted to PROI only after Govt. approval.



Automatic Route of Investment to PROI contd.

- FDI Investment in Indian companies (Regulation 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000)

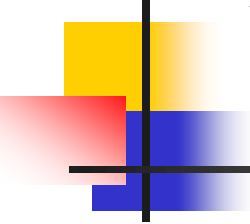
- Prohibitions (PARA 5.1 OF CFDIP)
 - Retail Trading, Atomic Energy, Lottery, Gambling & Bettings including Casinos, Chit Fund, Nidhi, Trading in Transferable Development Rights (TDRs), Activities/ Sectors not opened to Private Sector Investment, Agricultural & plantations
 - Mfg. of cigars, cigarettes of tobacco or of tobacco substitutes (w.e.f. 10.05.2010)



Automatic Route of Investment to PROI contd.

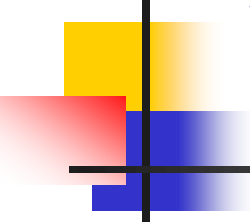
- ~~■ In case of Previous Joint Venture or Tie Up Press Note 1 of January 12, 2005, shall apply SIA/FIPB approval~~
- ~~— Exception in cases when Investment is by~~
 - ~~■ VCF, multilateral financial institution, or~~
 - ~~■ Existing investment of JV Partner is less than 3%, or~~
 - ~~■ It is a Defunct Joint Venture, or~~
 - ~~■ Investment is in Information Technology/ Mining Sector.~~

The above is removed w.e.f. April 1, 2011.



Automatic Route of Investment to PROI contd.

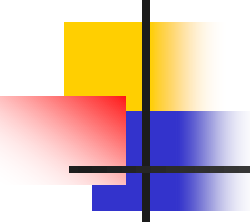
- Investment in Micro and Small enterprises
 - Micro, Small and Medium Enterprises Act, 2006.
 - FDI in MSEs is permitted subject to sectoral caps, entry routes and other relevant sectoral regulations.
 - Non-MSE undertaking that manufactures items reserved for MSE sector can issue shares upto 24 % to a PROI; FIPB approval if percentage of Capital is in excess of 24% to PROI.
 - Press Note no. 6 (2009 Series) dt. 4.09.2009 and S.O. 563(E) dt. 27.12.2009
- ADR/GDR & FCCB: Issue of FCCB and ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993.



Automatic Route of Investment to PROI contd.

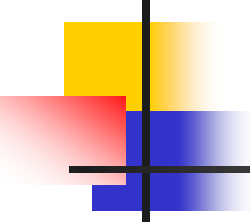
- Foreign Technology and other payments
 - All payments for Technology Transfer and use of trademark / brand name are under the Auto Route

(Press Note 8 of 2009 w.e.f. 16.12.2009)



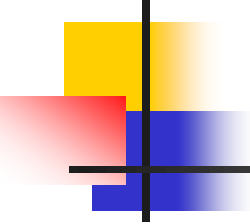
Erstwhile OCBs

- OCBs have been derecognized as a class of Investors in India with effect from September 16, 2003
- Such erstwhile OCBs which are incorporated outside India and are not under the adverse notice of RBI can make fresh investments under FDI Policy as incorporated non-resident entities
 - with the prior approval of Government of India if the investment is through Government route;
 - and with the prior approval of RBI if the investment is through Automatic route
- Any Foreign Company incorporated after September 2003 will be regarded as Non Resident Entity irrespective of it being owned by NRI or not



Guidelines for FIPB Approval

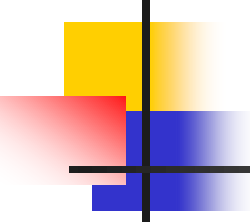
- Application to FIPB is preferred when Automatic route is not applicable
- Proposal is put before FIPB within 15 days of its receipt with the comments of respective Ministry/ies.
- Sectoral Cap & requirements to be considered by FIPB.
- Time frame of 30 days for communicating the decision by the GOI.
- Items requiring Industrial License.
- Export Oriented proposal.
- Strategic or defence related consideration.
- Priority if sector is Infrastructure or has export potential / Large scale employment potential/ item with backward linkage with Agro/ Farm Sector/ item with greater social relevance, induction of technology and capital.



Guidelines for FIPB Approval

contd.

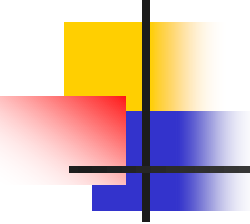
- Fresh Equity in existing company or New company with modality of right to transfer of shares etc.
- Activity is Industrial or Service.
- Sectoral Restrictions.
- Import of Hazardous or Banned items etc.
- Shares can be issued with FIPB approval in other cases such as swap of shares, against receipt of foreign exchange for pre-incorporation expenses and import of capital goods
- Application can be filed online through FIPB's website <http://fipbindia.com>



Recent changes in Consolidated FDI Policy

– Issue of Warrants / Partly paid shares

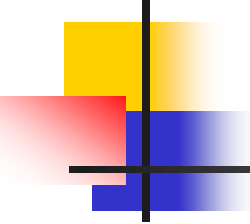
- As per Policy till 31 March 2011, issue of warrants and partly paid shares was not considered as capital and could not be issued to PROIs
- Now, effective 1 April 2011, warrants and partly paid shares can be issued to PROIs only after approval through Govt. route
- Review of FDI policy to include warrants and partly paid shares as capital is under consideration of the Govt.



Recent changes in Consolidated FDI Policy

– Pricing of Convertible Instruments

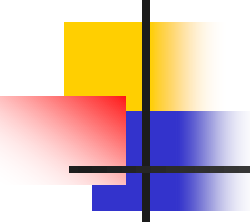
- As per Policy till 31 March 2011, conversion price of convertible instruments had to be specified upfront at time of their issue
- Now, effective 1 April 2011, option available to companies to prescribe conversion formula subject to FEMA/SEBI pricing guidelines
- Price on conversion should not be lower than fair value worked out at the time of issue of convertible instruments
- Key Issues:
 - Fair value as per FEMA guidelines still needs to be worked out at time of issue of convertible instruments
 - What happens in case of under performance by company? Whether actual NPV obtained will be permitted as basis of valuation



Recent changes in Consolidated FDI Policy

– Issue of Shares for non-cash consideration

- Issue of shares permitted under approval route for import of capital goods / machinery / equipments (including second-hand machinery)
- Import to be in accordance with EXIM policy as defined by DGFT and FEMA provisions relating to imports
- Independent valuation by third party entity from country of import
- Customs to certify assessment of fair value of imports
- Application to clearly indicate beneficial ownership and identity of Importer company and Oversees entity
- Conversions of such imports into FDI to be done within 180 days from date of shipment
- Special Resolution of the Company required
- Compliance with pricing guidelines of RBI and appropriate tax clearance



Recent changes in Consolidated FDI Policy

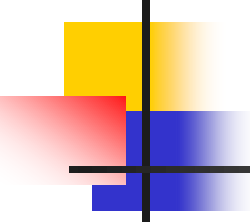
– Issue of Shares for non-cash consideration contd.

- Issue of shares permitted under approval route for pre-operative / pre-incorporation expenses (including payments of rent, etc.)
- Submission of FIRC for remittance of funds by overseas promoters
- Verification and certification by Statutory Auditor
- Payments by foreign investor to be made directly to the company
- Payments made through third parties due to any reason not allowed
- Capitalization to be completed within 180 days permitted for retention of advance against equity
- Special Resolution of the Company required
- Compliance with pricing guidelines of RBI and appropriate tax clearance

Recent changes in Consolidated FDI Policy

– Removal of condition of prior approval in case of existing JV / Collaboration

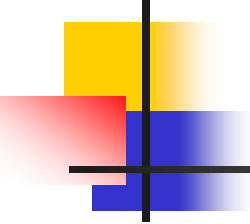
- As per Policy till 31 March 2011, foreign investor having Indian JVs / Technical Collaborations as on 12 Jan. 2005 was required to obtain prior Govt. approval for new ventures in same field subject to exemptions for FVCI, Defunct companies, etc.
- As per DIPP discussion paper issued last year, need was felt to attract fresh investment and technology and also to reduce levels of state intervention
- Now all such conditions / approval requirements abolished



Recent changes in Consolidated FDI Policy

– Simplification of down-stream investments

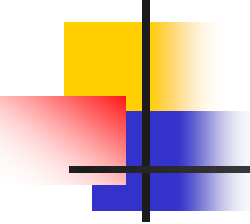
- Earlier categorization of 'investing companies', 'operating companies' and 'investing-cum-operating companies' done away with
- Companies now classified into two categories
 - companies owned ***or*** controlled by foreign investors
 - companies owned ***and*** controlled by Indian Residents



Recent changes in Consolidated FDI Policy

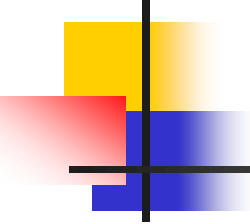
– Development of seeds

- FDI permitted in development and production of seeds and planting material without the stipulation of having to do so under controlled conditions



Investment in Limited Liability Partnership by PROI

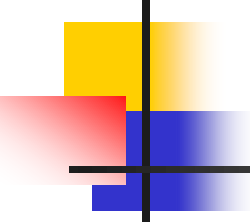
- FDI in LLPs allowed through Govt. approval route only in sectors / activities where 100% FDI is allowed through automatic route and there are no FDI-linked performance related conditions such as NBFCs, Development of Townships, Housing, etc.
- LLPs not allowed in agriculture/plantation, print media & real estate
- LLPs with FDI cannot make downstream investments
- Foreign Capital participation in LLPs only by way of fresh inward remittance / NRE / FCNR Accounts
- FIIs and FVCIs cannot invest in LLPs
- No ECBs for LLPs
- Designated Partner as per Sec. 7(1) of LLP Act, 2008 should be 'Person Resident in India' as per Sec. 2(v)(i) of FEMA, 1999
- Conversion of company with FDI into LLP allowed only if all stipulations are met and with prior FIPB/Govt. approval



Investment in Limited Liability Partnership

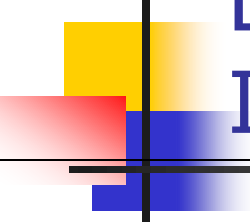
- Key Issues

- Whether any secondary approval from RBI required post FIPB
- Documentation / Reporting / Compliances of FDI in LLP
- Partners' Capital – Valuation on infusion / withdrawal / admission / retirement / transfer
- Interest on Capital as per Income Tax Act permissible?
- Issues regarding Restructuring of LLPs, Closure of LLPs, Conversion of Indian company with FDI into LLP



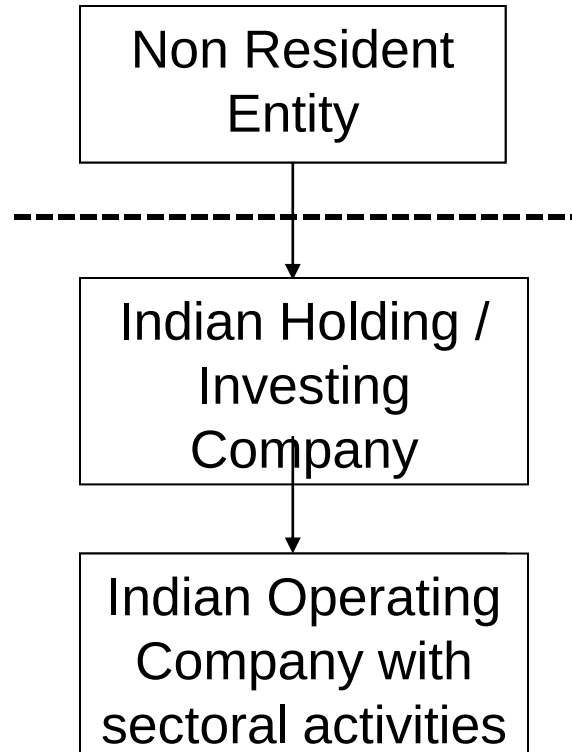
Direct and Indirect Foreign Investment in Indian Companies

- Para 4.1 of FDI Policy
 - Direct Foreign Investment is investment by Non-resident in Indian Company
 - Indirect Foreign Investment is in case of investment by an Indian investing company that has foreign investment in it
 - Indirect investment can also be a cascading investment through multi-layered structure



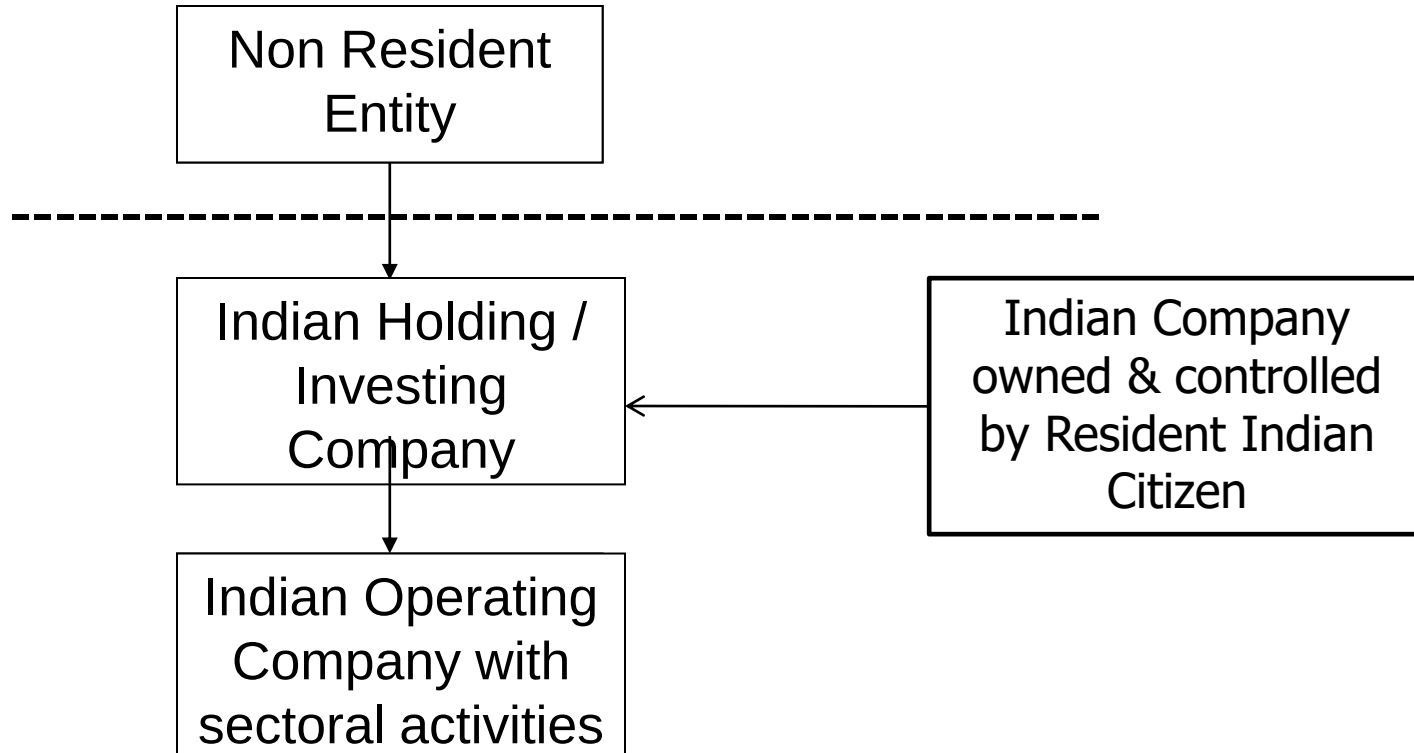
Direct and Indirect Foreign Investment in Indian Companies contd.

Indirect Investment



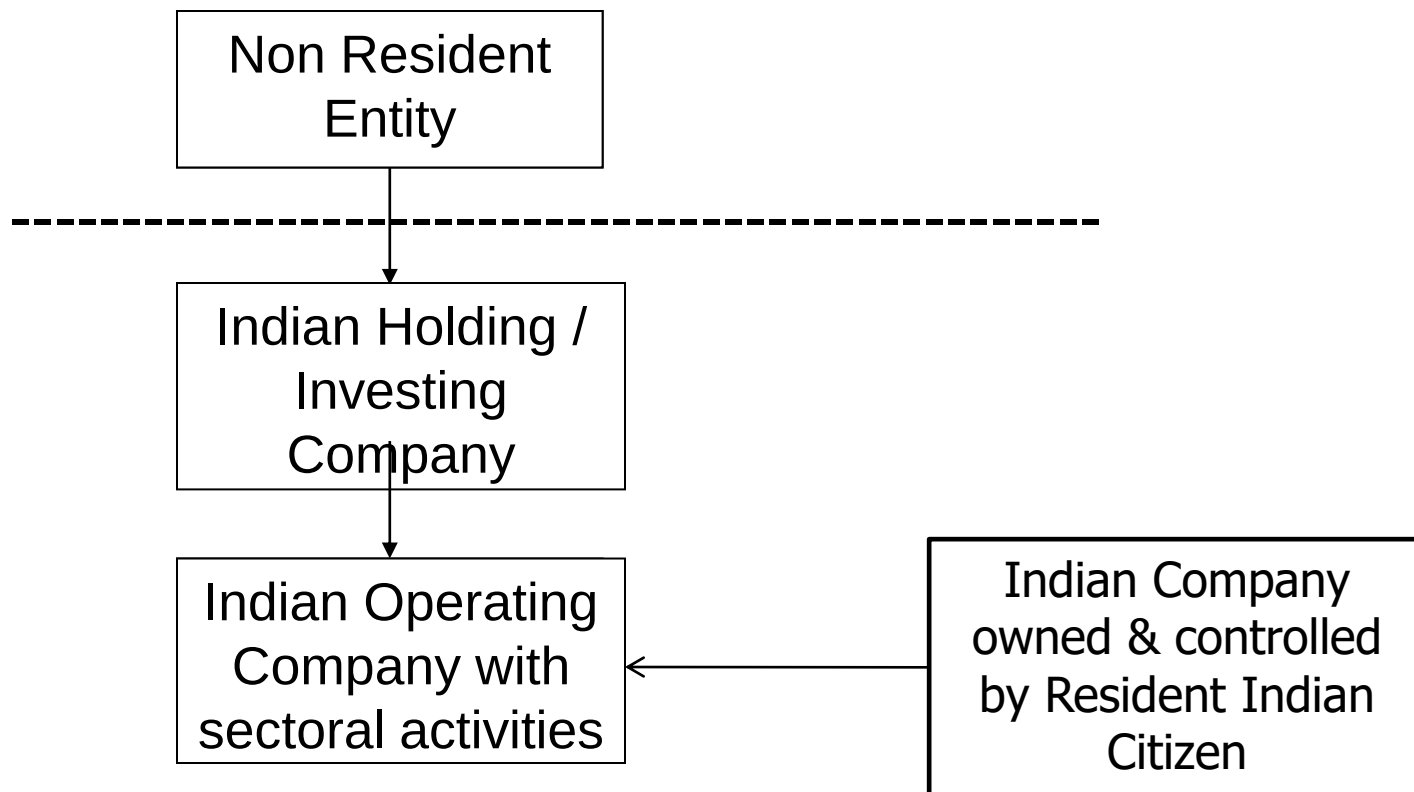
Direct and Indirect Foreign Investment in Indian Companies contd.

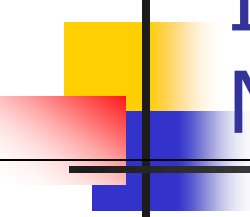
Indirect Investment



Direct and Indirect Foreign Investment in Indian Companies contd.

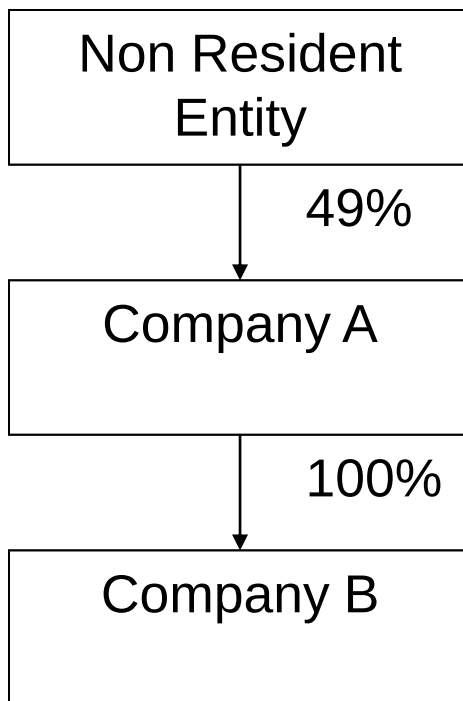
Indirect Investment



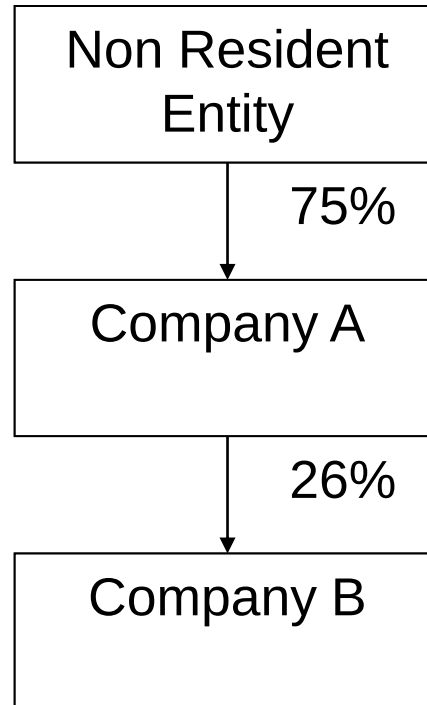


Investment through Holding Company Press Note 2 (2009 Series)

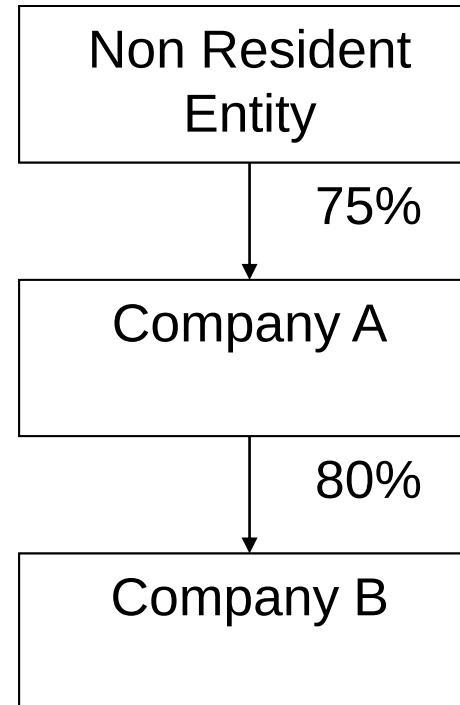
Scenario 1



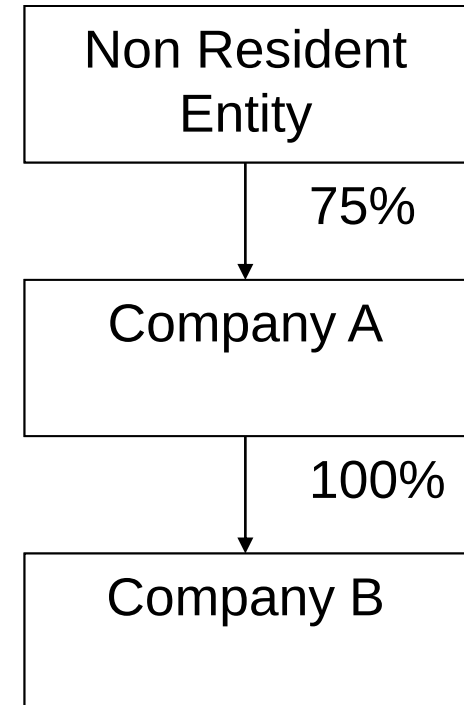
Scenario 2

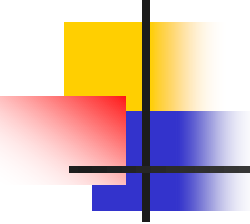


Scenario 3



Scenario 4



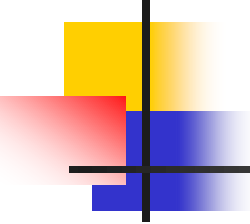


Investment through Holding Company Press Note 2 (2009 Series) contd.

- Company A is investing in company B
- Foreign Investment = Direct investment + Indirect investment
- Assuming there is no direct non resident investment in company B, foreign investment in each of the scenario is as under
 - a) Scenario 1: Nil + Nil = Nil
 - b) Scenario 2: Nil + 26% = 26%
 - c) Scenario 3: Nil + 80% = 80%
 - d) Scenario 4: Nil + 75% = 75%
- The methodology will apply at every stage where Investing Indian company is intercepted and to all Indian Companies.

Recent DIPP Discussion papers

- Multi-Brand Retail Trading



- Aims:
 - To control food inflation and curb prices
 - To provide benefit of organized retail to masses
- FDI envisaged at 50% to 51%
- Retail stores only in big / selected cities
- Ceiling on number of retail outlets
- Sourcing conditions to be applicable
- Stringent investment norms

Recent DIPP Discussion papers

- Rationale and relevance fo Sectoral Caps in FDI Policy (24 June 2011)

- FII investment ceiling may be reckoned over and above prescribed caps
- Downstream investments can carry out activity in any sector provided there is no direct FDI i.e. FDI is upto 49% and ownership and control is with Indian Citizens / Residents
- Level of control in sensitive sectors emphasized even in multi-layer structures
- Sectoral guidelines to include Indian citizens on Boards of Management / Top level managerial positions
- MNCs asked to develop long-term association with India by setting up core business, sourcing senior management from India, listing in India



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
1.	Agriculture & Animal Husbandry	100%	
2.	Tea Sector incl. tea plantations		100%
3.	Mining – metal, non-metal ores, gold, silver	100%	
4.	Mining – Coal & Lignite for captive use	100%	
5.	Mining – Titanium bearing minerals & ores		100%
6.	Manufacturing of items reserved for MSE sector by units which are not MSE		>24%
7.	Defense Industry subject to Industrial License		26%
8.	Electric Generation, Transmission, Distribution and Trading	100%	



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
9.	Airports – Greenfield projects	100%	
10.	Airports – Existing projects	74%	>74%
11.	Scheduled Air Transport Service / Domestic Scheduled Passenger Airline	49% (100% for NRIs)	
12.	Non - Scheduled Air Transport Service	49% (100% for NRIs)	74% (100% for NRIs)
13.	Ground Handling Services	49% (100% for NRIs)	74% (100% for NRIs)
14.	Civil Aviation – Maintenance & repairs, flying & technical training institutions	100%	
15.	Asset Reconstruction Company under SARFAESI Act		49%



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
16.	Banking – Private Sector	49%	74% incl. FII , NRI investments
17.	Banking – Public Sector incl. SBI		20% incl. Portfolio investment
18.	Broadcasting – Terrestrial FM		20% incl. NRI, PIO, PIS
19.	Broadcasting – Cable Network		49% incl. NRI, PIO, PIS
20.	Broadcasting – Direct-to-Home		20% FDI 49% incl. NRI, PIO, PIS
21.	Broadcasting – Headend-In-The-Sky	49%	74% incl. portfolio investments



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
22.	Broadcasting – Hardware such as Up-linking Hub / Telesports		49% incl. FII
23.	Broadcasting – Up-linking a Non-news & Current Affairs TV Channel		100%
24.	Broadcasting – Up-linking a News & Current Affairs TV Channel		26% incl. FII / NRI not acting in concert with FDI
25.	Commodity Exchange		49% incl. FII (FII 23% under PIS; 26% under FDI)



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
26.	Townships, housing, built-up infrastructure and construction development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure)	100%	
27.	Credit Information Companies		49% incl. FII
28.	Industrial Parks – existing & new	100%	
29.	Insurance	26%	
30.	Infrastructure companies in Securities market such as stock exchanges, DP, Clearing corp.		49% incl. FII limit of 23%



Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
31.	NBFCs engaged in specified activities	100%	
32.	Petroleum & Natural Gas – Exploration, marketing infrastructure, Refining in private sector	100%	
33.	Petroleum & Natural Gas – Refining by PSUs without disinvestment / dilution of domestic equity in existing PSUs		49%
34.	Print Media – Newspaper & periodicals dealing with news and current affairs		26% incl. NRIs / PIOs / FIIs
35.	Print Media – Indian editions of foreign magazines dealing with news, current affairs		26% incl. NRIs / PIOs / FIIs
36.	Print Media – Scientific & Technical magazines, speciality journals / periodicals		100%



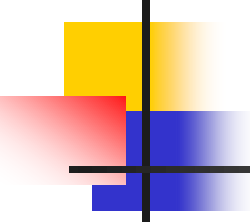
Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
37.	Print Media – facsimile edition of foreign newspapers		100%
38.	Satellites – Establishment & Operation		74%
39.	Telecom Services	49%	74%
40.	ISPs with or without gateways; Radio paging; End-to-End bandwidth	49%	74%
41.	Infrastructure provider providing dark fibre, right of way, duct space, tower (IP Category I); Electronic Mail; Voice Mail	49%	100%
42.	Cash & Carry Wholesale Trading / Wholesale Trading (including sourcing from MSEs)	100%	
43.	E-commerce activities (B2B commerce only)	100%	



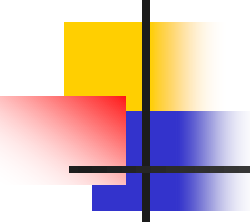
Analysis of Sectoral Caps

Sr. No.	Sector	Automatic Route (sectoral cap)	Govt. Route (sectoral cap)
44.	Test marketing for a period of two and investment in manufacturing facility commences simultaneously with test Marketing		100%
45.	Single Brand Product Trading		51%
46.	Courier services for items outside ambit of Indian Post Office Act, 1898		100%



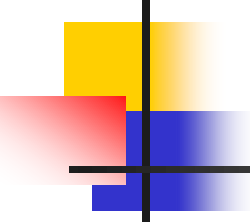
Issue of Shares- Different modes

- Issue of Bonus Shares allowed.
- Issue of Right Shares
 - Price offered to PROI can not be lower than that offered to PRII.
 - Additional Shares allowed within FDI Ceiling.
 - Existing OCB allowed with prior approval.
- Amalgamation / Demerger
 - Amalgamating/ transferee company can issue shares if it is engaged in eligible sector and observes FDI ceiling.
 - Reports the transaction to RBI within 30 days of such court order of amalgamation with percentage of capital held by PROI in transferor , transferee or new company before or after the transfer.



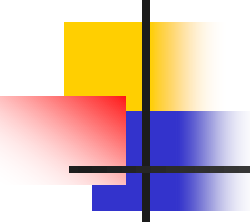
Issue of Shares- Different modes

- ESOP Shares
 - As per the SEBI guidelines, Face Value of shares does not exceed 5% of the paid up capital of the company.
 - Either through Trust or directly, Employees of company (PROI) or its Joint Venture or the WOS outside India.
 - Report the transaction to RBI within 30 days with certificate from Secretary that not exceeding 5% of the capital is issued and it is as per SEBI guidelines.



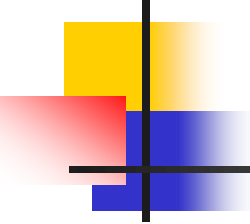
Issue of Shares under ADR/ GDR

- Foreign Exchange Resources by issue of ADR/GDR in accordance with scheme for issue of Foreign Currency Convertible Bonds and ordinary shares (through Depository Receipt mechanism)
- Issue of Depository Receipts issued by Depository Bank outside India on behalf of Indian company.
- Listed company eligible to issue shares to PROI.
- Unlisted company can issue shares under ADR/GDR scheme simultaneously with listing in domestic market.
- Unlisted company with ADR/GDR have to list within three years of such issue of ADR/GDR.
- End Use: NO bar except investment in real estate or the stock market.
- Erstwhile OCB cannot invest into ADR/GDR.
- Pricing: As per the scheme
- Sponsored ADR/GDR without increasing capital.



Issue of Shares under ADR/ GDR Contd.

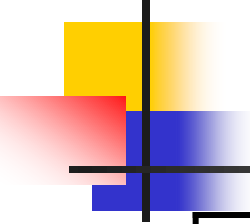
- Two Way Fungibility possible.
 - Full Report of issue of ADR/GDR within 30 days to RBI from the date of closing the issue.
 - Quarterly return to the RBI within 15 days of the each calendar quarter.
 - Quarterly reporting until amount is invested outside India or money is brought to India.
- [Form DR & DR (Quarterly)]



FDI Transfer of Shares

In case of transfer of securities, the transferee has to comply with the conditions of investment under automatic route as stated above and the regulations as applicable to the transferor are summarised as under (Regulation 9 & 10 of the Notification).

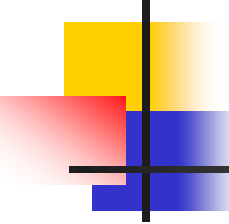
Sr. No.	Transferor	Transferee	Mode of payment	Condition
1.	PROI other than NRI/OCB	PROI	Sale or gift	Regl 9 of Ntf 20
2.	NRI/ OCB	NRI	Sale or gift	----- -----
3.	PROI	PRII	Gift	----- -----



FDI Transfer of Shares

contd.

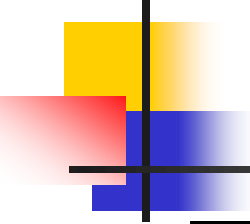
Sr. No.	Transferor	Transferee	Mode of payment	Condition
4.	PROI	Any Person	Sale on Stock Exchange through regd broker	Within the meaning of regulation 9 of Notification 20
5.	PROI	PRII	Sale through private placement	* Cir. No. 16 dt. 04/10/2004 under Regl. 10(A)(b)



FDI Transfer of Shares

contd.

Sr. No	Transferor	Transferee	Mode of payment	Condition
6.	PROI	Indian Company	Transfer under buy-back and/or capital reduction scheme	* Cir. No. 16 dt 04/10/2004 u/r (10)(A)(b)
7.	PRII	PROI	Gift	Max upto 5% of paid-up capital with RBI approval u/r (10)(A)(a)
8.	PRII	PROI	Sale through private placement	* Cir. No. 16 dt 04/10/2004 u/r (10)(A)(b)



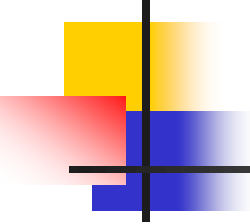
FDI Transfer of Shares

contd.

Sr. No.	Transferor	Transferee	Mode of payment	Condition
9.	PROI	PRII	Sale not covered by Regl 9	Form TS1Regl 10(B)(1), Prior approval of RBI
10.	NRI	PROI	Sale not covered by Regl 9 & 10(B)	Government approval or RBI as the case may be

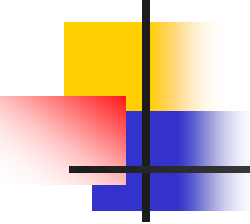
• ~~There is common condition that there is no previous venture or tie-up by the transferee of the shares in the same or allied field as that of the company. This condition is removed w.e.f. April 1, 2011~~

- * Applicable Form is FC-TRS and for all sectors except financial services



Documentation & Procedure of Issue of Shares to PROI

- Intimation of receipt of remittance to Authorised dealer (AD) within 30 days with KYC report as per CIR. NO. 44/2007-08-RB, DT. 30/05/2008 from the Banker of remitter.
- Intimation of allotment to ADs of Shares/CPS/CDS within 30 days from the date of allotment to PROI together with :
 - a) Allotment Report by Company Secretary
 - b) Valuation of Shares by CA.
 - c) Undertaking in respect of prohibited activity.
 - d) Resolution of Indian Company.
 - e) Form FC-GPR duly filled in.
- Intimation and allotment of Reporting- A Mechanism.
- Allotment is required to be made within 180 days of the receipt of remittance. Application money is required to be refunded if no allotment is made within 180 days.
- Annual return on Foreign Liabilities & Assets w.e.f. 15.3.2011 is to be filed every year by 31st July.
- In case of FIPB approval, additional information is required to be filed with FIPB on a half yearly basis



Manner of Receipts & Reporting of Investment

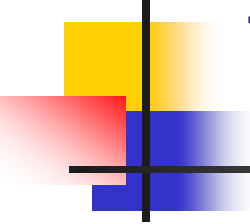
- Manner of Receipt :

Receipt of Subscription should be either by Inward remittance through normal Banking Channel or from NRE account of the Investor maintained in India.

Shares can be issued against conversion of ECB or against consideration in kind to provider of Technology/ technical know how against Royalty/ Lumpsum Fee.

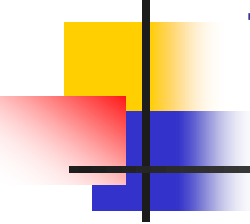
- FDI Policy 2011 now permits issue of shares, under Govt. route against (a) import of capital goods / machinery / equipment (including second-hand), and (b) Pre-operative / pre-incorporation expns (incl. rent) and swap of shares (cases where remittance is not received in an approved manner)
- Reporting in Form FC-GPR and FC-GPR/ ECB2 in case of conversion of ECB.
- Valuation of Shares :

Discounted Free Cash Flow method by CAs.



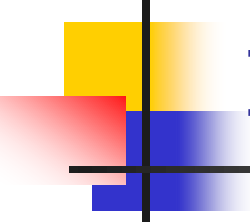
Investment by Registered FVCI in an IVCU

- Consolidated Policy of April 2011 at paragraph 3.1.6 states that a Foreign Venture Capital Investor(FVCI) may contribute upto 100% of the capital of an Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments can be made under automatic route in terms of Schedule 6 to Notification No. FEMA 20. A SEBI registered FVCI can also invest in domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to RBI regulations and FDI policy. However, in case the entity undertaking venture capital fund activity is a Trust registered under the Indian Trust Act, 1882, foreign investment would be permitted under the Government route. FVCIs are also allowed to invest in other companies subject to FDI Regulations.



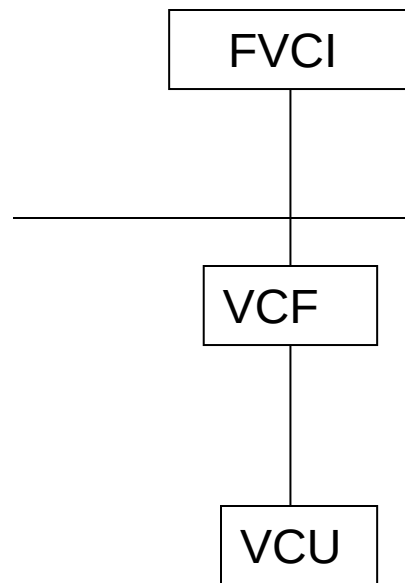
Investment by Registered FVCI in an IVCU contd.

- Both SEBI & Government guidelines have framed rules of investment as to maximum percentage of Equity in an IVCU, corpus of VCF into an IVCU etc.

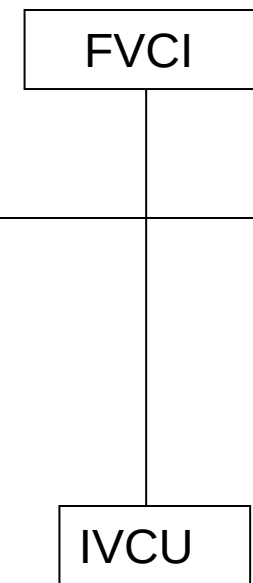


Investment by FVCI- Method of Investment

Investment through VCF



Investment directly into IVCU

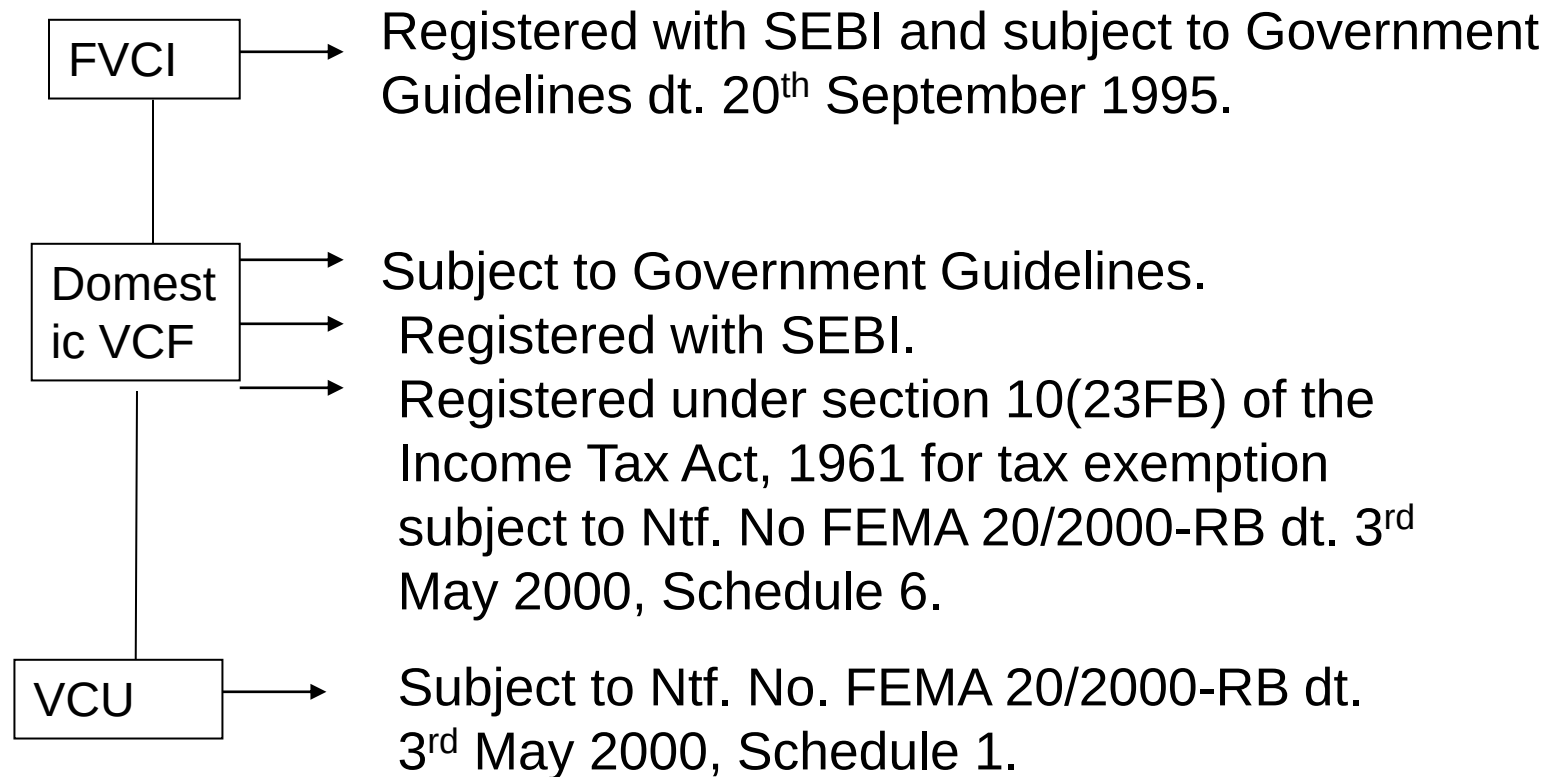


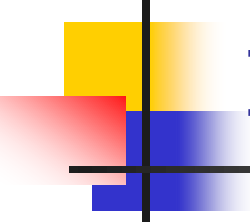
Outside India

In India

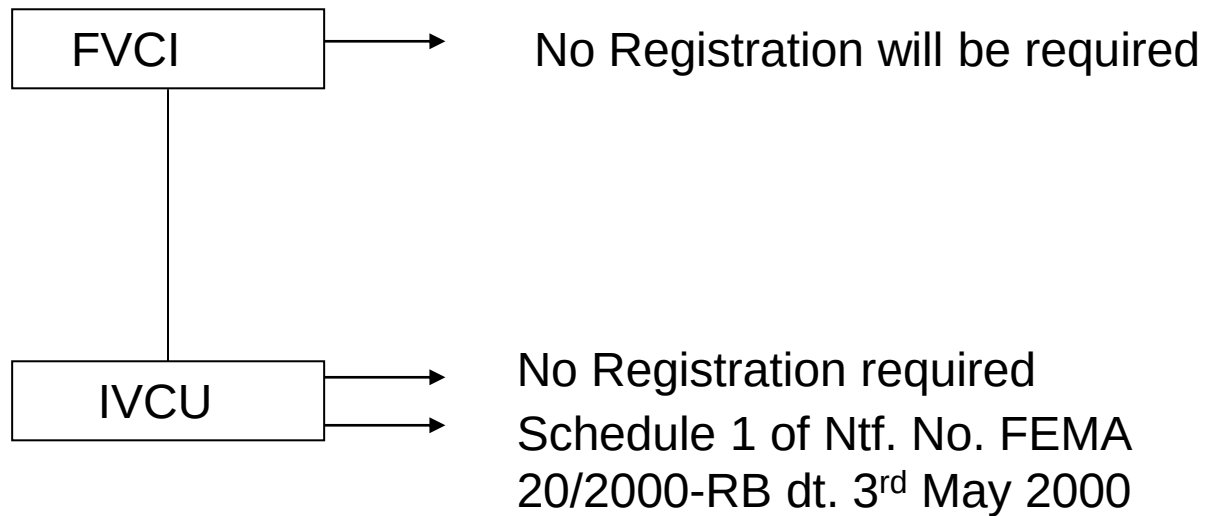
Investment by FVCI into Domestic VCF/ VCI

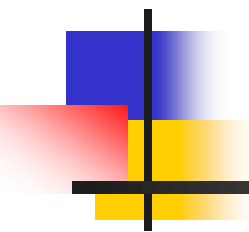
- Regulatory Framework





Investment by FVCI into an IVCU





Thank You
