

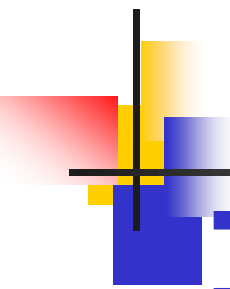
SOUTHERN INDIA REGIONAL COUNCIL OF ICAI

“BEYOND BOUNDARY” THREE DAY WORKSHOP ON FEMA

FEMA – An Overview

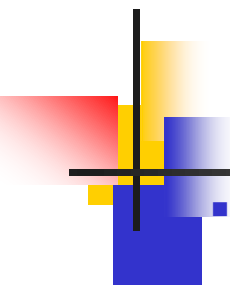
Presented by:
Mr. Paresh P. Shah

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



Overview

- Foreign Exchange Management Act – Overview
- Important definitions under FEMA
- Fundamentals of FEMA
- FEMA Practice
- Schemes for Inbound Investment - FEMA Notification 20(R) / 2017- RB
- Foreign Direct Investment (FDI) in India – Automatic & Approval Routes
- FDI related compliances and reportings
- Overseas Direct Investment (ODI) - FEMA Notification 120 / 2004 - RB
- External Commercial Borrowings – FEMA Notification 3 / 2000 - RB



Overview

Abbreviations: Authorised Dealer (AD),
Capital Account transaction (CAP),
Current Account Transaction (CAT),
Foreign Exchange (FE),
Government of India (GOI) ,
Notification no. (Notf.),
Person Resident Outside India (PROI),
Person Resident in India (PRII),
Non Resident Indian (NRI),
Person of Indian Origin (PIO),
Overseas Citizen of India (OCI),
Reserve Bank of India (RBI),
Non-repatriable basis (NRB).
Repatriable basis (RB).
Subject to (SBT).
Foreign Portfolio Investor (FPI),
Alternate Investment Fund (AIF),
Foreign Venture Capital Investor (FVCI),
Indian Venture Capital Undertaking (IVCU)



Overview of Foreign Exchange Management Act

- Applies to whole of India and all branches, offices and agencies outside India, which are owned or controlled by person resident in India – Extra territorial jurisdiction
- Broadly, the objectives of FEMA are: (i) To facilitate external trade and payments; and (ii) To promote the orderly development and maintenance of foreign exchange market. The Act has assigned an important role to the RBI in the administration of FEMA.
- FEMA has total 49 sections in which sections 1 to 9 are substantive and the rest are procedural /administrative to carry out function such as Appellate, Investigation, search and authorization to various statutory bodies to make rules, regulations, amendments
- Section 46 of the Act grants power to Central Government to makes rules and section 47 (as amended by Finance Act, 2015) of the Act grants power to RBI to make regulations to implements its provisions and the rules made there under; also provides that earlier regulations made by RBI, for which power now vests with Central Govt. remain valid until amended / rescinded by Central Govt.
- Every Rule and Regulation made under this Act shall be laid before each house of parliament Section 48.
- Section 49 deals with Repeal and savings
- **Finance Act, 2015 has amended Sections 2, 6, 13, 18, 46 & 47 and inserted new Section 37A**

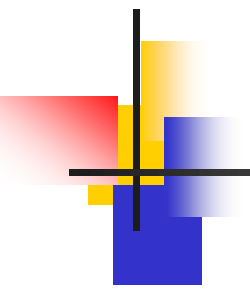


Overview of Foreign Exchange Management Act

Section	Description
1	Application and commencement of FEMA w.e.f. 1/6/2000
2	Definitions (amended by Finance Act, 2015 to include "Authorised Officer" and "Competent Authority")
3 to 9	Substantive provisions, Dealing in FE, No drawal of FE, CAT, CAP, Export & Import, Repatriation, Possession of FE etc. (Section 6 amended by Finance Act, 2015 to provide that equity flows shall be under Central Govt.)
10 to 12	Authorized person Delegation of power by RBI ,ADs & Documents
13 to 15	Contraventions and penalties (Section 13 amended by Finance Act, 2015 for penalty for holding foreign exchange, security or property in excess of threshold specified in new S. 37A)
16 to 38	Adjudication, Appeal and Directorate of enforcement [new Section 37A vide Finance Act, 2015: Special provisions relating to assets held outside India in contravention of section 4]
39 to 49	Miscellaneous provisions, Power of RBI, Power of Government of India, Procedure for issue of Notification etc. Sunset clause for FERA upto 31 st May 2002, Repeal and Savings

Overview of Foreign Exchange Management Act

Section	Description
3	Dealing in foreign exchange by any Person in India. Receipt by PRII without Remittance, Payment in India by PRII with a right O/I
4	Holding of foreign exchange, Security and Immovable property by PRII.
5	Current account transactions, List and Restrictions
6	Capital account transactions-Powers of RBI, Central Govt. and the list.
7	Export of goods and services- Declaration, Information, Direction to receive FE.
8	Realisation and repatriation of foreign exchange
9	Exemption from realization and repatriation in certain cases And possession of FE



Section 6 of FEMA - amendments by Finance Act, 2015

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.

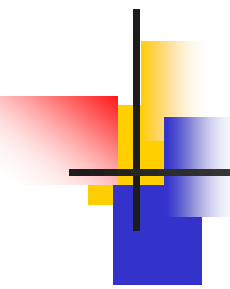
- (2) The Reserve Bank may, in consultation with the Central Government, specify—
 - (a) ~~any class or classes of capital account transactions which are permissible;~~ any class or classes of capital account transactions, involving debt instruments, which are permissible;
 - (b) the limit up to which foreign exchanges shall be admissible for such transactions:
 - (c) any conditions which may be placed on such transaction

Provided that the Reserve Bank or the Central Government shall not impose any restriction on the drawal of foreign exchange for payment due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

- (2A) The Central Government may, in consultation with the Reserve Bank, prescribe—
 - (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;
 - (b) the limit up to which foreign exchange shall be admissible for such transactions; and
 - (c) any conditions which may be placed on such transactions.

- (3) Omitted;

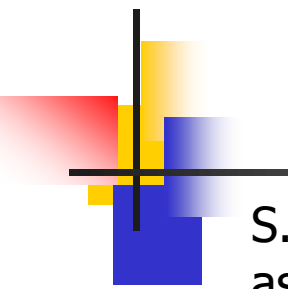
- (7) For the purposes of this section, the term “debt instruments” shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.



Section 46 of FEMA - amendments by Finance Act, 2015

Power to make rules.—

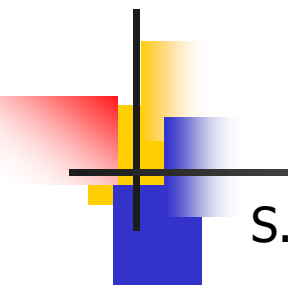
- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—
 - (a) the imposition of reasonable restrictions on current account transactions under section 5;
 - **(aa) the instruments which are determined to be debt instruments under subsection(7) of section 6;**
 - **(ab) the permissible classes of capital account transactions in accordance with subsection(2A) of section 6, the limits of admissibility of foreign exchange, and the prohibition, restriction or regulation of such transactions;”;**
 - **(gg)the aggregate value of foreign exchange referred to in subsection (1) of section 37A**



Important Definitions under FEMA

S. 2(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub- section (3) of section 6

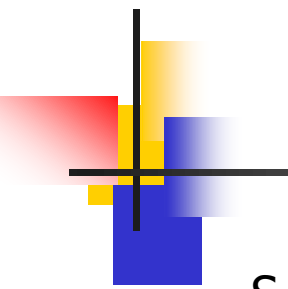
- S. 2(j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,-
 - (i) payments due in connection with foreign trade, other current business, services, and short- term banking and credit facilities in the ordinary course of business,
 - (ii) payments due as interest on loans and as net income from investments,
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children



Important Definitions under FEMA

S. 2(v) " person resident in India" means-

- (i) a person residing in India for more than one hundred and eighty- two days during the course of the preceding financial year but does not include-
 - (A) a person who has gone out of India or who stays outside India, in either case-
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than-
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;



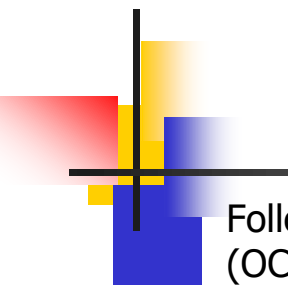
Important Definitions under FEMA

- S. 2(v) " person resident in India" means – (con't)
 - (ii) any person or body corporate registered or incorporated in India,
 - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
 - (iv) an office, branch or agency outside India owned or controlled by a person resident in India
- S. 2(w) " person resident outside India" means a person who is not resident in India



Important Definitions under FEMA

- 'Non-Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder ('OCI') within the meaning of section 7 (A) of the Citizenship Act, 1955.
- 'Persons of Indian Origin' cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are now deemed to be 'Overseas Citizen of India' cardholders w.e.f. 12.05.2015
- OCI is wider in scope than PIO which used to be up to 3 generations of foreign citizens. Now up to 4th generation of foreign citizens can be considered as OCI. Further, there are additional conditions in case of spouses that marriage should have subsisted for at least two years prior to application for OCI card.



Important Definitions under FEMA

Following categories of foreign nationals are eligible for registration as Overseas Citizen of India (OCI) Cardholder:-

- (1) Who was a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or
- (2) who was eligible to become a citizen of India on 26.01.1950; or
- (3) who belonged to a territory that became part of India after 15.08.1947; or
- (4) who is a child or a grandchild or a great grandchild of such a citizen; or
- (5) who is a minor child of such persons mentioned above; or
- (6) who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or
- (7) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

- Note : No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.



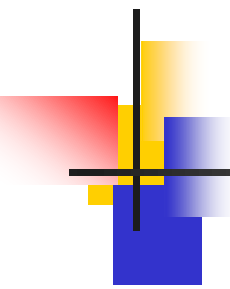
Issues – PIO to OCI change

FEMA Notification No. 5(R) relating to Deposits by non-residents still continues with definition of " Person of Indian origin" as amended in-line with OCI definition. Accordingly, as per FEMA 5(R):

'Person of Indian Origin (PIO)' means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

- a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or
- c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
- d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

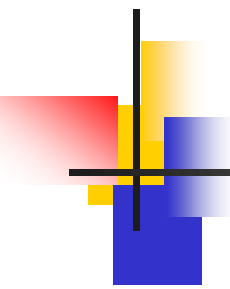
- Explanation: for the purpose of this sub-regulation, the expression 'Person of Indian Origin' includes an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.



Issues – PIO to OCI change (con't)

However, as per the latest definition mentioned in new FEMA 20(R) dt. 07.11.2017, a 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India.

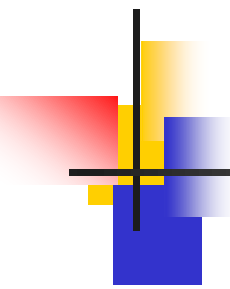
- OCI is now defined separately in new FEMA 20(R) as: 'Overseas Citizen of India (OCI)' means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
- Thus, with the latest amendment vide FEMA Ntf. 20(R), 'NRI' and 'OCI' are defined separately and there is no reference to 'PIO'; hence a PIO is required to take OCI card before undertaking the permitted investments.



Fundamentals of FEMA

Foreign Exchange belongs to Govt. of India except permitted.(Sec 5 about Current Account Transaction and Sec 6 about Capital Account Transactions)

- Dealing in Foreign Exchange by PRII as well as by PROI is regulated(Section 3 of The FEMA)
- Dealing between PRII and PROI in Rupees is also regulated(Borrowing and Lending in Rupees, deposit in Rupees, Gifts in India by PROI except to relatives etc)
- Permissible Capital Account or Current Account Transaction -Drawal of Foreign Exchange are specific to purposes for which they are granted.



Fundamentals of FEMA

SEC. 3: Dealing in foreign exchange, etc.

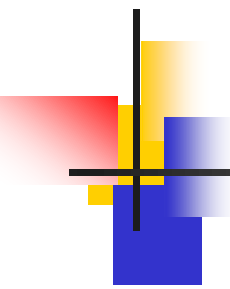
Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, no person shall-

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;
- (b) make any payment to or for the credit of any person resident outside India in any manner;
- (c) receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation.- For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

- (d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation.- For the purpose of this clause, " financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.



Fundamentals of FEMA

SEC. 4: Holding of foreign exchange, etc.

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

SEC. 5: Current account transactions

- **Any person may** sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction:

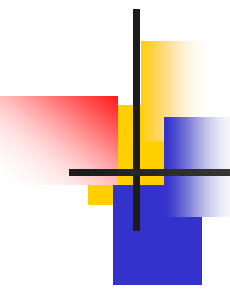
Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

SEC. 6: Capital account transactions **(before amendments by Finance Act, 2015)**

- (1) Subject to the provisions of sub- section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.
- (2) The Reserve Bank may, in consultation with the Central Government, specify-

- (a) any class or classes of capital account transactions which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions:

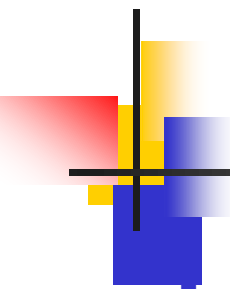
Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.



Fundamentals of FEMA

SEC. 6: Capital account transactions (con't)

- (3) Without prejudice to the generality of the provisions of sub- section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following-
 - (a) transfer or issue of any foreign security by a person resident in India;
 - (b) transfer or issue of any security by a person resident outside India;
 - (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
 - (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
 - (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
 - (f) deposits between persons resident in India and persons resident outside India;
 - (g) export, import or holding of currency or currency notes;
 - (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
 - (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
 - (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred-
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.



Fundamentals of FEMA

SEC. 6: Capital account transactions (con't)

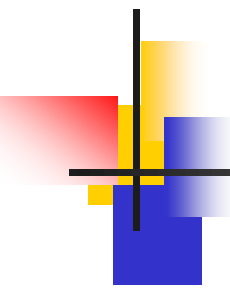
(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or inherited from a person who was resident outside India.**

Thus Asset held abroad can be inherited however for asset in India one may have to look for the concerned notification for inheritance two residents of such asset outside India

- (5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India **or inherited from a person who was resident in India.**

This is similar to note on 6(4) for inheritance of assets in India between two non Residents

- (6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

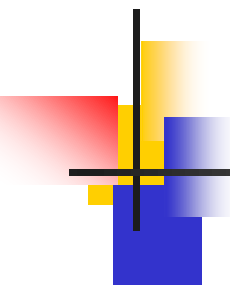


Fundamentals of FEMA

SEC. 8: Realisation and repatriation of foreign exchange. –

Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

Note: The above is dealt with by Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 issued under Notification No. FEMA 9 (R)/2015-RB dt. December 29, 2015



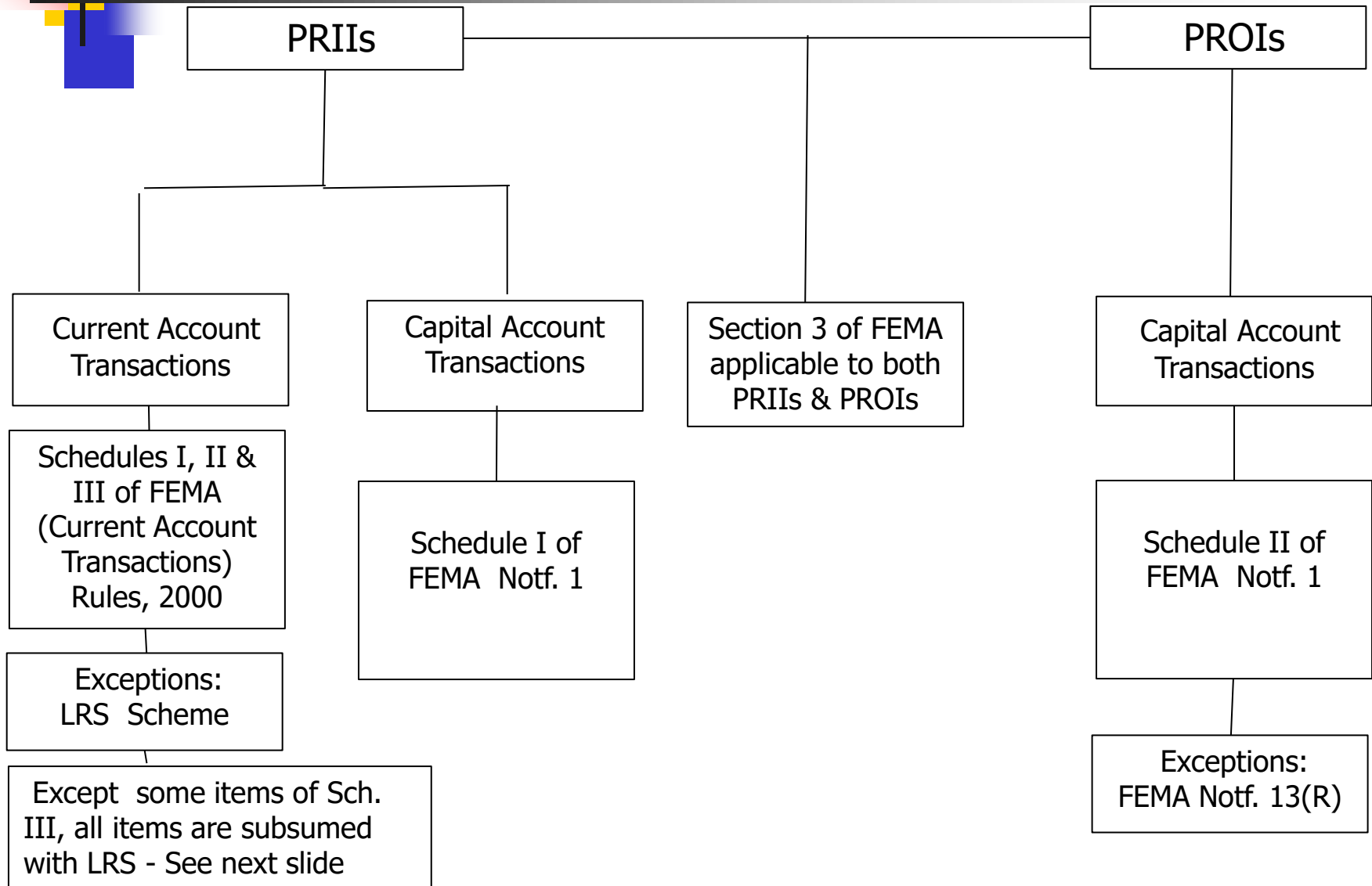
Fundamentals of FEMA

SEC. 9: Exemption from realization and repatriation in certain cases. – The provisions of sections 4 and 8 shall not apply to the following, namely:-

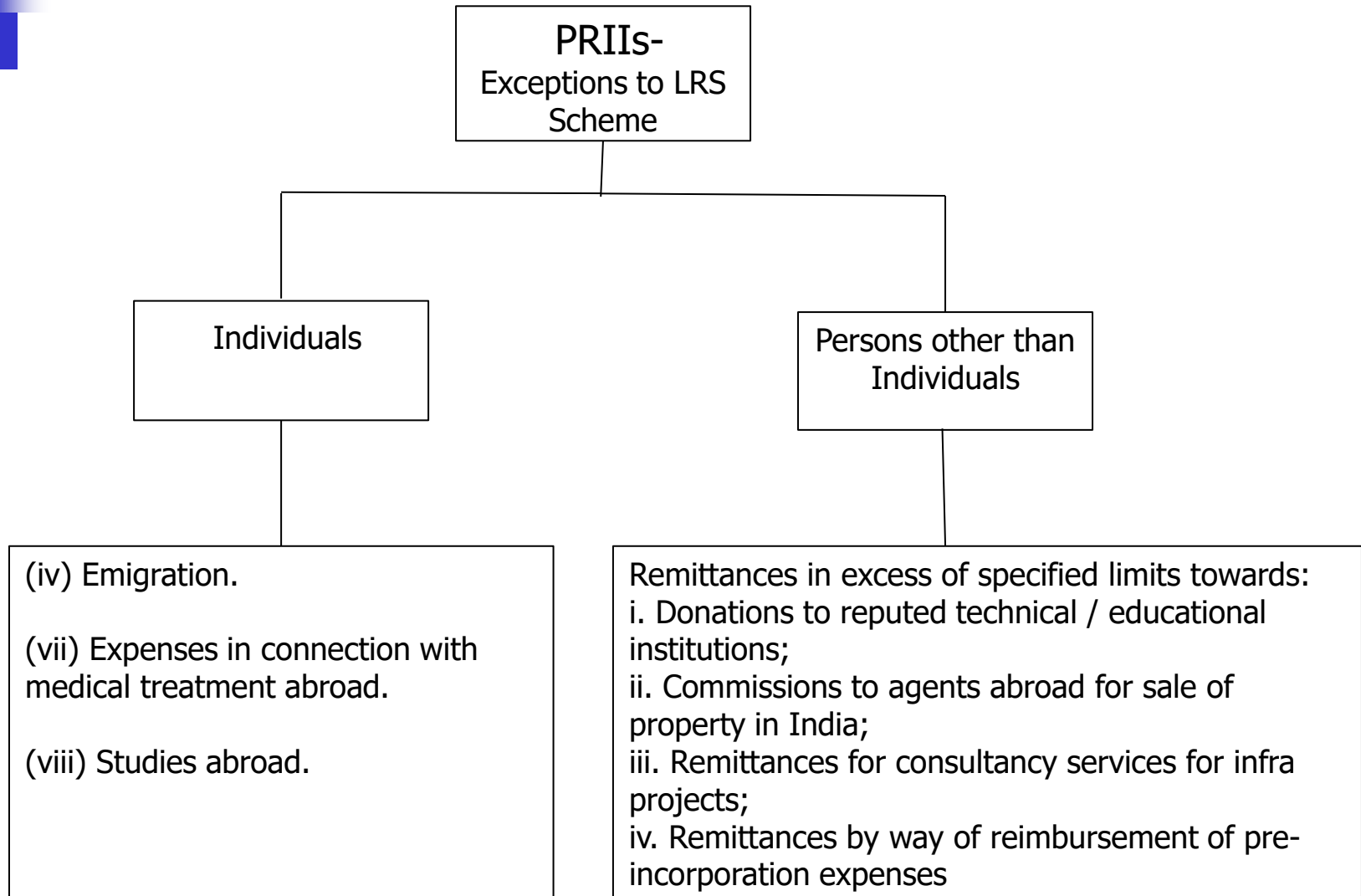
- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;
- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify y; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

Note: The above is dealt with by Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 issued under Notification No. FEMA 11 (R)/2015-RB dt. December 29, 2015 and Foreign Exchange Management (Export & Import of Currency) Regulations, 2015 issued under Notification No. FEMA 6 (R)/2015-RB dt. December 29, 2015

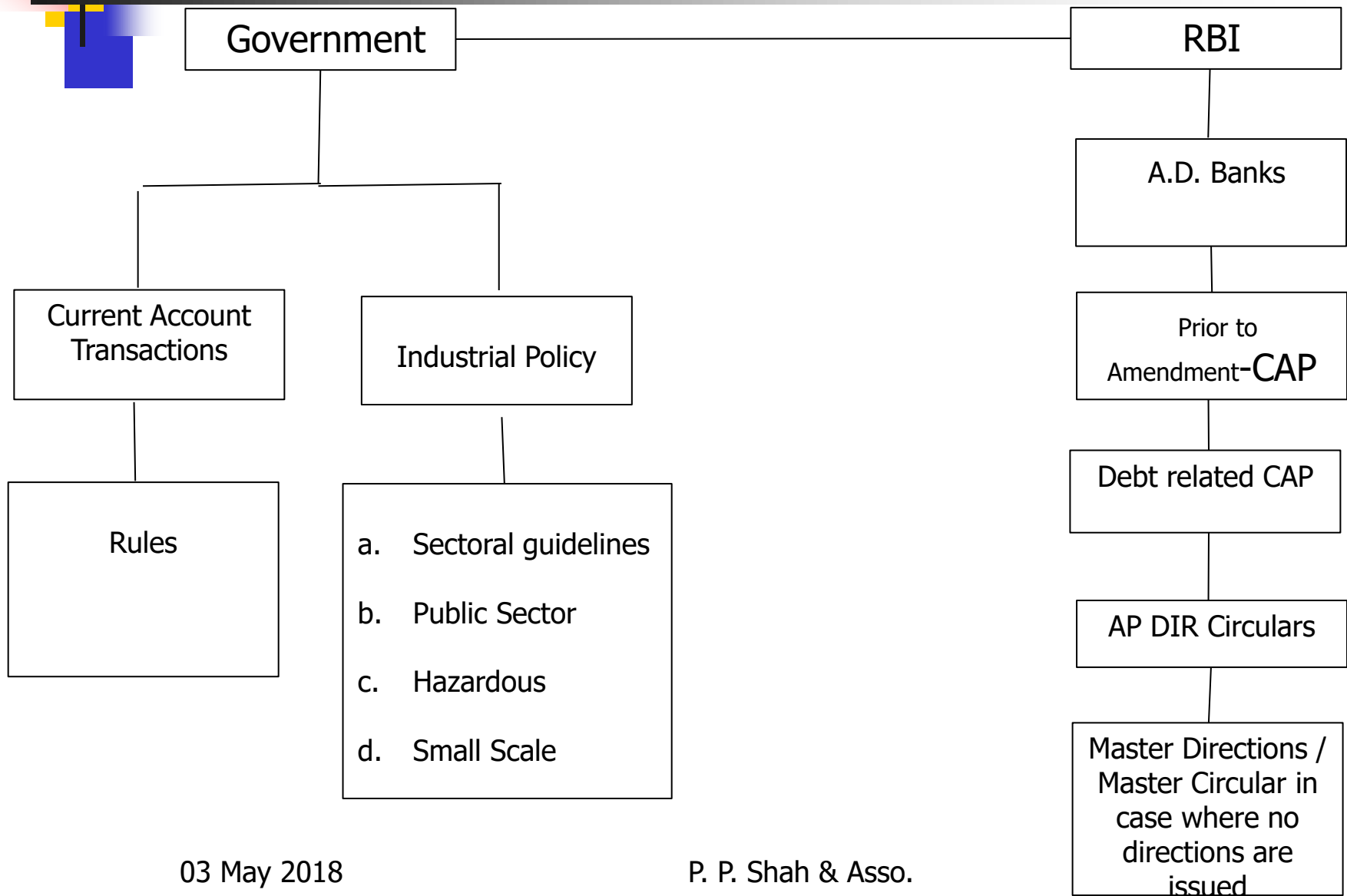
FEMA Practice



FEMA Practice



FEMA Practice



FEMA Practice

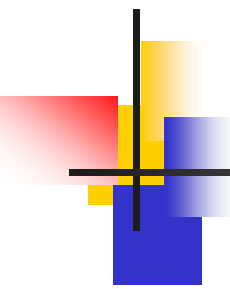
	PROI		
	Foreign Citizen	NRI	Other entities
Deposit- Notf.5(R) –Banking Accounts of PROI plus few cases in Notf. 10(R)	[Can open for limited purpose as mentioned in Notf.5(R) & 10(R)]	√ [Notf.5(R)]	√ [Notf.10 (R)]
Branch /Liaison - Notf. 22(R)	NA	NA	Prior approval through AD √ [except citizen of 8 countries]
Project office	NA	NA	Auto Route with conditions except 7 citizens
Immovable property in India- Notf.21(R)	X	√	√ [For branch, office or other place of business for carrying on in India any activity, excluding a liaison office]

FEMA Practice

	PROI		
	Foreign Citizen	NRIs	Other entities
Partnership business in India- Notf.24 [Now subsumed under Ntf. 20(R) w.e.f. 07.11.2017]	X (Prior approval on Repatriation basis)	√ (Auto Route on non repatriation basis, Repatriation -Prior approval)	(Prior approval on repatriation basis)
Borrowings in rupees	Restricted only to rupee borrowings		
Notf 4		-From relative SBT End use restrictions.(Reg 8B) -Special provision for housing loan by AD in rupee to non resident and loan against security of shares and immovable property (Reg.8 and 7) -body corporate registered or incorporated in India may grant rupee loan to its employees who is a non-resident Indian or a Person of Indian Origin(Regulation 8A) -Loan for acquiring share of Indian co. under ESOP (Reg.7) -loan granted to a non-resident by an authorised dealer, in accordance with Regulation 7 , may be repaid by any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.(Reg7A)	

FEMA Practice

	PROI		
	Foreign Citizen	NRIs	Other entities
Lending in FE		Close relative in Foreign exchange- Notf.3	ECB
Lending in rupee		Indian co- NCD- Notf.4 Notf.5 – against fund held in account	
Lending by way of Deposits		Schedule 6 & 7 of notf.5(R) , Loan from NRO account, Commercial paper	
Portfolio Investment	Notf. 20(R) – schedule 2, 5,8	[Notf. 20(R) - schedule 3 and 5]	Notf. 20(R) – schedule 2, 5,8
FDI	Notf. 20(R) - schedule 1,6,7,8	Notf. 20(R) - schedule 1,4, 6,7	Notf. 20 (R)- schedule 1,6,7,8



FEMA Practice

Structure the transaction as compliant with conditions of Automatic route

- Permissible transactions of every person either PRII or that of PROI are specific as to General or Specific Approval.

eg. Schedule 1 to 10 of Notf20(R) and Purpose of Notf 20/21/FDI. Purpose of drawal-Specific to use.

- Ability to structure any transaction as Current account transaction
- Interpretation of the provision, intention and philosophy is preferable over the literal meaning.
- A Circular law- Dynamics

FEMA Practice – Recent issue of Master Directions

Foreign Exchange Management Act was **enacted in 1999** with 25 original notifications came into force with effect from June 1, 2000.

- Over the years the regulations framed under FEMA have had **over 330+ amendments**.
- Keeping in view the objective of promoting ease of doing business, a need was felt **to consolidate the regulations and rationalise them** in the light of evolving business environment and changing practices in cross-border transactions relating to external trade and payments.
- **17 Master Directions issued on 04 January 2016 and 1 Master Direction on FDI issued on 04 January 2018** - **Consolidated** relevant A.P (DIR Series) Circulars issued so far
- All master regulations will be **fully updated and placed online**.
- Reserve Bank will issue Master Directions **on all regulatory matters**.
- The **Master Directions to be issued will consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts** including banking issues and foreign exchange transactions.
- The process of issuing Master Directions involves issuing one Master Direction for each subject matter covering all instructions on that subject. **Any change** in the rules, regulation or policy will be communicated during the year **by way of circulars**. The **Master Directions will be updated suitably** and simultaneously whenever there is a change in the rules/regulations or there is a change in the policy.
- All the changes will get reflected in the Master Directions available on the RBI website **along with the dates on which changes are made**.
- **Explanations of rules and regulations** will be issued by way of **Frequently Asked Questions (FAQs)** after issue of the Master Directions **in easy to understand language wherever necessary**.
- The existing set of **Master Circulars** issued on various subjects will **stand withdrawn** with the issue of the Master Direction **on the subject**.

FEMA Practice - Revised Notifications & Master Directions

NTF. No.	Subject	Revised NTF. No., if issued	Master Direction, if issued
1	Permissible Capital Account Transactions	-	-
2	Issue of Security in India by a branch, office or agency of a PROI	-	-
3	Borrowing and lending in Foreign currency	-	FED No. 5 / 2015-16
4	Borrowing and lending in Rupees	-	FED No. 6 / 2015-16
5	Deposits by NRs	FEMA 5(R)_ FEM (Deposit) Regn. 2016 dt. 01.04.2016	FED No. 14 / 2015-16
6	Export and Import of foreign currency	FEMA 06(R)_ FEM (Import & Export of Currency) Regn 2015 dt 29.12.2015	
7	Acquisition and transfer of immovable properties outside India	FEMA 7(R)_ FEM (Acquisition and Trnsfr of Immovable Properties outside India) Regn 2015 dt 21.01.2016	FED No. 12 / 2015-16
8	Guarantees	-	-
9	FE realisation, repatriation, surrender	FEMA 09(R)_ FEM (Realisation, repatriation, surrender of FX) Regn 2015 dt 29.12.2015	-
10	Foreign Currency Accounts by a PRII	FEMA 10(R)_ FEM (Foreign Currency Accounts by PRII) Regn 2015 dt 21.01.2016	FED No. 14 / 2015-16
11	Possession and retention of Foreign currency	FEMA 11(R)_ FEM (Possession and Retention of FC) Regn 2015 dt 29.12.2015	-
12	Insurance	FEMA 12(R)_ FEM (Insurance) Regn 2015 dt 29.12.2015	FED No. 9 / 2015-16
13	Remittance of assets in India	FEMA 13(R)_ FEM (Remittance of Assets) Regn 2016 dt 01.04.2016	FED No. 13 / 2015-16

FEMA Practice - Revised Notifications & Master Directions

NTF. No.	Subject	Revised NTF. No., if issued	Master Direction, if issued
14	Manner of receipt and payment	FEMA 14(R)_ FEM (Manner of Receipt and Payment) Regn 2016 dt 02.05.2016	-
15	Definition of Currency	FEMA 15(R)_ FEM (Currency) Regn 2015 dt 29.12.2015	-
16	Receipt and payment to person outside India	-	-
17	Transaction in Indian rupees with resident of Nepal and Bhutan	-	-
18	Post Office (Postal Money Orders)	FEMA 18(R)_ FEM (Postal Money Order) Regn 2015 dt 29.12.2015	-
19	Overseas Direct Investment	-	FED No. 15 / 2015-16
20	FDI, PIS	FEMA 20(R)_ (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 dt. 07.11.2017	FED No. 11 / 2017-18
21	Immovable property in India	FEMA 21(R)_ FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 dt. 26.03.2018	FED No. 12 / 2015-16
22	Branch etc in India	FEMA 22(R)_ FEM (Branch Liaison Project office) Regn 2016 dt 31.03.2016	FED No. 10 / 2015-16
23	Export of Goods & Services	FEMA 23(R)_ FEM (Export of Goods & Services) Regn 2015 dt 12.01.2016	FED No. 16 / 2015-16
24	Investment in Firm or Proprietary concern in India	SUBSUMED IN FEMA 20(R) w.e.f. 07.11.2017	-
25	Foreign exchange derivative contracts	-	-

FEMA Practice - Revised Notifications & Master Directions

Subject	Master Direction
Import of Goods & Services	FED No. 17 / 2015-16
Liberalized Remittance Scheme	FED No. 7 / 2015-16
Compounding of Contraventions	FED No. 4 / 2015-16
Other Remittance facilities (current account)	FED No. 8 / 2015-16
Reporting under FEMA	FED No. 18 / 2015-16
Misc Directions that do not figure in other Master Directions (TDS on remittances, repatriation of assets abroad & under LRS, Medical expenses of NRI, Routing of funds to India, SIT - sharing of information, IFSC guidelines, FEMA & Black Money Act)	FED No. 19 / 2015-16
Money Changing Activities	FED No. 3 / 2015-16
Vostro Accounts by Non-Resident Exchange Houses	FED No. 2 / 2015-16
Gold Monetisation Scheme 2015 dt 22.10.2015_amended to 21.01.2016	DBR.IBD.No.45/ 23.67.003 / 2015-16

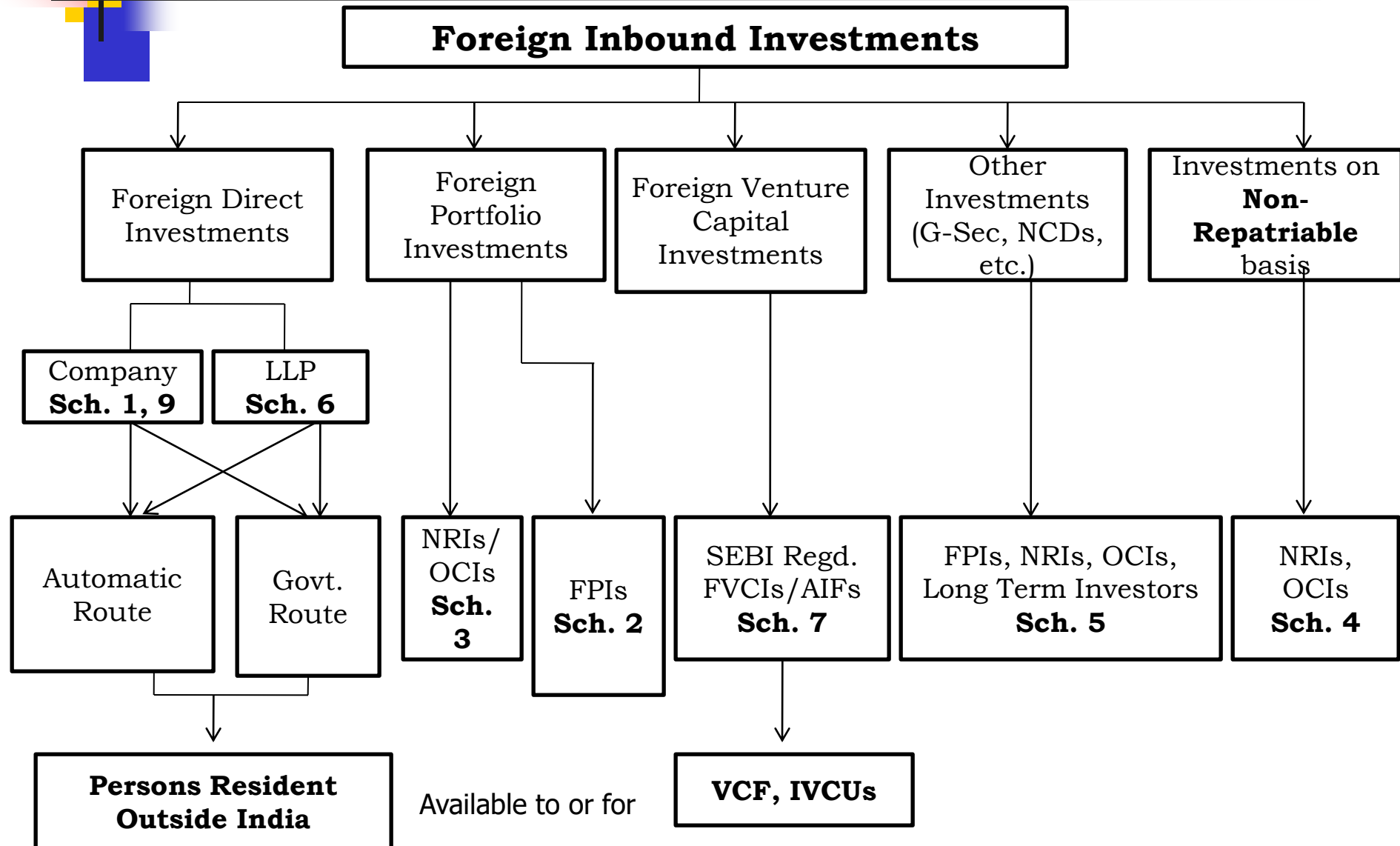
FEMA NTF. 20 (OLD) – Schemes for Inbound Investment

Sch. 1	Foreign Direct Investment ('FDI') Scheme
Sch. 2 & 2A	Purchase/Sale of shares or convertible debentures or warrants of an Indian Company by Registered Foreign Portfolio Investor (RFPI) under Foreign Portfolio Investment (FPIs) Scheme (Registered FIIs under Sch. 2 subsumed with Sch. 2A)
Sch. 3	Acquisition of Securities or Units by a Non-Resident Indian (NRI) on a Stock Exchange in India on Repatriation basis under the Portfolio Investment Scheme
Sch. 4	Acquisition of Securities or units by a Non-Resident Indian (NRI), on Non-Repatriation basis
Sch. 5	Purchase and Sale of Securities other than Shares or Convertible Debentures of an Indian company by a person resident outside India
Sch. 6	Investment by a registered Foreign Venture Capital Investor
Sch. 7	Indian depository receipts by eligible companies resident outside India
Sch. 8	Scheme for investment by Qualified Foreign Investors in equity shares (Subsumed under Sch. 2A)
Sch.9	Scheme for Acquisition/Transfer by a person resident outside India of capital contribution or profit share of (LLPs)
Sch. 10	Depository Receipts Scheme, 2014 (DRs)
Sch. 11	Investment by a person resident outside India in an Investment Vehicle
Composite Caps: Foreign investments, direct or indirect, under Schedule 1(FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 8 (QFI), 9 (LLPs) and 10 (DRs) vide PN 8 dated 30 July 2015 by DIPP	

FEMA NTF. 20(R) – Schemes for Inbound Investment (NEW)

Sch. 1	Purchase / Sale of capital instruments of Indian company by PROI (i.e. Foreign Direct Investment ('FDI') Scheme)
Sch. 2	Purchase/Sale of capital instruments of listed Indian company on recognised stock exchange in India by Foreign Portfolio Investor (i.e. Portfolio Investment Scheme)
Sch. 3	Purchase/Sale of capital instruments of listed Indian company on recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis (i.e. Portfolio Investment Scheme)
Sch. 4	Purchase/Sale of capital instruments or convertible notes of an Indian company or Units or contribution to capital of an LLP by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on non-repatriation basis
Sch. 5	Purchase and Sale of Securities other than capital instruments by a person resident outside India
Sch. 6	Investment in a Limited Liability Partnership (LLP)
Sch. 7	Investment by a Foreign Venture Capital Investor (FVCI)
Sch. 8	Investment by a person resident outside India in an Investment Vehicle
Sch.9	Investment in Depository receipts by a person resident outside India
Sch. 10	Issue of Indian Depository Receipts (IDRs)

Foreign Investment in India- Schematic Representation

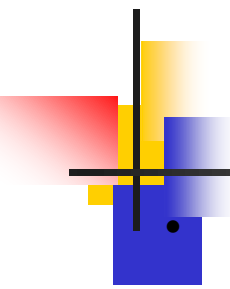


Schemes for Inbound Investment – FEMA Ntf. 20(R)

Schedule No. →	1	2	3	4	6	7	8	9	10
Type of Investor →	PROI (repatriation)	FPI (repatriation)	NRI / OCI (repatriation)	NRI / OCI (non-repatriation)	PROI (repatriation)	FVCI (repatriation)	PROI (repatriation)	PROI (repatriation)	FPI / NRI / OCI (repatriation)
Instrument									
Equity Shares (incl. partly paid-up; 25% consideration up-front & balance within 12 months)	Y	Y (listed co.)	Y (listed co.)	Y		Y			
Share Warrants (25% consideration up-front & balance within 18 months)	Y	Y (listed co.)	Y (listed co.)	Y		Y			
Debentures (fully, compulsorily and mandatorily convertible)	Y	Y (listed co.)	Y (listed co.)	Y		Y			
Preference Shares (fully, compulsorily and mandatorily convertible)	Y	Y (listed co.)	Y (listed co.)	Y		Y			
Convertible Note				Y		Y			
Units in Investment Vehicle				Y		VCF, Cat-I AIF, Cat-II AIF	Y		
Capital in LLP				Y	Y				
Capital in Firm or proprietorship				Y					
Depository Receipts								Y	
Indian Depository Receipts									Y

Schemes for Inbound Investment – FEMA Ntf. 20(R)

Schedule No. → Type of Investor →	5 FPI (repatriation)	5 NRI / OCI (repatriation)	5 NRI / OCI (non- repatriation)	5 Foreign Central Bank or Multilateral Dev. Bank (repatriation)	5 Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds (repatriation)
Govt. securities / Treasury Bills	Y	Y	Y	Y	Y
NCDs of Indian Companies	Y				Y (listed; unlisted in Infrastructure sector)
Commercial Paper of Ind. Co.	Y				Y
Units of domestic Mutual Funds	Y	Y	Y		Y
Security Receipts of ARCs	Y				Y
Perpetual Debt Instruments of banks	Y	Y			Y
NCDs of Infrastructure Finance Companies	Y				Y
Rupee denominated bonds/ units issued by Infrastructure Debt Funds	Y	Y			Y
Credit enhanced bonds	Y				Y
Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 9 of FEMA 20	Y	Y	Y		Y
Security receipts issued by securitization companies	Y				Y
Securitised debt instruments issued by SPV set up by Banks, FIs, NBFCs for securitisation	Y				
Bonds of PSUs		Y			
Shares in Public Sector Enterprises being disinvested by the Central Government		Y			
National Pension Scheme		Y			
National Savings Certificates			Y		
Chit Funds (authorised)			Y		



Schemes for Inbound Investment – FEMA Ntf. 20(R)

- **Important Regulations of FEMA Ntf. 20(R):**

3. Restriction on investment by a person resident outside India

Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall make any investment in India.

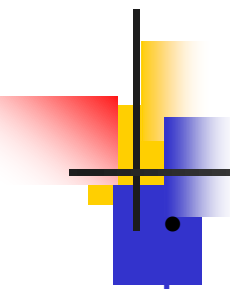
Provided that an investment made in accordance with the Act or the rules or the regulations framed thereunder and held on the date of commencement of these Regulations, shall be deemed to have been made under these Regulations and shall accordingly be governed by these Regulations.

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

4. Restriction on receiving investment

Save as otherwise provided in the Act, or rules or regulations made thereunder, an Indian entity or an investment vehicle, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.

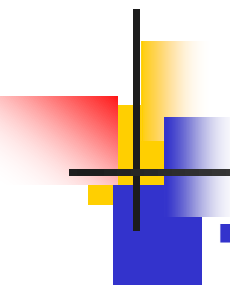
Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an Indian entity or an investment vehicle, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.



Schemes for Inbound Investment – FEMA Ntf. 20(R)

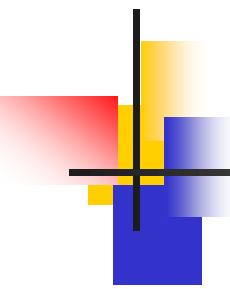
- **Important Regulations of FEMA Ntf. 20(R) (con't):**

- 5. Permission for making investment by a person resident outside India [Sch. 1 to 10].**
- 6. Acquisition through a rights issue or a bonus issue.**
- 7. Issue of shares under Employees Stock Options Scheme to persons resident outside India.**
- 8. Issue of Convertible Notes by an Indian startup company.**
- 9. Merger or demerger or amalgamation of Indian companies.**
- 10. Transfer of capital instruments of an Indian company by or to a person resident outside India.**
- 11. Pricing Guidelines.**
- 12. Taxes and Remittance of sale proceeds.**
- 13. Reporting requirements.**
- 14. Downstream Investment.**
- 15. Prohibited activities for investment by a person resident outside India.**
- 16. Permitted sectors, entry routes and sectoral caps for total foreign investment.**



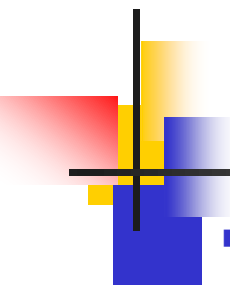
Important conditions of Automatic Route of FDI

- Sectors
- Conditionalities
- Issue of shares against exchange of shares, swap of shares, incorporation and allied expenses, other entitlements in kind, ESOP shares, conversion of ECBs
- Issue and Transfer
- Valuation norms
- Re-lending or stock market operations or prohibited activities
- Payments to be received in FE
- Reporting as per Regulations
- FDI in LLP – not at par with Investee Indian company
- Investment under Schedule 4 – a deemed Resident investment – meaning
- Gift of shares
- Brownfield vs Greenfield



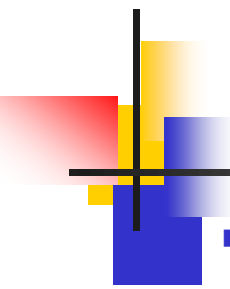
Foreign Direct Investment in India

- Regulatory & Legal Framework
Industrial Development (Regulation) Act, 1951 & FEMA 1999
- Overall Policy of Government, mainly focusses on
 - Public Sector
 - Compulsory Licensing
 - Erstwhile Small Scale Sector – Micro, Small & Medium Enterprises (Development) Act, 2006.
 - Locational Restrictions
- Prohibitions.
- Consolidated FDI policy, Sector Specific Guidelines (Regn. 16 of FEMA Ntf. 20(R)), Automatic route & Procedures
- FEMA provides for Rules/ modes of investment, manner of receipts, Valuations and reporting procedures.



Automatic Route of Investment to PROI

- Main Conditions of issue of Shares (Reg. 5, Schedule 1, Notification No. FEMA 20(R)/2017-RB dated Nov 7, 2017).
- Eligible Persons:
 - PROI other than citizen of Pakistan, entities of Pakistan.
 - Bangladesh Citizens & entities only with prior approval of FIPB.
 - OCB: Bonus Shares permitted, Right Shares with RBI Approval.
 - A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy
 - FPI under Sch. 2 may invest in excess of PIS limits upto sectoral cap / statutory ceiling subject to prior intimation to RBI
 - SEBI registered FVCI may contribute up to 100% of capital of Indian company under Sch. 7



Automatic Route of Investment to PROI

- Eligible Investee Entities:

- Indian companies
- Partnership Firm / Proprietorship concern (only for NRI / OCI on non-repatriation basis)
- Trusts in the form of SEBI regulated Venture Capital Fund
- Limited Liability Partnerships
- Investment Vehicles: SEBI registered and regulated Alternative Investment Funds, Real Estate Investment Trusts and Infrastructure Investment Trusts



Approval Route of Investment to PROI

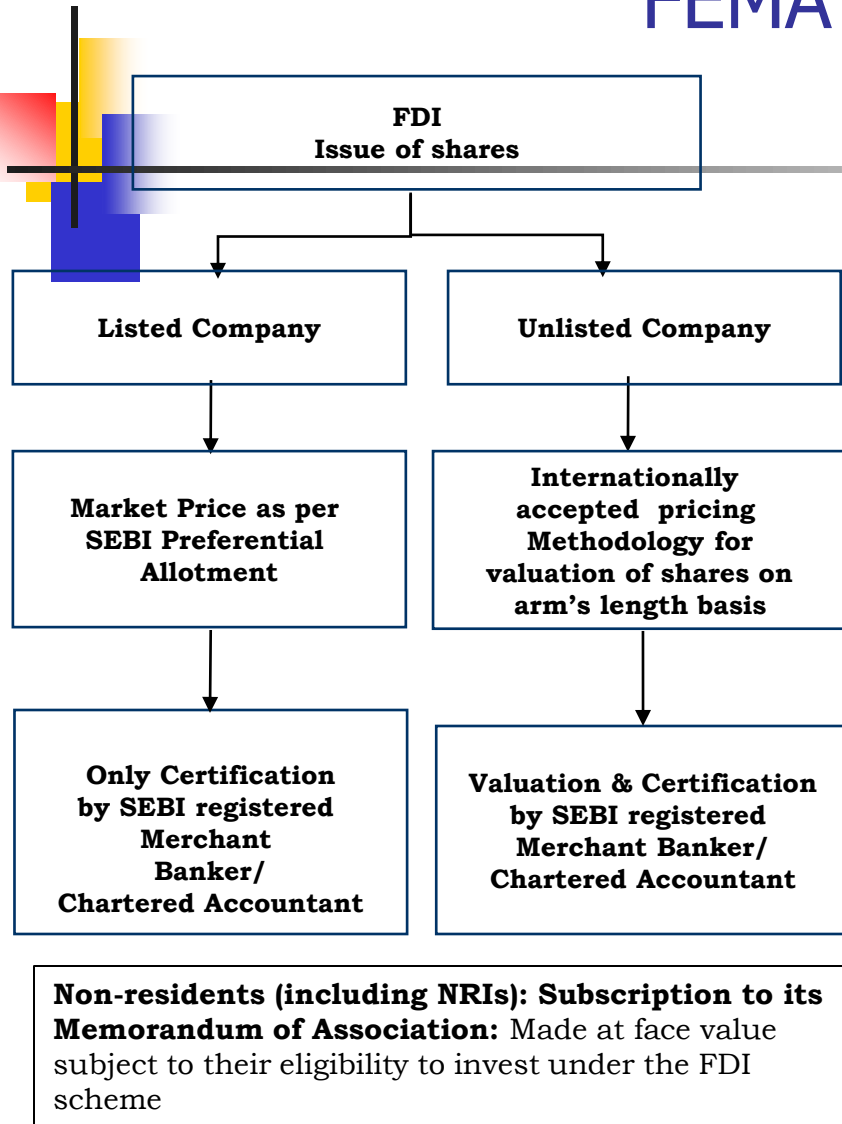
For FDI not eligible under the Automatic route / in sectors requiring prior government approval, the work of granting approval for foreign investment under the extant FDI Policy and FEMA Regulations, has been entrusted to the concerned Administrative Ministries / Departments after abolition of FIPB w.e.f. 05.06.2017

- The eleven notified sectors/activities requiring government approval are Mining, Defence/cases relating to FDI in small arms, Broadcasting, Print media, Civil Aviation, Satellites, Telecom, Private Security Agencies, Trading(Single, Multi brand and Food Products), Financial services not regulated or regulated by more than one regulator/ Banking Public and Private (as per FDI Policy) and Pharmaceuticals.
- The Department of Industrial Policy and Promotion, Ministry of Commerce & Industry has been given the responsibility of overseeing the applications filed on the **Foreign Investment Facilitation Portal (fifp.gov.in)** and to forward the same to the concerned Administrative Ministry.
- A Standard Operating Procedure (SOP) developed by DIPP in consultation with the concerned Administrative Ministries is being followed for processing of the FDI applications. Approval letters in Standard Format will be uploaded on the Portal itself for the benefit of the Investors.

Types of instruments: 'Capital'

Equity shares	
Fully, compulsorily & mandatorily convertible Preference Shares	
Fully, compulsorily & mandatorily convertible Debentures	
Differential voting rights shares as to dividend, voting or otherwise	Permitted
Non-convertible , optionally convertible or partially convertible instruments considered as debt	▪ To comply with ECB norms
Warrants: Upfront 25% of consideration and the balance amount within eighteen months of issuance of share warrants ▪ Upfront pricing/ conversion formula	
▪Partly paid 'Equity Shares' only: Upfront 25% of consideration including premium; Full payment in 12 months	
Optionality clauses: Capital instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.	

FEMA & Valuation



Transfer of shares from Resident to Non-Resident

Price of shares shall not be less than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis

Transfer of shares from Non-Resident to Resident

Price of shares shall not be more than the fair value worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis

Convertible instruments:

Based on conversion formula which has to be determined / fixed upfront. Price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments.

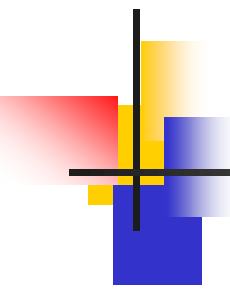
NRIs on non-repatriation basis under Schedule 4 of FEMA 20: No express provision for valuation

Pricing not applicable for transfers between two Non-Residents

SEZs against import of capital goods into equity shares: Committee of Development Commissioner

Preferential Allotment Pricing Guideline under SEBI (ICDR) Regulations 2009:

"Price not less than the higher of Avg. weekly high and low closing price over a trailing six month period, or a trailing two week period, from the "relevant date of transaction." "Relevant Date" means date thirty days prior to the date of GM of shareholders



Issue of Shares- Other 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 NCLT order of amalgamation with percentage of capital held by PROI in transferor, transferee or new company before or after the transfer.

Issue of Shares - Other modes – ESOP / Sweat Equity

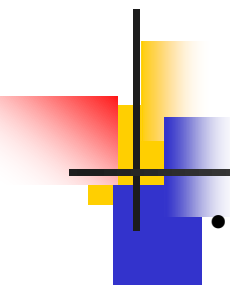
Indian company may issue “employees’ stock option” and/or “sweat equity shares” to **its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India**, provided that :

- a) The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the **Companies (Share Capital and Debentures) Rules, 2014** notified by the Central Government under the Companies Act 2013, as the case may be.
- b) The “employee’s stock option”/ “sweat equity shares” issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the **sectoral cap** applicable to the said company.
- c) Issue of “employee’s stock option”/ “sweat equity shares” in a company where foreign investment is under the **approval route** shall require prior Government approval.
- d) Issue of “employee’s stock option”/ “sweat equity shares” to a citizen of **Bangladesh/Pakistan** shall require prior Government approval.



Mode of Payment

- (i) **Inward remittance** through normal banking channels
- (ii) Debit to **NRE / FCNR** account of a person concerned maintained with an AD category I bank
- (iii) **Conversion** of royalty / lump sum / technical knowhow fee/ legitimate due for payment or conversion of ECB, shall be treated as consideration for issue of shares
- (iv) **Conversion** of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB
- (v) Debit to non-interest bearing **Escrow account** in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration



Other important conditions in FDI Policy

- **Caps in Investments:**

Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. The caps in various sector(s) are detailed in the Consolidated FDI Policy and in Regulation 16 of FEMA Ntf.20(R)

- **Entry conditions:**

Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. and are specified in the Consolidated FDI Policy

- **Other conditions:**

Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

- **Foreign Investment into/downstream Investment by eligible Indian entities:**

The Guidelines for calculation of total foreign investment, both direct and indirect in an Indian company/LLP, at every stage of investment, including downstream investment are specified in the Consolidated FDI Policy and in Regulation 14 of FEMA Ntf.20(R)



Reporting of FDI

- **Offline reporting**

Physical filing of FC-GPR, ARF and FCTRS forms is discontinued from **February 8, 2016** and online filing through government's e-Biz portal has been made mandatory.

- **Online reporting through eBiz Portal of GOI**

- With a view to promoting the ease of reporting of transactions under foreign direct investment (FDI), the filing of the ARF, Form FC-GPR and Form FCTRS has been enabled under the e-Biz platform of the Government of India.
- The design of the reporting platform enables the customer to login into the e-Biz portal, download the reporting forms, complete and then upload the same onto the portal using their digitally signed certificates.
- The Authorised Dealer Banks (ADs) will be required to download the completed forms, verify the contents from the available documents, if necessary by calling for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

Reporting of FDI Inflow

Form	Supporting	Time period	Action by Regional Office concerned	Non-compliance
Advance Reporting Form for shares / FCCD / FCPS / Warrants	❖ FIRC/s/ Debit certificate evidencing receipt of remittance ❖ KYC report on non-resident investor	Not later than 30 days from the date of receipt	Allotment of Unique Identification Number (UIN) for the amount reported	❖ Contravention under FEMA ❖ Attracts Late Submission Fees and penal provisions

In FIRC: Name of beneficiary; remitter bank; remitter; date of credit; INR equivalent; Purpose of remittance mentioned in FIRC

Amount in INR/FC should match with FIRC/Bank certificate

No KYC if debit to NRE/ FCNR(B)

In AD Bank letter/ debit certificate for NRE/ FCNR(B) transfer: Name, account type, amount, date of debit

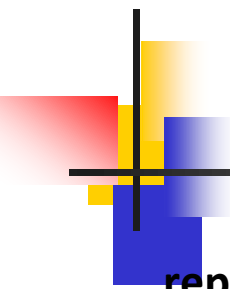
Reporting of Issue of Shares, etc.

Reporting of Issue of Fresh Shares /Partly paid shares/Bonus /Rights Shares /ESOP/ Convertible Debentures / Convertible Preference Shares /Conversion of ECB / Royalty / Lumpsum Technical Know-how Fee / Import of Capital Goods by SEZs /Pre-operative/Pre-incorporation Expenses/Legitimate dues/ Amalgamation/ Merger

Form	Supporting	Time period	Action by Regional Office concerned	Non-compliance
Form FC-GPR duly filled up on-line with digital signature of Director/ Authorised Person	- A certificate from Company Secretary - A certificate from SEBI registered Merchant Banker or Chartered Accountant for valuation	Not later than 30 days from the date of issue	Taking on record the shareholding pattern	❖ Contravention under FEMA ❖ Attracts Late Submission Fees and penal provisions

Reconciliation of shareholding pattern at RBI end (Fresh issue, transfers, reduction, merger, transfers from NR to NR etc.) – Previous RBI Acks, duly approved Form FC-TRS

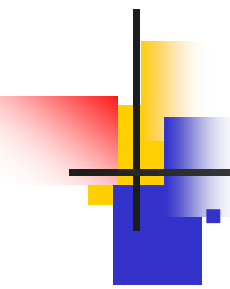
Onus of compliance with the sectoral /statutory caps on foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment



Reporting of Transfer of shares/ convertible debentures/ partly paid shares/ warrants

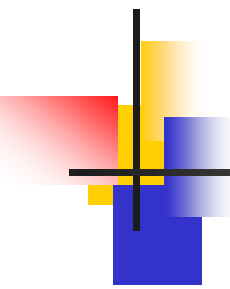
Between (i) Non-Resident on repatriable basis and Non-Resident on non-repatriable basis, and (ii) Resident and Non-resident on repatriation basis (Regn. 10 of FEMA Ntf. 20(R))

- File form FC-TRS online through eBIZ Portal within 60 days of receipt of consideration (in quadruplicate)
- In respect of the transfer from resident to non resident, the Form has to be digitally signed by the non resident buyer, and in respect of the transfer from non-resident to resident the declaration has to be digitally signed by the non-resident seller.
- Onus of reporting is on transferor / transferee, resident in India
- Onus on reporting for purchase on recognized stock exchange will be on the Investee company
- Inward remittance subject to KYC norms (KYC check to be carried by remittance receiving bank)
- AD Bank shall certify FC-TRS as being in order
- Indian company can record transfer only post approval of Form-FC TRS by AD-Bank



Periodic reporting - Annual Return of Liabilities & Assets

- To be filed electronically by Indian Companies to enable capture of statistics relating to Foreign Direct Investment, both inward and outward
- Due date: by July 15 of every year to the RBI, Mumbai
- To be submitted by all Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year
- Coverage:
 - Methodology for valuation of foreign liabilities and foreign assets
 - Nature of activities principal line of business as %, with NIC code (NIC Codes in the FCGPR and FCTRS forms as per the NIC 2008 version)
 - Name & country of non-resident investor under FDI
 - Financial derivatives, Money market instruments
 - Trade credits, loans, Currency & Deposits
 - ODI and Portfolio investment overseas
 - Contingent foreign liabilities
 - Disinvestments in India and Abroad
- The filled in Excel based FLA return should be forwarded through the official email id of any authorized person like CFO, Director, Company Secretary etc. Acknowledgement



Overseas Direct Investments under FEMA

- Regulated under separate Notification No. 120
- What is the rationale for having separate notification to regulate overseas direct investments?
- Shortcomings....
 - Ntf. No. 23(R)
 - Ntf. No. 14
 - Ntf. No. 9

Overseas Direct Investments - FEMA Ntf.

120

Regn. 6 – Conditions for Automatic approval

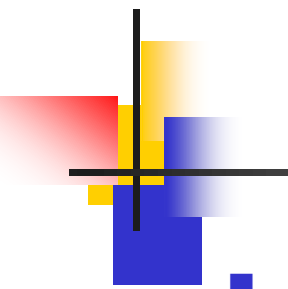
- Regn. 6A – Investments in Agricultural operations overseas directly or through Overseas Offices
- Regn. 6B – Investment in Listed Equity overseas by a listed Indian company
- Regn. 6C – Investment by Mutual Funds
- Regn. 7 – Investment by IP in Financial Services
- Regn. 8 – Investment by swap or exchange of shares
- Regn. 9 – Prior Approval Route
- Regn. 9A – Overseas Investments by Regd. Trust / Society
- Regn. 10 – Unique Identification Number
- Regn. 11 – Investment by Capitalization
- Regn. 12 – Export of Goods towards Equity
- Regn. 13 – Post investment changes / additional investment in existing JV / WOS
- Regn. 14 – Acquisition through bidding / tender
- Regn. 15 – Obligations of Indian Party
- Regn. 16 – Transfer by way of sale of shares of JV / WOS
- Regn. 17 – Transfer involving write-off
- Regn. 18 – Pledge of shares of JV / WOS
- Regn. 18A – Creation of charge on domestic and foreign assets

Overseas Direct Investments - FEMA Ntf.

120

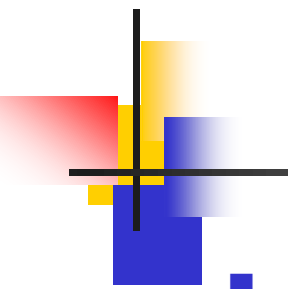
Regn. 19 – Prior RBI approval for Proprietary in India to accept shares

- Regn. 19A – Overseas Investments by Proprietorships / unregistered Partnership Firm in India being recognized Star Export House
- Regn. 20 – Investments by Individuals for acquiring shares as consideration for professional services rendered
- Regn. 20A - Acquisition or Setting up of a JV or WOS abroad by resident individual (w.e.f. 5th Aug. 2013)
- Regn. 21 – Issue of foreign security (FCCB) by person resident in India
- Regn. 22 – Purchase / acquisition by way of gift / inheritance / ESOP
- Regn. 23 – Transfer of foreign security by way of pledge by person resident in India
- Regn. 24 – General permission for acquiring qualification / rights shares and foreign securities under ADR/GDR linked stock options schemes
- Regn. 25 – Prior RBI approval for qualification shares in excess of limits specified under Regn. 24
- Regn. 26 – Investments by Mutual Funds / Venture Cap.Funds
- Regn. 27 – Opening of Demat Accounts with foreign depositories by Indian Clearing Corporations and Clearing Members



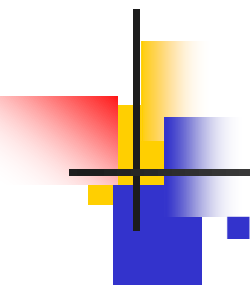
Auto Route-How much can be Invested?

- Overall ceiling of the investment: “Financial Commitment” plus amount in EEFC A/c plus amount raised via ADR/GDR issue
- Financial commitment of the IP can not be more than 400% of the Net worth of the IP; however, financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank
- Net worth: Regn. 2(o)-Paid up capital and free reserves
- What is Financial Commitment? [Reg.2(f)]



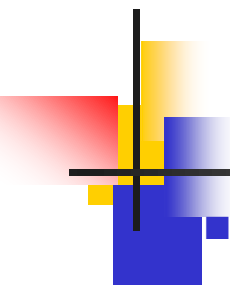
Auto Route-Financial Commitment

- Financial Commitment Reg.2(f):
Amount of Direct Investment by way of contribution to the equity and loan and 100% of guarantees issued by an IP to or on behalf of its overseas JVC or WOS plus 50% of Performance Guarantee
- Contribution to Equity can be by
 - Cash contributions or
 - Purchase of Shares or by Capitalization of Exports and Repatriable Entitlements
 - Swap of IP's shares or
 - ADR GDR Swap
- Loan to Overseas Entity (only if Equity is issued to IP)
- Guarantees to or on behalf of overseas entity



Auto Route-Financial Commitment (con't)

- Guarantees to or on behalf of overseas entity
 - Cannot be open-ended; Period & amount to be specified
 - Corporate guarantees only
 - In case of performance guarantees by IP, 50% is considered for financial commitment; if invocation leads to breach of ceiling of 400% of net worth of IP, prior RBI approval is required before remitting funds from India [*Ref: Cir. No. 69 dt. 27/05/2011 & Master Direction 15 dt. 01.01.2016*]
 - Bank guarantee issued by a resident bank on behalf of an overseas JV / WOS of the IP, which is backed by a counter guarantee / collateral by the IP, shall be reckoned for computation of the financial commitment of the IP [*Ref: Cir. No. 96 dt. 28/03/2012 & Master Direction 15 dt. 01.01.2016*]]



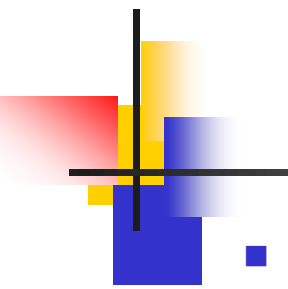
Auto Route-What is Prohibited & Exempted?

Prohibitions:

- Portfolio Investment, Real Estate & Banking Sector
- As per RBI's FAQs on ODI, Indian banks operating in India can set up JVs/WOSs abroad provided they obtain clearance under the Banking Regulation Act, 1949, from the Department of Banking Regulation (DBR), CO, RBI

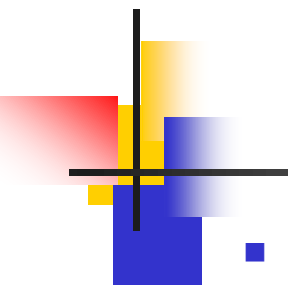
■ Exemptions:

- Investment through RFC A/c
- Bonus issue
- Investment by Persons Resident in India but not permanently resident in India.



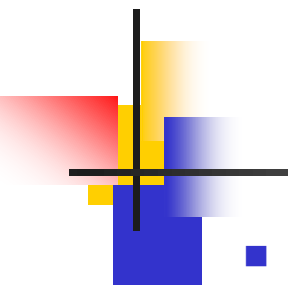
Eligible Entities for Investment – Important definitions as per Notification 120

- Sec. 2(e): "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 market purchase or private placement or through stock exchange, but does not include portfolio investment
- Sec. 2(m): "Joint Venture (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
- Sec. 2(q): "Wholly Owned Subsidiary (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



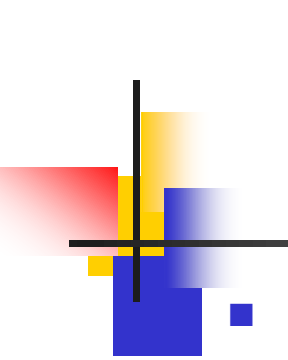
Eligible Entities for Investment (con't)

- 'Foreign entity' is not defined
- But from aforesaid definitions, it is one that is formed, registered or incorporated in accordance with laws of host country
- So can a foreign Proprietorship, Partnership Firm, LLP, Trust be considered as 'Foreign Entity'?
- As per definition of 'Direct investment outside India', investment has to be by way of purchase of shares; hence foreign entity must have Share Capital. Therefore, does it exclude investment in Firm, LLP or Trust as such entities do not have Share Capital even though they fall within the definition of 'Foreign entity' as they are formed or registered in accordance with laws of host country?
- Portfolio Investment is not defined



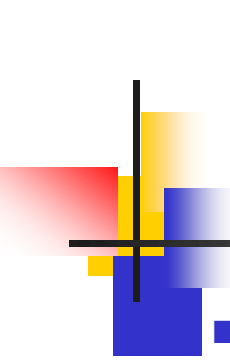
Is Foreign Trust an eligible Entity for ODI?

- Trust is not a 'Person' as defined in Sec. 2(u) of FEMA, 1999
- Trust is not a 'Person' as defined in Sec. 2(31) of Income – Tax Act, 1961
- An overseas Trust may be formed or registered in accordance with laws of host country
- However, can it be regarded as eligible 'Foreign Entity' for overseas direct investment?
- No, as it does not have shares which can be purchased by the Indian Party
- An Indian Trust, however, is permitted to make overseas direct investment under approval route



Other types of Entities – Whether Eligible Entities or not for ODI

- AOP / BOI / Artificial Juridical Person:
 - Not defined in FEMA
 - But included as Persons in Sec. 2(u) of FEMA 1999 and in Sec. 2(31) of Income-Tax Act, 1961
 - AOP / BOI included in 'Person' in General Clauses Act, 1897
- Trust is not AOP / BOI
- Artificial Juridical Persons such as Board of Directors of a Company or Managing Committee of a Society are recognized only for the purpose of the relevant Statute/s

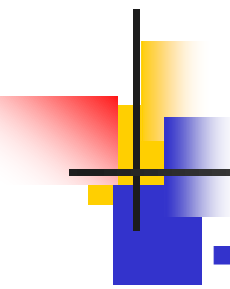


Overseas Direct Investment by Resident Individuals

- With effect from August 05, 2013,
 - a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification)
 - satisfying the criteria as per Schedule V of the Notification, may make
 - overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India
- The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme

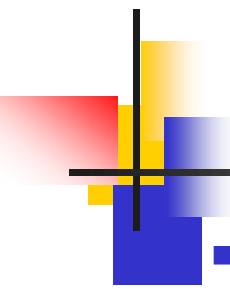
Overseas Direct Investment by Resident Individuals (con't)

- Important conditions in Sch. V of Ntf. 120:
 - JV or WOS abroad should not be engaged in the real estate business or banking business or in the business of financial services activity
 - JV or WOS abroad shall be engaged in bonafide business activity
 - JV or WOS not to be located in the countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" as available on FATF website www.fatf-gafi.org or as notified by the Reserve Bank
 - Investment made out of the balances held in EEFC / RFC account shall also be restricted to the limit prescribed under LRS
 - JV or WOS shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS
 - For the purpose of making investment under this Schedule, the valuation shall be as per Regulation 6(6)(a) of this Notification



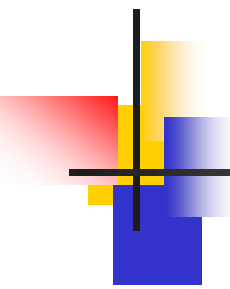
Overseas Direct Investment by Resident Individuals (con't)

- Important conditions in Sch. V of Ntf. 120:
 - Disinvestment (partially or fully) allowed by way of transfer / sale or by way of liquidation / merger of the JV or WOS
 - Disinvestment by a resident individual shall be allowed after one year from the date of making first remittance for setting up or acquiring the JV or WOS abroad. Investment made out of the balances held in EEFC / RFC account shall also be restricted to the limit prescribed under LRS
 - Disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment
 - No write off shall be allowed in case of disinvestments by the resident individuals



Overseas Direct Investment by Resident Individuals (con't)

- Important conditions in Sch. V of Ntf. 120:
 - The resident individual, making overseas direct investments under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorised dealer, within 30 days of making the remittance
 - The obligations as required in terms of Regulation 15 of Notification 120 shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule
 - The disinvestment by the resident individual may be reported by the designated AD to the Reserve Bank in Form ODI Part IV within 30 days of receipt of disinvestment proceeds



Branch outside India

FEMA Ntf. 10(R) gives general permission to a firm or company registered or incorporated in India to open a foreign currency account with a bank outside India in the name of its office (trading or non-trading) or its branch set up outside India or its representative posted outside India

- Conditions to be fulfilled: - The general permission is available to open an overseas branch and a bank account outside India only if the following conditions are fulfilled:

- (i) Conducting normal business activities: The overseas branch or office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity.
- (ii) Permissible amount of remittance: The total remittances by the Indian entity shall not exceed -

Remittance for Initial expenses: - 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth whichever is higher, where the remittances are made to meet initial expenses of the branch or office or representative.

Recurring expenses: - 10 per cent of such average annual sales/ income or turnover during the last financial year where the remittances are done to meet recurring expenses of the branch or office or representative.

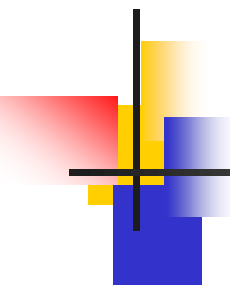


Branch outside India (con't)

Above restrictions on remittances not applicable in a case where:

- 1) remittances are made out of funds held in EEFC account of the Indian entity, or
- 2) the overseas branch/ office is set up or representative posted by a 100% Export Oriented Unit (EOU) or a unit in Export Processing Zone (EPZ) or in a Hardware Technology Park or in a Software Technology Park, within two years of establishment of the Unit.

- (iii) The Overseas Branch/Officer/representative shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations made thereunder;
- (iv) The account so opened, held or maintained shall be closed,
 - (a) if the overseas branch/ office is not set up within six months of opening the account, or
 - (b) within one month of closure of the overseas branch/ office, or
 - (c) where no representative is posted for six months,and the balance held in the account shall be repatriated to India;

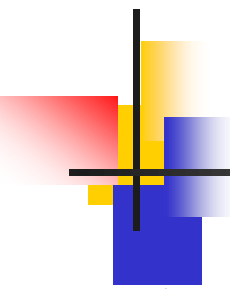


External Commercial Borrowings (ECBs)

ECBs: are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

- ECB is a Capital Account transaction and is regulated under FEMA Notf. 3 / 2000 - RB and FED Master Direction No.5/2015-16
- Forms of ECB:
 - i. Loans including bank loans;
 - ii. Securitised instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures);
 - iii. Buyers' credit;
 - iv. Suppliers' credit;
 - v. Foreign Currency Convertible Bonds (FCCBs);
 - vi. Financial Lease; and
 - vii. Foreign Currency Exchangeable Bonds (FCEBs)

ECB framework is not applicable in respect of the investment in Non-convertible Debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs).



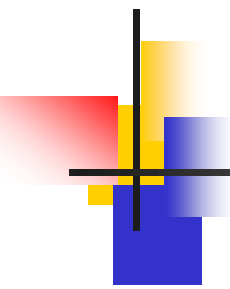
ECB Framework & routes

Framework for raising loans through ECB comprises the following three tracks:

- Track I : Medium term foreign currency denominated ECB average with minimum maturity of 3/5 years.
- Track II : Long term foreign currency denominated ECB with minimum average maturity of 10 years.
- Track III: Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

- Available routes for ECBs:

- Automatic route: The cases are examined by the Authorised Dealer Category-I (AD Category-I) banks so long as all the prescribed conditions are met
- Approval route: The prospective borrowers are required to send their requests to the RBI through their ADs for examination in cases where there are some differences in the form of amount of borrowing, eligibility of borrowers, permissible end-uses, etc.
- FCEBs can be issued only under the approval route



ECBs: Key parameters

- Eligible Borrowers
- Recognized Lenders
- End-use
- Minimum Average Maturity Period
- All-in-cost Ceilings
- Individual Limits
- Currency of Borrowing

ECBs: Eligible Borrowers

Track I	Track II	Track III
Companies in: • manufacturing • software development sectors • shipping and airlines companies • Infrastructure Sector as per Harmonized Master List (Transport, Energy, Water & Sanitation, Telecommunication, Social & Commercial Infrastructure) and Exploration, Mining and Refinery Small Industrial Development Bank of India (SIDBI) Units in SEZ Exim Bank NBFC – Infrastructure Finance Companies and NBFC – Asset Finance Companies Holding Companies and Core Investment Companies (CIC)	All entities listed under Track I. Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) regulated by SEBI.	All entities listed under Track II. NBFCs under the regulatory purview of the Reserve Bank. NBFC -Micro Finance Institutions, NPO, Societies, trusts and co-operatives, NGO engaged in micro finance activity Companies engaged in miscellaneous services viz. research and development (R&D), training (other than educational institutes), companies supporting infrastructure, companies providing logistics services. Developers of Special Economic Zones (SEZs)/ National Manufacturing and Investment Zones (NMIZs).



ECBs: Eligible Borrowers (con't)

Major recent amendments vide A.P. (DIR Series) Circular No.25 dt. 27th April, 2018:

- Expansion of Eligible Borrowers' list for the purpose of ECB:

It has been decided to permit:

- a. Housing Finance Companies, regulated by the National Housing Bank, as eligible borrowers to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
- b. Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 to avail of ECBs under all tracks. Such entities shall have a board approved risk management policy and shall keep their ECB exposure hedged 100 per cent at all times for ECBs raised under Track I.
- c. Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding to raise ECBs denominated in INR only.

ECBs: Eligible Lenders

Track I	Track II	Track III
i. International banks. ii. International capital markets. iii. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions. iv. Export credit agencies. v. Suppliers of equipment. vi. Foreign equity holders. vii. Overseas long term investors such as: a. Prudentially regulated financial entities; b. Pension funds; c. Insurance companies; d. Sovereign Wealth Funds; e. Financial institutions located in IFSCs in India viii. Overseas branches / subsidiaries of Indian banks	All entities listed under Track I (excluding overseas branches / subsidiaries of Indian banks)	All Entities in Track I (excluding overseas branches / subsidiaries of Indian banks) In case of NBFCs - MFI, other eligible MFI, nor for profit companies and NGOs: ECB can be availed from overseas organisations and individuals (subject to conditions)



ECBs: End-use conditions

Major recent amendments vide A.P. (DIR Series) Circular No.25 dt. 27th April, 2018:

- Currently, a positive end-use list is prescribed for Track I and specified category of borrowers, while negative end-use list is prescribed for Track II and III. It has now been decided to have only a negative list for all tracks. The negative list for all Tracks would include the following:
 - a. Investment in real estate or purchase of land except when used for affordable housing as defined in Harmonised Master List of Infrastructure Sub-sectors notified by Government of India, construction and development of SEZ and industrial parks / integrated townships.
 - b. Investment in capital market.
 - c. Equity investment.
- Additionally for Tracks I and III, the following negative end uses will also apply except when raised from Foreign Direct (25% minimum) and Indirect (51% minimum) equity holders or from a Group company, and provided the loan is for a minimum average maturity of five years:
 - d. Working capital purposes.
 - e. General corporate purposes.
 - f. Repayment of Rupee loans.
- Finally, for all Tracks, the following negative end use will also apply:
 - g. On-lending to entities for the above activities from (a) to (f).



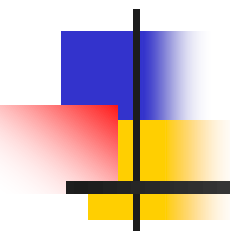
ECBs: All-in-one cost and Debt:Equity

Major recent amendments vide A.P. (DIR Series) Circular No.25 dt. 27th April, 2018:

- (i) Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds (RDBs) :

With a view to harmonising the extant provisions of Foreign Currency and Rupee ECBs and RDBs, it has been decided to stipulate a uniform all-in-cost ceiling of 450 basis points over the benchmark rate. The benchmark rate will be 6 month USD LIBOR (or applicable benchmark for respective currency) for Track I and Track II, while it will be prevailing yield of the Government of India securities of corresponding maturity for Track III (Rupee ECBs) and RDBs.
- (ii) Revisiting ECB Liability to Equity Ratio provisions:

It has been decided to increase the ECB Liability to Equity Ratio for ECB raised from direct foreign equity holder under the automatic route to 7:1. This ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.



Thank You
