

Foreign Inbound Investment

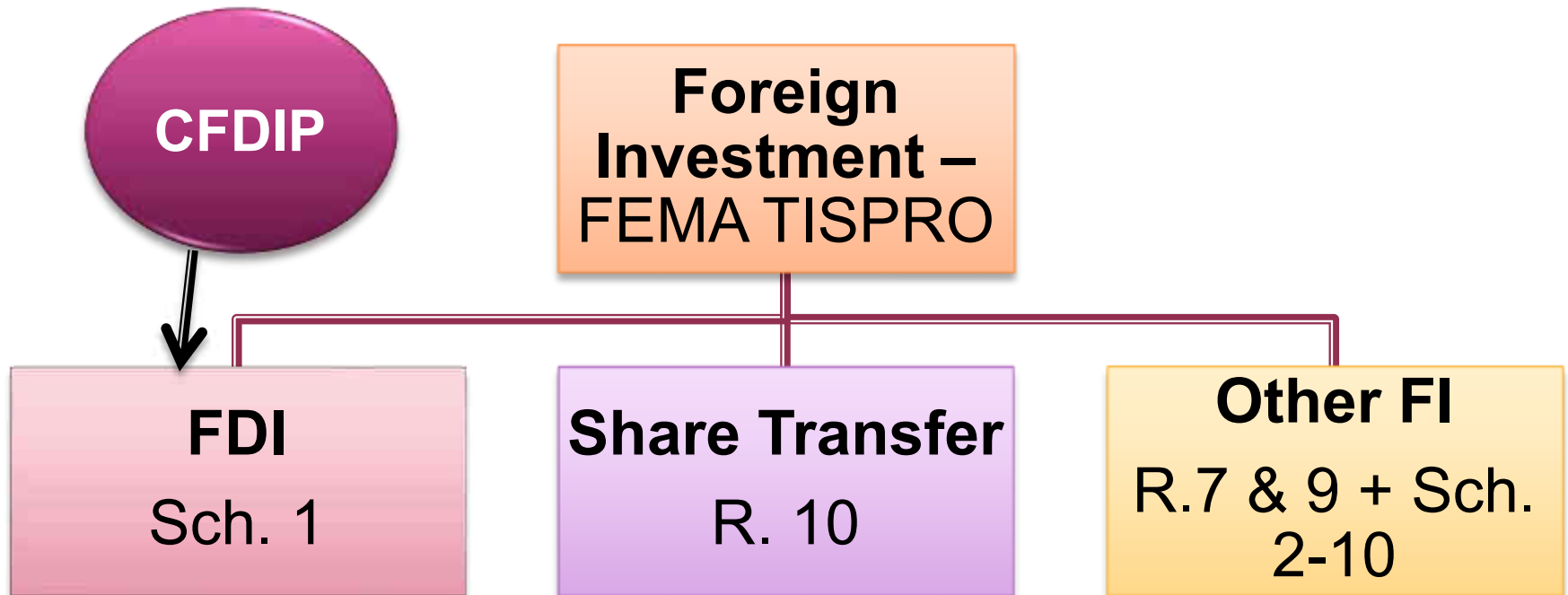
2 Days Conference on FEMA, Delhi

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4th May 2019

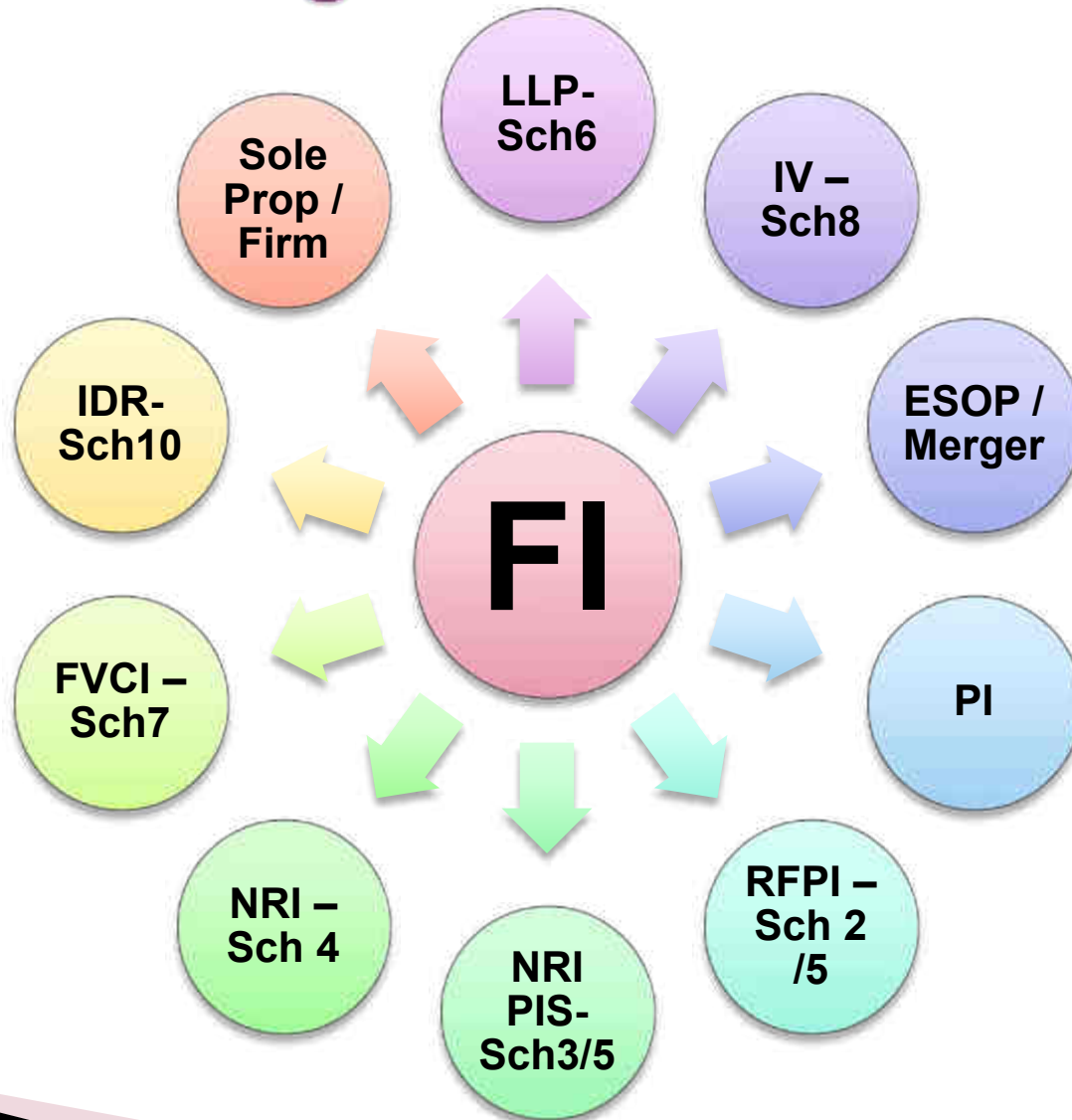


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Foreign Investment Routes



Other Foreign Investment





Foreign Direct Investment

Foreign Direct Investment

- Definition of FDI / FPI

- Foreign Investment in Unlisted Co. ~ **Always FDI**
- FI in Listed Co. $\sim \geq 10\%$ in Listed Co. ~ **Always FDI**
- FDI $\geq 10\%$ in Listed Co. falling below 10% ~ **Remains FDI**

\therefore FI by PROI $< 10\%$ in Listed Co. ~ **Always FPI**

- Foreign Portfolio Investment different than FPI Investment
 - FPI only by SEBI-registered FPIs
 - Foreign Portfolio Investment **by any PROI** $< 10\%$ in Listed Co.
 - Even Primary Subscription would be Foreign Portfolio Investment
 - No FC-GPR / ARF to be filed

Foreign Portfolio Investment

- **Fresh Investment by Foreign Co. < 10% in Listed Indian Co.**
 - Treated as Foreign Portfolio Investment and not FDI
 - However, Foreign Co. would not be designated as FPI since it is not registered with the SEBI
 - Investment would be a Preferential Issue under SEBI ICDR Regs.
 - Pricing as per SEBI Regs.
 - Reporting not required
- **If Fresh Investment by Foreign Co. > 10%**
 - Treated as FDI
 - Pricing remains same
 - But Reporting required

Foreign Portfolio Investment

- If 10% ↑ then Total FI by such Foreign Investor reclassified as FDI
 - ICO must then comply with ARF + FC-GPR Reporting
- But if FDI falls below 10% then not reclassified as Foreign Portfolio Investment ~ remains FDI
- For computing 10% consider Fully Diluted Capital of ICO

FDI Sch. 1

► Foreign Direct Investment

- Invst. by NR in Capital of an Indian Company under Sch. 1 of FEMA Regulations
 - Fresh Issue / Private Placement / Rights Issue to NR
 - Money comes directly into Indian Co.
 - FDI via Stock Market also permissible
 - Only for Foreign Promoters of Listed Cos.
 - Co. can issue shs in lieu of dividend payable to Promoter

Regulators / Agencies

GOI

Fin Min

ComMin

DEA

RBI

DIPP

ECD

SIA

Who Can Invest?

Non-resident Entity

- Bangladeshi / Pakistani citizens only by Govt route

Bhutan / Nepal

- NRIs allowed on Repatriation basis
- FDI by Inward remittance in Forex

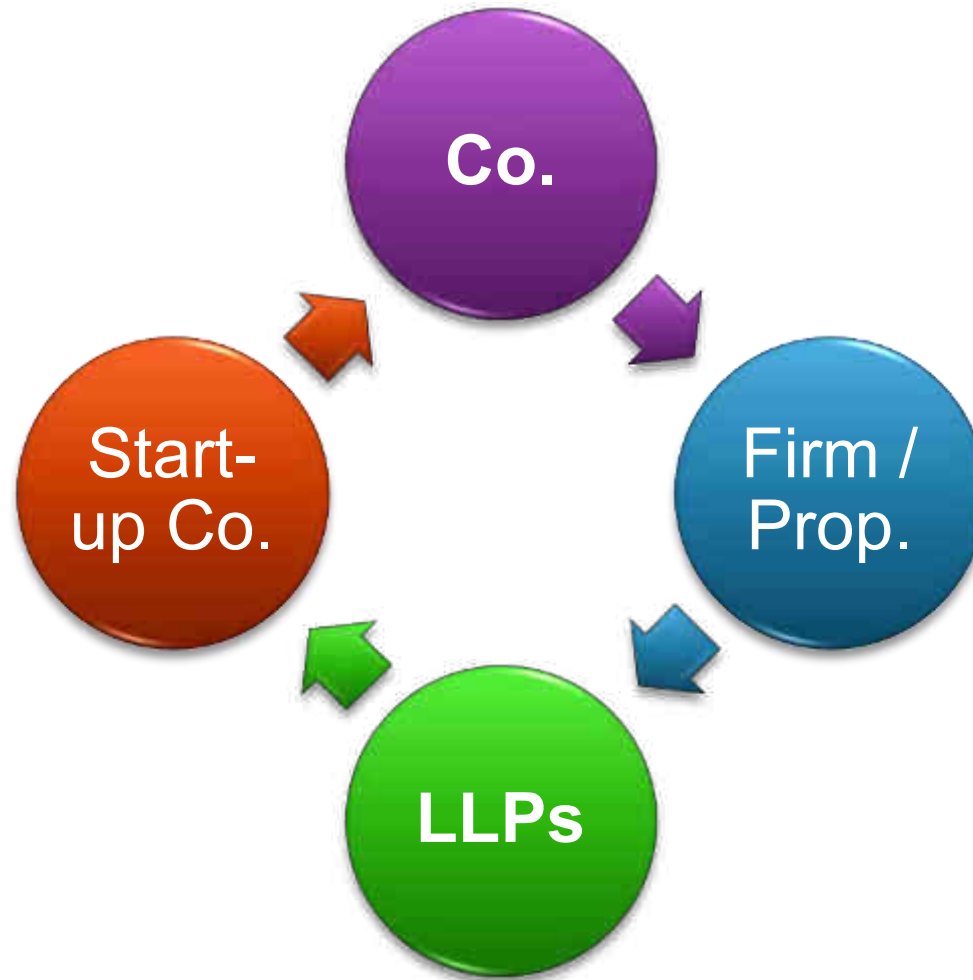
Erstwhile OCBs

- Provided not on RBI's Watch List
- Can invest under FDI with RBI / FIPB approval

FVCIs

- Can invest under FVCI Route in a VCF or under FDI route in a Company.

Entities for FDI



Types of FDI

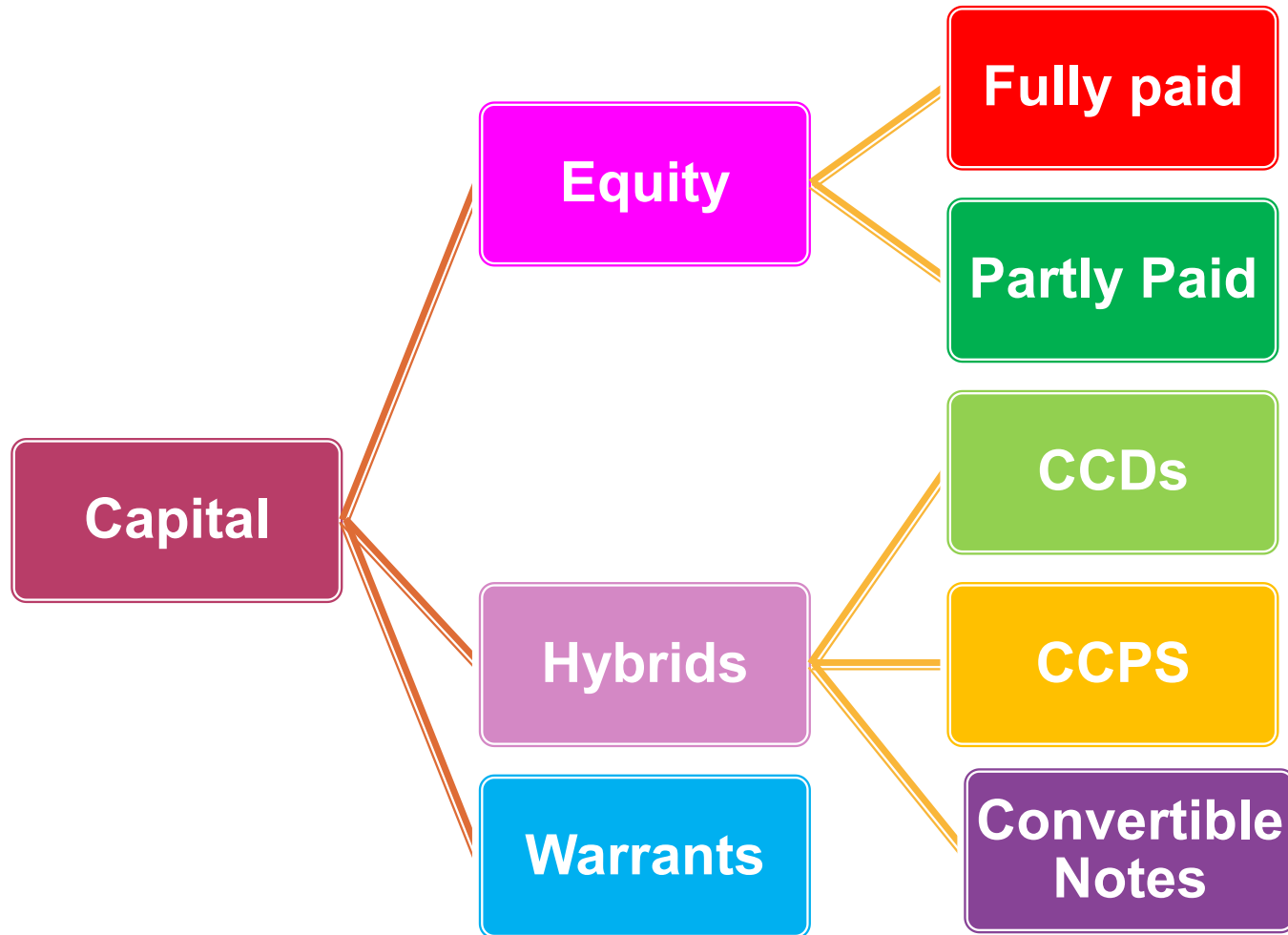
FDI

Automatic – Only Filings with RBI

Approval – Govt. - Ministries

**FDI > Rs. 5000 cr.
CCEA Approval**

Instruments



Equity Shares

- ▶ Consideration must be for Cash or allowed by CFDIP
 - Conversion of ECB / Royalty into Equity
 - Eq against Lumpsum FTS / Royalty
 - For Pre-inc. Exp. of WOS
 - For Import of Capital Goods / Machinery
 - Sh. Swap if Indian Co. in Auto Route sector
 - All other cases – Govt. approval
- ▶ Shares Must be issued within 60 days of funds ~ aligned with Companies Act since earlier was 180 days
 - Else refund the Amount

Equity Shares

- Valuation - Issue Price of FDI Shares
 - Listed Cos. – SEBI Guidelines
 - Unlisted Cos. - Any Internationally accepted Pricing Method
 - Valuation by CA / MB
 - No Assured Returns
 - ALP Basis
 - No Method Specified ~ DCF / ECM / NAV / Price * Book Value / SOTP / PE / Comparable Cases / Liquidation

Preference Shares

- Part of Sectoral Caps Only if CCPS
 - If RPS / OCPS – treated as ECBs
- Must be converted within a reasonable timeframe
 - Amendment of tenure must be in compliance with Co.'s Act
- No Max. Dividend Rate
 - Earlier cap done away with
- DDT Payable

CCDs

- Quasi-equity Instruments
- Subject to ECB restrictions?
- No Cap on Rate of Interest?
 - All-in-cost ceilings like ECBs?
- Tax Deduction benefits to Investee Co.
- Can be redeemed / bought back by Co.?

Valuation of CCDs/CCPS

- Issue Price or Conversion Formula to be specified upfront at time of issue
- Price @ Conversion Date > FMV @ Issue Date
 - FMV = Any Internationally Accepted Method
- No Guaranteed Returns possible

Partly Paid Shares & Warrants

- Partly Paid-up Shares
 - Auto Route Price determined upfront
 - 25% Upfront & Balance within 12 mts (can be received later if Issue > 500 cr Monitoring Agency appointed)
 - If balance not paid in time, 25% forfeited
- Warrants
 - Auto Route & issue as per SEBI Regs. –Even for Unlisted Cos?
 - Price upfront + Conversion Price \geq FMV on date of Warrants' Issue
 - 25% Upfront & Balance within 18 mts
 - If balance not paid then Forfeiture of Initial Amount

Options & Guaranteed Returns

- Put & Call Options
 - Permissible in Equity / CCPS / CCDs
 - Minimum 1 year lock-in period or higher if prescribed for Sector
 - No Assured Returns
 - Exit Price as per FMV – Valuation to be done
- Guaranteed Returns
 - Not permissible for any Instruments
 - Not allowed even if Contractually Agreed upon

Convertible Notes

- Can be issued only by Start-up Companies
 - FDI through C/Notes by Start-up Company
 - C/N = Initially debt but either repayable or convertible at Holder's Option or event based.
 - Max. 5 years for Conversion Option
 - Rs. 25 lakhs or more in a Single Tranche
 - If Govt. Route then with prior Approval
 - Eq. Shs. Against C/Ns as per Entry Route, Sectoral Caps, Pricing Guidelines

FDI Prohibited - Taboo

1

- **Chit Fund / Nidhi**

2

- **Agricultural / Plantations (Exceptions)**

3

- **Real Estate Business / TDR Trading**

4

- **Gambling / Lottery / Casinos**

5

- **Atomic Energy**

6

- **Tobacco / Related Products**

7

- **Sectors not open to Private Sectors**

Sectoral Caps

- FDI permitted up to Sectoral Caps, if any
 - If no Caps, then 100% FDI allowed on Auto Route
- Total FI cannot exceed Sectoral Cap
 - If Min. Cap. Requirement then Share Premium counted if received by Company
 - FDI for Investment Companies needs prior Govt. Approval
 - But if they are registered NBFCs then on Auto Route
 - FDI in Co. not yet started Ops.
 - Can be Auto FDI if Activities are under Auto Route
 - No Downstream Investment
 - When Ops commenced follow Sectoral Caps & Conditions
- Onus of Compliance on Indian Investee Company

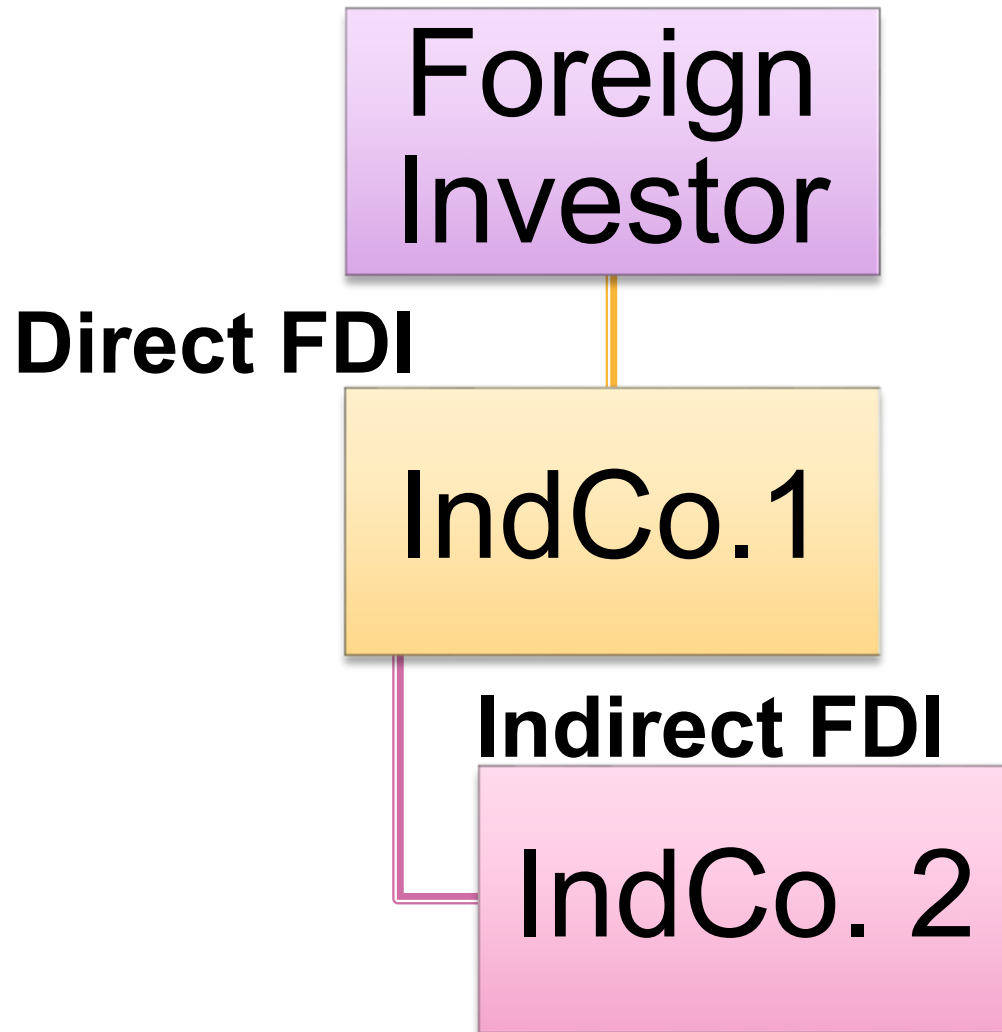
FDI on Approval Route

- Apply to relevant sectoral authority ~ Nodal Ministry
 - If Doubt DIPP would determined relevant authority
- For rejection, DIPP concurrence is a must
- Online filing of application www.fifp.gov.in
- Comments by Authority within 4 weeks
 - Else Deemed to have No comments
- For certain Sensitive Sectors (Defence, Aviation, Telecom) – Home Ministry Comments also needed
- Authority can ask DIPP for clarifications, if any on FDI Policy

FDI on Approval Route

Sector & Nodal Authority	Sector & Nodal Authority
Titanium Mining – Ministry of Mines	Above 49% FDI in Private Sector Banking – Dept. of Financial Services
Petroleum refining by PSUs	Above 49% FDI in defence – Defence Ministry
Print Media / Uplinking of News TV Channels / FM Radio / Publishing– Ministry of Info & Broadcasting	Above 74% FDI in Brownfield Pharma - Dept. of Pharmaceuticals
Private Security Agencies – Home Ministry	Multi-Brand Retail Trading - DIPP
Above 49% FDI in Telecom - Dept of Telecom	Core Investment Company – Dept. of Economic Affairs
Satellites – Dept. of Space	Countries of Concern - DIPP

Indirect / Downstream FDI



Indirect FDI

- FDI via Indian Cos
 - Owned & Controlled by Resident Indians Citizens = Domestic Investment not counted as FDI
 - Owned **OR** Controlled by NRs = Downstream is Indirect FDI
 - Ownership
 - More than 50% of Capital (Eq /CCD/CCPS)
 - Control
 - Right to appoint a majority of Directors or to control management or policy decisions including by virtue of their Shareholding or Management Rights or SHA or Voting Agreements

Indirect FDI

FDI% in Indco controlled by Residents	Indco's Investment in SPV	Indirect FDI in SPV
40%	51%	Nil – Indco is O&C by Indians
75%	26%	26% - Indco is O or C by NRs so entire Downstream is Indirect FDI
60%	100%	60% - Downstream in SPV is a mirror image of Indco

Indirect FDI Conditions

- 2nd Level Investee Co. must comply with
 - Entry Route
 - Sectoral Caps
 - Pricing Guidelines
 - Other FDI linked Performance Conditions
- As if it is a Direct FDI

Indirect FDI Conditions

- 1st Level Investor Co.
 - Must have a Board Resolution approving the Indirect FDI
 - Must have Shareholders' Agreement
 - Must Not raise funds for Invst. Via Domestic Markets
 - Can use Internal Accruals / Foreign Funds
 - Is responsible for compliance with FEMA Regs.
 - Obtain Auditors' Certificate + Report in Directors' Report
 - If Qualified Audit Report then inform RO of RBI

FDI Compliance

- Reporting of FDI Inflows to RBI be done by AD Bank
 - ARF+ KYC now not required
- Reporting of Issuance of Shares within 30 days to RO of RBI –**Form FC-GPR (Foreign Currency Gross Provisional Return)**
 - Signed by MD / Dir
 - Valuation Certificate from CA / Auditor
 - Certificate from CS of Co.
 - All requirements of the Companies Act, 2013 have been complied
 - Conditions of Government approval, if any, have been complied with.
 - Co. is eligible to issue Instruments under FEMA TISPRO
 - Co. has all original certificates issued by AD in India, evidencing receipt of amount of consideration

FDI Compliance

- If shares issued to a PROI other than one from whom funds received
 - KYC of both persons + relationship of two + NOC from remitter + Board Resolution of Investee Co for such issue
- Declaration in FC-GPR that FDI would be used in compliance with PMLA & FDI complies with all provisions of PMLA / its Rules
 - However, FEMA not a Scheduled Offence under PMLA
- **Annual Return** of Foreign A &L in **Form FLA** by 15th July

Rights / Bonus

- Auto Route Investment for Rights / Bonus if:
 - Companies Act, 2013 complied with
 - Sectoral Caps post-issue not breached
 - Original Shares in accordance with FEMA Regs.
 - New Shares subject to same conditions as Original
 - Listed Co ~ Rights to NR @ Price determined by Co.
 - Unlisted Co ~ Rights to NR @ price not less than that of Res.
 - NR can over-subscribe for Rights
 - Res / NR can renounce his Rights entitlement
 - Renouncee can acquire Rights Shares as per above Pricing Guidelines
 - Rights Shares subject to same repatriation as Original Shares

Merger & ESOPs

ESOPs – R. 7 of TISPRO

- Indian Cos. Can issue ESOPs / Sweat Equity to
 - NR Eees / Directors of self / Holdco / JV / Sub
 - Scheme must be as per SEBI Regs. or Companies Act
 - Defn. ~ ESOP issued under SEBI Regs. – Even for Unlisted??
 - ESOP within Foreign Sectoral Caps applicable to Co.
 - Earlier limit of 5% now deleted
 - If FDI on Govt. Route then ESOP requires CG Approval
 - E.g., NR ESOP in Private Security Agencies
 - ESOP to Pakistan / Bangladeshi citizen – CG Approval

Mergers – R. 9 of TISPRO

- Indian Cos. can issue shares to NR Shareholders of:
 - Indian Transferor companies in a Scheme of Merger / Demerger / Reconstruction
 - % of NR shareholding in Transferee within Sectoral Caps or as per CG approval, if any
 - Issue – Compliance with Entry Routes / Investment Limits
 - Transferor / Transferee Not in FDI Prohibited Sectors – e.g., Merger of Gambling / Casinos Co. – Listed Co. in this field
 - Scheme approved by NCLT in India

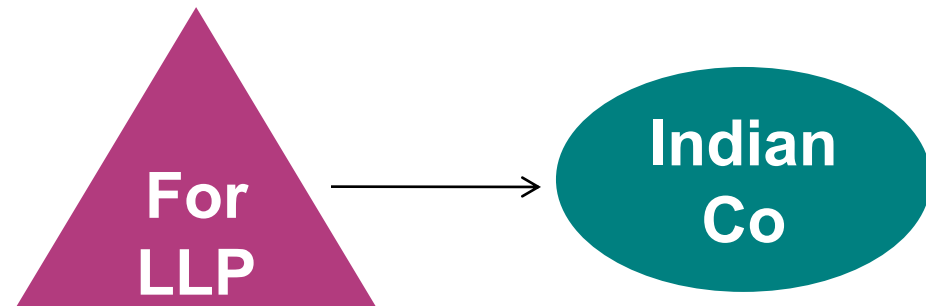
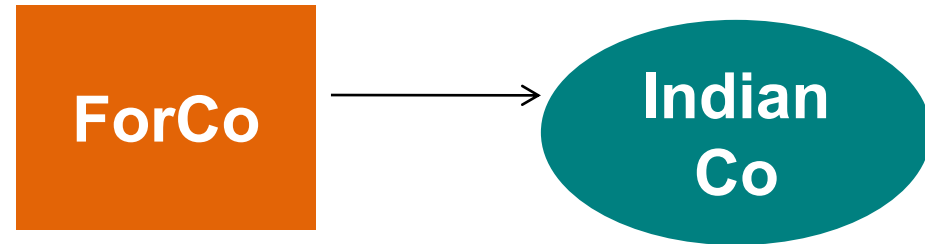
Foreign Mergers

- Under Cos. Act 2013
 - S.234 - Foreign Co. can merge with an Indian Co.
 - Provisions of mergers under the Act apply to such mergers also
 - Rule 25A of Companies (Arrangements & Amalgamations) Rules
 - NCLT permission required for Indian leg
 - Foreign Court's permission depending upon jurisdiction
 - Fco can merge with Ico after obtaining prior approval of RBI and complying with ss.230-232 of the Act
 - RBI has issued Regulations under FEMA granting permission

Foreign Mergers

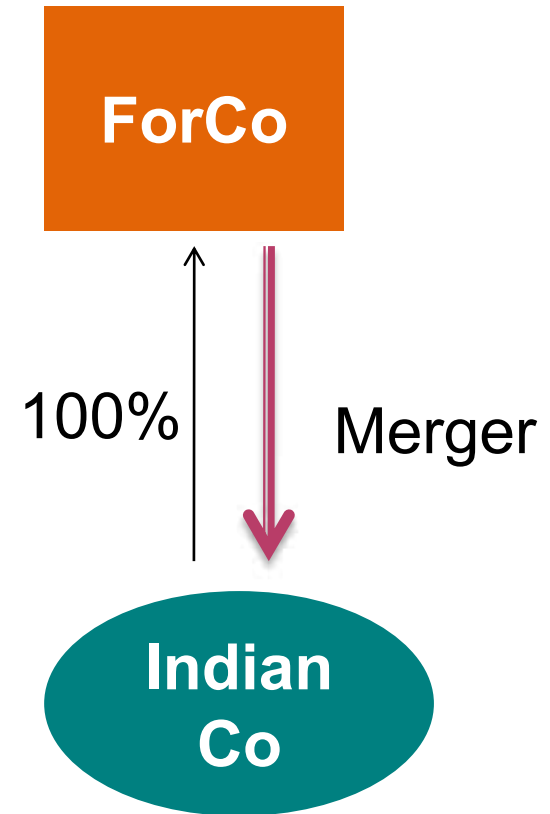
- **FEM (Cross Border Merger) Regs., 2018**

- **Inbound Merger** – merger of Foreign Co. into Indian Co.
- Foreign Company – Companies Act
 - Can be a Company or Body Corporate Incorporated Abroad
 - Thus, ForCo or ForLLP can merge with Ico – **Qube Cinema Tech (NCLT Chennai)**



Foreign Mergers

- **FEM (Cross Border Merger) Regs., 2018**
- Merger of ForCo which is WOS with ICo Parent
- In case Fco is WOS of Ico then comply with conditions for transfer of shares under No. 120/2004 – R. 16(1) /(2) e.g.:
 - Sale does not result in w/off
 - Q. How would it be satisfied in case of a merger of WOS with ICo?



Foreign Mergers

- **FEM (Cross Border Merger) Regs., 2018**

- Resultant Indian Co. can issue shares to PROIs
 - Follow Pricing G/L + Sectoral Caps + reporting under TISPRO
 - Foreign Office of Fco deemed to be branch of Ico
 - Borrowings of Fco become those of Ico and shall conform to ECB Regs within 2 years – No remittance for repayment of such Borrowings within 2 years
 - Ico can acquire / hold any foreign asset if so permissible under FEMA
 - Else sell it within 2 years of sanction of scheme
 - Ico can maintain foreign bank A/c for 2 yrs for incidental transactions

Foreign Mergers

- **FEM (Cross Border Merger) Regs., 2018**
 - Valuation done as per Rule 25A
 - Indian Co. by Indian Valuers and For Co by Foreign valuers
 - Reporting as may be specified by RBI
 - If merger as per Regs then treated as deemed approval of the RBI
 - Compliance certificate by MD / CS of these Regs to be furnished to NCLT

Arrangement – R. 9 of TISPRO

- Indian Co. can make a Bonus issue to NR Shareholders :
 - Non-convertible Redeemable Preference Shares / Debentures
 - Under a Scheme of Arrangement approved by NCLT under Companies Act 2013
 - Co. not engaged in Sectors where FDI Banned
 - E.g., Tobacco / Gambling
 - E.g.,: HUL / NTPC / Zee / Blue Dart issued Bonus NCD / RPS
 - Earlier Condition deleted of Co. obtaining NOC from ITO

Non Repatriable

Sch. 4: Non-Repatriable FI

- Non-Repatriable Meaning:
 - Only Dividend / Interest can be sent back abroad
 - Principal + Gains cannot be repatriated
- NRI/PIO can buy shares / CDs / warrants on NR Basis:
 - ***Investment treated as Domestic Investment***
 - Not Nidhi / Chit Fund / Plantations/ Farm Houses / Dealing in TDRs / Real Estate Business
 - RE Business means Dealing in land to earn profits but excludes Leasing of property / Investment in REIT units.

Sch. 4: Non-Repatriable FI

- NR Investment includes investment in the following:
 - Listed Securities - Eq / CCPS / CCD / Warrants
 - Unlisted Securities - Eq / CCPS / CCD / Warrants
 - Units of an Investment Vehicle ~ REITs / AIF / Invlts
 - LLP's Capital
 - Convertible Notes issued by a Startup
 - Sole Proprietary Firm's Capital
 - Partnership Firm's Capital
- **IMP Restriction – OCPS/NCD/OCD/ RPS.** Though Invst is Domestic, Instruments remain Foreign? **Strange!**

Sch. 4: Non-Repatriable FI

- Sch. 4 Route open to:
 - NRIs: Indian Citizens residing abroad OR OCI Cardholders
 - If a PIO is not registered as an OCI Cardholder – Not treated as NRI under FEMA and he Can't avail of Sch. 4
 - Foreign Company/ Trust/Firm owned & controlled by NRIs
 - What is O & C by NRIs?
 - No definition in Sch. 4 so Refer to R. 14
 - Ownership – 50%+ of Share Capital / LLP beneficially owned by NRIs
 - Control – right to appoint majority of Directors / Partners / DPs with NRIs

Sch. 4: Non-Repatriable FI

- For Sch. 4:
 - No Pricing Norms unlike Sch. 1
 - No Filings for FDI: FC-GPR, FC-TRS, FDI-LLP, FLA
 - Not counted for Direct / Indirect FI Limits for O&C
 - Can invest in Multi-brand Retailing / Telecom / Airlines, etc.
 - No cap on Dividend on CCPS
 - No bar to investing in Tobacco / Gambling / Lottery / Sectors not open to private investment (Railways)

Sch. 4: Non-Repatriable FI

- Sale Proceeds of NR Investment must be credited to NRO A/c.
- However, under FEM (Remittance of Assets) Regulations, 2016
 - Every NRI can repatriate up to \$1 million / year out of sale proceeds of assets

Firms & LLPs

FDI in Proprietary & Firms

- Foreign Investment allowed in Sole Proprietary concerns & Partnership Firms for:
 - NRIs / OCI on Non-Repatriation basis on Auto Route
 - **Express Prohibition for all Other FI in Firm / AOP / Sole Prop.**
 - **AOP covered for first time ~ FI permissible with RBI permission**
 - **Earlier Express Permission Now removed:**
 - NRIs / PIOs on Repatriation basis with RBI + GoI permission
 - Other Foreign residents with RBI + GoI permission
- Restricted Sectors for NRIs/ OCI:
 - Agricultural / Plantation / Real Estate Business / Print Media

Sch. 6: LLP

- Auto Route FDI in sectors with No performance conditions and Where 100% FDI is allowed
- No FDI in Sectors with performance linked conditions
 - Q NBFC, Housing, Trading not possible?
 - Q. What is Performance Linked Conditions?
 - **Would Guidelines for Cash & Carry WT be treated as PLC?**
 - Requirement of trade licence of valid business customers
 - Maintenance of Full records
 - Group Co. sales threshold
 - **Would Guidelines for SBRT be treated as PLC?**
 - Sourcing Requirements from India

Sch. 6: LLP

- No FDI in
 - Sectors eligible to receive less than 100% FDI under Auto Route
 - FM Radio / TV News / MBRT/Banks /Insurance / Print Media
 - Sectors where FDI possible only with Govt. permission
 - Mining / Defence / Publishing Journals / Brownfield Pharma
 - Sectors not opened up for FDI
 - Tobacco / Railways

Sch. 6: LLP

- Investment in LLP:
 - Contribution to capital is an eligible investment
 - Contribution to capital of LLP should be subject to compliance of LLP Act, 2008.
- Pricing:
 - Capital Contribution \geq FMV worked out as per any Int'l Accepted Valuation Methodology by CA / CMA / Regd. Valuer
 - Transfer of Capital Contribution or profit Share from R to NR \geq FMV
- Payment
 - Only Cash Consideration (no CoC though allowed under LLP Act)
 - Inward remittance / NRE / FCNR (B) Account

Sch. 6: LLP

- Foreign Investors not allowed to Invest in LLP:
 - Pakistani / Bangladeshi entity / citizen
 - FVCI
 - RFPI
- LLP to file Form Foreign Direct Investment-LLP(I) with RBI RO
 - Copy of FIRC/s + KYC report on NR investor + Valuation certificate within 30 days from Receipt of consideration.
 - RO would allot a Unique Identification Number (UIN)
 - Transfer of Capital / Profit share reporting in FDI-LLP(II) within 60 days of receipt of funds

Sch. 6: LLP

- To and From Conversion
 - Auto Route Conversion of Co. with FDI into LLP only if
 - Sector where FDI up to 100% on Auto Route
 - No FDI linked Performance Conditions
 - Possible under Schedule II & III of LLP Act, 2008 + s.47(xiiib) of ITA
 - Auto Route Conversion of LLP with FDI into Co. only if
 - Sector where FDI up to 100% on Auto Route
 - No FDI linked Performance Conditions
 - Possible under Chapter XXI of Companies Act, 2013

PIS by FPIs & NRIs

Foreign Portfolio Investment

- New Definition of Foreign Direct Investment & Foreign Portfolio Investment
- Definition linked to % of Investment in Indian Company / Type of Indian Company – listed / unlisted
- NOTE: Foreign Portfolio Investment different than Foreign Portfolio Investor or FPI
 - FPI only by SEBI-registered FPIs
 - Foreign Portfolio Investment **by any PROI** < 10% in Listed Co.
 - Even Primary Subscription would be Foreign Portfolio Investment
 - No FC-GPR / ARF to be filed

Foreign Portfolio Investment

FI in Unlisted Co

- Always treated as FDI
- % Irrelevant

FI of 10% or More in ListCo

- Always FDI even if by an FPI
- % Threshold Matters

FI of Less than 10% in ListCo

- Always FPI
- % Threshold Matters

FI > 10% in ListCo falling below 10%

- Remains FDI
- Change in % does not matter

Foreign Portfolio Investment

- **Fresh Invst by For Co. less than 10% in Listed Indian Co.**
 - Treated as Foreign Portfolio Investment and not as FDI
 - However, Foreign Co. would not be designated as RFPI since it is not registered with the SEBI
 - Investment would be a Preferential Issue under SEBI ICDR Regs.
 - Pricing as per SEBI Regs.
 - Reporting not required
- If Fresh Investment by Foreign Co. of 10% or more
 - Treated as FDI even if by a SEBI-registered FPI
 - Pricing remains same
 - But Reporting required to RBI as if an FDI

Foreign Portfolio Investment

- If Invst by a RFPI increases to 10% or more then Total FI by such RFPI reclassified as FDI
 - ICO must then comply with ARF + FC-GPR Reporting
- But if FDI falls below 10% then not reclassified as Foreign Portfolio Investment ~ remains FDI
- For computing 10% consider Fully Diluted Capital of ICO

Sch.2: PIS by RFPI

- ▶ FPI Regime – Registered Foreign Portfolio Investor
 - Must be registered with SEBI – 3yrs Regn at a time
 - **Cat I FPI**: Sovereign Wealth Funds / Govt. / Central banks
 - **Cat II FPI**: Regulated Broad-based Funds with Min. 20 investors & Max. Invst per Investor 49% of Units / University Funds / Mutual Funds / Banks / Portfolio Managers
 - **Cat III FPI**: Corporate Bodies, Trusts, Family Offices / Individuals
 - Earlier NRIs were not permitted to register as RFPI
 - But if a Fund has NRIs it could register as an RFPI

Sch.2: PIS by RFPI

- Changes for NRIs wef 21st Sept 2018
 - NRIs / OCIs / Resident Indians allowed as constituents of FPI
 - Contribution by single such Investor must be below 25% & in aggregate below 50% of corpus of the FPI
 - They cannot be in control of FPI
 - FPIs can be controlled by Invst Managers which can be C&M by such Investors
 - IM must be regulated in its Home Jurisdiction + registered with SEBI; or
 - IM is set up in India and registered with SEBI

Sch.2: PIS by RFPI

- All existing Investments as QFI / FII / SA grandfathered with RFPI regime and can continue as FPI
- FVCI can also register as FPI
 - Segregation of Portfolios
 - Reporting Separately
- As the Category ↑ KYC Requirements also ↑
 - Cat I has least and Cat III has maximum
 - Must be registered with DDP (Designated Depository Participant) approved by the SEBI

Sch.2: PIS by RFPI

- Can Invest in Listed Shares / CCDs / Warrants
- Holding/ RFPI $\leq 10\%$ & Total $\leq 24\%$ of Capital
 - 24% can be \uparrow to Sectoral Cap by Spl. Resln.
 - Buy from Inward remittances / Indian Re. or \$ Bank A/c.
 - One FPI can invest up to 10% of Capital of a Company
- Sale only on Stock Exchange
- Must do delivery based trades only
 - But can Short Sell + do Stock Lending
 - Can also do Stock lending and Borrowing

Sch.2: PIS by RFPI

- Can participate in Buy-backs / Open Offers / Delisting of Shares held by them / Divestment by GoI
- Can also invest under Sch. 1 FDI but the terms and conditions applicable to FDI – Pricing / Reporting would apply to FDI
- Can invest in Indian PMS
- Can also Invest in IPO of securities ~ treated as PIS
 - Conditions for FDI not applicable to an IPO to FPI

Sch.2: PIS by RFPI

- Can even invest in Private Placement / Preferential Allotment of securities under PIS Route
 - E.g., Nandan Denim issued 10 lakh warrants @ Rs. 80/ share to LGOF Ltd, an RFPI on Private Placement basis
- However Pre-IPO placement to FPI treated as FDI
 - Required to follow FDI Conditions
 - E.g., Pre-IPO placement to FII by Oberoi Realty / Godrej Properties was treated as FDI and required to adhere to P/N 2 of 2005 conditions but not so for their IPO investment

Sch.2: PIS by RFPI

- FPIs can also invest in units of REITs / AIFs / InvIts
- RFPI can open Foreign Currency A/c or a Special Non-resident Rupee A/c for routing receipts & payments
 - Credits ~ Inward remittance / sale proceeds
 - Debits ~ Purchase / repatriation
 - No Interest on these Accounts
 - Remittance allowed after Tax Payments

Sch.2: PIS by RFPI

- No Sectoral Caps for PIS – Multi-brand / Defence / Airlines
 - Earlier Print Media – Mid-day IPO – but now removed
 - RFPI Holdings in Companies where FDI is conditional:

Company	Sector	% RFPI Holding
HDFC	NBFC	71%
Future Lifestyle	Multi-brand Retail	15%
Idea Cellular	Telecom	26%
HDFC Bank	Banking	41%
DLF	Real Estate	16%
Delta Corp	Gambling	24%
Interglobe Aviation	Aviation	15%
HT Media	Print Media	7%

Sch.3: PIS by NRIs

- NRIs can purchase Shares / CDs / Warrants on PIS:
 - On repatriation basis
 - Paid-up value of Shares / CDs / Warrants $\leq 5\%$ per NRI
 - Aggregate shares / CDs / Warrants by all NRIs $\leq 10\%$
 - Can \uparrow to 24% by passing Spl. Resln.
 - Delivery based buying / selling
 - Can open an NRE PIS A/c with a Bank for buying under PIS
 - Sale Proceeds from such PIS also credited to this A/c

Sch.3: PIS by NRIs

- Bank must ensure that sale proceeds from other investments, such as FDI not credited to NRE PIS A/c.
- Remittance abroad allowed after Taxes
- Bank must report all PIS transactions by NRIs to RBI
- Earlier Sch. 3 provided that PIS would be subject to Sch1 for Sectoral Caps & Restrictions ~ Now Deleted?

Sch. 5 : Other Investments by NRIs

- NRI can also invest on Repatriation Basis
 - Units of MFs or CIS or Infrastructure Debt Funds
 - T-Bills
 - Derivatives
 - Perpetual Debt Instruments by Banks
 - Listed Non-convertible Debt / RPS under a Scheme
 - National Pension Scheme

Sch. 5 : PPF by NRIs

- NRIs cannot open PPF / Buy NSCs
 - Were allowed to contribute to Old PPF opened when R
- Circular: R who had a PPF becomes an NRI, A/c is deemed to be closed wef the day he becomes an NRI
 - Interest wef that date @ 4% p.a. up to the last day of the month preceding the one in which A/c is actually closed
 - However, this Cir kept in abeyance – thus, can continue till maturity
- NSC is deemed to be encashed on the day the holder becomes an NRI - Interest wef that date @ 4% p.a. till actually encashed
 - This Cir not kept in abeyance

IDRs / ADRs

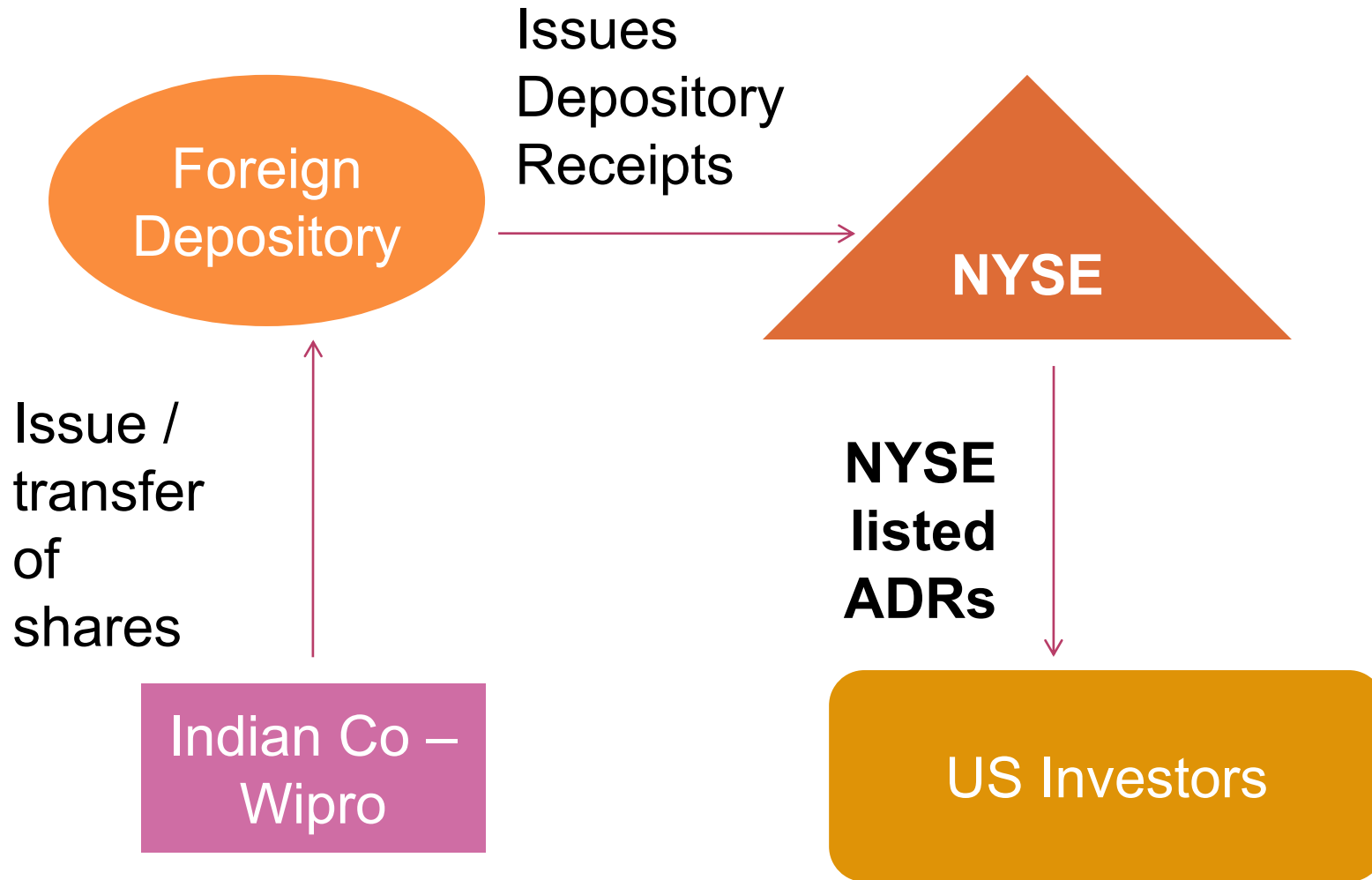
Sch. 10 : IDRs

- IDR: Foreign Companies can issue Indian listed Indian Depository Receipts to Indian residents
 - Enables Indian Rs to own Foreign Shares
 - E.g. **Standard Chartered Plc** has issued IDRs listed in India
 - IDRs denominated in INR only
 - If financial / banking presence in India by branches then requires prior approval of RBI
 - Proceeds of IDR issue must be repatriated by the Issuer Company

Sch. 7: IDRs

- NRIs and RFPIs can purchase IDRs
 - On repatriation basis
 - 2-way fungibility possible
 - Redemption into shares only after 1 year lock-in

ADR / GDR



ADR / GDR

- Foreign Currency denominated Instrument
 - May be listed – if issued in US (NYSE / NASDAQ) – ADR;
 - if in Europe / Others– GDR (LSE, Luxembourg, Singapore)
- Backed up by Eligible Instruments issued to Foreign Depository & held by Custodian ~ Shs / Deb. but in Demat
- NR must be eligible to invest in Shs / Deb under TISPRO
- Depository Receipts Scheme, 2014 – governing law
- Any Indian Co. (Listed / Pvt.) can issue DRs
 - Good avenue for E-commerce Companies –
 - 13 ADR Issues & about 110 GDR Issues
- Can be Public Issue or Private Placement
- 34 permissible jurisdictions

ADR / GDR

- Price of Eligible Securities issued to Depository cannot be lower than price for issue of such securities in India
 - E.g., Listed Co. can't issue DR shares lower than SEBI Preferential Issue Pricing under SEBI ICDR Regs
- Underlying Shares for DRs is part of Public Shareholding
- Compliance Obligations on Domestic Custodian
- No End-use restrictions but FEMA TISPRO Regulations
- Eg HDFC Bank raised Rs. 12,000 cr through ADR-issue

Sch.9: ADR / GDR Conversion

- Conversion of Shares into DRs
 - Foreign Investors can transfer shares /CDs in ICo to Foreign Depository and receive DRs
 - Domestic Custodian can purchase Indian Shares on behalf of Foreign Investor and convert them into DRs
 - Total \leq Foreign Investment limit under FEMA Regs.
 - Price of DRs not less than Price at which shares would have to be issued to Domestic Investors under applicable Laws

NCD by FPIs

NCDs to FPIs

- FPI can invest on Repatriation Basis
 - Listed NCDs with Interest / Premium
 - **Indian Co. can pay Fixed / Guaranteed Returns** through Interest and / or Redemption Premium
 - Can link Returns to Earn-out / Cash flow / Underlying Share Valuation / Profits of Investee Co. / CAGR / IRR
 - Full Repatriation allowed
 - Rating Agency required
 - Even Private Limited Co. can issue Listed NCDs

NCDs to FPIs

- FPIs up to **Rs. 3.03 lakh cr.** on tap ceiling & FVCIs no ceiling at all
 - Countrywide Aggregate Limit for all NCDs for all FPIs
- As of Apr 30th, Rs.2.10 lakh cr. or **69%** of the Corporate Bonds' Limit of Rs.3.03 lakh cr. was used by FPIs
 - Rs. 92,520 cr. yet available for Investment on the tap
 - Once exhausted no fresh bond issuance can take place until the Government increases the ceilings

NCDs to FPIs

- Minimum Maturity of 3 Years but FPI can sell domestically before that also
 - Can invest in Maturity of 1 Yr also but this cannot exceed 20% of total Invst. of that FPI in that Category
- **No Sector Restrictions**
- **No ECB Restrictions**— All-in-cost, Sectors, End-use, Type of Lender
- Need not be compulsorily convertible like CCDs
- FPI can even purchase Listed NCDs from Market

NCDs to FPIs

- FPI Investment in Unlisted NCDs
- **Not for On-lending, RE Activities, Capital market, Land acqn**
 - RE Activities – even construction not allowed? Should be RE Business like under FDI Regs.
- All other sectors permissible for Investment
- Minimum 3 Years Average Maturity
- Must be in Demat only

FVCI

Sch. 7: Investment by FVCI

- FVCI = SEBI Registered
 - Invst. Co / AMC / Invst. Manager / Invst. Vehicle
 - Tax Payer or Track Record from Banker
- SEBI Registration criteria
 - Status ~ Invst Co / Pension or Mutual Fund / Endowment Fund / Charitable Entity / Investment Trust?
 - AMC / Investment Manager is abroad
 - Whether Regulated by Foreign Regulator or Track Record by banker or an Income-tax Payer?
 - Whether Fit and Proper Person?
 - FVCI can also act as FPI – Portfolio segregation

Sch. 7: Investment by FVCI

- Firm Commitment from Investors of at least \$1 million
 - Financial Statements to be furnished of all Investors who have given Firm Commitment Letters
 - Investment:
 - Min. 66% of its Funds in Equity / Eq-linked Investments of VCU
 - **VCU: Unlisted and not NBFC /CIC/ Gold Financing /**
 - Max 33% of its Funds in Debt of Co. in which Eq Investment made / IPO of VCU / Preferential Allotment by Listed Co
 - No min. limit of equity required unlike in ECB
 - Can also invest entire funds in a single AIF Cat-I being a VCF

Sch. 7: Investment by FVCI

- Can Invest in OCPS / RPS / OCDs / Unlisted NCD / Listed Debt of the VCU
- No pricing requirements at time of investment
- Sch. 7 FVCI separate from FDI
 - Don't file FC-GPR else treated as FDI under Sch. 1
- Sectors open for FVCI
 - Only **10** specified sectors – Biotech / IT/ Nanotech / Seed R&D / Pharma R&D / Dairy / Poultry / Bio-fuels/ Hotel / Infrastructure ~
 - Energy /Telecom/ Transport/Water/Hospitals/Schools/ Mining / Cold Chain / Soil testing / **Affordable Housing**

Sch. 7: Investment by FVCI

- Sectors open for FVCI
 - **Start-ups** – No Sectoral restriction
 - Only Private Companies
 - Recognised by DIPP

Sch. 7: Investment by FVCI

- Can have assured Pricing / Guaranteed Returns at Exit
- No RBI approval required for making Investments
 - Earlier required
- Can have Resident \$ or INR Account in India
- Can transfer Investments to R / NR at mutually acceptable price
 - No Pricing Guidelines
 - No FC-TRS to be filed
- Like RFPI can invest in Listed NCDs
 - But within 33% of its funds & of VCU in which already invested

Qualified Institutional Placement

- Only for Listed Companies – separate SEBI Regs.
 - Pvt. Placement to QIBs
 - Global QIBs: FPI Cat I /II, FVCI
 - If to FPI, then treated as Portfolio Invst. – Sch 2A of TISPRO
 - If to FVCI then Issue to FVCI – Sch. 7 of TISPRO
 - Placement Document & Merchant Banker required
 - Pricing: Avg. Weekly H/L of Closing Prices during 2 weeks preceding Board Resolution approving QIP
 - Min. 2 allottees if QIP \leq 250 cr. else 5
 - All QIPs put together \leq 5 times Networth of Last Audited B/S

Qualified Institutional Placement

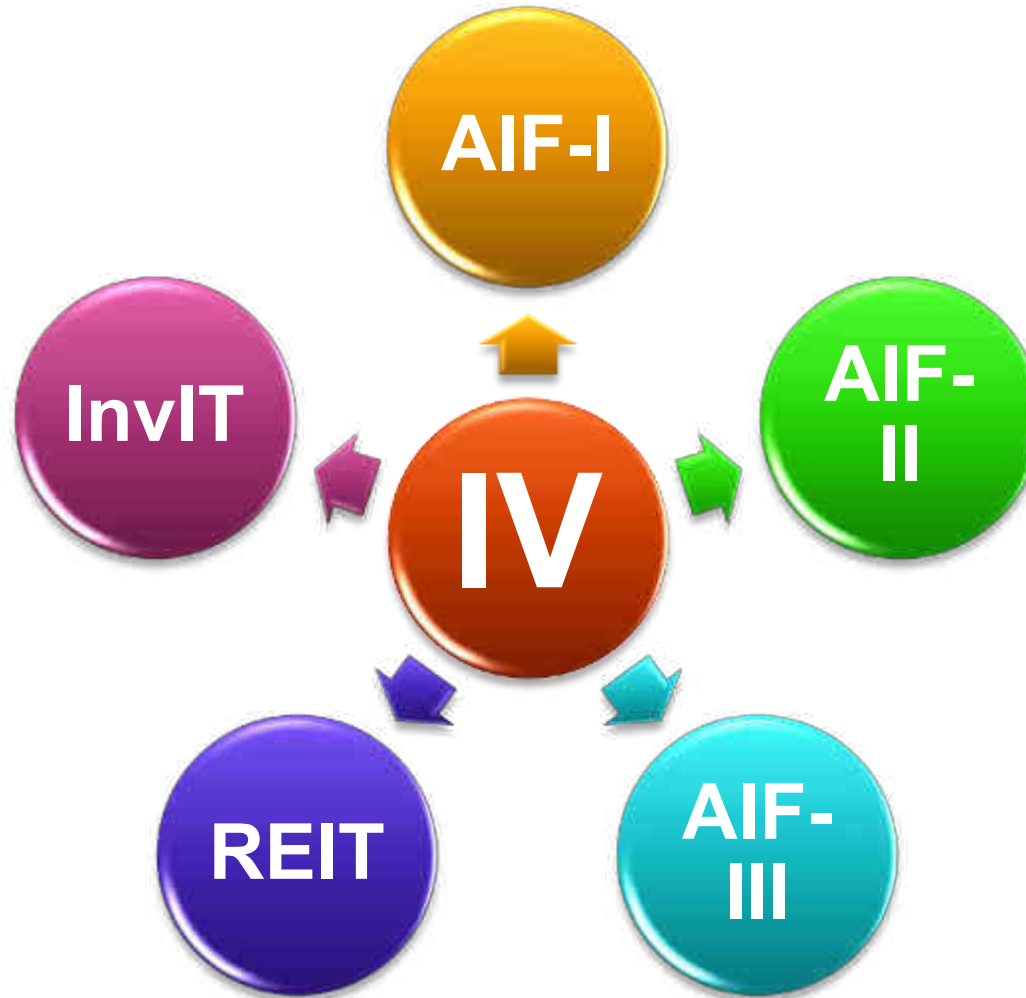
- Only for Listed Companies – separate SEBI Regs.
 - Can even issue Convertible Securities, such as, CCDs /CCPS
 - Convertible Sec. under QIP must be converted within 60 mts
 - E.g.,
 - **JM Financial Ltd raised Rs. 650 cr. by a QIP issue in Jan 2018 which included issues to Cat I FPI and Cat II FPI**

FDI v FVCI v FPI NCD

Factor	FDI	FVCI	FPI – NCD
Sector Restrictions	Yes & Caps	Yes (10) except for S/up	Not for Listed NCDs
Instrument	Equity / CCPS / CCD/Warrants	Equity / Unlisted Debt / Listed NCDs	NCDs
Listing a must	No	No	No
Cap on Interest	Now deleted	No	No
Pricing	FMV	Open	Open
Security	No	Yes if Debentures	Possible
Tax Benefit	Only in CCD Interest	Yes in Interest / Premium	Yes. Interest / Premium
Exit Route	Buyback / Sale	Buyback/ Sale / Redemption	Redemption / Sale
Assured Returns	NO	YES	YES

Investment Vehicle

Sch.8: Investment Vehicle



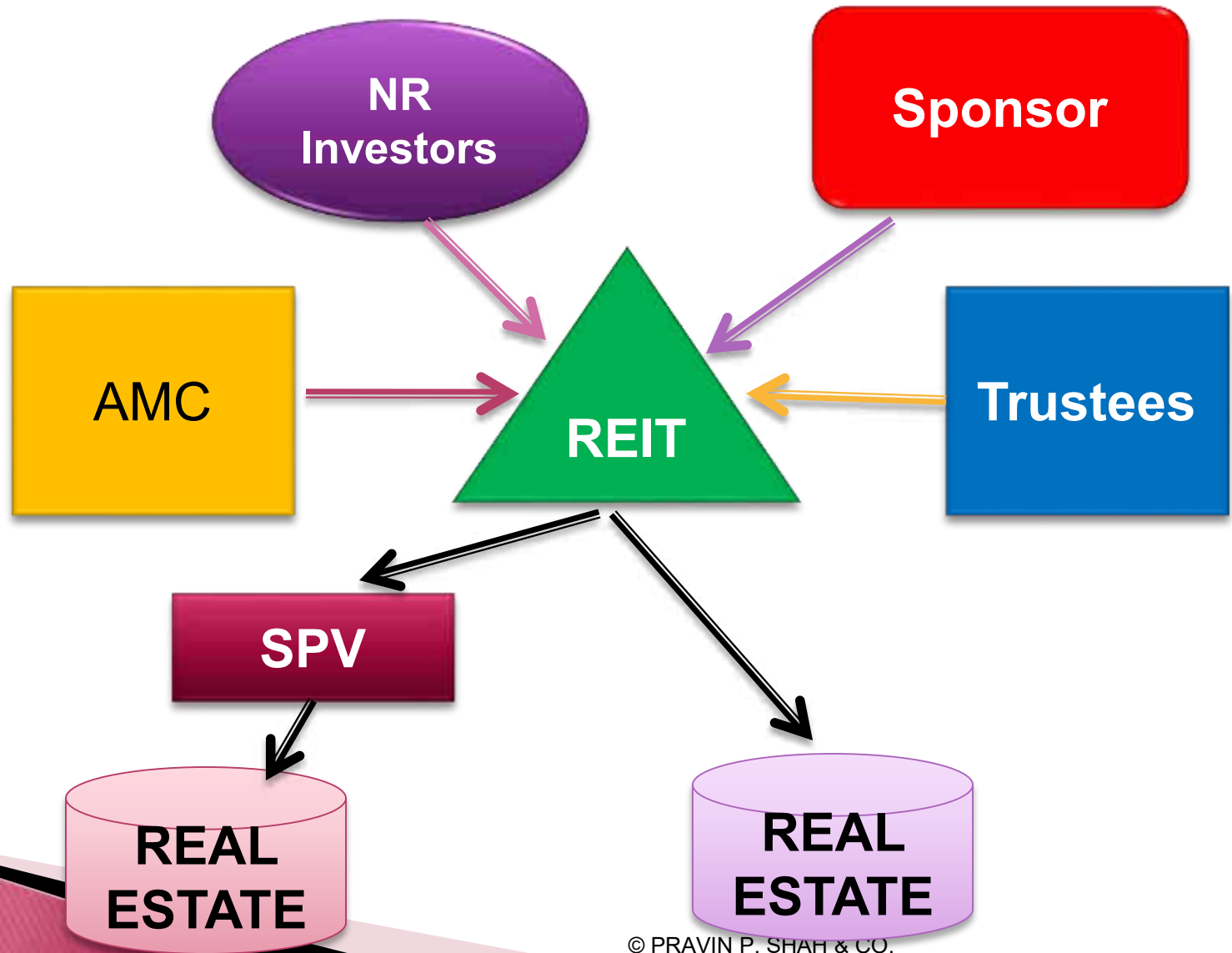
Sch.8: Investment Vehicle

- IV is an **Indian Vehicle** which makes Investments in Indian Companies
- IV must be Registered with and Regulated by the SEBI or any other Authority under its applicable Regulations
 - IV must be an Indian entity
- NRs would invest in Units of IV which would actually invest in shares / securities of Portfolio Companies / SPVs

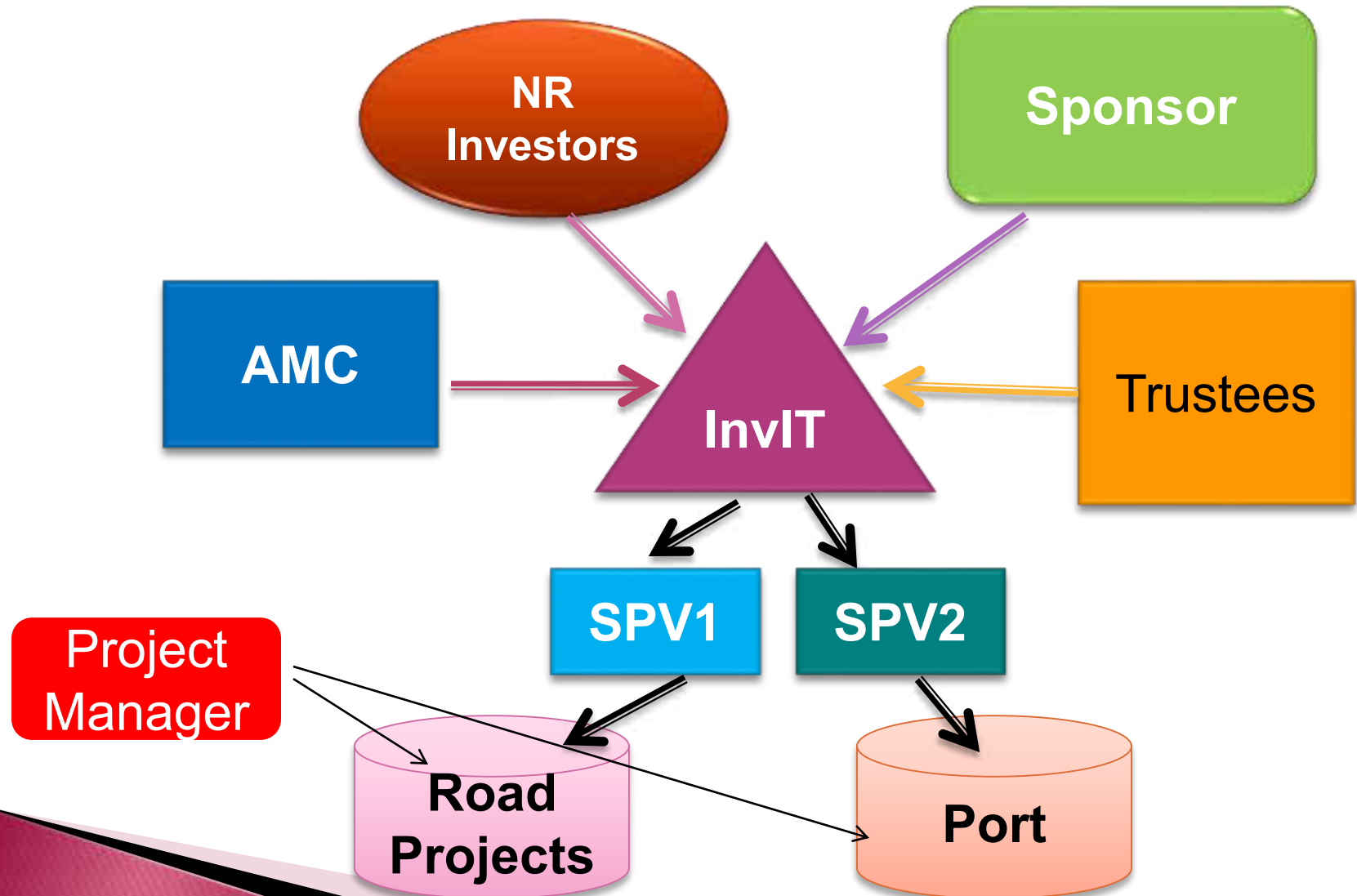
Sch.8: Investment Vehicle

- Eligible Investors who can invest in IV units:
 - Any PROI ~ Non-Pakistani / Bangladeshi
 - RFPI
 - NRI
 - FVCIs ~ But only in Cat I AIF
- Investment terms:
 - Payment from abroad or NRE / FCNR A/c
 - Investor Can sell / transfer / redeem such units
 - Subject to relevant SEBI restrictions
 - Investment is on repatriable basis

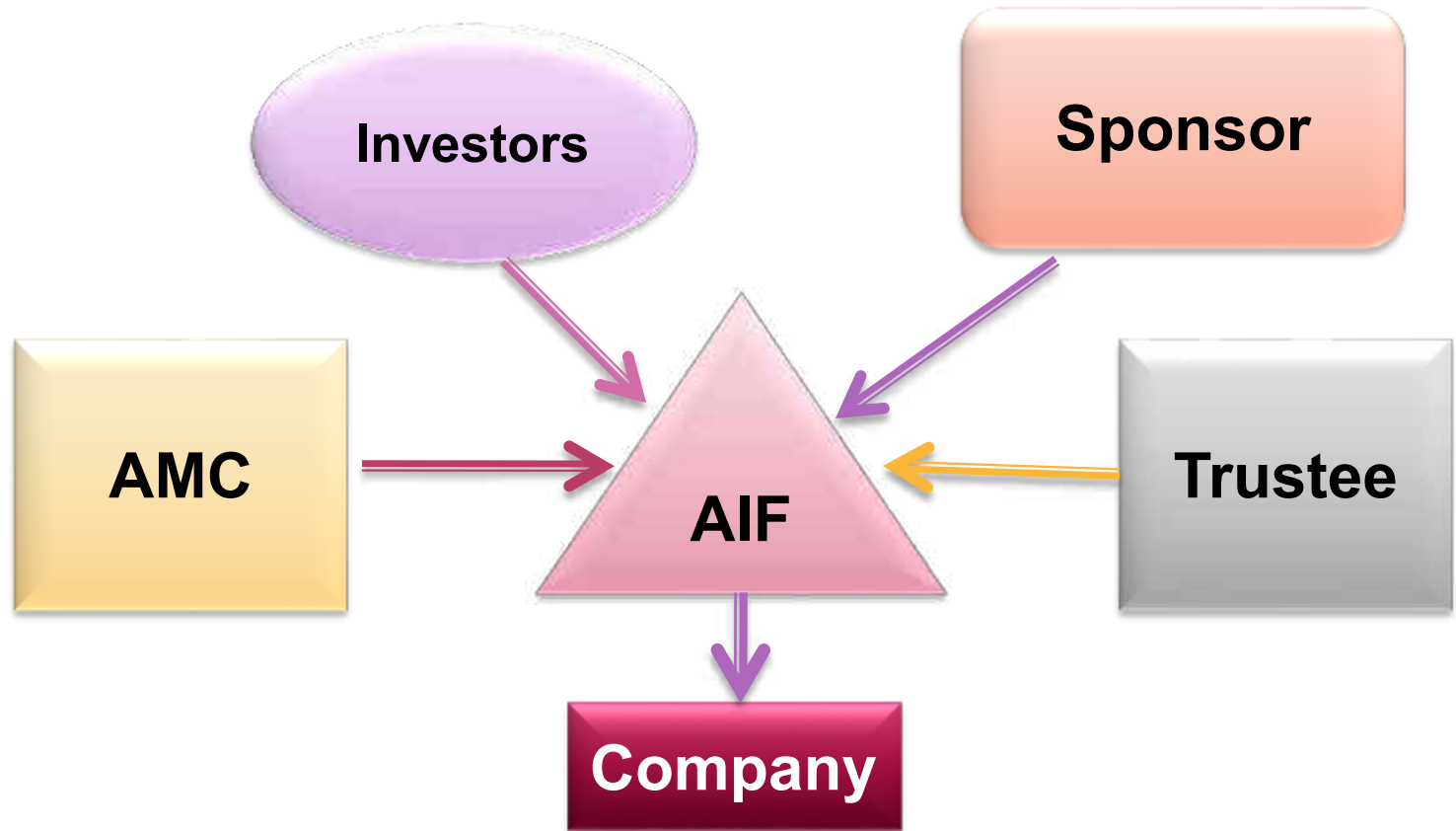
Real Estate Investment Trust



Infrastructure Investment Trust



Alternative Investment Funds



Categories of AIF

Particulars	AIF-I	AIF-II	AIF-III
Types	VCF / SME / Social Venture / Infra Funds	Private Equity / Debt Funds	Hedge Funds
Borrowing Allowed	No	Temporary funding \leq 30 days; 10% of Corpus + 4 times / Year	Yes subject to a maximum limit to be specified by SEBI
Investment	VCU /Cos / LLP – 2/3 in Eq. / Eq.-linked & Max 1/3 in Debt, QIP, IPO of VCU	Unlisted Cos. / Units of AIF-I / II	Listed / Unlisted Securities / Derivatives / Structured Products / Units of AIF-I /II
Max Investment in 1 Co.	25% of Corpus	25% of Corpus	10% of Corpus

Sch.8: Investment Vehicle

- ▶ Downstream Investment by IV
 - Investment in Portfolio Companies by IVs with For Invest. is treated as Domestic Invst. as long as:
 - Sponsor and AMC are both Indian O & C
 - Co Ownership: 50% + of capital held by resident Indian Citizens
 - Co Control: Right to appoint majority of BoD / control the management by SHA / SSA with resident Indian citizens
 - LLP: 50%+ of Invst is by R Indian Citizens
 - If Sponsor and / or AMC are Individuals then they must be resident Indian citizens

Sch.8: Investment Vehicle

- Sponsor and AMC are both Indian O & C
 - LLP Ownership: 50% + of Investment in LLP contributed by Resident Indian Citizens or entities ultimately O&C by R Indian Citizens
 - LLP Control: Right to appoint majority of DPs where such DPs alone have control over all the policies of the LLP.
- Control solely dependent upon the status of Sponsor / AMC
- Entity other than Co / LLP – SEBI to prescribe manner of determining its O&C

Sch.8: Investment Vehicle

▶ Downstream Investment by IV

- Extent of Foreign Investment in IV's corpus per se (e.g., AIF) irrelevant to ascertain whether it is Foreign or Resident
 - AIF can float an entire scheme dedicated to NRIs and yet remain Domestic as long as Sponsor / AMC is O&C by Indians
 - E.g., India Opportunities Fund (AIF-II) launched for RE
 - Manager, Sponsor, Trustee all O&C by Indian citizens
 - Fund contributors all PROI
 - Yet investment by AIF-II in RE treated as Domestic Investment
 - Can invest in RE Business / TDRs trading, Defence, Multi-brand.

Sch.8: Investment Vehicle

- ▶ Downstream Investment by IV
 - AIF set up or AMC owned by Indian Financial Institution, like HDFC which has over 75% Foreign Shareholding
 - Investment by such AIF Treated as Foreign since ultimate Ownership of Sponsor / AMC not with Resident Indians
 - But if AIF set up or AMC owned 51% by Indian Residents and 49% directly owned by Foreign Investors
 - Investment by such AIF treated as Domestic since ultimate Ownership of Sponsor AMC is with Resident Indians

Sch.8: Investment Vehicle

- If even any one of Sponsor or AMC is O&C by NRs then entire Downstream Investment by IV treated as Foreign
 - If treated as Foreign, then Investment in Portfolio Companies must conform to restrictions / sectoral caps, pricing / valuation, reporting norms applicable to FDI under Sch.1
 - If treated as Foreign, then Investment in Portfolio LLPs must conform to restrictions applicable to LLPs under Sch.9
 - In earlier E.g., if AMC was O&C by NRs then investment in RE Business / TDR trading not permissible

Sch.8: Investment Vehicle

- AIF Cat-III (Hedge Fund) with Foreign Investment
 - Can Invest in only such Portfolio Securities as are available to a RFPI under Sch. 2 / 5
 - Restricted List for RFPIs
 - NCDs with Maturity of less than 3 years

Transfer of Shares to PROI

Seller	Buyer	Auto Route	Remarks
PROI other than NRI / OCI	Any PROI	Sale / Gift No Pricing G/L	If FPI buys > 10% then must divest excess
NRI / OCI	Any PROI	Sale / Gift No Pricing G/L Now RBI not reqd.	If NRI buys > 5% then must divest excess
R or NRI on NR	Any PROI	Sale Pricing G/L	NA if Buyer is NR NRI under Sch. 4
R	Any PROI	Gift – RBI Approval	5% Capital Limit To relatives only Value <\$50,000
NRI on NR basis	Any NRI on NR basis	Sale / Gift No Pricing G/L	

Transfer of Shares to PROI

- Pricing Guidelines
 - Price worked out as per relevant SEBI G/L
 - Buyback / Delisting / Takeover
 - Unlisted Co. ~ Internationally Accepted Pricing Method
 - ALP Basis
 - As per CA / MB
- FC-TRS filed with AD
 - Within 60 days of Transfer

Transfer of Downstream Invst

- ▶ Shares / CCDs of Indian Co. which is not O&C by Indian Citizens can be transferred to
 - **PROI**
 - No Pricing Guidelines
 - But reporting in FC-TRS
 - **PRII**
 - No reporting
 - But comply with Pricing Guidelines
 - **Indian Co. with FI + Co is O& C by NRs**
 - No Pricing
 - No Reporting

Conclusion

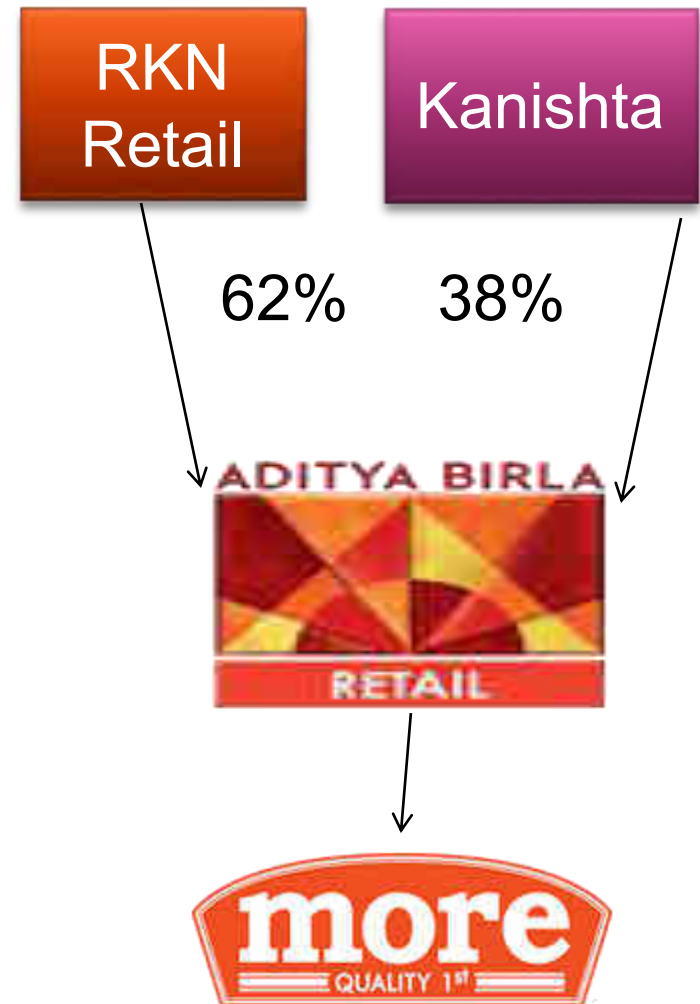
Sch.1 Caps Not Applicable

Restricted Sectors / Sectoral Caps / FDI Conditions not applicable to the following:

Investment	Unlisted Cos.	Listed Cos.
NRIs on Non-repatriable basis	Domestic – no limits	Domestic – no limits
Repatriable PIS by RFPI	NA	No limits with Spl. Resln.
Repatriable PIS by NRIs	NA	24% limit with Spl. Resln.
Indirect Foreign Investment via AIFs provided AIF's Control is with Indians	Domestic – no limits	Domestic – no limits (if Cat II or Cat III)
FVCI on repatriable basis	No limits but only in restricted sectors	×

Case Study: More for Amazon

- ▶ “**More**” Multi-Brand Retail Trading Outlets
 - 575 Supermarkets + Hypermarkets
 - 4th Largest Indian Retail Chain
 - Owned 100% by Aditya Birla Retail Ltd (**ABRL**)
 - ABRL, in turn, owned by 2 Private Ltd Cos. of Birla Group



Case Study

- ▶ Amazon wanted to acquire More
 - Offline presence with online store
 - FDI up to 51% allowed in MBRT on Govt Approval
 - FDI up to 100% on Wholesale Cash & Carry Business on Auto Route
 - State Govt. approvals needed for MBRT

Case Study

- Structure Adopted
 - Witzig, an existing Facility Management Back-end Firm used
 - Amazon invested 49% in Witzig while balance
 - 51% owned by Samara Capital, an AIF
 - AMC / Sponsor / IM entirely controlled and managed by Indian Citizens - \therefore IV treated as O&C by Indians
 - Corpus held by some US Family Offices
 - \therefore Investment by Samara treated as Domestic Investment
 - Witzig acquired 100% Shares of ABRL

Case Study

amazon

Samara,
AIF

49% 51%

Witzig

Sale of
100% stake
in ABRL for
Rs. 4200 cr.

RKN
Retail

Kanishta



Case Study

- Samara Owned and Controlled by Indians
 - So 51% in Witzig is O & C by Indians
 - So Witzig is a Domestic Company
 - Downstream Investment in ABRL is Not Indirect FDI
 - Will not require approval of State Government for MBRT FDI
 - Amazon can adopt the same model for buying out other MBRT Outlets

Case Study: Final Structure

amazon

49% 51%

Samara,
AIF

O&C by Res
Indians

Witzig

O&C by Res Indians

100%



THANK YOU!

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