

Borrowing and Lending in Foreign Currency & Indian rupees

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The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. Above the 'Y' is a yellow chevron shape pointing to the right. The logo is positioned in the bottom right corner of the slide, partially overlapping the background image of a woman.

Building a better
working world

1

**Introduction:
Funding in India**

2

**Evolution of ECB
Framework**

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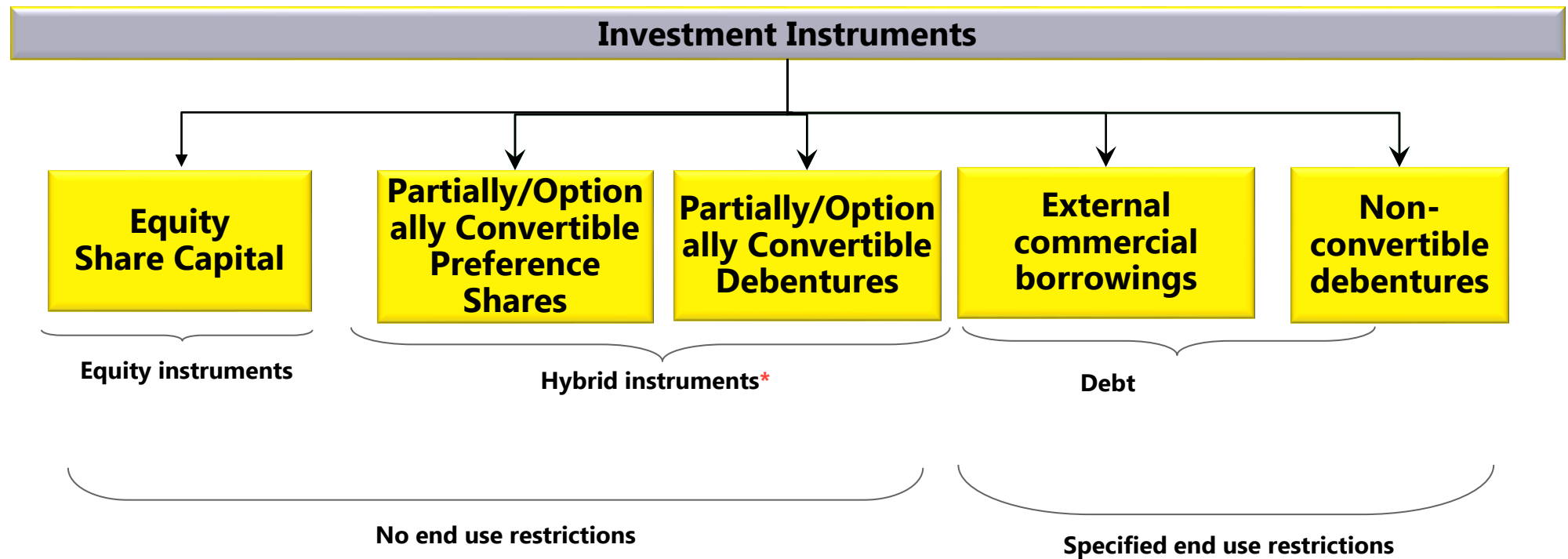
1

Introduction



Introduction

Funding Options



**Government of India working on the policy*

Debt Funding

Forms

01

On-shore

The offshore funding routes are generally highly regulated and need to comply with a number of conditions provided under Foreign Exchange Management Act, 1999 ("FEMA");

Entities facilitating such funding includes, NBFC, AIF, ARC, etc.

02

Off-shore

Onshore lending generally does not require compliance with FEMA, and is generally less regulated;

Entities listed as Recognized Lenders including lenders in FATF compliant countries, foreign equity holders, etc.

Investment opportunity

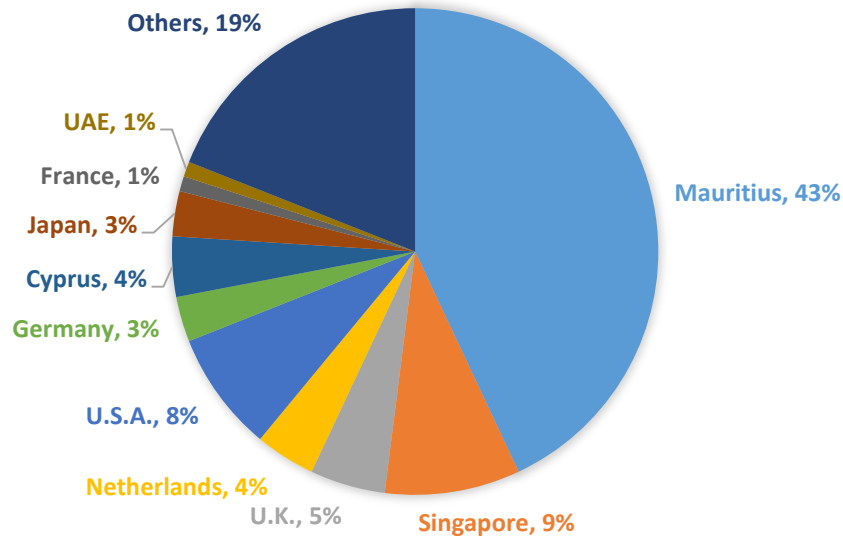
- ▶ India represents 1/6th of the world population
- ▶ India needs to create job opportunities and play a significant role in global economy
- ▶ Investments will generate greater economic activity; and
- ▶ Create employment opportunities – direct and indirect

Investment/ funding plays a **significant role in the future**:

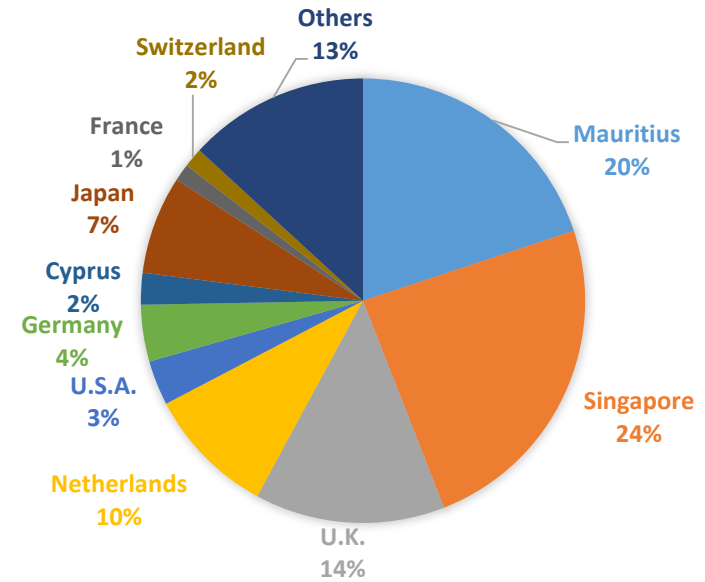
- ▶ Identify next generation of technology and invest
- ▶ Digital, Internet of Things, Robotics will reset business
- ▶ Use talent pool to invest ahead in R&D and create technologies to drive global business

Top investing countries in India

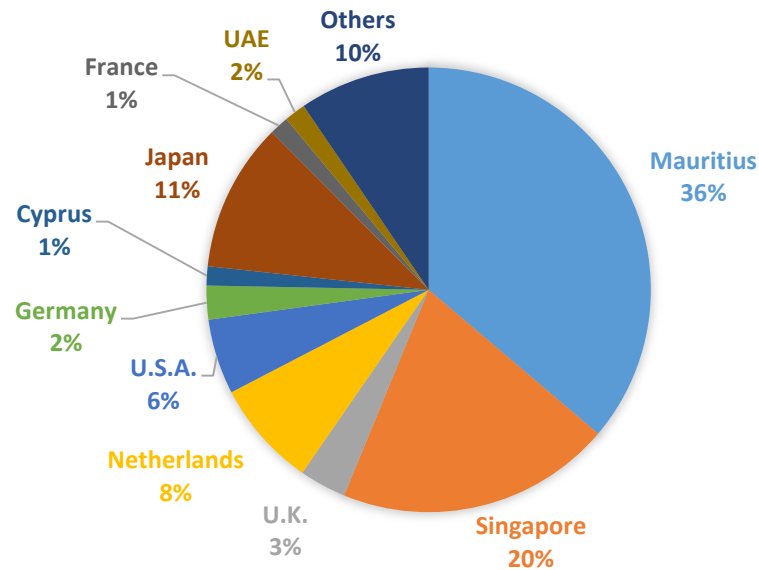
TOP INVESTING COMPANIES (CUMULATIVE INFLOWS TILL FY2009-10)



TOP INVESTING COMPANIES IN FY2013-14



TOP INVESTING COMPANIES IN FY2016-17

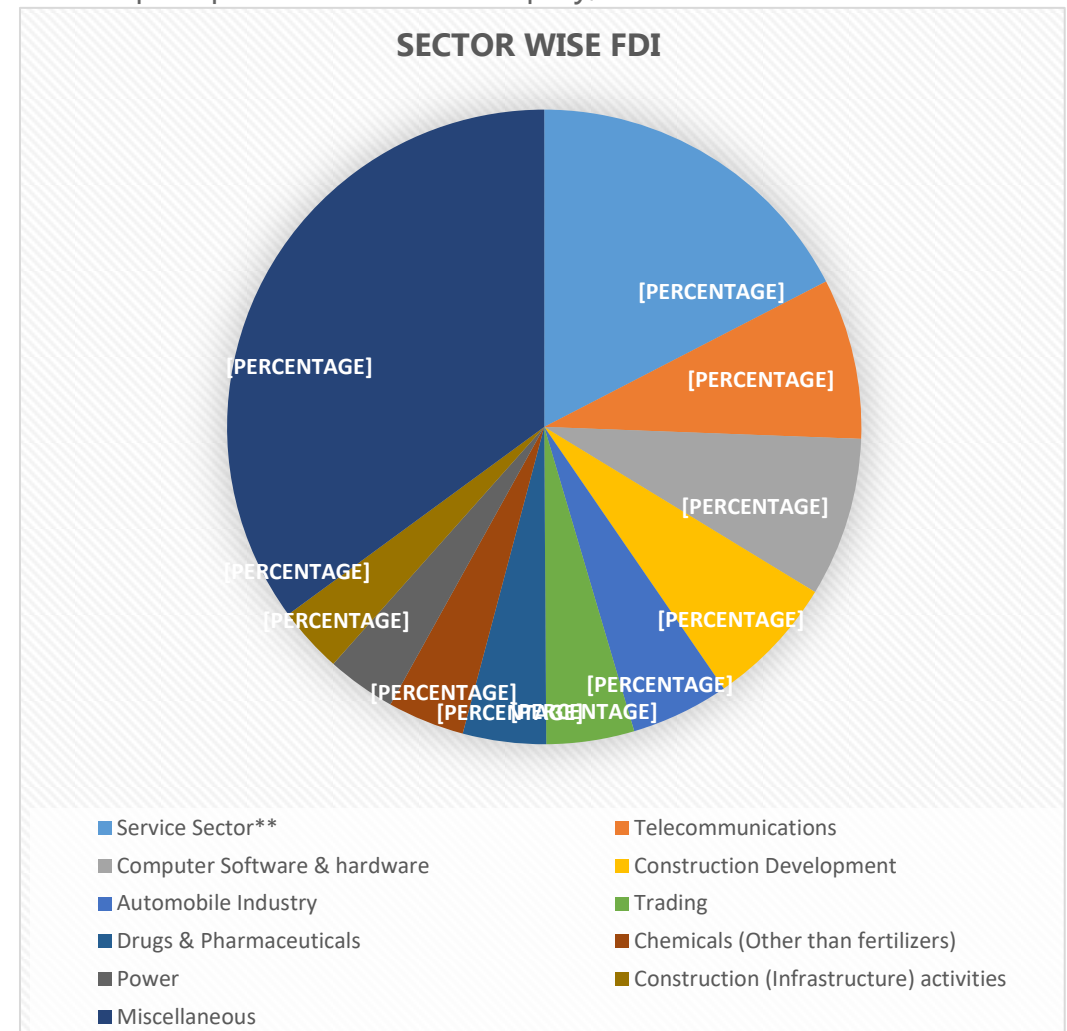


FDI policy of India – Evolution

- ▶ Pre-1975: Anti FDI
 - ▶ Political challenges & economic instability
 - ▶ Suspended world financial aid
 - ▶ Import substitution strategy
 - ▶ Forced devaluation of currency
- ▶ 1976-1991: Selective FDI
 - ▶ Not an open door policy
 - ▶ Pressure of overseas loans
 - ▶ FDI leads to outflows only after there is production and that too only when there is profit. Loans have to be paid whether investments are productive or not
 - ▶ FDI provides access to advanced technology
- ▶ 1991: Pro-FDI
 - ▶ BoP crisis
 - ▶ Consensus for economic reform
 - ▶ Access to capital and technology to fuel growth
 - ▶ Demand for level playing field, tariff protection and internal reforms
- ▶ 2000: Automatic route
 - ▶ Removal of dividend balancing regulations
 - ▶ FERA converted to FEMA
 - ▶ Introduction of transfer pricing legislation
 - ▶ Current account transactions relaxed
- ▶ 2014+: Decentralisation
 - ▶ Focus on periodic review of policies
 - ▶ Ease of doing business in India

Sources of FDI

- ▶ Transnational corporations
- ▶ Capital providers - Private equity, SWF and Pension



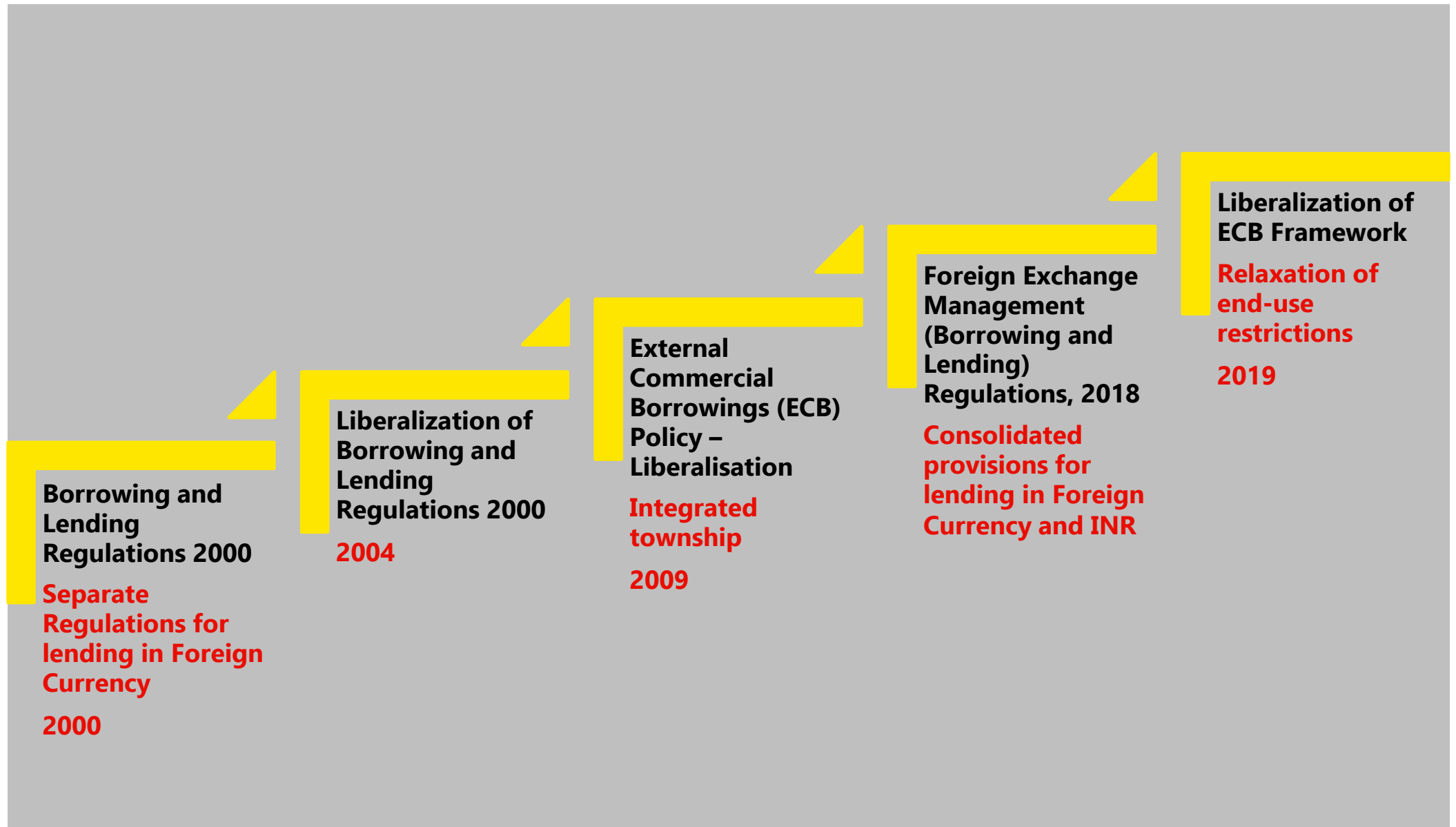
***Services sector includes Financial, Banking, Insurance, Non-Financial / Business, Outsourcing, R&D, Courier, Tech. Testing Analysis*

2 Evolution



Evolution over years

Borrowing and Lending Norms in India

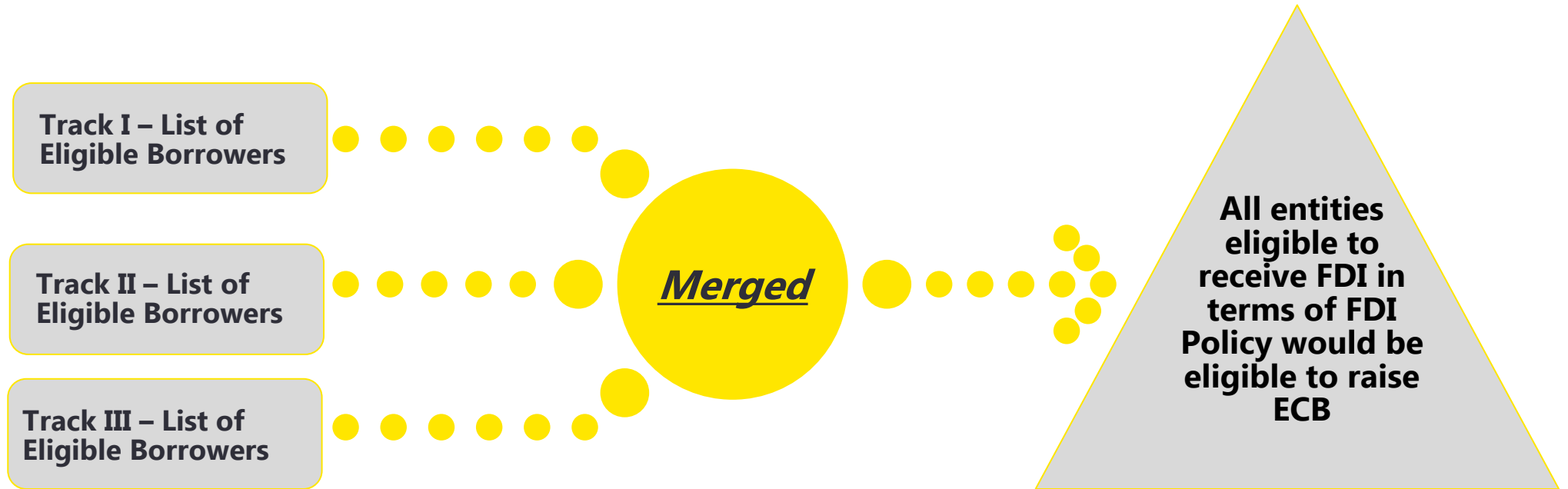


Evolution – *Recent Changes*

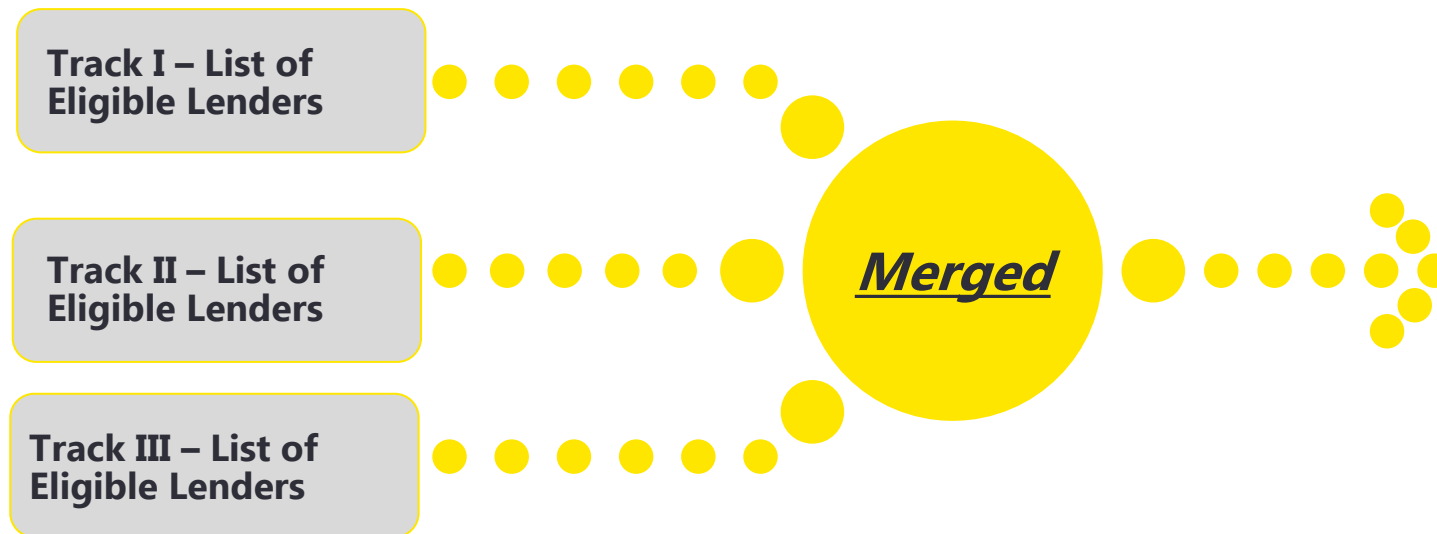
Borrowing and Lending Norms in India

- ▶ RBI *vide* Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 (**FEMA 3(R)**) **combined regulations** in relation to borrowing or lending in **foreign exchange/ INR** and regulations in relation to dealing with issuance of **FCCB**
- ▶ To rationalise and provide **operational framework for ECB and Rupee denominated bonds**, on 16 January 2019 the RBI, announced the New External Commercial Borrowing Framework (New ECB Framework) which was later compiled in the Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated 26th January 2019 (as amended from time to time)
- ▶ ECB Framework was further **liberalised** vide RBI Circular “**External Commercial Borrowings (ECB) Policy – Rationalisation of End-use Provisions**” dated 30 July 2019

Eligible Borrowers



Eligible Lenders



- Resident of Financial Action Task Force (FATF) or International organization of Securities commissions compliant country;
- Multilateral and regional financial institution where India is a member country;
- Individuals if they are foreign equity holders or for subscription to bond/debentures listed abroad
- Foreign branches / subsidiaries of Indian Banks – only for FCY ECB except FCCBs and FCEBs

Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

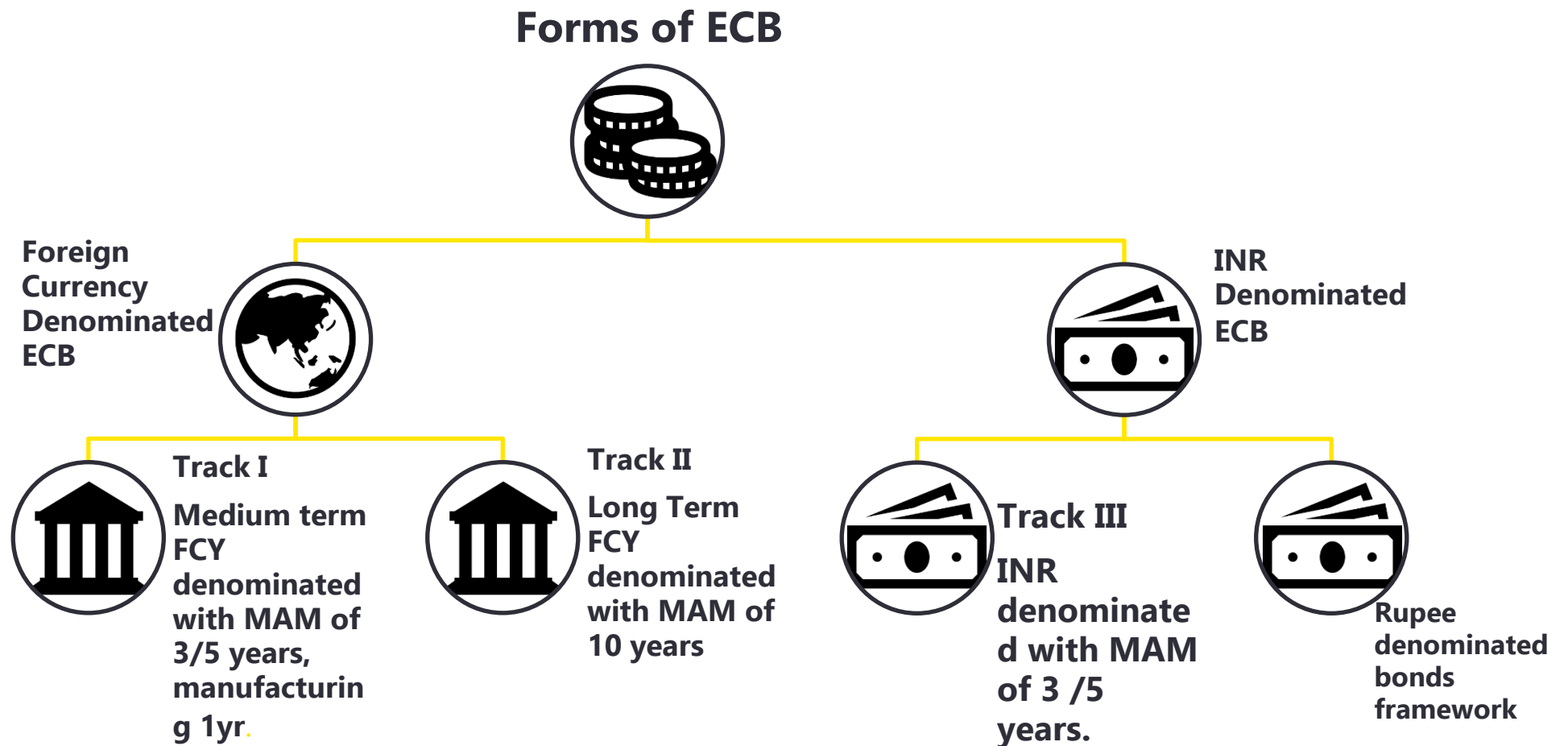
Real Estate Activities – Defined

Long awaited?



However, this would not include development of integrated township, purchase/ long term leasing of industrial land as part of new project/modernization or expansion of existing units or any activity under 'infrastructure sub-sectors' as given in the Harmonized Master List of Infrastructure sub-sectors approved by the GOI

Merging of Tracks



End-use Restrictions

Liberalisation

Investment in real estate or purchase of land except activities in the Harmonised Master List of Infrastructure Sub-sectors notified by GOI, construction and development of SEZ and industrial parks/integrated townships

Investment in capital market

Equity investment

Working capital purposes *only from foreign equity holder*

General corporate purposes *only from foreign equity holder*

Repayment of Rupee loans *only from foreign equity holder*

On-lending to entities for the above activities

Liberalisation

The end use restrictions for ECB proceeds are:

- a. Real estate activities;
- b. Investment in capital market;
- c. Equity investment;
- d. Working capital purposes from foreign branches/ subsidiaries of Indian banks;
- e. General corporate purposes from foreign branches/ subsidiaries of Indian banks;
- f. Repayment of Rupee loans from foreign branches/ subsidiaries of Indian banks;
- g. On-lending to entities for the above activities, except in case of ECB raised by NBFCs for the purpose stipulated at (d), (e) and (f).

Minimum Average Maturity Period

Minimum Average Maturity Period

- 3 years for all ECB's irrespective of the amount (except specifically provided)
- 1 year in case of ECB up to 50 million in the manufacturing sector
- 5 years in case ECB is raised from foreign equity holders for working capital, general corporate purposes and repayment of rupee loan
- 7 years in case ECB raised from other than foreign equity holder for working capital purposes or general corporate purposes or on-lending by NBFCs for working capital purposes or general corporate purposes
- 10 years in case ECB raised from other than foreign equity holder for repayment of Rupee loans availed domestically for capital expenditure and on-lending by NBFCs for the same purpose
- 10 years for ECB raised from other than foreign equity holder for repayment of Rupee loans availed domestically for purposes other than capital expenditure and on-lending by NBFCs for the same purpose

Not foreign branches / subsidiaries of Indian banks

*Liberalised**

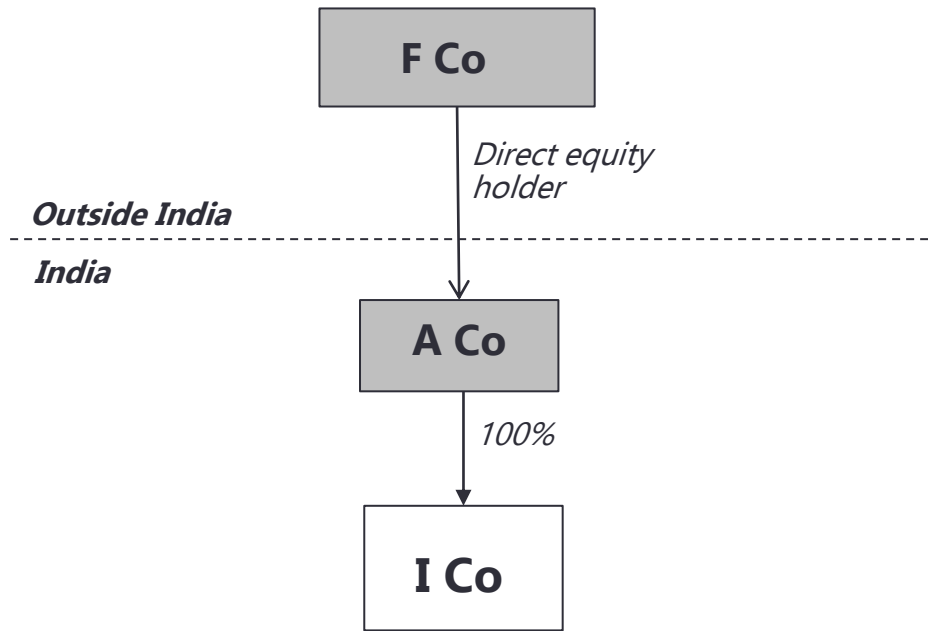
Powers delegated to AD Bank

- ▶ Changes in respect of ECBs, like name of borrower/lender
- ▶ Transfer of ECB
- ▶ Cancellation of LRN
- ▶ Refinancing of ECB
- ▶ Conversion of ECB to equity
- ▶ Creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB

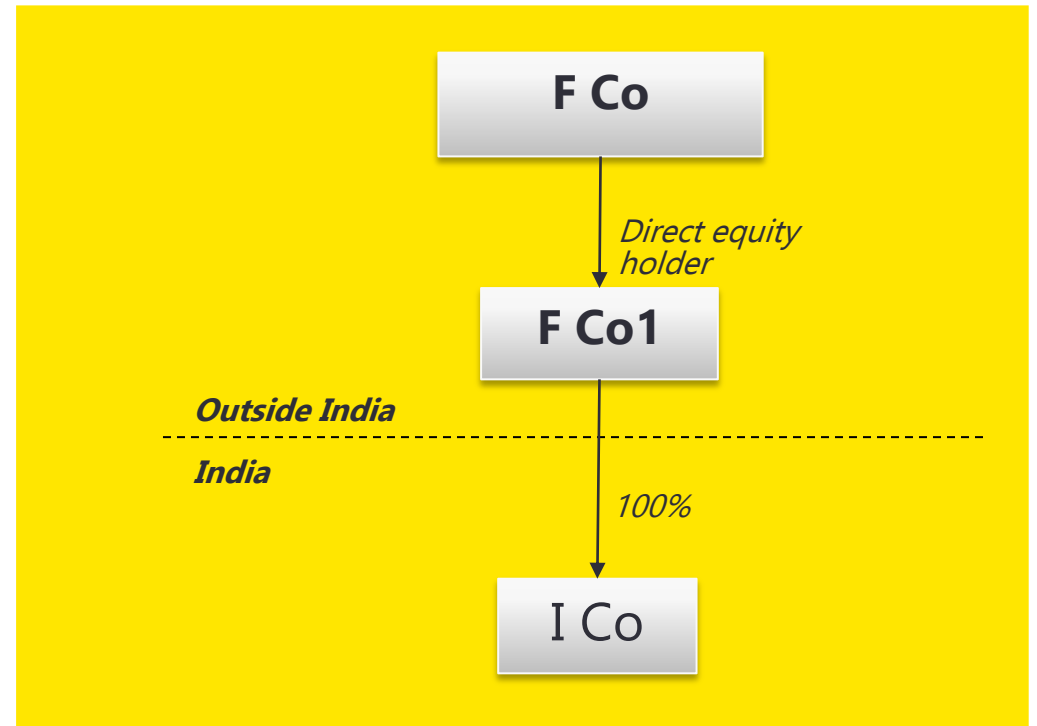
3 Case Studies



Case Study



SCENARIO 1



SCENARIO 2

Query:

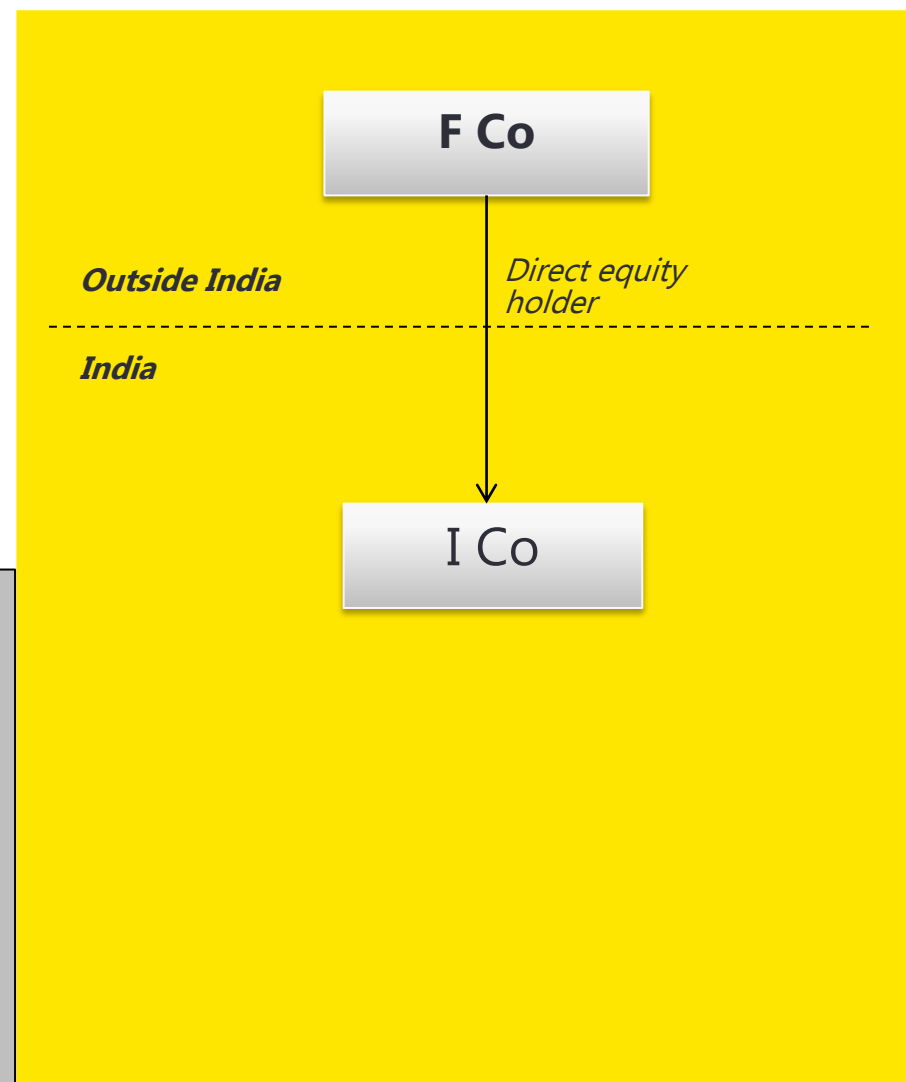
Whether F Co can be considered as foreign equity holder for the purposes of giving ECB to ICO?

Case Study

- ECB of USD 7.5 million availed by I Co., engaged in manufacturing sector, from its direct equity holder, in FY 2014-15, matures on 04 August 2021 (*i.e.*, after 7 years).
- Funds were obtained for **working capital purposes**.
- The company wants to repatriate funds outside India *i.e.*, prepay ECB availed by it, by December 2019 (*i.e.*, after 5 years, but before 7 years).

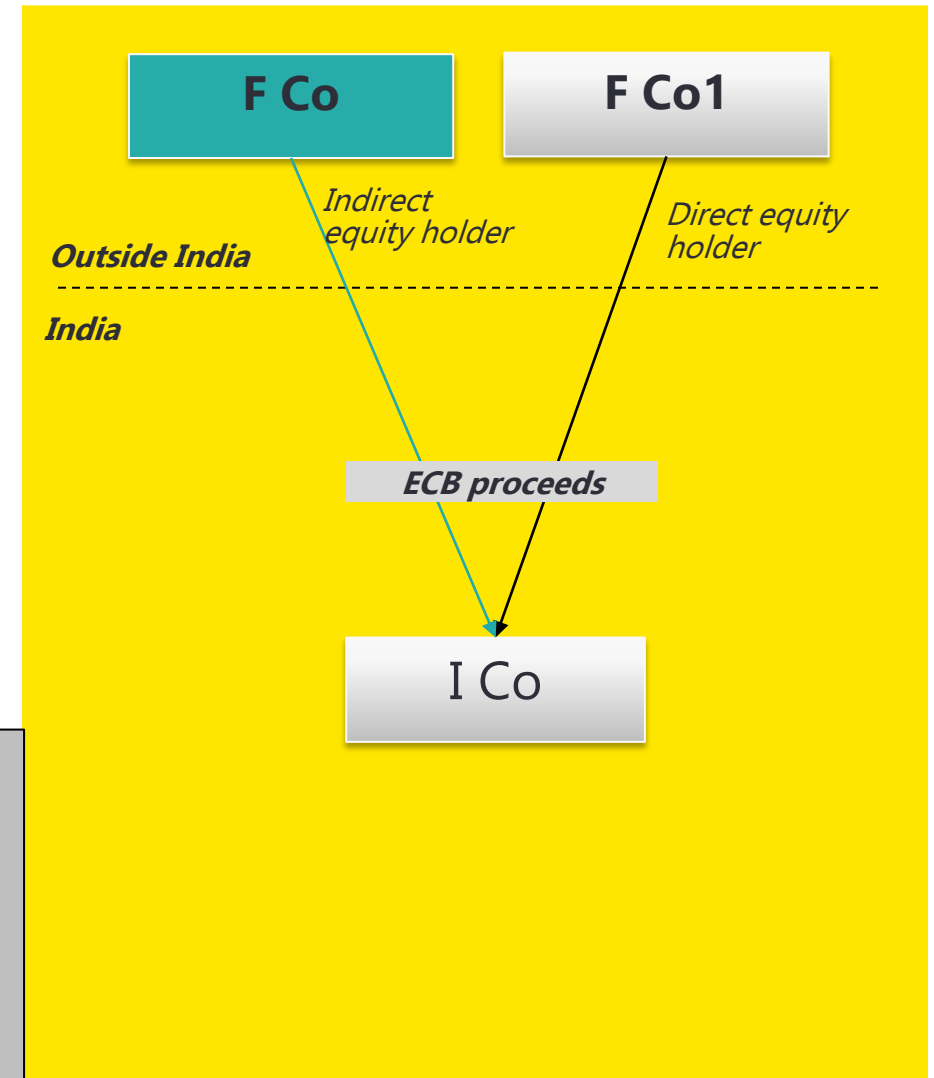
Query:

- Whether **prepayment** can be made for the ECB availed?
- Whether **prepayment** can be made before the expiry of:
 - Maturity period as per ECB agreement (*i.e.*, 7 years) **but**
 - After the minimum average maturity *i.e.* 5 years (as per the extant RBI Regulations, at the time of prepayment)



Case Study

- I Co obtains ECB proceeds from:
- Direct foreign equity holder for capital expenditure purposes;
 - Indirect foreign equity holder for capital expenditure purposes.



Query:

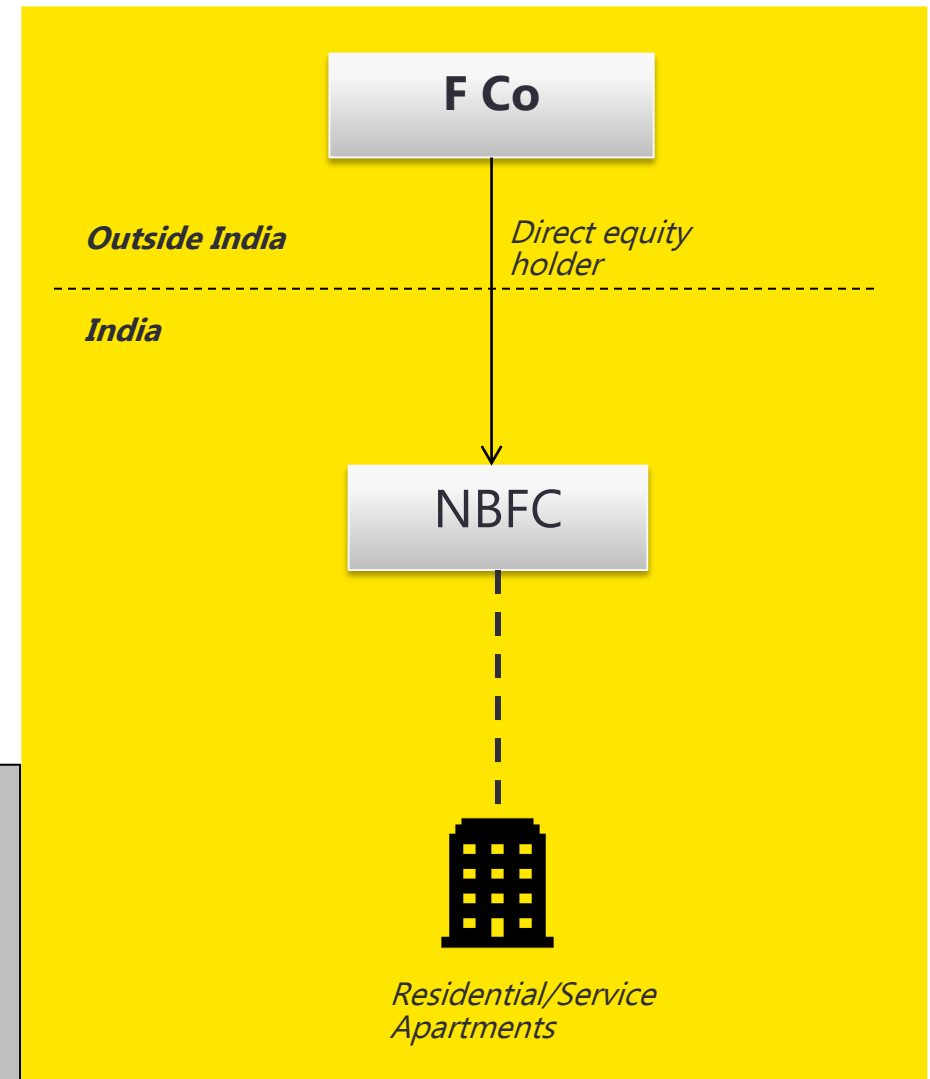
- Whether ECB liability – equity ratio would be applicable in both cases?
- What is included for calculation of this ratio?

Case Study

- NBFC obtain ECB proceeds from a recognized lender towards purchase of residential homes in integrated townships for purpose of renting/ use as service apartments etc.

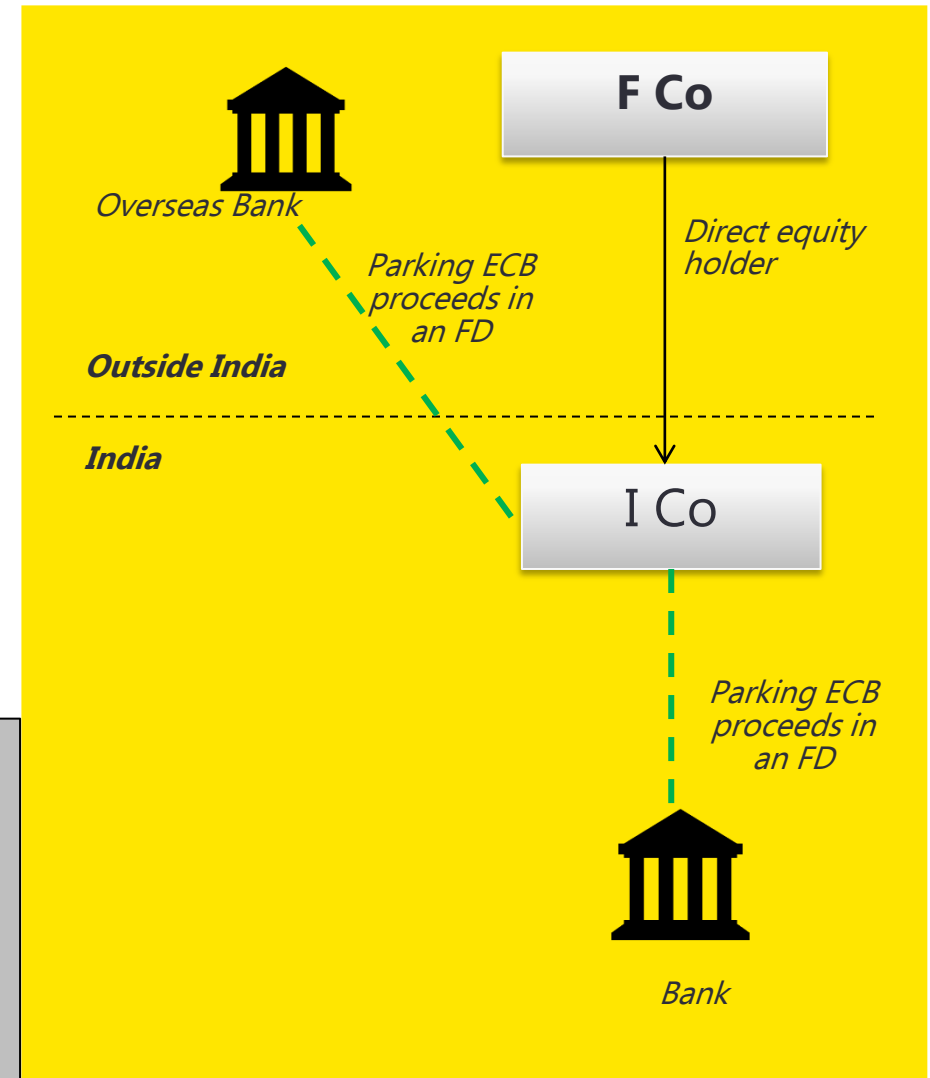
Query:

- Whether NBFC would be permitted to utilise ECB proceeds for this purpose?
- If yes, what would be the applicable MAMP?



Case Study

- I Co obtain ECB proceeds from F Co with an MAMP of 3 years;
- I Co park these proceeds in an FD:
 - In a scheduled bank domestically in India;
 - In a FD in an overseas bank.



Query:

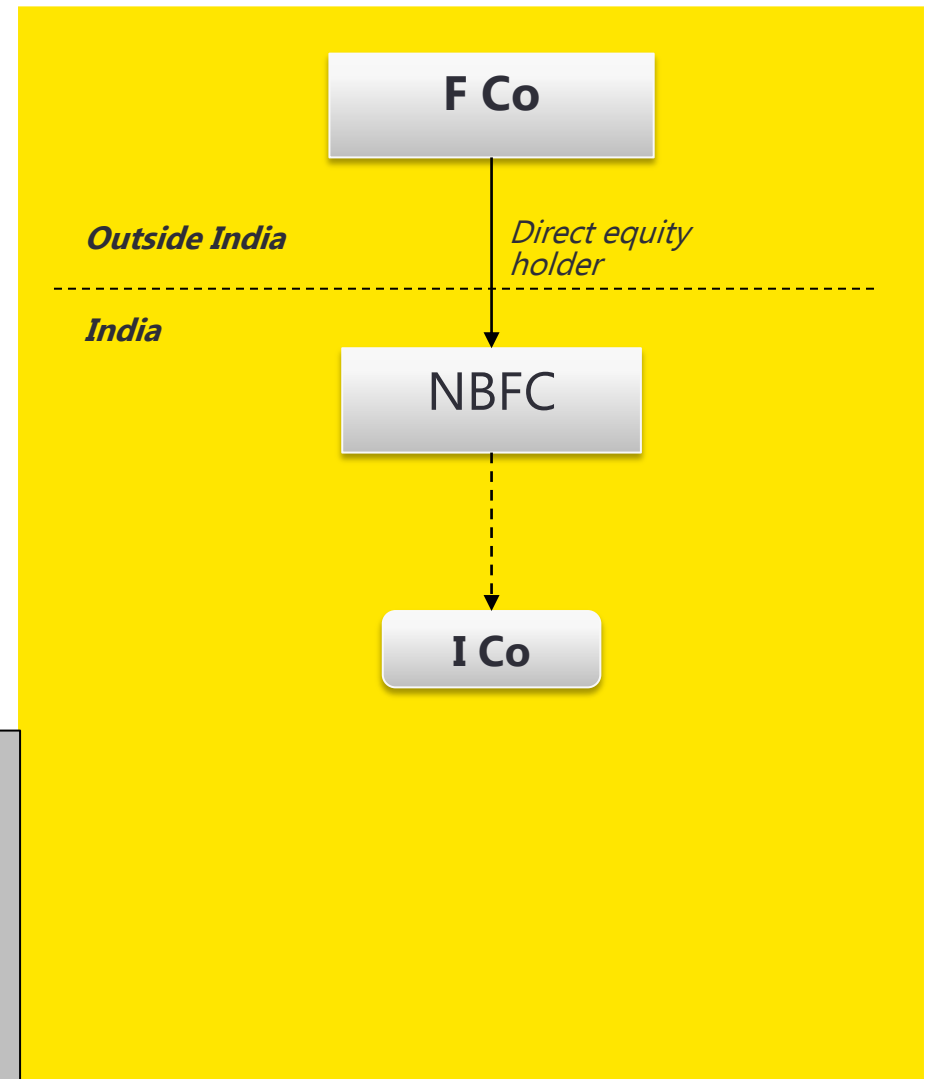
- Whether NBFC would be permitted to park the ECB proceeds in FD:
 - Domestically;
 - Overseas.

Case Study

- NBFC obtains ECB proceeds from a recognized lender for ***further on-lending***,
- ***I Co is an Indian company utilising ECB proceeds*** in India for the following purposes:
 - Reimbursement of expenses already made for business expansion;
 - Acquisition/development/construction of own office space;
 - Real estate broking;
 - Construction projects.

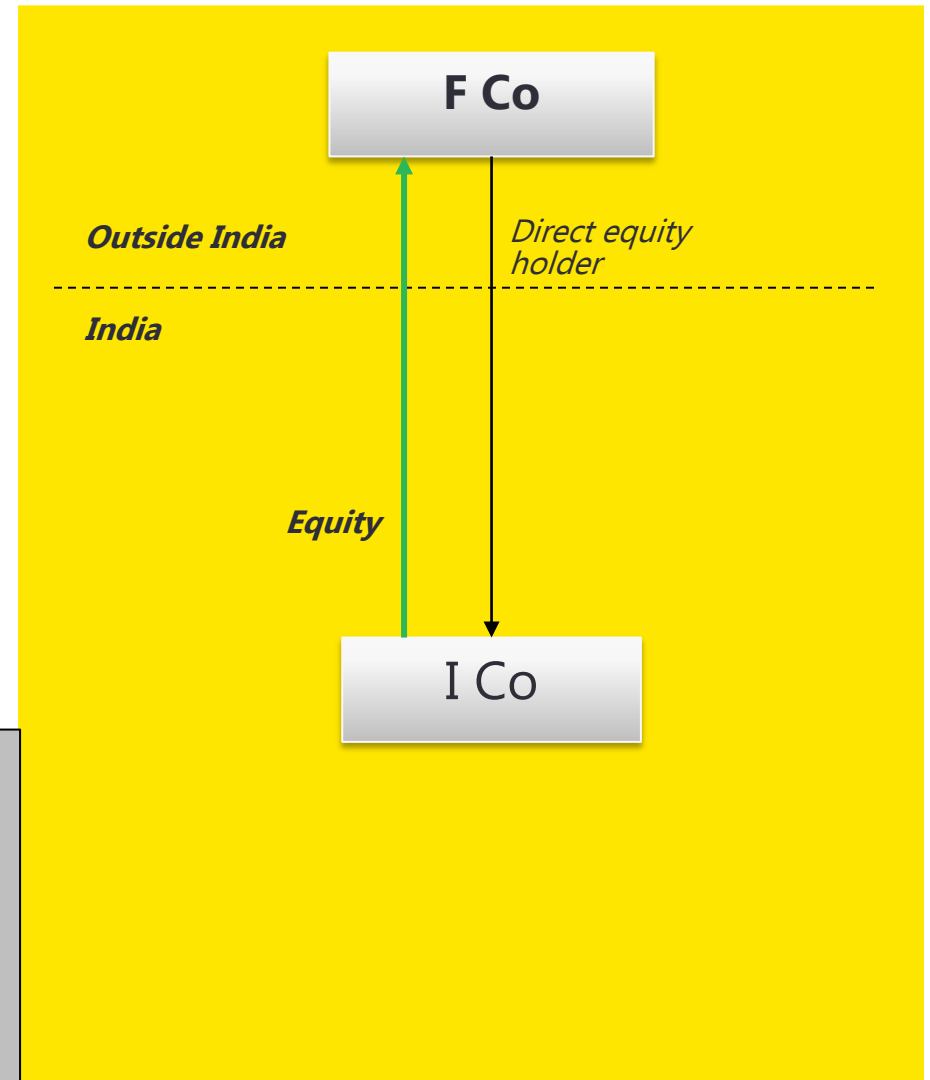
Query:

- Whether NBFC would be permitted to utilise ECB proceeds for this purpose?
- If yes, what would be the applicable MAMP?



Case Study

- I Co obtains ECB proceeds from its foreign equity holder for capital expenditure purposes with MAMP of 3 years and repayment period of 5 years;
- I Co wants to convert the unpaid portion of the ECB into equity and the interest accrued and unpaid on the ECB into equity shares.



Query:

- I Co can convert unpaid ECB into equity?
- Whether unpaid and accrued interest on equity can be converted to equity?

4 Practical Insights



Practical Insights

- ▶ Slump Sale
- ▶ Buyback of securities
- ▶ Prepayment of ECB
- ▶ ECB by SEZ entities (like company, LLP)
- ▶ Entities undertaking multiple business activities – determination of the end-use and utilisation
- ▶ Interest payment by LLP to its foreign partners

A woman with dark hair and bangs, wearing glasses and a dark top, is shown in a close-up shot. She has a pencil in her mouth and is looking thoughtfully to the right. The background is dark and out of focus, suggesting an indoor setting like a library or office. The text "Thank You" is overlaid in white on the left side of the image.

Thank You