

CTC – FEMA STUDY CIRCLE

NEW FDI Regulations

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Introduction

Reserve Bank of India (RBI) notified Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 vide notification dated October 17, 2019 such rules in pursuance of the recently notified amendments to Section 6 of the Foreign Exchange Management Act, 1999 after they were first proposed in the Finance Act, 2015 which shifted the control **over equity instruments from RBI to the Central Government (CG)**.

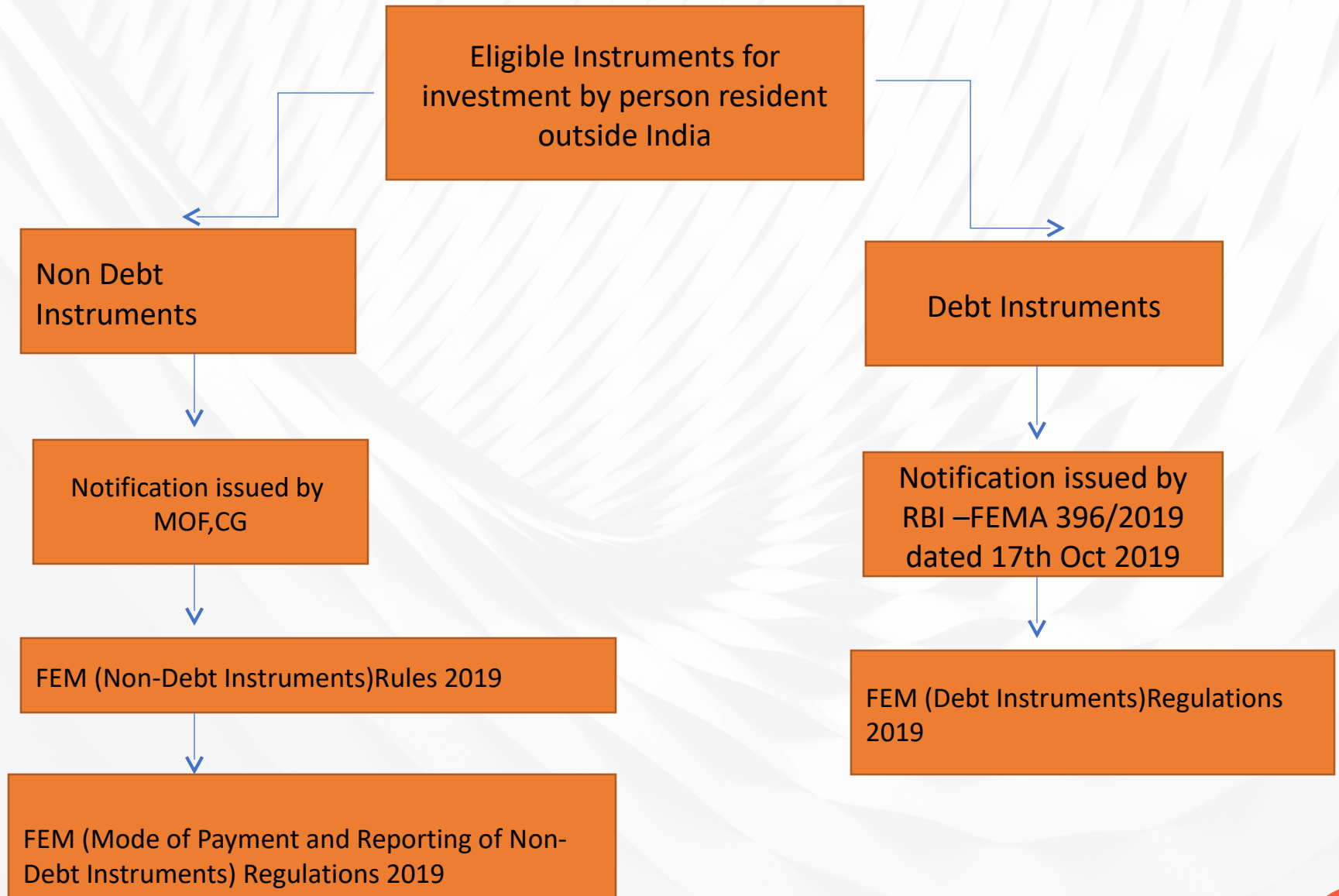
List of Debt and Non debt Instruments

FEMA 5R – Deposit
FEMA 14R – Manner of receipt &
Payment

Appointment of date
for applicability of prov.

- New Non Debt Rules – superseding 20(R) & 21R-Notification 395.
- Debt Regulations – FEMA Notification 396.
- Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019.

Introduction



Introduction

Old Regulation 5	New Regulations
Schedule 1	Rule 6-Chapter III
Schedule 2	Rule 10-Chapter IV
Schedule 3	Rule 12-Chapter V
Schedule 4	Rule 12-Chapter V
Schedule 5	Rule 14-Chapter VI Notification-396
Schedule 6	Rule 6-Chapter III
Schedule 7	Rule 16Chapter VII
Schedule 8	Rule 6-Chapter III
Schedule 9	Rule 6-Chapter III
Schedule 10	Rule 10& 12Chapter IV & V

Type of Instrument-Investment

DEBT



Analyze-Definitions

Non-Debt Rules 2019

- **Rule 2(k)-Equity instruments**-Term “Capital Instruments” Substituted with “ Equity instruments”. It means equity shares, convertible debentures, preference shares and share warrants issued by an Indian Company.
- **Rue 2(X)-Hybrid Securities**-means hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India;
(No further specification has been made in Rules)

Debt Regulations 2019

- **Regulations 2(d)-Debt Instruments**- “debt instruments” means the instruments listed under Schedule 1 of the Debt regulations 2019.

Analyze-Definitions

List of Non-Debt Instruments	List of Debt Instruments -396 Sch I
all investments in equity instruments in incorporated entities: public, private, listed and unlisted	dated Government securities/ treasury bills/Govt Bonds/ Corporate Bonds/depository receipts whose underlying securities are debt securities
capital participation in LLP	NCD/ bonds/CP issued by an Indian company
all instruments of investment recognized in the FDI policy notified from time to time	Security Receipts issued by ARC/ borrowing by Indian Firms through loan
investment in units of AIFs, REITs and Invlts.	debt instruments issued by banks, eligible for inclusion in regulatory capital
investment in units of MF or ETFs which invest more than fifty per cent inequity	investment in units of MF or ETFs which invest equal or less than fifty per cent in equity.
junior-most layer (i.e. equity tranche) of securitization structure	Credit enhanced bonds/all tranches of securitisation structure which are not Equity holder
acquisition, sale or dealing directly in immovable property	Listed NCD/ RPS or debentures issued in terms of Regulation 6 of Debt Regulations
contribution to trusts	Rupee denominated bonds/ units issued by Infrastructure Debt Funds/Municipal Bonds
depository receipts issued against equity instruments	Securitized debt instruments, including (i) any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s with banks, Financial Institutions or NBFCs as originators.

Analyze-Definitions

Non-Debt Rules 2019

Rule 2(ag)Listed Indian Company- means an Indian company which has any of its equity instruments or debt instruments listed on a recognized stock exchange in India and the expression “unlisted Indian company” shall be construed accordingly;”

Rule 2(h)Domestic Custodian-Definition has been aligned as per SEBI (Custodian of Securities) Regulations, 1996.

Debt Regulations 2019

- **Reg 2(o)-Municipal Bonds-** mean debt instruments issued by municipalities constituted under Article 243Q of the Constitution of India.
- **Reg 2(l)Mutual fund** - means an entity governed by the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

Borrowing by Indian **Firms** through loan-fall under
ECB ? – As per CG bifurcation

Schedule 1-Equity Instruments of an Indian Co held by PROI.

- WOS is no longer required to obtain a certificate from Statutory Auditor regarding utilization of pre-incorporation expenses which has been used for purpose for which amount was received while filing Form FC-GPR.
- Explanation to Pre-incorporation expenses has been removed.

Schedule 2-Investment by FPIs

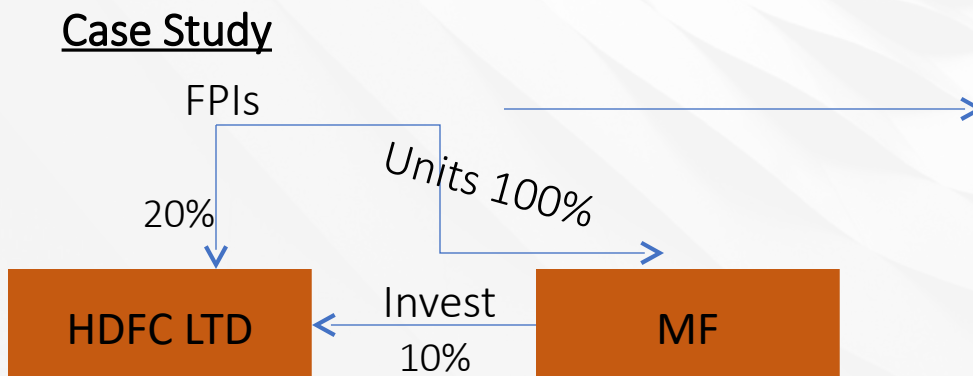
- Allows FPIs to also invest in Indian Company which are **to be listed** on recognized stock exchange.
- The term “**to be listed**” not defined.
- Corresponding effect of above amendment is not made in definition of FPI-Rule 2(t).
- Indirect foreign Investment shall be considered while calculating the total threshold limit (24%) of holding by FPIs in Indian Company.
- With effect from the 1st April, 2020, the aggregate limit shall be the sectoral caps applicable to the Indian company as laid out in sub-paragraph (b) of paragraph 3of Schedule I of these rules, with respect to its paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid up value of each series of debentures or preference shares or share warrants.
- Indian Company can decreased its threshold limit **of** 24% or 49% or 74% as deemed fit with board and General body approval before March 2020
- Further ,above Indian Company can later increased its threshold limit **to** 49% or 74% **or** sectoral caps as deemed fit with board and General body approval

Schedule 2-Investment by FPIs

- The investment by **foreign Government agencies** shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of **10 percent limit for FPI investments** in a single company, if they form part of an investor group. However, certain foreign Government agencies and its related entities may be exempt from such clubbing requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.
- In case, two or more FPI's including foreign Governments/their related entities are having common ownership, directly or indirectly, of more than fifty percent or common control, all such FPI's shall be treated as **forming part of an investor group**.
- Provided the aggregate limit of 24 per cent may be increased by the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively.- (Amendment to Non-Debt Rules,2019)

Schedule 2-Investment by FPIs

- FPIs are allowed to Invest in following instruments other than Equity instruments on **repatriation basis**:
 - Units of Domestic Mutual Funds
 - Category III AIF
 - Offshort Fund
- (Above Fund Invest more than 50% in Equity)*
- REITs
 - InVITs



Total Investment by FPIs cross the threshold limit-Whether thresholding provision of 24% is applicable on investment other than Equity instruments ?

Schedule 3-Investment by NRI/OCI

Allow NRI/OCI to invest in following instruments on repatriation Basis

- Units of Domestic Mutual Funds (invest more than 50% in Equity)
- Invest in Shares of Public Sector enterprises
- Subscription to NPS

Schedule 4-Investment by NRI/OCI

Allow NRI/OCI to invest in following instruments on Non-repatriation Basis

- Units of Domestic Mutual Funds (invest more than 50% in Equity)

Schedule 7-Investment by FVCI

- FVCI can invest irrespective of the sector in which start-up is engaged provided to sectoral caps, entry routes and attendant conditions shall apply.

Schedule 1-Debt Regulations

- NRIs/OCI-Repatriation or Non-repatriation basis-invest into MFs/ETFs which invest less than or Equal 50% in Equity.

Key Amendments to Non-Debt

- in clause (ae)-**Investment Vehicle**, the words, brackets and figures “and (iv) mutual funds which invest more than fifty percent in equity governed by the Securities and Exchange Board of India (Mutual Funds)Regulations.”
- The word “and Debt” has been omitted from the definition of Sectoral Cap.
- **Rule 11-Trf of Equity Instruments by FPI of Indian** :A FPI holding equity instruments of an Indian company or units in accordance with these rules, may transfer such equity instruments or units held by him in compliance with the conditions, if any, specified in the Schedules annexed to these rules, subject to the terms and conditions specified therein and by the Securities and Exchange Board of India.

Provided that, - (i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires the Government approval;

(ii) where the acquisition of equity instruments by FPI under Schedule II has resulted in a breach of the applicable aggregate FPI limits or sectoral limits the provisions of item (iii) of sub-paragraph (a) of paragraph (1) of Schedule II shall apply.

- **Pricing Guidelines**-the following explanation shall be inserted, namely-
Explanation: In case of **convertible equity instruments**, the price or conversion

Key Amendments to Non-Debt Rules

- **Manufacturing** –Opening para shall be henceforth read as “manufacturing in India through a legally tenable contract, whether on Principal to Principal or Principal to Agent basis. Further, a manufacturer is permitted to sell his products manufactured in India through wholesale and/or retail, including through e-commerce, without Government approval.
- Exclusive manufacturing Agreement – important clauses.
- FDI in Uploading/Streaming of News and Current Affairs through Digital Media-26% Government route.
- FDI in E-commerce further conditions has been prescribed –e-commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by 30th of September every year for the preceding financial year confirming compliance of the e-commerce guidelines”.
- FDI in Single Brand Product Retail Trading has been made Automatic-100%.

THANK YOU

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