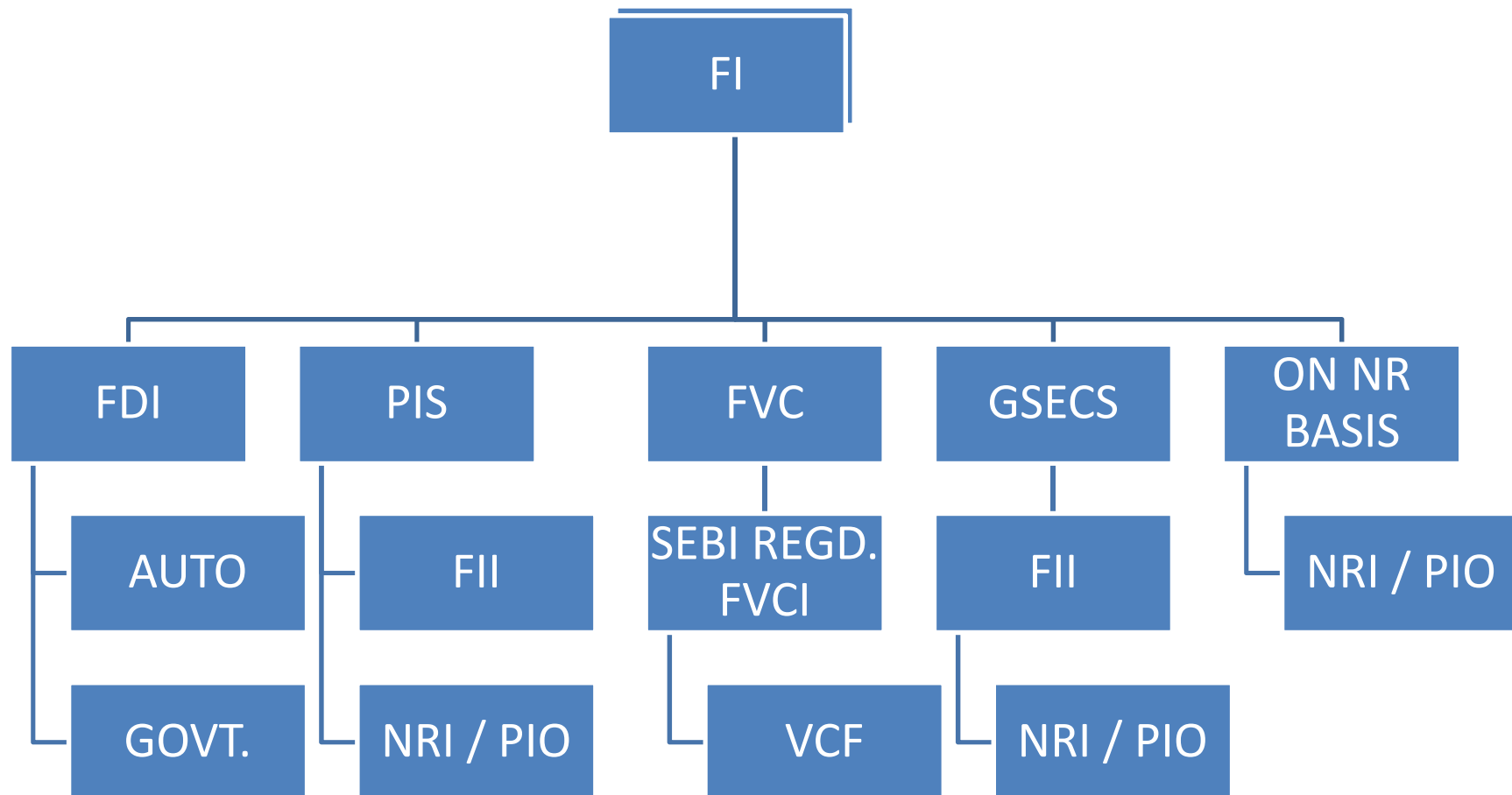


# 4. FOREIGN INVESTMENT IN INDIA

TO BE READ WITH LATEST RBI MASTER  
CIRCULAR & FEMA GUIDELINES

# FDI INVESTMENT IN INDIA



TO BE READ WITH LATEST RBI MASTER  
CIRCULAR & FEMA GUIDELINES

# FOREIGN DIRECT INVESTMENT IN INDIA

- FDI Policy of the GOI
- As per FDI Policy Circular issued
- FEMA Regulations
- Investments in Shares, mandatorily & fully convertible debentures and preference shares

# ENTRY ROUTES

- AUTOMATIC ROUTE – No approval reqd. to be taken by Fgn. investor or Indian co. from RBI / GOI for the investment
- GOVERNMENT ROUTE – Fgn. Investor or Indian co. should obtain prior approval of GOI, MOF, FIPB for the investment

# ELIGIBILITY FOR INVESTMENT – WHO CAN INVEST ?

- Any person resident or entity incorporated outside India (excluding citizen of or entity incorporated in Pakistan – in case of Bangladesh, prior approval of FIPB reqd.)
- NRIs resident in & citizens of Nepal & Bhutan can invest on repatriation basis subject to receipt of Forex funds
- Erstwhile OCBs incorp. outside India & not in adverse notice of RBI can invest as incorporated NRI entities with GOI approval (Approval Route) / RBI Approval ( Automatic Route )

# TYPES OF INSTRUMENTS

- Equity shares
- Fully & mandatorily convertible debentures
- Fully & mandatorily convertible preference shares

Issue of non-convertible, partially or optionally convertible should be in accordance with ECB guidelines

# PRICING GUIDELINES

- Fresh Issue – as per SEBI guidelines for listed companies

( Also applicable for issue of shares against payment of lump sum technical know-how fee / royalty or conversion of ECB with prior GOI approval )

- Preferential Allotment / Rights Shares

# PAYMENT MODE

- Inward remittance
- Debit to NRE / FCNR a/c
- Conversion of Royalty / lumpsum/ technical knowhow fees
- Conversion of ECB
- Conversion of Import payables / pre-incorporation expenses / share swap
- Debit to non-interest bearing Escrow a/c in INR

# REFUND IN CASE OF NON- ISSUANCE OF SHARES

- If shares or convertible debentures are not issued within 180 days receipt of funds, the amount of consideration can be refunded
- Beyond period of 180 days, RBI can permit company to refund such consideration amount

# FOREIGN INVESTMENT LIMIT

- Maximum permissible foreign investment / sectoral cap is determined by the sector in which co. is operating

## Present Cap of Fgn.Investment - Examples

- Agriculture – 100% - Automatic Route
- Mining ( Diamond / Gold / Silver ) & Coal – 100 % - Automatic Route
- Tea – 100 % - FIPB
- Asset Recon. Co. – 74%

( Annexure I of Master Circular )

# PROHIBITED SECTORS FOR FGN INVESTMENT IN ANY FORM & FDI ( INCL. NRI / FII )

- Business or chit fund
- Nidhi company
- Agricultural or plantation activities
- Real estate business ( does not include township / resi. / comm. / road / bridges development etc. )
- Construction of farm houses
- Trading in TDRs
- Atomic Energy / Rlwy Transport

# PROHIBITED SECTORS FOR FDI

- Besides foreign investment in any form, foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also completely prohibited for Lottery Business and Gambling and Betting activities.

# PRIOR PERMISSION OF RBI

Following cases require prior approval of RBI :

- Transfer of Shares or CDs of an Indian co. engaged in the Financial services sector
- Transactions which attract SEBI provisions
- Activity not covered under Automatic Route
- Transfer or Sale Price falls outside RBI pricing guidelines
- Transfer of Shares or CDs where deferment of payment is sought

( Transaction to be reported in form FC-TRS to AD within 60 days of receipt of full and final consideration )

# PRIOR PERMISSION OF RBI

Following cases require prior approval of RBI :

- Transfer of security by a resident by way of gift to a person resident outside India – Information to be submitted to RBI who would decide based on the value of gift ( to be less than 5 % of Paid-up capital ), sectoral cap, eligibility of transferee, total value of gift

# PRIOR PERMISSION OF GOI

Following cases require prior approval of GOI :

- Transfer of shares of company engaged in sectors falling under the Government Route
- Transfer of shares resulting in foreign investments in the company breaching the sectoral cap

# MODE OF INVESTMENT

- Issuance of Fresh Shares
- Acquisition by transfer of existing shares from  
:
  - Transfer NR to NR – Sales / Gift
  - Transfer NRI to NRI - Sales / Gift
  - Transfer NR to NR - Sales / Gift
  - Transfer R to NR – Pvt. Arrangement

# ISSUE OF RIGHTS / BONUS SHARES / ESOPs / CONVERSION OF ECBs / OTHER RECEIVABLES

- Rights / Bonus shares can be issued to existing Non-resident shareholders subject to certain conditions
- ESOPs can be issued to its employees or employees of JVs / WOS who are resident outside India (except Pakitsan citizens, citizens of Bangladesh can invest with prior FIPB Approval) subject to certain conditions
- Indian companies allowed to convert ECBs into Shares / CDs subject to certain conditions
- Shares / Pref. Shares can be issued against lumpsum Tech. knowhow, royalty payment etc. under Automatic Route
- Equity shares can be issued against Import of CG / M/c, subject to certain conditions

## ISSUE OF SHARES BY INDIAN CO.S UNDER ADR / GDR

- Depository Receipts ( DRs ) are negotiable securities issued outside India by a Depository Bank
- These are treated as FDI in the Indian context
- DRs are traded on stock exchanges in the major Intl markets.
- ADRs – DRs listed & traded in US markets
- GDRs – DRs listed & traded elsewhere
- FDI through issue / transfer of participating interest / right in Oil-fields to an NR
- Acquisition through Mergers / Amalgamations

## FOREIGN CURRENCY ACCOUNT / ESCROW ACCOUNT

- Share subscription can be held in Fgn. Currency Account
- AD – I Banks or SEBI Authorised Depository participant can open and maintain non-interest bearing Escrow account in INR

## REMITTANCE OF SALE PROCEEDS

AD – I Banks can allow remittance of sale proceeds of a security ( net of applicable taxes ) to the seller of shares resident outside India provided that :

- The security has been held on repatriation basis
- Sale of security has been made in accordance with prescribed guidelines
- NOC / Tax clearance from IT Deptt. has been produced

## REMITTANCE ON WINDING UP / LIQUIDATION OF COMPANIES & PLEDGE OF SHARES

AD – I Banks can allow remittance of winding up of companies in India, subject to certain conditions & payment of applicable taxes and submission of foll. documents by the applicant:

- NOC from IT Deptt.
- Auditor's certificate as prescribed
- Non-resident can pledge shares in favour of lender in India / Overseas

# FOREIGN INVESTMENTS UNDER PORTFOLIO INVESTMENT SCHEME (PIS)

## ELIGIBILITY – WHO CAN INVEST ?

- FIIs registered with SEBI
- NRIs who are permitted by AD – I Bank
- SEBI approved sub-accounts of FIIs

## INVESTMENT CEILINGS -

FIIs – Max 10% of total paid-up capital / each series of conv.deb.

- Total holdings of all FIIs / sub accounts not to exceed 24 % of paid-up capital / conv. Deb.

# FOREIGN INVESTMENTS UNDER PORTFOLIO INVESTMENT SCHEME (PIS)

## INVESTMENT CEILINGS

NRIs – Max 5% of total paid-up capital / each series of conv.deb.

- Total holdings of all NRIs put together not to exceed 10 % ( ceiling can be raised to 24%)

➤ FIIs / NRIs can invest under PIS in shares of listed Indian companies in recognised Stock Exchanges through designated ADs on repatriation / non-repatriation basis.

➤ Such shares cannot be trfd. By gift or pvt.arrangement to NR without RBI Approval

## ACCOUNTS WITH AD CATEGORY – I BANKS - FIIs

- FIIs can open non-interest bearing FCY a/c or SNRR a/c
- NRIs can designate a single NRE / NRO account with an AD –I Bank for the purpose of investments under PIS
- Reporting of PIS transactions by AD Bank in form LEC (FII) & LEC ( NRI)

## OTHER FOREIGN INVESTMENTS – PURCHASE OF OTHER SECURITIES BY NRIs

- Purchase of Shares / Conv. Deb. / Non-conv. Deb./Govt.Secs./ T-Bills / Units of DMFs & MMMFs etc. on Non-repatriation basis – No Limit
- Purchase of dated Govt.Secs. / T-Bills, Units of DMFs, PSU Bonds on repatriation basis – No Limit
- FIIs / NRIs can trade in exchange-traded derivative contracts. FIIs are permitted to short-sell while NRIs are not.

## OTHER FOREIGN INVESTMENTS – PURCHASE OF OTHER SECURITIES BY FIIs / QFIs & LONG-TERM INVESTORS

- FIIs / QFIs & LTIs can purchase dated Govt.Secs., T-Bills, Listed Non-conv. Debentures. Bonds & CPs issued by Indian Co.s, Perpetual Debt Instruments (Tier I) Debt Capital Instruments ( Tier II ) Units of DMFs, on repatriation basis, subject to ceilings on investment / holding , SEBI / RBI regulations
- FIIs / QFIs can invest in Tier I / II instruments issued by Banks
- QFIs can invest in Domestic MFs / IDRs

# ACQUISITION OF SHARES UNDER FDI SCHEME BY NRIs

- NRIs can acquire shares under FDI Scheme of a listed Indian co. on stock exchange subject to :
  - Shares are acquired & held as per SEBI regulations
  - Consideration is thro' Inw.Rem./NRE / FCNR/ Escrow a/c or thro' Div. amt.
  - Pricing is as per FEMA Guideline
  - FDI / FEMA Regulations are adhered to

# ISSUANCE OF GUARANTEES ON BEHALF OF NRIs

- AD Banks can issue Guarantees on behalf of NRIs acquiring shares / conv. Debentures of Indian cos. Thro' open offer / delisting / exit offer ag. Counter-guarantee of an Intl. Bank of repute & transaction is compliant with SEBI guidelines. The guarantee period should be co-terminus with offer period.

# QFIs

- QFIs is one who is not resident in India but is a Resident in a country that functions in compliance with FATF guidelines OR in a country that is a signatory to IOSCO's MMoU (Appendix A Signatories) or a signatory of a bilateral MoU with SEBI & is not a resident in country that has AML/CFT deficiencies person is
  - QFI should not be registered with SEBI as FII or Sub-Account of an FII or FVCI
  - QFI can have Demat a/c and can make investment thro' non-interest bearing INR a/c
  - QFIs can invest in equity ( subject to limits )/ rights / bonus shares and can sell thro' recognised brokers on regd. Stock exchange
- FVCI can invest in VCU / VRF with RBI approval

# IVCU & VCF

- *IVCU - company incorporated in India, whose shares are not listed on a recognized stock exchange in India and which is not engaged in an activity under the negative list specified by SEBI.*
- *VCF - a fund established in the form of a trust, a company including a body corporate and registered under the SEBI (Venture Capital Fund) Regulations, 1996 which has capital raised for investment in Venture Capital Undertakings*

# REPORTING GUIDELINES FOR FIIs-

## REPORTING OF INFLOWS

1. Actual Inflows to be reported by AD branch in R-Return
2. Indian co. receiving the Investment under FDI Scheme should report the details to RBI RO through AD- Category I Bank within 30 days of receipt alongwith FIRC and KYC docs. of Non-resident Investor to RBI RO who will allot a UIN ( Unique Identification number )

# REPORTING GUIDELINES FOR FIIs – REPORTING OF ISSUE OF SHARES

Equity Instruments to be issued within 180 days from date of receipt of Inward Remittance and Form FC – GPR should be filed with RBI RO through the AD – Category I Bank within 30 days alongwith prescribed documents

# REPORTING GUIDELINES FOR FIIs - REPORTING OF ISSUE OF SHARES

All issues of bonus / rights shares or shares on conversion of stock options issued under ESOP or otherwise, to persons resident outside India have to be reported in Form FC – GPR not later than 30 days from issuance

## REPORTING GUIDELINES FOR FIIs - REPORTING OF FDI FOR TRANSFER OF SHARES ROUTE

- Actual Inflows / Outflows to be reported by AD Bank in R-Return
- Reporting of Transfer of Shares between Residents & Non-Residents & vice-versa to be made in Form FC – TRS by the company to RBI RO through the AD within 60 days The onus of submission is on the resident in India. AD Bank to scrutinise & offer comments while submitting form in duplicate to IBD who will submit monthly Inflow / Outflow statement to RBI - FID
- KYC in respect of the receipt of consideration amount in the transaction to be carried out by the remittance receiving Bank & such Report to be submitted by Co. through the AD – Category I Bank handling the transaction alongwith Form FC – TRS.

## REPORTING GUIDELINES FOR FIIs - REPORTING OF FDI FOR TRANSFER OF SHARES ROUTE

- The transferee should approach Investee company to record transfer in their books alongwith Cert. in Form FC-TRS from the AD branch that the remittances have been recd.
- On receipt of statements from AD Bank, RBI may call for any addl. information.

## REPORTING GUIDELINES FOR FIIs - REPORTING OF CONVERSION OF ECB INTO EQUITY

- To be reported to RBI RO
- In case of full conversion of ECB into equity ,  
company shall report the conversion in Form FC  
– GPR to RBI RO and in Form ECB -2 to RBI,  
DESACS
- In case of partial conversion of ECB into Equity,  
only the converted portion shall be reported in  
Form FC – GPR & ECB-2
- In subsequent months, only the outstanding  
portion of the ECB is to be reported

## REPORTING GUIDELINES FOR FIIs – MISCELLANEOUS REPORTING

- ESOPs – To be reported by issuing co. within 30 days of date of issue of ESOPs in Plain paper to RBI RO.
- Also at the time of conversion of Options into Shares, Indian company to report in Form FC – GPR to RBI RO within 30 days of allotment of such shares
- Indian co. issuing ADRs / GDRs to submit details in specified Form within 30 days from the date of closing of the issue till entire amt. is recd.

# REPORTING GUIDELINES FOR FII & NRI

## Investments under PIS

- FII Reporting – AD – Category I Banks to ensure that FIIs purchasing securities by debit to SNRR a/c report all transactions to RBI , in Form LEC ( FII ). Data to be periodically reconciled.
- Fgn. Investment by issuance / transfer of participating interest / right in Oil-fields to be reported in FC-TRS & issuance to be reported in FC - GPR
- Indian Co. to report separate figures in respect of issuance of shares to FIIs under FDI Scheme where payment is directly in company's a/c and the PIS Scheme under item 5 in Form FC – GPR
- Daily Report on PIS Transactions undertaken on behalf of NRIs to be given to RBI on OFRS website Bank to periodically reconcile data reported.

# INVESTMENT IN PARTNERSHIP FIRM / PROPRIETARY CONCERN

- NRIs / PIOs resident outside India can invest by contributing to the capital of a firm or prop. Concern in India on **Non-repatriation** basis provided :
- Amount is invested through Inward Remittance / Debit to NRE / FCNRB/ NRO a/c
- Firm or Prop. Concern is not engaged in any Agri / Plantation/ Real estate business or Print Media sector

# INVESTMENT IN PARTNERSHIP FIRM / PROPRIETARY CONCERN

- NRIs / PIOs resident outside India need to seek prior RBI permission for investing by contributing to the capital of a firm or prop. concern in India on **Repatriation** basis. Other non-residents may seek prior approval of RBI.
- NRIs / PIOs are not allowed to invest in Firm or Prop. Concern engaged in any Agri / Plantation/ Real estate business or Print Media sector.

# THANK YOU

TO BE READ WITH LATEST RBI MASTER  
CIRCULAR & FEMA GUIDELINES