Foreign Investment (Other than FDI)

Intensive FEMA Course

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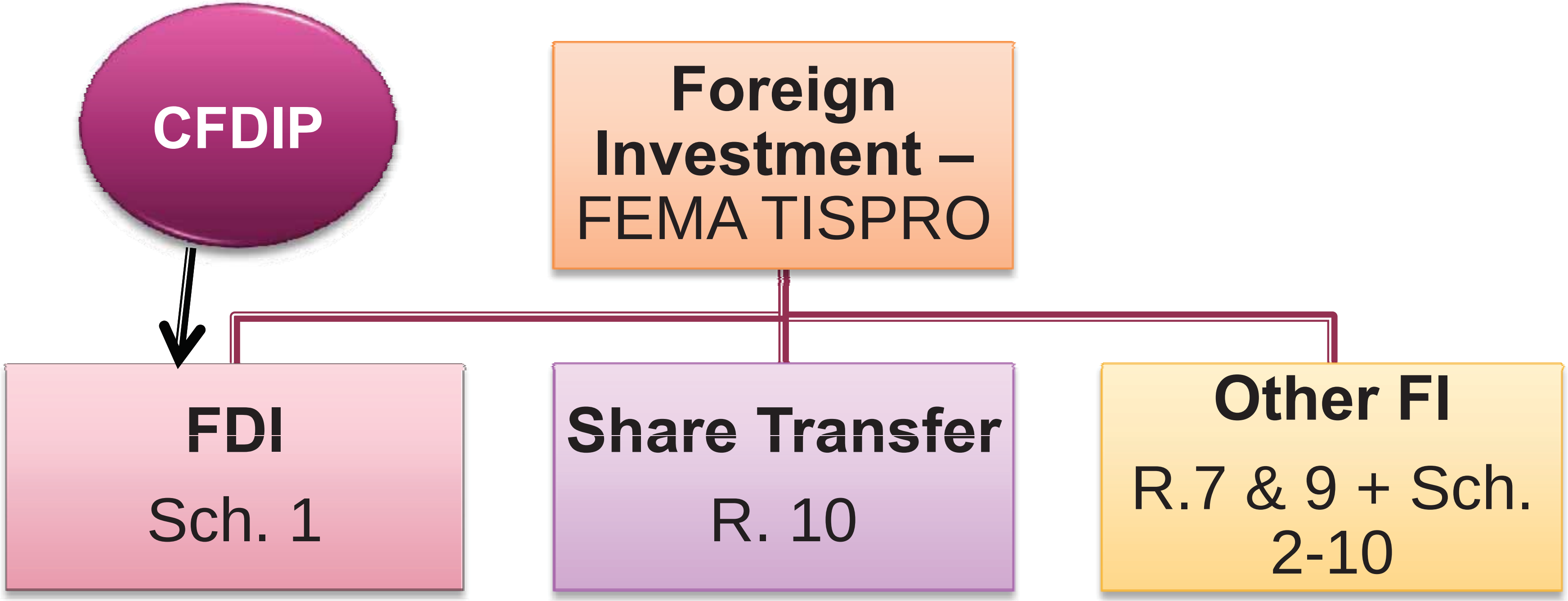
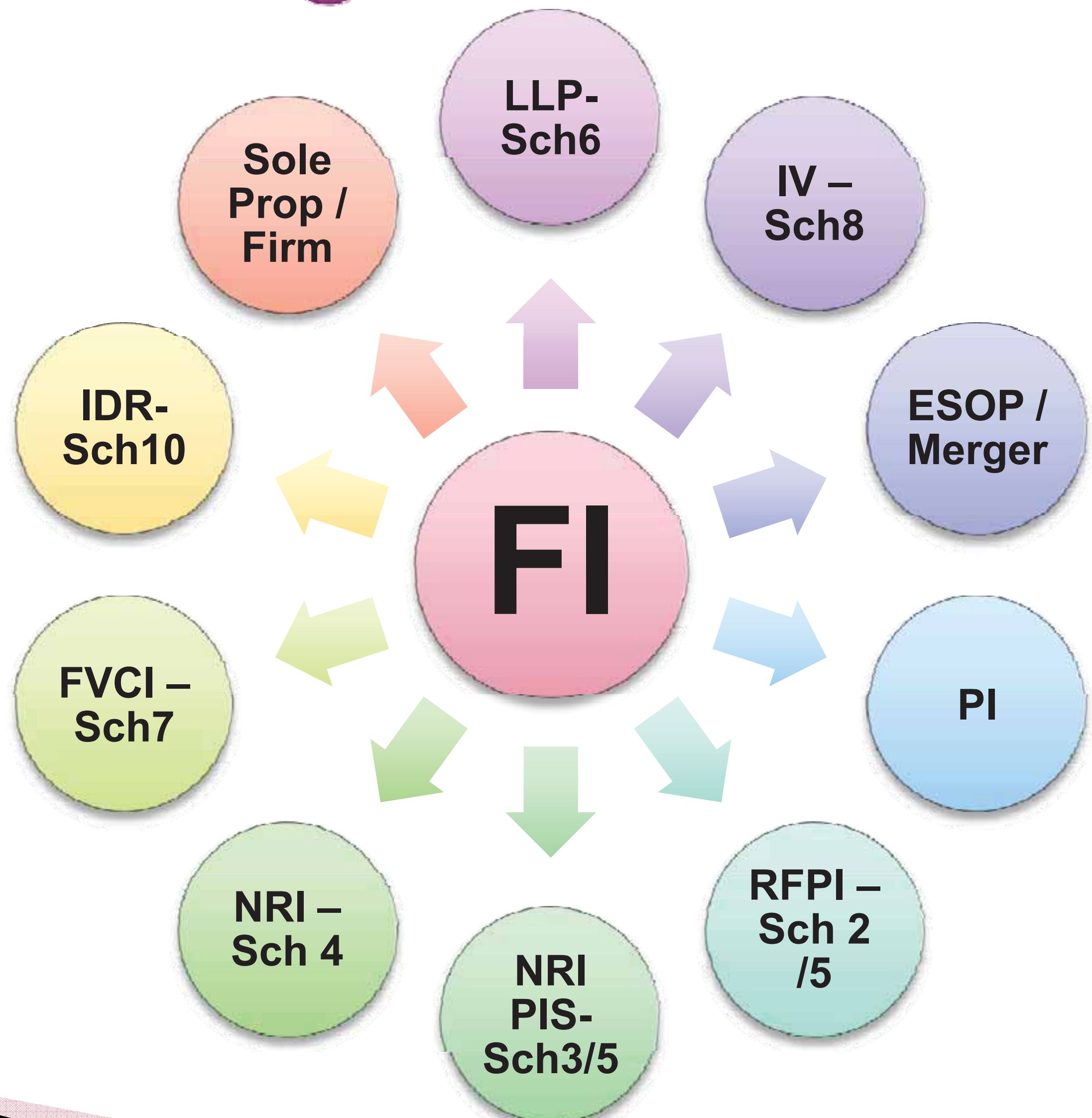
THE CHAMBER OF TAX CONSULTANTS

Foreign Investment Routes



Other Foreign Investment



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

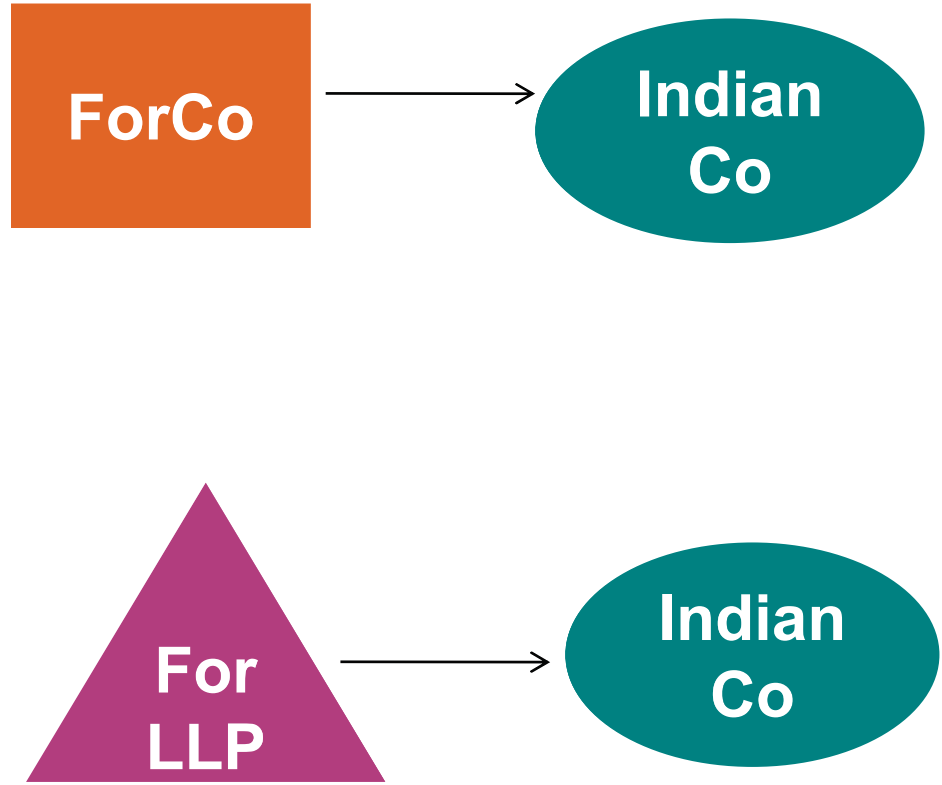
- Indian Cos. can issue shares to NR Shareholders of:
  - Indian Transferor companies in a Scheme of Merger / Demerger / Reconstruction
    - % of NR shareholding in Transferee within Sectoral Caps or as per CG approval, if any
    - Issue – Compliance with Entry Routes / Investment Limits
    - Transferor / 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

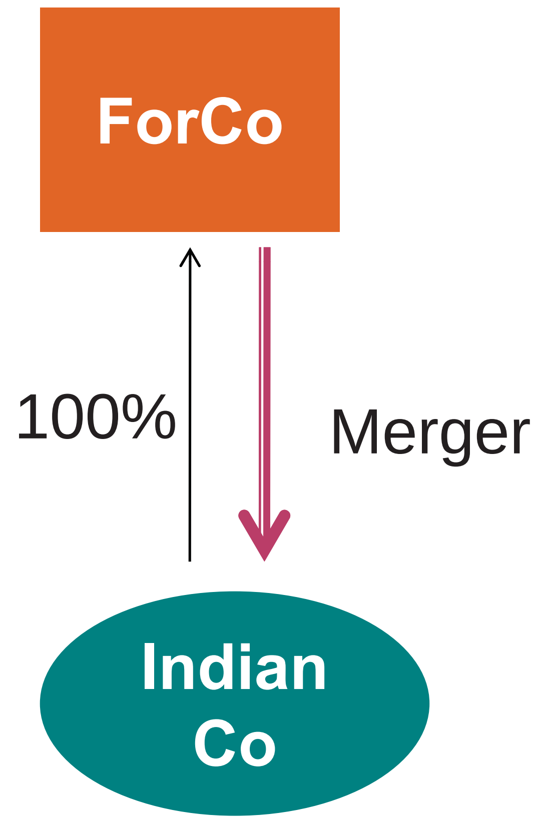
Foreign Mergers

- **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 / InvIts
  - 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: ARF, 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 ~ 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 ≥ 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 ≥ 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

Sch. 6: LLP

- Other Conditions:
  - Must ensure compliance with LLP Act, 2008
  - Designated Partner – must be an Indian Company
    - Resident DP u/s. 7 of LLP Act must be a Resident u/s. 2 of FEMA, 1999
    - DP responsible for all compliances and penalties on LLP
    - LLPs cannot avail ECBs
- Q. Is NR FDI in LLP possible in Prohibited Sectors?
  - Earlier FIPB view NO
  - Now – Sch. 4 expressly provides

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 ≤ 10% & Total ≤ 24% of Capital
  - 24% can be ↑ 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 FIIs 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 ≤ 5% per NRI
  - Aggregate shares / CDs / Warrants by all NRIs ≤ 10%
    - Can ↑ 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

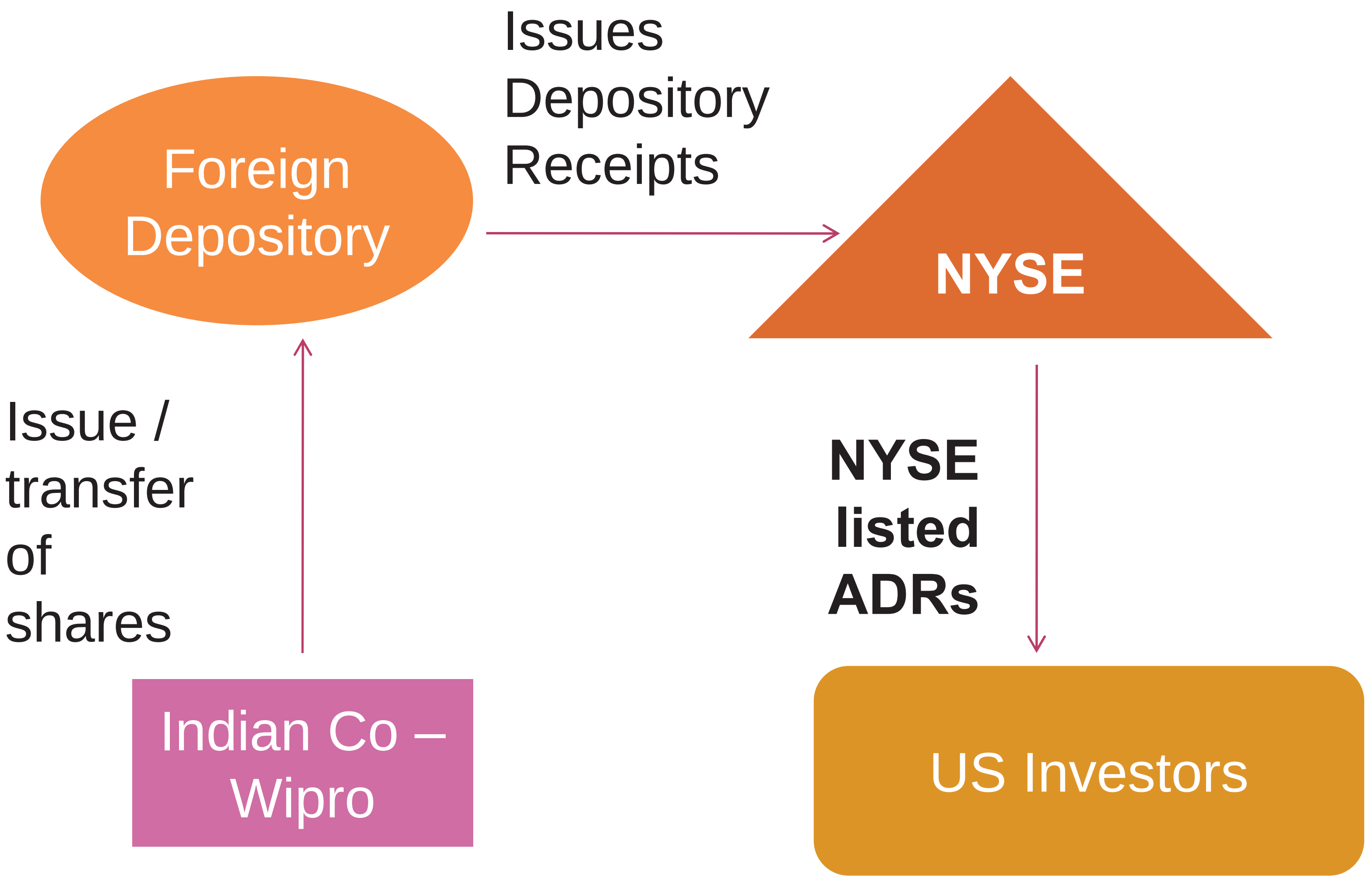
Sch. 10 : IDRs

- 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


Issues Depository Receipts
Foreign Depository
NYSE
Issue / transfer of shares
NYSE listed ADRs
Indian Co – Wipro
US Investors

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 ≤ 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. 2.89 lakh cr.** on tap ceiling & FVCIs no ceiling at all
  - Countrywide Aggregate Limit for all NCDs for all FPIs
- As of Dec 6th 2018, Rs.1.96 lakh cr. or **67%** of the Corporate Bonds’ Limit of Rs.2.89 lakh cr. was used by FPIs
  - Rs. 92,800 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

Restrictions for Corp Debt

- Max. Invst. by any FPI ~ 50% of a Corporate Bond Issue
  - Thus, Min. Two FPIs now needed for One Bond Issue
- Max. 20% of Corp. Bond Portfolio of an FPI can be in a single Co
  - Grandfathering of all Invsts. till 27 Apr 2018
  - But fresh Bonds in that Corp only after 20% limit reduced
  - New Invsts. in other Cos. allowed in excess of 20% limit till 31st March 2019 – thereafter 20% limit applies
  - New FPIs can comply with this 20% limit till 31st Mar 2019 or 6 mts ~ whichever is later
- Partly Paid Debt Instruments not allowed

VRR Proposal

- Voluntary Retention Route proposed for FPIs
  - Investments in Bonds in addition to limits
    - provided minimum % of investments maintained in India for 3 years or as designated by RBI
  - 20% & 50% Limits not applicable to VRR
  - Separate A/c to be opened for VRR
  - Can shift from VRR to General Investment Limit but then governed by limits & all terms of General Limits
  - Can exit before tenure by selling to other FPIs who shall then be bound to hold for balance tenure
  - Violation of conditions ~ deregistration by SEBI

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

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≤ 250 cr. else 5
  - All QIPs put together ≤ 5 times Networth of Last Audited B/S

Qualified Institutional Placement

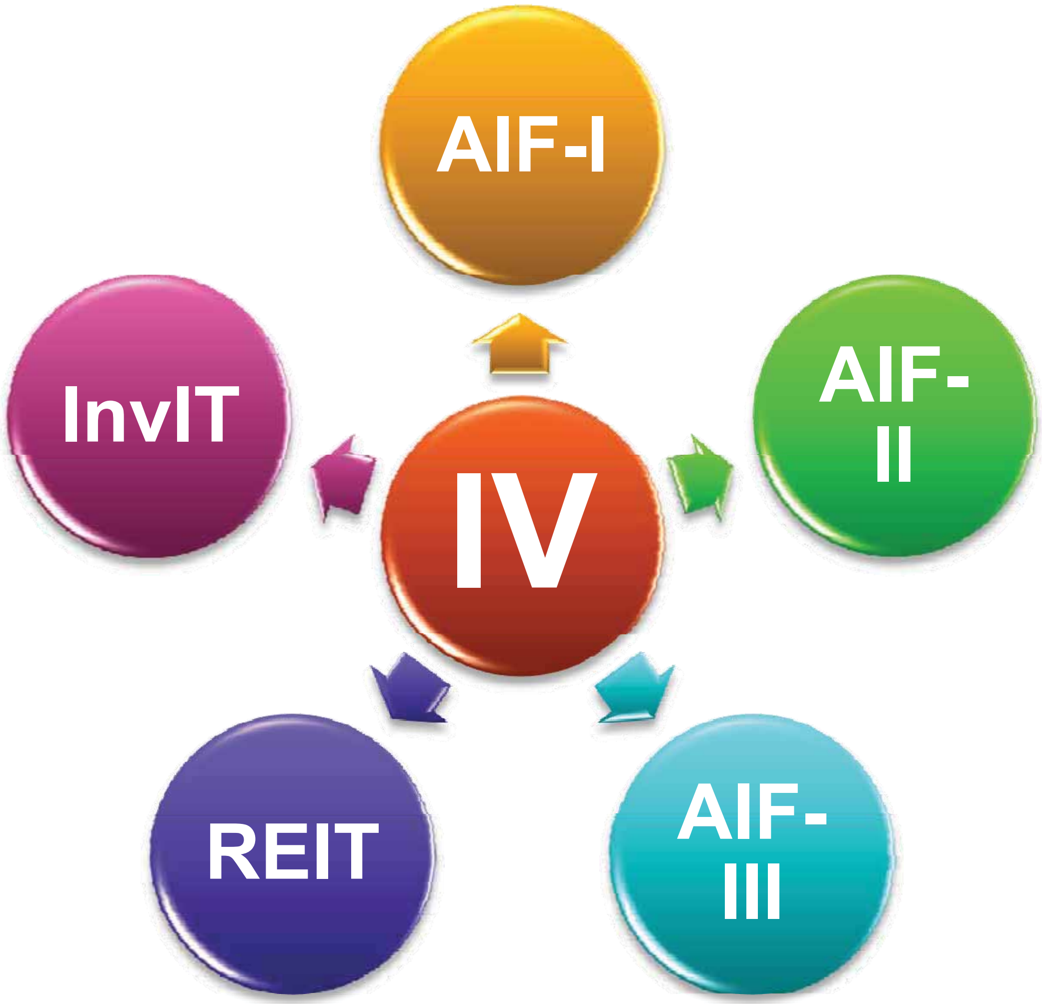
- Only for Listed Companies – separate SEBI Regs.
  - Can even issue Convertible Securities, such as, CCDs /CCPS
  - Convertible Sec. under QIP must be converted within 60 mts
  - E.g.,
    - **JM Financial Ltd raised Rs. 650 cr. by a QIP issue in Jan 2018 which included issues to Cat I FPI and Cat II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



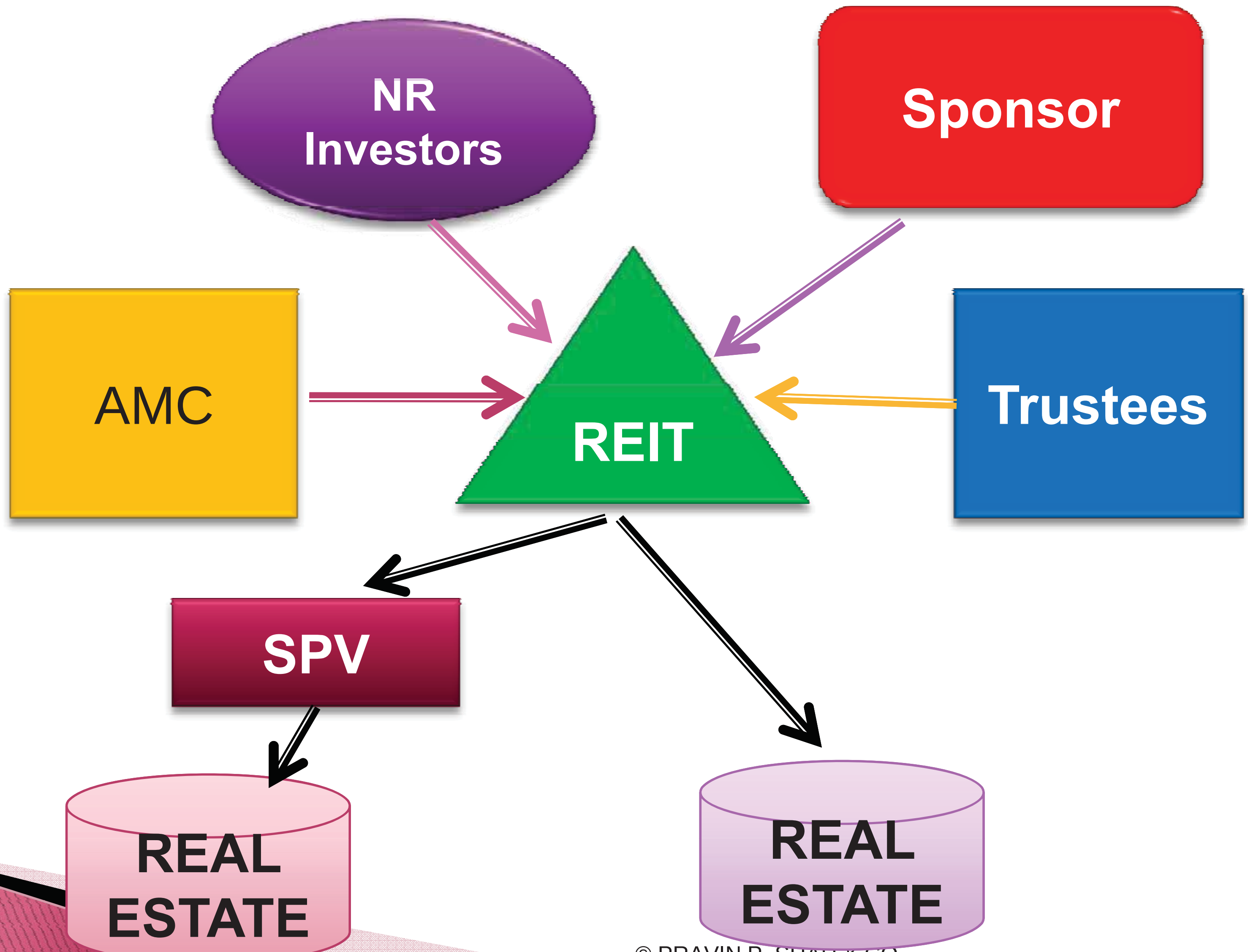
Sch.8: Investment Vehicle

- 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

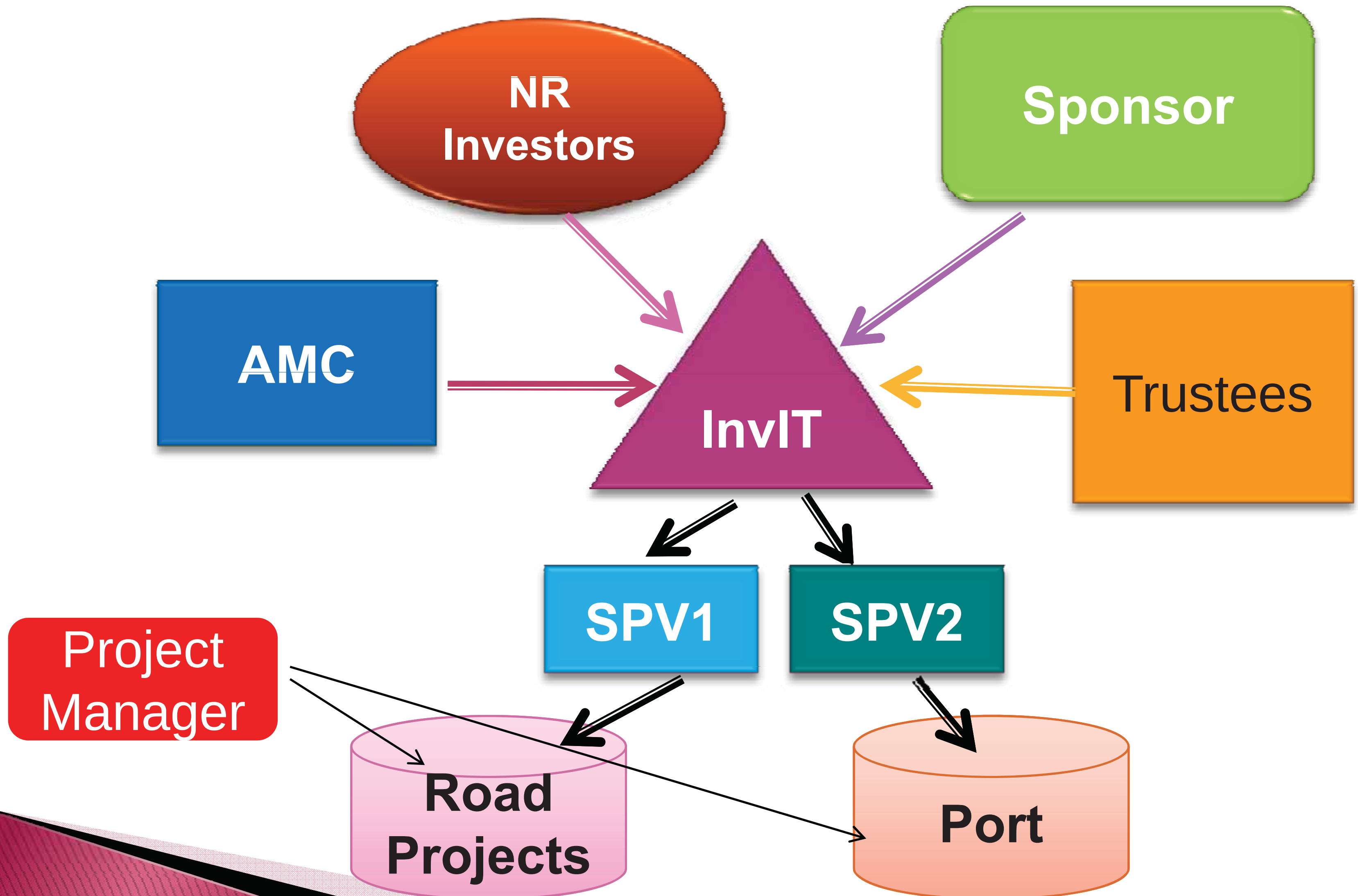
Real Estate Investment Trust



REIT Example

- Blackstone –Embassy REIT would be launching an IPO
  - Blackstone –Embassy JV would be the Sponsor and would contribute its Rental Portfolio to the REIT
  - About 33 m. sq. feet of Office Space of Business Parks / Hotels spread-across 4 cities
  - REIT would make an IPO Raising Rs. 5,000 cr.
  - Would be India's 1st REIT

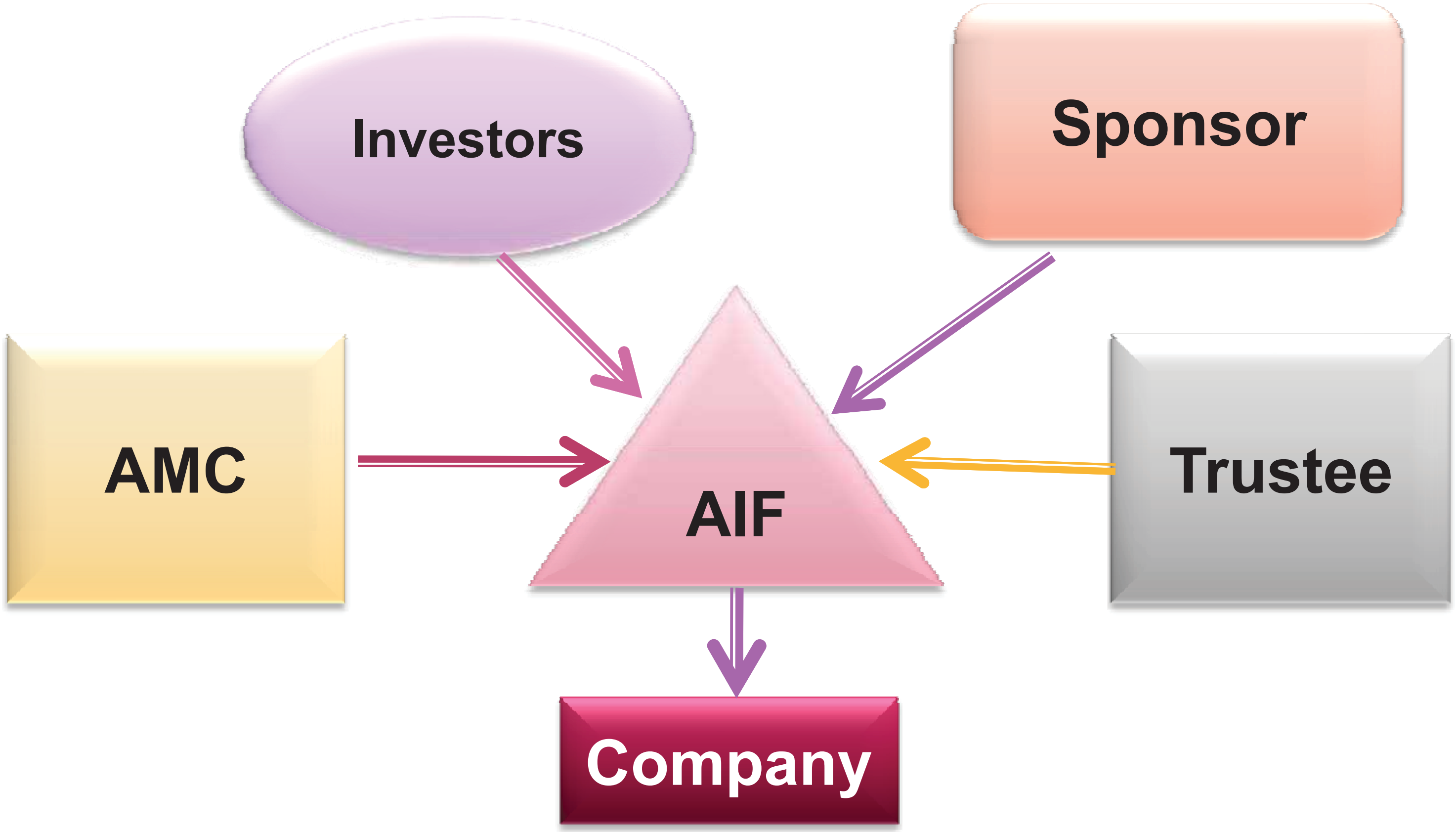
Infrastructure Investment Trust



InvIT Example

- **IRB InvIT Fund**
  - Raised Rs. 5900 cr. by IPO of units + Loan Rs. 1500 cr.
  - 7 Road Projects bought from IRB Infra. Developers Ltd
  - IRB Infra. Devlp Ltd got cash
  - Units listed on NSE/BSE
  - 37% of units held by FPIs
  - Fund earns Toll revenue from Projects
    - Distributes 90% to Unit Holders as Interest / Capital Reduction
- India GRID: Power InvIT from Sterlite Power

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 ≤ 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

AIF Example

- India Opportunities Fund (AIF-II) launched by Indiabulls for Investments in Real Estate
  - Manager, Sponsor, Trustee all O&C by Indian citizens
  - Fund contributors all PROIs
  - Yet investment by AIF-II in RE treated as Domestic Investment
    - Such funds Can invest in RE Business / TDRs trading, Defence, Multi-brand.

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

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	×

THANK YOU!

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