

Introduction to FEMA (NDI) Rules, 2019 and recent amendments

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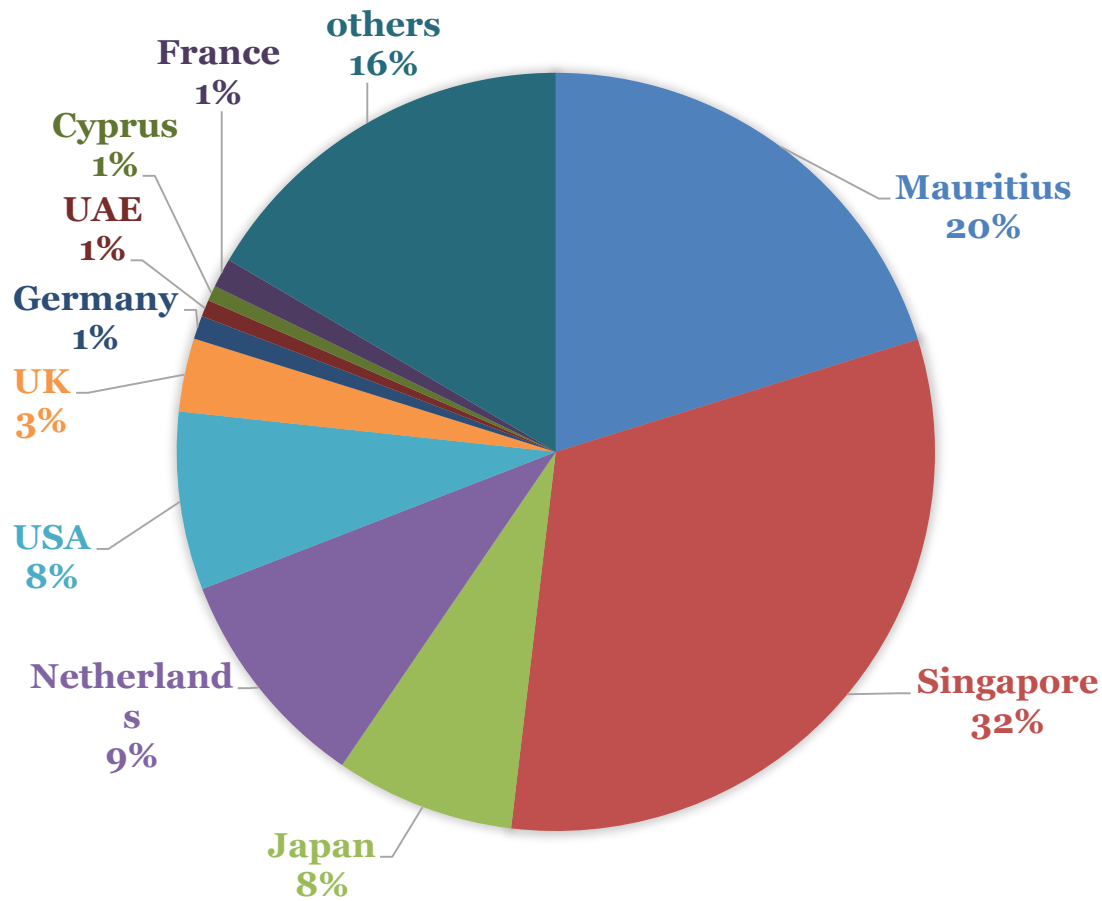
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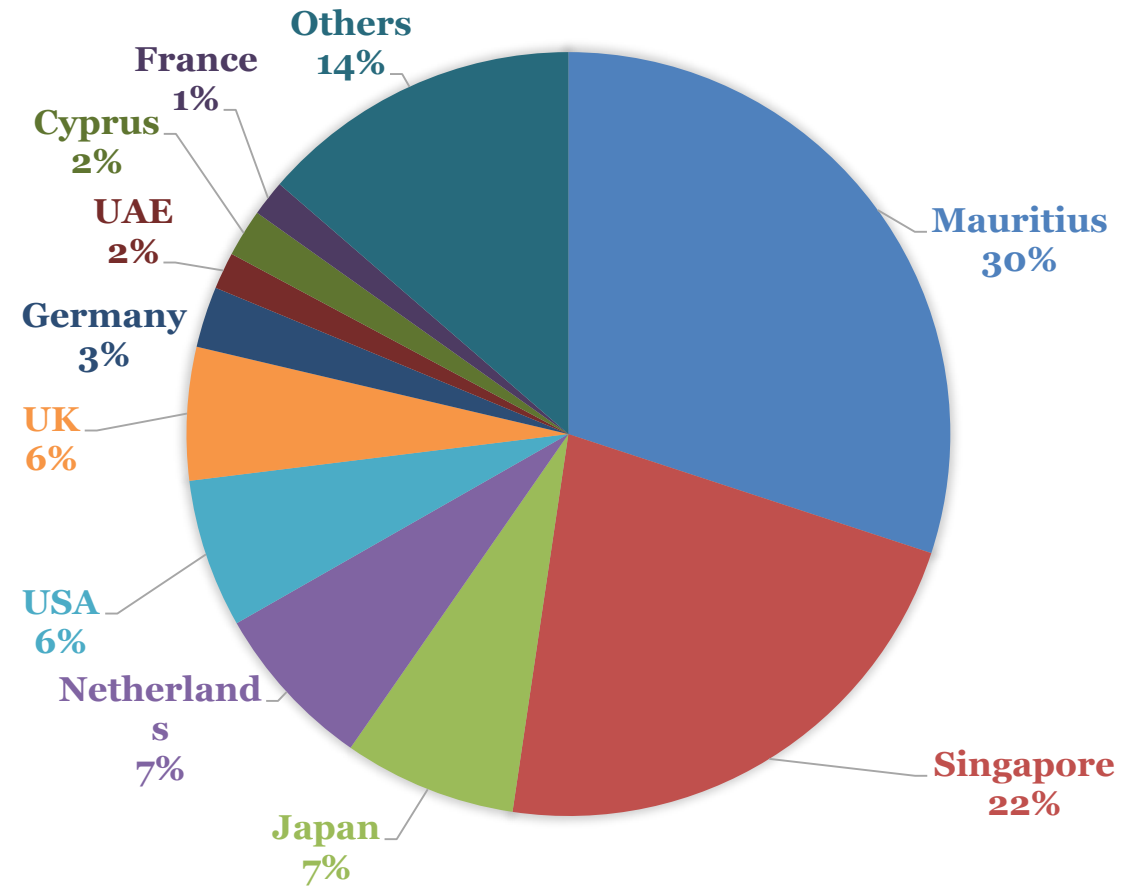
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Statistics of foreign investment

Share of Countries in Total FDI Equity Inflows in India

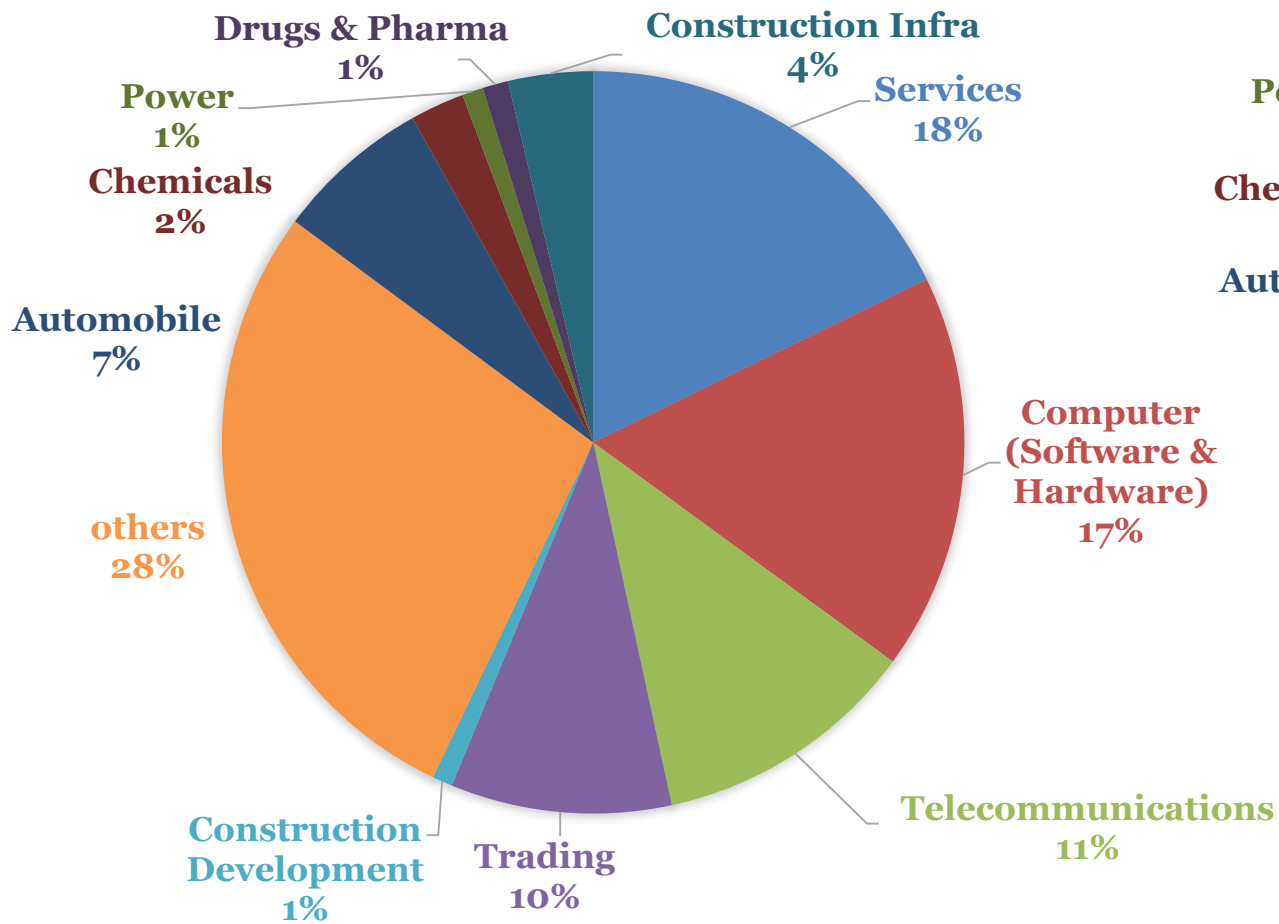


April, 2019 to December, 2019

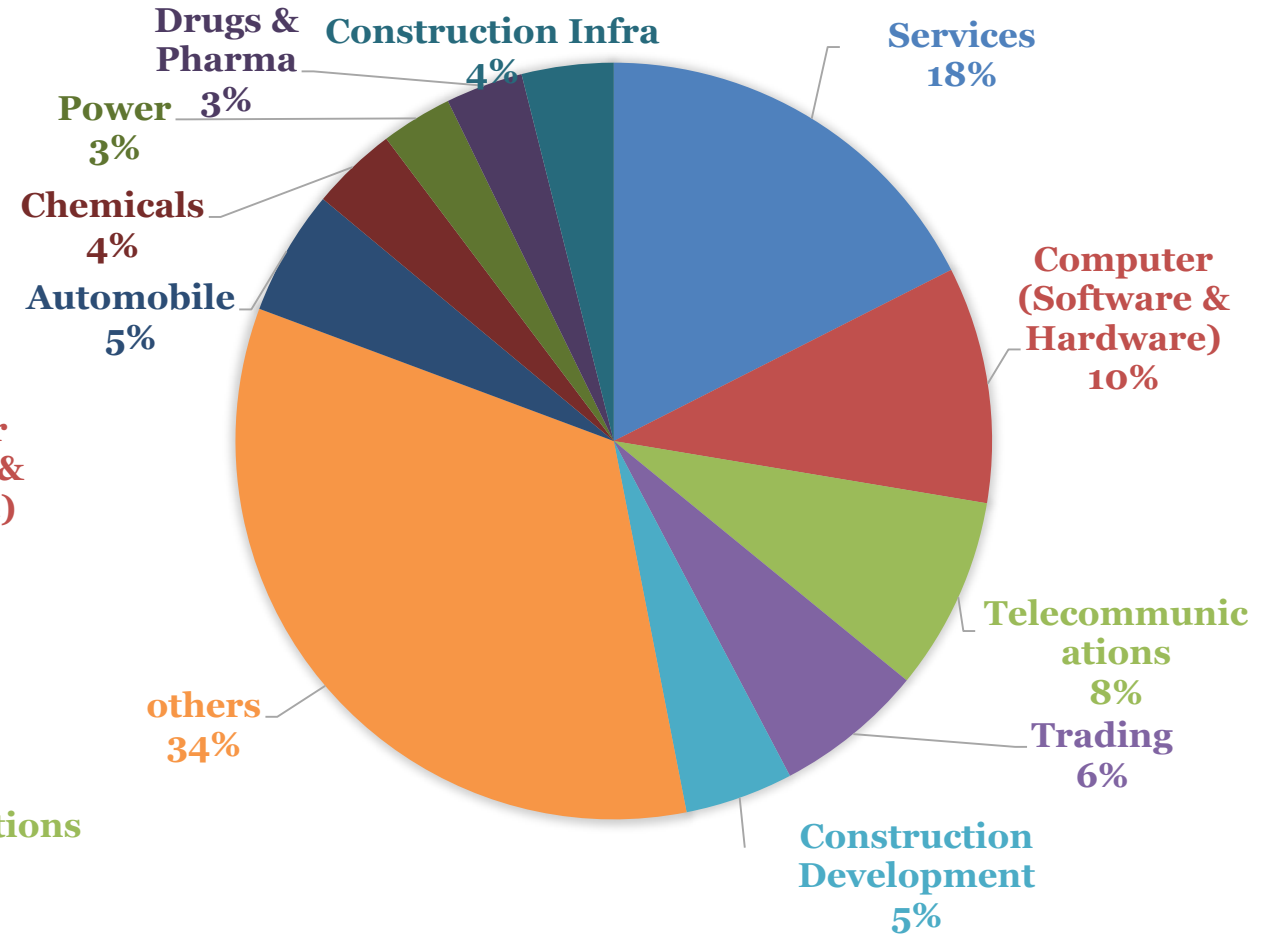


April, 2000 to December, 2019

Sectors attracting Highest FDI Inflows

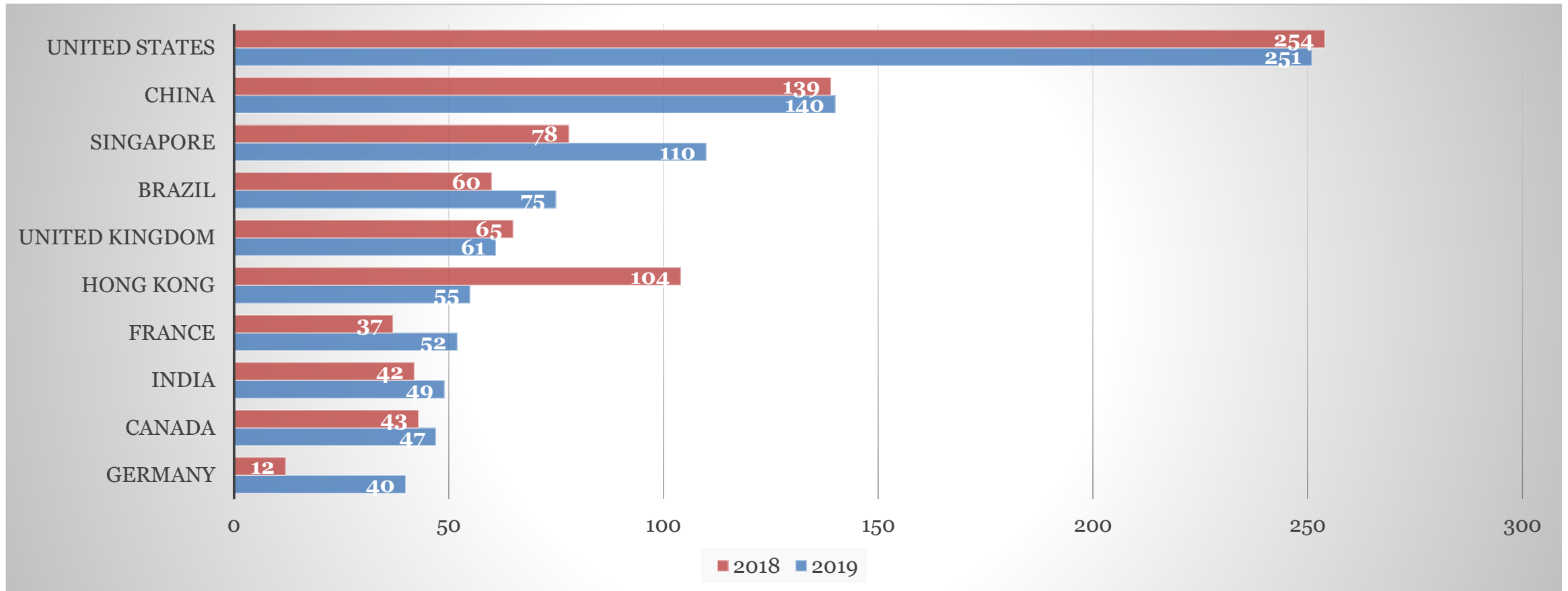


April , 2019 to December, 2019



April, 2000 to December, 2019

INDIA VIS-À-VIS THE WORLD (FDI)



- Figures in USD Billion.
- India showed a 16% increase in FDI from 2018. India ranked 8th in the world in terms of FDI in 2019.
- India not traditionally in the top 20 outward investor countries, was also considered among the top 10 most important sources of FDI for the 2019 to 2021 period

FPI / FII Investment (in Rs. Crores)

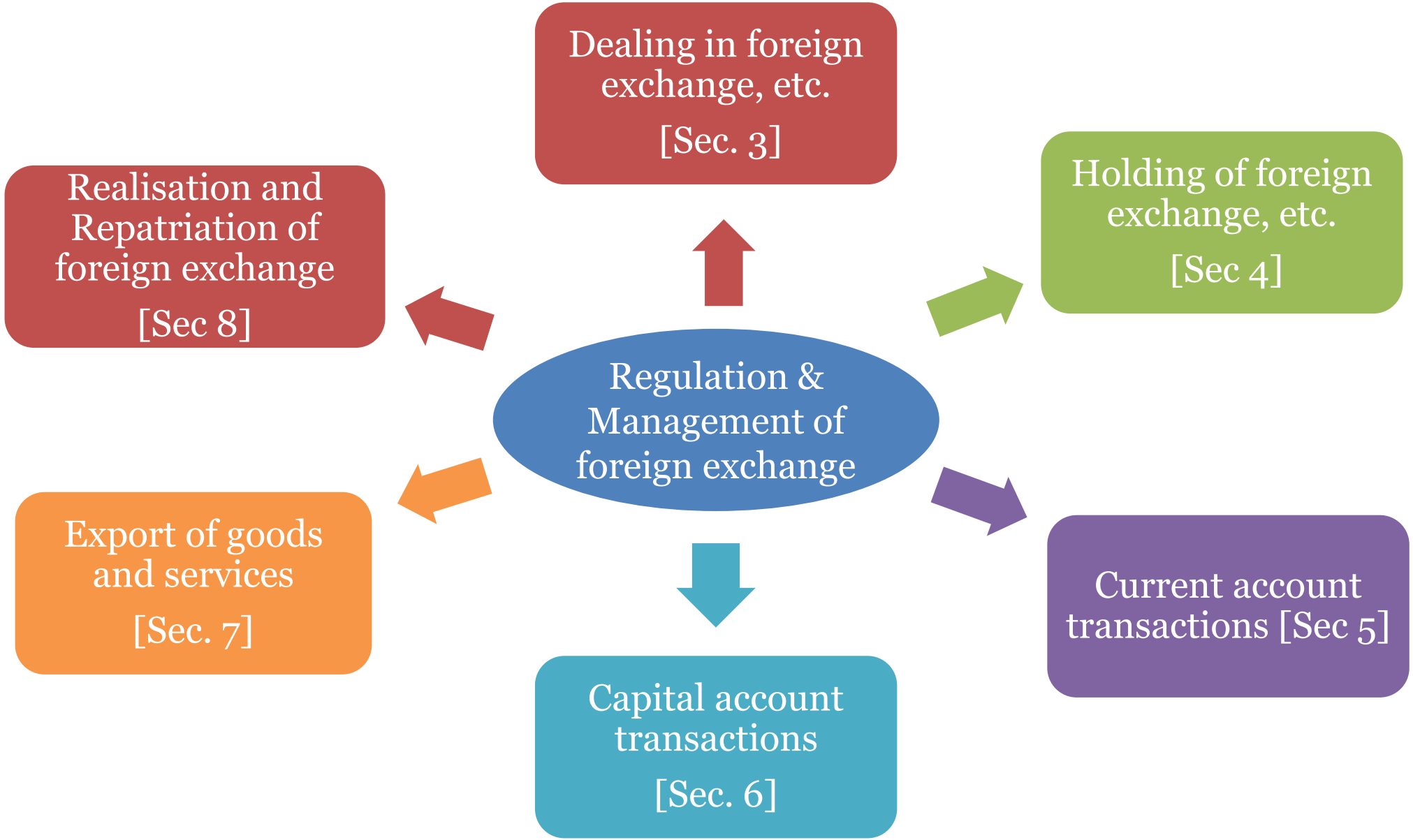


Source: NSDL

Outline

- Overview of FEMA Act;
- Amendments vide Finance Act, 2015;
- Rules and regulations for investment in securities;
- Non-Debt instruments v/s Debt instruments;
- Concepts under FEMA (NDI) Rules;
- Structure of FEMA (NDI) Rules;
- Global measures to curb opportunistic acquisition
- Measures taken by India to curb takeovers
 - FEMA (NDI) Amendment Rules, 2020
 - Effective from April 22, 2020.
- FEMA (NDI) Second Amendment Rules, 2020
 - Effective from April 27, 2020.

Overview of FEMA Act



Capital Account Transactions (CAT) – Pre amendment

- CAT are transactions which alters the assets or liabilities, including contingent liabilities,

- outside India of persons resident in India;

OR

- in India of persons resident outside India;

- | | |
|--|---|
| <ul style="list-style-type: none"> ▫ Transfer or issue of any foreign security by a PROI; ▫ Transfer or issue of any security by a PROI; ▫ Borrowing or lending in foreign exchange/ rupees; ▫ Deposits between PROI and PRII; | <ul style="list-style-type: none"> ▫ Export, import, holding of currency or currency notes; ▫ Acquisition or transfer of immoveable property; ▫ Giving of guarantee or surety in respect of any debt incurred <ul style="list-style-type: none"> • by a PRII and owed to a PROI; • by a PROI. |
|--|---|

- CAT had been provided in Section 6 (3) of FEMA Act.
 - omitted by Finance Act, 2015 w.e.f. [October 15, 2019](#).

Amendment in CAT vide Section 139 of Finance Act, 2015

- Amendment in Section 6 of FEMA Act.
 - Effective from October 15, 2019.
- Reserve Bank of India (RBI) will govern capital account transactions involving debt instruments.
 - Section 6 (2) of FEMA Act substituted.
- Central Government (CG) will govern capital account transactions involving non-debt instruments, limits and other conditions.
 - Section 6 (2A) of FEMA Act inserted.
- Debt instruments would be determined by CG in consultation with RBI.
 - Section 6 (7) of FEMA Act inserted.
- Ministry of Finance (MoF) notified list of debt instruments and non debt instruments.
 - Notification dated [October 16, 2019](#).

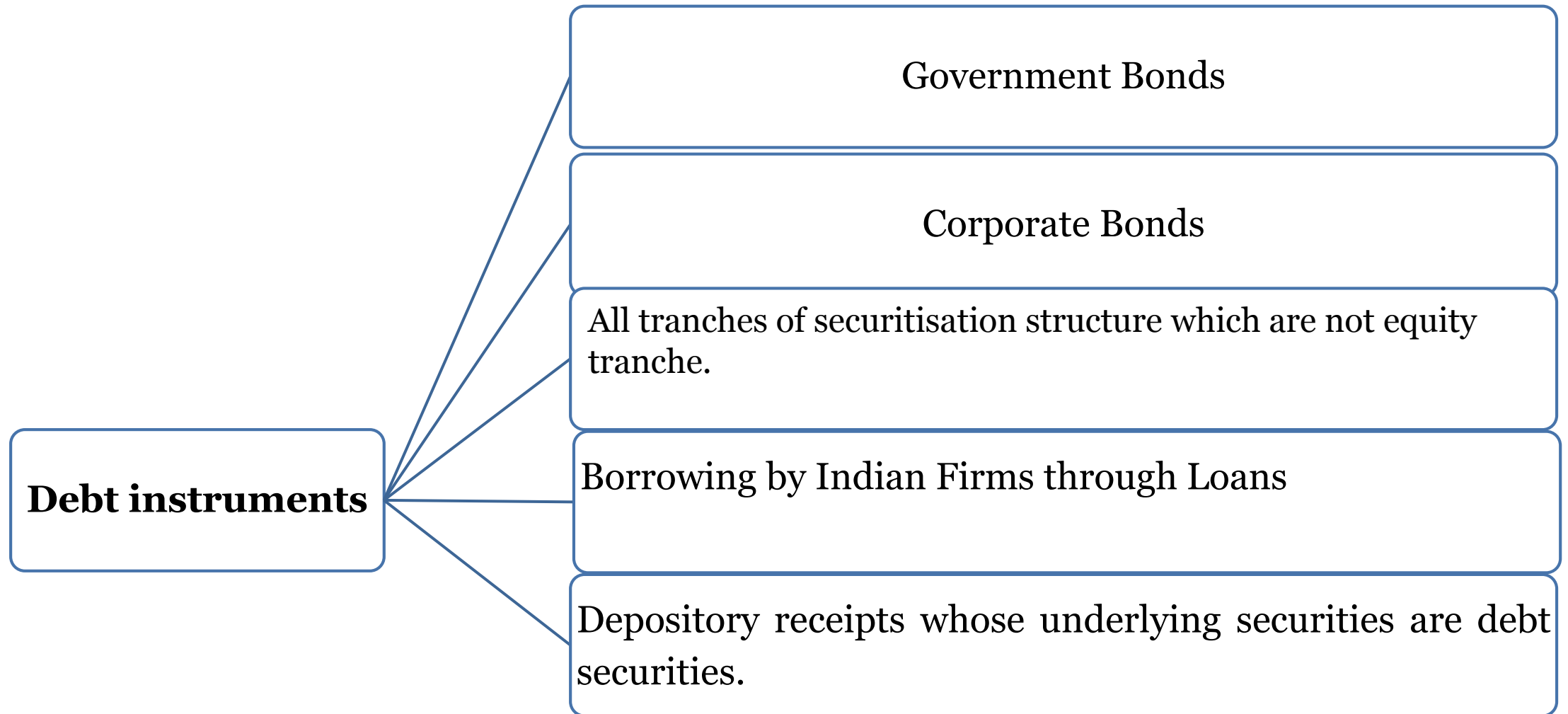
Amendment vide Section 143 of Finance Act, 2015

- Section 46 empowers CG to frame rules.
 - imposition of reasonable restrictions on current account transactions
 - Manner of compounding contravention;
 - Manner of holding an inquiry by the Adjudicating Authority
- Amendment in Section 46 of FEMA Act vide Section 143.
 - **Effective from October 15, 2019.**
- CG to have power to determine instruments to be debt instruments under Section 6 (7).
 - **Section 46 (2) (aa) of FEMA Act inserted.**
- CG has power to stipulate permissible classes of CAT as per Section 6 (2A) of FEMA Act, limits, prohibition, restriction or regulation of such transactions.
 - **Section 46 (2) (ab) of FEMA Act inserted.**

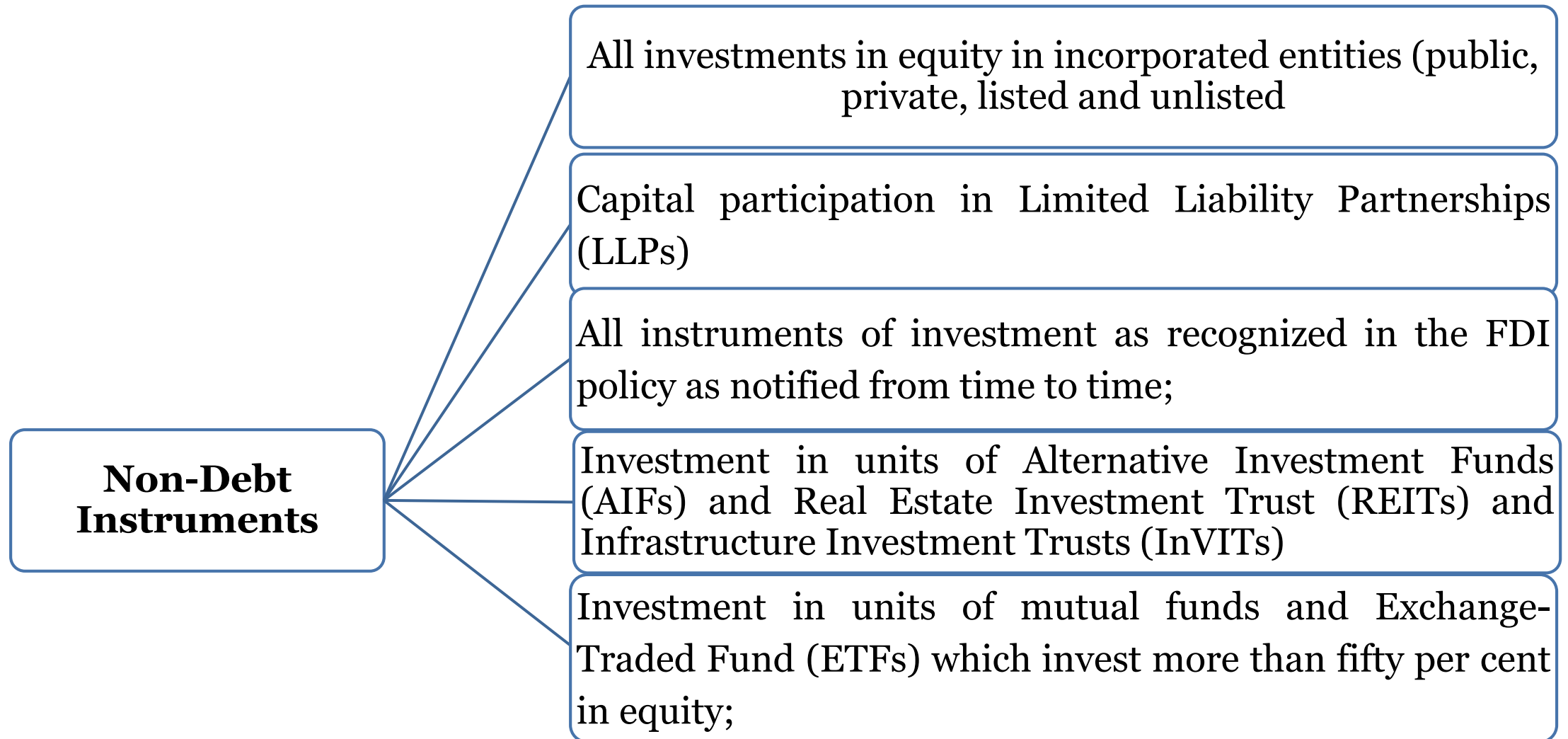
Amendment vide Section 144 of Finance Act, 2015

- Section 47 empowers RBI to frame regulations.
 - Permissible Capital Account Transactions;
 - Manner of repatriation of foreign exchange;
 - Maintenance of foreign current accounts.
- Amendment in Section 47 of FEMA Act vide Section 144
 - **Effective from October 15, 2019.**
- RBI empowered to stipulate permissible classes of CAT involving debt instruments as per Section 6 (7) of FEMA Act, limits, prohibition, restriction or regulation of such transactions;
 - **Instead of all capital account transactions;**
 - **Section 47 (2) (a) of FEMA Act substituted.**
- All regulations stipulated by RBI before notification of amendment provisions in relation to Section 6 and Section 47 of FEMA Act shall be valid until amended or rescinded by CG;
 - **Section 47 (3) of FEMA Act inserted.**

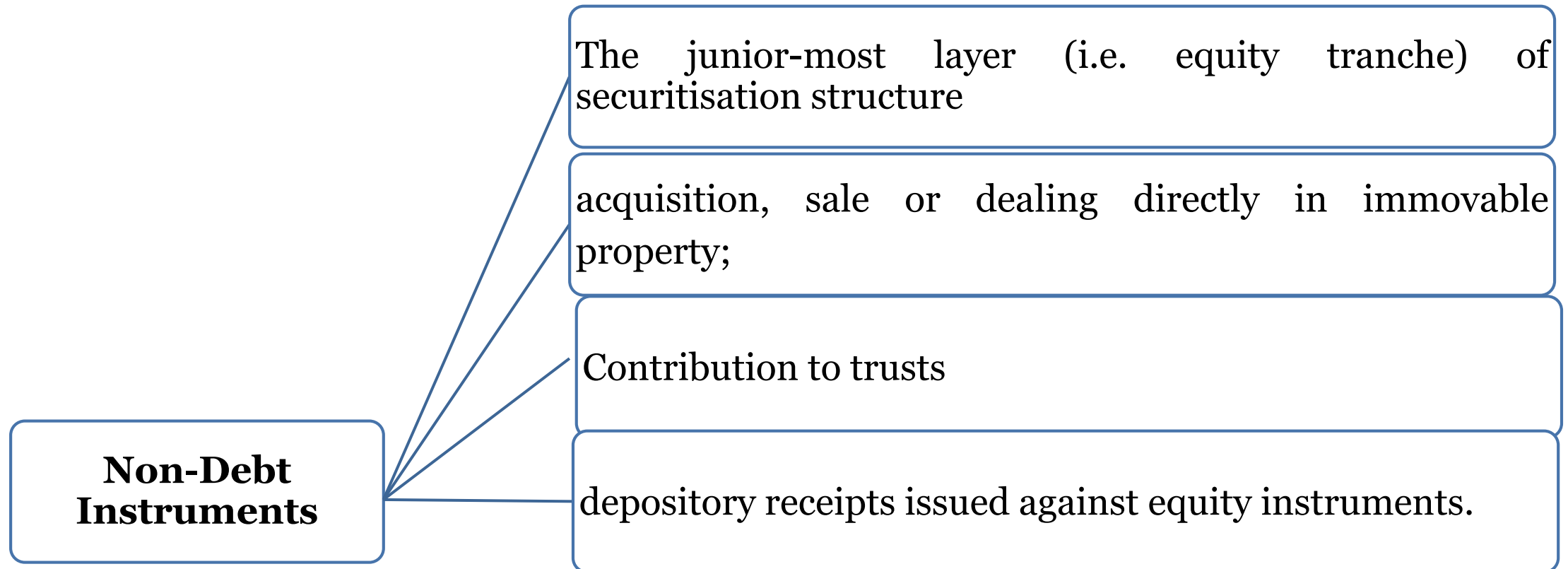
Debt instruments



Non-Debt Instruments



Non-Debt Instruments



Rules/Regulations for investment by PROI

- [FEM \(Non – Debt Instruments\) Rules, 2019](#)
 - notified on/ effective from October 17,2019.
 - [FEMA \(NDI\) Amendment Rules, 2019](#)
 - Notified on December 5, 2019
 - Certain amendments effective from October 17, 2019
 - Certain amendments effective from December 5, 2019
 - [FEMA \(NDI\) Amendment Rules, 2020](#)
 - Notified on/ effective from April 22, 2020
 - [FEMA \(NDI\) Second Amendment Rules, 2020](#)
 - Notified on/ effective from April 27, 2020
- [FEM \(Mode of Payment and Reporting of Non-Debt Instruments\)Regulations 2019](#)
 - notified on/ effective from October 17, 2019
- [FEM \(Debt Instruments\) Regulations, 2019](#)
 - notified on/ effective from October 17, 2019.

Foreign investment in India – an Overview

FEM (Non – Debt Instruments) Rules, 2019

- notified on October 17, 2019
- supersedes FEM (Transfer of Issue of security by a person resident outside India) Regulations, 2017
- supersedes FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018
- FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019
 - notified on October 17, 2019
- Sectors specified v/s Sectors not specified
- Automatic v/s approval route
 - Approval based on sector
 - Approval based on investor
- Repatriable v/s non-repatriable
- Sectoral cap
 - “sectoral cap” means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity and debt instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity.

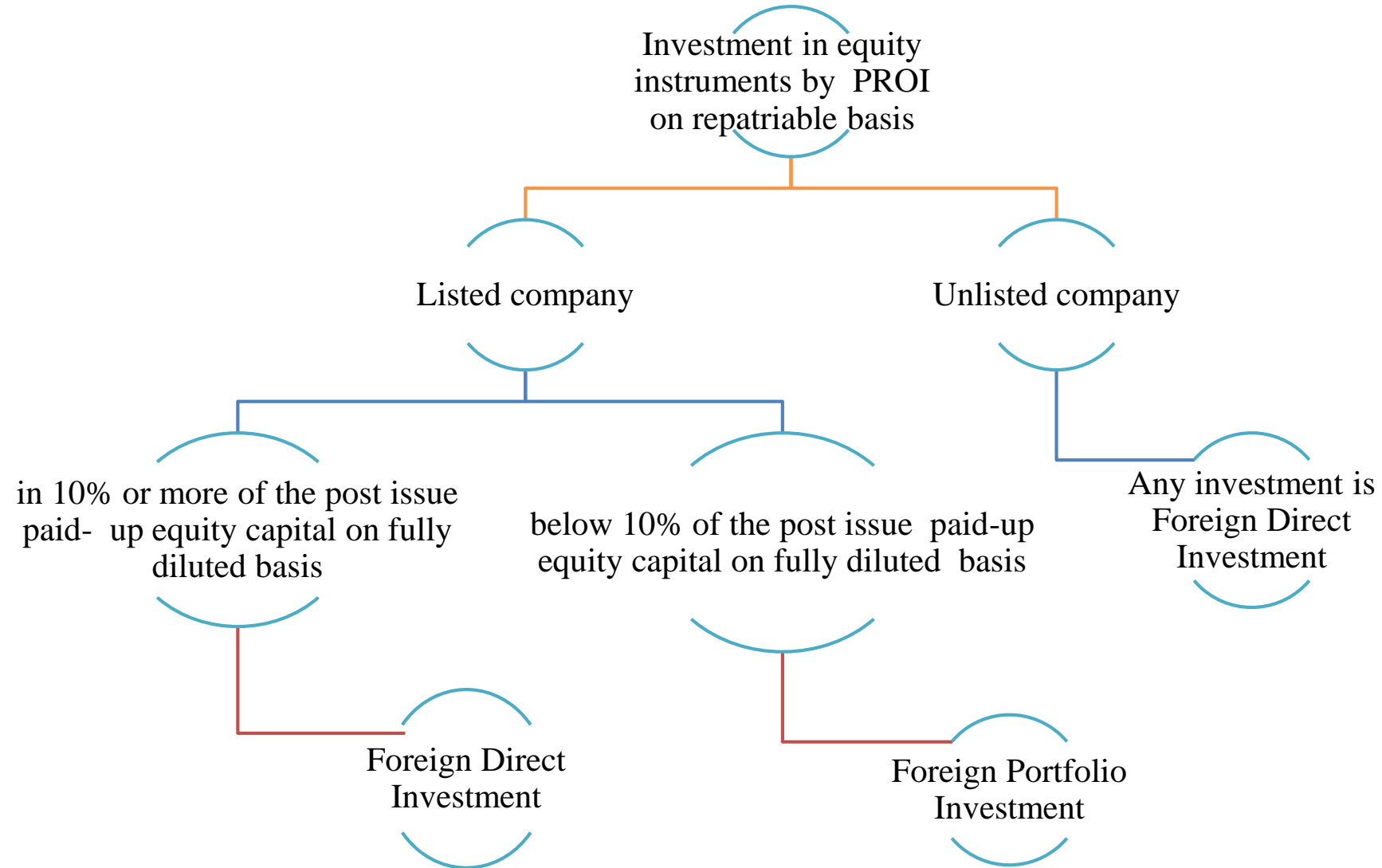
Definition of Foreign Investment

- Foreign Investment
 - means any investment in equity instruments of an Indian company or to the capital of an LLP
 - **made by a PROI**
 - on a repatriable basis
 - Explanation: If a declaration is made by persons as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.
 - PROI may hold foreign investment either as Foreign Direct Investment or Foreign Portfolio Investment.

Equity Instruments under NDI Rules

- Equity shares
 - issued as per Companies Act, 2013
 - includes partly paid up shares
 - 25% payment upfront, full payment in 12 months
- Preference shares
 - fully, compulsorily and mandatorily convertible into equity
- Convertible debentures
 - fully, compulsorily and mandatorily convertible into equity
- Share warrants
 - issued as per SEBI Regulations
 - 25% payment upfront, full payment within 18 months
- Formerly regarded as 'Capital Instruments' under TISPRO Regulations, 2017.

FDI v/s FPI



Indirect Foreign Investment



- Indirect foreign investment means downstream investment
 - Investment in the equity instruments of another Indian company
 - **by an Indian entity** (*“Indian entity” shall mean an Indian company or a LLP*)
 - which has received foreign investment; and
 - is not owned and not controlled by resident Indian citizens; or
 - is owned or controlled by persons resident outside India.
 - **Or by an Investment Vehicle**
 - whose sponsor or manager or investment manager
 - is not owned and not controlled by resident Indian citizens; or
 - is owned or controlled by persons resident outside India.

Important concepts for downstream investment – 1/2

- ‘Ownership of an Indian company’ shall mean
 - beneficial holding of more than 50 percent
 - of the equity instruments of such company.
- ‘Ownership of an LLP’ shall mean
 - contribution of more than 50 percent in its capital and having majority profit share.
- ‘Company owned by resident Indian citizens’ shall mean an Indian company
 - where ownership is vested in resident Indian citizens and/ or
 - Indian companies, which are ultimately owned and controlled by resident Indian citizens.
- An ‘LLP owned by resident Indian citizens’ shall mean an LLP
 - where ownership is vested in resident Indian citizens and/ or
 - Indian entities, which are ultimately owned and controlled by resident Indian citizens.
- ‘Company owned by persons resident outside India’
 - shall mean an Indian company that is owned by persons resident outside India.
- An ‘LLP owned by persons resident outside India’
 - shall mean an LLP that is owned by persons resident outside India.

Important concepts for downstream investment – 2/2

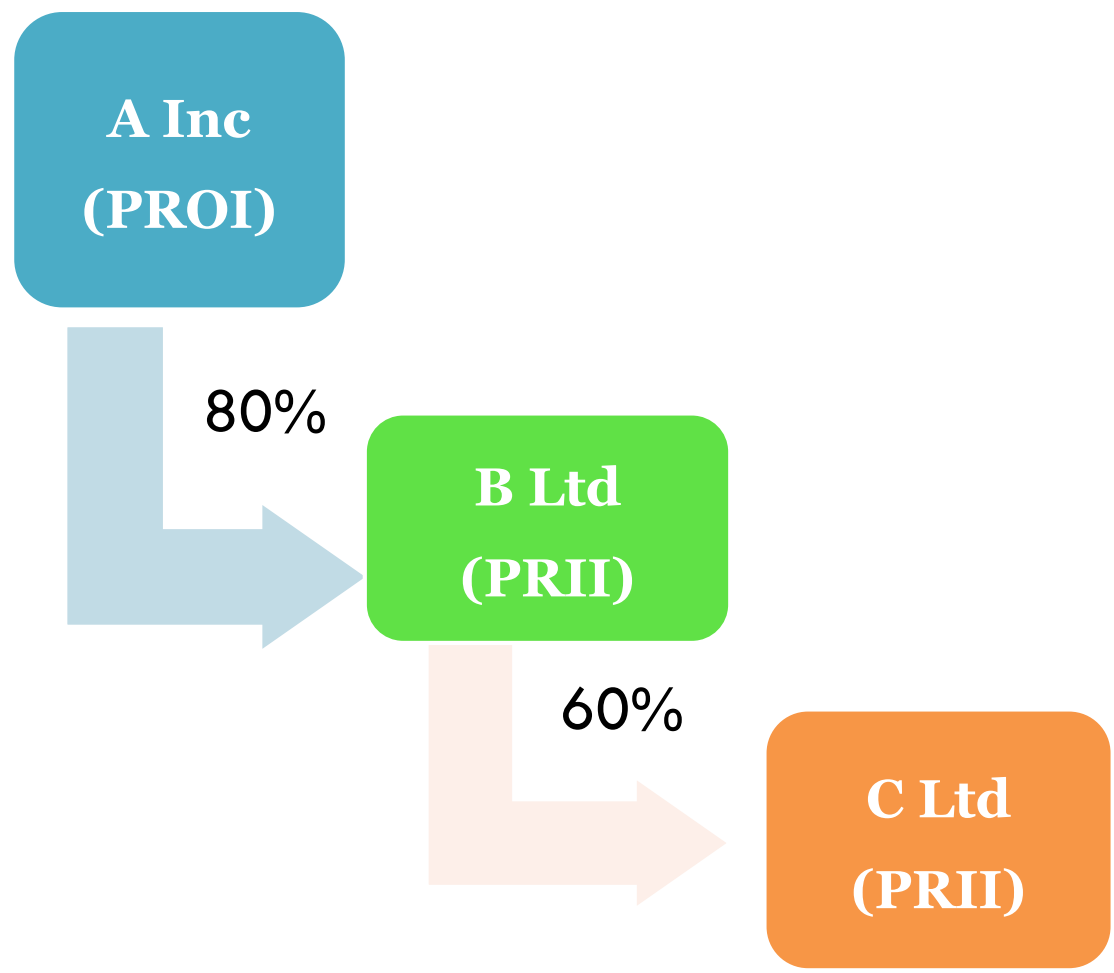
- ‘Control’ shall mean
 - the right to appoint majority of the directors or
 - to control the management or policy decisions
 - including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.
- For the purpose of LLP, ‘Control’ shall mean
 - the right to appoint majority of the designated partners,
 - where such designated partners, with specific exclusion to others, have control over all the policies of an LLP.
- ‘Company controlled by persons resident outside India’
 - shall mean an Indian company that is controlled by persons resident outside India.
- An ‘LLP controlled by persons resident outside India’
 - shall mean an LLP that is controlled by persons resident outside India.

Manner of computing indirect foreign investment

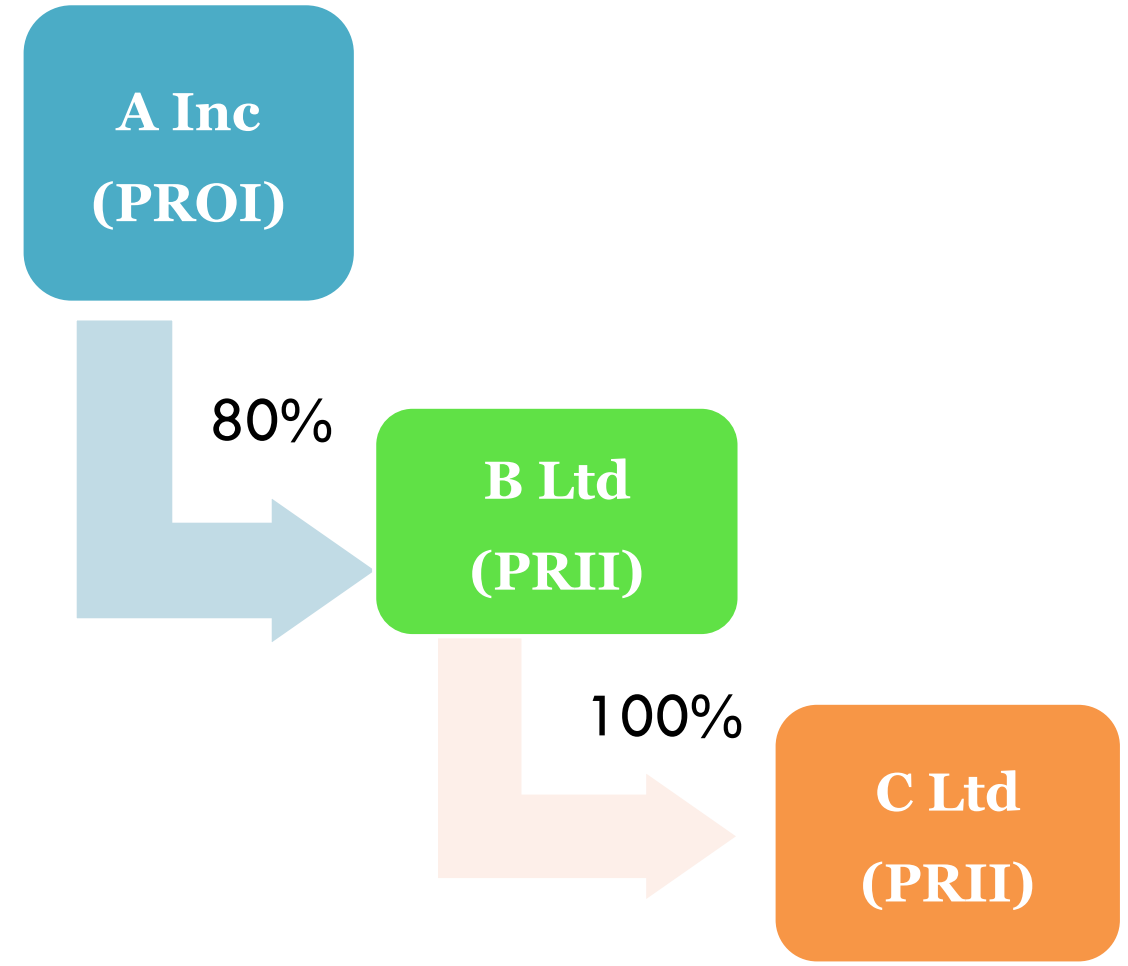
- Foreign investment in investing entity less than 50%
 - Downstream investment will not be regarded as indirect foreign invst.
- Foreign investment in investing entity 50% or more
 - Entire downstream investment will be regarded as indirect foreign invst.
- Foreign investment in investing entity is 50% or more
 - Investing entity has WOS;
 - Indirect foreign invst received by a WOS of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment.

Illustrations of indirect foreign investment

Case 1



Case 2



Structure of NDI Rules – 1/5

Chapter No & Name	Rule and corresponding Schedule
I Preliminary	<ol style="list-style-type: none">1. Short title commencement;2. Definitions;
II General conditions applicable to all investors	<ol style="list-style-type: none">3. Restriction on investment in India by PROI;4. Restriction on receiving investment;5. Permission for making investment by a PROI;

Structure of NDI Rules – 2/5

Chapter No & Name	Rule and corresponding Schedule.
<p>III</p> <p>Investment by PROI</p>	<p>6. Investments by person resident outside India (<i>Schedule I, VI, VIII, IX</i>);</p> <p>7. Acquisition through rights issue or bonus issue;</p> <p>8. Issue of Employees Stock Options and sweat equity shares to persons resident outside India;</p> <p>9. Transfer of equity instruments of an Indian company by or to a person resident outside India.</p>
<p>IV</p> <p>Investment by Foreign Portfolio Investor (FPI)</p>	<p>10. Investment by SEBI registered FPIs (<i>Schedule II, X</i>)</p> <p>11. Transfer of equity instruments of an Indian company by FPI</p>

Structure of NDI Rules – 3/5

Chapter No	Rule and corresponding Schedule.
<p style="text-align: center;">V</p> <p>Investment by NRI or an OCI</p>	<p>12. Investment by NRI or OCI [<i>Schedule III, IV, X</i>]</p> <p>13. Transfer of equity instruments by NRI or OCI</p>
<p style="text-align: center;">VI</p> <p>Investment by other Non-Resident Investors</p>	<p>14. Investment by other non-resident investors [<i>Schedule V</i>]</p> <p>15. Transfer of equity instruments by other non-resident investors.</p>
<p style="text-align: center;">VII</p> <p>Investment by FVCI</p>	<p>16. Investment by FVCI [<i>Schedule VII</i>]</p> <p>17. Transfer of equity instruments of an Indian company by or to a FVCI.</p>

Structure of NDI Rules – 4/5

Chapter No	Rule and corresponding Schedule.
VIII General Provisions	18. Issue of Convertible Notes by an Indian startup company 19. Merger or demerger or amalgamation of Indian companies 20. Reporting requirements 21. Pricing guidelines 22. Taxes and remittances of sale proceeds 23. Downstream investment

Structure of NDI Rules- 5/5

Chapter No	Rule and corresponding Schedule.
IX Acquisition and Transfer of immovable property in India	24. Acquisition and transfer of property in India by a NRI or an OCI 25. Joint acquisition by the spouse of a NRI or an OCI 26. Acquisition of immovable property for carrying on a permitted activity 27. Purchase or sale of immovable property by Foreign Embassies or Diplomats or Consulate Generals 28. Acquisition by a long-term visa holder 29. Repatriation of sale proceeds 30. Prohibition on transfer of immovable property in India 31. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries 32. Miscellaneous 33. Savings

Global measures to protect opportunistic acquisition on account of COVID-19

Global measures to protect Foreign Investment

Country	Type of investment	Restriction	Measures
European Union (25 th March 2020)	<p>FDI and acquisition of control and influence in EU companies (Mainly for health and medical sector biotechnology and infrastructure)</p> <p>FDI- which establish or maintain lasting and direct links between investors from third countries including State entities, and undertakings carrying out an economic activity in a Member State</p>	Non- EU countries	<p>In case of FDI: Adoption of FDI Screening Regulations- Power to take Measures to prevent foreign investors from acquiring or taking control over a company on grounds of security and public order taking into account impact on the European Union as a whole</p> <ul style="list-style-type: none"> - Member states that already have an FDI screening mechanism in place to make optimum use of the same (14 Member states) - Member states not having an FDI screening mechanism, to set up such mechanism <p>Screening would not necessarily result in prohibition but would also include mitigating measures</p> <p>In case of investments not constituting FDI's eg. Portfolio investment</p> <ul style="list-style-type: none"> - Screening as per Treaty provisions on free movement of capital - Retention of special rights in Companies (golden shares) i.e. right to block or set limits to certain types of investments

Country	Type of investment	Restriction	Measures
Germany (8 th April, 2020)	<ul style="list-style-type: none"> Acquisition of voting rights (for government intervention) Direct or indirect acquisition of 10% or more of the voting rights (for suspensory effect) 	Non- EU / Non-European Free Trade Association	<ul style="list-style-type: none"> ▪ Stipulation for Government intervention extended <ul style="list-style-type: none"> ○ Government can intervene and open a review procedure in case of a probable impairment rather than an actual threat ▪ Consideration factors extended to other EU members and EU as a whole <ul style="list-style-type: none"> ○ Interests of not only Germany but also other EU members and EU as a whole will be considered ▪ Suspensory effect (i.e. the transaction can become effective only after an approval has been granted) extended to critical infrastructure <ul style="list-style-type: none"> ○ Critical infrastructure- energy, water, food supply, telecommunications, finance and transportation) ○ Earlier applied only to defence and encryption sector ▪ A Ban on sharing information prior to the FDI
Italy (9 th April , 2020)	For Golden Power law: Controlling stake is acquired by a EU entity. Stake of minimum 10% is acquired by a non-EU entity	Non- Italy countries	<ul style="list-style-type: none"> ▪ Expansion of strategic sectors governed by Golden Powers <ul style="list-style-type: none"> ○ Golden Power- To prohibit or impose restrictions/ conditions on investment made by foreign persons ○ Additional sectors- Financial, credit and insurance critical infrastructure supply of critical inputs Critical technologies and dual-use items, Food security etc ▪ Inclusion of new sectors under FDI screening mechanism

Country	Type of investment	Restriction	Measures
Spain (17 th March, 2020)	FDI- <ul style="list-style-type: none"> Any investment whereby minimum 10% of the share capital of is acquired or a transaction which results in effective participation in the management of the company or control of the Company by an investor 	Non- EU / Non-European Free Trade Association	<p>Prior Government authorisation will be required before carrying out foreign direct investments in Spain</p> <ul style="list-style-type: none"> ○ Applicable Sectors- critical infrastructure, critical technologies and dual-use items, media and other sectors where investment may affect public security, public order and public health. ○ Further prior authorisation irrespective of sector in case foreign investor is <ul style="list-style-type: none"> ❑ directly or indirectly controlled by a foreign government, including public bodies or the armed forces ❑ has made investments or participated in activities in sectors affecting security, public order and public health in another EU Member State ❑ has any open administrative or judicial proceedings (in Spain or abroad) for criminal or illegal activities
Australia (30 th March, 2020)	All types of foreign investments exceeding threshold limits specified under the Act	All types of foreign investors	<ul style="list-style-type: none"> ▪ Temporary changes in Foreign Acquisitions and Takeovers Act <ul style="list-style-type: none"> ○ Dollar threshold for Foreign Investment Review Board (FIRB) approval for foreign investment reduced to 0\$ (previously threshold could be as high as A\$1,192 million depending on certain factors) ❑ However % threshold same as before (eg. acquisitions of 20% or more in an Australian company or trust irrespective of amount shall require approval)

Measures taken by India to curb opportunistic acquisition on account of COVID-19

FEMA (NDI) Amendment Rules, 2020
Effective from April 22, 2020.

Rule 6 of FEMA (NDI) Rules, 2019

Clause	Relevant Schedule	Deals with
a	I	<ul style="list-style-type: none"> Manner in which a PROI may make investment in Indian company <i>Pre-amendment:</i> Restriction on a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan. <i>Post-amendment w.e.f. April 22, 2020:</i> Restriction on entities situated in or citizen of countries sharing land border.
b	VI	<ul style="list-style-type: none"> Manner in which PROI may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an LLP. Restriction on a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan.
c	VIII	<ul style="list-style-type: none"> Manner in which PROI may invest in units of an investment vehicle. Restriction on a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan.
d	IX	<ul style="list-style-type: none"> Manner in which PROI may invest in depository receipts issued by foreign depositories.

Rule 6 (a) – Pre amendment

- Investments by PROI will be subject to conditions in Schedule I.
- Investment by following will be under government route
 - A person who is citizen of Bangladesh or Pakistan
 - Entity incorporated in Pakistan or Bangladesh
 - Can invest in sectors **other than** defence, space, atomic energy and prohibited sectors.
 - Lottery, gambling, betting, casino;
 - including foreign technology collaboration in any form.
 - to ensure foreign companies do not maintain their trade interests in India through the trademark or licensing route.
 - chit funds, nidhi company;
 - TDRs, real estate business or construction of farm house;
 - Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes;
 - Activities/ sector not open for private investment
 - Atomic energy, Railways.

Conditions under Schedule 1

- Deals with purchase or sale of equity instruments of an Indian company by PROI
- Indian company can issue equity instruments to PROI
 - Subject to entry route, sectoral caps and attendant conditionalities.
 - if the Indian investee company is engaged in an automatic route sector, shares may be issued against
 - Swap of equity instruments; or
 - Import of capital goods or machinery or equipment
 - Excluding second-hand machinery;
 - Pre-operative or pre-incorporation expenses
 - Including payment of rent etc.
- A PROI can purchase equity instruments on S.E.
 - If such person has already acquired control in accordance with SAST.

Rule 6 (a) – Post amendment

- Investments by PROI will be subject to conditions in Schedule I.
- Investments from certain countries, moved under approval route.
 - If made by entity of a country sharing land border with India; or
 - If beneficial owner (BO) of an investment is
 - Situated in; or
 - Citizen of
 - Country sharing land border with India.
- Direct/ indirect transfer of ownership, moved under approval route
 - If BO is an entity of a country sharing land border with India; or
 - If BO is situated in or is a citizen of country sharing land border.
- Measure to curb opportunistic acquisition, due to COVID-19
 - Ministry of Commerce & Industry issued [Press note 3 of 2020](#)
 - Effective from the date of FEMA notification.
 - Ministry of Finance issued [FEMA \(NDI\) Amendment Rules, 2020](#)
 - Effective from April 22, 2020.
 - Rule 6 (a) amended.
- Countries sharing land border with India
 - Pakistan, Afghanistan, China, Bhutan, Nepal, Myanmar and Bangladesh.

Rule 6 (a) of NDI Rules

(6) Investments by person resident outside India: - A person resident outside India may make investment as under:-

(a) may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the terms and conditions specified in Schedule I:

Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval:

Provided further that, a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors or activities prohibited for foreign investment:

Provided also that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval:-

First proviso to Rule 6 (a)

Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval:

- Which countries share land border with India?
- What kind of investments are covered above?
- Mode of investments?
- Who will be regarded as beneficial owner of the investment?
- Whether the investee company has any actionable for past investments received?
- Who is required to apply for government approval?
- Will it get attracted in case of downstream investment?
- Will this apply to investment in LLP?
- Whether this will apply to investment by FPIs under Schedule II?
- What if the FPIs breach 10% limit?
- In case of listed company, whether the limit of 10% on diluted basis should be considered per person or aggregated?
- Conversion of ECB or NCDs held by investor in aforementioned country?

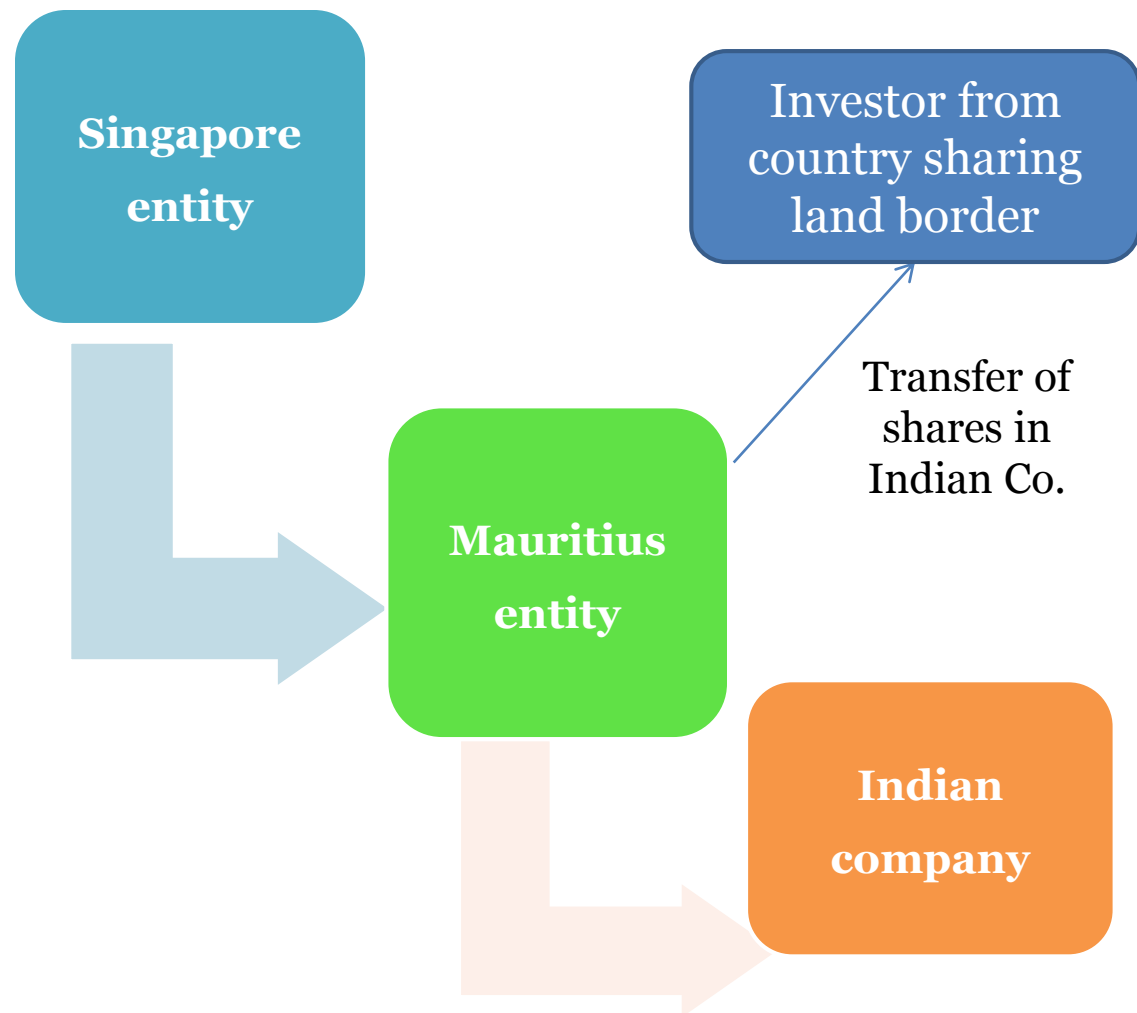
Third proviso to Rule 6 (a)

Provided also that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval-

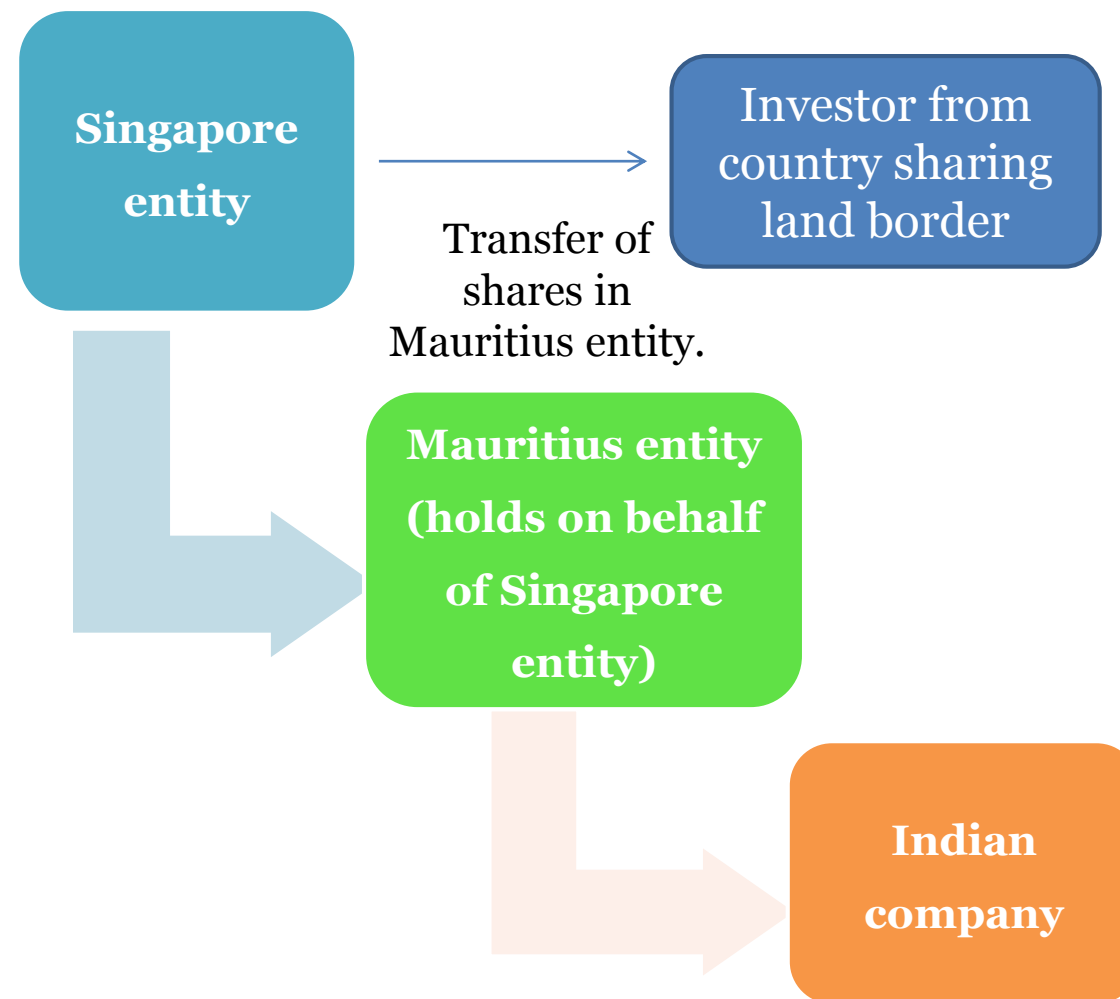
- What is meant by direct transfer of ownership?
- What is meant by indirect transfer of ownership?
- How will the investee company get to know about transfer of shares overseas?
- Whether investee company is to ask for beneficial ownership declaration?
- In case of transfer, whether the investee company is required to apply for government approval?
- Is the investee company bound to accept the investment made in violation of above?
- Will this apply to buyback of shares by Indian Company?

Illustrations

Case 1



Case 2



FDI in Insurance sector (including insurance intermediaries)

FEMA (NDI) Second Amendment Rules, 2020

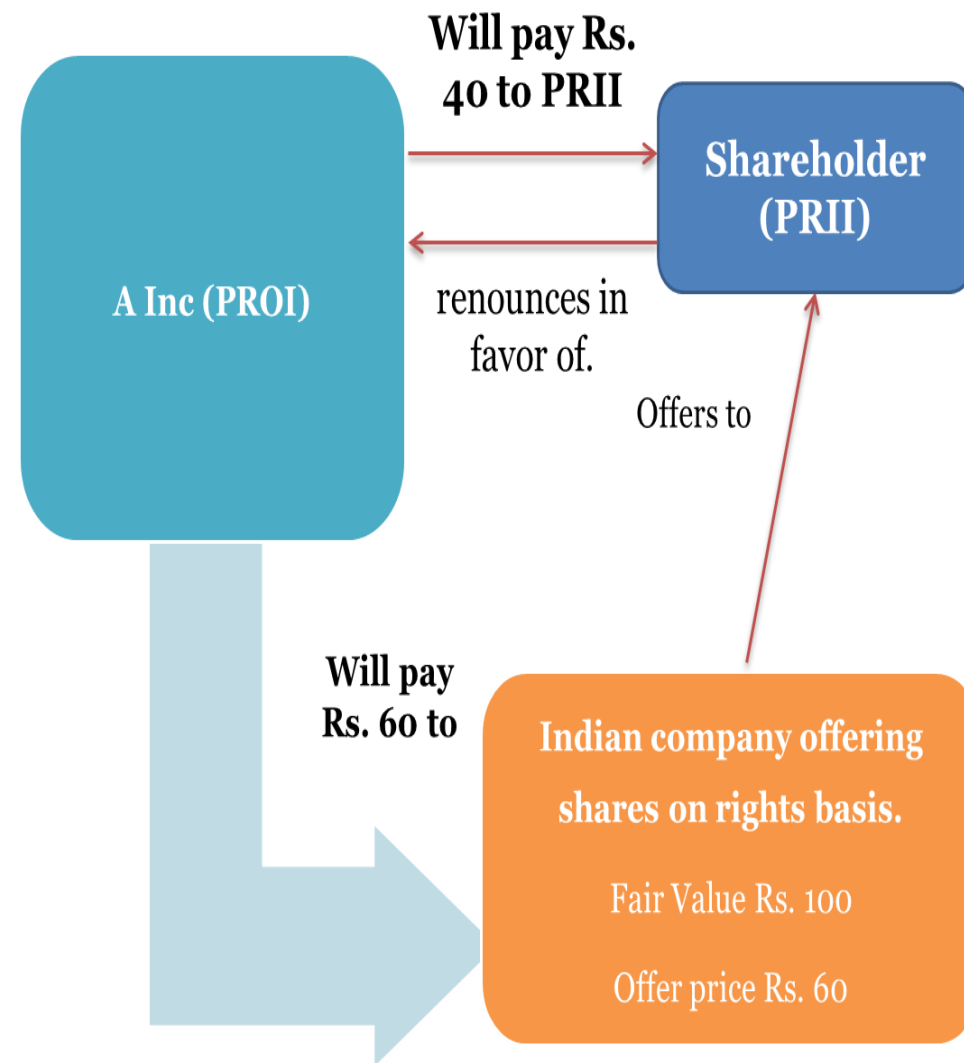
Effective from April 27, 2020.

Brief of amendments - 1 / 3

- **Rights issue:**

- Pricing requirement in case of acquisition by a Person Resident outside India (**'PROI'**) of equity instruments (other than share warrants) from a Person Resident in India (**'PRII'**) who has renounced the right in favor of PROI;

- Rule 7A has been inserted ;
- PROI can acquire shares renounced in its favor as per pricing guidelines provided under Rule 21 of NDI Rules
 - Listed company – as provided under SEBI Guidelines
 - Unlisted company – as per valuation report.



Brief of amendments – 2/3

- **Insurance company:**

- Foreign Direct Investment ('FDI') in norms in case of insurance company and insurance intermediaries, to implement the changes proposed vide *DPIIT press note no 1 of 2020 dated February 21, 2020*.
 - https://dipp.gov.in/sites/default/files/pn1_2020.pdf
 - Insurance company – up to 49% under Automatic route
 - Intermediaries or Insurance intermediaries - up to 100% under Automatic route
 - "Intermediary" or "insurance intermediary" **includes** insurance brokers, reinsurance brokers, insurance consultants, **corporate agents**, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time."
- Indian Insurance Companies (Foreign Investment) Rules, 2015
 - In September, 2019 IRDA amended Rule 9 of Insurance Foreign Investment Rules to provide that there shall be no cap to foreign equity investment for intermediaries or insurance intermediaries. The said amendment became effective from September 2, 2019 <https://financialservices.gov.in/sites/default/files/FDI%20Gazette%20intermediaries%2002.09.2019.pdf>

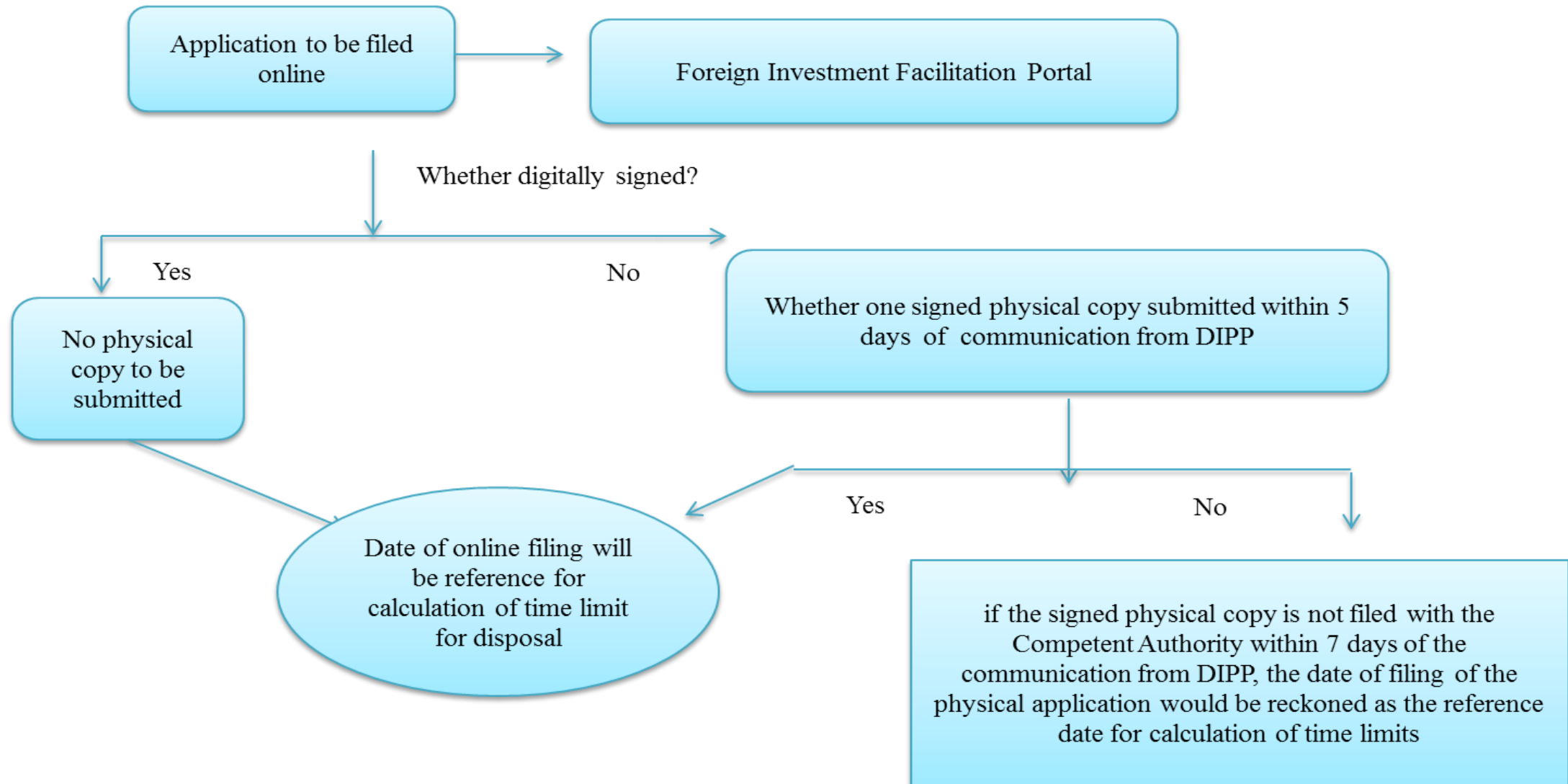
Brief of amendments – 3/3

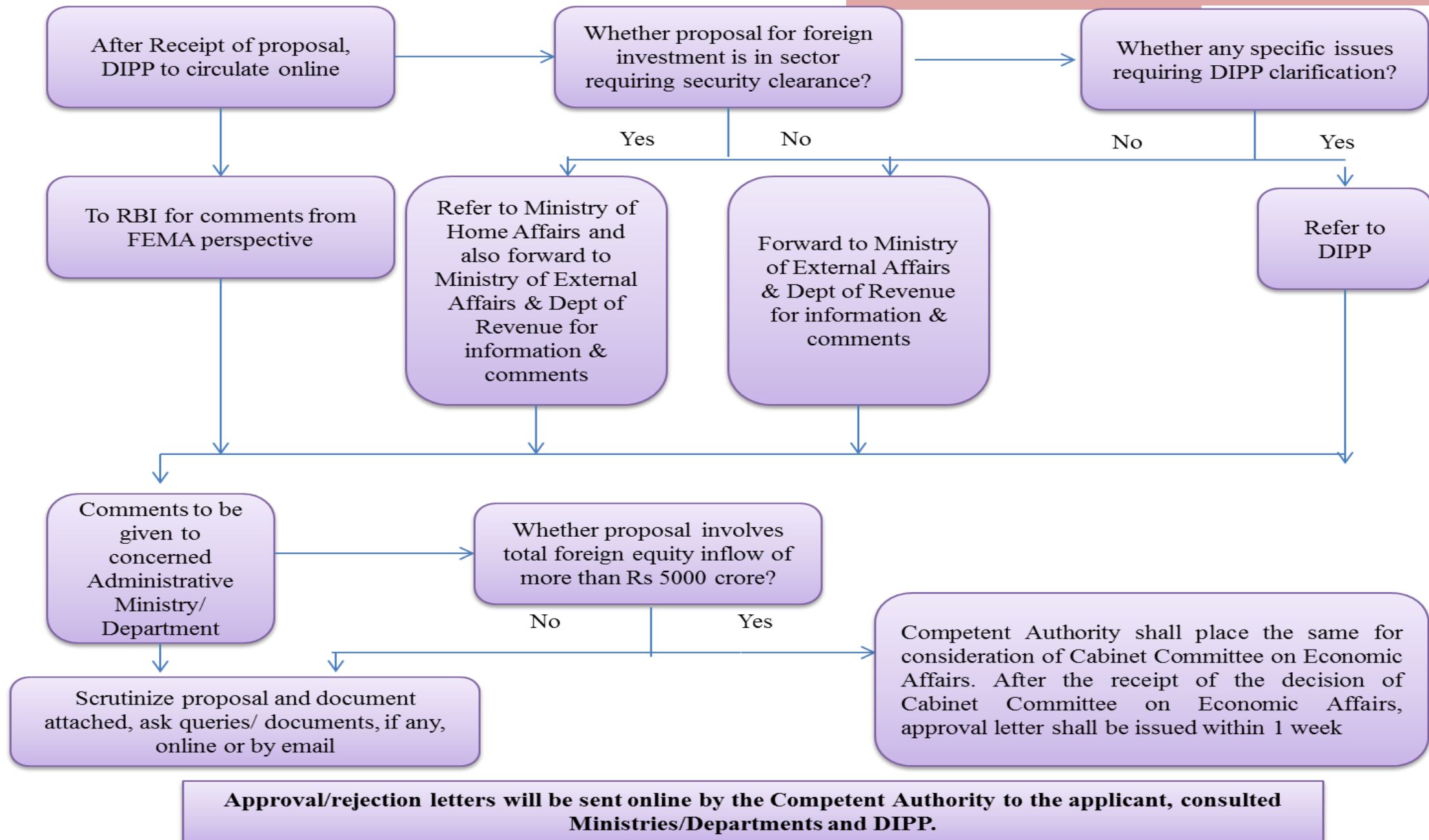
- Insurance intermediary with majority shareholding of foreign investors shall undertake following:
 - Incorporation as a limited company under Companies Act, 2013;
 - Ensuring that Chairman of the Board or CEO or Principal Officer of MD is a resident Indian citizen;
 - Take prior permission of IRDA for repatriating dividend;
 - Bring in latest technological, managerial and other skills;
 - Abstain from making payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by IRDA;
 - Disclose in the formats prescribed by IRDA in relation to all payments made to its group or promoter or subsidiary or interconnected or associate entities;
 - Ensure composition of the Board of Directors and KMPs as specified by concerned regulators.

FDI under Approval Route

Process, competent authorities, timelines

Procedure under Approval Route





Competent Authorities

S. No.	Activity/ sector	Administrative Ministry/ Department
(i)	Mining	Ministry of Mines
(ii)	Defence	
	a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DIPP	Department of Defence Production, Ministry of Defence
	b) Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959	Ministry of Home Affairs
(iii)	Broadcasting	Ministry of Information & Broadcasting
(iv)	Print Media	
(v)	Civil Aviation	Ministry of Civil Aviation

Competent Authorities

(vi)	Satellites	Department of Space
(vii)	Telecommunication	Department of Telecommunications
(viii)	Private Security Agencies	Ministry of Home Affairs
(ix)	Applications involving investments from <i>Countries of Concern</i> which presently include Pakistan and Bangladesh, requiring security clearance as per the extant FEMA 20, FDI Policy and security guidelines, amended from time to time	
(x)	Trading (Single, Multi brand and Food Product Retail Trading)	Department of Industrial Policy & Promotion
(xi)	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units (EOUs) requiring approval of the Government	

Amended vide P.N. 01/ 2018
(not effective yet)

Investment under
automatic route –
DPIIT(formerly
DIPP)

Cases pertaining to
Govt approval route
– Nodal
Administrative
Ministries/
Departments

Proposals requiring security clearance

- Investments in
 - Broadcasting
 - Telecommunication
 - Satellites - establishment and operation
 - Private Security Agencies
 - Defence,
 - Civil Aviation and
 - Mining & mineral separation of titanium bearing minerals and ores, its value addition and integrated activities.
- Investments from Pakistan and Bangladesh;
- Security clearance and comments from Ministry of Home Affairs (MHA)
 - within 6 weeks of online receipt of the proposal
 - If not in position to revert in 6 weeks, will inform concerned administrative Ministry/Department of the expected time frame

Timelines for approval

S.No	Action Points	Time Period	Cum. Time Period
1	Dissemination of Investment Proposal by DIPP to Concerned Ministry/Department	2 days	1 Week
2	Time for submission of signed physical copy of the proposal to the Competent Authority, if needed	5 days	
3	Initial scrutiny of the proposal and documents attached therewith, and seeking relevant additional information/documents from the applicant	1 Week	2 Weeks
4	Submission of clarification by DIPP on specific issues of FDI policy	2 Weeks	4 Weeks
5	Submission of comments by Consulted Ministry/ Department/ RBI/ Any Other Stakeholder	4 Weeks	6 Weeks
6	Submission of Comments by Ministry of Home Affairs on proposals requiring security clearance	6 Weeks	8 Weeks
7	Approval on proposals by Competent Authority for grant of approval	2 Weeks	
	Proposals not requiring security clearance		8 Weeks
	Proposal Requiring security clearance		10 Weeks

Note:

- i. Additional time of 2 weeks will be given to DIPP for consideration of those proposals which are proposed for rejection or where additional conditions which are not provided in the FDI policy are proposed to be imposed by the Competent Authority.
- ii. Time limits allocated exclude the time taken by applicants in removing deficiencies in the proposals/supplying additional information as may be required by the Competent Authority.

Refer other resources

- FEMA: Click [here](#)
- Companies Act: Click [here](#)
- SEBI: Click [here](#)
- RBI: Click [here](#)