

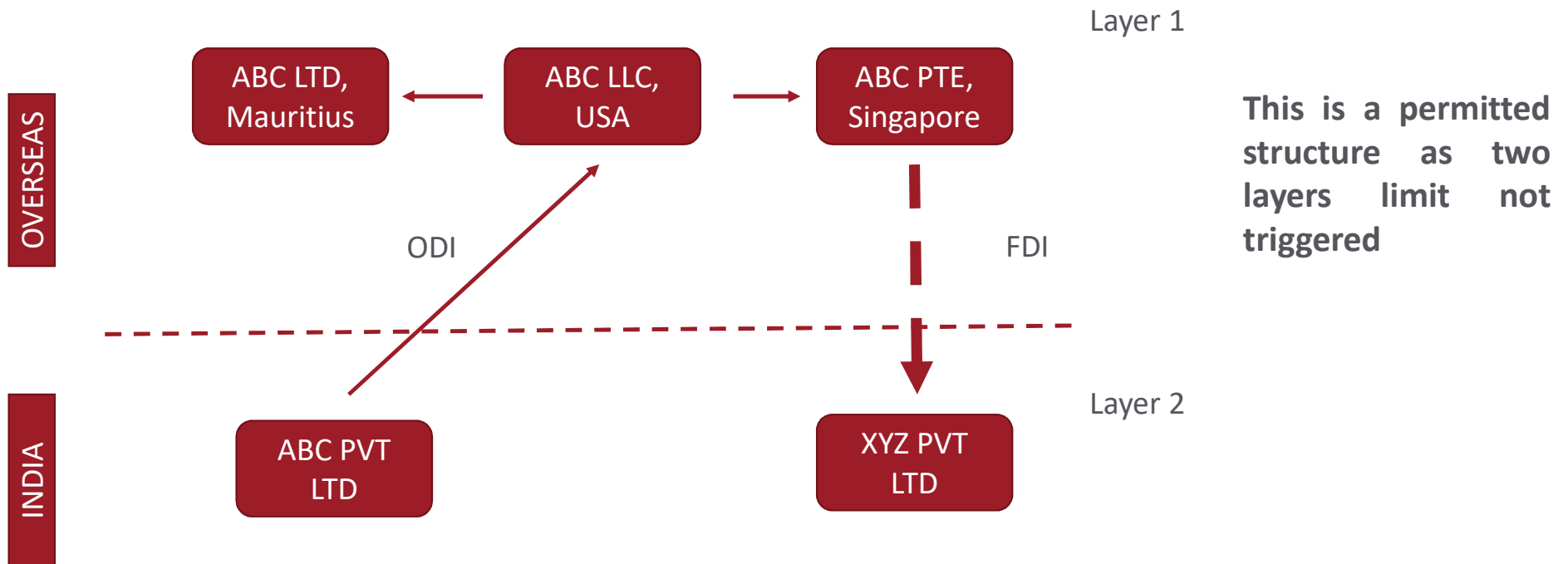
**REVISED OVERSEAS
INVESTMENT REGULATORY
FRAMEWORK**

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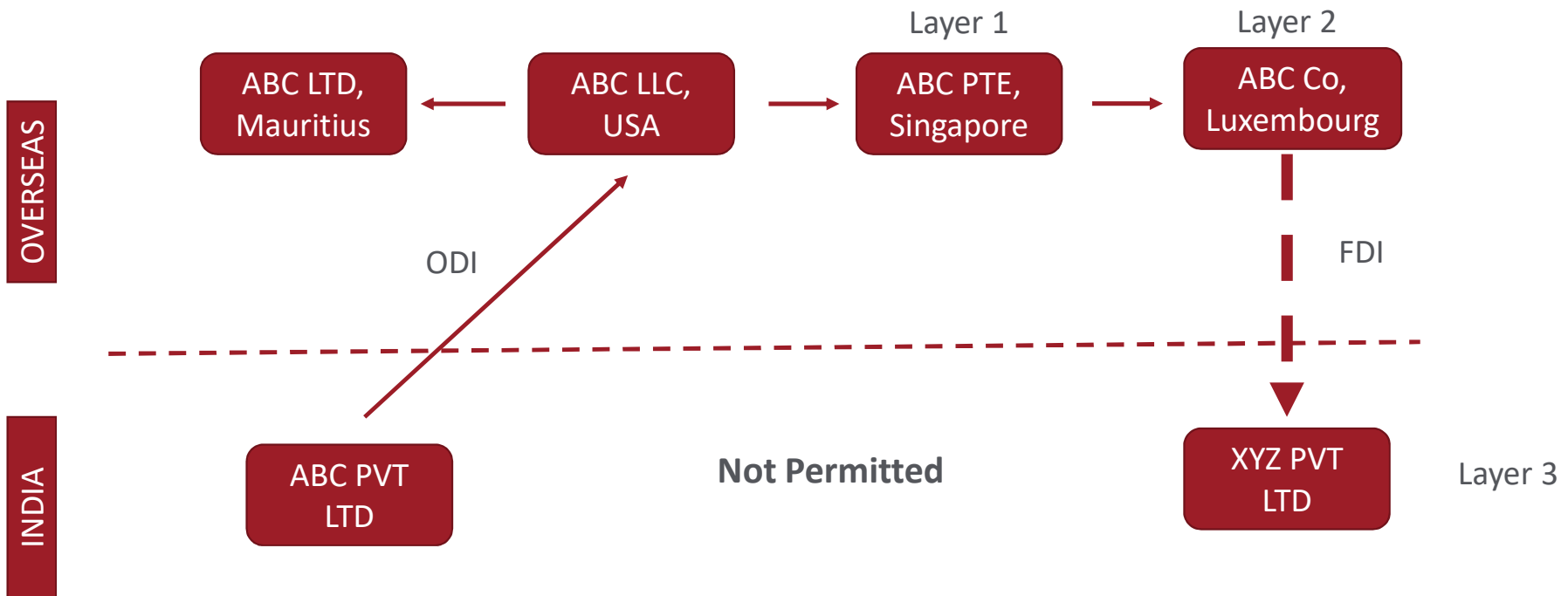
Two Layer Structures – Round Tripping

Rule 19(3) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries



Determination of Two Layer Structures ...

Rule 19(3) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries



Deferred Consideration facility

- ✓ Available only for ODI cases not OPI
- ✓ No ceiling on time limit of deferment – though to be documented upfront
- ✓ Foreign securities to be acquired upfront
- ✓ Compliance to pricing guidelines to be ensured upfront. No need for compliance to pricing guidelines on individual subsequent tranche payment
- ✓ Section D & Section E of Form FC not required on subsequent tranche payments although other parts of Form FC to be submitted for each tranche
- ✓ Deferred payment facility available on sale/transfer also as per Reg 7 although operational clarity awaited.

Overseas Investment in Financial Services

INDIAN PARTY	FE NON IFSC	FE IFSC	
Non Individual FS	FS	FS	<ul style="list-style-type: none"> All 3 conditions Overseas regulator approval exempt, if not required as per laws of host country IFSC regulator required to approve applications within 45 days, failing which approval is deemed as provided
Non Individual FS	Non FS	Non FS	<ul style="list-style-type: none"> Subject to guidelines issued by respective regulators in India in addition to ODI Rules and Reg.
Non Individual Non FS	FS (except banking & insurance)	FS (except banking & insurance)	<ul style="list-style-type: none"> Only conditions applicable is 3 years profitability track record. For OI in IFSC, 3 years profitability track record requirement is dispensed with

Overseas Investment in Financial Services

INDIAN PARTY	FE NON IFSC	FE IFSC	
Individual (no Control in FE)	Not Permitted in FS	ODI (except banking & insurance) OPI as contribution to investment fund/INVI	<ul style="list-style-type: none"> • IFSC FE may be operating entity or otherwise – Special dispensation to OI in IFSC • IFSC FE with ODI/OPI from Individuals can have SDS inside / outside of IFSC
Individual (having Control in FE)	Not Permitted in FS except by way of inheritance, sweat equity, qualification shares, ESOP	ODI (except banking & insurance)	IFSC FE can have SDS only within IFSC

Non Fund Financial Commitments

OLD FRAMEWORK

- Bank Guarantees only for JV/WOS & Corporate guarantee only up to SDS 1.
- Financial Commitment on pledge/charge considered equivalent to guarantee/pledge value.
- Rollover of guarantees not treated as fresh commitment provided no change in amount.

NEW FRAMEWORK

- Guarantees (Bank or Corporate) for FE or SDS (all levels).
- Financial Commitment on pledge/charge restricted to underlying facility amount.
- Rollover of guarantees not treated as fresh commitment irrespective of renewal of amount on lower side.

- ❑ ***Multiple securities towards same facility may result in total financial commitment beyond the facility amount***
- ❑ ***Existence of NPA / Investigation to be checked at the time of issuing guarantee / creating pledge, not at the time of invocation***

Overseas Investments – ESOPs

OPI

- Whether listed or unlisted FE (*deviation refer std. definition of ODI/OPI*)
- OI \leq 10% of paid-up capital/stock of FE, and Non existence of Control in FE
- Reporting responsibility on Corporate

ODI

- Whether listed or unlisted FE (*deviation refer std. definition of ODI/OPI*)
- OI $>$ 10% of paid-up capital/stock of FE, and Existence of Control in FE
- Reporting responsibility on Individual employee

Threshold for OPI and ODI categorization will be based on each individual employee level and not on consolidated level.

No limit on remittance amount however, amount actually remitted will be reckoned towards utilization of LRS limit.

Overseas Investment - Gift / Inheritance

DONEE

DONOR

Resident Individual

Resident Individual

- Inheritance is totally permitted
- Gift can be only between Relatives

Resident Individual

Non Resident

- Inheritance is totally permitted
- Gift requires compliance with FCRA Act

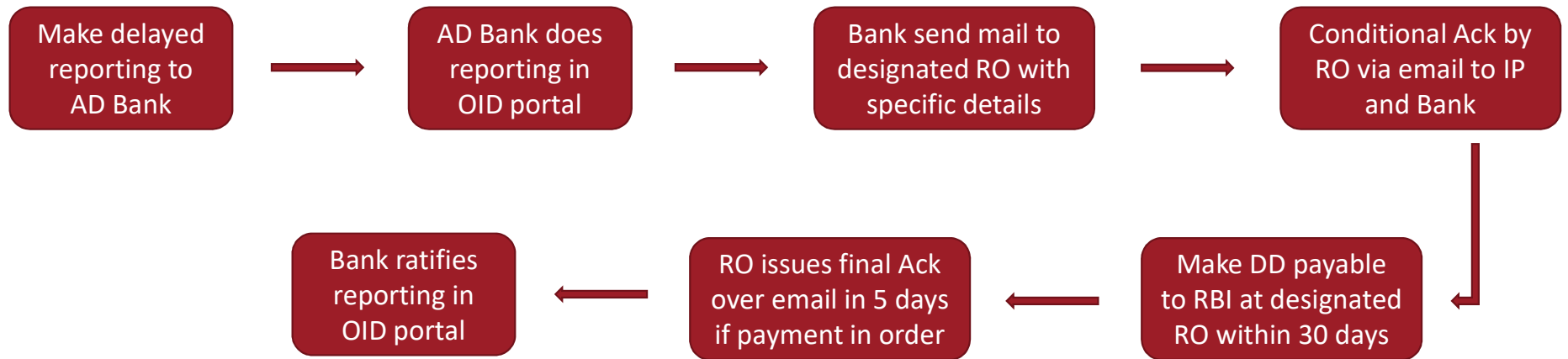
Non Residents

Resident Individual

- Not Permitted

“Relative” has same meaning under Companies Act, 2013

Late Submission Fee



UIN PREFIX	DESIGNATED RO
AH	Ahmedabad
BG	Bengaluru
BL, BY, PJ	Mumbai
BN, CA, GA, GH	Kolkata

UIN PREFIX	DESIGNATED RO
CG, JM, JR, KA, ND, PT, WR	New Delhi
HY	Hyderabad
KO, MA	Chennai

Key Changes

**NPA/Investigation
require NOC from
banks/investigative
agency**

**Acquisition of
Control must for
inter-corporate
loans in OI**

**Interest free loans in
OI structures not
permitted (ALP
concept introduced**

**Net worth includes
Share Premium - in
line with Companies
Act 2013.**

**APR exempt for ODI
in unlisted FE with
less than 10% equity
and no Control**

**Non Pendency to be
ensured UIN wise
not Indian partywise**

**Recognition of SDS -
FE to have Control**

**Restructuring of ODI
only on
proportionate basis
(will cover equity +
debt)**

**Concept of LSF
(restricted to 3
years) only for
delayed reporting
not for violation**

**Individuals can
invest in
Equity/CCP/CCD/per
petual irredeemable
capital**

**LRS regulations
applicable only to
the extent of limits**

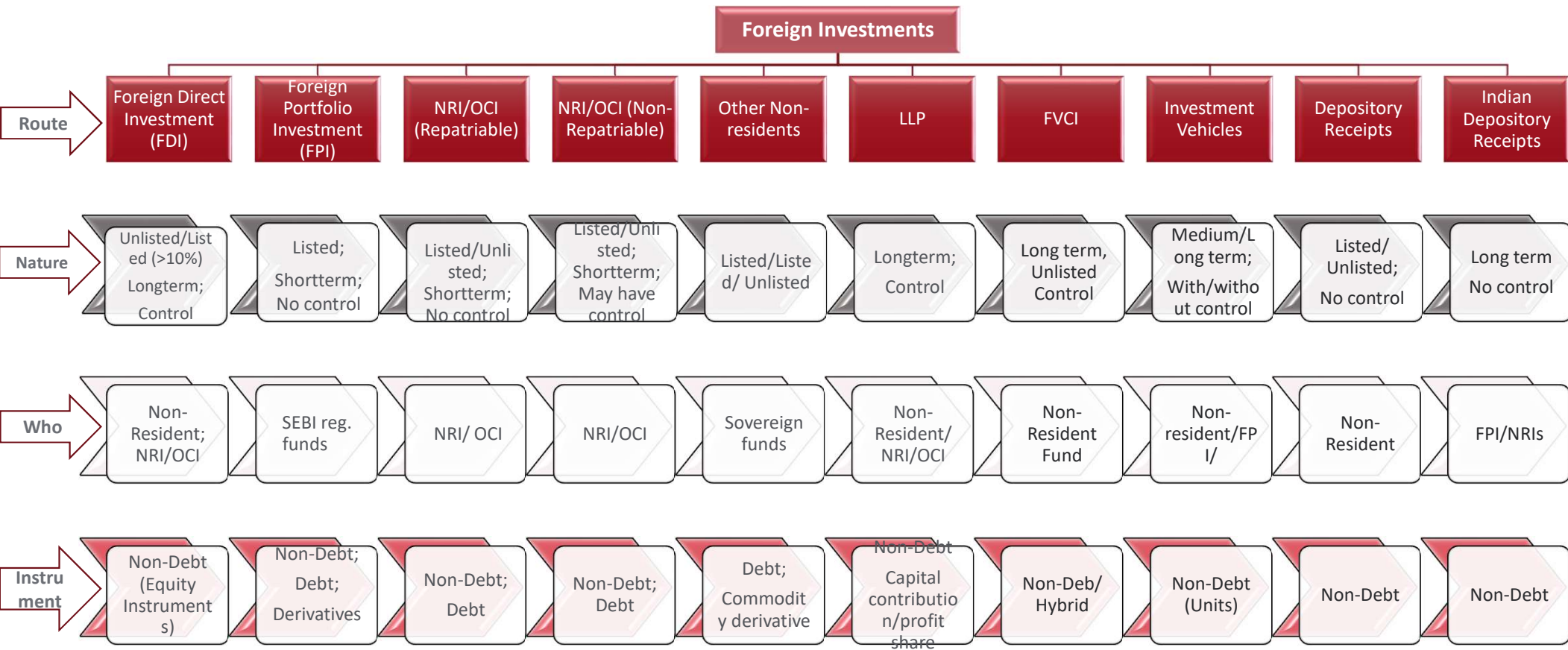
**Bona fide business
purpose still the
prima facie
requirement for OI**

FOREIGN DIRECT INVESTMENTS

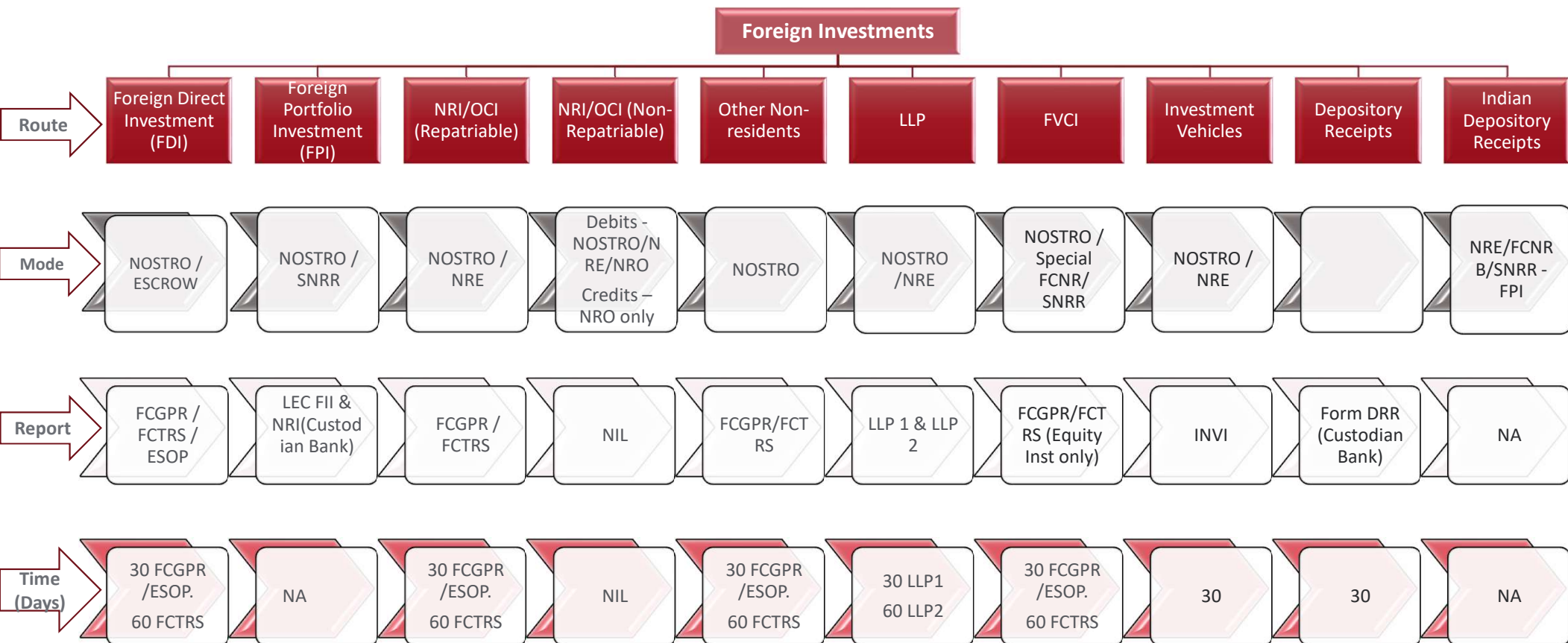
REGULATORY FRAMEWORK

- FDI Policy - DPIIT
- Foreign Exchange Management Non-Debt Instruments Rules, 2019
- Foreign Exchange Management Mode of Payment and Reporting of Non-Debt Instruments Regulations, 2019
- Master Direction on FDI - RBI
- Gazette Notifications - Amendments

NDI RULES



MODE OF PAYMENTS & REPORTINGS



Other Reporting Type

CN

Convertible Notes issued by Indian Startup entity to Non-resident investor

Within 30 days of Issuance of CN

ESOP

Indian Company issuing employee stock option plan to its Non-resident employees/directors including those of its holding company/JV/WOS

Within 30 days of issuance of ESOP

DI

Foreign Owned and Controlled Company in India making onward investment in other Indian Company

Within 30 days of making investment

PN 3 - FDI from Land Bordering Countries

Total Restriction (irrespective of BO)	Beneficial Owner Principal Application	Permitted
<ul style="list-style-type: none">• Individual investor being citizen of 7 countries #• Entities incorporated or registered in aforesaid 7 countries	<ul style="list-style-type: none">• Entities incorporated / registered in any other Country• BO threshold to apply	<ul style="list-style-type: none">• Individual investor being citizen of any country other than 7.• Within the BO threshold as per Companies Act 2013 and Rules made thereunder.

Afghanistan, Pakistan, Nepal, Bhutan, China, Myanmar, Bangladesh. Macau and Hong Kong currently considered as part of China. Taiwan is exempted.

Beneficial Ownership Threshold as per Companies Act **i.e. 10%**

Applies to – Schedule 1 & wherever Equity Instruments Issuance/transfer involved, Downstream Investments, Bonus / Rights Issue, subsequent M & A corporate actions.

Not Applies to – Debt Route and NR exit deals.

Indirect FI – FOCC to NR/R Transfers

Foreign Owned & Controlled (FOCC) – Indian Company/LLP with NR beneficial holding/Contribution > 50%, **OR** Control exercised by NR

Rule 23(5) – NDI – What it says

Transfer	Reporting	Pricing conditions
FOCC to NR	FCTRS & Change entity master for DI leg	No
FOCC to R	Change entity master for DI leg	Yes
FOCC to FOCC	No	No

Rule 23(5) – NDI – What it doesn't say

Transfer	Reporting	Pricing conditions
NR to FOCC	FCTRS & DI	Yes
R to FOCC	Form DI	NA

ESOP Case Study

Q. Whether Pricing guidelines applicable?

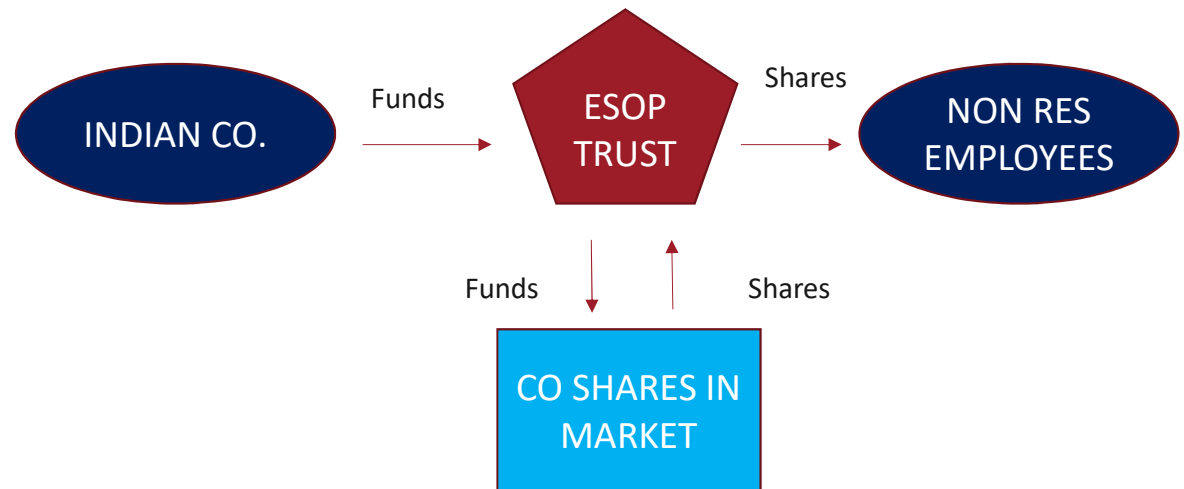
Not Applicable

Q. Reporting in which Form in SMF?

FCTRS Form

Q. Whether Valuation Certificate required?

Not Required

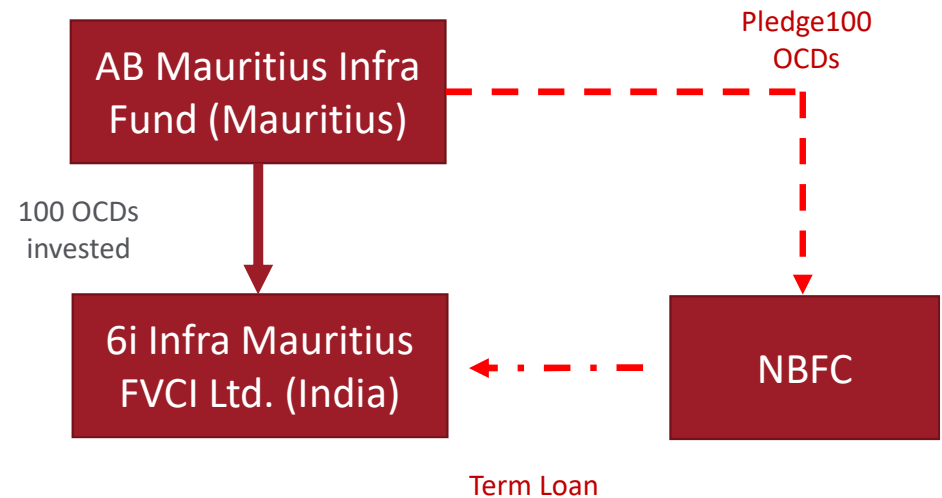


Pledge of Securities by FVCI

- ❑ Rule 9(8) of FEM (NDI) Rules permit pledge of equity instruments and units of investment vehicles in favour of Indian banks / overseas banks / Indian NBFCs
- ❑ No mention of pledge of securities by FVCI under Schedule VII of NDI Rules

Schedule VII of NDI Rules, 2019

“3) The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security or instrument it is allowed to invest in...”



Whether AB Mauritius Infra pledge it 100 OCDs held in 6i Infra Mauritius FVCI in favor of NBFC for proposed borrowing by 6i?

Yes

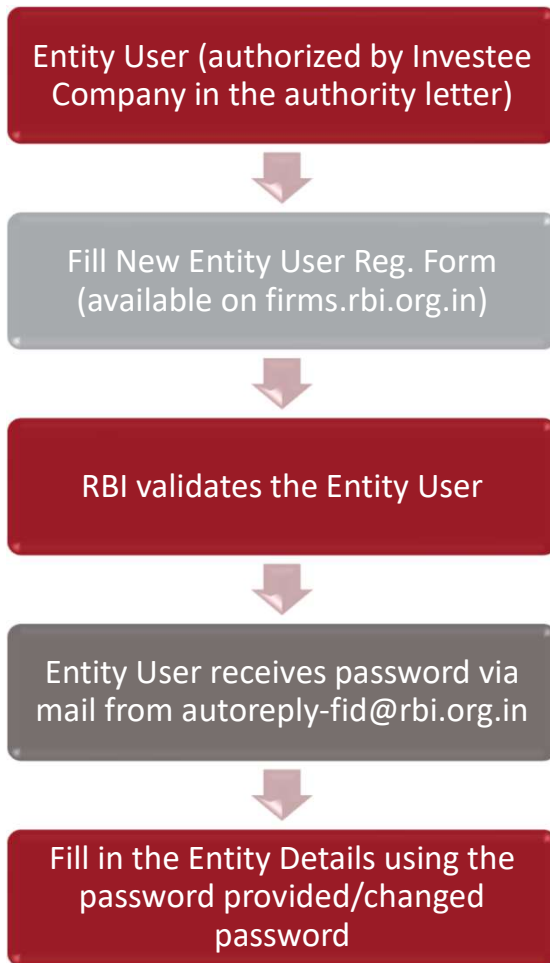
FDI – RECKONER TRANSFER SCENARIOS

Nature of transfer	Mode of Transfer	Rule	Pricing guidelines	Reporting
NR to NR (Excl. NRI/OCI/OCB)	Sale or Gift	Automatic route	NA	NA
NR to R	Sale or Gift	Automatic route.	Yes	FCTRS
NR to R (FOCC)	Sale	Automatic route	Yes	FCTRS & Form DI
R to NR	Sale	Automatic route. Should comply with all FDI guidelines	Yes	FCTRS
R to NR	Gift (Relatives)	RBI approval. {Shall not exceed 5% of paid up capital or \$ 50000 max}	NA	FCTRS
R to NR	Pledge	Under ECB; AD NOC;	NA	NA
R to FOCC	Sale	Automatic Route (No Deferred Payment allowed)	Yes	Form DI

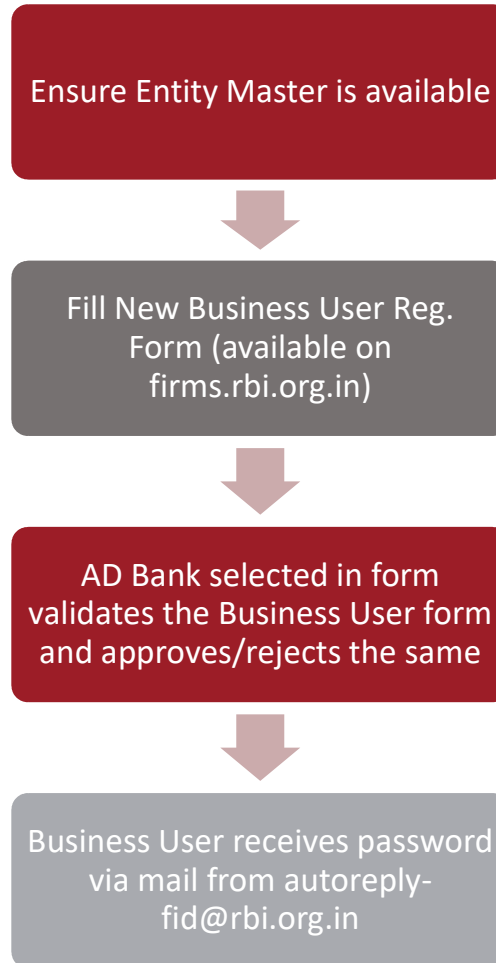
FDI – TRANSFER SCENARIOS

Nature of transfer	Mode of Transfer	Rule	Pricing guidelines	Reporting
NR to R (Bank/Lender/NBFC)	Pledge	Automatic AD NOC;	NA	NA
NR to NR (Overseas lending bank)	Pledge	Automatic AD NOC;	NA	NA

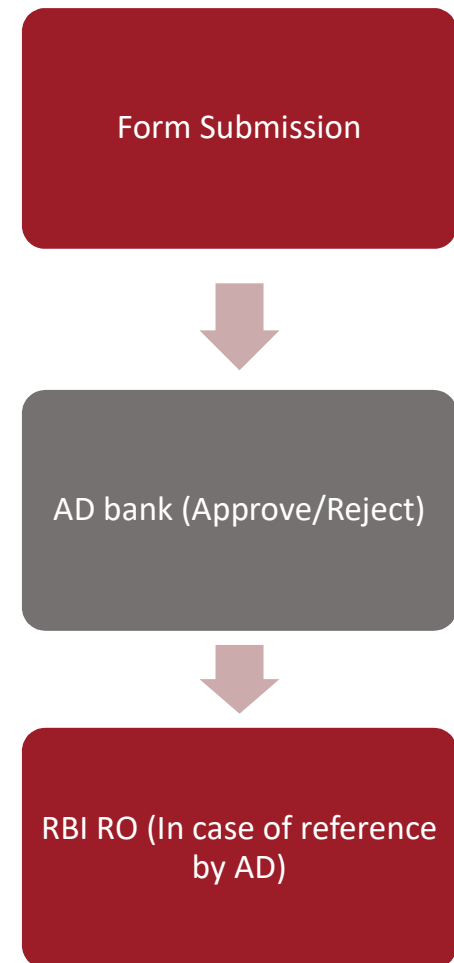
Entity Master



Business User Creation



Single Master Form



FIRMS Dos & DON'Ts

DOs

- Refer to latest User Manual from firms.rbi.org.in
- Strictly follow the Document Checklist as per Manual
- RBI Acknowledgements mandatory for original NR holdings in case of FCTRS transactions of sale by NR to R
- Ensure that Entity Master Figures are correct before submitting any form for reporting

DON'Ts

- Miss the SMF filings for corporate actions pertaining to M & A deals
- Initiate the filings on or near the due dates.
- Upload Valuation Certificate which is more than 3 months old

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Q & A

THANK YOU