

Foreign Direct Investment

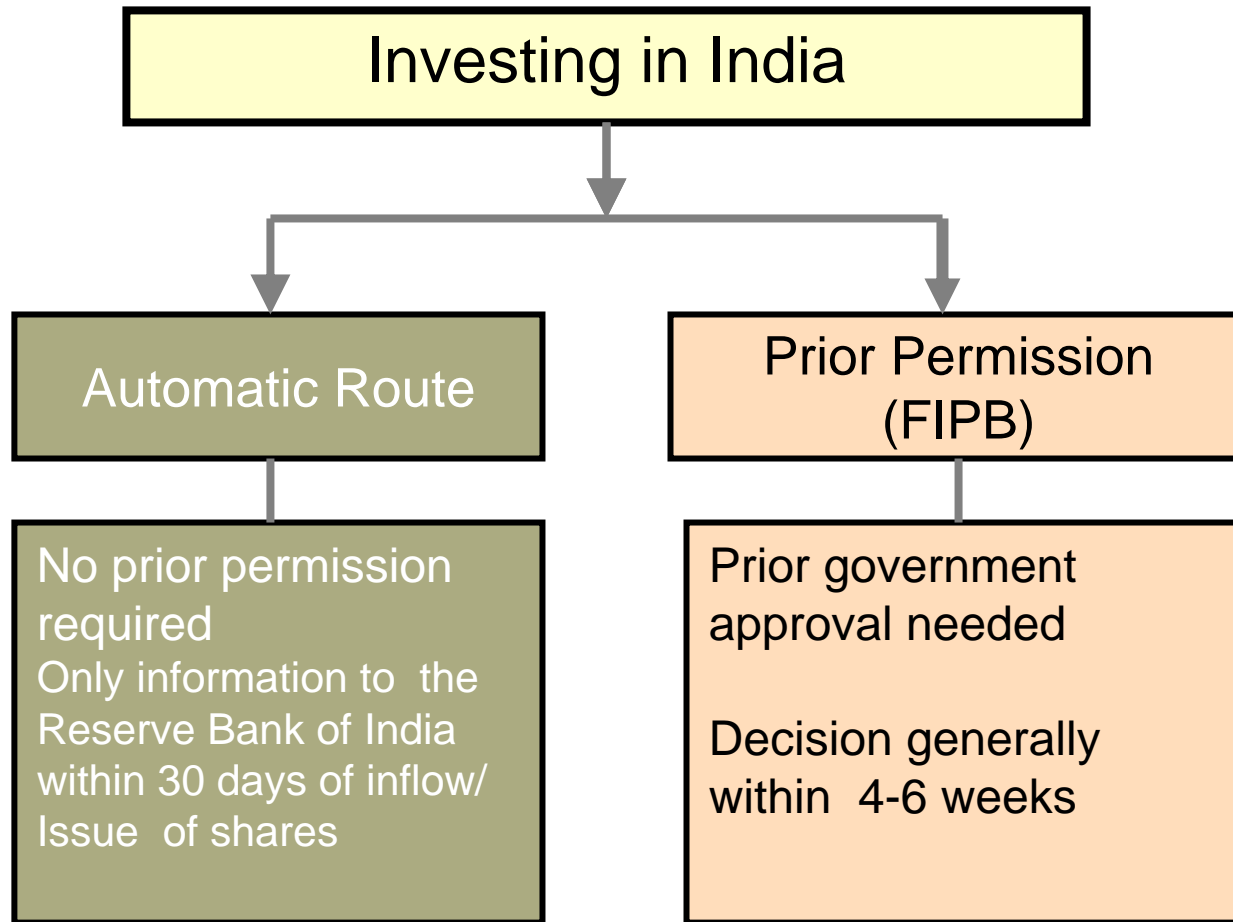
Presented by:

Team, ABN Amro Bank

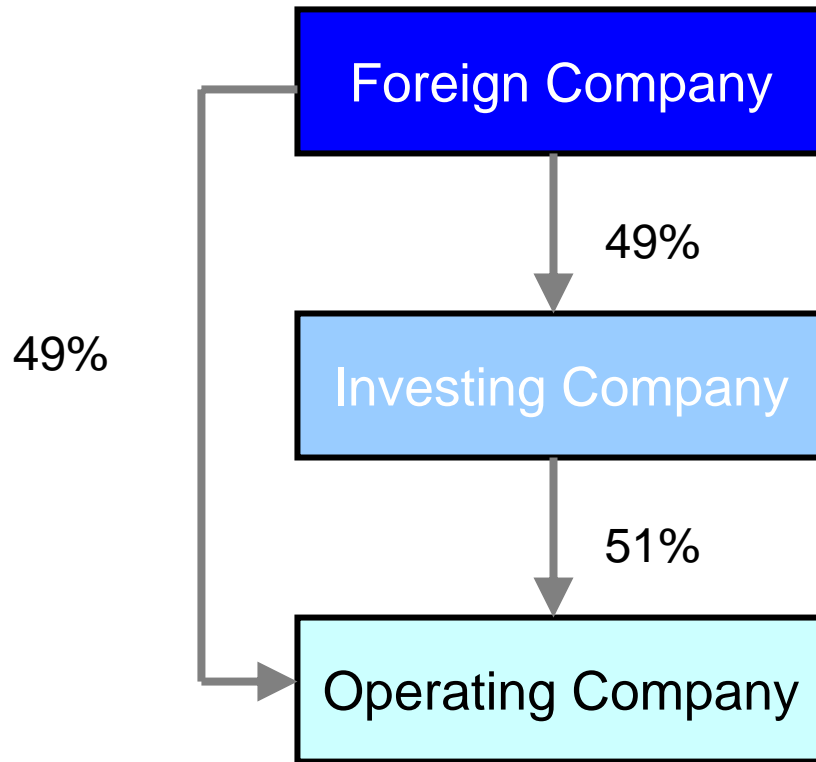
Business Banking, Commercial Banking

New Delhi

FDI ,Investing in India – Entry Routes



Current Methodology

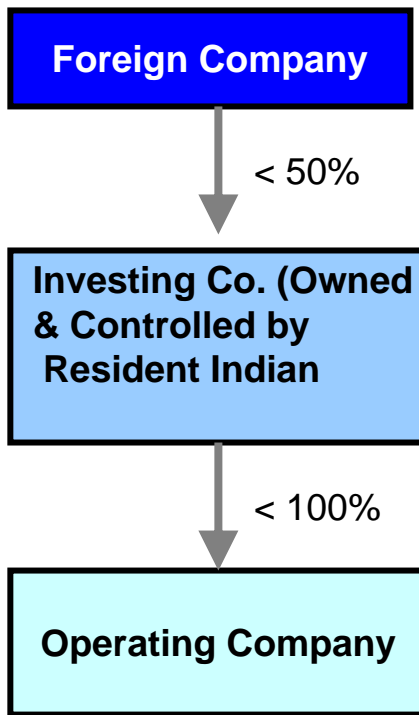


Effective FDI in Opco. = 49% + 49% of 51% = 74%

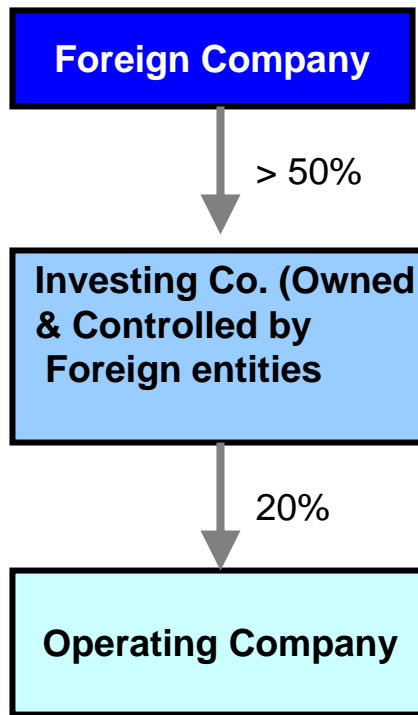
Press Note 2 of 2009

- All investment directly by the non resident entity into the Indian operating company will be counted towards Foreign Investment.
- Foreign Investment through an Investing Indian company will not be considered for calculation of Indirect Foreign Investment in case of Indian companies which are “[owned and controlled](#)” by Resident Indian citizens and Indian companies which are owned and controlled by resident Indian citizens. Refer [Case:1](#)
- If the investing company is either owned [or](#) controlled by “ Non resident entities”, the entire investment by the Indian investing company in the Indian company will be considered as indirect foreign investment. Refer [Case 2](#)
- Exception to above where Indian investing company has 100% ownership of downstream co, FDI in the downstream company will be mirror image of the FDI in the Indian investing company, if the Indian investing company is owned or controlled by non resident entities. Refer [Case 3](#)

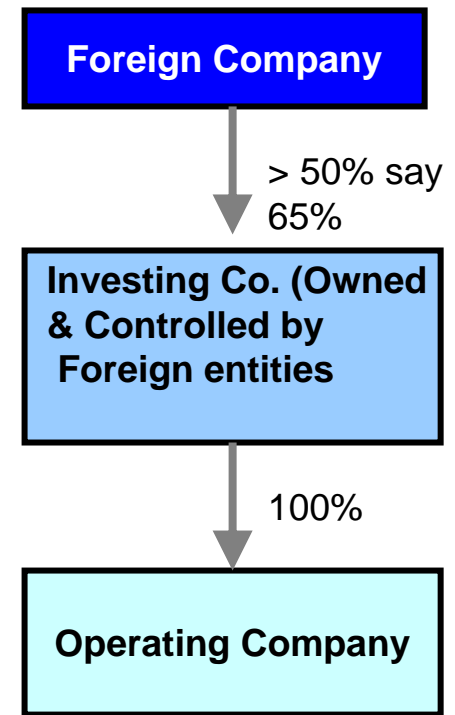
New Methodology



Case 1- FDI not counted



Case 2- FDI in Op co. = 20%



Case 3- FDI in Op co. = 65%



Conclusion

- New FDI policy allows in all sectors through downstream investments thereby allowing foreign capital in sectors such as retail trading, real estate, telecom, defense etc.
- The methodology will not be applicable for insurance sector which is still governed by the earlier regulations
- Welcome step when the investments are drying.
- Guidelines will help real estate to route FDI into smaller projects which were not eligible for FDI
- Not clear where both partners enjoy equal board seats i.e 50:50 JV

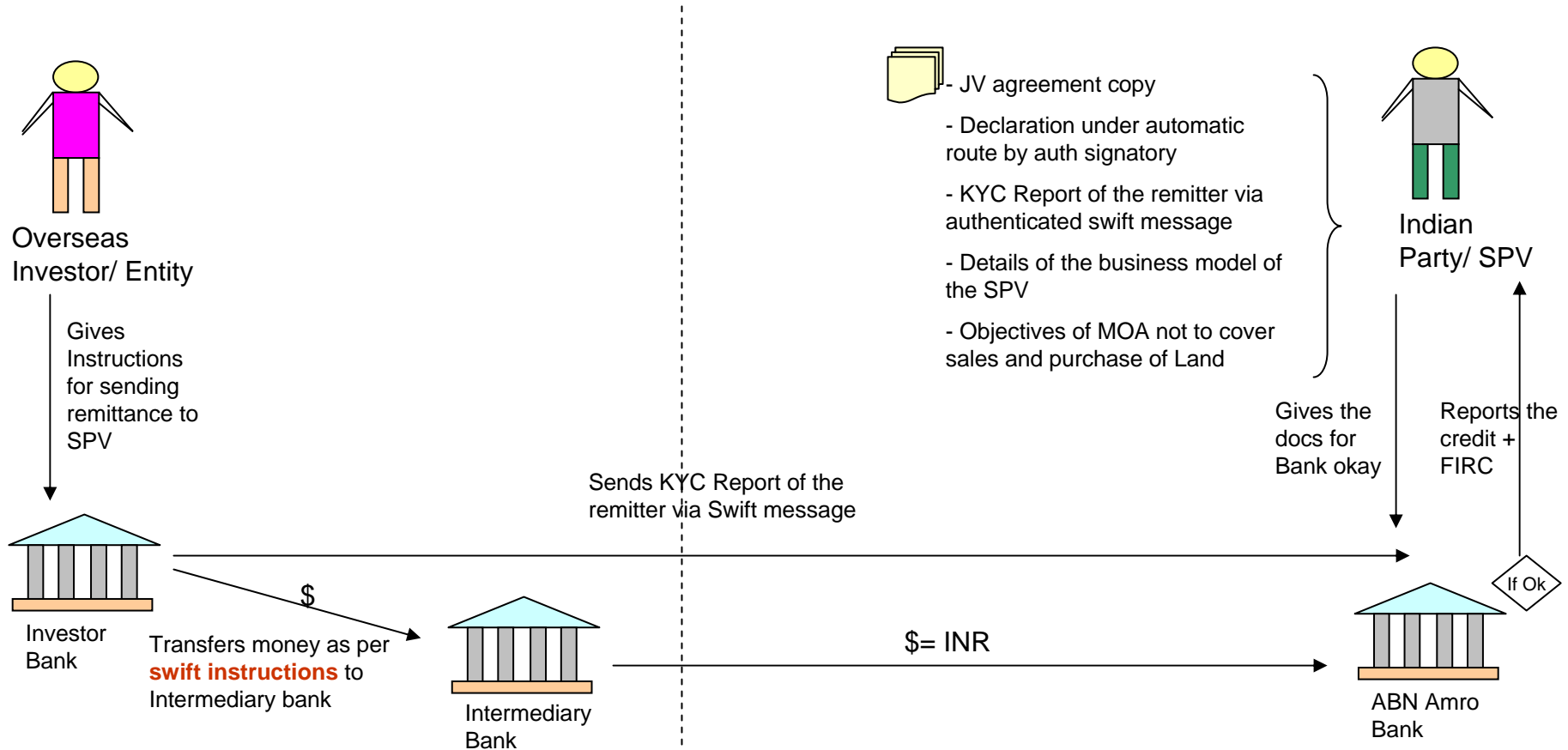
Press Note 3 of 2009

- Highlights the transfer of ownership or control of Indian companies in sectors with cap from resident to non resident
- In sectors with caps i.e defence, air transport service , asset reconstruction co. pvt. sector banking, broadcasting, insurance, telecom, print media etc. Govt approval/FIPB approval is required for
 - Indian company owned/controlled by non-resident entity
 - Ownership/control of Indian company owned or controlled by resident Indian transferred/passed to non resident through amalgamation, merger or acquisition.
- Is not applicable to 100% automatic route cases.

Conclusion

- Some investments which were earlier under automatic route will now require FIPB clearance
- The new move adds a layer of scrutiny thereby making the process cumbersome.

FDI Process -Credit



We provide complete handholding of FDI transactions

Note: This example is taken for Automatic Route of RBI only

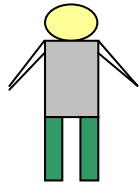
FDI Process –Post Credit

STEP 1



- Name and address of Foreign Investors.
- Details of receipt of funds in Foreign Currency
- Name and address of Auth dealer through whom funds have been received
- Copy of the FIRC

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Indian Party/ SPV

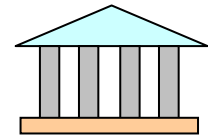
Part B of FCGPR

June

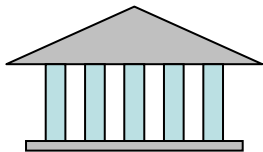


- Form FCGPR Part A
- Certificate of company secretary
 - Requirements of Co. law 1956 have been compiled
 - Co. is eligible to issue shares under regulation
 - Co. has all original certificates issued from AD
- Certificate from Statutory Auditors/ CA indicating the manner in arriving the value of shares
- Copy of the endorsement of reporting the transaction

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ABN AMRO Bank



RBI

Note: This example is taken for Automatic Route of RBI only

Real Estate Sector

As per FEMA 120 RB-2004 dated July 07 2004, Real Estate is defined as :

"Real estate business" means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges

Real Estate-Contd.

- Minimum Capitalization of \$10 million for WOS
- Min. Capitalization of \$5 million for JV.
- Funds to be brought in within 6 months of commencement of co.
- Original investment cannot be repatriated before a period of 3 years from completion of Min. capitalization.
- Atleast 50% of the project to be developed within 5 years from the date of getting statutory clearances.
- Investor not allowed to sell undeveloped plots.
- Should also conform the:
 - Building control regulations
 - Bye laws
 - State Govt. Regulations

Points to Ponder

Real Estate Sector

1. MOA of the company should be in congruence with the RBI guidelines
2. Land to be contiguous and titles to be transferred in the name of the company.
3. Necessary clearances are obtained and recorded.
4. Compliance of conditions stipulated in Press Note 2 dated 2005
5. Address and contact details of the company to be clearly mentioned in all forms of communication.

Thank You

“Owned” : If more than 50% of the equity interest in it is beneficially owned by resident Indian citizens and Indian companies which are owned and controlled ultimately by resident Indian citizens

“Controlled” : If the resident Indian citizens and Indian companies which are owned and controlled by resident Indian citizens have the power to appoint majority of its directors

