

Foreign Exchange Management

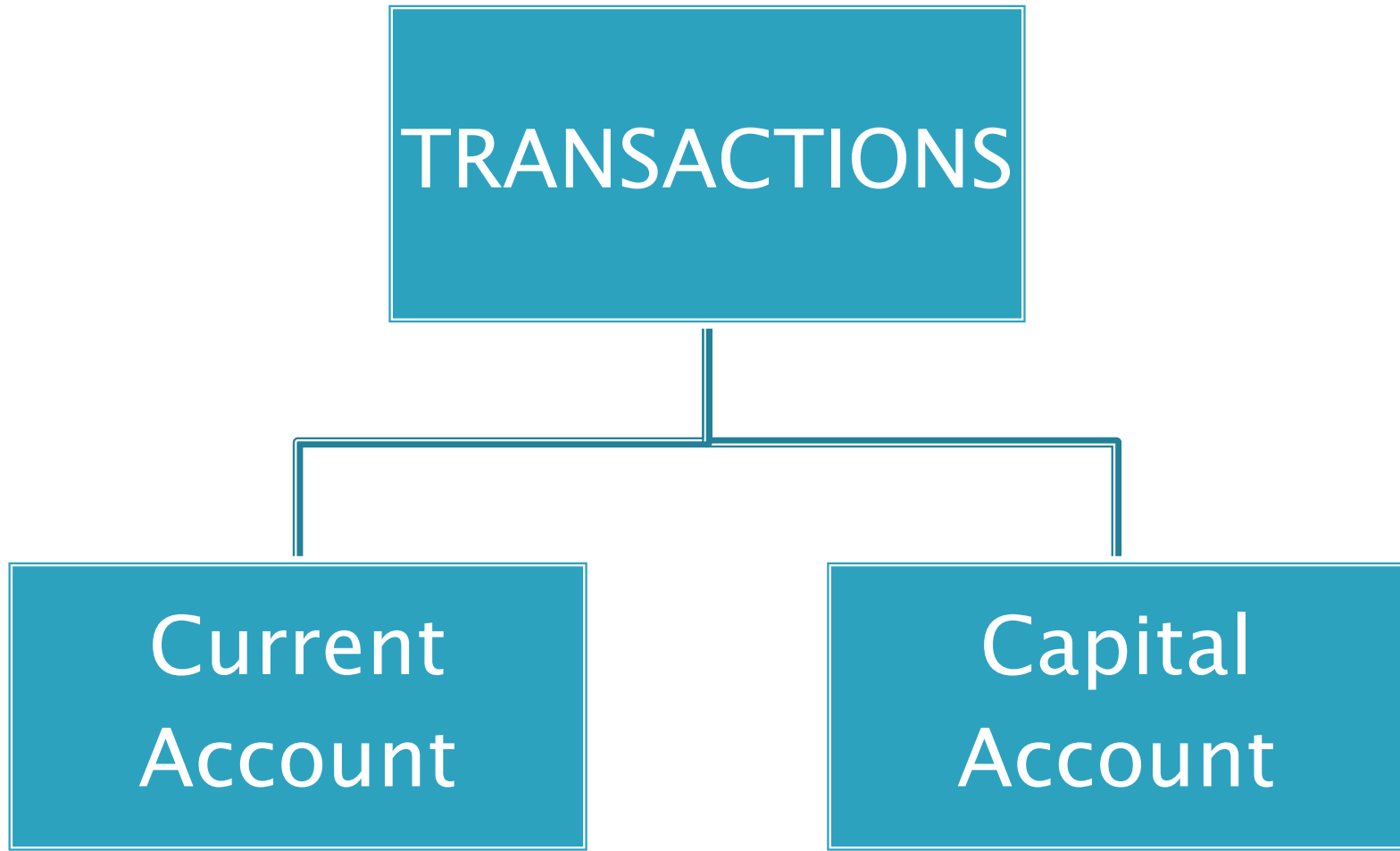
FEMA in everyday business...

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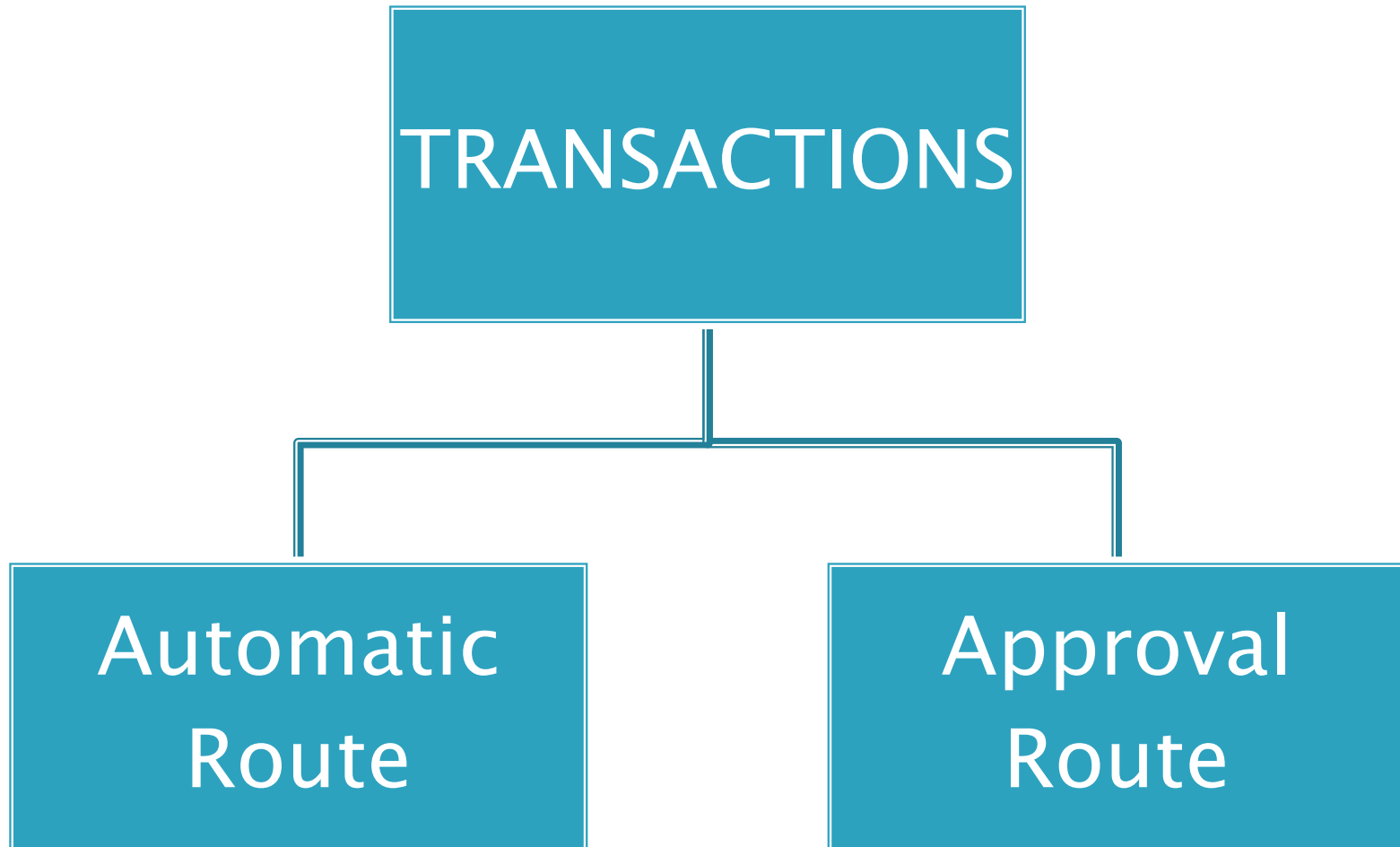
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Transactions type under FEMA



Transactions type under FEMA



Thumb Rule

- Capital account transactions are deemed to be **prohibited unless permitted**.
- Current account transactions are deemed to be **permitted unless prohibited**.

CAPITAL ACCOUNT

Permissible Transactions

- ▶ Investment in foreign securities.
- ▶ Foreign currency loans raised in India and abroad.
- ▶ Transfer of immovable property.
- ▶ Remittance of capital assets outside India.
- ▶ Sale/purchase of foreign exchange derivatives.
- ▶ Export, import and holding of currency/ currency notes.

CURRENT ACCOUNT

Examples of Frequent Transactions

- ▶ Payment for imports of goods and services.
- ▶ Remittance of interest on investment made from abroad/ funds borrowed from abroad.
- ▶ Remittance of dividend.
- ▶ Salary/remuneration to foreign nationals/ foreign directors.

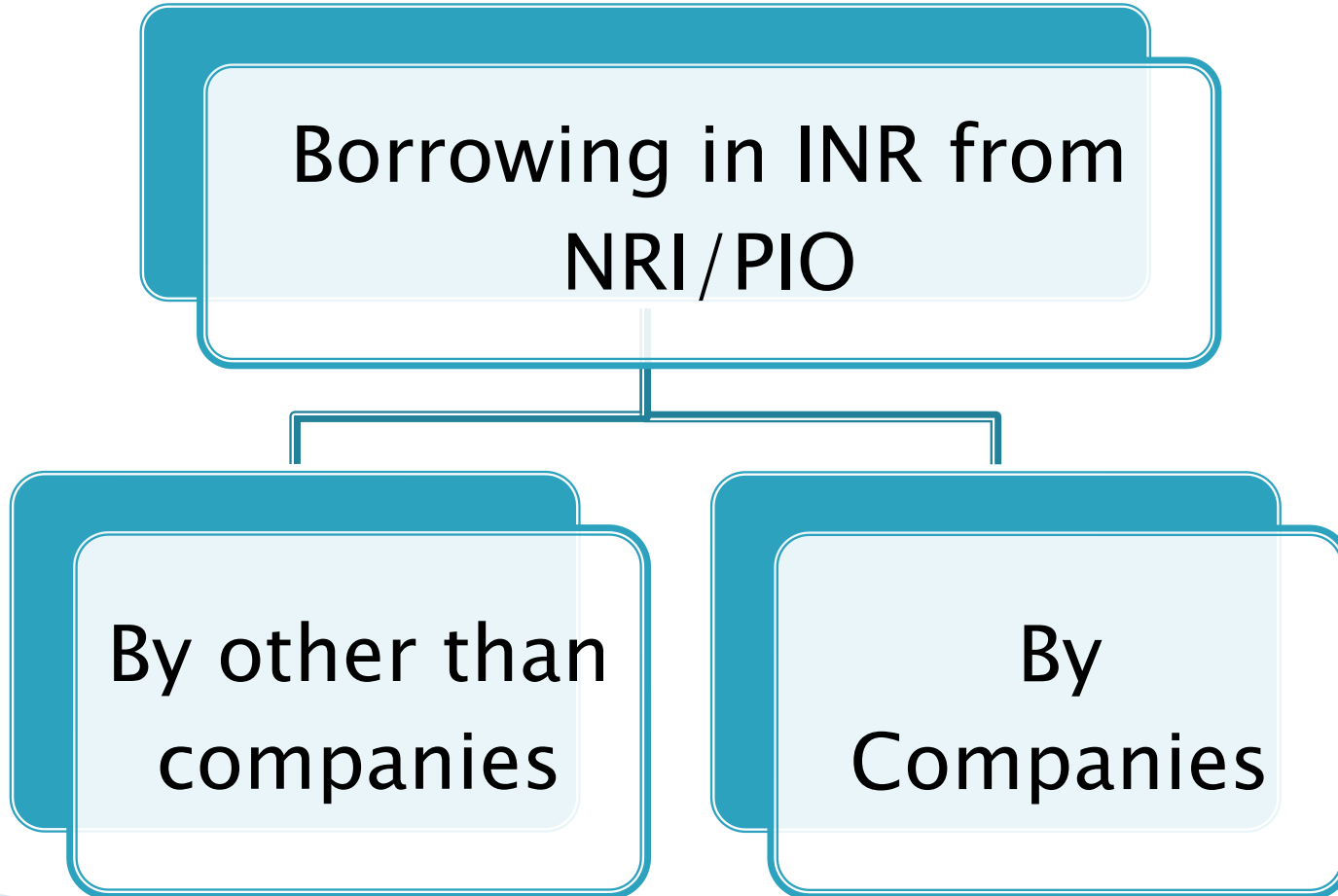
CURRENT ACCOUNT

Examples of Frequent Transactions

- ▶ Remittances from EEFC/RFC account.
- ▶ Export Commission.
- ▶ Booking of passage for foreign travel or cargo with airline/aircraft/shipping companies.
- ▶ Remittance for advertisement in print media or advertisement on internet/TV.

Some frequent business transactions observed in day to day activities.

BORROWING



BORROWING BY COMPANIES (NRI/PIO IN INR)

- ▶ Company shall not be engaged in
 - Agriculture/Plantation/Real estate business
 - Trading in TDR
 - Nidhi/Chit Fund activities
- ▶ Issue of NCDs made in public offer
- ▶ Period of holding > 3 years
- ▶ Rate of Interest \leq Prime lending rate

BORROWING BY COMPANIES (NRI/PIO IN INR)

- ▶ If borrowing on repatriation basis,
 - NCD value < Prescribed % of Equity.
 - Borrowing received through inward remittance from outside India or debit to NRE/FCNR account.
- ▶ Others on non-repatriation basis.
- ▶ Restriction on use of borrowed funds.
- ▶ Reporting requirements.

BORROWING – BY COMPANIES (Foreign Currency)

- ▶ For execution of projects outside India and for exports on deferred payment terms
 - From a bank situated outside India
 - Subject to T&C
- ▶ For imports
 - In form of foreign currency credit
 - Period not exceeding 6 months
- ▶ In form of ECB and Trade credit.

EXTERNAL COMMERCIAL BORROWING

INTRODUCTION:

- ▶ ECBs are commercial loans.
- ▶ Companies that borrow from non-resident entities have to compulsorily route it through ECB.
- ▶ ECB can be raised by automatic or approval route.

FRAMEWORK FOR LOANS THROUGH ECB

- **Track I** : Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.
- **Track II** : Long term foreign currency denominated ECB with minimum average maturity of 10 years.
- **Track III** : Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.

TYPES OF ECB



LOANS e.g. bank loans, loans from equity holder, etc.

CAPITAL MARKET INSTRUMENTS e.g., securitized instruments, preference shares, FCCB/FCEB

BUYERS' CREDIT / SUPPLIERS' CREDIT

FINANCIAL LEASE

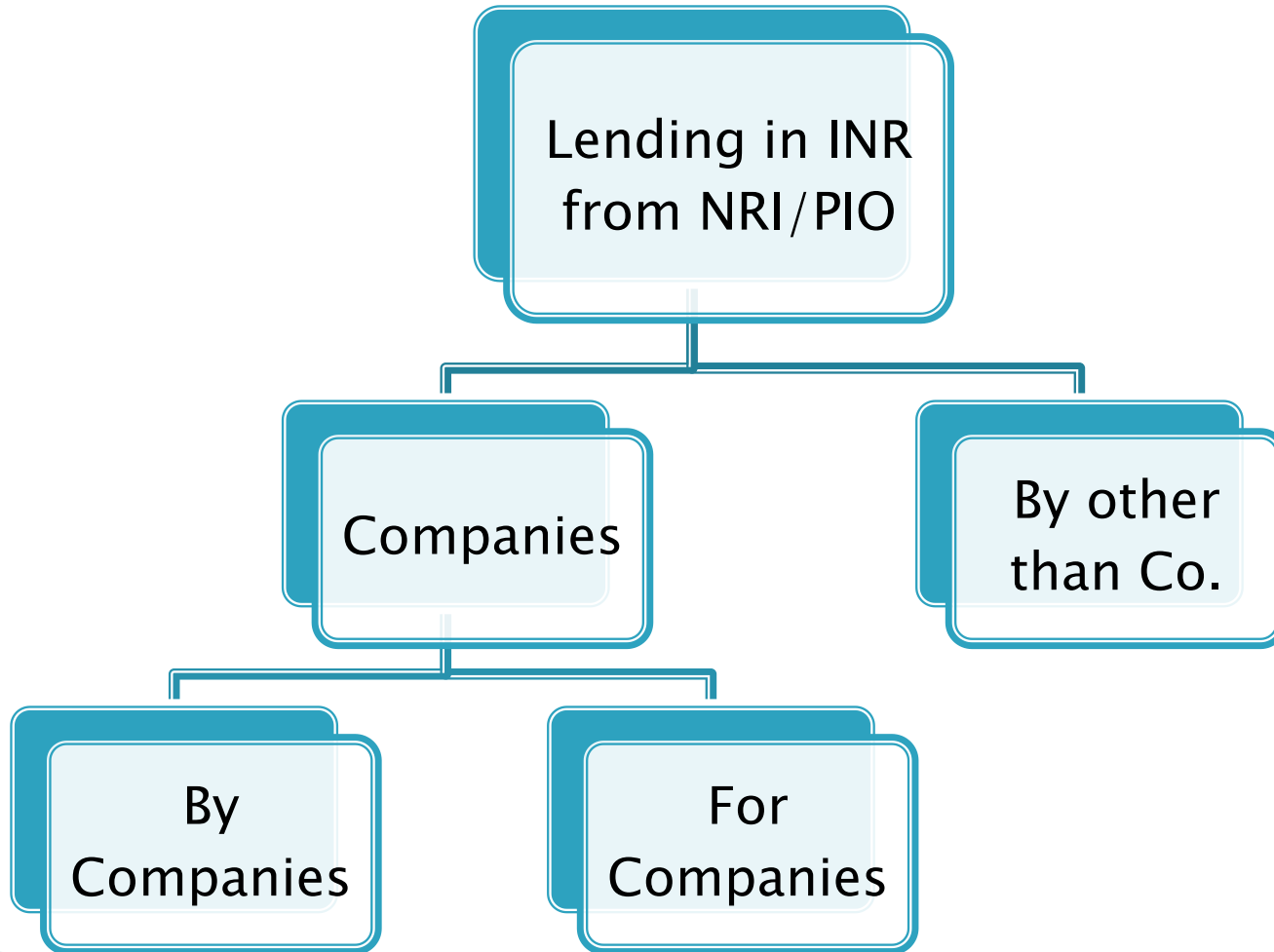
ECB – Points to remember

- ▶ Automatic v/s Approval
- ▶ Minimum average maturity period – 3 to 10 yrs
- ▶ Eligible borrowers
- ▶ Recognized lenders
- ▶ All-in-all cost
- ▶ End use prescription over ECB
- ▶ Currency of borrowing
- ▶ Hedging Requirements
- ▶ Parking of ECB proceeds
- ▶ Conversion of ECB into equity
- ▶ Re-financing of ECB

ECB Compliances

- ▶ Loan Registration number(LRN)
- ▶ ECB 2 Return
 - i. Required for reporting the actual transaction.
 - ii. Should be reported on a Monthly basis.
 - iii. Should reach DSIM within seven working days from the close of the month.
- ▶ Form 83
 - i. To obtain LRN.
 - ii. To report changes in terms and conditions.
- ▶ For conversion of ECB into equity: Form FC-GPR

LENDING



LENDING

In INR (For companies)

- ▶ Authorized Dealer
- ▶ Loan to NRI employees of Indian companies
- ▶ Acquiring shares under ESOP scheme.
- ▶ Subject to prescribed terms and conditions.

LENDING

In INR (By companies)

- Grant rupee loan
- To NRI/PIO employees
- For personal purposes
- Including purchase of property in India
- In accordance with staff welfare/housing loan scheme of lender
- Repayment through remittance from outside India or from NRE/NRO/FCNR (B) account of borrower.

LENDING

By companies (Others)

- ▶ Lending to WOS/JV (requisite provisions)
- ▶ To their employees
 - Of branches outside India
 - Personal purposes
 - In accordance with staff welfare/housing loan scheme of lender

LENDING

By companies (Others)

- ▶ From EEFC account
 - For trade related purposes
 - No ceiling for trade related loans and advances
 - Reputed bank guarantee if loan is in excess of prescribed limit

INVESTMENT OPTIONS

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graph TD; A[INVESTMENT OPTIONS] --> B[Outside India by person resident in India]; A --> C[In India by resident outside India]
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Outside India by
person resident
in India

In India by
resident outside
India

PERMISSIONS & PROHIBITIONS

▶ Permissions

- Purchase/acquisition of securities
 - Out of funds in RFC account
 - As bonus shares on existing foreign currency share holding
 - Out of foreign currency resources when not permanently resident in India
- Sale of shares so purchased

▶ Prohibitions

- Engaged in real estate business
- Banking business

OVERSEAS DIRECT INVESTMENT

- ▶ Direct investment outside India means investments
 - either under the Automatic Route or the Approval Route by way of contribution to the capital
 - subscription to the Memorandum of a foreign entity
 - by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange
 - Capitalization of exports and other dues within applicable ceilings and prescribed time

OVERSEAS DIRECT INVESTMENT

- ▶ Direct investment outside India means investments
 - Signifying a long-term interest in the foreign entity (JV or WOS)
 - by an Indian party (company/partnership/LLP/body created under act of Parliament)
 - In the form of foreign investment or financial commitment
 - Generally within 400% of Net worth

OVERSEAS DIRECT INVESTMENT

- ▶ Direct investment outside India means investments
 - Subject to other restrictions as well
 - Limit applicable for total FC in all JV/WOS
 - To be routed through one branch of AD
 - If holding through partnership firm and funds transferred by the firm shares can be held by partners on behalf of the firm
 - Investor should not be on caution list of RBI

DOCUMENTS REQUIRED

- ▶ Application to designated AD
 - A letter from the Indian Party addressed to the designated AD bank.
 - Board resolution for the proposed transactions.
 - Other requisite documents
- ▶ Form ODI to be filled for reporting the transaction.

OBLIGATIONS OF INDIAN PARTY

- ▶ Receive share certificates or any other documentary evidence of investment as an evidence of investment and submit the same to the designated AD **within 6 months.**
- ▶ Submit to the Reserve Bank through the designated Authorized Dealer, every year, an Annual Performance Report in Part III of Form ODI in respect of each JV or WOS outside India set up or acquired by the Indian party.

OBLIGATIONS OF INDIAN PARTY

- ▶ Repatriate to India, all dues receivable like dividend, royalty, technical fees etc.
- ▶ Report the details of the decisions taken by a JV/WOS regarding diversification of its activities /setting up of step down subsidiaries/alteration in its share holding pattern **within 30 days** of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of the local laws of the host country. These are also to be included in the relevant Annual Performance Report.

OBLIGATIONS OF INDIAN PARTY

- ▶ In case of disinvestment, sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case **not later than 90 days** from the date of sale of the shares /securities and documentary evidence to this effect shall be submitted to the Reserve Bank through the designated Authorised Dealer.

ANNUAL PERFORMANCE REPORT

- ▶ An Indian Party (IP) / Resident Individual (RI) which has made an Overseas Direct Investment (ODI) has to submit an Annual Performance Report (APR) in Form ODI Part III to the Reserve Bank by **30th of June** every year in respect of each JV /WOS outside India set up or acquired by the IP / RI.
- ▶ Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted.

ANNUAL PERFORMANCE REPORT

- ▶ An IP / RI, which has set up / acquired a JV / WOS overseas in terms of the Regulations of the Notification, *ibid*, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV / WOS outside India and other reports or documents by **31st December** each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV / WOS unless specifically exempted by the Reserve Bank.

ANNUAL RETURN ON FOREIGN LIABILITIES AND ASSETS

- ▶ FLA is required to be submitted by all the India resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including current year by July 15 every year.
- ▶ If the Indian company does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, the company need not submit the FLA Return.

ANNUAL RETURN ON FOREIGN LIABILITIES AND ASSETS

- ▶ If a company has received only share application money and does not have any foreign direct investment or overseas direct investment outstanding as on end-March of the reporting year, then that company is not required to fill up FLA return.

FOREIGN INVESTMENT IN INDIA

- ▶ FDI means
 - Investment by non-resident entity or person resident outside India
 - In capital of an Indian Company
- ▶ Who can invest in India–Non-resident entity
- ▶ Investment on repatriation basis or otherwise
- ▶ Investment by firms, trust, companies controlled by NRI.
- ▶ Investment by FII/FPI through Portfolio Investment scheme subject to capital limits.

FOREIGN INVESTMENT IN INDIA

- ▶ Eligible Investee details
 - FDI in Indian Company
 - Shares
 - CCD
 - CCPS
 - Restriction on dividend payout in case of PS.
 - FDI in partnership firm/proprietary concern by NRI
 - Contribution to capital
 - Remittance received from abroad

FOREIGN INVESTMENT IN INDIA

- Firm not engaged in agricultural/plantation /real estate
- Not available for repatriation outside India
- Investments with repatriation option available with permission
- ▶ Eligible Investee details
 - Investments by non-residents other than NRI/PIO in firms through approval route.
 - FDI in trust not permitted
 - FDI in LLP subject to FDI conditions

FOREIGN INVESTMENT IN INDIA

▶ **Automatic Route**

- Foreign Investment is allowed under the automatic route without prior approval of the Government or the Reserve Bank of India.

▶ **Government Route**

- Foreign investment in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

▶ **Form FC-IL:**

- For making an application under Government route.

REPORTING OF FDI

- ▶ Advance Remittance Form (ARF): An Indian company receiving investment from outside India for eligible securities under the FDI Scheme, should report the details of the amount of consideration (including each upfront/ call payment) to the Regional Office concerned of the Reserve Bank through its AD Category I bank, not later than 30 days from the date of receipt in the ARF.

REPORTING OF FDI

- ▶ **Reporting of inflow**: The actual inflows on account of such issuance of shares should be reported by the AD branch in the R–returns in the normal course.
- ▶ **Foreign Collaboration– Transfer of Shares (FC–TRS)**: Reporting of transfer of eligible securities between residents and non–residents and vice–versa is to be made in Form FC–TRS. The Form FC–TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration.

INVESTMENT MADE BY NRI IN INDIA

- ▶ Period of loan shall not be less than three years.
- ▶ If the borrowing is on **repatriation basis**,
 - $\frac{\text{NCD issued to NRI or PIO}}{\text{Paidup value of all NCD}} \leq \text{ceiling prescribed for FDI}$
 - **Funds:** Through inward remittance from outside India or by debit to NRE/FCNR (B) account

INVESTMENT MADE BY NRI IN INDIA

- ▶ If the borrowing is on non-repatriation basis,
 - **Funds:** inward remittance from outside India or by debit to NRE/NRO/FCNR(B)/NRNR/NRSR account
 - Payment of interest and repayment of principal shall be made only to the NRO account of the lender

REPORTING BY THE BORROWING COMPANY

- ▶ The borrowing company should file with the nearest office of the RBI, not later than 30 days from the date of receipt of remittance for investment in NCDs, full details of the remittances received, viz.,
 - a list containing names and addresses of NRIs
 - repatriation and/or non-repatriation basis
 - amount and date of receipt of remittance and its rupee equivalent
 - names and addresses of the authorised dealers

REPORTING BY THE BORROWING COMPANY

- ▶ Issue of NCDs, full details of the investment, viz.,
 - a list containing names and addresses of NRIs and number of NCDs issued to each of them on repatriation and/or non-repatriation basis and
 - a certificate from its Company Secretary that all applicable provisions in regard to issue of NCDs have been duly complied with.

PENALTIES UNDER FEMA

- ▶ The penalty can be upto thrice the sum involved in such contravention where the amount is quantifiable.
- ▶ If the amount is not quantified, penalty upto Rs. 2 lakhs can be imposed.
- ▶ If contravention is of continuing nature, further penalty upto Rs. 5000 per day during which the contravention continues can be imposed.

TDS (Amendment)

Concessional rate of 5% on Interest earned on ECB

- ▶ On interest earned by foreign entities on ECB/bonds
- ▶ Available on borrowings made, under a loan agreement at any time on or after 1st July, 2012, but before 1st July, 2017
- ▶ Or by way of any long-term bond on or after 1st October, 2014 but before 1st July, 2017.
- ▶ Extended in respect of borrowings made before 1st July, 2020.

TDS (Amendment)

Concessional TDS rate under Section 194LC

- ▶ Applicable from AY 2018-19 (retrospectively from AY 2016-17)
- ▶ Foreign currency loan agreement entered into between 01-07-2012 and 01-07-2017 or by way of long-term bonds issued between 01-10-2014 and 01-07-2017, tax is deducted at 5% in respect of interest payable to non-residents.
- ▶ It is proposed that benefit u/s 194LC will be available in respect of borrowings made before the 01-07-2020.

TDS (Amendment)

Extension of eligible period of concessional tax rate under section 194LD

- ▶ Considering the representations received from stakeholders, it is proposed to amend section 194LD to provide that the concessional rate of five per cent on interest payable before the 1 July, 2020.
- ▶ This amendment will take effect from 1 April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

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THANK YOU!

