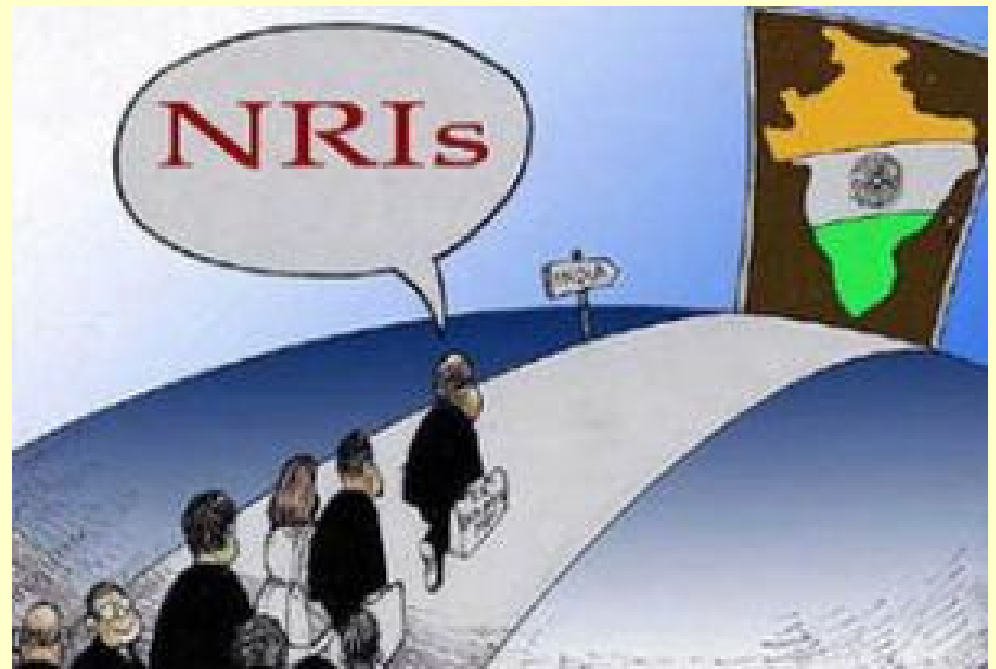


WELCOME

Presentation by

Auriga Corporate Advisors, Mumbai

PRESENTATION ON INVESTMENT IN IMMOVABLE PROPERTIES IN INDIA BY NON – RESIDENTS



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PART B : Acquisition of Immovable Properties

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PART F : Investment in Real Estate Development

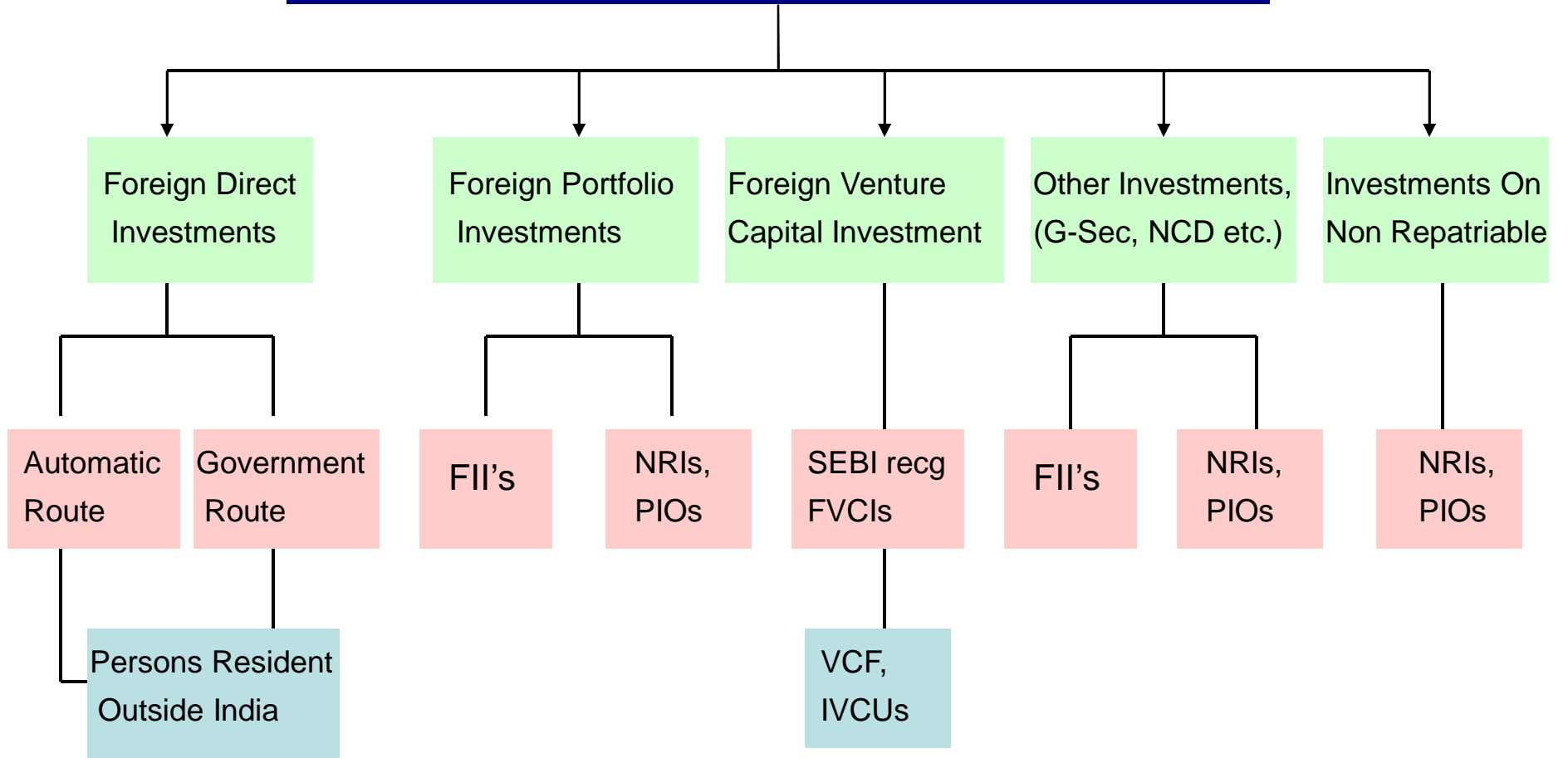
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PART A : INTRODUCTION OF FOREIGN INVESTMENT IN INDIA

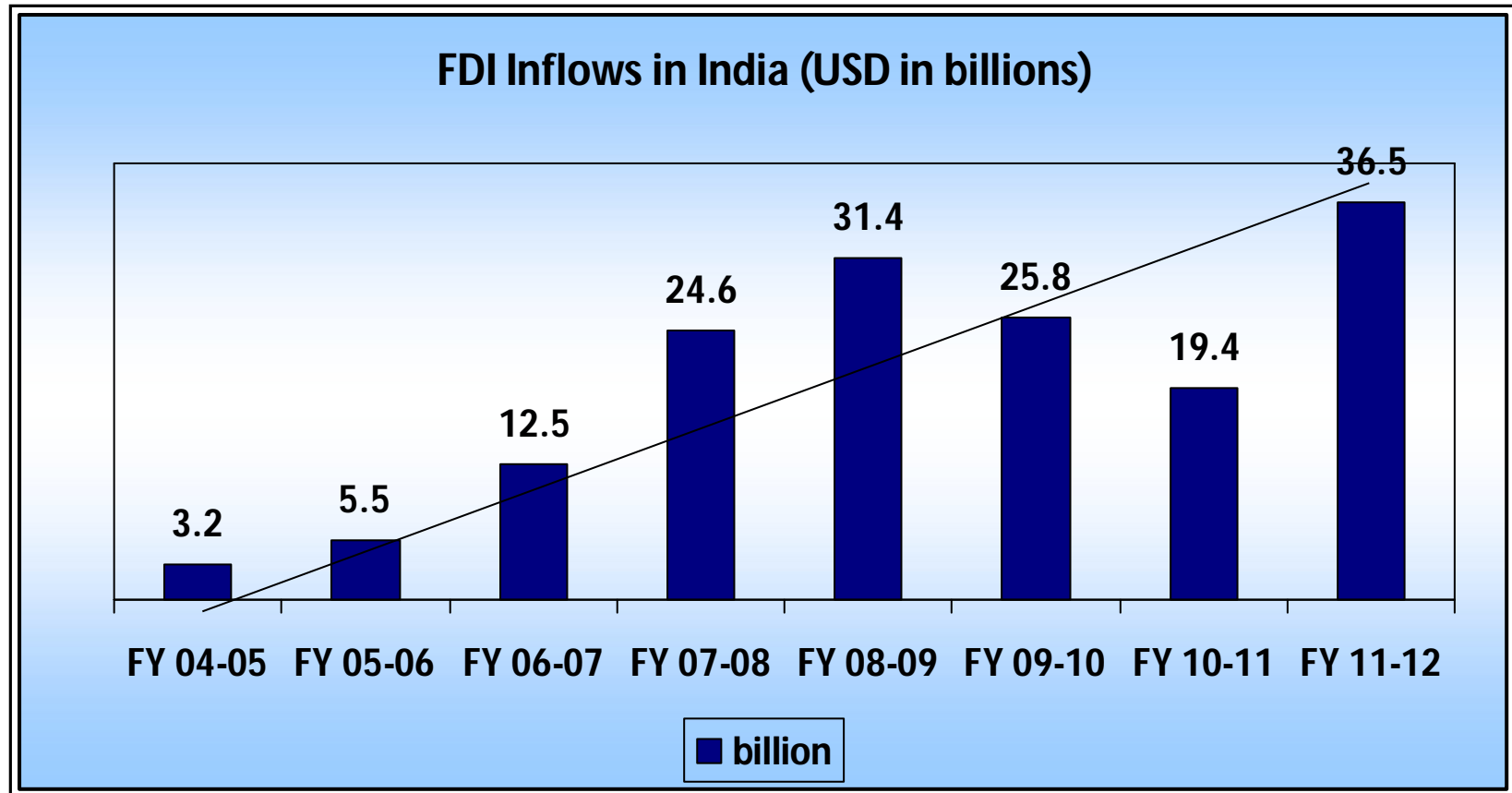


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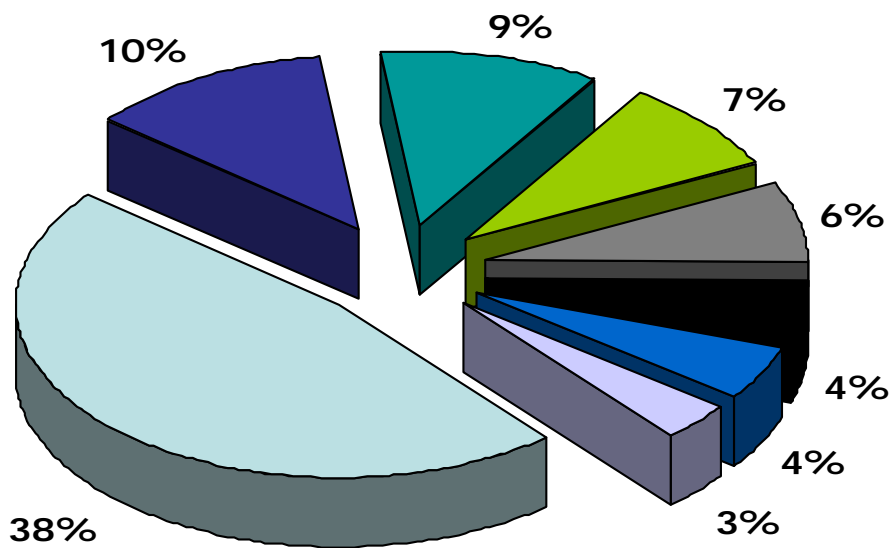
Foreign Investment In India



Year wise FDI Inflows in India



Country Wise FDI

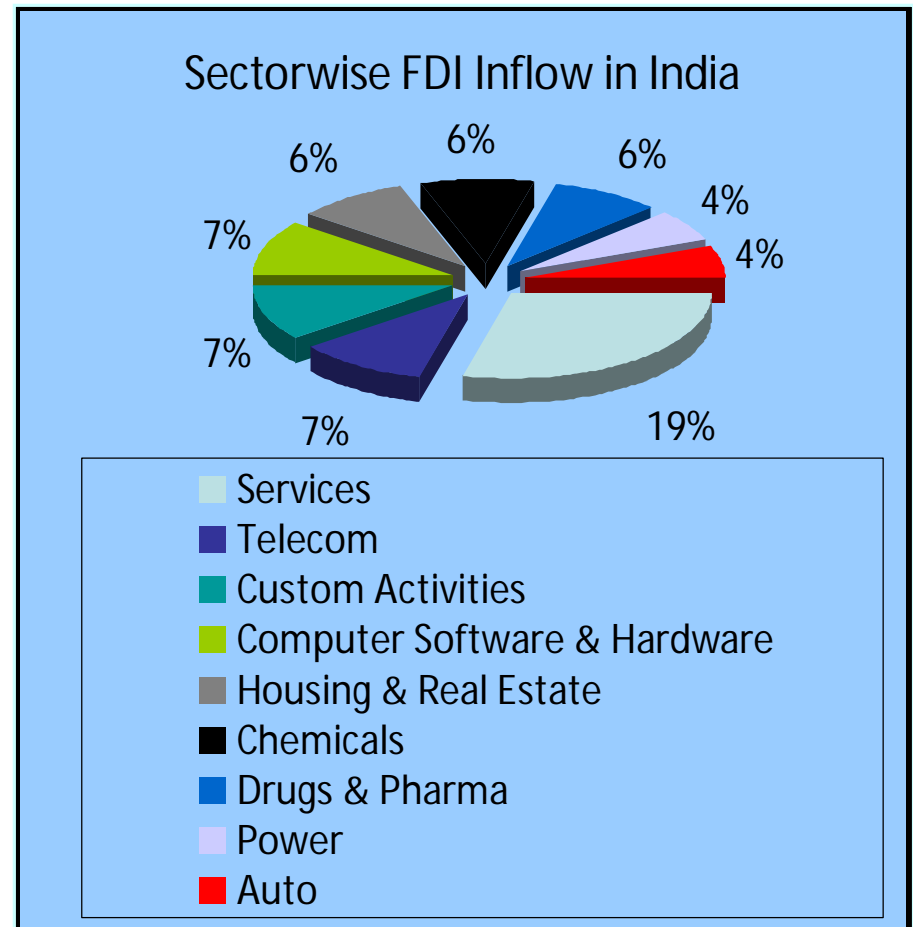


Ranks	Country	% of total inflows
1	Mauritius	38%
2	Singapore	10%
3	UK	9%
4	Japan	7%
5	USA	6%
6	Netherlands	4%
7	Cyprus	4%
8	Germany	3%

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Sector Wise FDI

Ranks	Sectors	% of total inflows
1	Services	19%
2	Telecom	7%
3	Custom Activities	7%
4	Computer Software & Hardware	7%
5	Housing & Real Estate	6%
6	Chemicals	6%
7	Drugs & Pharma	6%
8	Power	4%
9	Auto	4%
Total FDI Inflows		66%



Sections & Notifications

- Notification No. FEMA 21/ 2000 – RB dated 3rd May, 2000
- Section 6(3), 6(4) & 6(5) of FEMA, 1999
- Notification No. FEMA 13/2000 – RB dated 3rd May, 2000
- The regulations are effective from 1st June, 2000.



PART B : ACQUIRING IMMOVABLE PROPERTIES IN INDIA



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Non Resident Indian (NRI)

- The term **NRI** has not been defined in FEMA, 1999.
- However Regulation 2 (vi) of the FEMA – 21 (Acquisition of immovable Property in India) Regulations 2000 defines the same as follows:

“ An NRI is a person resident outside India (PROI) who is a citizen of India or is a Person of Indian Origin (**PIO**)”



Person of Indian Origin (PIO)

- General Definition

A **Person of Indian Origin** means an Individual (not being a citizen of Pakistan or Bangladesh) who

- at any time, held an Indian passport; or
- who or either of whose **father** or **mother** or whose **grandfather** or **grandmother** was a citizen of India by virtue of the Constitution of India or The Citizenship Act, 1955.
- Spouse of such Individual

Person of Indian Origin (PIO)

- **Specific Definition** for Immovable Properties :

A Person of Indian Origin means an Individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan) who

- at any time, held an Indian passport; or
- who or either of whose **father** or ~~mother~~ or whose **grandfather** or ~~grandmother~~ was a citizen of India by virtue of the Constitution of India or The Citizenship Act, 1955
- ~~Spouse of such individual~~

Acquiring Immovable Properties

- NRI/PIO can :
 - Acquire property for holding/ self use.
 - Payments can be made from abroad by inward remittance through normal banking channel or debit to NRE / FCNR(B) / NRO account.
 - Payment cannot be made by Travellers' cheques or foreign currency notes.
 - Acquisition can be by purchase or gift.
 - No RBI approval required. No declarations to be filed.
 - Can let the property on rent and repatriate the funds after payment of taxes.

Acquiring Immovable Properties

- Contd..
 - Indian Citizens (NRI) cannot :
 - Buy agricultural property, plantations & farmhouses.
 - Do Real Estate Trading or trade in Trade Development Rights.
 - Invest in capital of proprietorship concern/partnership firm engaged in real estate business



Acquiring Immovable Properties

- Foreign nationals of Non Indian origin :
 - **Resident outside India** cannot acquire any property in India.
 - Can inherit a property from Indian Resident
 - Can acquire property on lease not exceeding 5 years.
 - They cannot be added as 2nd holder
- **Resident In India** can acquire property in India provided.
 - * Condition of period of stay is satisfied.
 - * The visa should indicate intention to stay for an uncertain period.



Change of Residential Status

Resident who becomes NR

- Can continue to hold any property including Agriculture property in India.
- Agricultural activity cannot be done.

NR who became Resident

- Can continue to hold property in India.
- Repatriation advantage lost.

Inheritance / Bequests

- An NRI can acquire property through inheritance.
- An NRI can bequeath property in his will to another non resident or Indian Resident.
- An Indian Resident can also bequeath property to a non resident.
- Even agricultural property can be bequeathed / inherited.
- However restrictions can be put to use/ repatriation.



Prior Permission to Citizens of Certain Countries

- Prior permission to citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, whether resident in/outside India to acquire/transfer immovable property in India.
- Restriction not applicable where immovable property taken on lease for period not exceeding 5 years

PART C : TRANSFER OF IMMOVABLE PROPERTIES IN INDIA



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Transfer of Immovable Properties

- NRI/PIO can:
 - Transfer immovable property without any approval.
 - **Non Agricultural Property** can be sold or gifted away to Indian Residents and NRIs (Not to foreigners who are non – residents.)
 - **Agricultural Property** can be sold or gifted, only to **Indian Residents.**

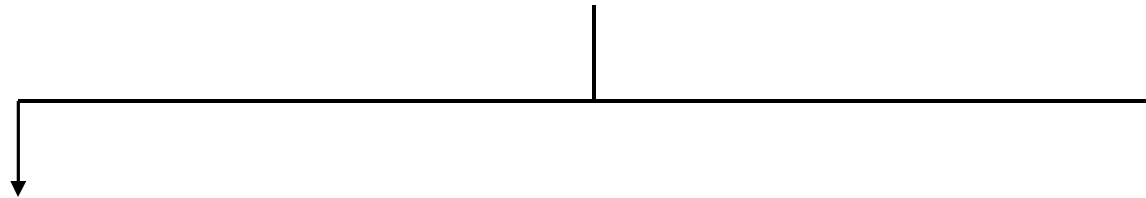
PART D :REPARTRIATION OF SALE PROCEEDS



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Repatriation of Sale Proceeds

Acquired by way of Purchase



Out of Inward Remittance,
NRE/ FCNR A/c

Out of Indian Rupee,
Inherited/ Will

(Agriculture, Farm house, Plantation property – RBI Permission required.)

Repatriation of Sale Proceeds

- **Out of Inward Remittance/ NRE/ FCNR :**
 - IP purchased in compliance with foreign exchange laws in force.
 - Acquisition could be by way of inward remittance, out of funds held in FCNR(B) or NRE account
 - Foreign exchange equivalent to the cost of purchase
 - In case of residential house, maximum of 2 properties.

Repatriation of sale proceeds

- **Acquired by way of inheritance/legacy or out of Rupee funds:**
 - Can remit up to US \$ 1 Million per F.Y.
 - Documentary proof in support of inheritance or legacy or acquisition.
 - Tax Clearance/No Objection Certificate from Tax Officer.
 - If remittance is in installments, all installments from single AD.
 - For remittance exceeding US \$ 1 Million in a FY – RBI approval required.

Case Study

Repatriation

NRI has invested Rs. 8.5 CR \longrightarrow US \$ 2.0 million

Sold for - Rs. 20.0 CR

Gain - Rs. 11.5 CR

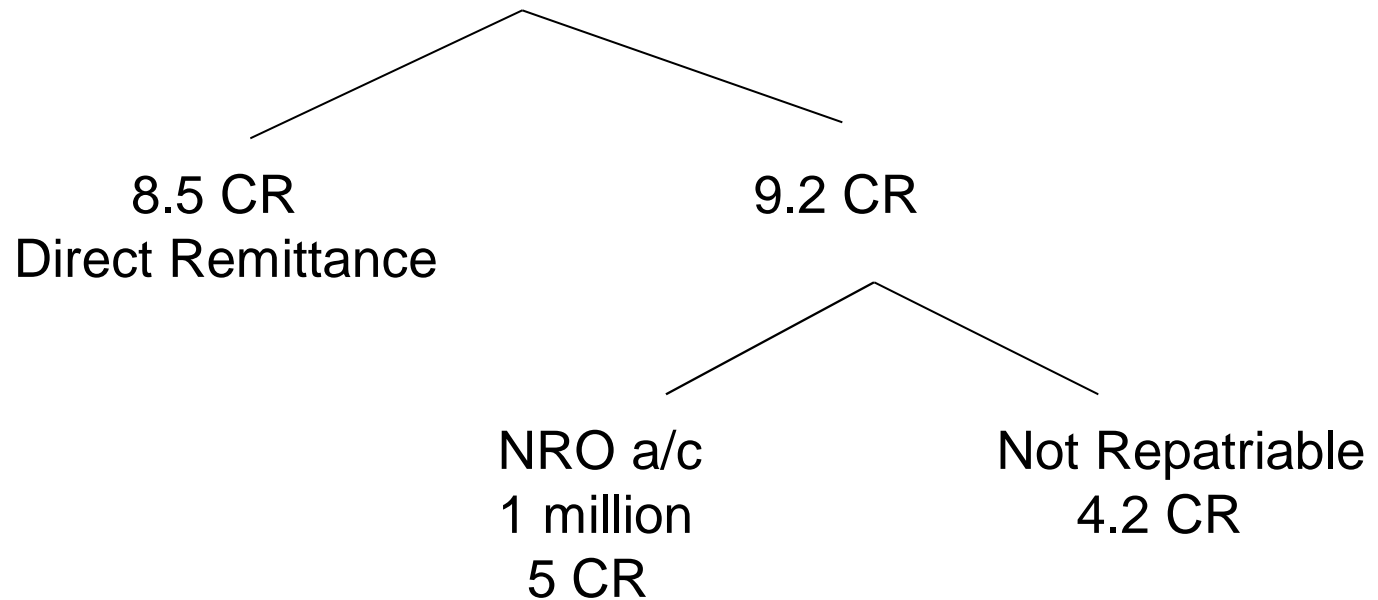
(Less) tax - Rs. 2.3 CR

Net Balance Rs. 17.7 CR

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Case Study

Repatriation of Balance Fund of Rs. 17.7 CR



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Repatriation of Sale Proceeds

- Prior approval of RBI if PIO is citizen of Pakistan, China, Bangladesh, Sri Lanka, Afghanistan, Iran, Nepal or Bhutan.
- Lock in period of 10 years for remittance dispensed with.
- Sale Proceeds of IP be credited to NRO A/c only.



Refund of Purchase consideration

- Refund of any application/earnest money on account of non-allotment or cancellation of booking of IP – Allowed to be repatriated.
- Credit be given to NRE or FCNR(B) account if investment was by way of inward remittance or NRE or FCNR(B)
- Interest, if any, is allowed to be repatriated subject to payment of Tax.
- AD be satisfied about bonafide of transaction.

Others

- Section 195 of the Income Tax Act, 1961
 - If a Resident Indian purchases IP from an NRI he has to deduct & pay tax @ 20.6% from the sale consideration.
 - If an NRI purchases IP from another NRI directly outside India, the buyer has to pay TDS in India
 - The seller (NRI) has to file his return of Income in India.
 - The entire transaction has to be routed through a Bank in India.

PART E : INVESTMENT IN IMMOVABLE PROPERTIES BY BO/ LO/ WOS/JV



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Immovable Property by Branch Offices

- Can buy immovable property, which is necessary & incidental to carrying out the activities.
- A declaration has to be filed within 90 days in Form IPI.
- Mortgage of property can be done for taking a bank loan.
- For sale and repatriation, RBI approval is required.
- Renting of property not allowed.

Immovable Property by Liaison Offices

- Liaison offices cannot buy immovable property.
- Acquiring property by way of lease up to 5 years is permitted.
- For sale and repatriation, RBI approval is required.



PART F : FDI in Real Estate Development



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FDI in Real Estate Development

- 100% FDI permitted only in Township, Housing, Built – Up Infrastructure and Construction Development Rights.
- Objects :
 - Generate Economic Activity and Development
 - Create new employment opportunities
 - Add to the available Housing Stock and Built – up Infrastructure
- Types of Projects Covered :
 - Housing, Commercial Premises, hotels, Resorts, Hospitals, Educational Institutions, Recreation Facilities, City and Regional Level Infrastructure.

FDI in Real Estate Development

- General Prohibitions :

- (i) **Entities prohibited**

- Citizen of Pakistan or Bangladesh
 - Any entity incorporated in Pakistan or Bangladesh.

Both the above entities can invest only under Government approval route.

- (ii) **Activities prohibited**

- Real Estate Business
 - Construction of Farm Houses
 - Trading in Transferable Development Rights (TDRs)

FDI in Real Estate Development

- **Mandatory Guidelines**

- (i) Minimum Area

- Development of Serviced Housing Plots – Minimum of 10 hectares of land
 - Construction Development Projects – Minimum Built – up Area of 50,000 sq. mts.
 - In case of combination projects, any one of the above combination would suffice.

- (ii) Minimum Capitalisation

- For WOS → upto US \$ 10 mn
 - For JV in India → upto US \$ 5 mn

FDI in Real Estate Development

- **Repatriation / Exit Policy**

- Original investment cannot be repatriated before a period of 3 years from the completion of minimum capitalization
- Earlier Exit permitted with prior approval from FIPB.
- Investor will not be allowed to sell **undeveloped plots**
“ **Undeveloped plots**” will mean where roads, water supply, street lighting, drainage, sewerage and other conveniences as applicable under the prescribed regulations, have not been made available.

FDI in Real Estate Development

- **Contd..**
 - Investor is required to provide this infrastructure and obtain completion certificate from the concerned local body / service agency before he is allowed to dispose off the serviced housing plots.
 - Relaxation for NRIs and SEZ



FDI in Real Estate Development Issues

- Whether FDI can be made in a company which has compliant and non compliant projects, provided FDI is used for compliant projects commencing post FDI coming into the company?
- Whether it is only the minimum capitalisation of \$ 10 million or \$ 5 million as the case may be, that is locked in for 3 years?
- Whether there should be no restriction on the transfer of the shares made by one non resident to another even if the transfer is before the expiry of three years from the minimum capitalisation?
- Whether it is possible to lease the property instead of sale by the FDI compliant company?

FDI in Real Estate Development Issues

- Whether the 50,000 square meter minimum built up area criteria would include basements, terraces, etc. not taken into consideration for the purposes of floor area ratio and FSI calculation?
- Whether FDI can be used for Compliant Projects at the advanced stage of development, say when 40-50% work is completed?



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By:

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