

WIRC
PRESENTATION
ON
INVESTMENT OPPORTUNITIES IN INDIA
FOR NRIS /OCIS

16TH MARCH 2023

BY

CA NAREN MADLANI

INVESTMENT IN INDIA BY NRI / OCI

EQUITY INSTRUMENTS

DEBT INSTRUMENTS

Repatriation Basis

Non Repatriation Basis

Next
Slide

Schedule – I (FDI)
Equity Instruments

Schedule – III
Foreign Portfolio
Investments

Schedule – VI
Capital in LLP

Schedule – IV

- Equity Instruments
- Unit of Mutual Fund with > 50% in Equity
- Convertible Notes in Start-Ups
- Capital contribution in LLP

- Proprietorship
- Partnership Firm

DEBT INSTRUMENTS

REPATRIATION BASIS

- a) GOVERNMENT DATED SECURITIES, TREASURY BILLS, UNITS OF DOMESTIC MUTUAL FUNDS WITH LESS THAN 50% INVESTMENT IN EQUITY
- b) BONDS ISSUED BY PSU, INDIA SHARES OR DEBENTURES
- c) BONDS ISSUED BY INFRASTRUCTURE DEBT FUNDS
- d) LISTED NON CONVERTIBLE / REDEEMABLE PREFERENCE SHARES OR DEBENTURES
- e) DEBT INSTRUMENT ISSUED BY BANK
- f) SUBSCRIPTION TO NATIONAL PENSION SYSTEM

NON REPATRIATION BASIS

- a) GOVERNMENT DATED SECURITIES, TREASURY BILLS, UNITS OF DOMESTIC MUTUAL FUNDS WITH LESS THAN 50% INVESTMENT IN EQUITY
- b) NON CONVERTIBLE/ REDEEMABLE PREFERENCE SHARES OR DEBENTURES
- c) CHIT FUND AUTHORIZED BY REGISTRAR OF CHITS

NOTE FOR REPATRIATION BASIS :

- 1) NRI / OCI TO BE REGISTERED UNDER PORTFOLIO INVESTMENT SCHEME (PIS)
- 2) PURCHASE CONSIDERTAION TO BE PAID EITHER THROUGH DIRECT OVERSEAS REMITTANCE OR FROM NRE A/C

NOTE FOR NON REPATRIATION BASIS :

- 1) PURCHASE CONSIDERTAION TO BE PAID EITHER THROUGH DIRECT OVERSEAS REMITTANCE OR FROM NRE A/C OR FCNR (B) A/C OR NRO A/C
- 2) SALE CONSIDERTAION TO BE DEPOSITED IN NRO A/C ONLY
- 3) NO REGISTRATION OR ANY COMPLIANCES ARE REQUIRED UNDER FEMA

VARIOUS IMPORTANT TERMS

- ❖ **NON RESIDENT MEANS NRI ,OCI , NON – NRI FOREIGN COMPANY, FOREGN LLP / LLC, FOREIGN PARTNERSHIP FIRM OR PROPREITOR OR ANY OTHER ENTITY INCORPORATED OUTSIDE INDIA**
- ❖ **NON RESIDENT INDIAN (NRI) MEANS A PERSON RESIDING OUTSIDE INDIA BUT HOLDING INDIAN PASSPORT. (LIKE PERSON RESIDING IN GULF COUNTRIES)**
- ❖ **OVERSEAS CITIZEN OF INDIA (OCI) MEANS INDIVIDUAL RESIDING OUTSIDE INDIA WHO IS REGISTERED AS AN OCI CARDHOLDER U/S 7(A) OF CITIZENSHIP ACT, 1955.**
- ❖ **NRO A/C - NON-RESIDENT INDIANS (NRIs) OR PERSON OF INDIAN ORIGIN (PIOs) ARE PERMITTED TO OPEN AND MAINTAIN NRO A/C . THE ONLY LOCAL CURRENT A/C INCOME OR CAPITAL A/C RELATED RECEIPTS CAN BE DEPOSITED IN & LOCAL PAYMENTS CAN ALSO BE MADE FROM, SUCH A/C AND NO REMITTANCE OUTSIDE INDIA IS PERMITTED TO BE MADE FROM SUCH BANK ACCOUNT EXCEPT TRANSFER UNDER 1 MILION USD SCHEME TO NRE A/C OR DIRECT OVERSEASE REMITTANCE .(IT IS SIMILAR TO SB A/Cs OF RESIDENTS).**
- ❖ **NRE A/C - NON-RESIDENT INDIANS (NRIs) OR PERSON OF INDIAN ORIGIN (PIOs) ARE PERMITTED TO OPEN AND MAINTAIN NRE A/C AND ONLY FUND RECEIVED FROM ABROAD CAN BE DEPOSITED OR FUNDS LYING IN NRO A/C CAN BE TRANSFERRED TO SUCH NRE A/C SUBJECT TO ISSUANCE OF 15 CA/CB. FUNDS LYING IN SUCH ACCOUNT CAN BE FRELLY REMITTED OUTSIDE INDIA & CAN ALSO BE USED TO MAKE LOCAL / REPATRIABLE**

NRIs/OCIs INVESTMENT IN INDIA

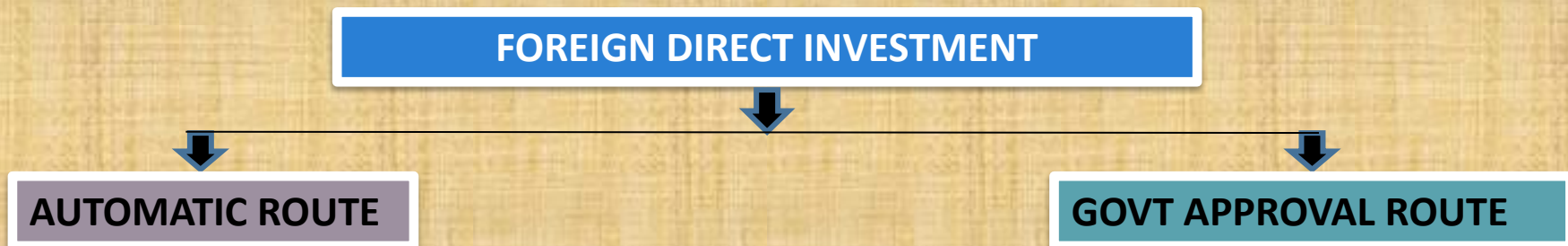
REPATRIATION BASIS	NON-REPATRIATION BASIS
1) INVESTMENT IN EQUITY INSTRUMENTS	1) INVESTMENT IN EQUITY INSTRUMENTS (UNDER SCHEDULE – IV)
A) PORTFOLIO INVESTMENT (UNDER SCHEDULE – III)	
B) FOREIGN DIRECT INVESTMENT (UNDER SCHEDULE – I)	
2) DEBT INSTRUMENTS (UNDER SCHEDULE 1 OF FEMA - 396)	2) DEBT INSTRUMENTS (UNDER SCHEDULE 1 OF FEMA - 396)
3) CAPITAL CONTRIBUTION IN LLP (UNDER SCHEDULE – VI)	3) CAPITAL CONTRIBUTION IN LLP (UNDER SCHEDULE – IV)
	4) CAPITAL CONTRIBUTION IN PROPRIETORSHIP AND PARTNERSHIP FIRM (UNDER SCHEDULE IV)

FEMA (NON DEBT INSTRUMENTS) RULES 2019

SCHEDULE – I (FOREIGN DIRECT INVESTMENT)

PROHIBITED SECTORS

- 1) Lottery BUSINESS
- 2) GAMBLING
- 3) CHIT FUND
- 4) NIDHI FUND
- 5) TRADING IN TDR
- 6) REAL ESTATE BUSINESSs (DEVELOPMENT & CONSTRUCTION ACTIVITES ARE NOT CONSIDERED AS REAL ESTATE BUSINES.
- 7) MANUFACTURING of CIGARS, CHERROTS & TOBACCO RELATED PRODUCTS.
- 8) PUBLIC SECTORs LIKE RAILWAY OPERATION & ATOMIC ENERGY ETC.



EQUITY INSTRUMENTS

- 1) EQUITY SHARES
- 2) FULLY & MANDATORILY CONVERTIBLE PREFERENCE SHARES OR DEBENTURES
- 3) SHARE WARRANTS ISSUES BY INDIAN COMPANY
 - ❖ PARTLY PAID SHARES ARE ALSO ALLOWED TO BE ISSUED PROVIDED MINIMUM 25 % OF TOTAL AMOUNT TO BE BROUGHT UPFORNT & BALANCE AMOUNT TO BE BROUGHT WITHIN 12 MONTHS
 - ❖ SHARE WARRANTS ARE ALSO ALLOWED PROVIDED 25% OF THE AMOUNT TO BE BROUGHT UPFORNT & BALANCE TO BE BROUGHT WITHIN 18 MONTHS

SECTORAL CAP

- ❖ FDI CAN BE MADE WITHIN SECTORAL CAP AS PER TABLE PROVIDED IN SCHEDULE – I & SUBJECT TO COMPLIANCE WITH CONDITIONS APPLICABLE TO THE CONCERNED ACTIVITY / SECTORS.
- ❖ SECTORS WHICH ARE NOT COVERED IN TABLE PROVIDED IN SCHEDULE – I ARE PERMITTED UPTO 100% UNDER AUTOMATIC ROUTE.

PRICING GUIDELINES

- ❖ **NOT APPLICABLE TO LISTED EQUITY INSTRUMENTS WHERE ISSUE PRICE IS DETERMINED THROUGH STOCK EXCHANGES OR SEBI.**
- ❖ **VALUATION OF SHARES TO BE DONE BY PRACTICING CHARTERED ACCOUNTANT , COST ACCOUNTANT OR SEBI REGISTERED MERCHANT BANKER AS PER ANY INTERNATIONALLY ACCEPTED VALUATION METHODOLOGY.**
- ❖ **NO EXIT VALUE SHOULD BE GUARANTEED .**
- ❖ **NO VALUATION IS REQUIRED FOR RIGHT ISSUE UNDER FDI PROVIDED RIGHT SHARES OFFERED TO NON RESIDENTS IS NOT AT A PRICE BELOW THE PRICE AT WHICH SUCH RIGHT SHARES ARE OFFERED TO RESIDENTS.**
- ❖ **EQUITY INSTRUMENTS CAN BE ISSUED TO NON RESIDENTS AT A PRICE NOT BELOW THE FMV DETERMINED BY VALUER BUT THERE IS NO UPPER CAP.**

ONLINE REPORTING

FOR NEW ISSUE OF SHARES

- ❖ **BUSINESS USER REGISTRATION & ENTITY MASTER REGISTRATION TO BE DONE THROUGH RBI FIRM PORTAL**
- ❖ **SHARES TO BE ALLOTTED WITHIN 60 DAYS OF RECEIPT OF FUNDS NOT AT BELOW FMV AS DETERMINED BY THE VALUER.**
- ❖ **FORM FC-GPR TO BE UPLOADED ON FIRM PORTAL OF RBI WITHIN 30 DAYS OF ALLOTMENT OF SHARES.**

DOCUMENTS TO BE ATTACHED WITH FORM FC-GPR

- 1) FIRC**
- 2) KYC**
- 3) COMPANY DECLARATION**
- 4) BOARD RESOLUTION FOR ALLOTMENT OF SHARES**
- 5) SHARE VALUATION CERTIFICATE IF APPLICABLE**
- 6) CS COMPLIANCE CERTIFICATE**
- 7) UNDERTAKING BY THE COMPANY DECLARING NO INVESTMENT FROM BORDER SHARING COUNTRIES.**
- 8) RBI APPROVAL LETTER / MAIL AS A PROOF OF EARLIER ALLOTMENT TO INVESTOR IN CASE OF RIGHT ISSUE.**

SCHEDULE - III

1) SUCH NRI /OCI REGISTERED AS PIS CAN PURCHASE OR SELL EQUITY INVESTMENT IN LISTED COMPANY THROUGH RECOGNIZED STOCK EXCHANGE SUBJECT TO FOLLOWINGS

A) SUCH TRANSACTION TO BE DONE THROUGH DESIGNATED AD BANK.

B) INDIVIDUAL HOLDING SHALL NOT EXCEED 5% OF TOTAL PAID-UP EQUITY CAPITAL OF EACH SERIES OF DEBENTURES / PREFERENCE SHARES OR WARRANTS ISSUED BY INDIAN COMPANY.

&

SUCH AGGREGATE HOLDING BY ALL SUCH NRI'S / OCI'S PUT TOGETHER SHALL NOT EXCEED 10% OF PAID UP CAPITAL OF EACH SERIES OF DEBENTURES / PREFERENCE SHARES OR WARRANTS ISSUED BY INDIAN COMPANY.

SUCH AGGREGATE LIMIT OF 10% CAN ALSO BE RAISED TO 24% BY PASSING SPECIAL RESOLUTION IN THE GENERAL BODY MEETING OF THE COMPANY.

2) SUCH NRI / OCI CAN ALSO INVEST WITHOUT LIMIT IN DOMESTIC MUTUAL FUNDS WHOSE INVESTMENT IN EQUITY INSTRUMENTS IS MORE THAN 50%.

3) SUCH NRI /OCI CAN ALSO INVEST IN PUBLIC SECTOR ENTERPRISES BEING DISINVESTED BY CENTRAL GOVERNMENT.

MODUS OPERANDI OF THE TRANSACTIONS

- 1) NRI / OCI TO BE REGISTERED UNDER PORTFOILO INVESTMENT SCHEME (PIS) THROUGH DESIGNATED BANKER**
- 2) NRI/OCI WILL HAVE TO OPEN NRO A/C AND NRE A/C WITH THE DESIGNATED BNAKER**
- 3) PURCHASE CONSIDERTAION TO BE PAID THROUGH DESIGNATED NRE A/C**
- 3) SALE CONSIDERTAION TO BE DEPOSITED IN NRO A/C FIRST AND THEN BANKER TO DEDUCT APPLICBALE TDS AND PAY THE SAME TO GOVERNMENT**
- 4) THEREAFTER THE BANKER TRANSFERS THE NET OF TAX BALANCE FROM NRO A/C TO NRE A/C**
- 5) FURTHER PAYMENT FOR THE NEXT PURCHASE OF EQUITY INSTRUMENTS SHALL GO FROM NRE A/C.**

INVESTMENT ON NON – REPATRIATION BASIS BY NRI/OCI ETC. SCHEDULE – IV

- 1) FOR PURCHASE OR SALES OF EQUITY INSTRUMENTS OR CONTRIBUTION TO CAPITAL OF LLP**
 - a) INVESTOR SHOULD BE EITHER NRI / OCI OR COMPANY ,TRUST ,PARTNERSHIP OWNED & CONTROLLED BY NRI / OCI AND INVESTMENT SHALL BE SUBJECT TO FOLLOWING :**
 - I. EQUITY INSTRUMENT ISSUED BY INDIAN COMPANY WITHOUT ANY LIMIT THROUGH STOCK EXCHANGE OR UNDER PRIVATE PLACEMENT-UNLISTED COMPANY.**
 - II. UNITS ISSUED BY INVESTMENT VEHICAL WITHOUT ANY LIMIT THROUGH STOCK EXCHANGE OR OUTSIDE IT.**
 - III. CAPITAL CONTRIBUTION TO LLP WITHOUT LIMIT**
 - IV. CONVERTIBLE NOTES ISSUED BY STARTUP COMPANY**
 - b) ALL ABOVE INVESTMENTS ARE CONSIDERED AT PAR WITH INVESTMENT MADE BY RESIDENTS**
- 2) NRI / OCI CAN PURCHASE / SALE UNITS OF DOMESTIC MUTUL FUNDS WITHOUT ANY LIMIT PROVIDED SUCH MUTUAL FUNDS HAVE INVESTED MORE THAN 50% IN EQUITY INSTRUMENTS.**
- 3) PROHIBITED ACTIVITIES**
 - INVESTMENT IN EQUITY INSTRUMENTS, UNITS OF NIDHI COMPANY OR COMPANIES ENGAGGED INTO AGRICULTURAL ACTIVITY, PLANTATION ACTIVITY ,REAL ESTATE BUSINESS OR CONSTRUCTION OF FARM HOUSE OR DEALING IN TDR .**

INVESTMENT BY NRI / OCI IN PROPRIETORSHIP OR P'SHIP FIRM

- **PROPRIETORSHIP, PARTNERSHIP FIRM CAN UNDERTAKE ALL ACTIVITIES EXCEPT PROHIBITED ACTIVITIES I,E AGRICULTURAL, PLANTATION ,PRINT MEDIA OR REAL ESTATE BUSINES.**
- **SUCH NRI / OCI CAN INVEST FUNDS FROM NRO A/C, NRE A/C OR BY DIRECT REMITTANCE FROM OUTSIDE INDIA.**
- **INCOME EARNED BY SUCH PROPRIETORSHIP OR FIRM CAN BE REPATRIATED OUTSIDE INDIA WITHOUT LIMIT SUBJECT TO PAYMENT OF TAXES IN INDIA.**
- **THE PRINCIPAL AMOUNT AT THE TIME OF EXIT CAN BE DEPOSITED IN NRO A/C ONLY WHICH IS NORMALLY NOT REPATRIABLE OUTSIDE INDIA.**
- **BUT OVERSEAS REMITTANCE UPTO USD 1 MILLION PER FINANCIAL YEAR IS ALLOWED TO BE MADE FROM NRO A/C.**

PROS & CONS OF PVT. LTD. COMPANY / PARTENERSHIP FIRM AND LLP

	PVT. LTD. COMPANY	PARTNERSHIP FIRM
ADVANTAGE	LIMITED LIABILITY	NO DOUBLE TAXATION (ONLY FIRM TAX TO BE PAID)
DIS-ADVANTAGE	DOUBLE TAXATION (COMPANY TAX & DIVIDEND TAX)	UNLIMITED LIABILITY

LIMITED LIABILITY PARTNERSHIP

ADVANTAGE

LIMITED LIABILITY

**NO DOUBLE TAXATION
(ONLY FIRM TAX TO BE PAID)**

INVESTMENT IN LLP BY NON-RESIDENT ON REPATRIATION BASIS UNDER AUTOMATIC ROUTE SCHEDULE – VI

- 1) ANY NON RESIDENT EXCEPT CITIZEN OF PAKISTAN OR BANGLADESH AND ENTITY FROM BANGLADESH OR PAKISTAN IS PERMITTED TO INVEST THROUGH LLP IN INDIA**
- 2) INVESTMENT IN LLP IS ALLOWED UNDER AUTOMATIC ROUTE IF FOREIGN INVESTMENT UPTO 100% SECTORAL CAP IS PERMITTED FOR THE CONCERNED ACTIVITY AND THERE IS NO PERFORMANCE LINKED CONDITIONS ATTACHED TO SUCH SECTORAL CAP.**
- 3) VALUATION OF LLP IS REQUIRED TO BE DONE UNDER INTERNATIONALLY ACCEPTED METHODS OF VALUATION FOR NEW INVESTMENT AS WELL AS FOR TRANSFER OF EXISTING INVESTMENT IN LLP BY ONE PARTNER TO ANOTHER PARTNER.**
- 4) INVESTMENT CAN BE DONE FROM NRE A/C HELD BY NRI AND FOR OTHER THAN NRI BY DIRECT REMITTANCE FROM OUTSIDE INDIA.**
- 5) THE CURRENT PROFIT OF THE LLP CAN BE REPATRIATED OUTSIDE INDIA SUBJECT TO PAYMENT OF APPLICABLE TAXES IN INDIA.**

16

- 1) LLP CAN NOT BORROW MONEY BY WAY OF ECB**

THANK YOU

EMAIL ID: NAREN@NARENANDCO.COM