REAL ESTATE INVESTMENT IN INDIA

25th June 2008

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Presentation Overview

Law, Regulations & Policies

Investment in India

FDI Policy

Special Economic Zones

Industrial Parks

Real Estate Mutual Funds

Real Estate Investment Trusts

Laws, Regulations and Policies: An Overview

Investing in real estate in India requires compliance with various laws. In addition to federal laws, there are many State laws governing real estate transactions and investment.

Laws, Regulation and Policies
Central Laws

Acquisition of Property

A. **Urban Land (Ceiling and Regulation) Act, 1976**

- Prescribes the limits to urban areas that can be acquired by a single entity
- Repealed in some States and Union Territories

Laws, Regulation and Policies
Central Laws

B. Land Acquisition Act, 1894

- Provides for the compulsory acquisition of the land by the Central or State Government for public purposes

Central Laws

2. Transfer of Property

A. Transfer of Property Act, 1882

- Identifying the categories of properties that are capable of being transferred, persons competent to transfer property, the validity of restrictions and conditions imposed on the transfer and the creation of contingent and vested interest in the property

B. Registration Act, 1908

- The purpose of this Act is the conservation of evidence, assurances, title, publication of documents and prevention of fraud. It details the formalities for registering an instrument.

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Laws, Regulation and Policies
Central Laws

C. Indian Stamp Act, 1899

- Stamp duty needs to be paid on all property documents specified under this Act and at the rate specified in the schedules
- Rate of stamp duty varies from State to State

D. Easements Act, 1882

- Right which the owner or occupier of land possesses for the beneficial enjoyment of the land
- Rights to do or to prevent something from being done in respect of certain other land not owned

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Laws, Regulation and Policies
State Laws

1. Urban Development Laws

- Projects have to be planned and developed in conformity with the norms established under the State laws and regulations.
- Building plans are required to be approved and zoning requirements are to be adhered to.
- Clearances with respect to fire, civil aviation and pollution control are required from appropriate authorities.
- Completion/ Occupancy Certificate to be obtained upon completion of the project.

Laws, Regulation and Policies
State Laws

2. Agricultural Development Laws

- Acquisition of land is regulated by State land reform laws/ regulations which prescribes limits for acquisition of agricultural land
- Any transfer of land which results in exceeding the ceiling, the surplus land will be deemed to vested in the State Government, free of all encumbrances
- Conversion certificate is required to be obtained for change in use of land from agricultural to non-agricultural for development into townships.

FDI in Real Estate

Press Note 2 (2005 series)

Particulars	Regulations
Permitted activities	■Construction Development projects, including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships.
Minimum area of development	■Serviced housing plots –10 hectares ■Construction – development projects - 50,000 sq meters ■Combination projects – either of above two conditions
Investment Limit	■WOS –Min. capitalization of US$ 10 million ■JV with Indian partners –US$ 5 million ■investment within six months of business commencement
Lock-in restriction	■Original investment locked-in for 3 years
Project development	■50% of the project to be developed in 5 years (under-developed plots cannot be sold)

FDI in Real Estate

Press Note 2 (2005 series)

Particulars	Regulations
Hotels, tourism And hospitals	■100% permitted under automatic route ■ Hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities to tourists.
Industrial park	■ 100% permitted as per the Industrial Parks Scheme, 2008.
SEZs	■ 100% permitted as per the SEZ Policy. ■ For investment in SEZs, Hotels & Hospitals, conditions mentioned in Press Note 2 (2005) are not applicable. [Press Note 7 (2008)]

Rehabilitation and Resettlement Policy

- Approved by the Union Cabinet on October 11, 2007.
- **Purpose of the Policy** –To strike a balance between the need for land for development purposes and protecting the interests of land owners and other displaced persons.
- Provides land-for-land compensation for acquisition of land for development purposes, including SEZs, and employment to at least one person from each affected family.
- Provides compensation for those who lose their land due to natural calamity.

Special Economic Zones

- Governed by the Special Economic Zones Act, 2005
- 100% FDI is permissible for setting up a SEZ under the automatic route.
- Single window approval mechanism for Developers & Units in SEZs.
- Developer required to have at least 26% of the equity in the company proposing to create business, residential or recreational facility in a SEZ.

Special Economic Zones

- SEZ unit to achieve cumulative positive Net Foreign Exchange Earning (NFE) in a period of 5 years from the commencement of production.

- Fiscal concessions for SEZ Units/ Developers –exemption from custom duty, excise, service tax, income tax, stamp duty, etc.

Industrial Parks

- **Indian Government has notified Industrial Park Scheme on 8th January 2008 ("Scheme")**
- **Under the Scheme, a developer who has established an Industrial Park before March 31, 2009 is granted tax exemptions for a period of 10-years on 100% of business profits earned from the development, operation and maintenance of the Industrial Park.**
- **Press Note 3 & 7 (2008 series) –100% FDI is allowed both in setting up and in established Industrial Parks under the automatic route subject to the following conditions –**
  - **It would comprise of a minimum 10 units and no single unit shall occupy more than 50% of the allocated area;**
  - **The minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.**

  [Conditions mentioned in Press Note 2 (2005) would not apply if the above conditions are fulfilled.]

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Entry options

The following options are available to a foreign entity desirous to set up business operations in India:

- **Incorporation of company (JVC or WOS)**
- **Liaison office/ Representative office**
- **Branch office**
- **Branch office on "stand-alone basis" in Special Economic Zone**
- **Project offices**
  - [RBI has provided general permission to foreign companies to establish project office in India if they have secured a contract with an Indian Company to execute a project in India along with some other conditions laid down by RBI in Master Circular dated 12th June, 2007. If the conditions are not met, the foreign company will have to obtain RBI's approval]

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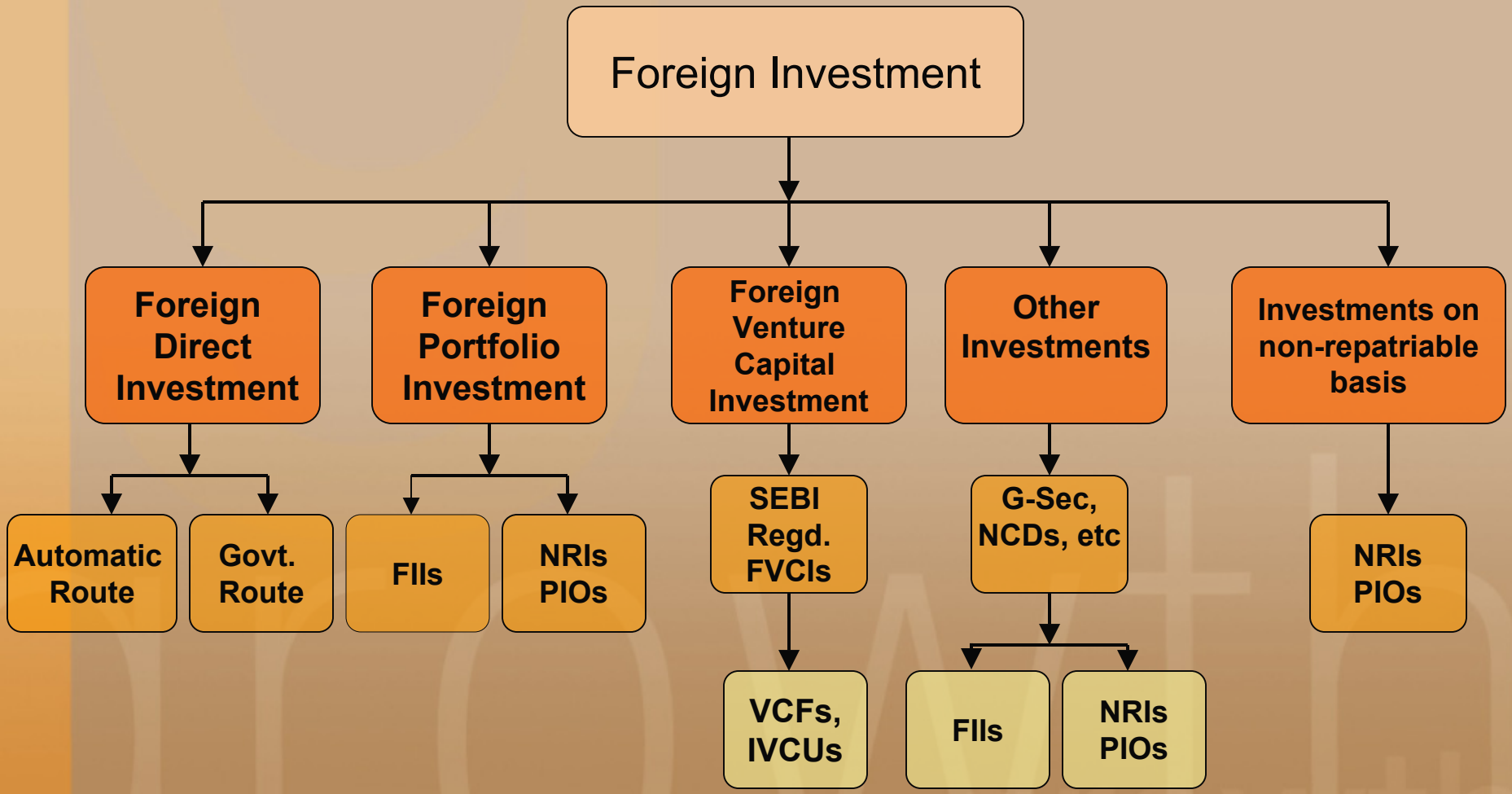
Foreign Investment Options, Generally



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Entry Routes

Investing in India – Entry Routes

Automatic Route

No prior permission Required.

Intimation to Reserve Bank of India (RBI) required within 30 days of inflow/Issue of shares

Approval Route

Prior Government Approval required (through FIPB).

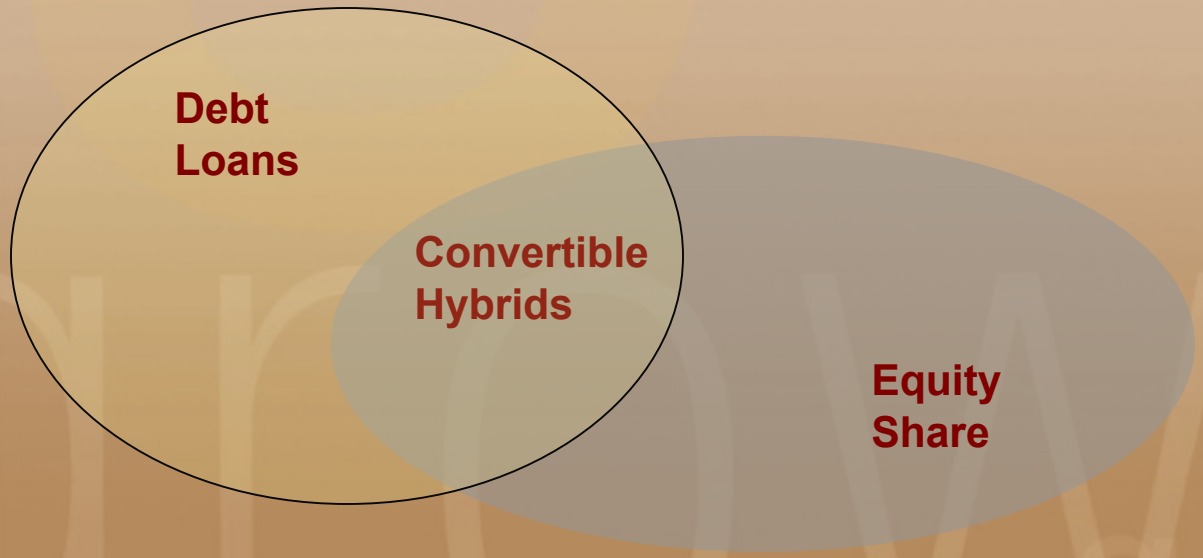
Decision generally within 4-6 weeks

Investment Options

Debt

Equity

Debt & Equity combine



- Voting rights
- Management rights
- Information rights
- Economic Rights
- ECB/ FDI Compliance

Investment Options: Instruments/ Nature

- Equity Shares
- Compulsorily convertible preference shares
- Compulsorily convertible debentures

Foreign Direct Investment (FDI)

- Non convertible preference shares
- Non convertible debentures
- Optionally convertible debentures

External Commercial Borrowing (ECB)

Real Estate Mutual Funds (REMF)

- **Governed by the Guidelines under SEBI (Mutual Funds) Regulations to be issued.**
- **REMF is a scheme of a Mutual Fund which has the objective to invest directly or indirectly in real estate property.**
- **Structure of the REMF to be initially closed ended.**
- **Units to be compulsorily listed and NAV of the Scheme shall be declared daily.**
- **REMF to appoint Custodian to safe keep the title of real estate properties.**
- **REMF Schemes can invest:**

(1) Directly in real estate property within India
(2) Mortgage (housing lease) backed securities
(3) Equity shares/ Bonds/ Debentures of listed/ unlisted companies which deal in properties/ property development
(4) Other securities

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Real Estate Investment Trust (REIT)

- The draft Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2008 defines REIT as a trust registered under the Indian Trusts Act, 1882 and registered with SEBI, whose object is to organize, operate and manage real estate collective investments.

- REIT is an entity that puts together the investments of individuals/ entities and deploys the funds into income-producing real estate assets.

- REIT would *inter alia,* appoint a Real Estate Investment Management Company (REIMC) to organize, operate and manage real estate investment scheme.

- REIMC floats various schemes for collection of funds against issue of units. The Trustees hold the property of the real estate investment scheme in trust for the benefit of the unit holders.

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