

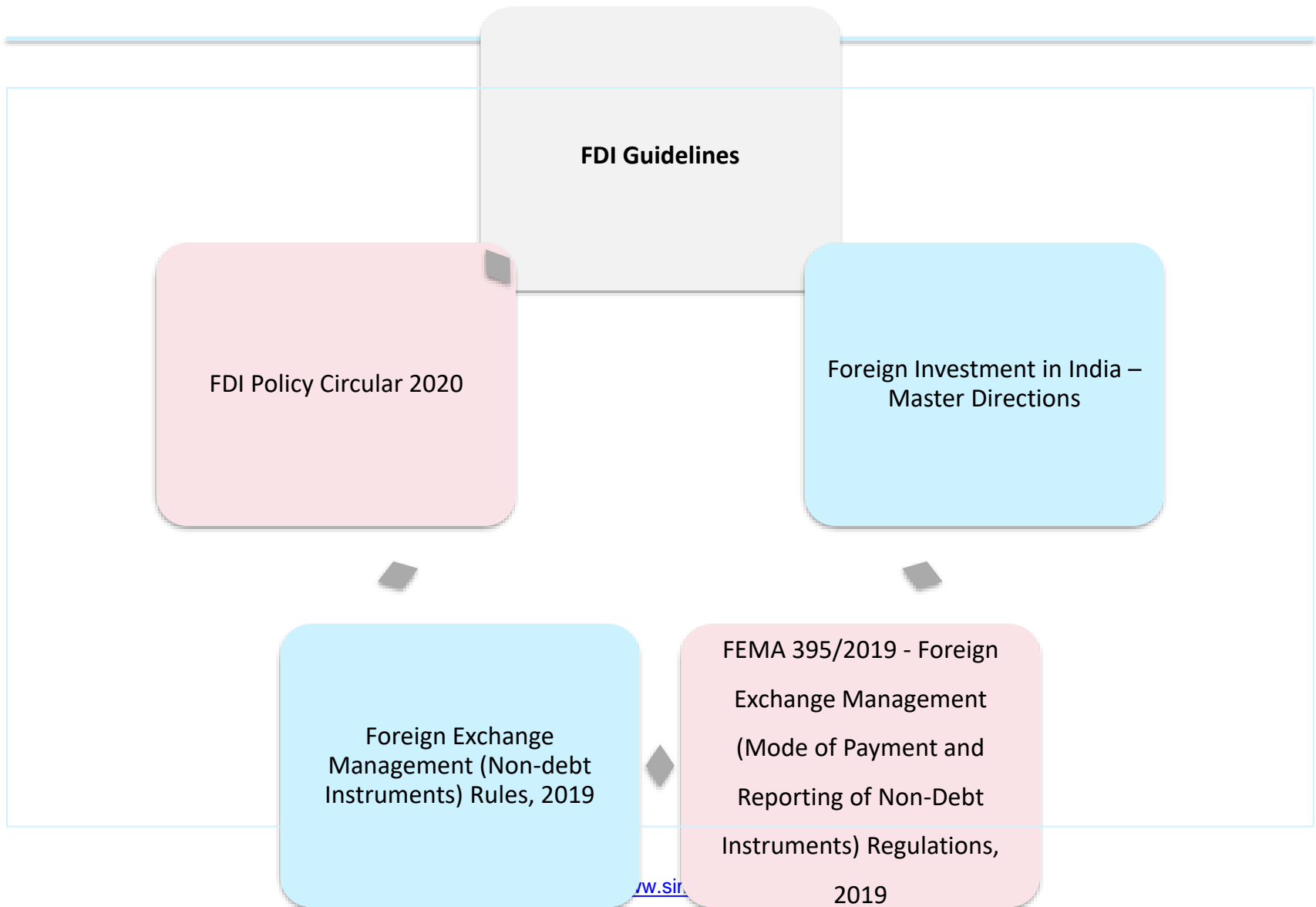
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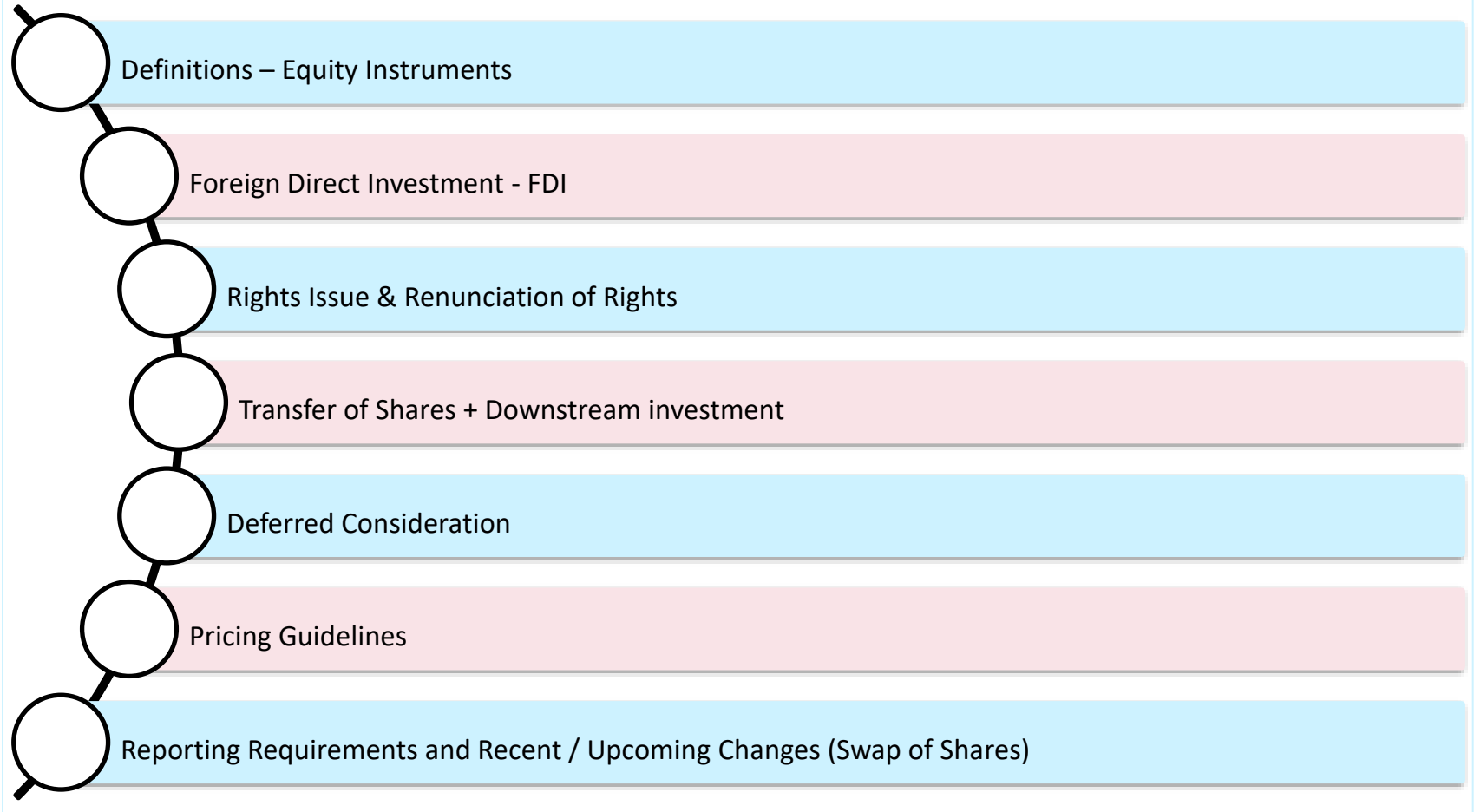
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Foreign Direct Investment

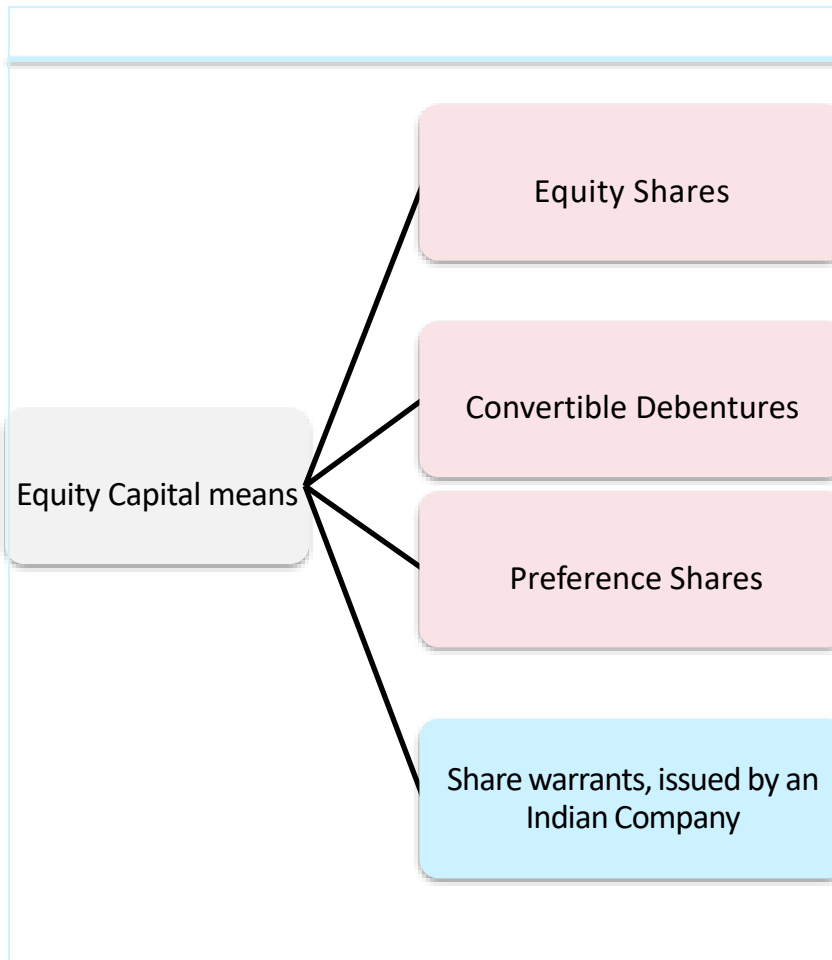
ODI Guidelines Framework



Key Changes



Equity Instruments



Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid.

Convertible debentures means fully, compulsorily and mandatorily convertible debentures.

Preference shares means fully, compulsorily and mandatorily convertible preference shares.

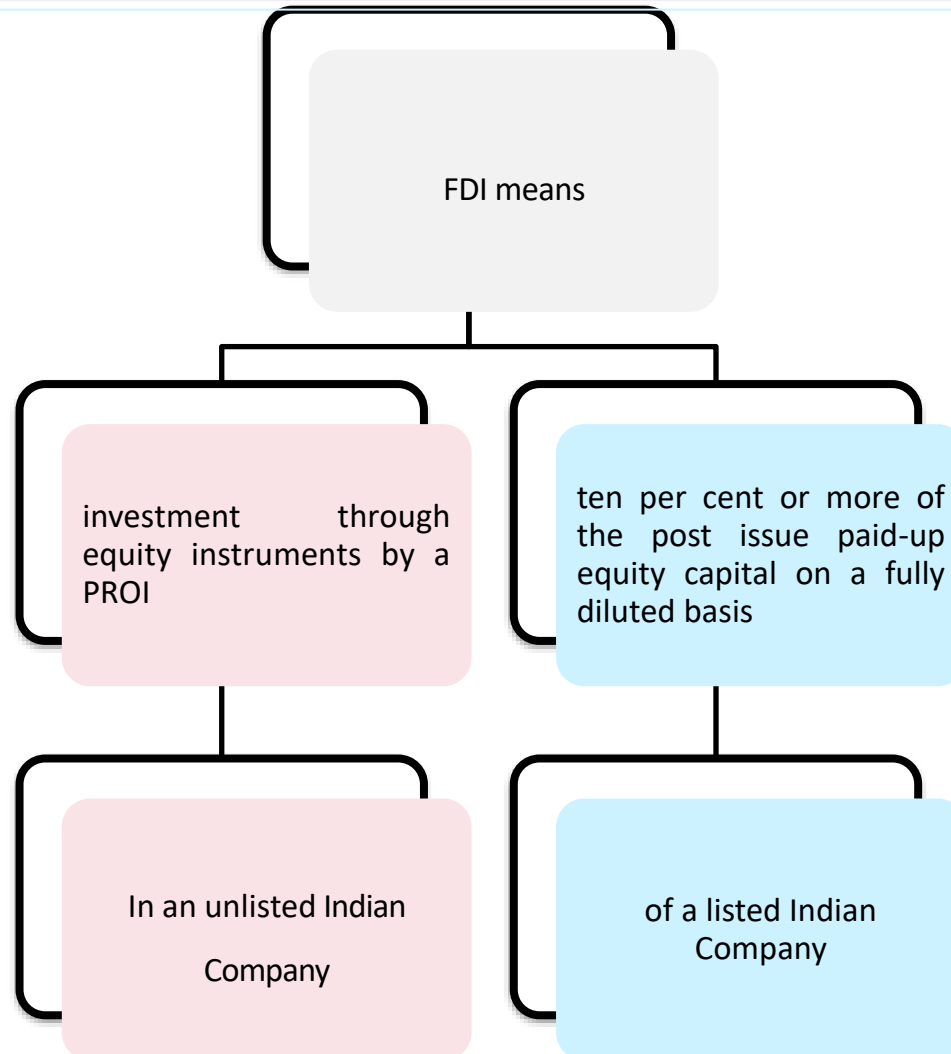
Share Warrants are those issued by an Indian company in accordance with the regulations by the Securities and Exchange Board of India.

Equity instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.

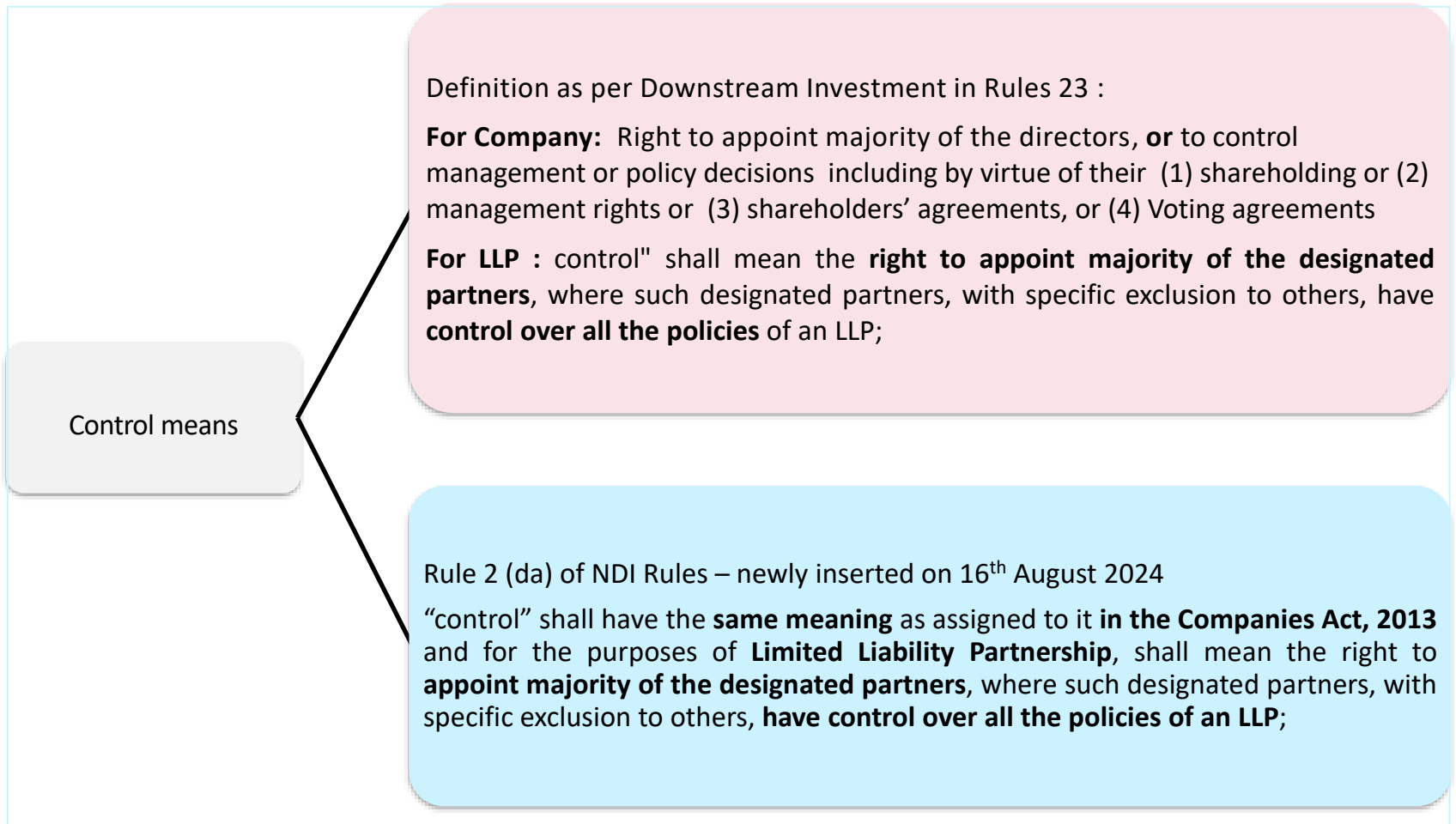
Partly paid shares : fully called in 12 months of such issue + 25% of total consideration amount (including share premium) received upfront.

Warrants : 25% of total consideration upfront + balance in 18 months

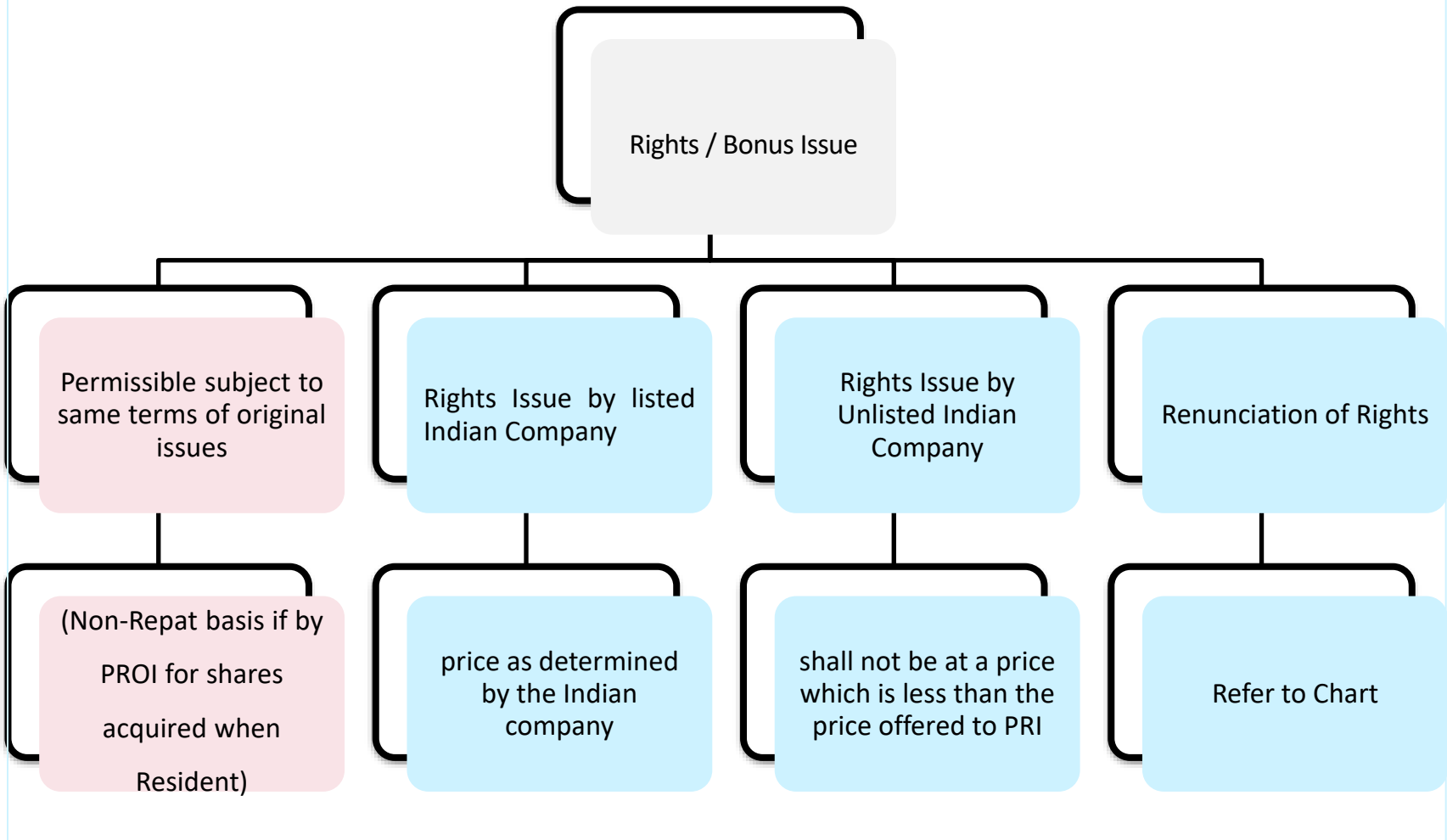
Foreign Direct Investment



Control



Rights / Bonus Issue



Renunciation of Rights

Seller of Right	Rights Status	Buyer of Right	Investment undertaken	Equity instruments issued will be
PRII	Right (non-repat)	PROI	Investment (repat)	Equity instruments (repat)
PROI	Right (non-repat)	PROI	Investment (repat)	Equity instruments (repat)
PRII	Right (non-repat)	PROI	Investment (non-repat)	Equity instruments (non-repat)
PROI	Right (non-repat)	PROI	(non-repat)	Equity instruments (non-repat)

6.11.4 Renunciation of rights **(inserted directly in the FDI Master Direction on 8th August 2024)**

1. A person resident in India and a person resident outside India may subscribe to additional shares over and above the shares offered on rights basis by the company and also renounce the shares offered either in full or part thereof in favour of a person named by them.
2. The facility at para 6.11.3 and para 6.11.4(1) would not be available to investors who have been allotted such shares as Overseas Corporate Bodies (OCBs).
3. **A person resident outside India who has acquired a right from a person resident in or outside India, holding equity instruments on non-repatriation basis, who has renounced it, may acquire equity instruments (other than share warrants) on repatriable basis, against the said rights subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India specified in the NDI Rules;**
4. **Provided that if the investment is made by the person resident outside India using funds which are non-repatriable in nature, then such investments shall be held by such person resident outside India on non-repatriation basis.**
5. **The equity instruments so acquired shall be subject to the same conditions as applicable to the original holding against which rights issue has been made except for the change in repatriability status resulting from investments made in terms of para 6.11.4(3) above.**

Transfer of Equity Instruments (Rule 9 of NDI Rules)

Seller	Buyer	Mode	Pricing	Reporting	Government Approval
PROI (not NRI / OCI / OCBs)	PROI	Sale / Gift - It covers transfer pursuant to liquidation, merger, de-merger and amalgamation of entities or companies outside India	No (yes if seller holds on NR basis and buyer acquires on Rep basis with attendant conditions)		Yes for sectors Under Approval Route
PROI	PRII	Sale / Gift – sale is subject to pricing guidelines & reporting	Yes for sale (except when PROI holds on Non-Rep basis)		NO
PRII	PROI	Sale – adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions	YES		Yes for sectors Under Approval Route
PRII / NRIs & OCIs on Non-Rep Basis	PROI	Gift – with prior RBI approval - 5% of the paid –up capital of Indian Company / each series of debentures and aggregate ceiling of USD 50K per financial year qua donor	YES		Yes though not expressly mentioned
PROI holding equity instruments of an Indian Company with optionality clause can exit without any assured return subject to minimum lock-in period of one year					
Sale on deferred consideration between PRII and PROI		<ul style="list-style-type: none"> Deferred consideration not to exceed 25% of the total consideration Deferment period not to exceed 18 months from date of transfer agreement Can be settled through Escrow arrangement Can be indemnified by the seller for a period not exceeding 18 months from the date of the payment of the total consideration if total consideration has been paid by the buyer to the seller Total consideration to be compliant with applicable pricing guidelines 			

Transfer of Shares + Downstream Investment

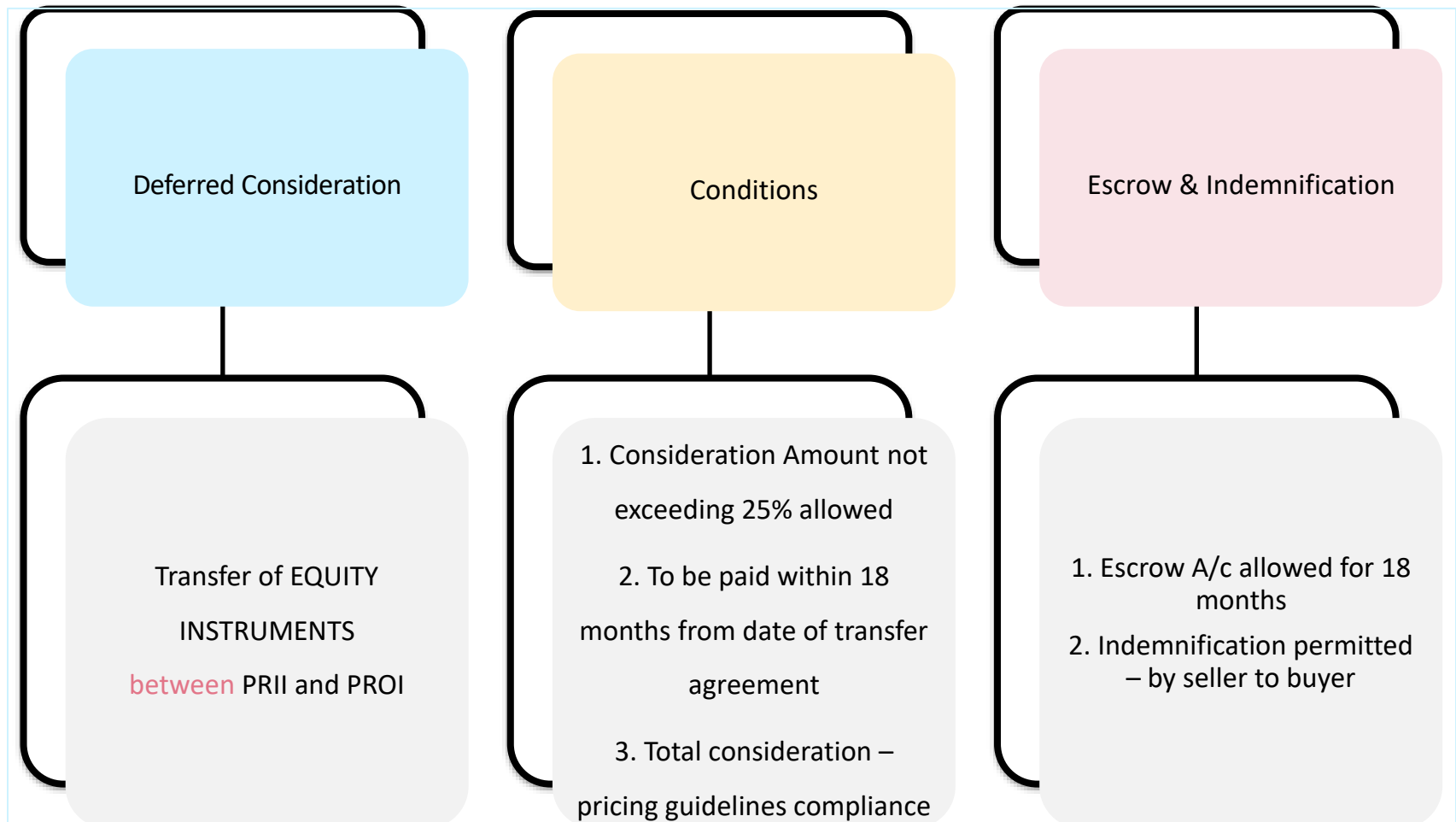
Seller	Buyer	Reporting	Pricing	Deferred Consideration	Reference
FOCC	PROI	FCTRS	As per RBI norms, the pricing guidelines are not applicable. However, it remains practically relevant, especially since it is inward Foreign Direct Investment (FDI). All declarations for FDI inflows required by Authorised Dealer (AD) Banks stipulate the applicability of pricing guidelines.	Allowed	Para 9.6 of FDI MD + Rule 23 (5) of NDI Rules
FOCC	PRII	Not Applicable	Applicable	Not Applicable	Para 9.6 of FDI MD + Rule 23 (5) of NDI Rules
FOCC	FOCC	Not Applicable	Not Applicable	Not Allowed	Para 9.6 of FDI MD + Rule 23 (5) of NDI Rules
PROI	FOCC	FCTRS + DI	Applicable as outward remittance		
PRII	FOCC	Not Applicable	Applicable	Not Allowed	

FOCC - Foreign Owned and/or Controlled | PROI - Person Resident Outside India | PRII - Person Resident In India

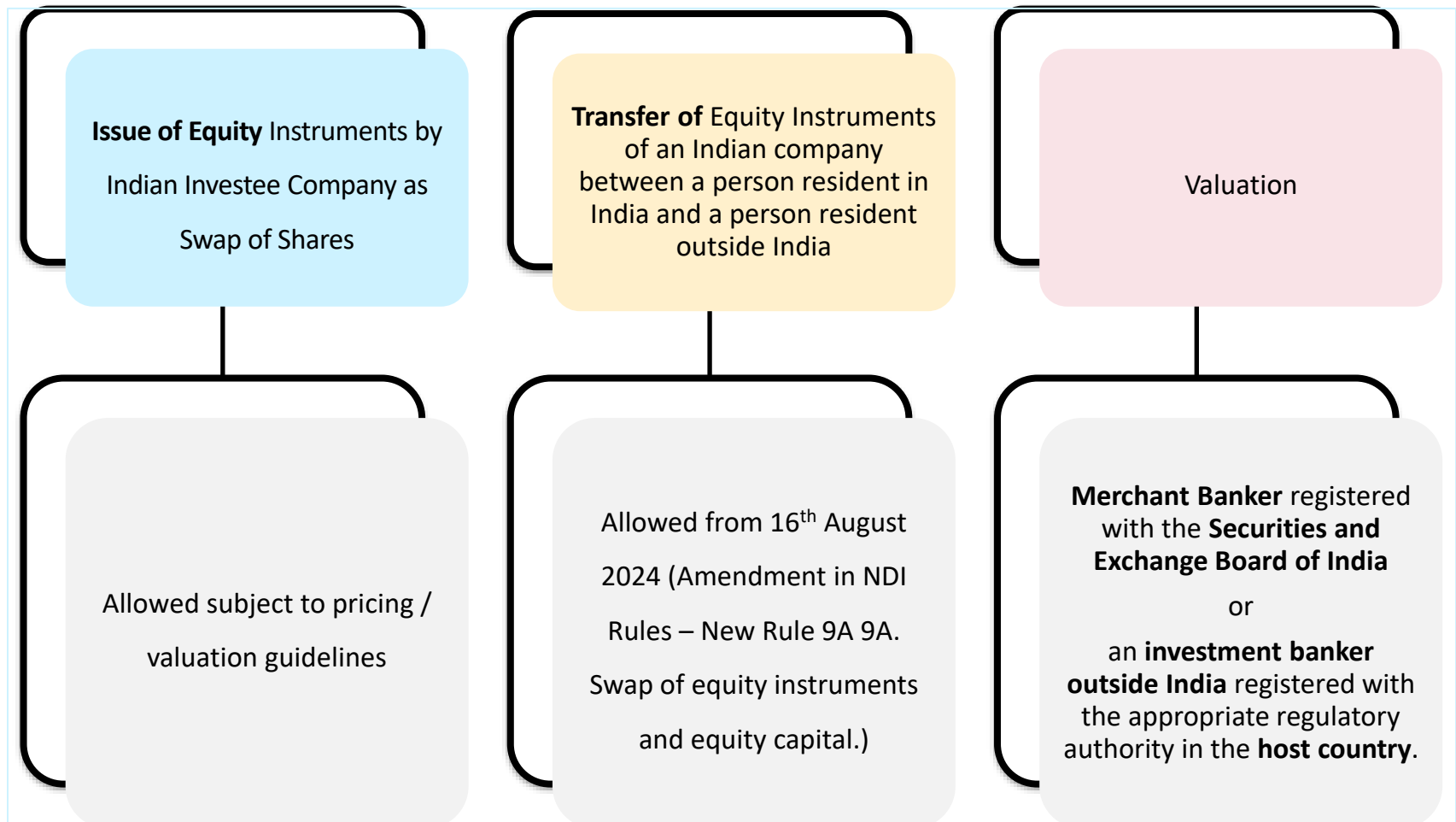
Pricing Guidelines (Rule 21 of NDI Rules)

Category	Pricing Guidelines Requirements	
Issue of Equity Instruments	Issue price of equity instruments to PROI – price should not be lower than:	
	Listed Entity	SEBI Guidelines including for Delisting
	Unlisted Company	<ul style="list-style-type: none"> Internationally accepted pricing methodology (IAPM) for valuation on arm's-length basis Valuation by Merchant Banker / CAs / Cost Accountants + report within 90 days prior from the date of Issue / transfer
	Explanation : convertible equity instruments	<ul style="list-style-type: none"> price or conversion formula determined upfront at the time of issue of the instrument + price at the time of conversion should not be lower than the fair value worked out, at the time of issuance of such instruments
Transfer of Equity Instruments	PRII to PROI	<ul style="list-style-type: none"> price not to be less than SEBI guidelines (issue or preferential allotment or delisting) for Listed Company and IAPM for unlisted company as above
	PROI to PRII	<ul style="list-style-type: none"> price not to exceed SEBI guidelines for listed company and IAPM for unlisted company as above
	Valuation report	<ul style="list-style-type: none"> Valuation by Merchant Banker / CAs / Cost Accountants Report – Arms length pricing FEMA NDI Rules Upfront for CCDs / CCPs within 90 days prior from the date of Issue / transfer
	Note	<ul style="list-style-type: none"> PROI cannot be guaranteed assured exit price and the exit to be at prevalent price Pricing is not applicable for investment by PROI on non-repatriation basis
Other Cases	Swap of Shares	<ul style="list-style-type: none"> valuation only by SEBI Registered Merchant Banker / Investment Banker registered with Host Country
	Subscription to MoA	<ul style="list-style-type: none"> face value
	Share warrants	<ul style="list-style-type: none"> pricing / conversion formula to be determined upfront

Deferred Consideration



Swap of Shares (Rule 9A and Schedule I of NDI Rules)



Reporting Requirements (FEMA 395/2019)

Reporting Form	Filing Requirements	Due Dates
FCGPR	Issue of Shares to PROI + Conversion of ECB to Equity	30 days from the date of issue of capital instruments.
FLA Return	Indian company which has received FDI or an LLP which has received investment by way of capital contribution	By 15 July of the corresponding year
FCTRS	For transfer of Equity instruments	60 days of transfer or receipt / remittance of funds (which is earlier)
ESOP	Indian company issuing employees' stock option to PROI	30 days from the date of issue of ESOPs.
LLP (I)	LLP receiving amount of consideration for capital contribution and acquisition of profit shares	30 days from the date of consideration
LLP (II)	Disinvestment/ transfer of capital contribution or profit share of LLP between a resident and a non-resident	60 days from the date of receipt of funds
DI	Indian entity or an investment Vehicle making downstream investment in another Indian entity	30 days from the date of allotment of capital instruments
Downstream - IFI (DPIIT)	Indian entity or an investment Vehicle making downstream investment in another Indian entity	30 days of such investment, even if equity instruments have not been allotted

Reporting Requirements (FEMA 395/2019)

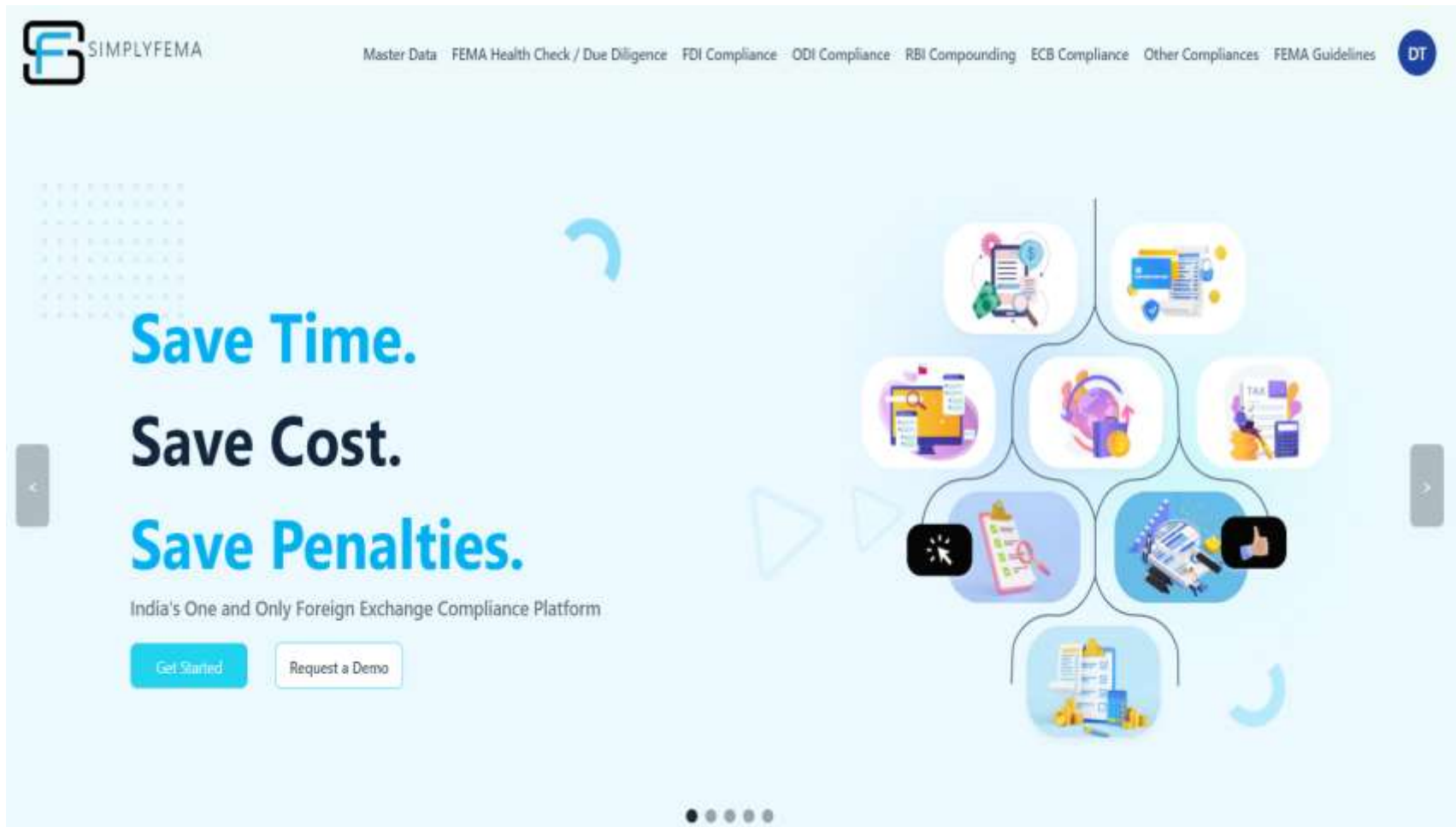
Reporting Form	Filing Requirements	Due Dates
CN	Indian startup company issuing Convertible Notes to a person resident outside India	30 days of such issue
InVi	Investment vehicle which has issued its units to a person resident outside India	30 days from the date of issue of units
LEC(FII)	Purchase/ transfer of capital instruments by FPIs on the stock exchanges in India	AD Bank to report
LEC(NRI)	Purchase/ transfer of capital instruments by Non-Resident Indians or Overseas Citizens of India stock exchanges in India	AD Bank to report

Upcoming Changes in FDI Reporting timelines : 90 days timelines for all the FDI Forms

Key Practical Observations

- Transfer of Shares – Includes transfer of CCDs or CCPs (definition of Equity instruments)
- Issuance of RSUs to PROI – whether aligned with ESOPs? AD Banks taking view that RSUs require RBI approval [SAR allowed]
- Extension of CCDs or CCPS – If in compliance with Companies Act, then allowed. For change of terms i.e. conversion ratio, AD Banks taking view of obtaining RBI approval.
- Deferred Consideration R and FOCC – Whether allowed for Downstream Investments? AD Banks view its not allowed requiring RBI approval. FOCC to R – no reporting only EMF updation
- Rights Issue (Downstream investment) – Whether Valuation required. No as valuation not required for foreign Investment (Rules 23)
- Fair Value on RBI Firms Portal – Mention nothing where fair value is not applicable i.e. MOA, Rights Issue, Bonus Issue etc. Provide declarations. Valuation report issued by RV does not work for RBI filings.
- Refund – Refund of Share application allowed. Refund without interest beyond 60+15 = 75 days allowed by RO of RBI.
Refund of Units – RBI approval

Simply FEMA – Web Application + Compliance Tool



The image shows a screenshot of the Simply FEMA website landing page. The page has a light blue background with a grid of dots on the left. The main headline reads "Save Time. Save Cost. Save Penalties." followed by the tagline "India's One and Only Foreign Exchange Compliance Platform". There are two buttons: "Get Started" and "Request a Demo". The top navigation bar includes the Simply FEMA logo and a list of services: Master Data, FEMA Health Check / Due Diligence, FDI Compliance, ODI Compliance, RBI Compounding, ECB Compliance, Other Compliances, and FEMA Guidelines. A "DT" button is also visible in the top right. The right side of the page features a circular diagram with eight icons representing various compliance and financial services. The page is framed by a thin blue border.

SIMPLYFEMA

Master Data | FEMA Health Check / Due Diligence | FDI Compliance | ODI Compliance | RBI Compounding | ECB Compliance | Other Compliances | FEMA Guidelines

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DT

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DT

	FDI	FLA	
MD			
DD / HC			
FDI	FDI - Inward Remittance Reporting of FDI with RBI for Issue of Capital / Equity instruments to a person resident outside India in the Indian Company	Form FCGPR Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Form FCTRS Reporting of FDI with RBI for Transfer of Capital / Equity Instruments to / from a person resident outside India in the Indian Company
ODI			Form ESOP Reporting with RBI for making downstream investment in the Indian Company
COC	Start Filling →	Start Filling →	Start Filling →
ECB			
OC	Form LLP Reporting of FDI with RBI for Transfer of Capital / Equity Instruments to / from a person resident outside India in the Indian Company	Form CN Reporting of FDI with RBI for Transfer of Capital / Equity Instruments to / from a person resident outside India in the Indian Company	Form DI and DPIIT (Downstream Investment) Reporting with the RBI / DPIIT by an Indian Company / LLP for undertaking Downstream Investment in the Indian Company / LLP.
FG			Form FCTRS + DI & DPIIT (Downstream Investment) Reporting of Transfer of Shares and Downstream Investment (Combination) with the RBI/DPIIT i.e. Transfer from Foreign Owned and Controlled Companies (FOCC)...
	Start Filling →	Start Filling →	Start Filling →

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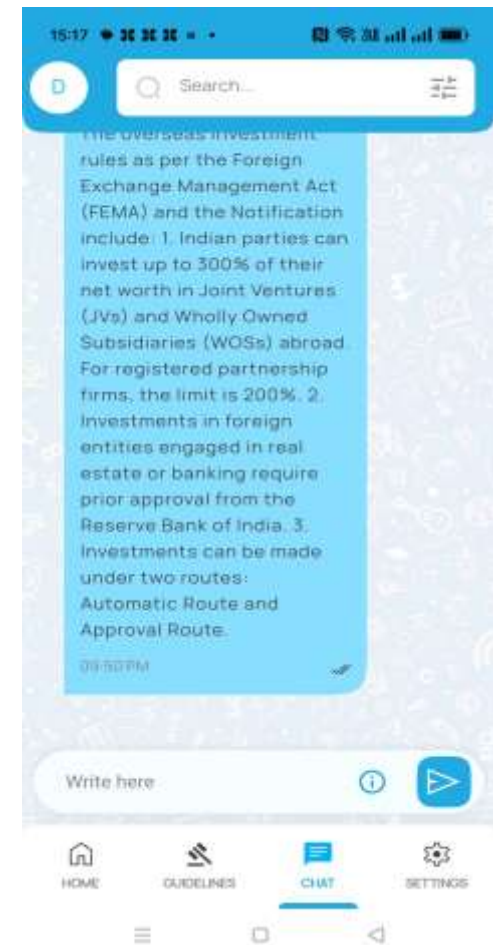
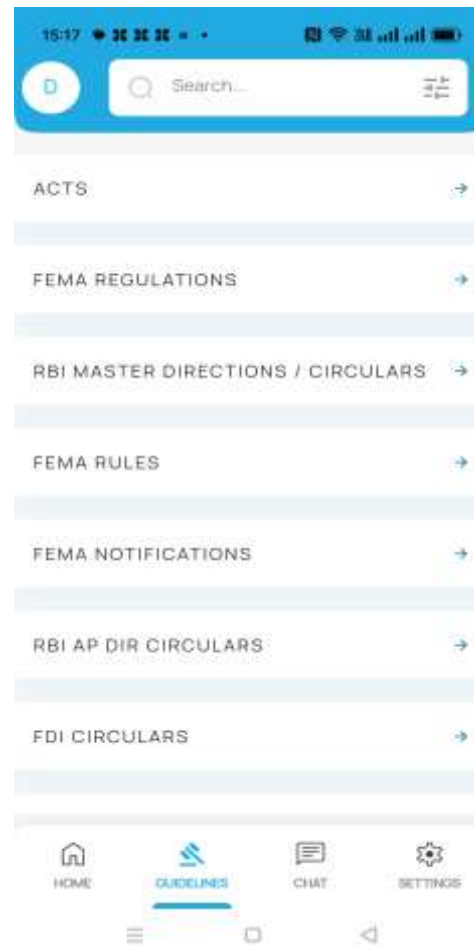


MD

Compounding

DD / HC	FDI Compounding	ODI Compounding	ECB Compounding	LOBO Compounding
FDI	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company
ODI	Start Filling →	Start Filling →	Start Filling →	Start Filling →
COC				
ECB	EOGS Compounding	IOGS Compounding	IP in India Compounding	CAT - Capital Compounding
OC	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company	Reporting of FDI with RBI for Issue of Capital / Equity Instruments to a person resident outside India in the Indian Company
FG	Start Filling →	Start Filling →	Start Filling →	Start Filling →

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