



FOREIGN DIRECT INVESTMENT

Agenda

- **Background**
- **Entry Policy & Procedures**
- **Investment in LLP**
- **Investment by NRIs**
- **Pledge of Shares**
- **Escrow Arrangement**
- **Transfer of Capital**
- **Reporting and Remittance**
- **Contraventions & Compounding**

Background...



FERA 1973

- Focus on corporate sector
- Restricted foreign investment
- FERA companies (>40% foreign ownership)
- Violation - a CRIMINAL OFFENCE

FERA - Progressive Liberalization

- Automatic Route for select industries – 1991
- Employment of foreign nationals allowed – 1993
- Negative List introduced – 1999

FEMA 1999

- Regulation Vs Management
- Partial Capital Account Convertibility
- Current Account Convertibility
- Violation - CIVIL OFFENCE



OPEN ARM FOREIGN INVESTMENT POLICY



Permitted

100% FDI permitted without approvals in most sectors

Approval required for Licenced Industries

- Tobacco
- Hazardous Chemicals
- Defence Equipment

Restricted

<u>Sector</u>	<u>FDI Cap</u>
▪ Private Banking	74%
▪ Mining of Precious Stones	74%
▪ SSI Unit	24%
▪ Credit Information Co.	49%
▪ Commodity Exchange	49%
▪ Infrastructure Co.	49%
▪ Airports	74%
▪ Telecom	49%
▪ Civil Aviation	49%
▪ Insurance	26%
▪ Single Brand Retailing	51%
▪ Asset Reconstruction	49%

Prohibited

- Agriculture (some exceptions)
- Gambling, Betting & Lottery
- Retail (except Single Brand retail)
- Chit Fund, Nidhi, TDRs
- Mfg of Cigars
- Real Estate, or Farm House
- FTC, TM, Franchisee, Mgt. Contract for Lottery, Betting

Govt. sector only

- Railways
- Atomic Energy

Existing JVs – no more a stumbling block

FDI in

LLP



Foreign Direct investment in LLPs



100% FDI Allowed in Limited Liability Partnerships (“LLPs”)

- Activities currently eligible for 100% FDI under automatic route
- Prior approval from FIPB
- LLPs with FDI cannot make downstream investment
- FII and FVCI investment not permitted in LLPs
- LLPs with FDI cannot raise foreign currency loan (ECB)

Businesses Eligible for FDI in LLPs

An Indicative List



Services

- IT / ITeS / KPO
- Business services
- Engineering, technical support and R&D
- Healthcare and medical services
- Logistics, supply chain management
- Advertising and films
- Hotels, tourism, F&B, restaurants

Trading

- Wholesale / B2B / Exports
- Sourcing

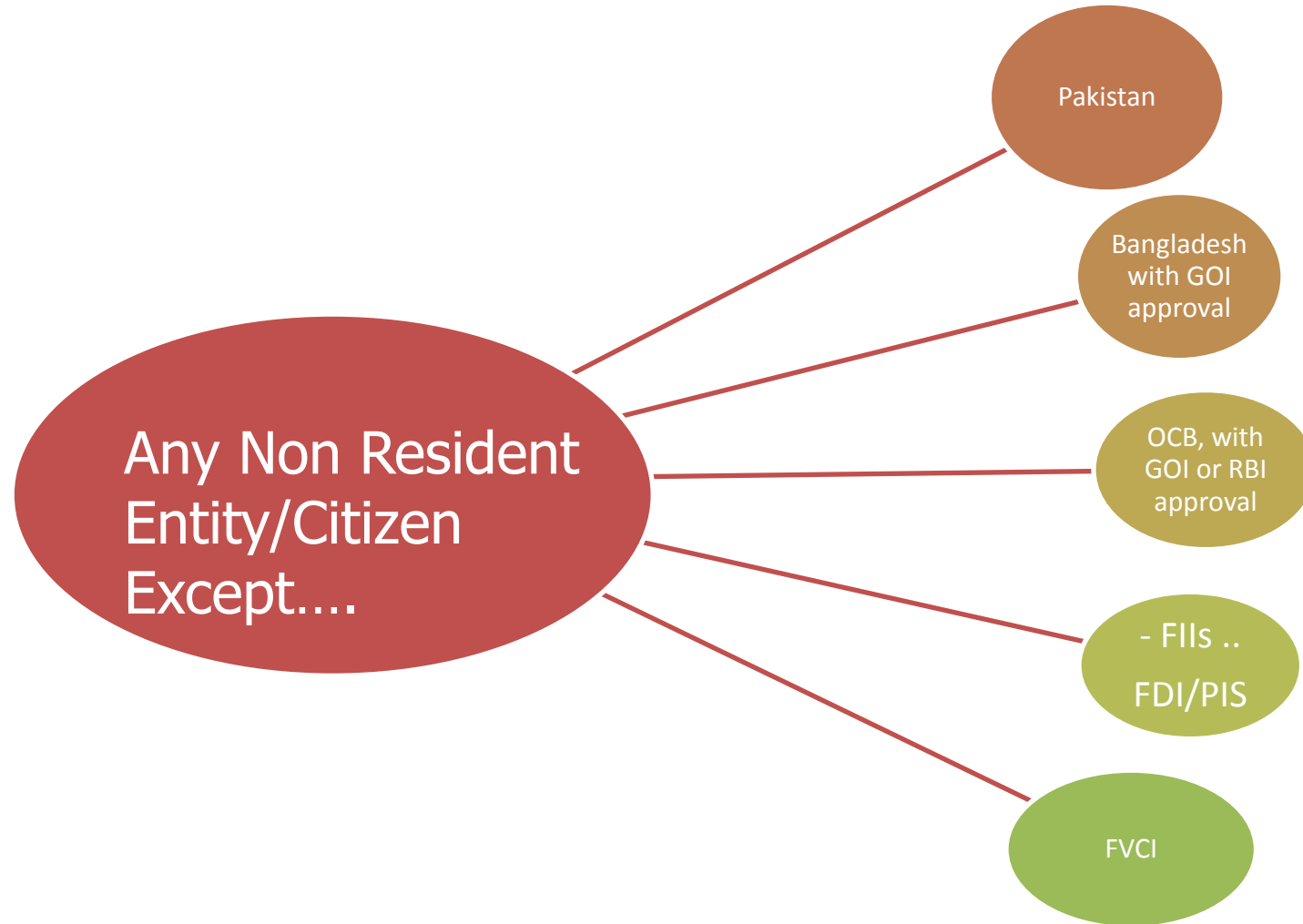
Manufacturing and processing

Special Economic Zones

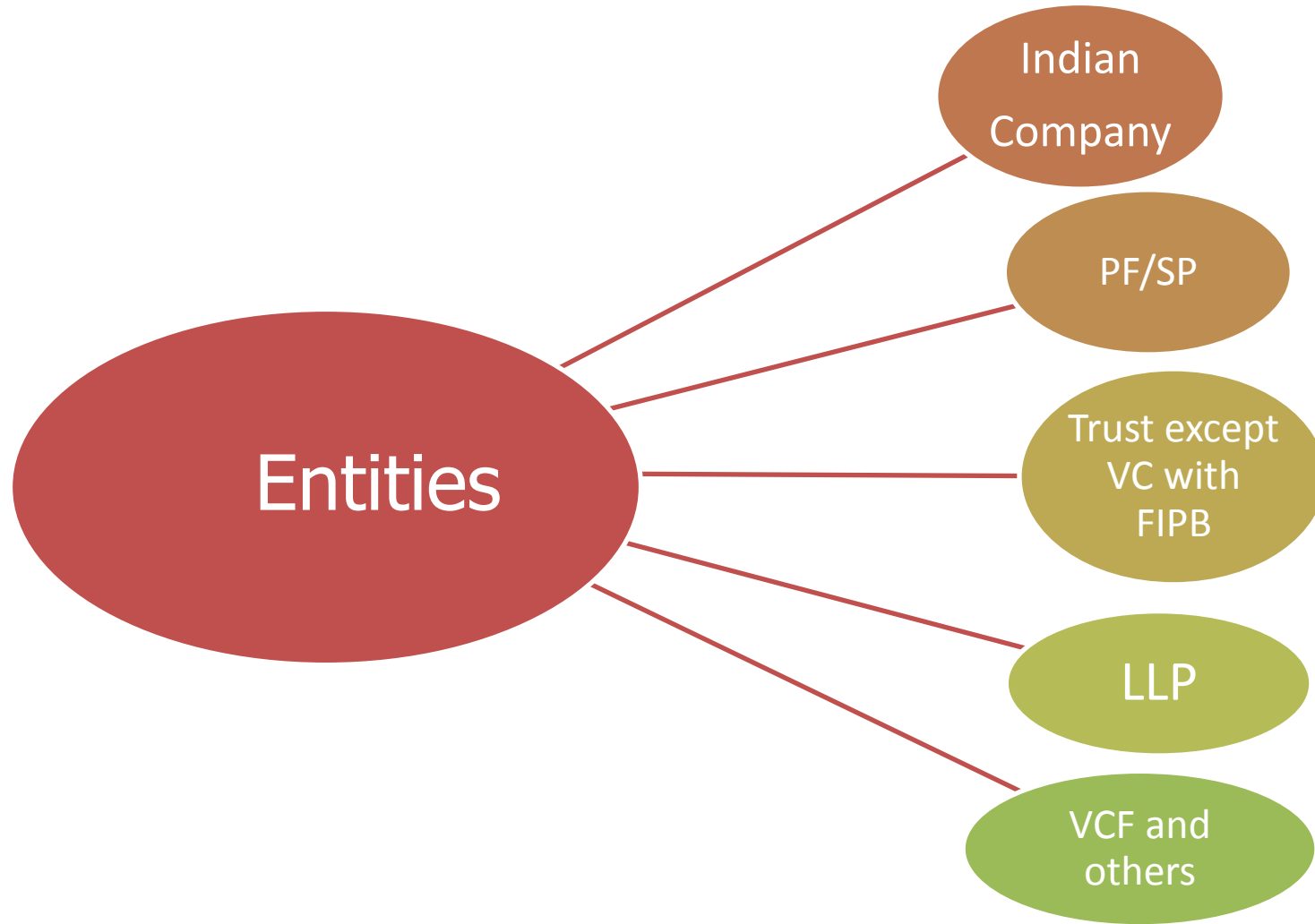
- Developers
- Units

NBFCs, Construction Development Projects etc. where FDI Linked performance conditions are prescribed – Not permitted

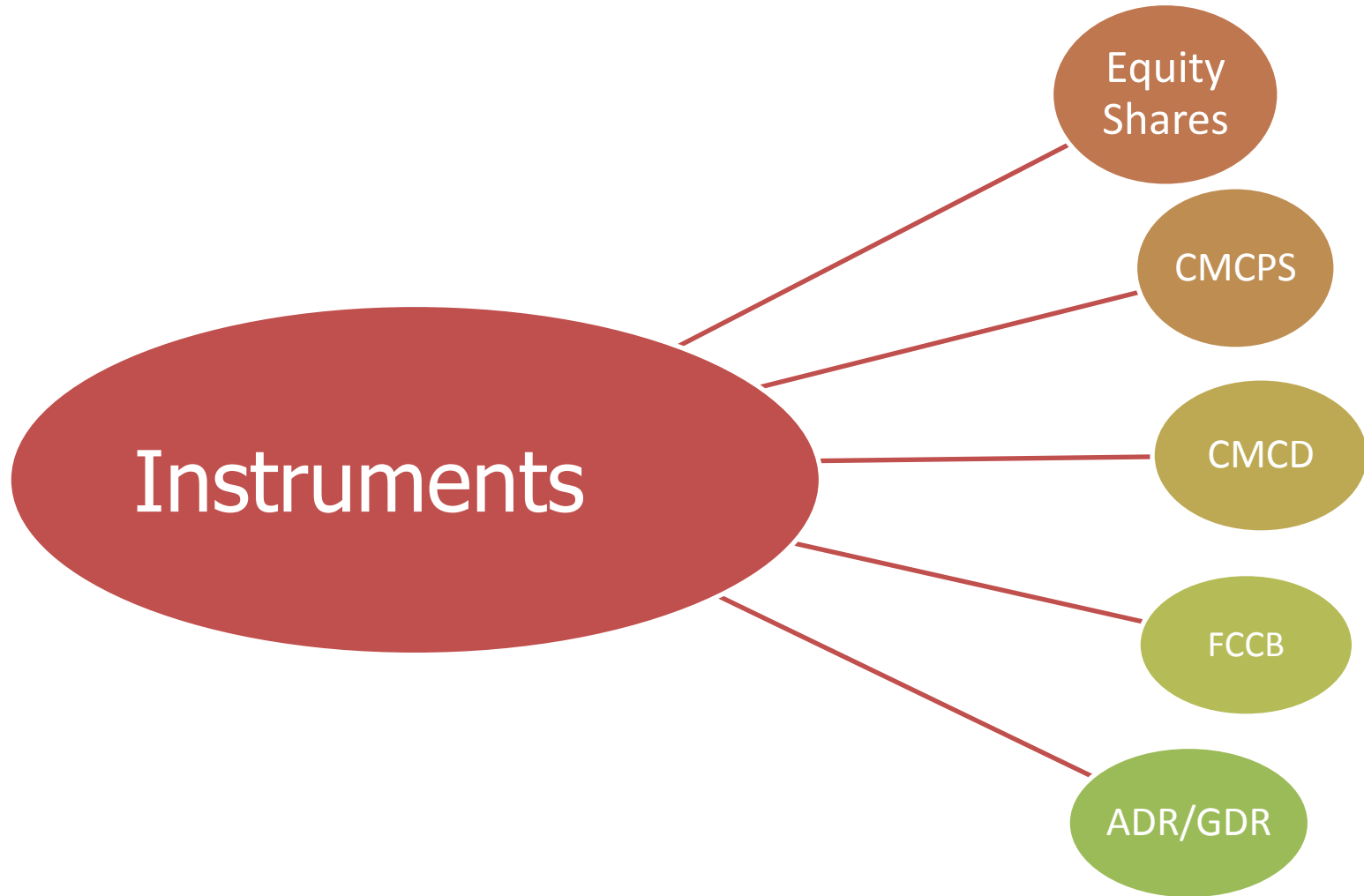
Eligible Investors



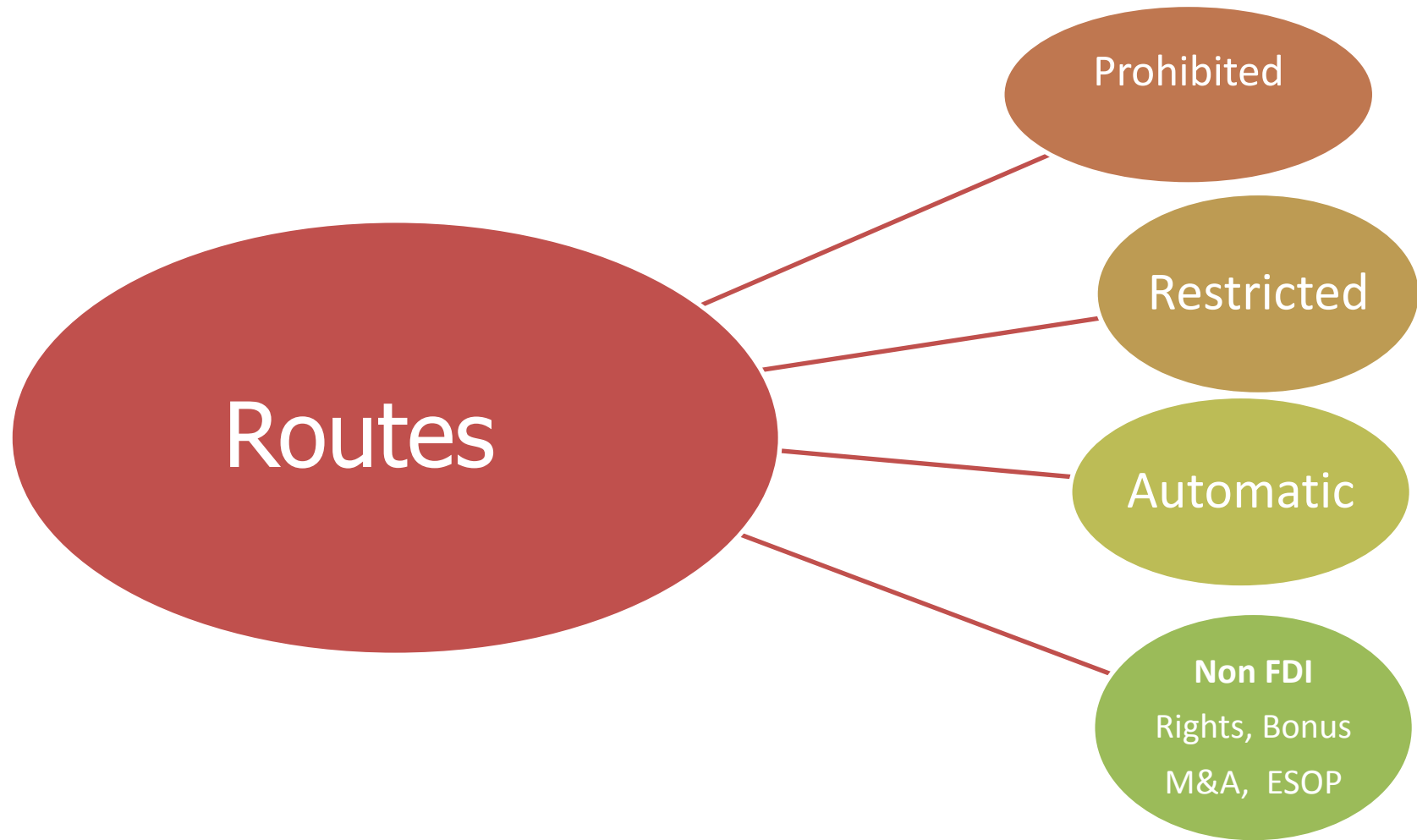
Eligible Entities



Permissible Instruments



Different Routes



Pre-requisites and other conditions



PRICING

Listed--

SEBI Guidelines

Unlisted-

DCF Basis valued by CA or MB

SEZ....Valuation by Committee consisting of DC and Custom Officials

Convertible Instrument: Can be based on prefixed formula but at the conversion price should not be less than the fair value worked out at the time of issuance of instrument

MODE OF PAYMENT

**Inward Remittance or debit of Foreign Currency A/C, TKH/Royalty/ECB Conversion/
Conversion against import of P&M/Toward Pre-Operative Expenses/Debit of Escrow A/C**

OTHER CONDITIONS

Allotment of Instrument or Refund within 180 days else RBI approval

Issue of Equity Shares in some cases



Against import of Capital Goods/Plant and Machinery(including second hand) in compliance with FTP, FV determined by Independent Valuer, EQUITY SHARES be issued within 180 days of import.....prior FIPB Approval

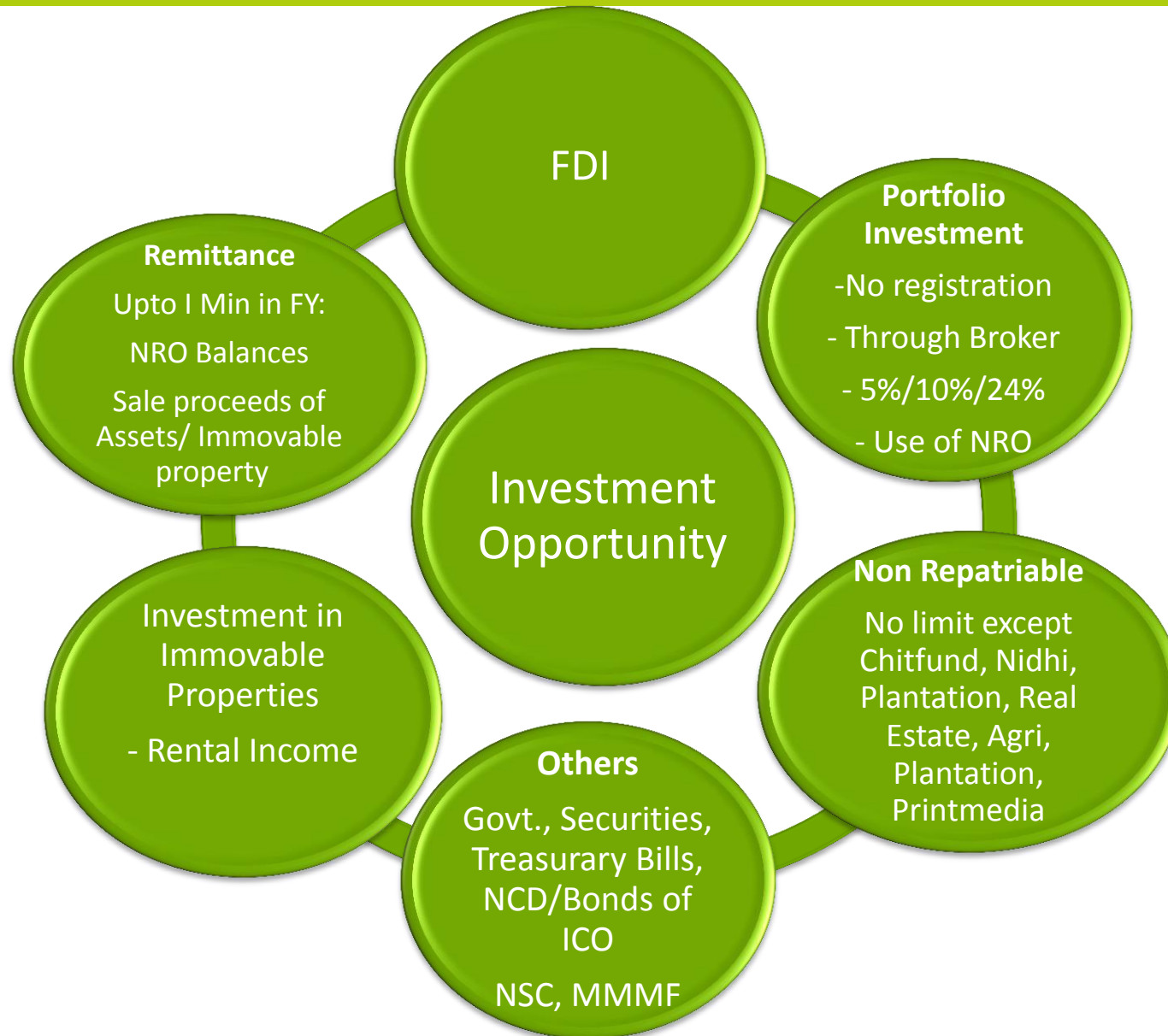


Against Pre-Operative/Pre Incorporation expenses(including Rent) subject to submission of FIRC, remittance in company's Bank Account, certificate from Auditor of Indian Company, EQUITY SHARES be issued within 180 days.....prior FIPB approval

Investment by NRIs



Privileges to NRIs



Micro and Small Enterprises..EOUs etc.



MSEs, EOUs, FTZs, STPI, EHTPs subject to Sectoral Caps..

Non MSE Industrial Undertaking License manufacturing items MSE, can have FDI to the extent of Sectoral Cap whichever is lower.....

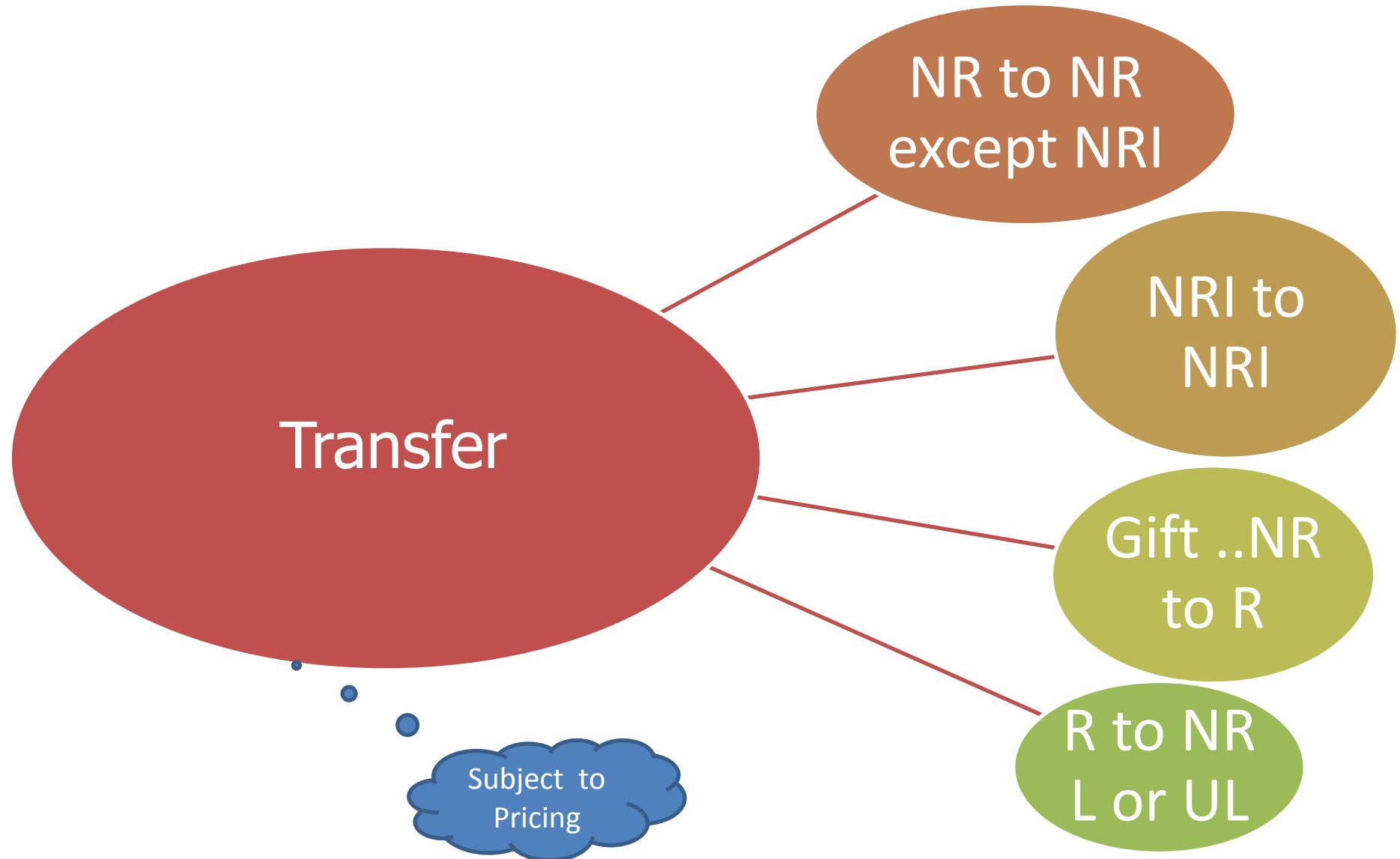
Non MSE Industrial Undertaking License manufacturing items	having Industrial RESERVED for
MSE, can have FDI to the extent of Sectoral Cap whichever is lower.....	24% or

Section 25..no specific prohibition since it is a Company should be allowed subject FCRA...
....Specific clarification can be sought from DIPP

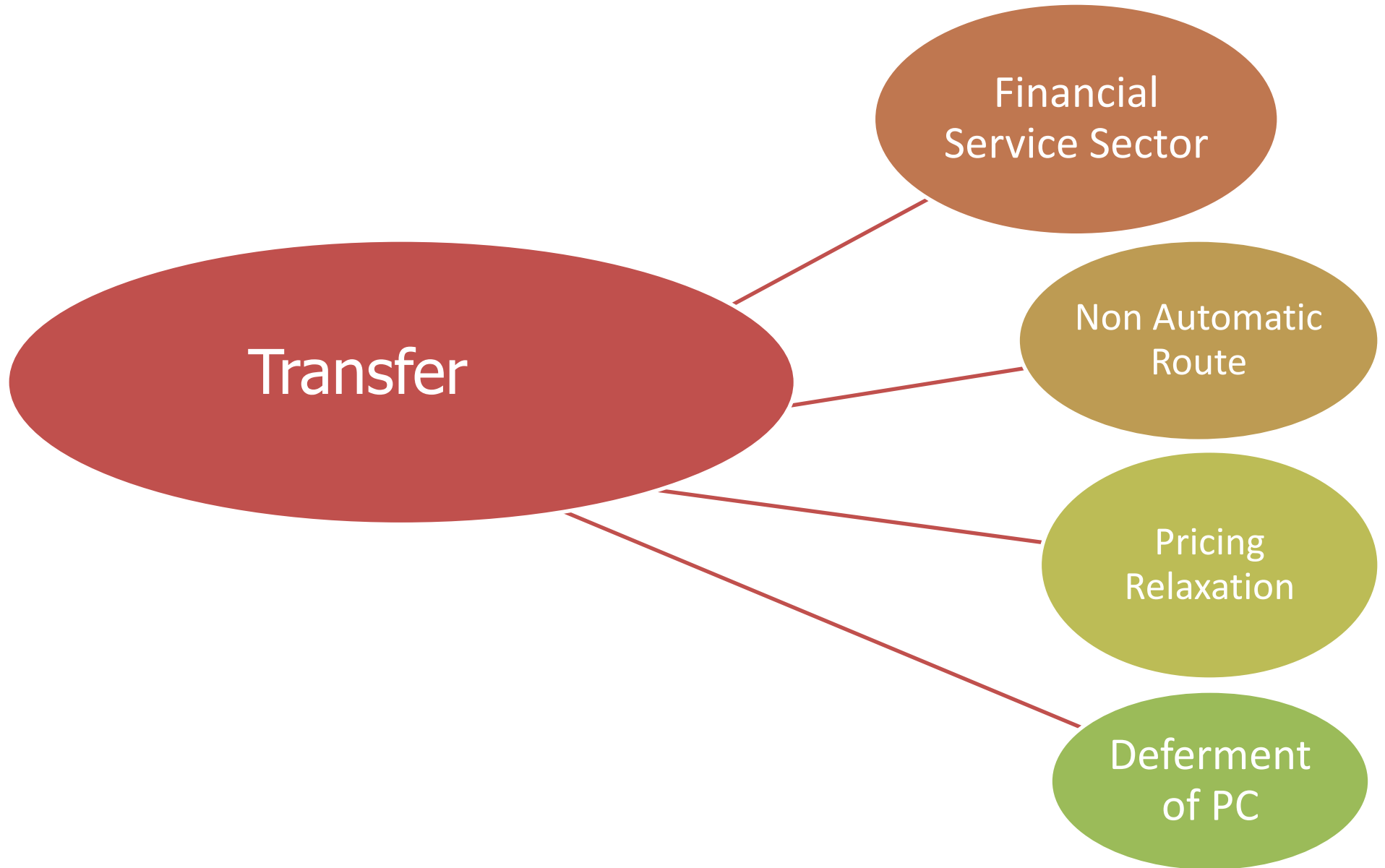
Transfer of Securities



TransferAutomatic



TransferRBI Approval



Pledge of Securities



Pledge of Shares of Indian Company



Resident
Indian

- Promoter of Borrowing Indian Company which has raised ECB may pledge the shares of the borrowing company or of its associate resident companies.
- No objection from Authorised Dealer stating extant FEMA regulations for ECB has been followed has to be obtained.

NRI

- Non-resident holding shares of Indian Company may pledge shares in favour of **AD bank in India** to secure credit facilities being extended to resident Investee Company for bona fide purpose, subject to certain conditions.

NRI

- Non-resident holding shares of Indian Company may pledge shares in favour of **overseas bank** to secure credit facilities being extended to non-resident investor / non-resident promoter of the Indian Company or its overseas group company for bona fide purpose, subject to certain conditions.



Escrow Arrangement



Opening of Escrow Account for FDI Transactions



AD is permitted to open Escrow A/c on behalf of Non- resident Corporate

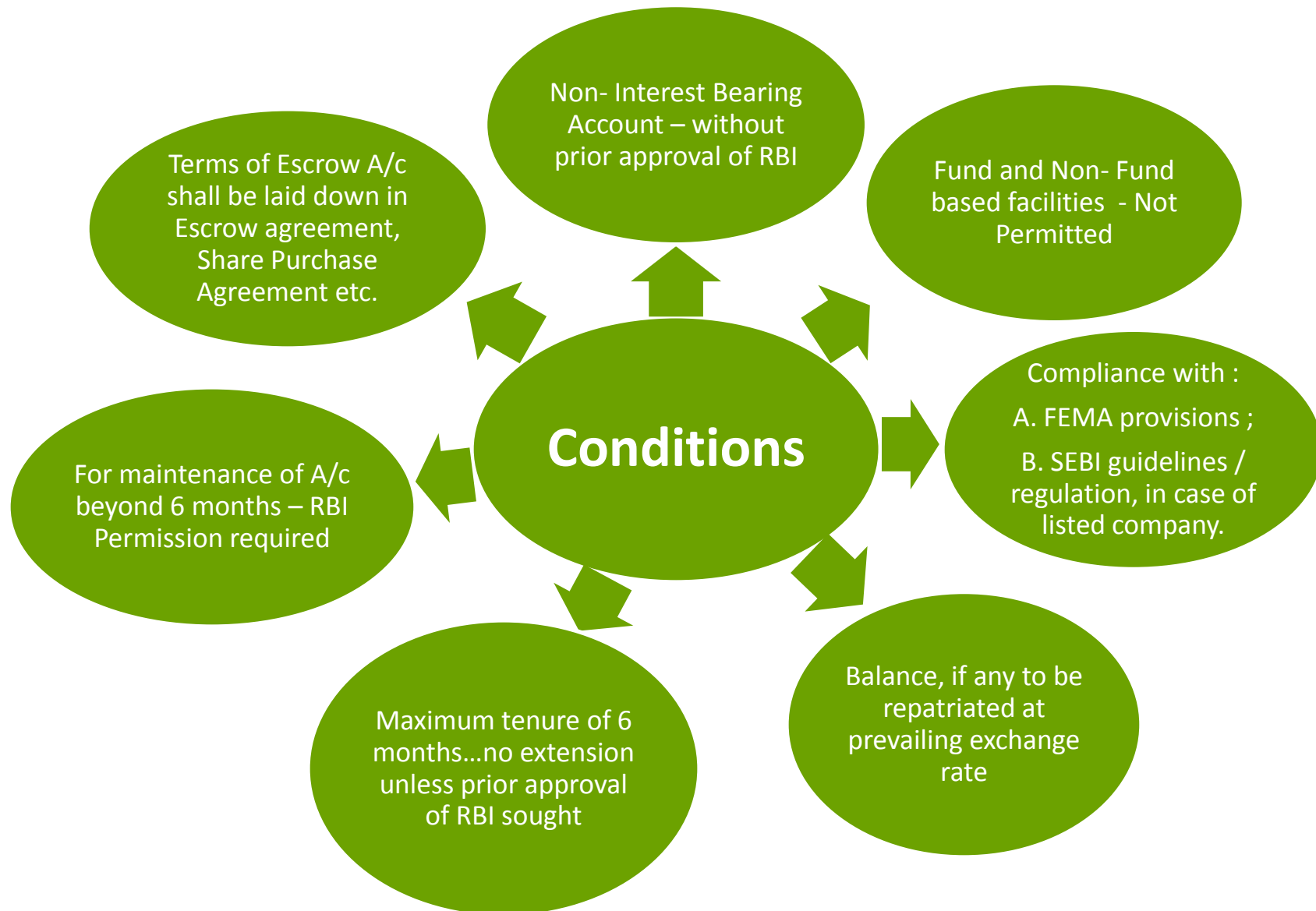
For acquisition / transfer of shares / convertible debentures of an Indian Company

Through open offers/ delisting / exit offers, subject to compliances of applicable SEBI Regulations

It facilitates FDI transactions, where parties to share purchase agreement desire to complete due diligence process before they finalize the agreement for the same.

In all other cases, prior approval of RBI is required.

Opening of Escrow Account for FDI Transactions



Reporting and Remittances



Reporting and Remittance



Reporting

- Investment Stage: 30 RBI reporting on receipt of money
: FC(GPR) to RBI in 30 day through AD for FDI, ESOP, Right, Bonus, M&A, ECB FCCB/ADR/GDR
- Transfer Stage : FC(TRS) to AD within 60 days

Remittance

- Through Authorised Dealer subject to WHT:
- Dividend
- Interest
- Sale Proceeds of shares and other instruments
- Winding up/ Liquidation: Auditor Certificate for no o/s Liabilities or adequately provided for, If voluntary W/L no pending legal proceeding



I read all the sections and clarifications in detail but I can't make out if we are defaulting or compliant!

Compounding & Contravention



Compounding & Contravention



- Every contravention is a Civil liability – with only monetary fine
 - Upto 3 times the sum involved (where quantifiable)
 - Upto Rs. 2 Lakhs (if sum not quantifiable)
 - Up to Rs. 5,000 per day (as additional penalty for continuing default)
- No criminal consequences except where the offender fails to pay even the fine.
- Authorised Dealer's liability - Possible revocation of the RBI license

