Foreign Investment in India

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Surat Branch (ICAI)

by CA. Sudha G. Bhushan

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-Press notes issued by DIPP – 2009 series

Press note 1 dated 14th January 2009

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Foreign Investment in India

- Foreign Exchange Management Act
- Reserve bank of India
- Department of Industrial Policy and Promotion

Regulatory Framework

Foreign Exchange Management Act,1999

- Section 6(3)(b)
- Section 47

Reserve Bank of India

- Foreign Exchange Management (Transfer or issue of security by a Person resident outside India)Regulaitons,2000
- Master Circular – Foreign Investment in India dated 1 July 2008

Department of Industrial policy and Promotion

- Press Notes

Ways

Schedule 1

- Foreign Direct Investment

Schedule 2

- Foreign institutional investor under Portfolio investment Scheme

Schedule 3

- Non resident Indian under Portfolio investment Scheme

Continued...

Schedule 4
- NRI on non repatriation basis under the scheme other than through PIS

Schedule 5
- NRI/FIIs can purchase securities other than the shares and debentures

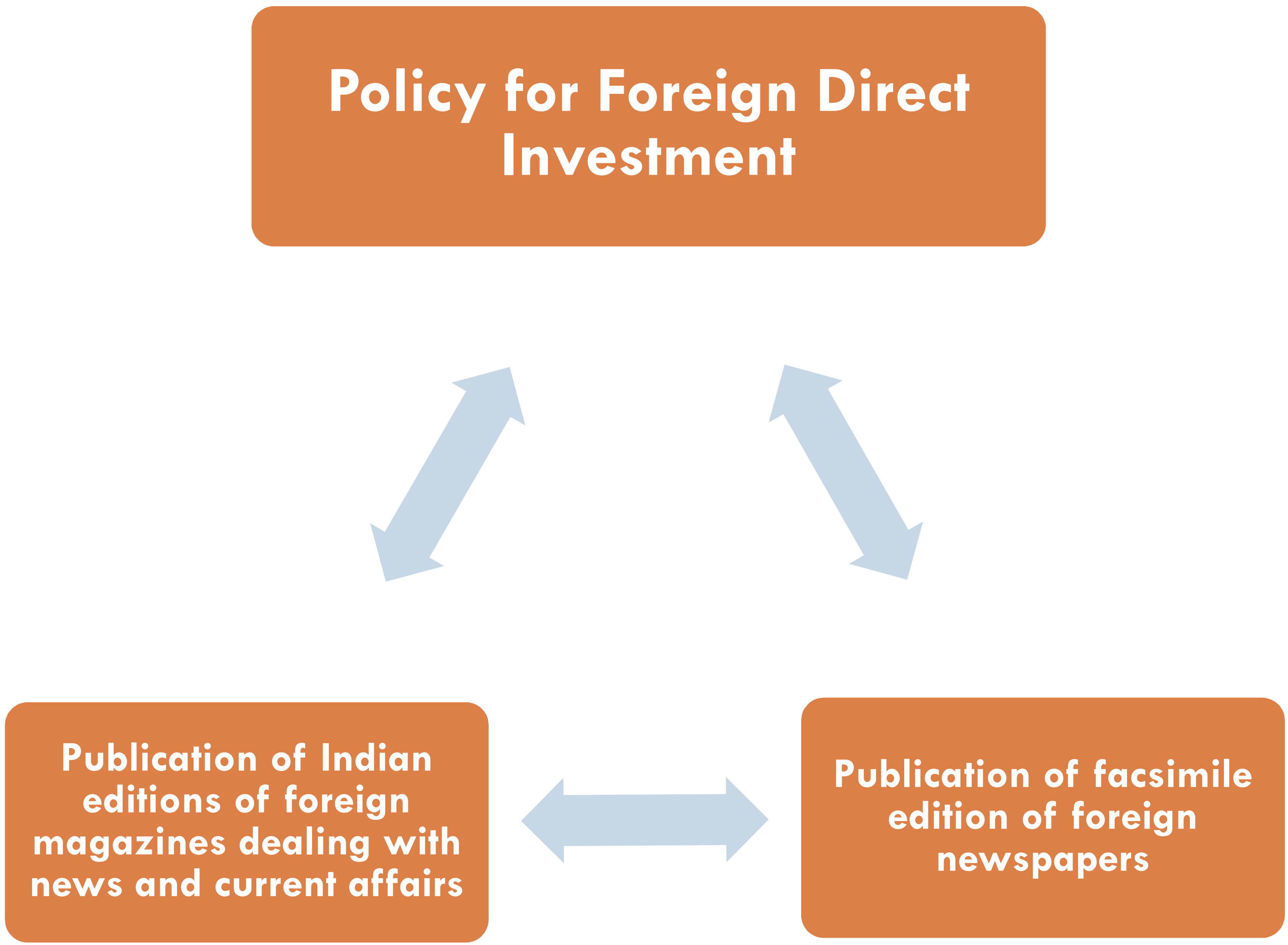
Schedule 6
- Foreign venture capital investor registered with SEBI may make investment in a venture capital fund or an Indian Venture capital undertaking

Limits

Foreign Direct investment	• Approval route [Latest press note 7/2008] • Prohibited Sector • Automatic Route [also those sectors not specifically mentioned under approval route or not specifically prohibited –Automatic Route]
Foreign Institutional Investors under portfolio investment Scheme	• FII- 24% of the paid up capital of the company.
Non resident Indian under Portfolio investment Scheme	• NRI- 10% of the paid up capital of the company

NRI on non repatriation basis under the scheme other than through PIS	• No Limits
NRI/FIIs can purchase securities other than the shares and debentures	• Securities other than shares and debentures
Foreign venture capital investor registered with SEBI	• Investments to be in accordance with SEBI regulations dealing with VCF / FVCI

Press Note 1


Policy for Foreign Direct Investment
Publication of Indian editions of foreign magazines dealing with news and current affairs
Publication of facsimile edition of foreign newspapers

Publication of facsimile edition of foreign newspapers

- 100% FDI permitted
- Prior approval of the Government
- Conditions:
  - FDI is by the owner of the original foreign newspaper
  - Publication by an entity incorporated or registered in India under the provisions of the Companies Act, 1956.
  - Subject to guidelines issued by Ministry of Information & Broadcasting

Publication of Indian editions of foreign magazines dealing with news and current affairs

- Foreign investment up to 26%
- Prior approval of the Government
- Guidelines issued by the Ministry of Information & Broadcasting

Press note 2

- Guidelines for calculation of Foreign investment i.e. Direct and indirect foreign investment in Indian Companies

Direct Foreign Investment

Non resident entity

Outside India

In India

Indian Company

Indirect Foreign Investment

Non Resident Entity

Outside India

Direct Foreign Investment

In India

Indian Company

Indirect Foreign Investment

Indian Company

Definitions

- **Foreign Investment in Indian company** shall include all types of foreign investments i.e. FDI, investment by FIIs(holding as on March 31), NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and convertible preference shares, convertible Currency Debentures regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations[For the purpose of computation of indirect Foreign investment].

- '**Resident Indian Citizen**' (RICs) shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship Act.

- **"Non resident entity"** (NREs) means a 'person resident outside India' as defined under FEMA 1999.

- '**Indian Company**' means a company registered or incorporated in India as per the Indian Companies Act, 1956.

- **"Investing Company"** means an Indian Company making equity/preference/CCD investment into another Indian Company.

- **"Holding Company"** would have the same meaning as defined in Indian Companies Act 1956.

Owned and controlled

By RICs and Indian companies, which are owned and controlled by RICs

owned	**Controlled**
More than 50% of the equity interest in it is **beneficially owned** by RICs and Indian companies, which are owned and controlled ultimately by RICs	The RICs and Indian companies, which are owned and controlled by RICs, have the power to appoint a majority of its directors

By Non Resident Entities

owned

- More than 50% of the equity interest in it is beneficially owned by non-residents

Controlled

- Non-residents have the power to appoint a majority of its directors

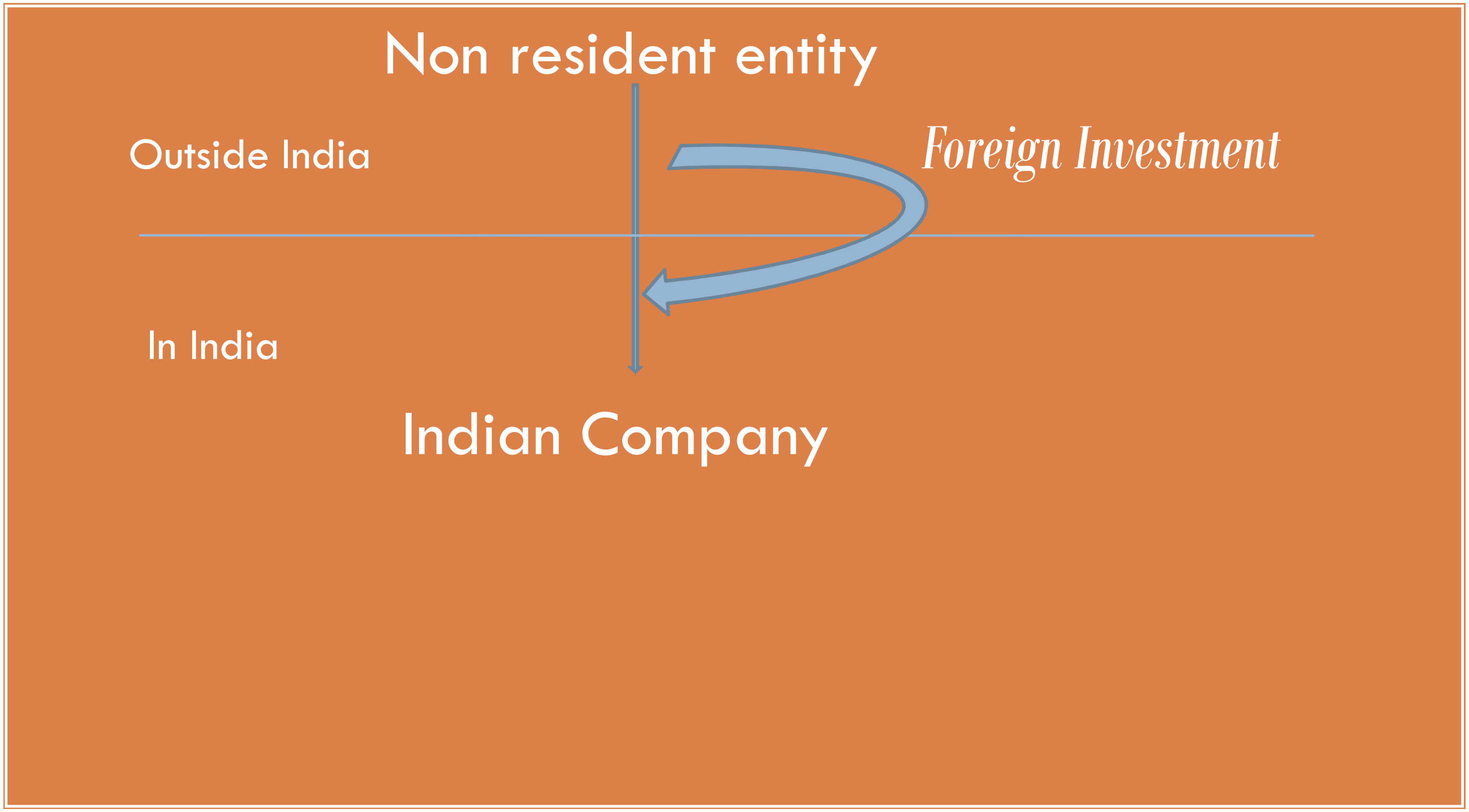
Counting of foreign Investment

- Direct
- Indirect
- Total

Counting the Direct Foreign Investment

- All investment directly by a non resident entity into the Indian company would be counted towards foreign investment

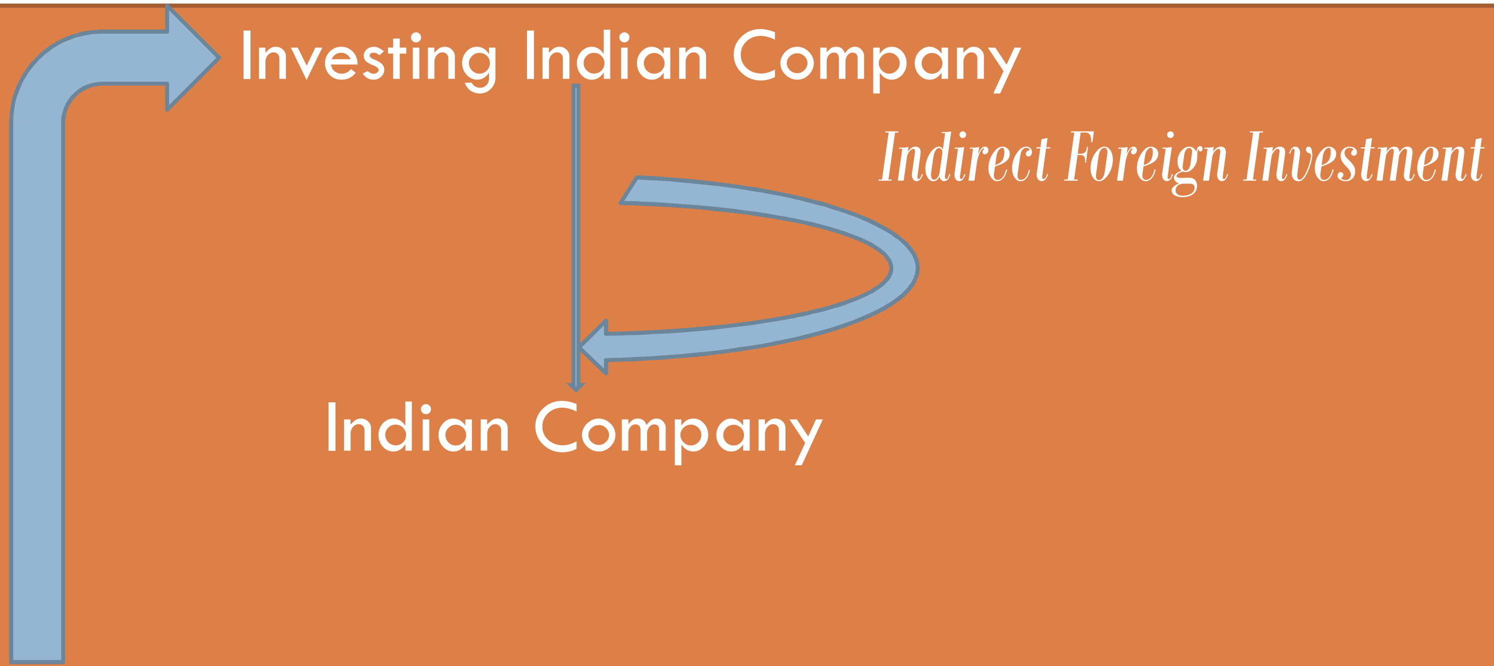
Counting the Direct Foreign Investment



Counting of Indirect Foreign Investment

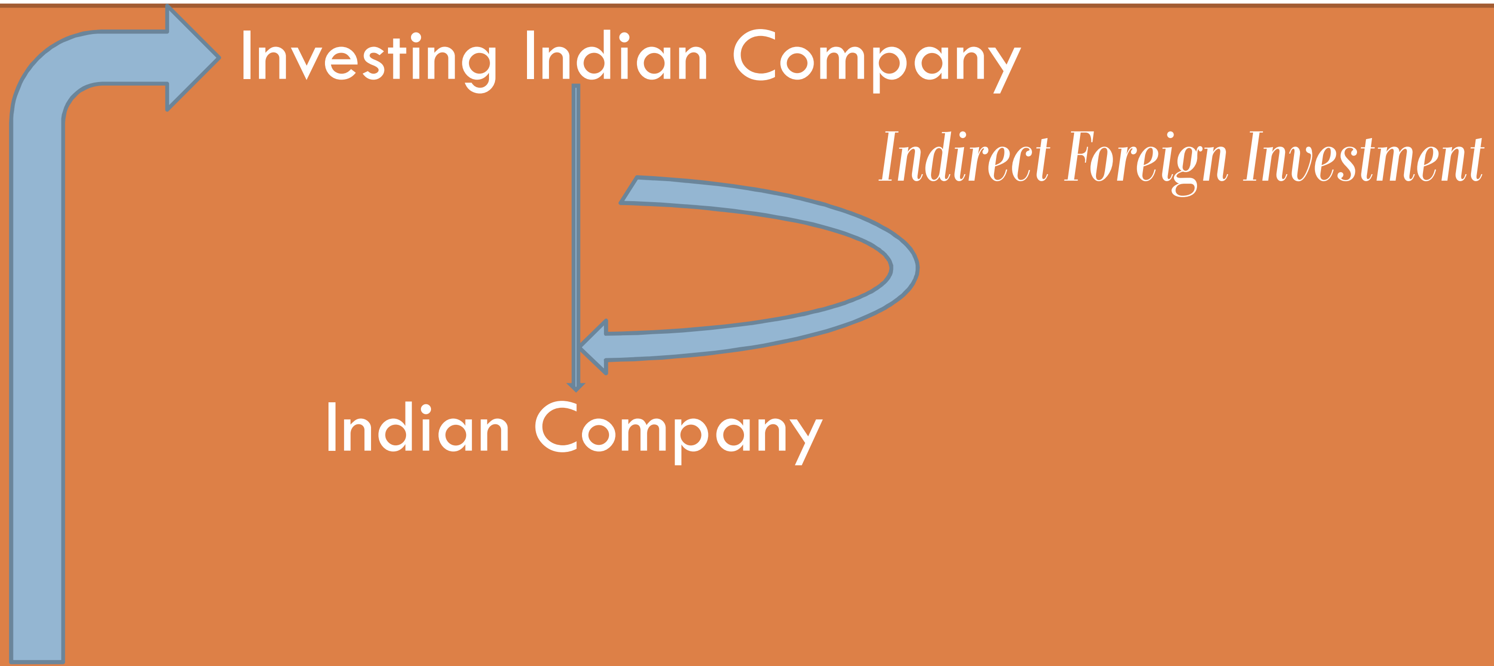
- Not counted as Indirect Foreign Investment
- Counted as Indirect Foreign Investment

Not counted



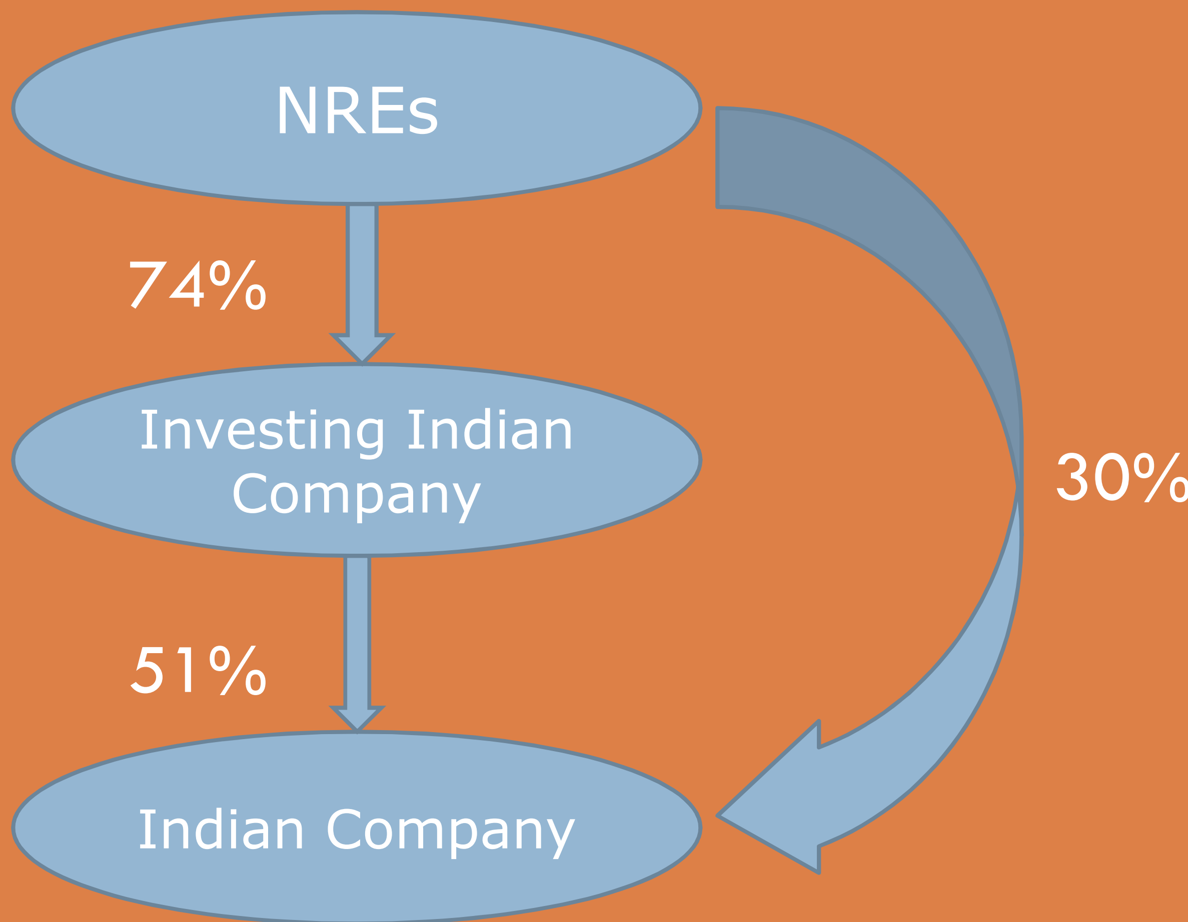
if the investing Indian company is "owned and controlled" by RICs and/or by Indian companies which are owned and controlled by RICs

Counted



if the above conditions are not satisfied or if the investing Company is owned or controlled by NREs

Total Investment

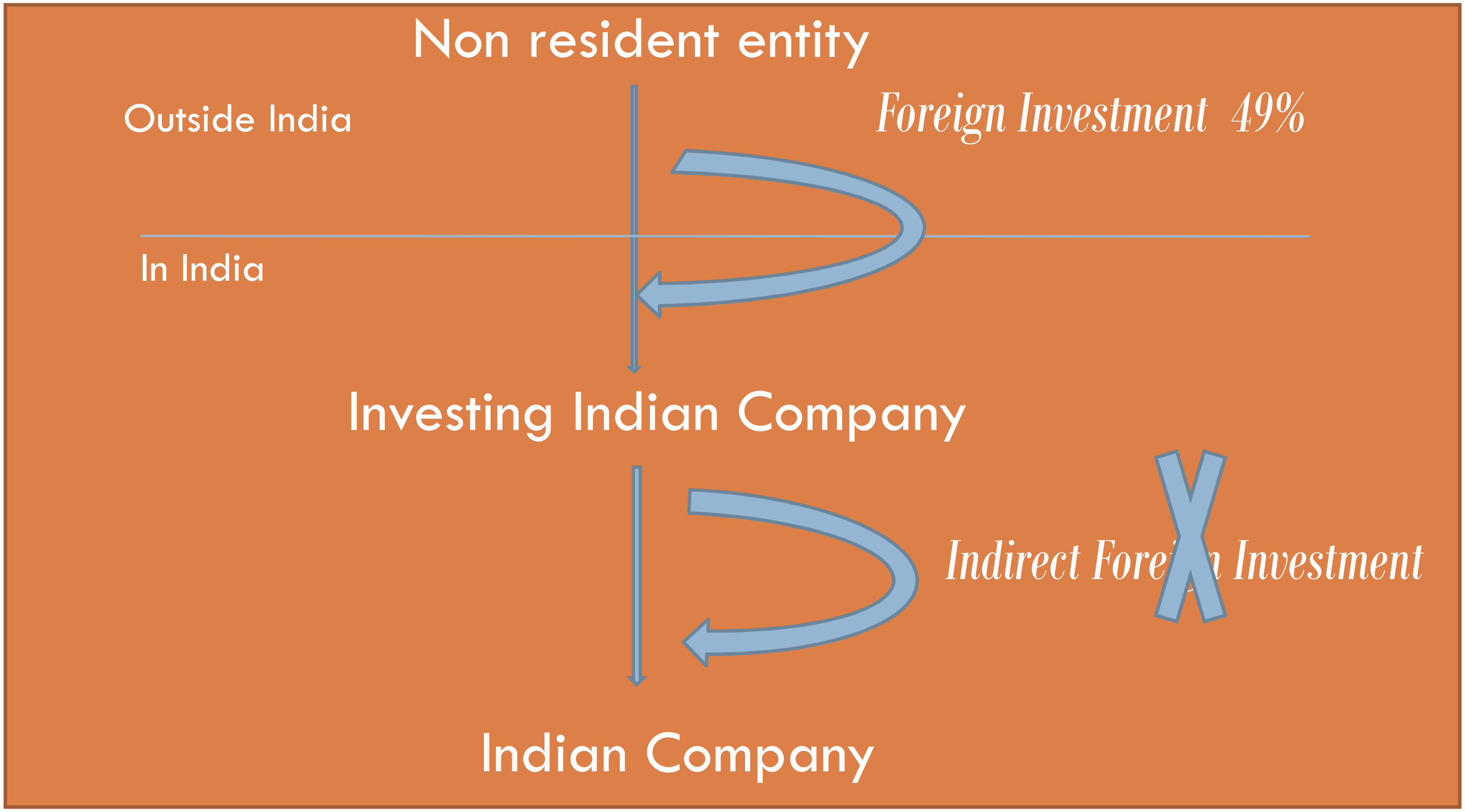


Total Foreign Investment in subject Indian Company

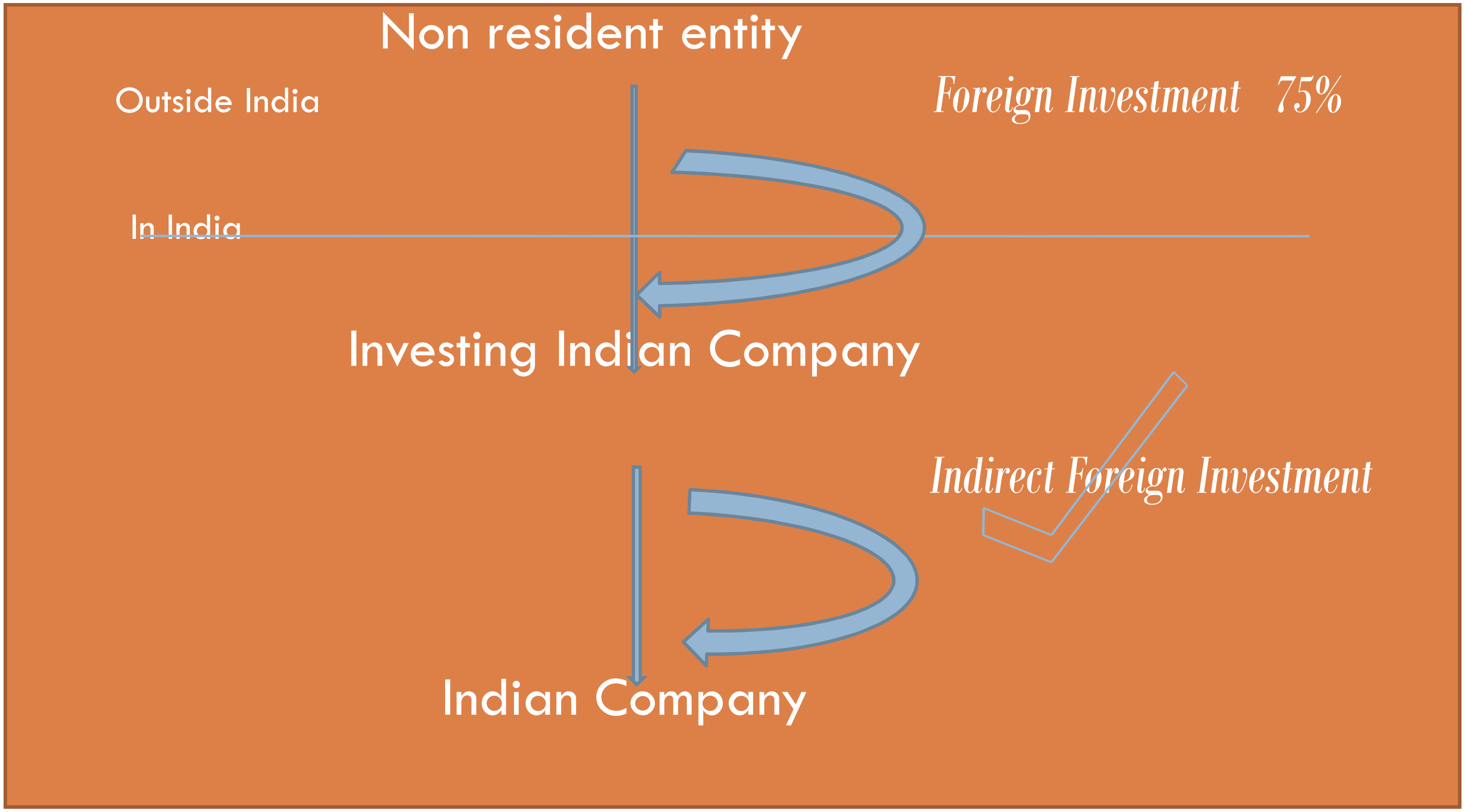
Direct (51%) + Indirect (30%)=81%

Examples

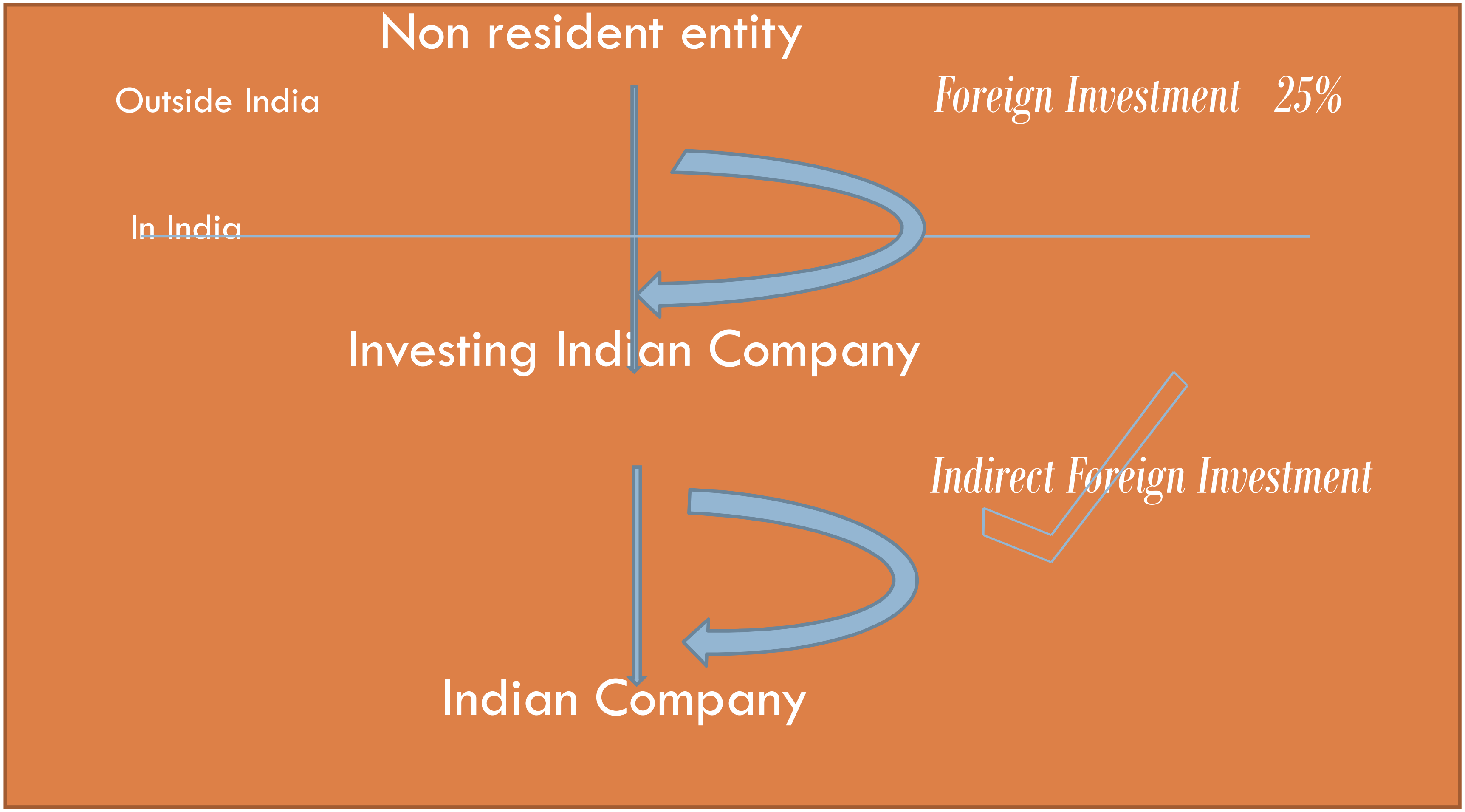
1. Ownership and control with Indian entity



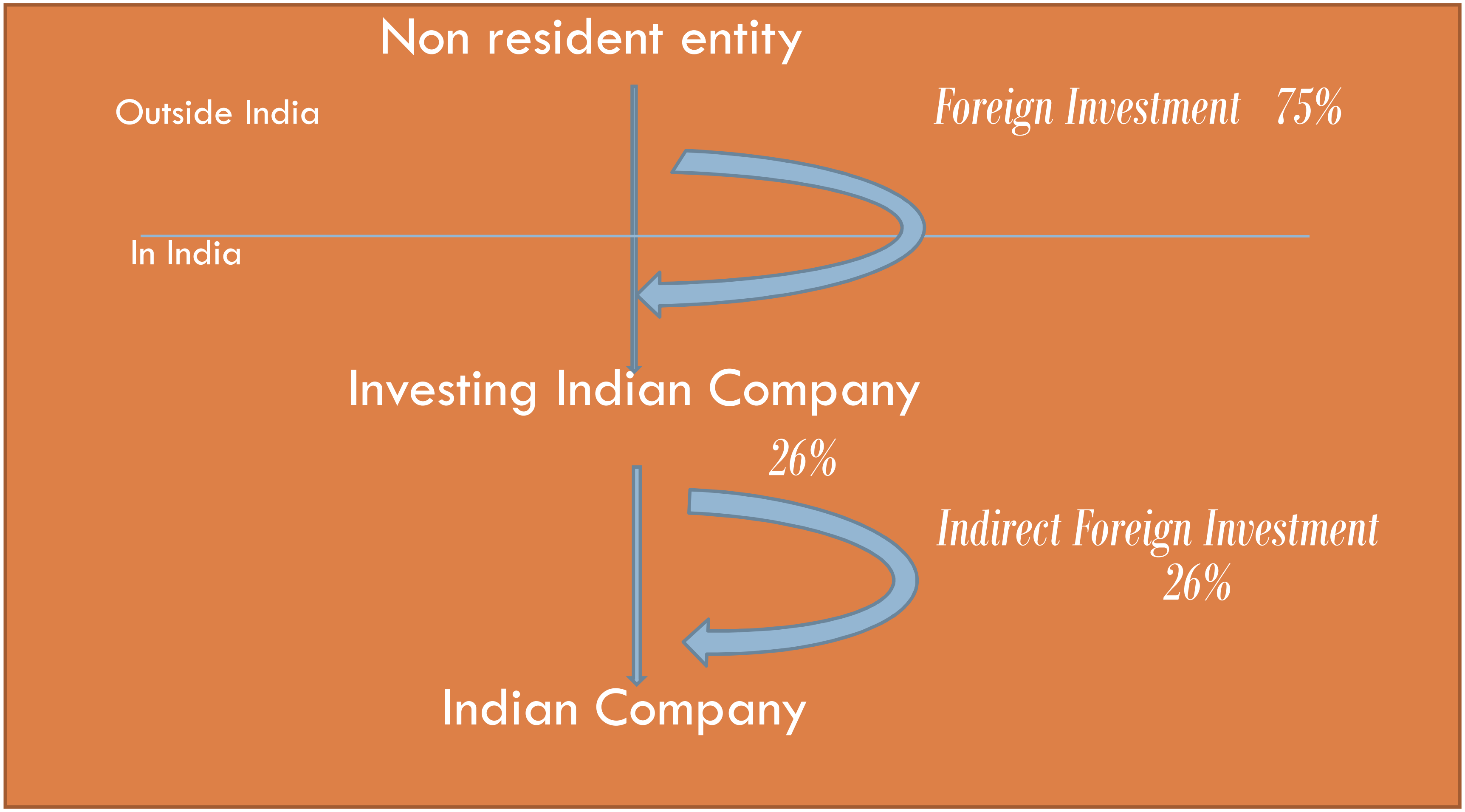
2. Ownership with Non resident entity



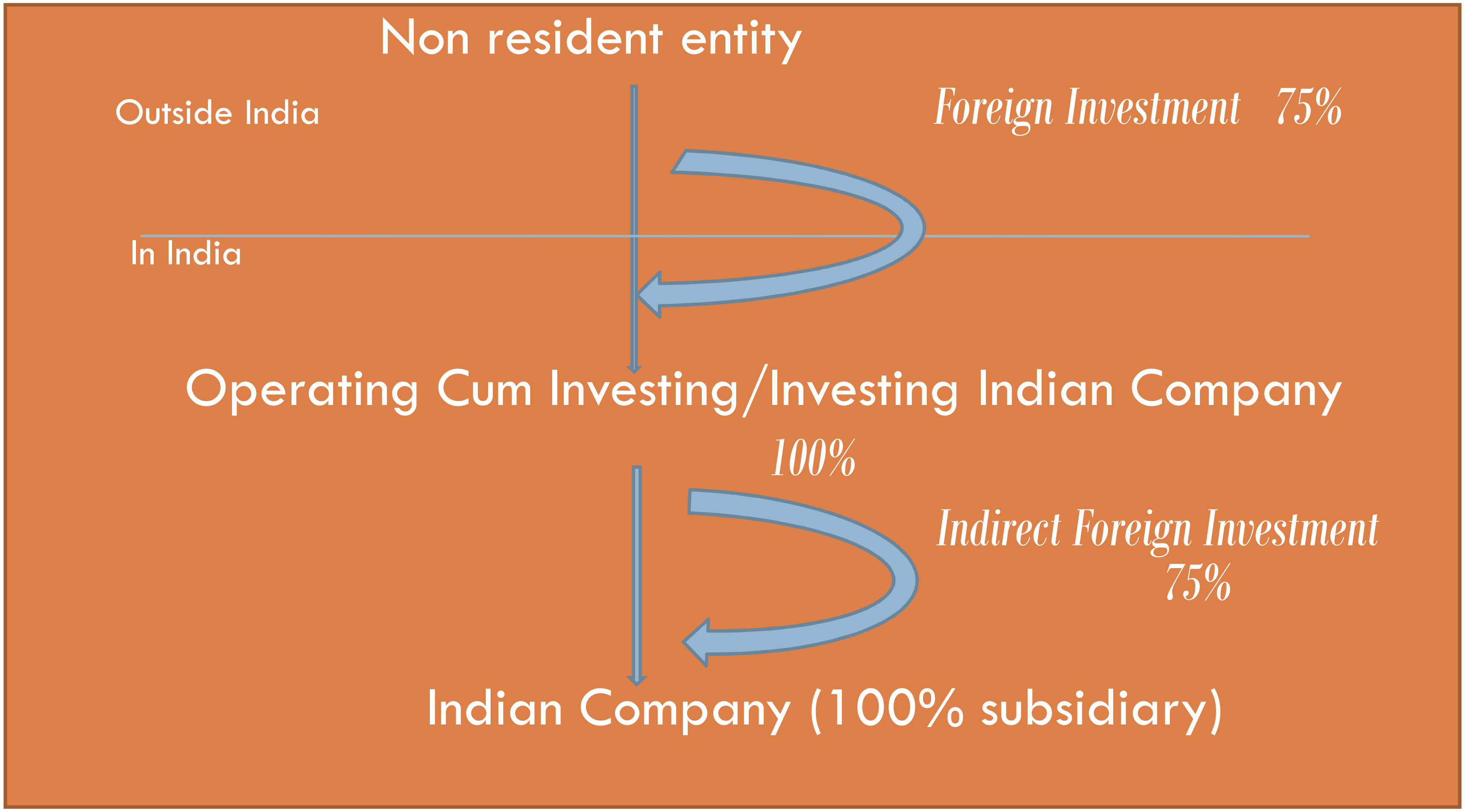
3. Control with Non resident entity



4.


Non resident entity
Outside India
Foreign Investment 75%
In India
Investing Indian Company
26%
Indirect Foreign Investment
26%
Indian Company

Exception


Non resident entity
Outside India
Foreign Investment 75%
In India
Operating Cum Investing/Investing Indian Company
100%
Indirect Foreign Investment
75%
Indian Company (100% subsidiary)

Addition Conditions

- The full details about the foreign investment to be furnished to the government of India at the time of seeking approval

- Agreements
  - *which have an effect on the appointment of the Board of Directors or*
  - *on the exercise of voting rights or*
  - *of creating voting rights disproportionate to shareholding or*
  - *any incidental matter thereof,*

  such agreements will have to be informed to the approving authority in case of sectors where government is required for Foreign Investment

- The balance equity in case of sectoral caps would specifically be beneficially owned by RICs and Indian companies, owned and controlled by RICs

- Investment by RICs is counted as foreign investment ,If a declaration under section 187C of the Indian Companies Act is made regarding the same

Press Note 4

Clarificatory Guidelines on downstream investment by Indian Companies

Policy comprises

- Only operating companies
- Operating cum investing companies
- Only investing companies
- Non operative non investment Companies

Definitions

- “**Indian Company**” same as press note 2 of 2009 series

- “**Operating Company**” is an Indian company which is undertaking operations in various economic activities and sectors.

- “**Downstream Investment**” means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of press note 2 of 2009.

- “**Investing Company**” means an Indian company holding only investments into another Indian company, directly or indirectly, other than for trading of such holding/securities.

- “**Foreign Investment**” same as press note 2 of 2009 series

- ‘**Downstream investment**’ means indirect foreign investment by one Indian company into another Indian company by way of subscription or acquisition in terms of Press Note 2 of 2009.

Only operating company

- Foreign investment - to comply with the relevant sectoral conditions:
  - on entry route
  - conditions
  - caps

with regard to their relevant sectors

Operating-cum-investing companies

- Foreign investment to comply with the relevant sectoral conditions with regard to the sectors in which such companies are operating

- The subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditions and caps in regard of the sector in which the subject Indian companies are operating

Policy

Non resident entity

Relevant sectoral conditions w.r.t. the sector in which the company is operating

Operating cum Investing Indian Company

Relevant sectoral conditions w.r.t. the sector in which subject company is operating

Indian Company

Investing companies

- Foreign Investment in Investing Companies - prior Government/FIPB approval, regardless of the amount or extent of foreign investment
- The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditions and caps in regard of the sector in which the subject Indian companies are operating

Policy

Non resident entity

Prior Government/FIPB Approval

Investing Indian Company

Relevant sectoral conditions w.r.t. the sector in which subject company is operating

Indian Company

Non operative Non investment

- Government/FIPB approval be required

- As and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditions and caps

Policy

Non resident entity

Prior Government/FIPB Approval

Non operative and non Investing Indian Company

Relevant sectoral conditions w.r.t. the sector in which subject company is operating

Indian Company

Additional Conditions

- SIA, DIPP and FIPB to be notified within 30 days of investment
- Resolution of Board of Directors
- Issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines
- Investing companies to bring in requisite funds from abroad

Press Note 3

Guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities

Guidelines

In Sector with caps, government approval/FIPB approval would be required in all cases where:

- An Indian company is being established with foreign investment and is **owned** or **controlled** by a non-resident entity or
- The **ownership or control** is transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc.

Thankyou