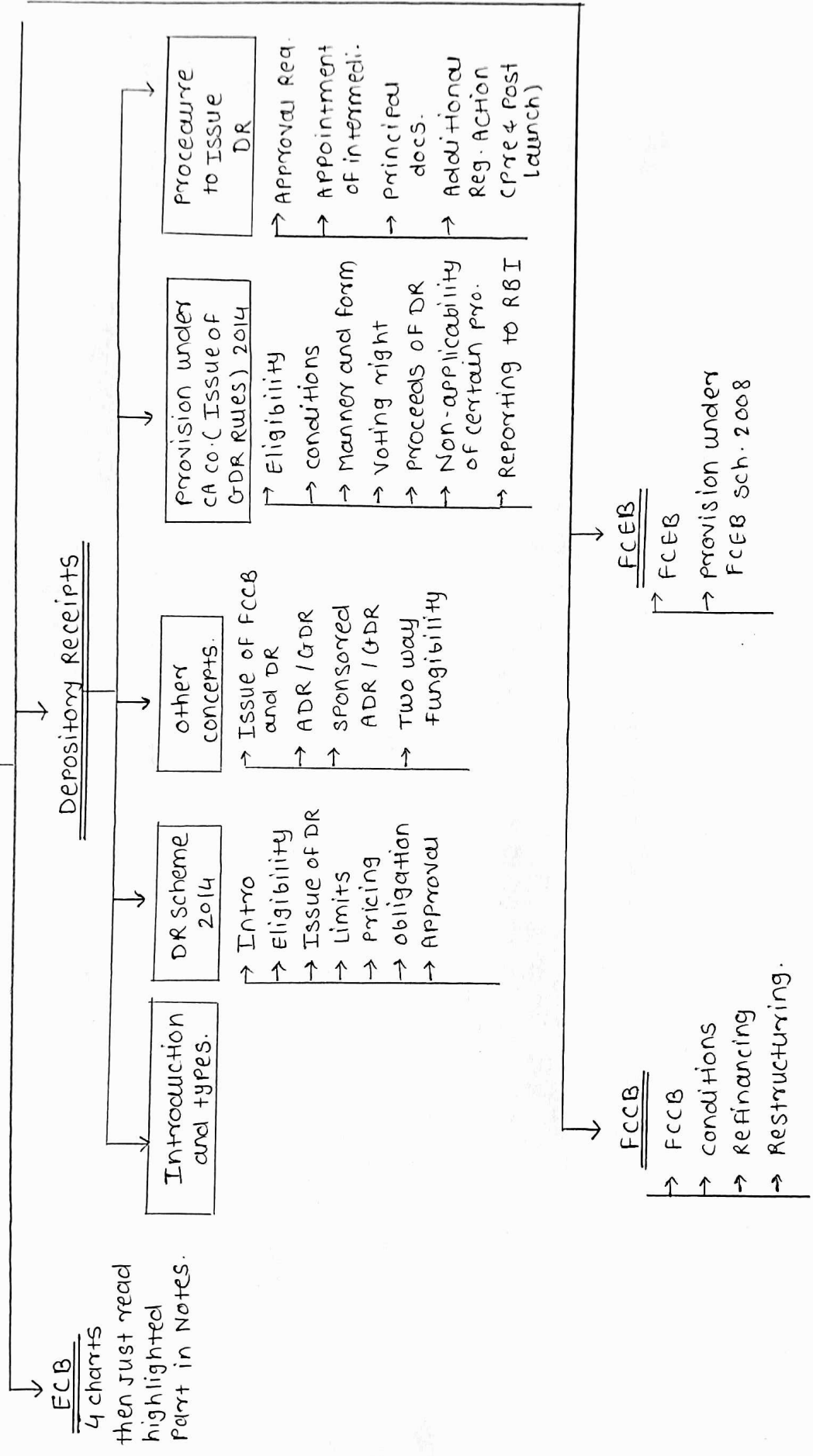


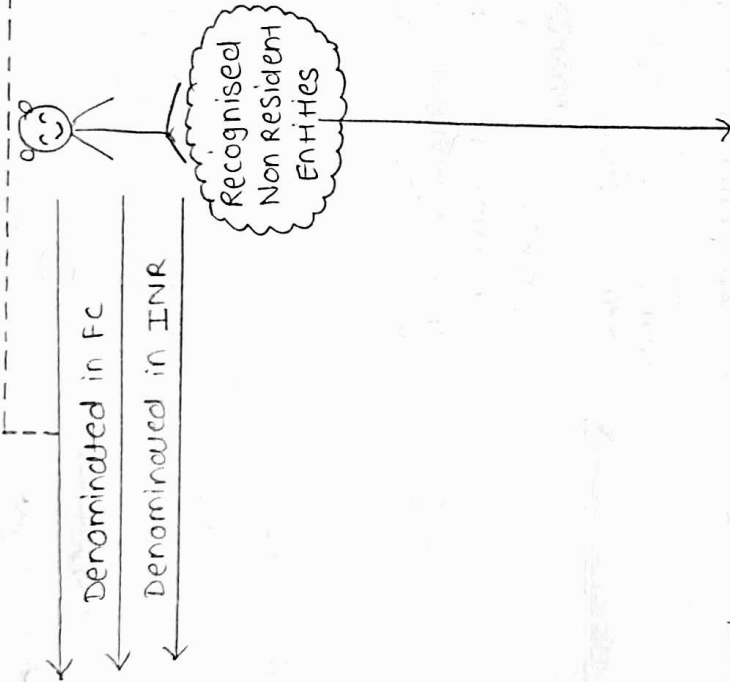
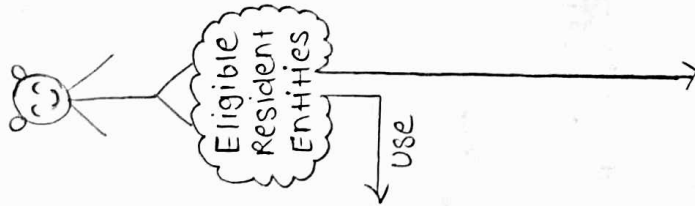
Ch-16 Foreign Funding - Instruments



PART - A ECB

Negative List.

- a) Recd estate activities
- b) Investment in capital market.
- c) Equity investment
- d) working cap purpose
- e) Generaly corpo. purpose
- f) Repayment of rupee loan
- ↓
- d). e). f) → except from foreign equity holder
- g) on-lending to entities for the above activities



Form

- Bank loan
- Bonds
- Debentures
- Trade credit beyond 3 yrs
- FCCB, FCEBs
- Fin. Lease.

Eligible Borrowers.

→ All entities eligible to receive FDI, further the following entities also eligible to raise ECB

- a) Port Trusts.
 - b) Units in SEZ
 - c) SIDBI
 - d) EXIM Bank.
 - e) Registered entities engaged in micro finance activities
- (Permitted only to raise INR ECB)

Recognised lenders.

→ The lender should be resident of FATF or ISCO compliant country, including on transfer of ECB. However.

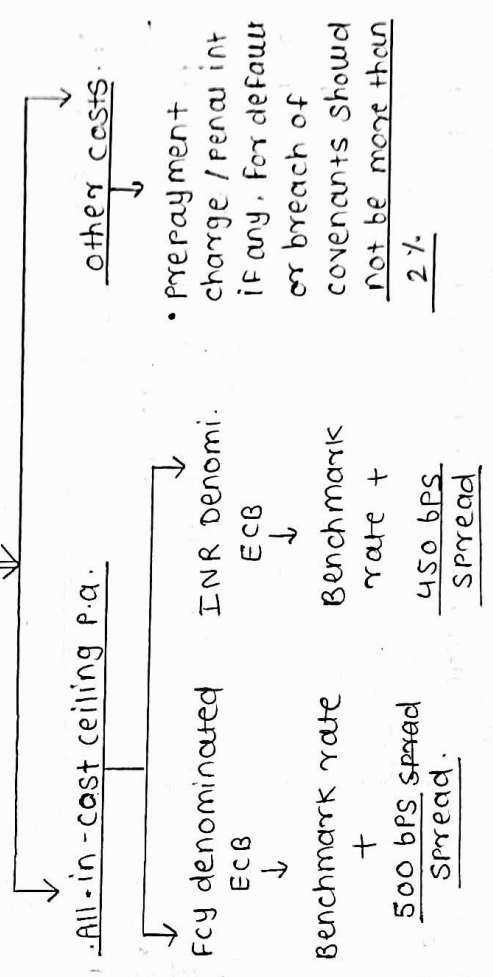
- a) Multinational and Regional financial institutions where the India is the member country
- b) Individuals as lenders can only be permitted if they are foreign equity holders
- c) Foreign branches / subsidiaries of Indian bank permitted as Recog. lenders only for FCY ECB (except FCCBs & FCEBs). They can participate as arrangers / underwriters for Rupee denominated bonds issue overseas

↓

underwriting by foreign branches / subsidiaries of Indian banks for issuance by Indian banks → Not allowed

Minimum Av. Maturity Period		
a) ECB raised by manuf. co. up to \$ 50 million	or for repayment of rupee loan	1 year
b) ECB raised from foreign ed. holders for working cap purpose, general corpo. purp		5 years
c) ECB raised for on-lending by NBFCs for working cap purpose, gen. corpo. purpose or repayment of rupee loan availed domes. for the purpose other than cap. purpose on-lending NBFC for the same		10 years
d) (C) ↑ for capital purpose		7 years

Special Provisions
For ECB



ECB Denominated in INR.

→ For conversion to Rupee exchange rate shall be the rate prevailing the date of settlement

→ The overseas investors are eligible to hedge their exposure in rupee through permitted category I bank in India

→ The investors can also access the domestic market through branches / subsidi. of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

→ change of currency from INR to any freely convert. foreign currency

↓

Not permitted.

ECB Denominated in FC

• Exchange Rate -

→ change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of Agreement.

• Hedging Provision

→ The entities raising ECB are required to follow the guidelines for hedging issued if any by concern Sectoral or prudential regulator in respect of foreign currency exposure.

→ Infra. space co. (mandatorily hedge 70% of their ECB exposure in case av. maturity p. < 5 yrs or other aspects.

- coverage, tenor & rollover

- Natural Hedge

• change of currency of Borrowing

→ change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR

↓

Freely permitted.

• ECB Facility For Start-up.

- Entity must be recognised as a start up by the CA.
 - Min Average Maturity period will be 3 years.
 - Lender / investor shall be a resident of a FATF compliant country.
- ↓
- However, foreign branches / subsidiaries of Indian banks and overseas entity in which Indian entity has made ODI will not be considered as recog. lender under this framework.
- Borrowing can be in the form of loan, or non convertible, or partially convt, or optionally convertible pref. shares.
 - Borrowing per start-up will be limited to USD 3 million. eper F.Y. either in INR or any convertible FCY or combination of both.

• ECB Facility For oil marketing companies

- public sector oil marketing companies (OMCs) are raise ECB for working cap purpose with min. average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging.
- overall ceiling for such ECB shall be USD 10 billion or equivalent.

• Limit For ECB

- Eligible Borrowers can raise ECB up to USD 750 million or equivalent per F.Y. under auto route.
- Further, in case of FC denominated ECB raised from direct foreign equity holder ECB liability - equity ratio for ECBs raised under the automatic route cannot exceed 7:1.

↓

However, this ratio will not be applicable if o/s amount of all ECBs, including proposed one is up to USD 5 million

Other provisions for ECB

Parking of ECB proceed abroad

- ECB proceeds meant for Foreign currency expenditure Park abroad pending which till utilised these funds can be invested in following assets.
 - a) Deposits or certifi. of deposits or other product offered by bank rated not less than
 - AA (-) - by standard & poor
 - Aaa - by Moody's.
 - b) Treasury bill or other money instrument of 1 yr maturity
 - c) deposits of foreign bank subsidi. of Indian bank ^{abroad}

Parking of ECB proceeds domestic

- ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their rupee accounts with AD category I Bank in India
- ECB borrower are also allowed to Park ECB proceeds in term deposit with AD category I Bank in India for max period of 12 months maturity.
- These term deposit should kept in unencumbered portion.

Procedure for Raising ECB

Automatic Route

Approach an AD category I bank their proposal along with duly filed in Form ECB

Approval Route

Application to RBI in Form ECB for examination through their AD category I Bank

Application is placed before empowered committee (the empowered committee will have external as well as internal members.

RBI will take the final decision in the cases taking in to account recommendation of empowered committee.

Reporting Requirement

- Loan Registration number to be obtained from RBI
- Any changes in terms and conditions of ECB to be reported to RBI (thr. AD category I Bank) in 7 days (7 working days)
- Monthly Reporting of Actual transⁿ (thr. AD cat I) Bank within 7 w.d. from close of month
- Late submission fees for delay in reporting and standard operating procedure for untraceable entities.

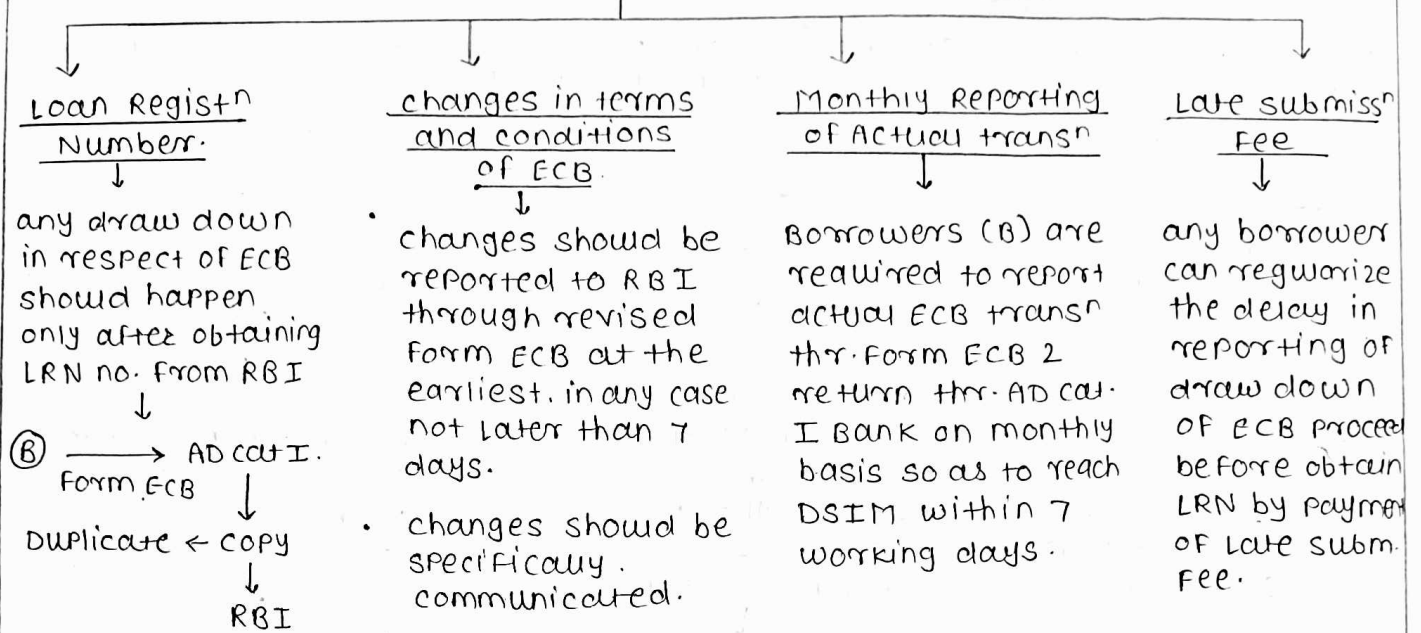
Security for raising ECB

AD category I banks are permitted to allow creation / cancelⁿ of charge on immovable assets subject to satisfying themselves that:

- underlying ECB is in compliance with the extent ECB guidelines.
- There exists a security clause in the loan agreement requiring the ECB borrower to create / cancel charge in
- No objection certificate from the existing lenders in India has been obt.

<u>creation of charge on immovable asset.</u>	<u>creation of charge on movable assets</u>	<u>creation of charge over Fin. security.</u>	<u>Issue of corporate or Personal Guarantee</u>
<ul style="list-style-type: none"> • such security shall be subject to provisions contained in Foreign Ex. management (Acq & transfer of immovable property in India) Reg. 2017. • permission ⊗ construed as a permⁿ to acquire imm. asset in India by overseas lender • in the event of enforcement / invocation the imm. property will have to be sold only to PRI and sale proceed shall be repatriated. 	<ul style="list-style-type: none"> • In case of enforcement / invocation of charge the claim of lender will be restricted to the o/s claim • Encumbered movable asset may also be taken out of the country subject to 'No objection certificate' from Domestic lender. 	<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px; margin-right: 10px;">Lender.</div> <div style="margin-right: 10px;">↓</div> <div style="margin-right: 10px;">want to enforce</div> <div style="margin-right: 10px;">↓</div> <div style="margin-right: 10px;">Make sure that he is within a limit.</div> </div> <div style="margin-top: 20px;"> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">←</div> <div style="margin-right: 10px;">ECB</div> <div style="margin-right: 10px;">→</div> <div style="margin-right: 10px;">security</div> </div> <div style="margin-top: 10px;"> ↓ sec. of the co. held with promoter or associate → any bond, deb. deposit or any invt. with the co / promoter. → Loan A/c, any current asset trustee a/c of co / P. </div> </div>	<ul style="list-style-type: none"> • Arrangement shall be subject to following <ul style="list-style-type: none"> i) BR for issue of corpo. guarantee specifying the name of officials who authorized to execute such gur. ii) specific req. from individuals iii) such sec. shall be subject to provision of FEMA (Chur.) Reg 2000. iv) must fulfil criteria of Recog. Lender

Reporting requirement



Standard operating procedure for Untraceable entities.

→ Untraceable entities -

- Any borrower who has raised ECB will be treated as untraceable entity if entity, dir/p of entity are not reachable / responsive / reply for a period of not less than 2 quarters with documented communication reminder numbering 6 or more and it fulfil both the ↓ conditions.
 - Entity not found to be operative at the reg. office address as per record available with AD bank or not found to be operative during the visit by the official of the AD bank or any other agencies authorised by AD bank.
 - Entities have not submitted statutory auditor's certificate for last 2 years or more.
- The following actions ^{sops} are to be undertaken in respect of untraceable entities who are found to be in contravention of reporting provision for ECBs by failing to submit prescribe return either physically or electronically for past 8 quarters or more.
- Actions are to be undertaken in respect of untraceable entities.

- File Revised Form ECB, if req. and last form ECB 2 return without certifiⁿ from co. with UNTRACEABLE ENTITY written in bold on top. The outstanding amount will be treated as written off from external debt liability of the country but may be retained by the lender in its books.
- No fresh ECB appⁿ by the entity should be examined by AD bank
- ED should be informed whenever any entity is designated UNTRACEABLE ENTITY
- No inward remittance or debt servicing will be permitted under auto route.

Power Delegate to AD category I Bank

- AD category I Bank can approve any requests from borrowers for change in respect of ECBs except FCCBs / FCEBs
- Following changes can be undertaken under automatic route.

change of the AD category I Bank.

↓
AD category I bank can be changed sub. to obtaining Noc from existing AD category I bank.

cancelⁿ of LRN.

↓
• AD cat. I bank may directly approach DSIM for cancelⁿ of LRN.

↓
• Ensure that no draw down against the said LRN has taken place.

↓
• Monthly ECB 2 return till the date in respect of quoted LRN have submitted to RBI.

Re financing of existing

ECB

↓
• allowed by raising fresh ECB provided the outstanding maturity of the original borrowing is not reduced.

and

All in cost of fresh ECB is lower than the all in cost of existing ECB

• Indian banks are permit to participate in re-financing of ex. ECB only for highly traded corporates and for Maharatna / Navratna Pub. sector undertaking

conversion of ECB in to equity

- The activity of borrowing co. is covered under auto. route for FDI or Govt. approval is received for foreign entity participⁿ as per extant FDI Policy.
- conversion should not result in contravention of eligibility and breach of applicable sector cap on the Foreign equity holder under FDI Policy.
- Applicable pricing guidelines are complied with.
- If borrower's consent has availed for other credit facility from Indian banking system the applic. guidelines issued by dept. of banking regⁿ by RBI are complied with.
- consent of other lender if any to the same borrower is available or at least info. regarding com. is exchanged with other lender of the borrower.

• In case of partial or full conversion of ECB in to equity reporting → RBI

→ For partial conversion converted portion is to be reported in form FC-GPR. while monthly reporting to RBI in form ECB 2 return will be with suitable remark "ECB partially converted in to equity"

→ For full conversion entire portion is to be reported in form FC-GPR while reporting to RBI in ECB 2 return should be done with remark "ECB fully converted into equity"

→ For conversion of ECB in to equity in phases reporting through form FC-GPR

• For conversion the exchange rate prevailing on the date of agreement or any lesser rate can be applied with a mutual agreement with lender

PART-B

Depository Receipts

- It is a Negotiable Financial instrument issued by company in foreign Jurisdⁿ
- It is a important Mechanism for raising Funds by tapping Foreign investors who otherwise may not be able to participate in Domestic market.

① DR are generally classified as under :-

Sponsored

- DR is based on stock agreement between foreign depository and issuer of securities.

Capital Raising

- The indian issuer deposits freshly issued securities with the domestic custodian.
- on the basis of such deposit foreign depository then create / issue DR abroad for sale to global investors.
- Proceeds of the sale of DR eventually go to the indian issuer

Non-Capital Raising

- No fresh underlying securities are issued
- Issuer gets holder of its existing securities to deposit these sec. with domestic custodian
- Proceeds from sale of DR go to the holder of underlying securities

unsponsored.

- There is no stock agreement between the foreign depository and Indian issuer.
- Any person without any involvement of the issuer may deposit the securities with a domestic custodian in India.
- The proceeds from sale of such DR go to the holder of underlying securities.

Depository Receipts.

Listed

- Listed DR are traded on SE

Unlisted.

- are those which are intra traded betⁿ parties.
- Not listed on any SE.

② Depository Receipt Scheme, 2014

uptil 2014

Foreign currency convertible bonds and ordinary shares (through DR) scheme, 1993.

↓ covers FCCB & DR

Post 2014

Issue of FCCB and OS (through DR) sh 1993

↓ covers FCCB

DR scheme 2014

↓ covers DR

③ Definitions :-

→ permissible Jurisdiction -

- Member of financial Action Task Force on money Laundering.
- Regulator of sec. market in that Jurisdiction is a mem of international organization of sec. commission.
- It include the international service centre in india

→ permissible securities.

- securities acquired by a person resident outside india under the FEMA, 1999 + in demat form.

④ Eligibility for issue of DR

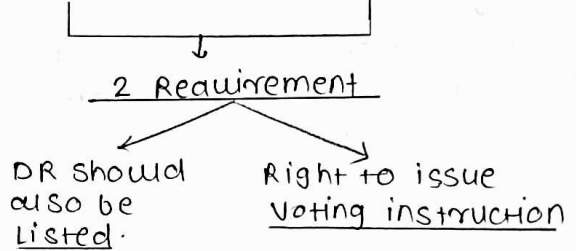
→ clause 3 of the scheme. des. eligibility

- Any indian company Listed / unlisted Public or Private.
- Any other issuer of permissible sec.
- Any person holding permissible securities.

↓
which has not been specifically prohibite
From accessing the cap market or
dealing in securities.

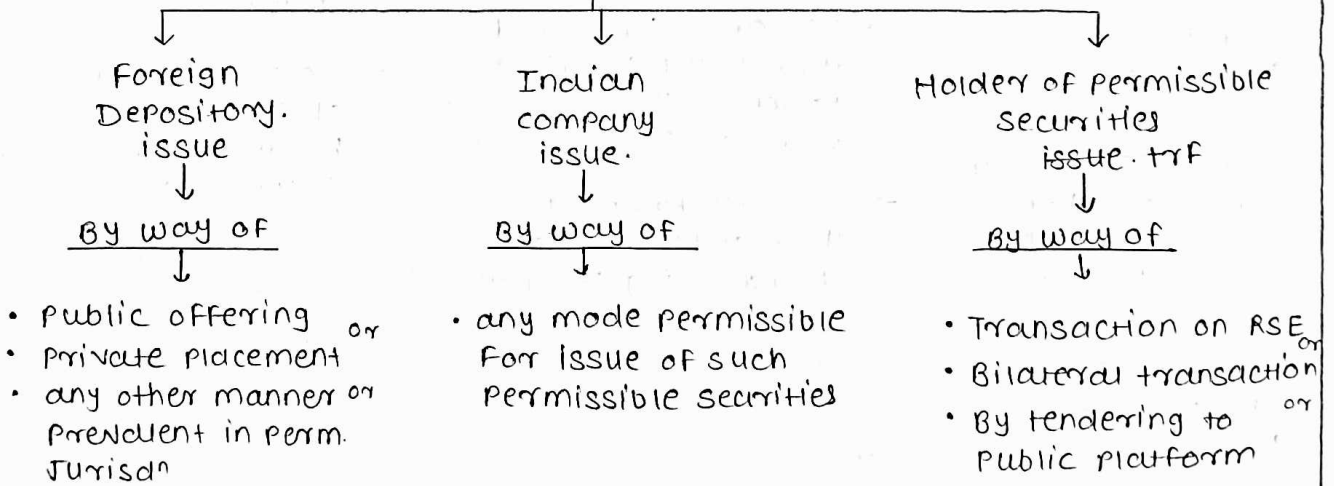
→ case -

sec. are Listed + unsponsored
in India DR is issued



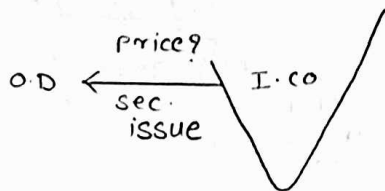
⑤

Issue of Depository Receipts.



⑥ LIMITS - Pricing

- price should not be less than the price at which such transfer can be made to domestic investor.



⑦ Limits

- sec. which may be issued / transferred for issue of DR outside india shall not exceed the limit on foreign holding of such permissible sec. under FEMA, 1999.

⑧ Obligations -

clause - 8 - certain obligation imposed on the domestic custodian

- Provisions of the scheme related to the issue and cancellation of depository R. is complied with.
- To maintain record in respect of all transactions in the nature of issue and cancel of DR for the purpose of monitoring limits under the FEMA, 1999.
- To provide info. and data as may be called upon by SEBI, RBI Min. of Finance, MCA
- To file with SEBI copy of the document by whatever name called which sets the terms of issue of DR issued on back of securities.

Following obligations - on Indian Dep.

- They shall co-ordinate among themselves.
- They shall disseminate the outst. permissible securities against which the DR are outstanding.
- They shall disseminate the limit up to which permissible sec. can be converted to DR.

⑨ Approval -

OD - obtain all necessary approval as required in the DR scheme.

⑩ Issue of FCCBs and DR

- Inward remittance received by the Indian co. vide issuance of DR and FCCB are treated as FDI
- In terms of FEM (Non debt instrument) Rules, 2019, person will be eligible to issue or transfer eligible securities to a foreign depository for the purpose of converting the sec. so purchased into DR in terms of DR scheme, 2014

⑪ ADR and GDR :-

- ADR - American Depository Receipts means a security issued by a bank or a depository in United State of America, against underlying rupee share of a company incorporated in India
- GDR - Global Depository Receipt means a security issued by a bank or a depository outside india against underlying rupee share of a co. in india.

⇒ Two way Fungibility scheme - Topic - ⑫

- Two way Fungibility scheme has been put in place by the Govt. of India for ADR / GDR.
- Under this scheme stock broker in india, registered with SEBI can purchase shares of an Indian co from the market for conversion into ADR / GDR based on instruction received from overseas investors.

One way Fungibility

- Here investors could cancel their DR and recover the proceeds by selling the underlying shares in indian market
- DR once redeemed could not be converted into shares.

Two way Fungibility

- shares so released can be reconverted by the co. into DRs for purchase by the overseas investors

⑬ Provision under co. Act 2013
co. (ISSUE under GDR) RWE 2014

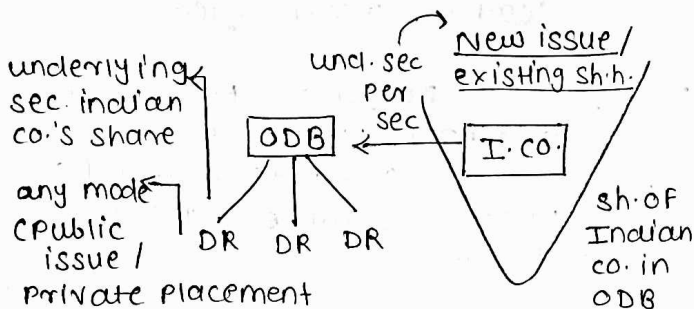
• Eligibility :-

DR issue → Scheme, 2014 ✓
 → FEMA ✓

• Conditions :-

- DR issue → Board Resolution
 → Special Resolution
 → Overseas Dep. Bank - Sec. issue
 → Domestic custodian - Sec. custody
 → Appointment of MB / PCA / PCMA → compliance report
 → at least one ID if required.

• Manner and Form of Dep. Receipts.
 (RWE 5)



• Whether Depository Receipt holder can vote ?

→ No, overseas depository Bank has the right to vote.

Whether DR holder can give voting instruction to ODB, to cast vote ?

→ IF the issue is unsponsored

+ securities are listed in India

↓
 DR holders have a right to give Voting instruction.

→ In other cases - It depends upon the agreement betⁿ co, ODB and DR holder.

• proceeds of ISSUE.

Sponsored capital Raising.	→ Bank A/c in India → In an Indian Bank operating abroad → Foreign Bank (sch) having op ⁿ in India → IFSC Banking unit.
Sponsored Non-capital Raising	→ credited to the Reserve bank A/c of shareholder.

• Non Applicability :-

- Provisions / RWEs related to public issue of shares or debⁿ not apply to issue of DR.
- The offer doc. if prepared for the issue of DR shall not be treated as prospectus or an OD within the meaning of this Act and all the provisions as applic^o to a prospectus or an OD shall not apply to DR offer document
- Notwith standing anything contain U/s 88 of the co. Act 2013, until the redemption of DR the name of the overseas dep. bank shall be entered in the RoM of the co.

→ Reporting of FCCB / ADR / GDR issue

• Form-DR Return to be filed by an Indian co. who has arranged issue of GDR / ADR

↓
within 30 days from the date of closing of issue

• The company should also furnish quarterly return in the form DR-quarterly to the RBI

↓
within 15 days from the close of calendar quarter

Procedure for Issuance of ADR/GDR

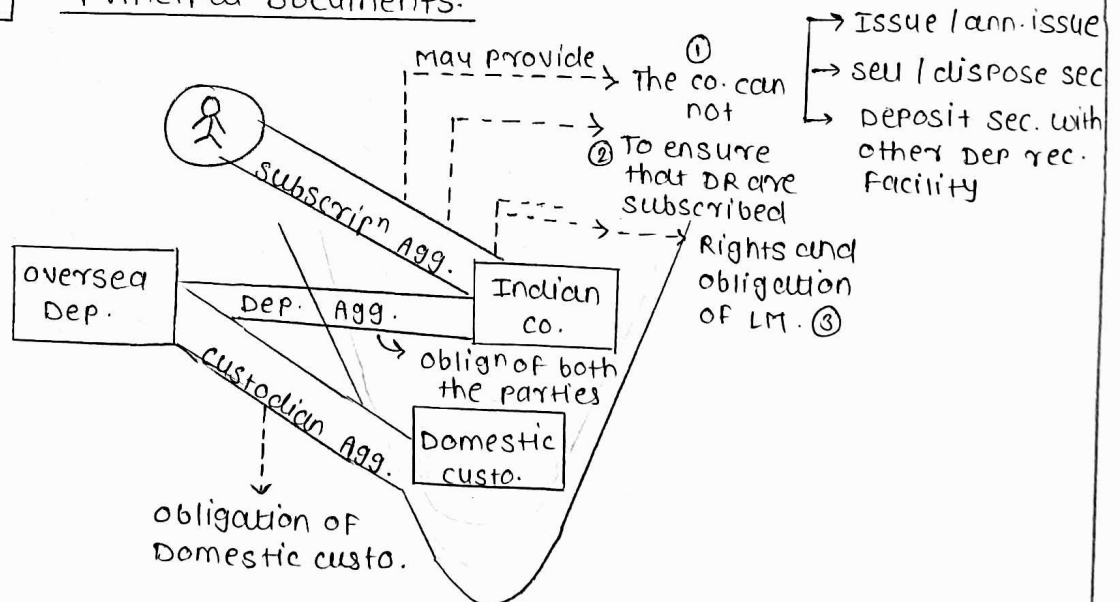
→ STEP-1 - Approval for ADR/GDR

- Board of Directors
- Shareholder
- FI
- stock exchange → In principle consent
- RBI
- Ministry of Finance. } → In principle and final approval

→ STEP-2 - Appointment of Intermediaries.

- overseas depository
- Domestic custodian
- Lead Manager.
- co-lead manager.
- Underwriters
- Listing Agent
- Legal Advisor
- Auditor
- Printer.

→ STEP-3 - Principal Documents.



- Agency Agreement - co. has to enter into agency agreement with certain persons known as conversion agent. These agents are req. to make the principal and int. payment to the holders of FCCBs.
- Trust Deed - co enter into a covenant (known as trust deed) with the trustee guaranteeing payment of principal and int amount on such FCCBs and to comply with the obligⁿ in respect of such FCCB

→ **STEP-4** - Pre and Post Launch - Additional key Actions.

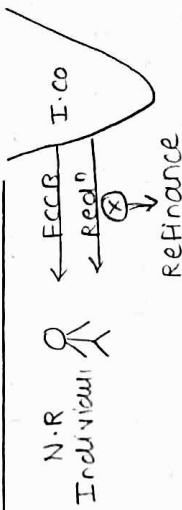
- Constitution of Board sub-committee.
- Appoint syndicate member. (intermediaries) [by Lead M]
- Constitution of task force for due diligence - (by LM)
- Listing (by LM)
- Offering circular.
- Research papers
- Pre-marketing.
- Timing, pricing and size of the issue
- Road shows.
- Book building pricing.
- closing of the issue and allotment
- Investor Relation Programme.

Foreign currency convertible bonds

- FCCBs are optionally convertible bonds issued in a currency other than Indian rupees.
- These bonds give the bondholders option to convert the bonds in to the shares at the expiry of the term of the bond.
- FCCBs are unsecured, carry fix rate of int.
- FCCBs shall be denominated in freely convert. Foreign currency.

AS PER ISSUE OF FCCB (CDR) scheme. 1993

→ REDEMPTION OF FCCB -



→ Additional FCCB -

- comply with
 - 1) Min av maturity period.
 - 2) All in cost ceiling.
- amt. of refinancing - should not be more than redemption value.
- fresh FCCB / ECB - within 6m before the maturity date.
- PURPOSE in LRN - Redn of outstanding FCCB in form 83
- AD cat I Bank - will monitor end use.
- FCCB / ECB beyond USD 500 million - consider approval route

- FCCB / ECB will be reckoned as part of limit USD 750 million available under automatic route
- Restructuring existing FCCB:
 - allowed except for conversion price.

AS PER FEMA NOTIFICATION

- Min Tenure - 5 years
- call or put - only after 5 years.
- warrants - Not allowed with FCCB
- EXP on issue - max.
 - 4% - Public issue
 - 2% - PVT. Placement

Foreign Currency Exchangeable Bonds

- Means a bond expressed in foreign currency principal and int in respect of which is payable in foreign currency. Issued by issuing co. and subscribed to by a person resident outside India exchangeable in to equity shares of another co. (Offered co)

End use of FCCB proceeds.

- Proceeds of FCCB may be invested by a issuing co overseas by way of Direct invt incl. Joint ventures or wholly owned subsi. abroad or may be invested in promoter group companies.
- Per co receiving invt. out of FCCB proceed utilize the amt in accordance with end use prescribed under the ECB policy.
- will not be permitted to utilize the proce. for invt. in cap. market or real estate in India.
- Rate of int - shall be within a call in cost ceiling as per ECB policy.
- Pricing - shall not be less than higher of the following two.
 - i) av. of the weekly high and low of the cl. prices of the shares of the offered co. during 6m preceeding the relevant date.
 - ii) av. of the weekly high and low of the cl. prices of the sh. offered during P. 2 weeks

FCEB scheme. 2008

- The offered co. shall be listed co. which is engaged in sector eligible to receive FDI and eligible to issue and avail of FCCB or ECB.
- ENTITIES NOT ELIGIBLE TO ISSUE FCEB -
 - ENTITIES NOT ELIGIBLE TO RAISE FUNDS FROM Indian sec. market.
- ELIGIBLE SUBSCRIBERS -
 - ENTITIES COMPLYING WITH THE FDI POLICY AND ADHERING TO THE SECTORIAL CAPS AT THE TIME OF FCEB CAN SUBSCRIBE TO FCEB. Prior approval of Foreign invt promotion board (FIPB) is required.
- ENTITIES NOT ELIGIBLE TO SUBSCRIBE FCEB
 - ENTITIES PROHIBITED TO BUY, SELL OR DEAL IN SECURITIES BY THE SEBI

- Min maturity → 5 years.
- The holder of the FCCB shall take delivery of offered sh.
 - cash settlement of FCCB shall not be permissible
- FCEB PROCEEDS
 - Retain Repatriate overseas to India
 - Pending Utilish
- comply with ECB end use requirem. requirement.
- prior app. of RBI is req. for issuing of FCCB for raising ECB.