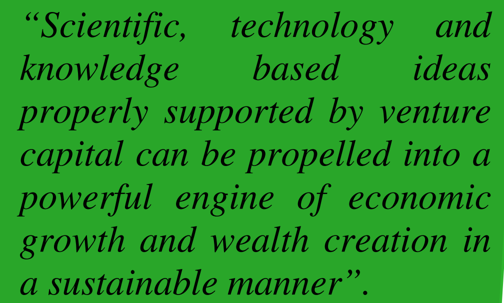
Institute of Company Secretaries of India

Regulatory Framework

Foreign Venture capital Investor

By CA. Sudha G. Bhushan



Report of K B Chandrasekhar Committee on Venture Capital

BY: CA. Sudha G. Bhushan

Article on Foreign Venture capital Investor

Contents

(1) Meaning of Foreign Venture capital Investor
(2) Need of Foreign Venture capital Investor
(3) Foreign Investment – Foreign Venture capital Investor
(4) RBI regulations
(5) SEBI regulations
(6) Benefits
(7) Taxation of Venture capital
(8) Structuring of Venture capital

BY: CA. Sudha G. Bhushan

Meaning

Before starting with Foreign Venture capital Investor it is definitely worthwhile to understand the meaning of venture capital. Venture Capital (VC) is an important source of funding seed capital for start-up ventures and technology projects. Venture Capital is a type of funding which is different from traditional sources of financing as unlike traditional source of funding Venture capitalists finance innovation and ideas which have potential for high growth with inherent uncertainties. Venture capital funds ("VCF") are professional money managers who provide risk capital to businesses.

Venture capital is a high-risk, high return investment. In other words, Venture capital is money provided by an outside investor to finance a new, growing, or troubled business. The venture capitalist provides the funding knowing that there's a significant risk associated with the company's future profits and cash flow. Under Venture capital the capital is invested in exchange for an equity stake in the business rather than given as a loan, and the investor hopes the investment will yield a better-than-average return. It is an important source of funding for start-up and other companies that have a limited operating history and no access to capital markets. A venture capital firm typically looks for new and small businesses with a perceived long term growth potential that will result in a large payout for investors. Venture capitalist are mostly limited partnerships that have a fund of pooled investment capital with which to invest in a number of companies. They vary in size. VCs may be a small group of investors or an affiliate or subsidiary of a large commercial bank, investment bank, or insurance company that makes investments on behalf clients of the parent company or outside investors. VC aims to use the business knowledge it has, experience and expertise to fund and nurture companies that have high potential to yield a substantial return on the VC's investment.

The formalisation of the Indian venture capital community began in 1993 when Indian Venture Capital Association was formed. In 1996, the Securities and Exchange Board of India ("**SEBI**") introduced the SEBI (Venture Capital Funds) Regulations, 1996 ("**VCF Regulations**"), for regulating and promoting the activities of domestic venture capital funds.

Pursuant to K B Chandrasekhar Committee recommendations, in 2000 Securities and Exchange Board of India (SEBI) was made a nodal regulator for VCFs to provide for regulatory and institutional environment to facilitate faster growth of venture capital industry in the country. In 2000 the SEBI announced the SEBI (Foreign Venture Capital Investor) Regulations, 2000 ("**FVCI Regulations**") enabling foreign venture capital and private equity investors to register with it and avail of certain benefits provided there under. The step liberated the industry from a number of bureaucratic hassles and paved the path for the entry of a number of foreign funds into India.

<u>The term Foreign Venture Capital Investor [FVCI] has been defined under the SEBI (FOREIGN VENTURE CAPITAL INVESTOR) REGULATIONS, 2000 [FVCI Regulations] to mean an investor incorporated or established outside India, which proposes to make investments in venture capital fund(s) or venture capital undertakings in India and is registered under the FVCI Regulations.</u>

Need of FCVI*

With a view to promote innovation, enterprise and conversion of scientific technology and knowledge based ideas into commercial production, it is very important to promote venture capital activity in India. India's recent success story in the area of information technology has shown that there is a tremendous potential for growth of knowledge based industries. This potential is not only confined to information technology but is equally relevant in several areas such as bio-technology, pharmaceuticals and drugs, agriculture, food processing, telecommunications, services, etc. Given the inherent strength by way of its skilled and cost competitive manpower, technology, research and entrepreneurship, with proper environment and policy support, India can achieve rapid economic growth and competitive global strength in a sustainable manner.

A flourishing venture capital industry in India will fill the gap between the capital requirements of technology and knowledge based startup enterprises and funding available from traditional institutional lenders such as banks. The gap exists because such startups are necessarily based on intangible assets such as human capital and on a technology-enabled mission, often with the hope of changing the world. Very often, they use technology developed in university and government research laboratories that would otherwise not be converted to commercial use. However, from the viewpoint of a traditional banker, they have neither physical assets nor a low-risk business plan. Not surprisingly, companies such as Apple, Exodus, Hotmail and Yahoo, to mention a few of the many successful multinational venture-capital funded companies, initially failed to get capital as startups when they approached traditional lenders. However, they were able to obtain finance from independently managed venture capital funds that focus on equity or equity-linked investments in privately held, high-growth companies. Along with this finance came smart advice, hand-on management support and other skills that helped the entrepreneurial vision to be converted to marketable products.

*Source: - http://www.sebi.gov.in/commreport/venture.pdf

Foreign Direct Investment Policy

To fulfill the need of freeing the Indian industry from excessive official control and for promoting foreign investments in India in necessary sectors the much required liberalization of Indian economy was brought in by Industrial Policy of 1991. From then the Indian economy is more facilitating to Foreign Direct investment in all form.

The intent and objective of the Government is to promote foreign direct investment through a transparent, predictable, simple and clear policy framework and which reduces regulatory burden.

Foreign Investment [FI] in India is regulated under FEMA and it regulations. FI by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' under FEMA, 1999. Keeping in view the current requirements, the Government from time to time comes up with new regulations and amendments/changes in the existing ones through order/allied rules, Press Notes, etc. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendment to notification No.FEMA 20/2000-RB dated May 3, 2000. These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. The procedural instructions are issued by the Reserve Bank of India vide A.P.Dir. (series) Circulars. The regulatory framework over a period of time thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.
Foreign Investment can be in two ways
(i) Foreign Direct Investment (FDI) and
(ii) Foreign Portfolio Investment.

"Investment' is usually understood as financial contribution to the capital of an enterprise or purchase of shares in the enterprise. 'Foreign investment' is investment in an enterprise by a Non-Resident irrespective of whether this involves new capital or reinvestment of earnings. One of the difference between FDI and Foreign Portfolio investment is the objective with which the investment is made. The main motivation of investor of Foreign Direct Investment is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. Direct investment allows the direct investor to gain access to the direct investment enterprise which it might otherwise be unable to do. However the objectives of portfolio investment is different whereby investors do not generally expect to influence the management of the enterprise.

FDI is defined by International Monetary Fund (IMF) and Organization for Economic Cooperation and Development(OECD) as a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a 'lasting interest' in an enterprise (the direct investment enterprise) that is resident in an economy other than that of the direct investor. In the Indian context, 'FDI' means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.

It is the policy of the Government of India to attract and promote productive FDI in activities which significantly contribute to industrialization and socio-economic development. FDI supplements domestic capital and technology.

FDI EQUITY INFLOWS (MONTH-WISE) DURING THE FINANCIAL YEAR 2010-11:

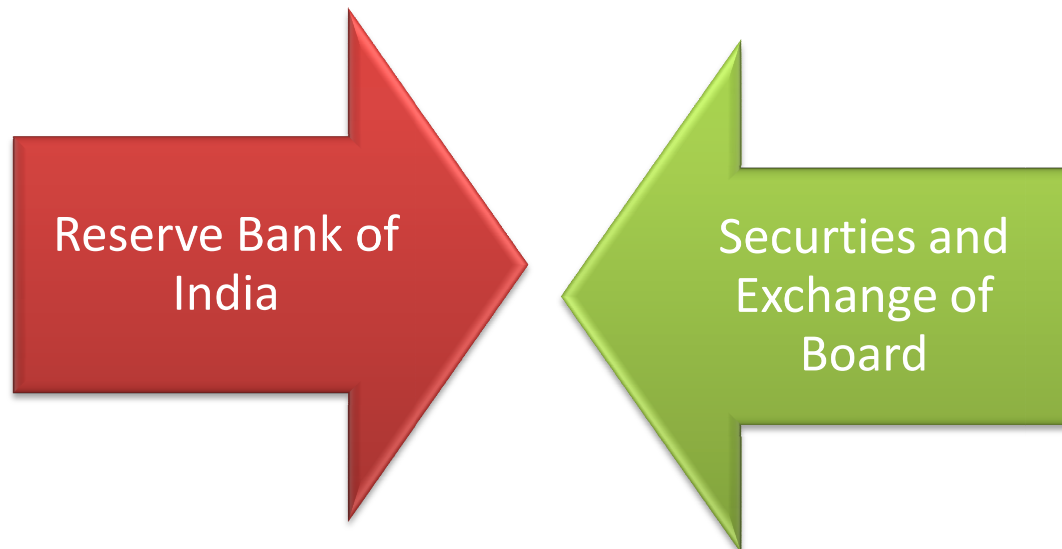
Financial Year 2010-11 (April-March)	Amount of FDI inflows (In Rs. Crore)	Amount of FDI inflows (In US$ mn)
April 2010	9,697	2,179
May 2010	10,135	2,213
June 2010	6,429	1,380
July 2010	8,359	1,785
August 2010	6,196	1,330
September 2010	9,754	2,118
Total 2010-11 (up to September 2010)	50,570	11005

 # Figures are provisional, subject to reconciliation with RBI, Mumbai.
Source : http://www.dipp.nic.in/fdi_statistics/indian_FDI_September2010.pdf

A Foreign Venture Capital Investor (FVCI) may contribute upto 100% of the capital of an Indian Venture Capital Undertaking and may also set up a domestic asset management company to manage the fund. All such investments by FVCI can be made under automatic route in terms of Schedule 6 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified under the Foreign Exchange Management Act, 1999 ('FEMA') [discussed in detail below].

A SEBI registered FVCI can also invest in domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996. Such investments would also be subject to RBI regulations and FDI policy. However, in case the entity undertaking venture capital fund activity is a Trust registered under the Indian Trust Act, 1882, FDI would be permitted under the Government route. FVCIs are also allowed to invest in other companies subject to FDI Regulations.

Regulatory Framework:



Reserve Bank of India

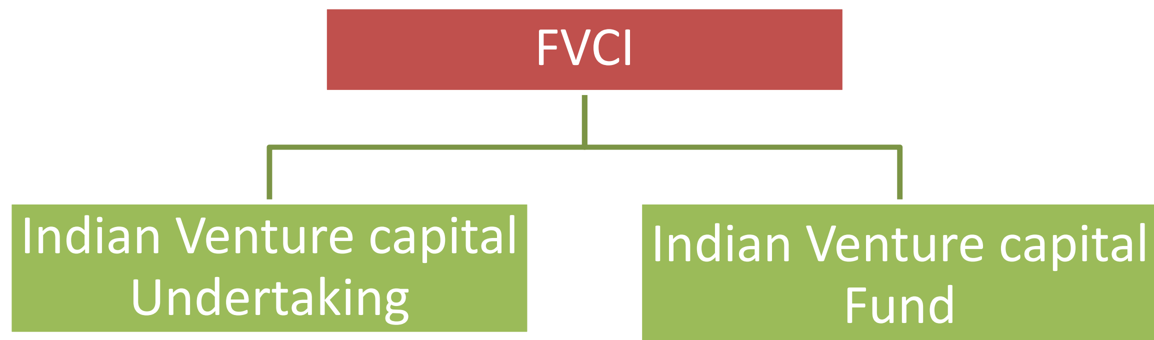
Foreign Investment by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' and is regulated under Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified under the Foreign Exchange Management Act, 1999 ('FEMA').

The Inbound Regulations prescribes the following Schemes of Inbound Investments:

Schedule I Foreign Direct Investment Scheme
Schedule II Purchase / Sale of Shares and / or Convertible Debentures of an Indian Company by a Registered Foreign Institutional Investor under
Portfolio Investment Scheme
Schedule III Purchase / Sale of Shares and / or Convertible Debentures by a NRI on a Stock Exchange in India on Repatriation and / or Non- Repatriation basis under Portfolio Investment Scheme
Schedule IV Purchase and Sale of Shares / Convertible Debentures by a NRI on Non-Repatriation basis
Schedule V Purchase and Sale of Securities other than Shares or Convertible Debentures of an Indian Company by a Person Resident outside India
Schedule VI Investment in an Indian Venture Capital Undertaking by a registered Foreign Venture Capital Investor

As per schedule VI

(i) A SEBI registered Foreign Venture Capital Investor (FVCI) with specific approval from RBI under FEMA Regulations can invest in Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a Scheme floated by such IVCFs subject to the condition that the VCF should also be registered with SEBI.



An **Indian Venture capital undertaking** [IVCU] is defined as a company

- incorporated in India
- whose shares are not listed on a recognized stock exchange in India
- which is not engaged in an activity under the negative list specified by SEBI.

A Indian **Venture capital Fund** [VCF] is defined as a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996 which has a dedicated pool of capital raised in a manner specified under the said Regulations and which invests in Venture Capital Undertakings in accordance with the said Regulations.

(ii) FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, the Reserve Bank permits the FVCI to open a Foreign Currency Account and/or a Rupee Account with a designated branch of an AD Category – I bank.

(iii) The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.

(iv) AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.

Securities and Exchange Board of India

For regulation of FVCI and the investment by FVCIs Securities and Exchange Board of India have framed SEBI (FOREIGN VENTURE CAPITAL INVESTOR) REGULATIONS, 2000.

The term FVCI has been defined under the SEBI (FOREIGN VENTURE CAPITAL INVESTOR) REGULATIONS, 2000 **[**FVCI Regulations] to mean:

"an investor incorporated or established outside India, which proposes to make investments in venture capital fund(s) or venture capital undertakings in India and is registered under the FVCI Regulations".

"Venture Capital Fund" means a Fund established in the form of a Trust, a company including a body corporate and registered under Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996, which
(i) has a dedicated pool of capital;
(ii) raised in the manner specified under the Regulations; and
(iii) invests in accordance with the Regulations;

"Venture capital undertaking" means a domestic company:—
(i) whose shares are not listed in a recognised stock exchange in India;
(ii)which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the Board, with approval of Central Government, by notification in the Official Gazette in this behalf."

Foreign Venture Capital Investor [FVCI] have to apply for registration to SEBI. For the purpose of the grant of a certificate to an applicant as a Foreign Venture Capital Investor, the Board shall consider the following conditions for eligibility, namely:-

- the applicants track record, professional competence, financial soundness, experience, general reputation of fairness and integrity.
- Whether the applicant has been granted necessary approval by the Reserve Bank of India for making investments in India;
- whether the applicant is an investment company, investment trust, investment partnership, pension fund, mutual fund, endowment fund, university fund, charitable institution or any other entity incorporated outside India; or
- whether the applicant is an asset management company, investment manager or investment management company or any other investment vehicle incorporated outside India;
- whether the applicant is authorised to invest in venture capital fund or carry on activity as a foreign venture capital investors;
- whether the applicant is regulated by an appropriate foreign regulatory authority or is an income tax payer; or submits a certificate from its banker of its or its promoter's track record where the applicant is neither a regulated entity nor an income tax payer.
- the applicant has not been refused a certificate by the Board.
- whether the applicant is a fit and proper person.

The applicant can be a pension fund, mutual fund, investment trust, Investment Company, investment partnership, asset Management Company, endowment fund, university fund, charitable institution or any other investment vehicle incorporated and established outside India etc.

All investments to be made by FVCIs shall be subject to the following conditions:-

(a) it shall disclose to the Board its investment strategy.
(b) it can invest its total funds committed in one venture capital fund
(c) it shall make investments as enumerated below:

(i) at least 66.67% of the investible funds* shall be invested in unlisted equity shares or equity linked instruments of Venture Capital Undertaking;
(ii) not more than 33.33% of the investible funds may be invested by way of:

- subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed.
- debt or debt instrument of a venture capital undertaking in which the foreign venture capital investor has already made an investment by way of equity;
- preferential allotment of equity shares of a listed company subject to lock in period of one year.
- the equity shares or equity linked instruments of a financially weak company or a sick industrial company whose shares are listed.
- special purpose vehicles which are created for the purpose of facilitating or promoting investment in accordance with these Regulations.

(d)It shall disclose the duration of life cycle of the fund.

*investible funds" means corpus of the fund net of expenditure for administration and management of the fund.

Besides above

- Every Foreign Venture Capital Investor shall maintain for a period of eight years, books of accounts, records and documents which shall give a true and fair picture of the state of affairs of the Foreign Venture Capital Investor.

- Foreign Venture Capital Investor or a global custodian acting on behalf of the foreign venture capital investor shall enter into an agreement with the domestic custodian to act as a custodian of securities for Foreign Venture Capital Investor.

- Foreign Venture Capital Investor shall appoint a branch of a bank approved by Reserve Bank of India as designated bank for opening of foreign currency denominated accounts or special non-resident rupee account.

Benefits

SEBI and the Reserve Bank of India ("**RBI**") have extended certain benefits to funds registered under the FVCI Regulations making it beneficial to register. This is an optional registration that an investor can seek, in order to qualify for certain benefits.

FVCIs enjoy a number of regulatory relaxations; some of the significant ones are:

▪ Exemption from pricing norms at the time of entry as well as exit;

▪ Exemption from "lock-in" period requirements when the investee company goes public; FVCIs are thus effectively allowed to exit investment, immediately on listing of the investee company;

▪ Exemption from "Takeover Code" (which mandates making of an open offer by the acquirer, on acquisition of shares beyond prescribed threshold limits) in respect of shares sold by the FVCI to the promoters of the company, after the company goes public

"The regulatory, tax and legal environment should play an enabling role. This also underscores the facilitating and promotional role of regulation. Internationally, venture funds have evolved in an atmosphere of structural flexibility, fiscal neutrality and operational adaptability. We need to provide regulatory simplicity and structural flexibility on the same lines. There is also the need for a level playing field between domestic and offshore venture capital investors"

Report of K B Chandrasekhar Committee on Venture Capital

Taxation

In India taxation system is under the Ministry of Finance, Department of Revenue. Taxability of income is determined by Indian Income Tax Act, 1961("ITA" or Act). With the countries with which Indian Government have signed Double taxation avoidance agreement in that cases the taxability shall be determined by Indian Income Tax Act, 1961 read with DTAA. As per section 90(2) of the Act an assesse has an option to choose from ACT or DTAA which ever is more beneficial to him.

According to Sect. 5 (2) Indian Income Tax Act, 1961 non residents are taxable in respect of the income received or deemed to be received, accrued or deemed to have been accrued or arisen in India. This definition covers income accruing or arising or and also deemed to have accrued or arisen to a non-resident whether directly or indirectly, through or from any business connection in India, Sect. 9 ITA. The term "Business Connection" involves a relationship between the business of the assessee and some activity in India which contributes directly or indirectly to the earning of profits and gains by the assessee from his business. This is a very broad definition rendering almost any activity of a non resident company subject to tax in India. It is however required to be read with Double Taxation Avoidance Agreements (DTAAs) entered into by India with respective countries. The DTAAs aim at restricting the right of a state to levy tax on income received by a non resident company from business activities pursued in that state. According to national Indian tax law, the provisions of a DTAA apply if they are beneficial for the foreign company ("assessee"), Sect. 90 (2) ITA.

The taxability of venture capital company or venture capital fund is determined under section 10(23FB) read with 115U of the Act. Section 10(23FB) and section 115U have to be read together. These two sections constitute an integrated code. Venture capital company or venture capital fund have been given the status of pass through entities under the Act. Intention in enacting sections 10(23FB) and 115U is to make venture capital funds and companies tax exempt and to provide for the taxation of the income in the hands of the investors, when distributed to them. In other words, the scheme of taxation of these entities is to exempt the income in their hands while providing for its taxation in the hands of the investors. The venture capital company or the venture capital fund is not to be taxed on any income that is earned from the investments. The income earned is taxable in the hands of the investors when the venture capital company or the venture capital fund distributes the same to the investors.

The relevant text of sections is reproduced here:

Section 10 reads "In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

Section 10(23FB)

any income of a venture capital company or venture capital fund [from investment] in a venture capital undertaking.

Explanation [1].—For the purposes of this clause,—

(a) "venture capital company" means such company—

BY: CA. Sudha G. Bhushan

(i) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and regulations made thereunder;

(ii) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf;

(b) "venture capital fund" means such fund—

[(i) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) or operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);]

(ii) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and regulations made thereunder;

(iii) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf; and

[(c)"venture capital undertaking" means such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the—

(i) business of—

(A) nanotechnology;

(B) information technology relating to hardware and software development;

(C) seed research and development;

(D) bio-technology;

(E) research and development of new chemical entities in the pharmaceutical sector;

(F) production of bio-fuels;

(G) building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand; or

(H) developing or operating and maintaining or deve-loping, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA; or

(ii) dairy or poultry industry;]

Section 115U

(1) Notwithstanding anything contained in any other provisions of this Act, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.

(2) The person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund

shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving details of the nature of the income paid during the previous year and such other relevant details as may be prescribed.

(3) The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.

(4) The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund under this Chapter.

Explanation.—For the purposes of this Chapter, "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (23FB) of section 10."

As can be seen from above that the domestic investee companies must only be engaged in the following activities:

- dairy or poultry industry;
- nanotechnology;
- information technology relating to hardware and software
- development;
- seed research and development;
- biotechnology;
- research and development of new chemical entities in the
- pharmaceutical sector;
- production of bio-fuels; or
- building and operating composite hotel-cum-convention centers having a seating capacity of more than 3000 persons.

The tax treatment of the income that is subject to "pass through" status will depend on the nature of the income. Dividend income is tax free in the hands of shareholders, but is subject to a dividend distribution tax of 16.99 % payable by the company distributing the dividend. Otherwise, capital gains tax is charged on the sale of shares of the investee companies. There is no specific tax exemption for FVCI. However based on the jurisdiction from which the FVCI invests in India, it can avail the benefits in the corresponding DTAA that India may have with that jurisdiction. On account of its favorable tax treaty with India, Mauritius has become the most popular jurisdiction for investing into India. The India-Mauritius DTAA exempts capital gains earned by a resident of Mauritius from tax in India. As per Article 13 of the India-Mauritius treaty**,** when a Mauritius resident entity transfers an Indian capital asset (such as shares of an Indian company), the gains from such a transfer are considered taxable only in Mauritius. Mauritius does not tax capital gains, the result is an overall beneficial position for the taxpayer. Several investors have chosen this route to make investments into India, because tax is only payable in the country of residence of the investor. The popularity of Mauritius also comes from the landmark ruling in **Azadi Bachao Andolan.** Wherein it was held that if the taxpayer has legitimately reduced his tax burden by taking advantage of a treaty the benefit cannot be denied to him on the ground of loss of revenue.

Structuring

As there is no specific tax exemption under Indian Income tax Act to FVCI it becomes crucial to structure the fund in the manner that there are no unwanted tax implications on FVCIs.

Foreign investments in India have traditionally been made through offshore holding company jurisdictions. There are certain other tax efficient jurisdictions which have been extensively used for making investments. Some of the most popular ones are Mauritius, Cyprus, Singapore, Netherlands etc because of the benefits the treaty offers. For example Under Indian tax treaty with Mauritius capital gains earned by Mauritius residents are not taxable in India. Also unlike Singapore treaty there is no limitation to benefit condition.

For the purpose of structuring Characterization of income is very important. Also because in case it is seen that the activities are pursued through a Permanent Establishment* [PE], the income attributable to such a PE shall become taxable in India. Under Article 5 of India and Mauritius treaty PE is defined *interalia* as *"means a fixed place of business through which the business of the enterprise is wholly or partly carried on"*. PE is a fact driven analysis and is very critical consideration in making decision the investment / divestment in respect of an investment fund or a private equity fund .

Most common types of investment from FVCIs are as follows:

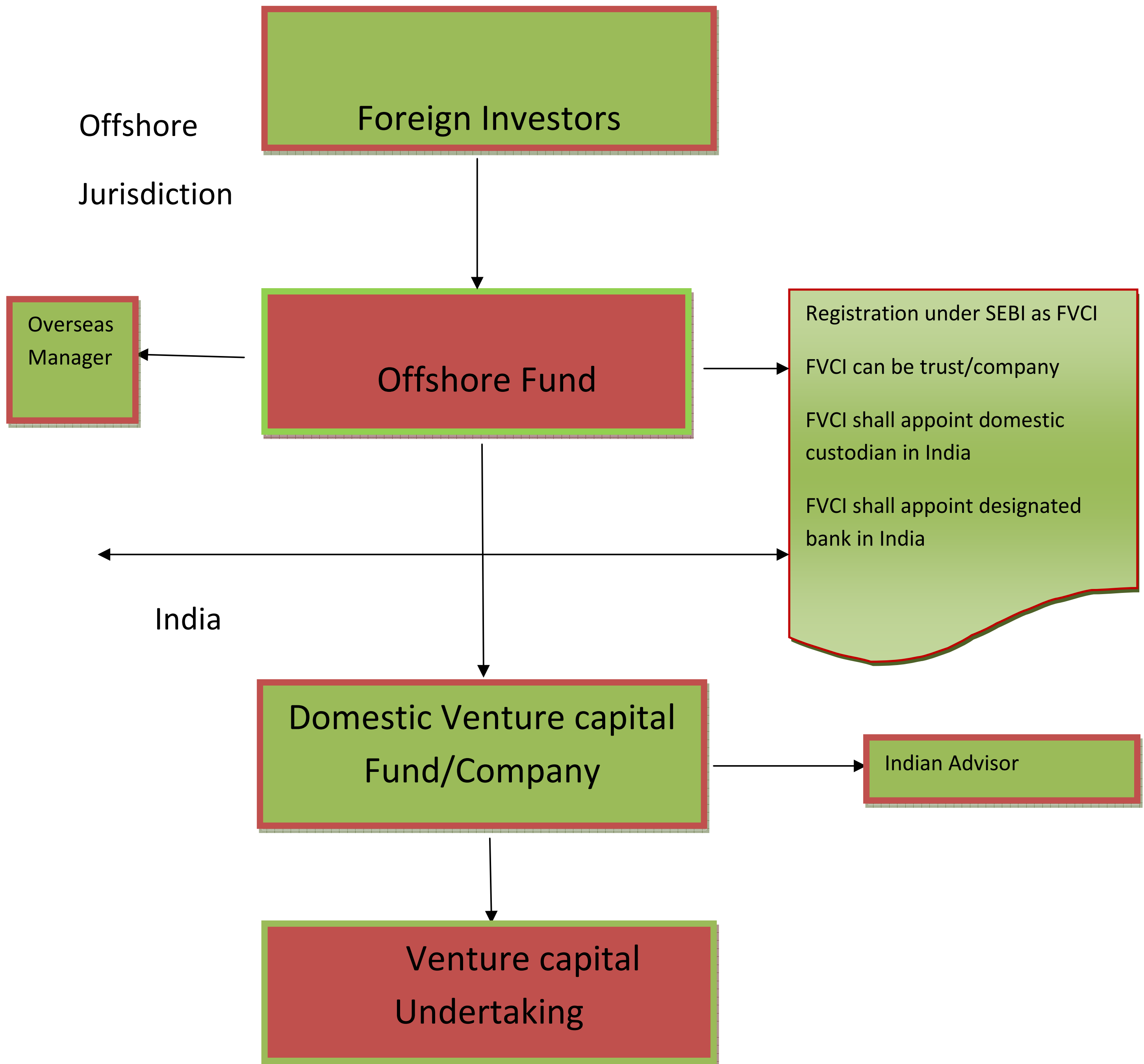
Offshore Funds

Under offshore funds an investment vehicle in the form of a limited liability company or limited liability partnership organized in an offshore tax favorable jurisdiction makes portfolio investments into Indian companies. Mauritius, which has a favorable tax treaty with India, is routinely used to locate the investment vehicle. Usually, there is an offshore manager to administer the assets of the fund, and an investment advisor in India for identifying deals and prospective investment opportunities. However, in such a structure, the relationship between the Indian advisor, the overseas manager and the offshore fund must be structured very carefully. This is important so as to avoid a situation where the offshore fund is deemed to have a permanent establishment ("PE") in India, which can have adverse tax implications [as mentioned below].

Unified Funds

This structure is generally used where domestic investors are also expected to participate in the fund. In this structure, a domestic investment vehicle is established in India preferably as a trust (/company) in addition to the offshore fund. This domestic trust is registered with the Securities Exchange Board of India as a venture capital fund. Under Unified funds Domestic investors directly contribute to the domestic trust, whereas overseas investors pool their investments into the offshore fund, which, in turn, invests in the domestic trust. The portfolio investments are made by the trust, which will generally have a domestic manager or advisor. This structure is preferred from a tax perspective as well as the

chances of formation of PE is reduced in this case since the Indian advisor is not connected with the offshore fund directly and it draws its compensation from the domestic trust.



Conclusion

The ever growing Indian economy and the potential to grow further definitely makes India one of the most liked destination also strong fundamentals comprising of favorable demographic profile, human capital, trade openness, increasing urbanization and rising consumer spending has made India one of the fastest growing markets in the world.

From the economic liberalization that started in India in 1991 to introduction of LLP Act, 2006 to consolidated FDI policy policymakers have steadily made India attractive to global players to compete and tap the large potential in the domestic market. Almost all the sectors are open for FVCIs except few like Apart from a few sectors like non-banking financial services, gold financing and activities not permitted under the industrial policy of the Government of India. Although lot have already been done yet the lot still requires to be done like clarification in taxation system of FVCI, rationalization in investment limits etc.

As such the overall environment in India is conducive for venture capitalists and will get better in the coming years.

In case of clarification please

Contact at:

+ 091 9769033172

Email at:
sudhag999@gmail.com
sudha.gupta@icai.org

Blog:
http://casudhafema.blogspot.com/