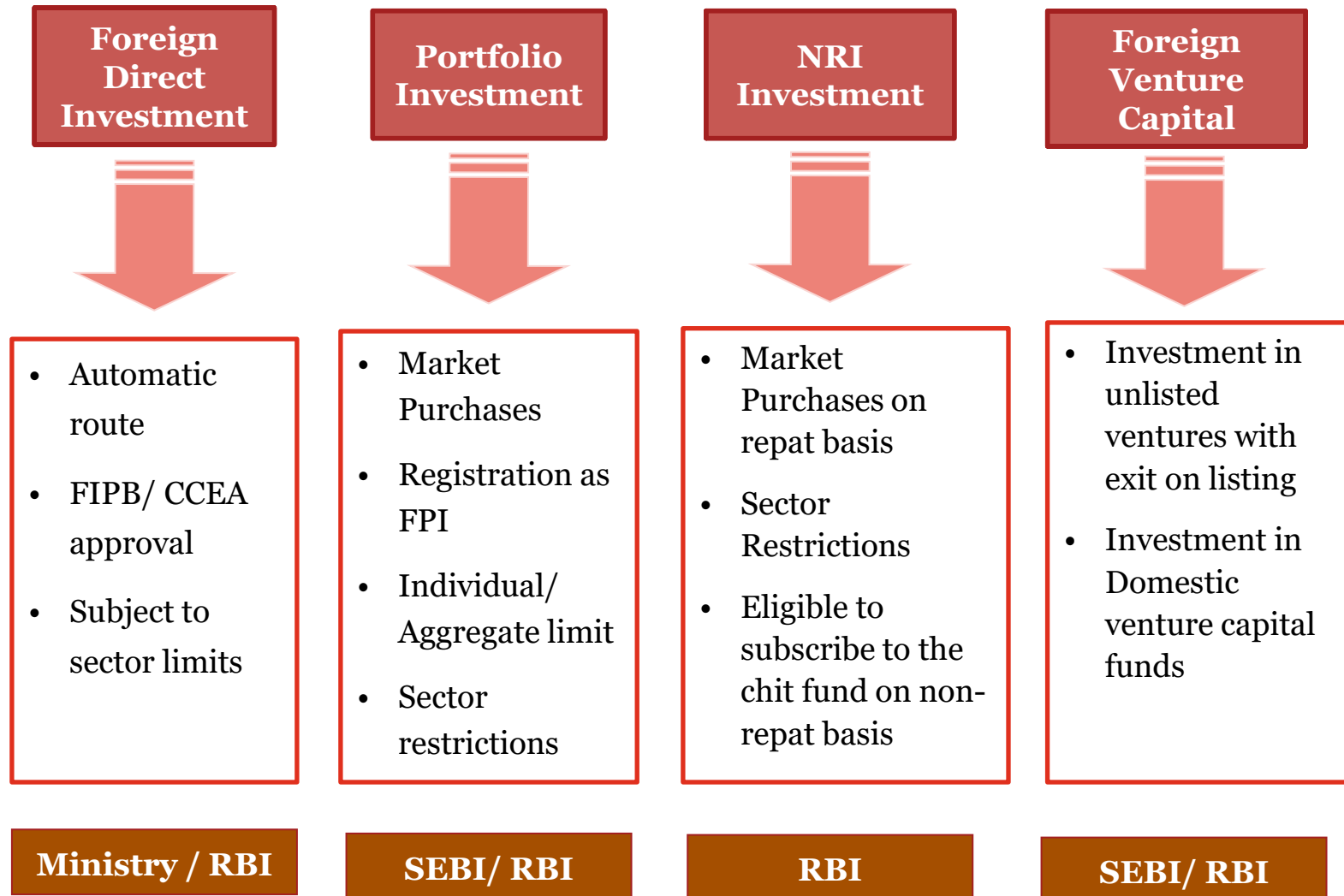


# Foreign Direct Investment

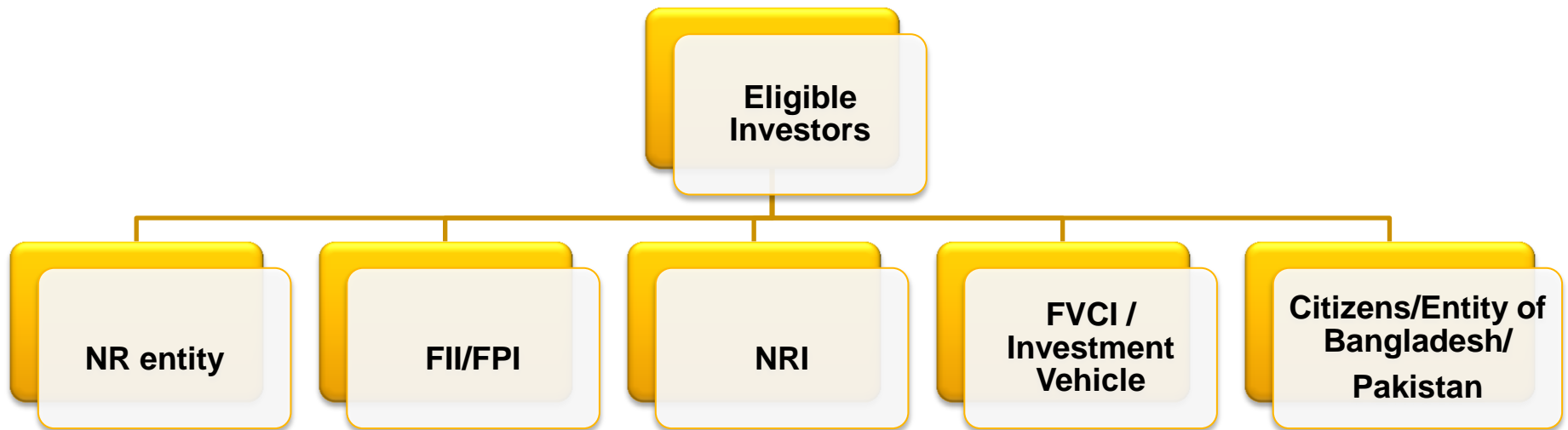
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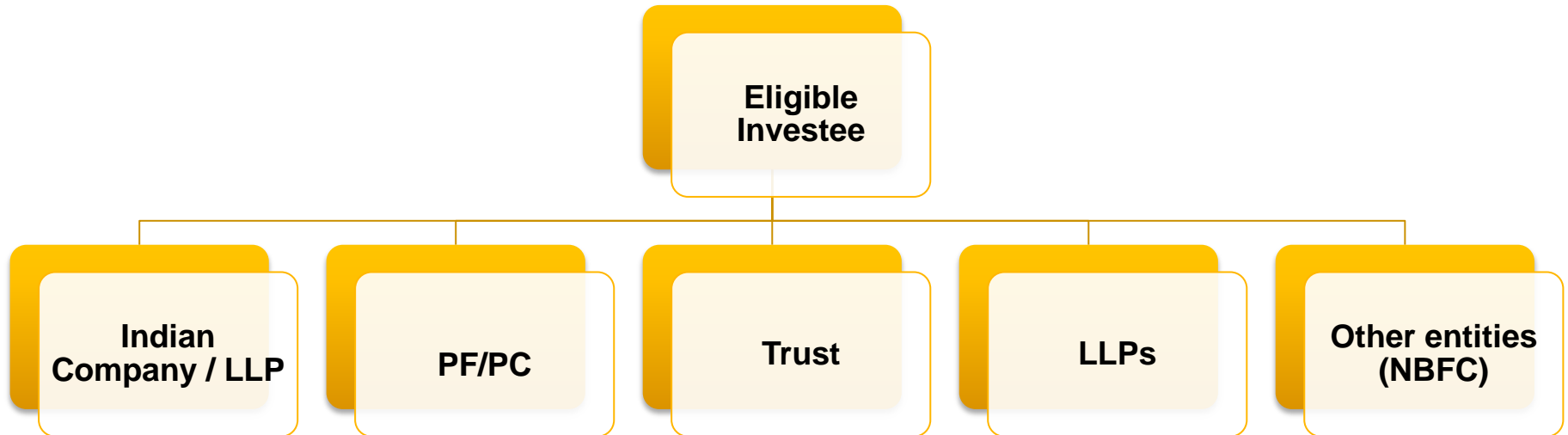
# Schemes



# *Eligible Investors*



# *Eligible Investee*



# FDI Limits

*100% FDI permitted without approvals in most sectors*

## Prohibited Sectors

- Nidhi Companies
- Gambling /Betting & Lottery/Chit funds
- Real Estate (except certain construction development projects)
- Manufacture of cigarettes / cigars / tobacco products
- Trading in TDRs

## Conditionalities in sensitive Sectors

- Telecom, Insurance, Civil Aviation, Retail Trading, Defense, Petroleum refining, Pharma

## Government Sector only

- Atomic Energy, Print Media, Satellites, Multi brand Retail Trading, Banking Public Sector, FM Radio

Sector	FDI Cap
• Private Banking	74%
• Insurance	49%
• FM Radio	49%
• Petroleum refining	49%
• Print Media	26%
• Pvt. Security Agencies	74%
• Pension Sector	49%



# *Types of Instrument*

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**Equity Shares**

**Fully, compulsorily and mandatorily convertible debentures**

**Fully, compulsorily and mandatorily preference shares**

**DRs and FCCBs**

**Share Warrants**

# *Instruments with optionality clause*

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Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to following conditions

- There is a minimum lock-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher.
- The lock-in period is effective from the date of allotment of such shares or convertible debentures;
- After the lock-in period, the non-resident investor exercising option/right is eligible to exit without any assured return

The guiding principle is that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at a fair price computed at the time of exit.

## Valuation requirement

- Fresh issue of shares – at a price which is not less than the value determined
- At face value in case of subscription to MoA
- Transfer of shares -  
NR to R - at a price which is less than the value determined  
R to NR - at a price which is equal to or higher than the value determined.

### Listed Companies

As per SEBI Guidelines  
i.e. Ruling market price

### Unlisted Companies

As per any internationally accepted  
method of valuation method



# *Restriction on Transfer of Shares*

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- Transfer subject to pricing guidelines
- A person resident outside India, not being a non-resident Indian or an overseas corporate body, **may transfer by way of sale or gift** the shares or convertible debentures or warrants held by him or it to any person resident outside India;
- A non-resident Indian may transfer by way of sale or gift, the shares or convertible debentures or warrants held by him or it to another non-resident Indian only.
- A person resident outside India holding the shares or convertible debentures of an Indian company:
  - may transfer the same to a person resident in India by way of gift;
  - may sell the same on a recognized Stock Exchange in India through a registered broker.
- Prior approval of RBI is required for transfer of shares or convertible debentures from person resident outside India to Person resident in India in case the transfer is not as per SEBI Regulations and where FEMA pricing guidelines are not met.

# *Restriction on Transfer of Shares*

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- Prior approval of RBI is required in case of transfer of capital instrument from resident to non resident in case of deferment of payment and where pricing guidelines are not met and by way of Gift
- Prior Government approval is required for any transfer in case the India company is engaged in a sector which requires Government approval
- General permission has been granted for conversion of ECB in convertible foreign currency into Equity shares/fully compulsorily and mandatorily convertible preference shares subject to conditions
- General permission for issue of share/preference against lump sum technical know how fee, royalty due for payment subject to conditions.
- Equity shares can be issued with government approval against import of capital goods/ machinery/ equipment/ preoperative/pre incorporation expenses subject to conditions
- Prior approval of RBI is required for transfer of shares by way of sale or gift by an NRI/ OCI holding securities on a non-repatriable basis to a person resident outside India

# Transfer of Shares

Category	Manner	Prior Approval/No approval	Conditions
NR to NR (other than NRI and OCB)	Sale/gift	No approval	Sector should under automatic route
NRI/ OCI to NRI	Sale/gift	No approval	
NRI / OCI to NR	Sale/Gift	Prior approval	Investment should be on repatriable basis
NR to R	gift	No approval	
NR to R/NR	Market sale	No approval	Only through registered stock broker
NR to R	Sale under private arrangement	No approval	<ol style="list-style-type: none"> <li>1. Pricing guidelines are met</li> <li>2. Within the sectoral caps</li> <li>3. Subject to SEBI guidelines, if applicable</li> </ol>
R to NR	Sale	No approval	Compliance with pricing guidelines / other conditions
R to NR	gift	Prior approval is required	

# *Mode of Payment*

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- The amount of consideration for transfer of capital instruments between a person resident in India and a person resident outside India should be received from abroad or remitted from India, as the case may be, through banking channels in India or paid out from or received in, as the case may be, NRE/ FCNR(B)/ Escrow accounts maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.
- In case an investment is held on a non-repatriation basis the amount of consideration for transfer may be paid out from or received in, as the case may be, NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

# *Escrow Account*

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- Non-Interest Bearing Escrow Accounts in Indian Rupees can be opened and maintained with the AD banks by Residents and / or Non-Residents towards payment of Share Purchase Consideration.
- SEBI Authorized Depository Participants to open and maintain Escrow Account for the Securities.
- The Account can be opened jointly and severally;
- The Securities kept / linked with such Accounts can be linked with the Demat Account with the SEBI Authorized Depository Participants;
- No fund or non fund-based facilities to be permitted against the balances in the account;
- Permitted credits to the Account would relate to foreign inward remittance towards consideration in case of Non-Resident Acquirers or rupee consideration in case of Resident Acquirers acquiring from Non-Resident Shareholders;

# *Escrow Account*

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- Non-Interest Bearing Escrow Accounts in Indian Rupees can be opened and maintained with the AD banks by Residents and / or Non-Residents towards payment of Share Purchase Consideration for a maximum period of 6 months. In case the Escrow account is required to be maintained beyond six months, specific permission from the RBI is required
- SEBI Authorized Depository Participants to open and maintain Escrow Account for the Securities.
- The Account can be opened jointly and severally;
- The Securities kept / linked with such Accounts can be linked with the Demat Account with the SEBI Authorized Depository Participants;
- No fund or non fund-based facilities to be permitted against the balances in the account;
- Permitted credits to the Account would relate to foreign inward remittance towards consideration in case of Non-Resident Acquirers or rupee consideration in case of Resident Acquirers acquiring from Non-Resident Shareholders;

# *Escrow Account*

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- Permitted debits to the Account would relate transfer into the bank account of the beneficiary (in India or overseas) or refund / remittance to the initial remitter in case of failure/non-materialization of the transaction (including balance if any post completion of all formalities);
- The underlying transaction to be compliant with Foreign Exchange Management Act, 1999 (FEMA) / SEBI regulations.
- Balance in the Escrow account, if any, may be repatriated at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the shares), after all the formalities in respect of the said acquisition are completed.
- In cases, where proposed acquisition/ transfer does not materialise, the authorised dealer may allow repatriation/ refund of the entire amount lying to the credit of the Escrow account on being satisfied with the bonafides of such remittances.

# ***Pledge of shares***

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## **For Securing ECB**

Pledge of shares for securing the ECB is permitted, subject to compliance with the conditions prescribed

## **By a nonresident shareholder**

- In favour of a bank in India to secure the credit facilities being extended to Indian company for bona-fide purposes, subject to compliance with the conditions prescribed
- In favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company, subject to compliance with the conditions prescribed
- In favour of a Non-Banking Financial Company registered with the Reserve Bank to secure the credit facilities being extended to such Indian company for bona fide purposes, subject to compliance with the conditions prescribed



# *Share swap / Partly paid shares / Share warrants*

## **Share swap**

Permitted under automatic route subject to valuation and share swap ratio to be determined by the Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country , irrespective of the amount

## **Partly paid up shares**

Permitted under automatic route . Pricing needs to be determined upfront.

## **Share warrants**

Permitted under automatic route. Pricing and the price/ conversion formula needs to be determined upfront.

The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants.

# ***Non cash considerations***

<b>Automatic</b>	<b>Approval</b>
Conversion of ECB	Import of machinery
Technology transfer/ technical knowhow	Import of capital goods by DTA units
Import of capital goods by SEZ units	
Royalty due for payment	
Pre operative / Pre incorporation expenses	
Swap of shares	

# *Reporting Requirement*

## Reporting of Inflow

- Advance reporting with 30 days of receipt along with KYC and FIRC
- Form FCGPR within 30 days of issue of shares
- Annual Return on Foreign Liabilities & Assets by 15<sup>th</sup> July every year

## Reporting of transfer of shares

- Form FCTRS within 60 days of receipt of amount of consideration

## Reporting of Non-Cash

Form ECB-2 within 7 working days from the close of month in FCTRS within 60 days of receipt of amount of consideration

A photograph of a desk setup. On the left, a small green plant in a glass jar sits on a dark desk. A white lamp with a conical shade is lit, casting a warm glow. In the background, a laptop is open, and a pen lies on the desk. The overall scene is a professional and cozy workspace.

# *Thank you*

In the event you need any further information or clarification. Please feel free to contact:

Mr. Manish K Tyagi  
Partner- MHA Legal  
[manish@mhalegal.in](mailto:manish@mhalegal.in)

# *About MHA Legal*

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MHA Legal is a full service firm composed of highly skilled professionals offering expertise in a wide range of transactions and business consulting services. With skilled and experienced members in nearly each and every field of law and taxation, MHA provide outstanding legal solutions in the chosen practice areas with a strong emphasis on ethics and excellence.

Clients benefit from the expertise and experience of the team members holding experience of the large consultancy firm while enjoying the privilege of personal attention and responsiveness of a small firm.

Team members hold specializing in the areas of corporate and commercial laws, Foreign Direct Investment Policy of Government of India, Foreign Exchange Regulations, mergers and acquisitions, Taxation, real estate projects, foreign trade, international transactions, trademarks and patents, and environmental law.

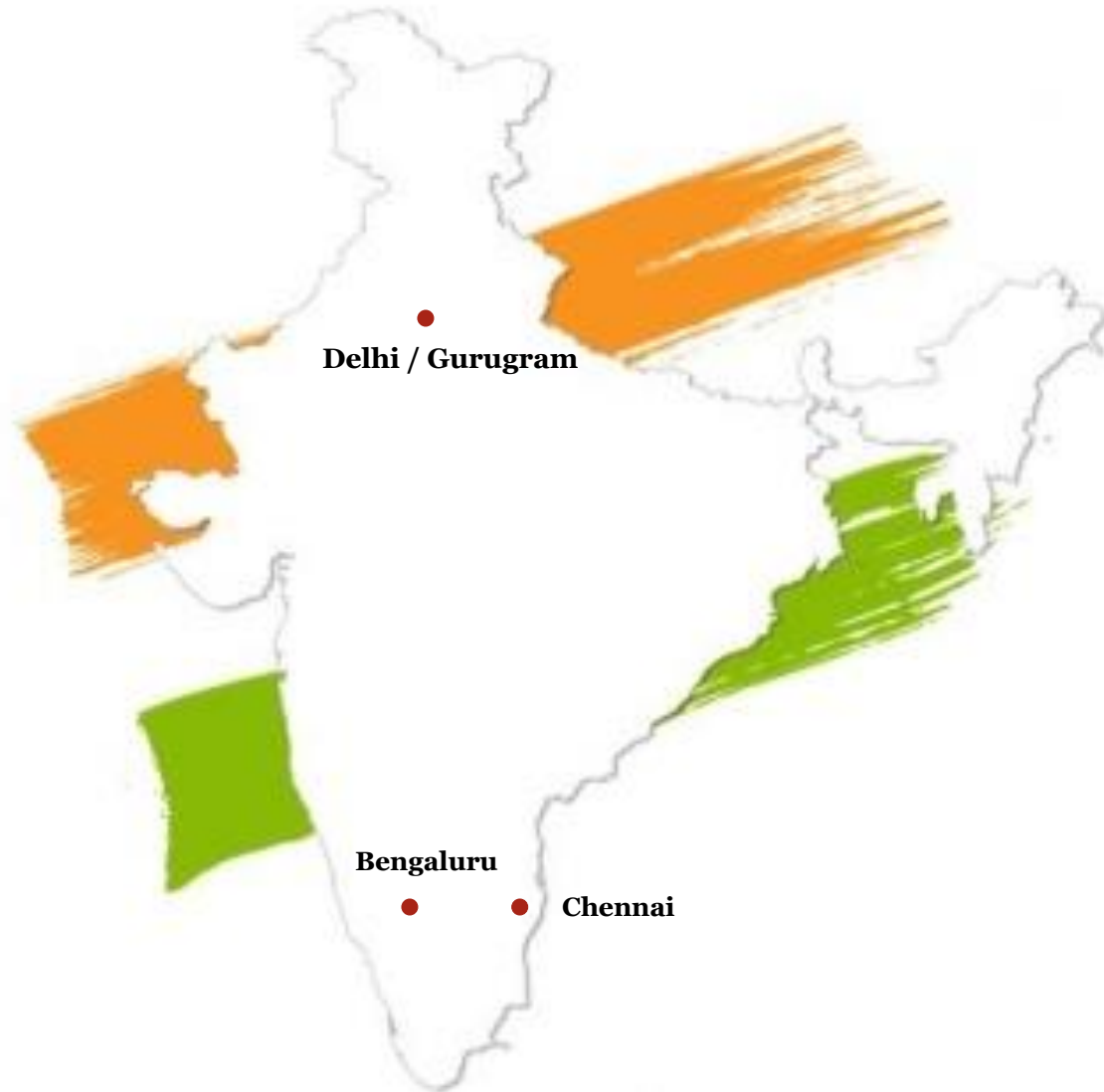
MHA Legal has its offices in New Delhi, Gurugram, Bengaluru, Chennai and a network of correspondents covering all Indian States.

# *How We Can help you*

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- Providing assistance in structuring of overseas investment to achieve business objective in compliance with tax and regulatory requirements.
- Drafting / Vetting Joint Venture Agreement, if required.
- Preparation and filing of documents with the AD bank / RBI for obtaining UIN for Overseas Investment
- Preparation and filing of APR.

# Office Locations



# *Thank you*

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**Mind, Heart, Aspiration =  
Passion, Integrity, Excellence**

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