Workshop On Private Equity

Strictly Private & Confidential

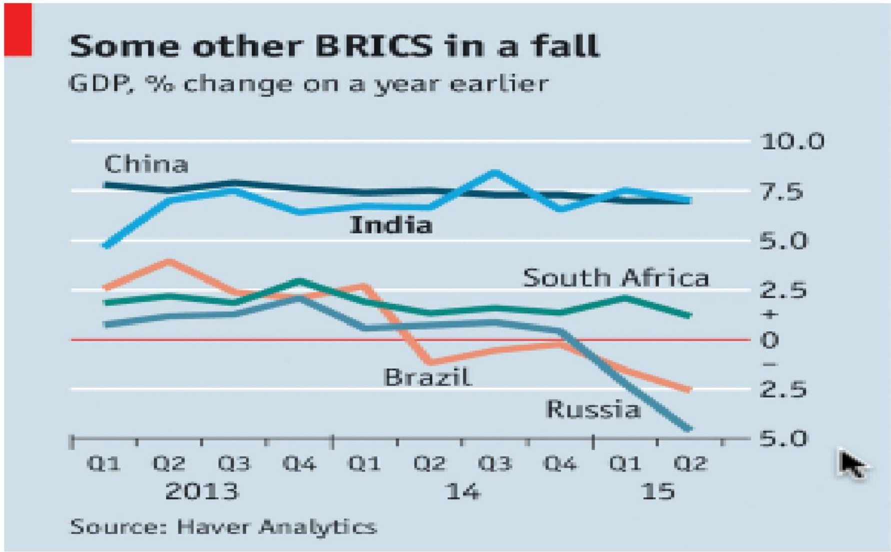
India : Still in business

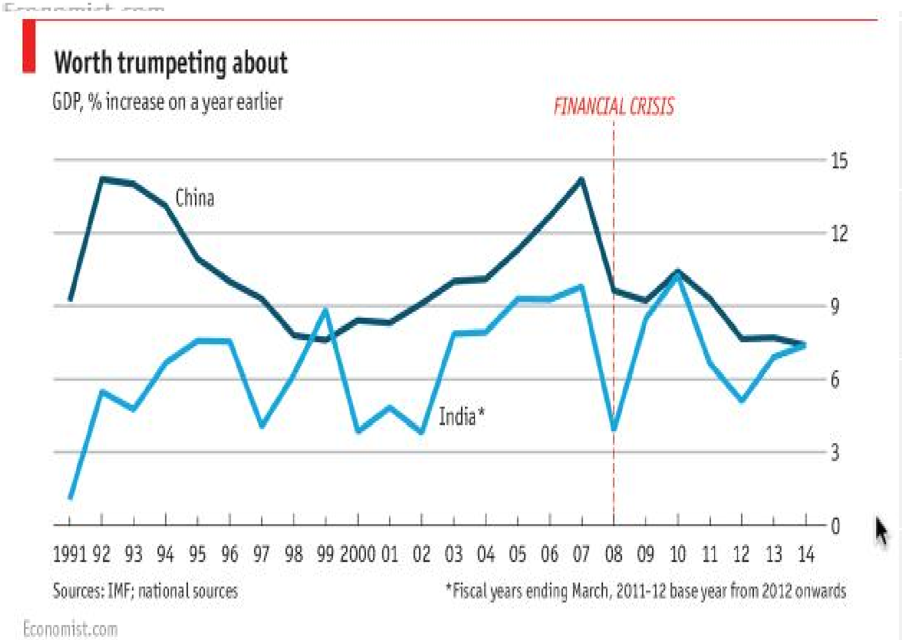
- ❖ Indian economy showed resistance to external shocks, but not to local politics

- ❖ With current account deficit narrowing to 0.2% of GDP, much maneuvering available on fiscal front to provide further growth impetus to economy

- ❖ Economy performed better than its peers in BRICS

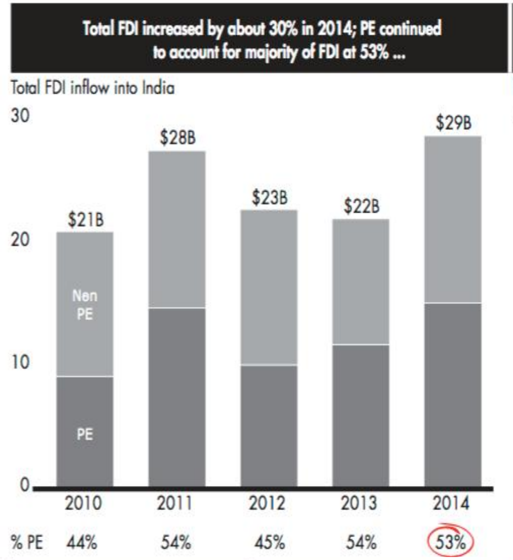
- ❖ Catching up with Dragon soon…

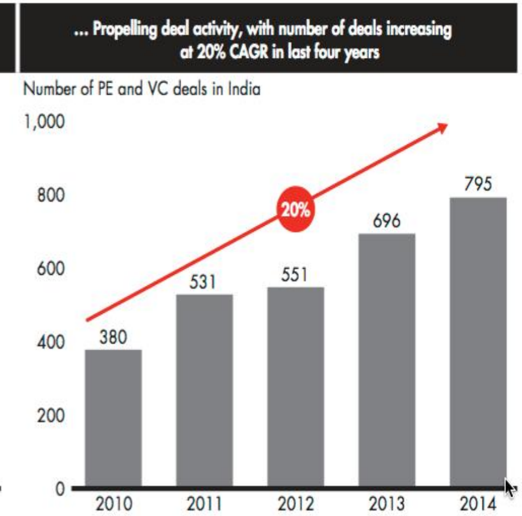




India PE Industry : Key Trends

- Rising optimism with single party majority government in 3o years
- Phenomenal returns in stock markets of 30%+ as compared to 10% in 2013.
- Private equity accounting for 53% of FDI flows
- Deal value increased by 28% to $15.8 bn – inching closer to 2007 peak of $17.1 bn
- Consumer technology sector leads the pack followed by BFSI
- $1 billion series of investment in flipkart represent the largest deal.





	Top deals in 2014	
Company	**Fund(s)**	**Value ($M)**
Flipkart	Naspers, Tiger Global Mgmt, Accel Partners, Morgan Stanley Investment Mgmt, DST Advisors, GIC, Sofina, Iconiq Capital	1,000
Flipkart	Qatar Investment Authority, DST Advisors, Greenoaks Ventures, GIC, Iconiq Capital, Tiger Global, Steadview Capital, T. Rowe Price, Baillie Gifford & Co.	700
Snapdeal.com	BlackRock, Tybourne Capital Mgmt., Temasek, SoftBank, PI Opportunities Fund I, Myriad Asset Mgmt.	636
Unitech Corporate Parks	Brookfield	581
Kotak Mahindra Bank	Canada Pension Plan Investment Board (CPPIB)	376
Shriram Capital	Piramal Enterprises	334
L&T IDPL	CDPQ, CPPIB, State General Reserve Fund (SGRF)	323
Jaiprakash Power Ventures	IDFC Private Equity, PSP Investments	316
Sutherland Global Services	TPG Capital	300
Minacs	CX Partners, others	260
	Total	**4,826**

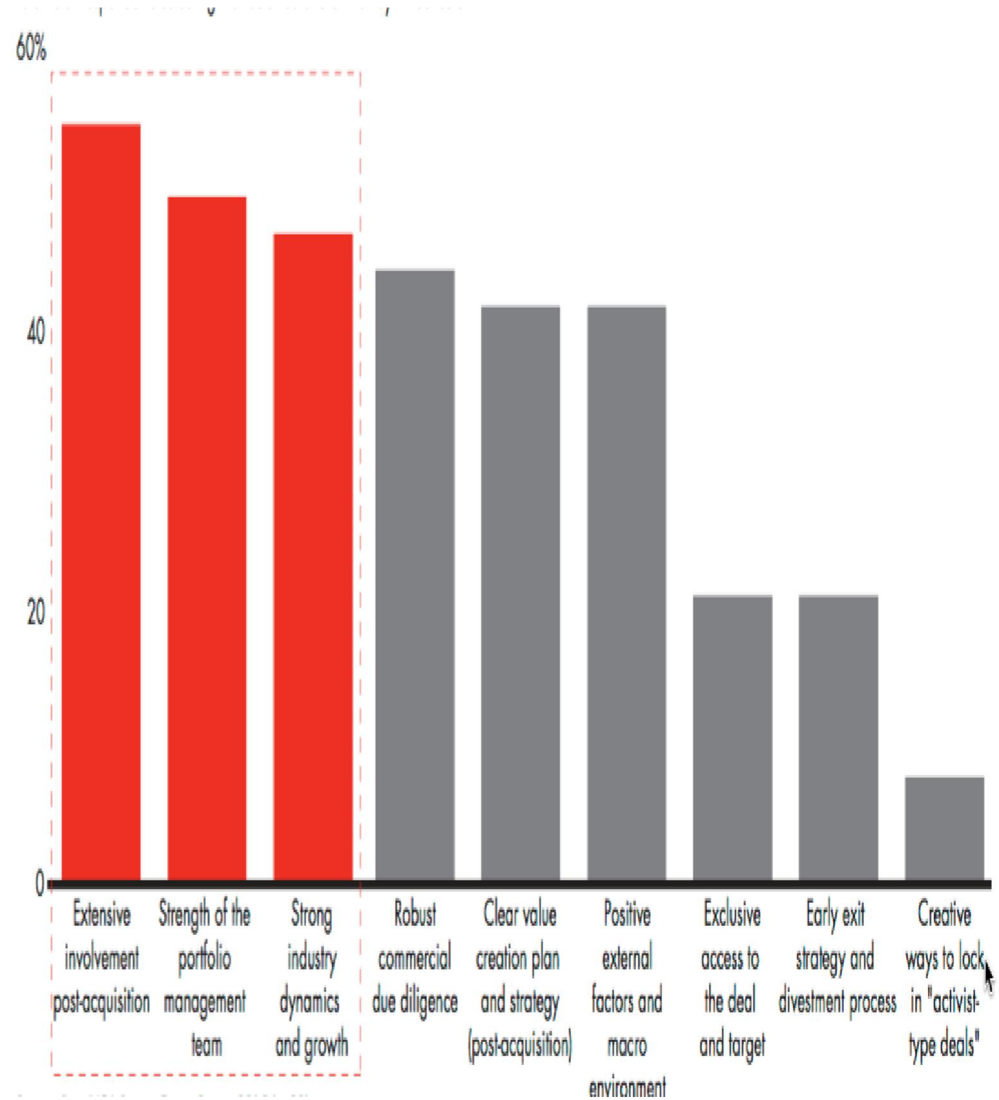
India PE Industry : Key Factors

- In a survey by Bain, nearly 60% of the fund managers consider post deal involvement as the key to successful investment.

- Nearly 80% of the fund managers considered following 2 factors as key challenges to a successful investment :-

  - Unpredictable political environment

  - Mismatch in valuation expectations



India PE Industry : Regulatory regime

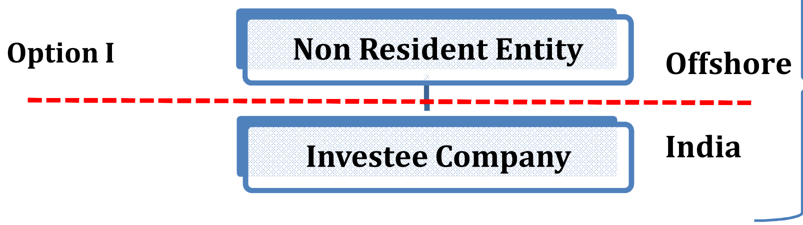
Private Equity in India can take following broad routes based on the legal status and place of incorporation of the investing entity:-

- Foreign Investments which can happen through 3 main routes :-
  - Any Non – Resident entity under the Foreign Direct Investment (FDI) Policy
  - Foreign Venture Capital Investor under the FVCI Regulations of SEBI
  - Foreign Portfolio Investor under the FPI Regulations of SEBI

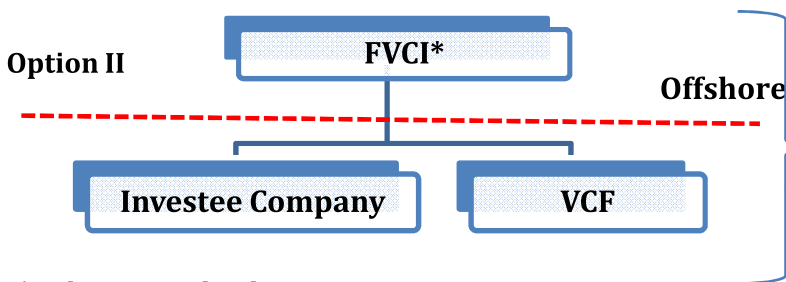
- Domestic Investment through
  - Any Resident entity including Companies, Trusts, AoPs, HUFs, LLPs, etc.
  - Alternative Investment Funds (AIFs) under the SEBI AIF Regulations, 2012

India PE Industry : Various investment routes

OFFSHORE

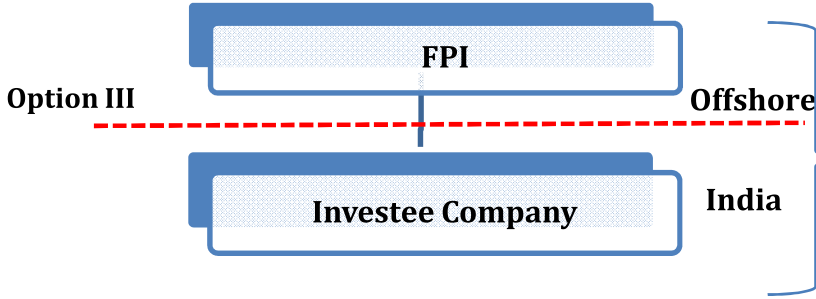


- Any Non-Resident can invest in India subject to FDI Policy
- FDI is subject to various caps, entry conditions such as minimum capitalization, lock in period etc and other applicable sectoral laws.



** To be registered with SEBI*

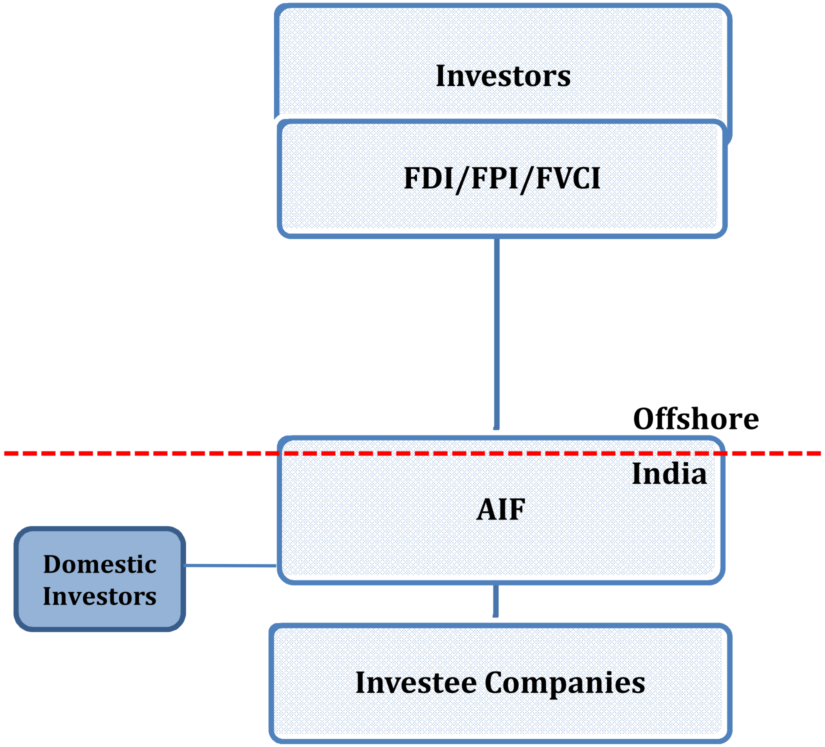
- FVCI is defined as an entity incorporated and established outside India and registered with SEBI under FVCI Regulations, 2000
- Eligibility criteria includes track record, competence etc.
- FVCI can invest in :-
  - Unlisted Companies; at least up to 66.7% of their funds and balance in IPO's of proposed to be listed companies
  - Preferential allotment of equity of listed companies
- Included in the definition of **Qualified Institutional Buyer (QIB)** in ICDR Guidelines
- Can be considered as a **Promote**r' under ICDR Guidelines if deemed to be "i**n control**"



- FPI is defined as a person **not** resident in India but is resident of a country whose securities market regulator is signatory to IOSCO
- **Category III** FPI includes **corporate bodies, trusts, individuals and family offices.**
- Eligible instruments for investment includes equity shares in primary and secondary markets of listed & unlisted companies, Treasury bills & government securities, mutual funds etc
- **Category III** FPI does **not** qualify as QIB
- Investment restriction of 10% of issued capital per company for a Single FPI / investor group and 24% on aggregate basis.
- Can be considered as a Promoter under ICDR Guidelines

India PE Industry : Various investment routes

ONSHORE – AIF Structure



- SEBI notified **AIF Regulations** on **May 21, 2012** to regulate all funds established in India, raising funds from Indian or foreign investors
- Required to obtain a Certificate of Registration from SEBI as a **Category I / II / III AIF**
- **Category I AIF**: Invests in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors which the government or regulators consider as "socially or economically desirable". In other words, **Venture Capital / Social Impact / SME / Infrastructure Funds.**
- **Category II AIF**: Does not fall in Category I or III, and which does not undertake leverage or borrowing other than to meet day-to-day operations and other permitted uses
- **Category III AIF**: Employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. In other words, all types of Hedge Funds.
- Investment is permissible in securities of companies incorporated outside India (subject to conditions of RBI / SEBI)
- The AIF may launch multiple schemes. No separate registration is needed for each scheme and a scheme can be launched by filing a placement memorandum with SEBI 30 days prior to launch of the Scheme.

AIF : Route to Private Equity

What is an AIF	**A *privately pooled investment vehicle* incorporated in India** in the form of **a Trust / Company / LLP** which collects funds from ***Indian or Foreign*** investors, in accordance with ***a defined investment policy***		
Categories of AIF	Category I AIFs which invests in start ups or early stage ventures or social ventures or SMEs or Infrasructure or other prefered sectors as defined and include VCFs (i.e a fund which invest primarily in unlisted securities of start ups involved in new products, technolgy etc)	Category II AIFs which doesn't fall in Category I or Category III and doesn't undertake leverage	Category III AIFs which employs diverse trading strategies and may deploy leverage for investments.
Tenor	Close ended with minimum of 3 yrs. Extension of tenor up to 2 yrs subject to approval of $2/3^{rd}$ of unit holders	Close ended with minimum of 3 yrs. Extension of tenor up to 2 yrs subject to approval of $2/3^{rd}$ of unit holders	Both open ended or close ended
Investment Restrictions	• For VCF at least $2/3^{rd}$ of investible funds shall be invested in unlisted equity or companies listed / proposed to be listed on SME Exchange and not more than $1/3^{rd}$ in preferential allotment / QIP of a listed Company • For SME Funds atleast $3/4^{th}$ of investible funds in unlisted securities which are SMEs • For Infrastructure Funds atleast $3/4^{th}$ of investible funds should be invested in unlisted securities of Companies / SPVs engaged developing or holding infrastructure projects. ✓ Notwithstanding above Infrafunds may also invest in debt instruments of SPVs or Companies	• Shall invest primarily in unlisted companies • May invest in Companies listed on SME Exchange pursuant to due diligence and shall disclose investment within 2 days • May subscribe to unsubscribed portion of a public issue pursuant to agreement with Merchant Banker • May invest in units of Category I or Category II AIFs	• May invest in securities of listed or unlisted Companies • May invest in units of Category I or Category II AIFs • May engage in leverage subject to maximum limit as prescribed by SEBI

AIF : Route to Private Equity

Other Investment Restrictions	• Categories I and II shall invest not more than 25% of investible funds in one investee company • Category III AIFs shall not invest more than 10% of the investible funds in one investee company • Un-invested portion may be invested in liquid mutual funds, bank deposits etc
Investment in AIF	• An AIF may raise funds from any domestic investor, foreign investor or NRI by way of issue of units • Each scheme of AIF shall have corpus of at least INR 200 mn • Minimum Investment value of INR 10 mn from any single investor • AIF may lunch schemes subject to filing of placement memorandum with SEBI • Not more than 1000 investors per scheme of AIF
Sponsor Contribution	• In case of Category I & II AIF, Sponsor shall invest not less than 2.5% of the corpus or INR 50 mn whichever is lower. • In case of Category III AIF, Sponsor shall invest not less than 5% of the corpus or INR 100 mn whichever is lower
Key Eligibility Criteria	• In case of an AIF incorporated as Trust, a duly registered trust deed permitting Trust to carry activity of an AIF • Applicant, Sponsor and Manager to befit and proper person as per SEBI (Intermediaries) Regulations, which includes – integrity, reputation, absence of convictions and restraint orders and competence including financial solvency. • At least one key personnel having not less than 5 years of experience in advising or managing pools of capital
Winding Up	• AIF set up as a trust shall be wound up :- ✓ When tenor of all schemes is over ✓ If it is the opinion of the trustees that IF be wound up in the interests of the investors or ✓ If 75% of the investors by value pass a resolution for winding up.

Public Vs Private Equity

Particulars	Private Equity	Public Equity
Pricing Restrictions	Nil in case of domestic investment. In case of FDI at fair market value or higher.	Pricing of equity shares shall be higher of :- i. Average of weekly high & low of closing prices during 26 weeks preceding the relevant date ii. Average of weekly high & low of closing prices during 2 weeks preceding the relevant date
Disclosure Requirements	To file relevant returns with RoC as per the Companies Act 2013	In addition to filing returns, following disclosures need to be made :- i. If 5% or less equity shares purchased from promoters, disclosure to stock exchanges under Insider trading regulations. ii. If 5% or more shares are purchased from any seller, disclosure under SAST Guidelines.
Transaction Structuring	Presence of small number of shareholders (usually promoters) which allows drafting of Shareholders' Agreement (SA) with all shareholders as consenting parties to the SA. Other relevant changes in the Articles of the Investee Company can also be undertaken to provide special rights to the financial/ minority investors	Presence of large number of shareholders, including promoters and general public. Scope of structuring the transaction is limited to inter-se selling shareholders (usually promoters) and incoming investor. However this may not be binding on the Investee Company and other shareholders and is subject to class action suits.

Public Vs Private Equity

Particulars	Private Equity	Public Equity
Minority Protection Rights	Minority protection rights are essential part of any private equity deal construct which goes beyond the general rights available to minority shareholders under Companies Act. This includes i. Information Rights ii. Inspection Rights iii. Board Rights – Right to nominate Director on the Board and Quorum to include Director nominated by Minority shareholders (generally financial investor) iv. Affirmative matters which require consent from minority shareholder viz Key hires (CEO / CFO) v. Right of First Refusal / Tag Along Right The above rights are generally not available under the Companies Act for minority shareholders. However can be obtained by Financial Investors in a private equity transaction.	General Rights of the shareholder under Companies Act in a public Company is influenced by the level of his shareholding. Various categories of shareholding with progressive influence on the conduct of the Company's affairs is as below :- i. Up to 10% - Shareholders with 5% or more holding can propose resolution at Company AGM ii. From 10% to 25% - Right to appeal against variation of rights. iii. Above 25% to 51% - Right to block passing of special resolution. iv. Above 51% - Ability to control. Some of the key rights available to reasonably influence a public company comes at 25%, which is the trigger point for SAST Guidelines for open offer. Holding above 51% will require investor to operationally run the Company with statutory obligations on the Directors
Strategic & Operational Flexibility	Few Shareholders with aligned interest, quick decision making and to change the key personnel if required.	Large and diversified shareholding with slow decision making and difficult to change key personnel.

THANK YOU