



# Comprehensive Course on Foreign Exchange Management, 1999

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# Overseas Direct Investment



# Summary of Outward Foreign Direct Investment (OFDI)

			(amount in USD million)	
Month	Equity	Loan	Guarantee Issued	Total Financial Commitment
	1	2	3	1+2+3
April 2020	230.81	586.42	201.21	1,018.44
May 2020	400.18	212.07	679.60	1,291.85
Month	Equity	Loan	Guarantee Issued	Total Financial Commitment
	1	2	3	1+2+3
May 2019	510.80	546.78	4,310.54	5,368.12
May 2020	400.18	212.07	679.60	1,291.85

# Major relaxations in overseas investment policies

March 2012	Permission for creation of charge on immovable/movable property and other financial assets under approval route.
Sept 2012	Investment in Pakistan under approval route.
Sept 2013	Corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries under approval route.
May 2014	Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 permitted to do overseas investment.
Dec 2014	Alternative Investment Fund (AIF), registered with Securities and Exchange Board of India (SEBI), to invest overseas permitted to make overseas investment.
Jan 2015	Review of Overseas Direct Investments by proprietorship concern/unregistered partnership firm in India.
April 2016	Rationalisation in reporting of overseas investment.

# The Governing Regulation



# Governing Regulation

Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide Notification No. FEMA.120/RB-2004 dated July 7, 2004

- Regulation 1 to Regulation 4
- Regulation 5 to Reg. 18 - Part 1 - Direct Investment outside India
- Regulation 19 and 20 - Part II Investments abroad by Individuals in India
- Regulation 21 and 22- Part III Investments in Foreign Securities other than by way of Direct Investment
- Regulations 23 to Regulation 26

**Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad updated as on Sept 18, 2019**

- Section A – General
- Section B - Direct Investment (or financial commitment) outside India
- SECTION C - Other investments in foreign securities

# Permission

- In terms of Regulation 6 of the [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#), as amended from time to time, an Indian Party has been permitted to make investment / undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank from time to time.
- With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

# Joint Venture || WOS

## Joint Venture

- Means a foreign entity
- Registered or incorporated in accordance with the laws and regulations of host country
- In which Indian Party makes direct investment

## Wholly Owned Subsidiaries

- Means a foreign entity
- registered or incorporated in accordance with the laws and regulations of host country
- Whose entire capital is held by Indian Party.



# Joint Venture || WOS

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## Wholly Owned Subsidiaries

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- registered or incorporated in accordance with the laws and regulations of host country
- **Whose entire capital is held by Indian Party.**

Who can  
Invest

How much  
can be  
invested

In what  
manner can it  
be invested

What funds  
can be used

# Direct Investment outside India

Route of  
Investment

Net worth and  
Financial  
commitment

Guarantee by  
Indian  
Company

Obligations of  
Indian Party

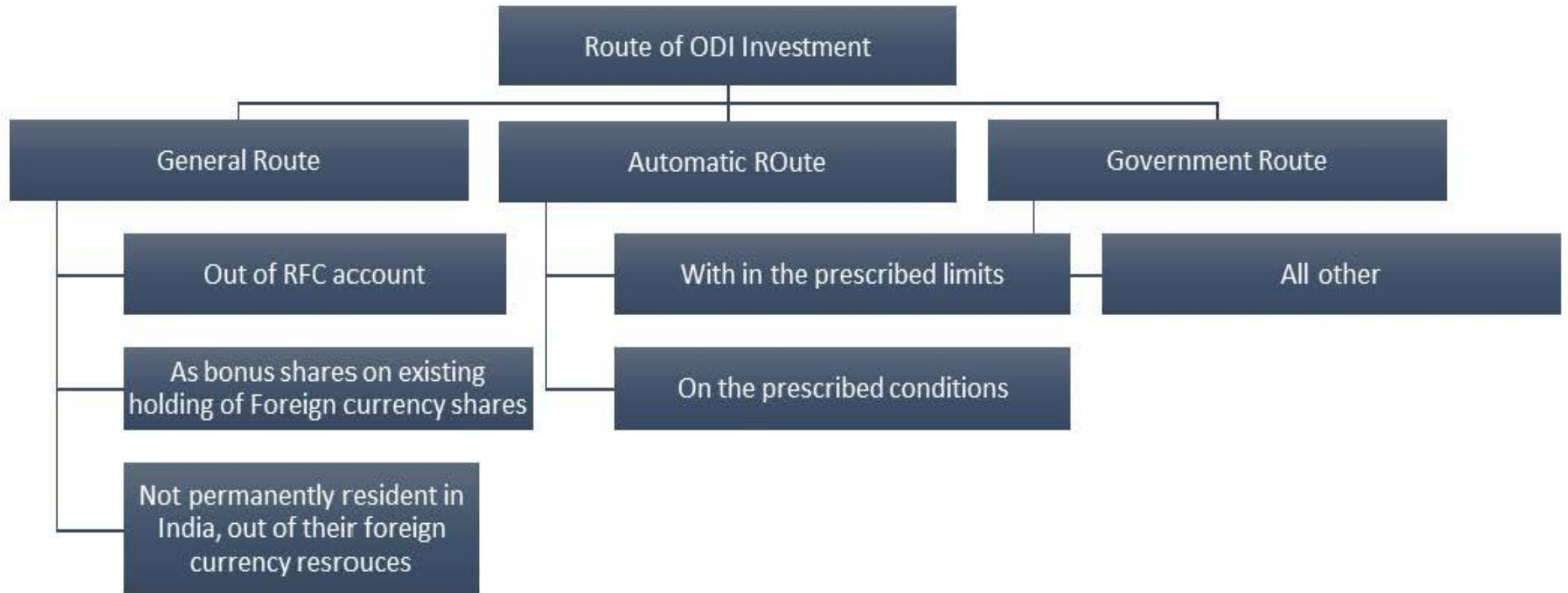
Method of  
Funding

Restructuring  
of the balance  
sheet

# Routes



# Route of ODI Investment



# General permission

- has been granted to persons residents in India for purchase / acquisition of securities in the following manner:
  - out of the funds held in RFC account;
  - as bonus shares on existing holding of foreign currency shares; and
  - when not permanently resident in India, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

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- out of the funds held in RFC account;
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- when not **permanently resident in India**, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

# Automatic Route

- An Indian party can make investment/undertake financial commitment (FC) in overseas JVs/WOSs, as per the ceiling prescribed by the RBI from time to time. (*Regulation 6 of the Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.*)
- Under the automatic route, an Indian Party does not require any prior approval from the RBI for making overseas direct investments (ODIs) in a JV/WOS abroad. The Indian Party should approach an Authorised Dealer Category - I bank with an application in Form ODI and the prescribed enclosures/documents for effecting the remittances towards such investments.
- *Prior approval of RBI if FC exceeds USD 1 (one) billion:* With effect from July 03, 2014, any FC exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the RBI even when the total FC of the Indian Party is within the eligible limit under the automatic route (ie, within 400% of the net worth as per the last audited balance sheet).



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- Under the automatic route, an Indian Party does not require any prior approval from the RBI for making overseas direct investments (ODIs) in a JV/WOS abroad. The Indian Party should approach an Authorised Dealer Category - I bank with an application in Form ODI and the prescribed enclosures/documents for effecting the remittances towards such investments.
- **Exception**
- *Prior approval of RBI if FC exceeds USD 1 (one) billion: With effect from July 03, 2014, any FC exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the RBI even when the total FC of the Indian Party is within the eligible limit under the automatic route (ie, within 400% of the net worth as per the last audited balance sheet).*

# Approval Route

Any investment over and above prescribed limit can be made under the approval route in which an application to RBI is required to be submitted.

# Approval Route

## Application

- The applicant should approach their designated Authorized Dealer (AD) with the proposal which shall be submitted to Reserve Bank after due scrutiny and with the specific recommendations of the designated AD bank along with supporting documents (as mentioned below) to the following address:

The Chief General Manager,  
Reserve Bank of India,  
Foreign Exchange Department,  
Overseas Investment Division,  
Amar Building, 5th Floor,  
Sir P. M. Road, Fort,  
Mumbai 400001.

# Approval Route

## Documents

Section D and Section E of Form ODI - Part I by the designated Authorized Dealer:

a) A letter from the designated AD of the IP in a sealed cover mentioning the following details:

- Transaction number generated by the OID application.
- Brief details of the Indian entity.
- Brief details of the overseas entity.
- Background of the proposal, if any.
- Brief details of the transaction.
- Reason/s for seeking approval mentioning the extant FEMA provisions.
- Observations of the designated AD bank with respect to the following:
  - Prima facie viability of the JV/ WOS outside India;
  - Contribution to external trade and other benefits which will accrue to India through such investment;
  - Financial position and business track record of the IP and the foreign entity;
  - Expertise and experience of the IP in the same or related line of activity of the JV/ WOS outside India.
- Recommendations of the designated AD bank.

b) A letter from the IP addressed to the designated AD bank.

# Approval Route

## Documents

- c) Board resolution for the proposed transaction/s.
- d) Diagrammatic representation of the organisational structure indicating all the subsidiaries of the IP horizontally and vertically with their stake (direct & indirect) and status (whether operating company or SPV).
- e) Incorporation certificate and the valuation certificate for the overseas entity (if applicable).
- f) Other relevant documents properly numbered, indexed and flagged.

# Approval Route

## Process

- Online Reporting of Form ODI .
- Online OID application has been revamped to further reduce the traditional paper based filing system, to provide the AD banks fast and easy accessibility to data for reference purpose, to improve the coverage and ensure proper monitoring of the flows in a dynamic environment.
- Accordingly, modules in online OID application have been added, wherein all the ODI forms as mentioned in this circular may be reported.
- A concept of AD Maker, AD Checker and AD Authorizer has now been introduced in the online application process. The AD Maker shall initiate the transaction and submit to the AD Checker for verification of the transaction before submission to Reserve Bank. The AD Authorizer shall have the authority to ratify these ODI transaction which are pending due to various reasons, such as, delay arising on account of seeking further clarification from the IP / RI, technical difficulty in reporting the transaction in the online OID application and on account of delay in completing the due diligence process.

- The AD bank may identify an official in the middle management level who may be assigned the responsibility of the AD Authorizer. The Authorizer shall be entrusted with the following responsibilities: (i) Examining the genuineness of the reason/s behind late submission of the ODI Forms. (ii) Ratifying those online transaction which are reported with a delay owing to operational difficulties after recording the facts in the online OID application under the Remarks column.
- The Centralized Unit / Nodal Office of the AD bank should ensure online reporting of Overseas Investments in the application hosted on the website <https://oid.rbi.org.in> 18. The AD Maker, AD Checker and AD Authoriser identified by the AD Bank may obtain a user-id for accessing the online OID application by submitting a request in the prescribed format (Annex IV).

A modern, minimalist desk setup with a laptop, smartphone, and headphones. The desk is light-colored and features a laptop, a smartphone, and a pair of headphones. The background is bright and out of focus, suggesting a clean, professional workspace.

## Investment outside India



# Direct investment outside India

Regulation 2(e) of the ODI Regulations

## ‘Direct investment outside India’ means:

"investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include portfolio investment"

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Market  
purchase

Private  
Placement

Through  
stock  
exchange

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❖ *Portfolio investment not defined.*

❖ only listed Indian companies are permitted to invest up to 50% of their net worth as on the date of the last audited balance sheet in (i) shares and (ii) bonds/fixed income securities, rated not below investment grade by accredited/registered credit rating agencies, issued by listed overseas companies

# Portfolio Investment

**Annex III**

<b>Form for monthly reporting of Portfolio Investment and Overseas Investment by Mutual Fund</b>														
(As per Regulation 6B and 6C of FEMA Notification No 120/RB-2004 dated July 07, 2004 as amended from time to time)														
AD bank name and code -														
Name and address of the AD bank branch -														
Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec		
Year														
<b>A. Overseas Investments by Listed Indian Companies</b>														
<b>(Figures in USD million)</b>														
													No. of Investors	Amount
I.	Net Amount of Investment held abroad (Opening Balance)													
II.	Investments made during the month (Outflow)													
III.	Disinvestments made during the month (Inflow)													
IV.	Net Amount of Investments held abroad (Closing Balance)													
<b>B. Overseas Investment by Mutual Funds</b>														
Mutual Fund Name *														
Mutual Fund Location *														
<b>Investment Details</b>														
<b>(Figures in USD million)</b>														
			ADR/GDR	Debt Instruments	Equity	ETF (Securities)	Mutual Funds	Total						
I.	Net Amount of Investment held abroad (Opening Balance)													
II.	Investments made during the month (Outflow)													
III.	Disinvestments made during the month													

# Prohibition on Investment

- Indian parties are prohibited to make investment in a foreign entity engaged
  - in real estate [meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges]
  - or banking business,  
without the prior approval of the RBI.
  - Financial Services subjected to conditions
- Vide a clarification issued by the RBI in April 2013, an overseas entity, having direct or indirect equity participation by an Indian party, shall not offer financial products linked to Indian Rupee (eg, non-deliverable trades involving foreign currency, rupee exchange rates and stock indices linked to the Indian market) without the specific approval of the RBI. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.

A modern, minimalist desk setup. In the foreground, a silver laptop is open. To its left, a white smartphone lies flat. Behind the laptop, a stack of several white books or documents is visible. In the background, another laptop is open, and a pair of black headphones rests on it. A small potted plant with green leaves is partially visible in the upper right. The desk is light-colored, and the overall scene is brightly lit, suggesting a clean, professional workspace.

## Who can make investment



# Who can make investment

Who can make  
Investment

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graph TD; A[Who can make Investment] --- B[Indian Party]; A --- C[Trust/society]; A --- D[Resident]
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Indian Party

Trust/society

Resident

# Indian Party

## Regulation 2(k) of ODI Regulations

- "Indian Party" means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank:
- Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"

# Eligible entities

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- Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"
- ❖ In case of investment in overseas JV/WOS abroad by a registered partnership firm, where the entire funding for such investment is done by the firm, it will be in order for individual partners to hold shares for and on behalf of the firm in the overseas JV/WOS if the host country regulations or operational requirements warrant such holdings.

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- Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"
- ❖ W.e.f May 07, 2014, LLP is allowed to make overseas investment. LLP means a body corporate having perpetual succession duly formed and incorporated under the Limited Liability Partnership Act, 2008 (No.6 of 2009).

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Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"

- With effect from August 05, 2013 vide Notification No. 263, resident individuals can make investment up to the limit specified in the liberalised remittance scheme.

# Indian Party

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- **Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"**



# Resident Individuals

With effect from August 05, 2013 vide Notification No. 263

- Resident individuals can make investment up to the limit specified in the liberalised remittance scheme. General permission has been granted to persons (individual) resident in India for purchase/acquisition of securities as under:
  - a) Out of funds held in the RFC account;
  - b) As bonus shares on existing holding of foreign currency shares;
  - c) When not permanently resident in India, from the foreign currency resources outside India.
- General permission is also available to sell the shares so purchased or acquired.

# Direct investment by Trust

- Trust can also make direct investment outside India. Trust means a Trust registered under the Indian Trust Act, 1882;
- Eligibility Criteria for Trust
  - ✓ i. The Trust should be registered under the Indian Trust Act, 1882;
  - ✓ ii. The Trust deed permits the proposed investment overseas;
  - ✓ iii. The proposed investment should be approved by the trustee/s;
  - ✓ iv. The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bona fide activity;
  - ✓ v. The Trust has been in existence at least for a period of three years;
  - ✓ vi. The Trust has not come under the adverse notice of any Regulatory/Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

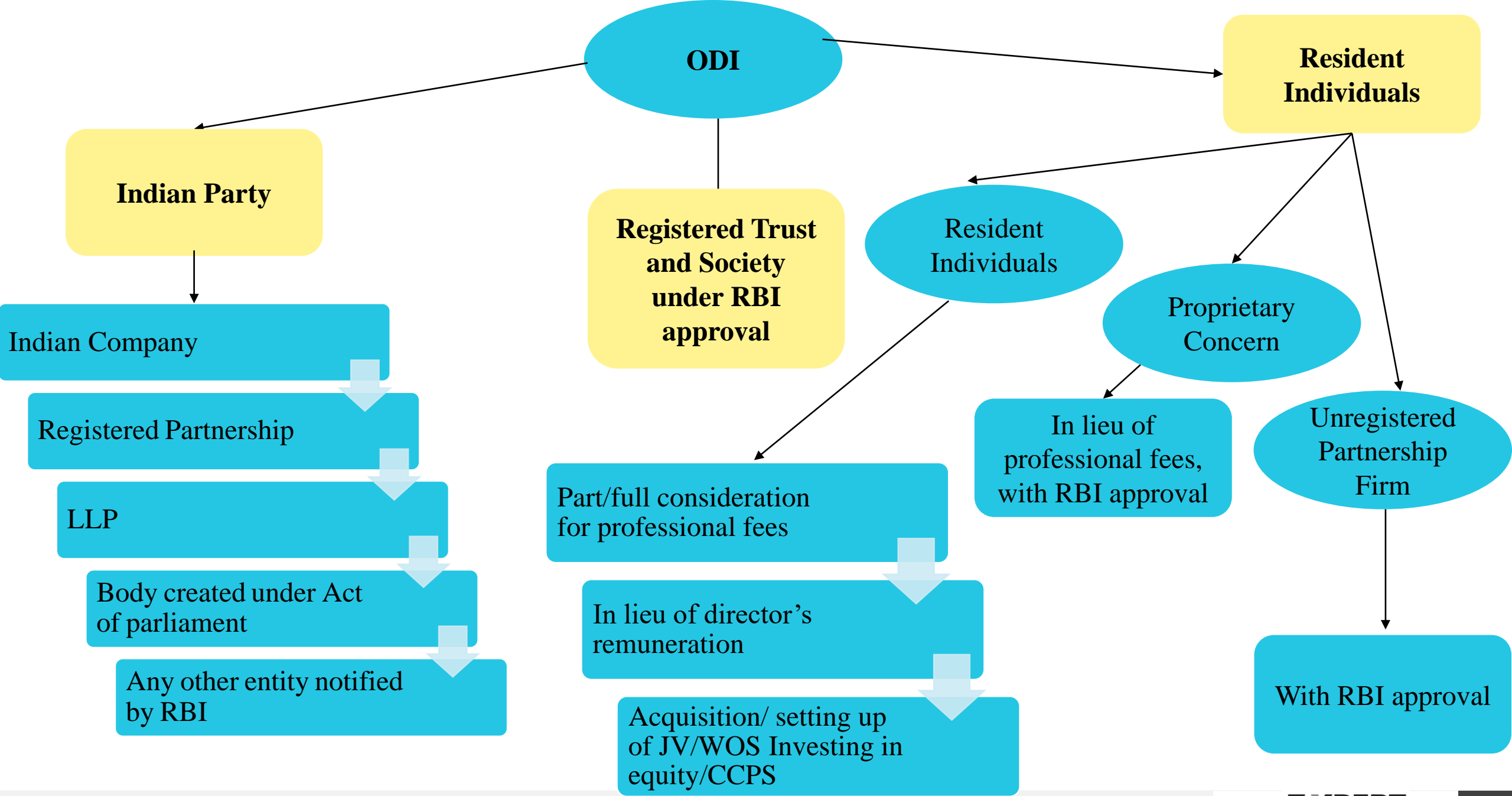
# Direct Investment by Society

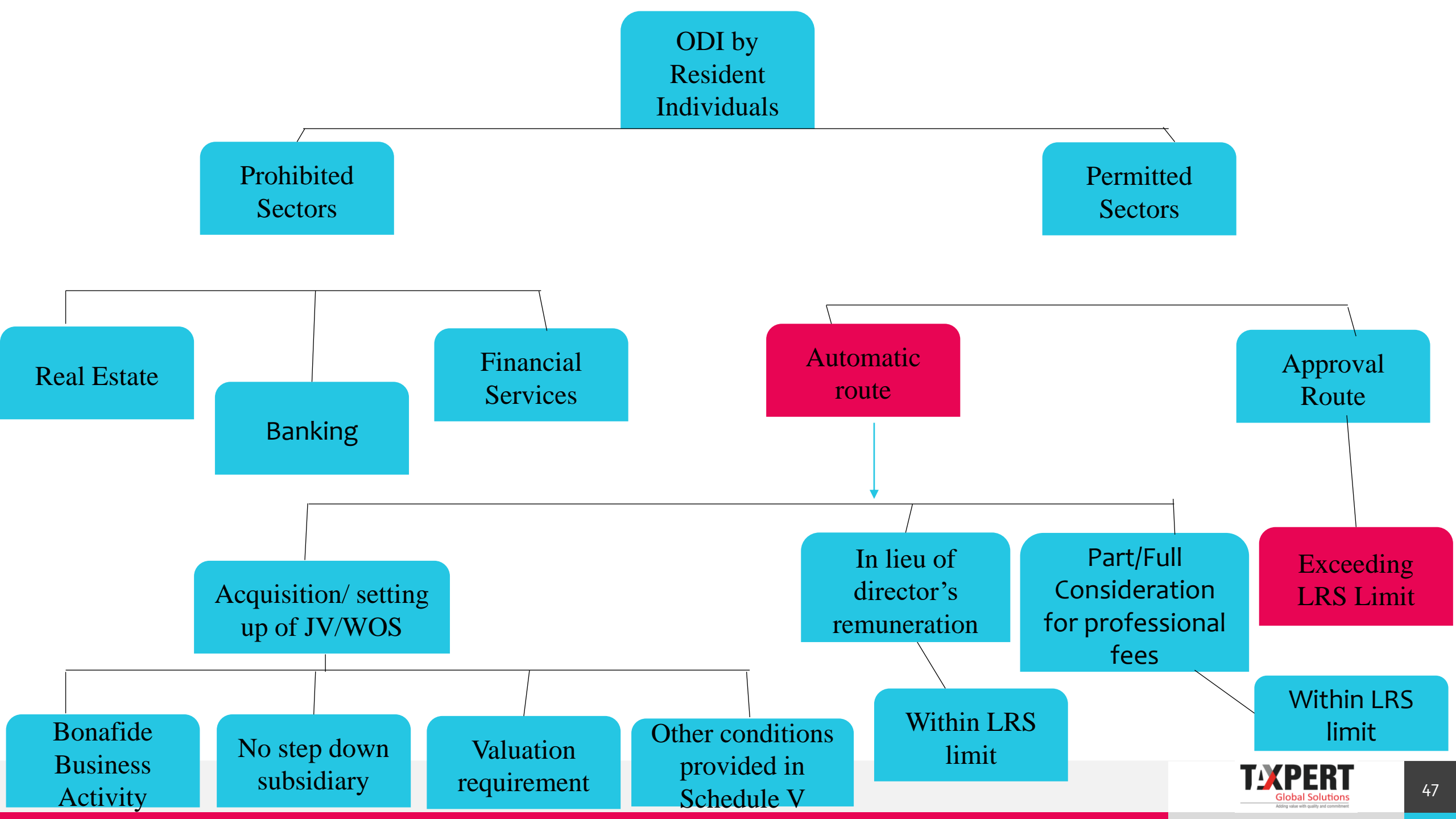
- Society can also make direct investment outside India. ‘Society’ means a society registered under the Societies Registration Act, 1860. Eligibility Criteria for Society
  - ✓ i. The Society should be registered under the Societies Registration Act, 1860.
  - ✓ ii. The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body/council or a managing/executive committee.
  - ✓ iii. The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bona fide activity;
  - ✓ iv. The Society has been in existence at least for a period of three years;
  - ✓ v. The Society has not come under the adverse notice of any Regulatory/Enforcement agency like the Directorate of Enforcement, CBI, etc,
  - ✓ vi. special license/permission has been obtained by the applicant in case the activities require special license/permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

- Effective from November 21, 2014 vide A.P.(DIR Series) Circular No.48 dated December 09, 2014 Domestic VCFs/Alternative Investment Funds registered with SEBI may invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million.
- *a new reporting format has also been introduced for Venture Capital Fund (VCF) / Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds*

ODI

Indian  
Party





**ODI by Resident Individuals**

**Prohibited Sectors**

**Permitted Sectors**

**Real Estate**

**Banking**

**Financial Services**

**Automatic route**

**Approval Route**

**Acquisition/ setting up of JV/WOS**

**In lieu of director's remuneration**

**Part/Full Consideration for professional fees**

**Exceeding LRS Limit**

**Bonafide Business Activity**

**No step down subsidiary**

**Valuation requirement**

**Other conditions provided in Schedule V**

**Within LRS limit**

**Within LRS limit**



**How much can be  
invested?**

**Financial Commitment**



# Limit of Investment

The limit of investment prescribed by the RBI is as follows:

- **The total financial commitment of the Indian party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed 400% of the net worth of the Indian Party as on the date of the last audited balance sheet;**
- *400% of the net worth:* An Indian party can make investment within the limit of 400% of the net worth of the company as on the date of the last audited balance sheet.
- *As on the date of last audited balance sheet:* The total FC of the Indian party in JVs/WOSs shall not exceed 400% of the net worth of the Indian Party as on the date of the last audited balance sheet.
- *Balances held in EEFC Account:* In respect of balances held in EEFC account of the Indian Party the limits of FC vis-à-vis the net worth does not apply.
- *Proceeds of ADR / GDR:* Proceeds of foreign currency funds raised through ADR / GDR issues the limits of FC vis-à-vis the net worth does not apply.

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# Limit of Investment

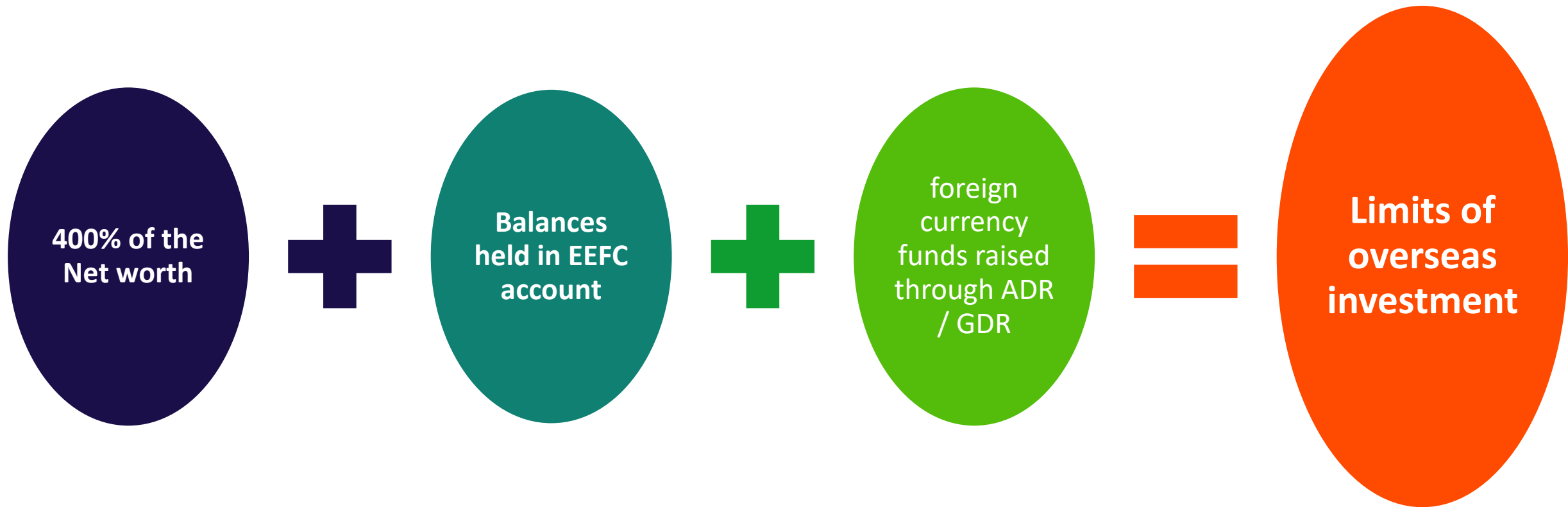
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- **Proceeds of ADR / GDR: Proceeds of foreign currency funds raised through ADR / GDR issues the limits of FC vis-à-vis the net worth does not apply.**



- *400% of net worth is an aggregate limit:* The limit of 400% of net worth for Financial Commitment is the aggregate FC of the Indian party, in all the JVs/WOSs put together.
- *The FC is to be calculated at the time of making investment* The FC is to be calculated at the time of making investment. For example, if the FC at the time of making further investment into the JV/WOS exceeds (together with the investment already made) 400% of the net worth as on the last audited balance sheet such further investment can be made only with the approval of the RBI.

## ABCN Ltd. – Indian Company

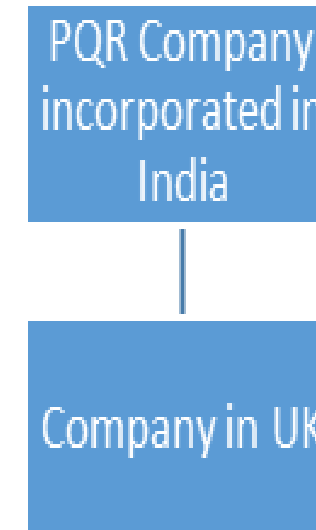
Particulars	Amount in INR
Net worth of ABCN Ltd.	100
Balance in EEFC Account	100
Proceeds of foreign currency funds raised through ADR/GDR issues	100



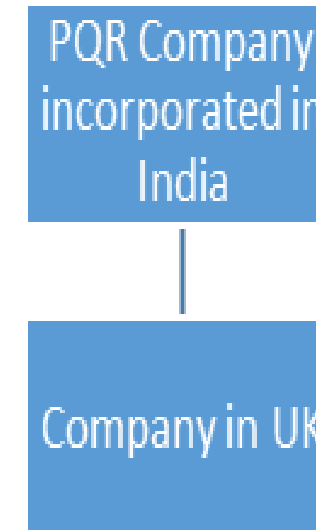
## ABCN Ltd. – Indian Company

Particulars	Amount in INR
Net worth of ABCN Ltd.	100
Balance in EEFC Account	100
Proceeds of foreign currency funds raised through ADR/GDR issues	100
	600

- PQR is a company incorporated under Companies Act, 2013 on 12 Jan 2015. It proposes to set up a company (wholly owned subsidiary) in UK under Automatic Route in April 2015. Whether such an investment by PQR be made under automatic route?



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- The wholly owned subsidiary in UK can be established under Automatic route. The regulation specifies the last audited balance sheet and does not specify the period for which the Audit needs to be undertaken. Therefore, in this case PQR may get its account audited for the period from 12 Jan 2015 till 31 March 2015 and can make investment till 400% of the net worth on the basis of last audited balance sheet as on 31 March 2015.



# Meaning and computation of term Net worth

As per Regulation 2(o) of the ODI Regulations:

"Paid up capital of the company and the reserves and surplus of the company.

For the purpose of computation of net worth the last audited balance sheet of the Indian party is considered.

the net worth of its holding company (which holds at least 51% direct stake in the Indian Party)

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- ✓ to the extent not availed by the holding company or the subsidiary independently
- ✓ and has furnished a letter of disclaimer in favour of the Indian Party.

# Meaning and computation of term Net worth

As per Regulation 2(o) of the ODI Regulations:

- The total FC of the Indian party, in all the JVs/WOSs put together, shall not exceed 400% of the net worth of the Indian party as on the date of the last audited balance sheet. The object is to limit the outflow of money through various manufactured ways of remitting money.
- **Net worth = Paid up capital + Free Reserves**
- The limit of 400% of net worth for FC is the aggregate FC of the Indian party, in all the JVS/WOSs put together.
- This facility is not available to partnership firms. Also the partnership firm's net worth cannot be taken into account by an incorporated entity.

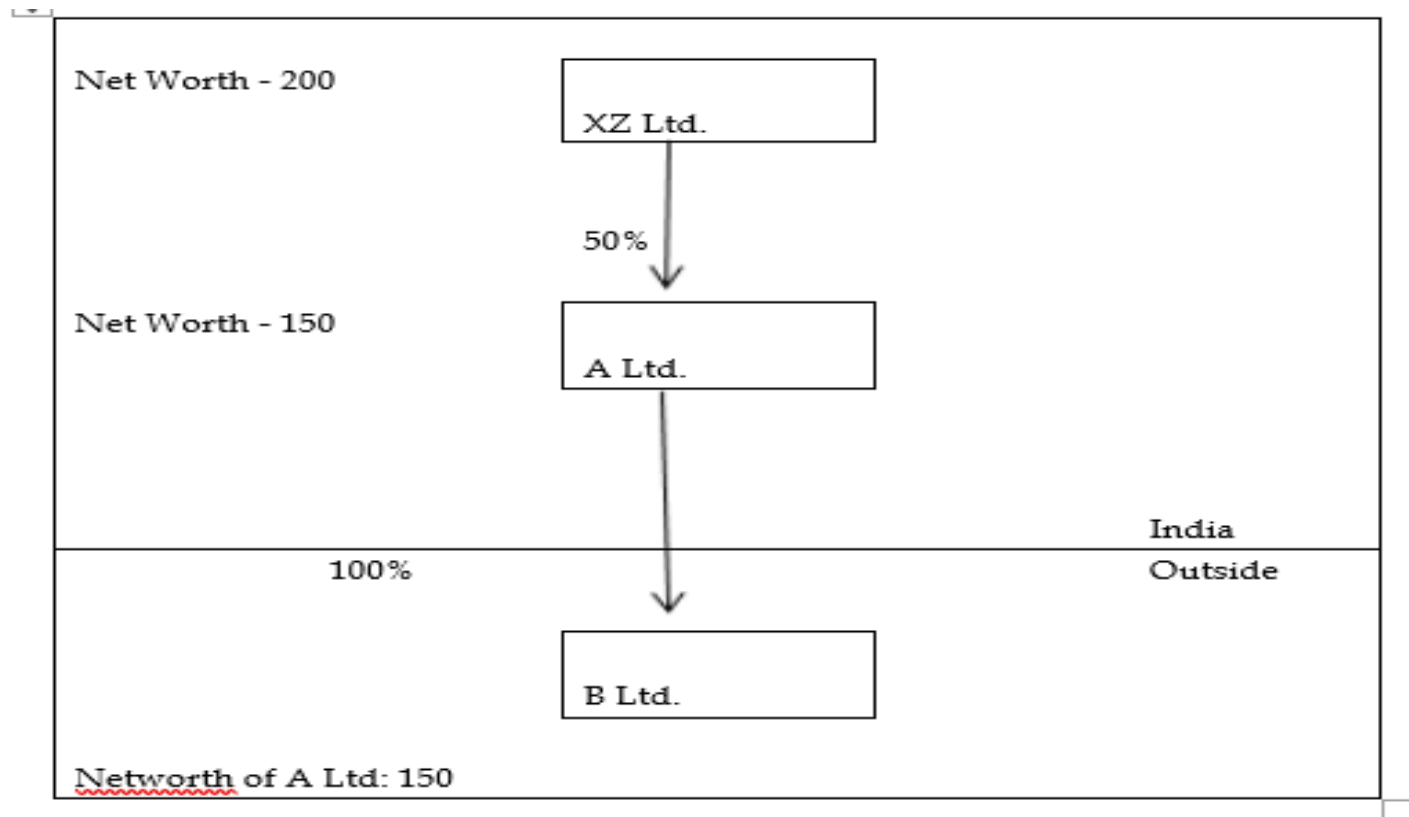
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# Example

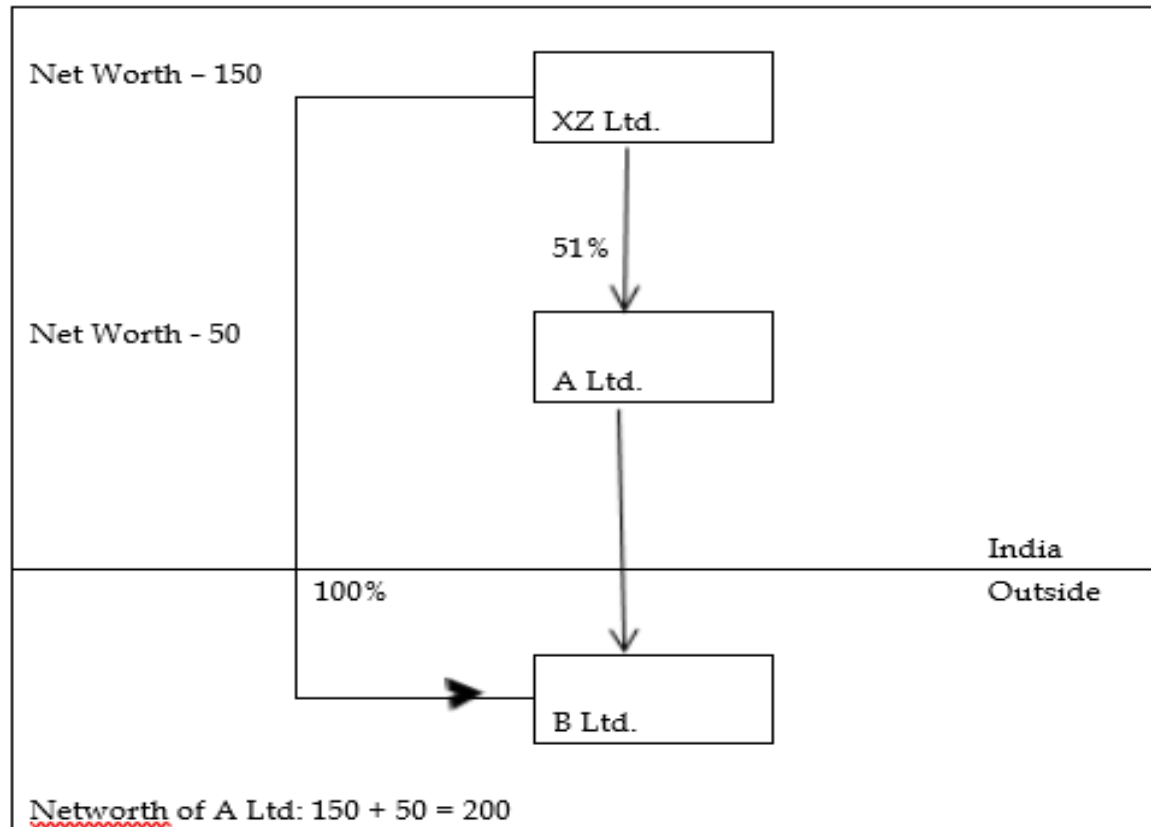
- In case where A Ltd is desirous of making investment outside India, the net worth of XZ Ltd. will not be clubbed as the holding of XZ Ltd. in A Ltd is only 50%.





# Example

- In contrast to the above case, in the below case for calculation of net worth of A Ltd. the Net worth of its holding company ABC Ltd. shall be taken in account as the holding of XZ Ltd. in A Ltd is only 51%.



# Meaning and computation of 'financial commitment'

As per Regulation 2(f) of ODI Regulation

- 'Financial commitment' means the amount of direct investment by way of contribution to equity and loan and 50 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;

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# 'financial commitment'

- The total FC of the Indian party in JVs /WOSs shall not exceed 400% of the net worth of the Indian Party as on the date of the **last audited balance sheet**;
- Any FC exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the RBI even when the total FC of the Indian Party is within the eligible limit under the automatic route (ie, within 400% of the net worth as per the last audited balance sheet).
- A.P. (DIR Series) Circular No.1 dated July 3, 2014.

# 'Financial commitment

- The total FC of the Indian Party in all the JVs/WOSs shall comprise the following:
  - a) 100% of the amount of equity shares;**
  - b) 100% of the amount of compulsorily and mandatorily convertible preference shares [Compulsorily Convertible Preference Shares (CCPS) shall be treated at par with equity shares] –

The change in the policy came w.e.f. 28 March 2012 vide A.P. (DIR Series) Circular No. 96 prior to this the CCPS were treated as Loans.
  - c) 100% of the amount of other preference shares;
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  - f) 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee is backed by a counter guarantee/collateral by the Indian party.
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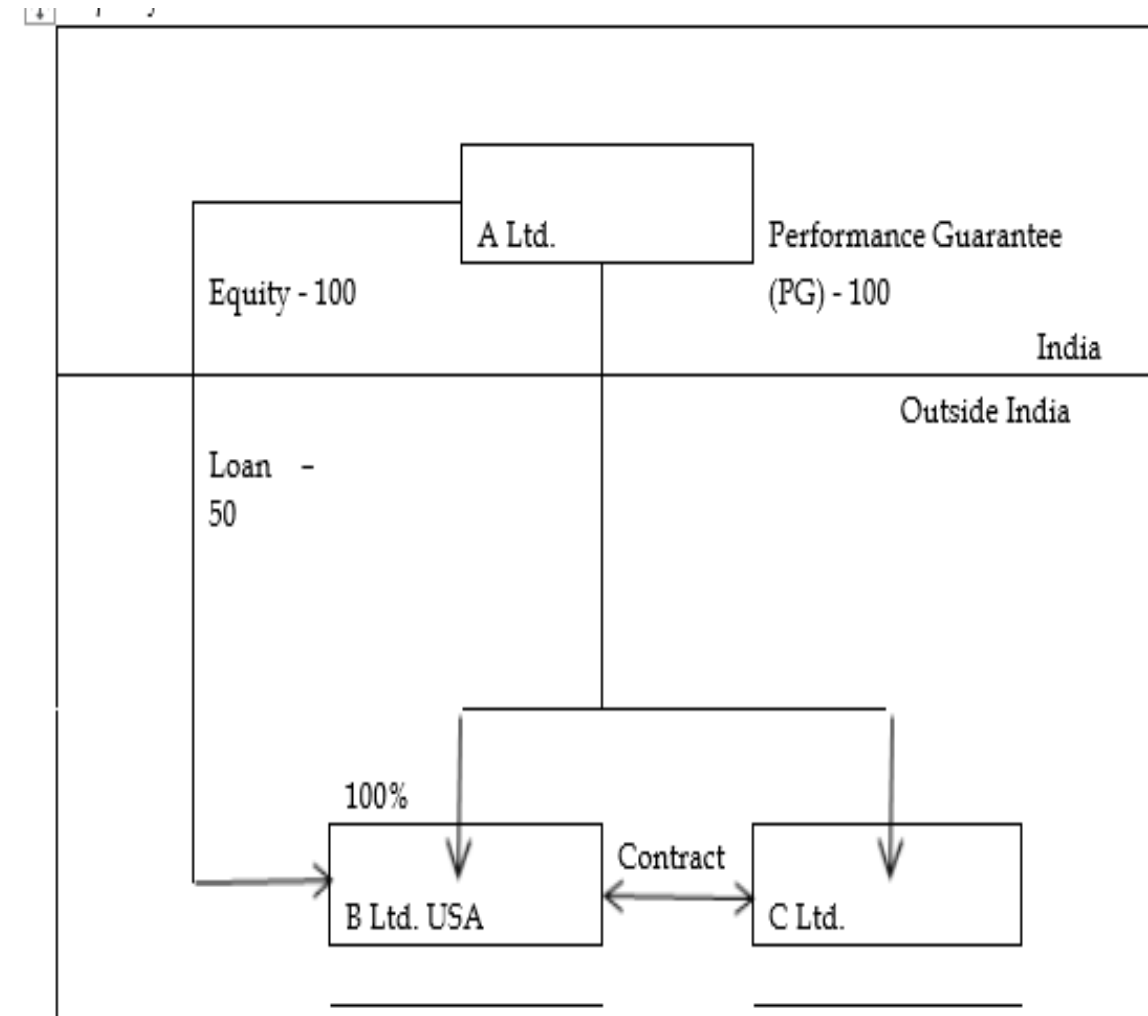
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# Example

- in case where an Indian company in the infrastructure sector opened a subsidiary in Singapore, under a global tender floated from Indian PSU, the Singapore subsidiary entity got a contract to execute an order in India. The precondition of which was that 10% of the award amount was required to be given as corporate guarantee by the Singapore entity. Singapore entity approached the Indian PSU with a request to allow it to provide the guarantee through its Indian holding company. The PSU agreed to receive guarantee on behalf of the Singapore entity from its Indian holding company. The guarantee was issued from Indian Company to PSU on behalf of Singapore entity.
- In this case, the Indian company is required to file the FORM ODI for corporate guarantee issued on behalf of Singapore entity to RBI and to check if its overseas investment is within the overall limit of 100% of FC after providing the guarantee.

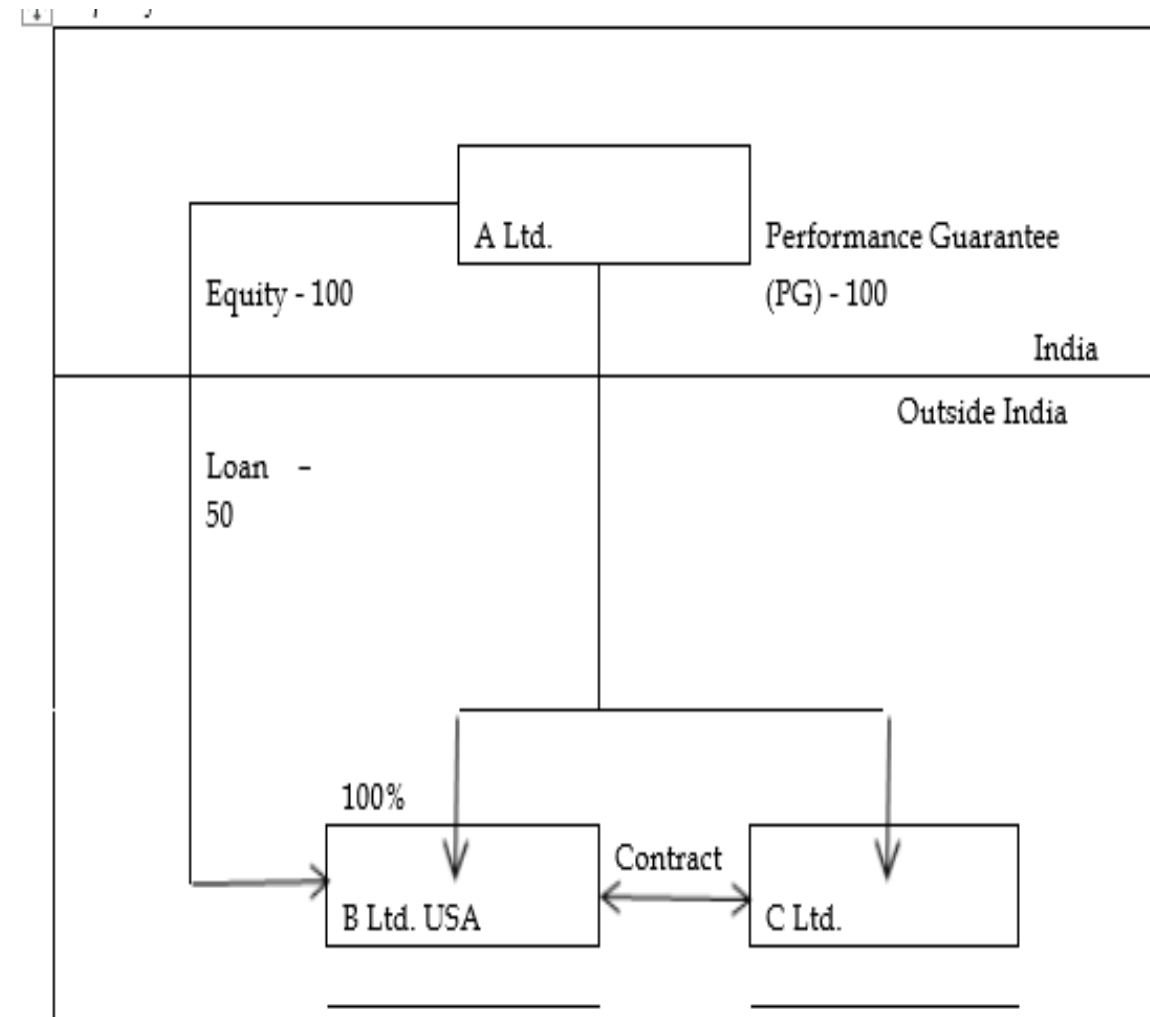
# Example of Financial Commitment

- B Ltd., a company incorporated in USA, is a wholly owned subsidiary of A Ltd. an Indian Company.
  - A Ltd.'s (with net worth of 50) investment in B Ltd. is as under:
    - Equity contribution – 100;
    - Loan – 50
    - A Ltd. has also given Performance Guarantee (PG) of 100 to C Ltd. On behalf of B Ltd.
- What is the FC of A Ltd.?



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- What is the FC of A Ltd.?  
**FC of A Ltd: 100 (E) + 50 (L) + 50 (PG)\* = 200**
- \*only 50% of the Performance Guarantee is taken for calculation of FC.





**How**

**Procedure under  
Automatic Route**



# Procedure under Automatic Route

- If the FC of the company is within the prescribed limits, the overseas investment can be made without any prior approval from the RBI.
  - ❖ Only an intimation of investment is required to be given to Authorised Dealer Category - I bank in Form ODI within a period of 30 days from the date of the transaction.
  - ❖ After the initial investment any changes post investment need to be informed to RBI in form ODI only.
  - ❖ An Annual Form which is Annual Performance Report (Part of ODI form) is also required to be submitted on an annual basis.

# Procedure under Approval Route

- An application in Form ODI along with prescribed enclosures/documents is required to be made to an Authorised Dealer Category - I bank for the purpose of taking prior approval of the RBI for seeking permission of investment.
- *Unique Identification Number (UIN)*: On filing of Form ODI with the AD Category - I Banks, it will generate a UIN online and allot to the Indian Investor. The UIN allotted to each JV or WOS abroad is required to be quoted in all correspondence with the RBI. AD Category - I banks may allow additional investment in an existing overseas concern set up by an Indian party, after the RBI has allotted necessary UIN to the overseas project.
- All transactions relating to a JV/WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian party.

# Form ODI

- The structure of the rationalised and revised Form ODI (Annex I) will now comprise the following parts:
- Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:
  - Section A – Details of the IP / RI.
  - Section B – Capital Structure and other details of JV/ WOS/ SDS.
  - Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.
  - Section D – Declaration by the IP/ RI.
  - Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.
- Part II - Annual Performance Report (APR) Part III – Report on Disinvestment by way of
  - a) Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
  - b) Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
  - c) Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and
  - d) Buy back of shares by the overseas JV/ WOS of the IP / RI.

# Form ODI

- An annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies which have made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, to the Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India.
- The Annual Return on FLA is available on the RBI website ([www.rbi.org.in](http://www.rbi.org.in) → Forms category → Foreign Exchange Management Act Forms) which can be duly filled-in, validated and sent by e-mail, by July 15 every year.



# Methods of Funding

# Financial Commitment



# Drawal of Foreign Exchange

- A party can draw foreign exchange up to the permissible limits of investments by submitting the duly filled in Form ODI together with Form A2 to the AD Category-I banks.

# Investment by capitalisation

- (1) An Indian party may make direct investment outside India by way of capitalisation in full or part of the amount due to the Indian Party from the foreign entity towards:
  - i. Payment for export of plant, machinery, equipment and other goods/software to the foreign entity; and
  - ii. Fees, royalties, commissions or other entitlements due to the Indian party from the foreign entity for the supply of technical know-how, consultancy, managerial or other services.
- *Prior permission of the RBI if sale proceeds unrealised for more than 6 months:* Prior permission of RBI shall be required for capitalisation where the export proceeds have remained unrealised beyond a period of six months from the date of export, or from the date on which such payment for fees, royalties, commission has become due as the case may be.
- Capitalisation of export proceeds or other entitlements, which are overdue, would require prior approval of the RBI for which the Indian parties should make an application in form ODI to the RBI for consideration.



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- Capitalisation of export proceeds or other entitlements, which are overdue, would require prior approval of the RBI for which the Indian parties should make **an application in form ODI to the RBI for consideration.**

# Investment by SWAP of shares

- The overseas investment can be made via swap of shares. **The swap of shares required FIPB approval earlier. Via Press Note 12/2015, the swap of shares is liberalised to be under automatic route.**

## Route of investment

- Approval of the Government is required for investment by swap of shares for sector under Government approval route.
- No approval of the Government is required for investment in automatic route sectors by way of swap of shares..

## Valuation

- Valuation of the shares will have to be made by a Category I 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.

## Undertaking

- An undertaking to the effect that future sale/ transfer of shares so acquired by non-residents in the Indian company shall be in accordance with the provisions of Notification No. FEMA 20/2000-RB dated 3 May 2000, as amended from time to time is required to be given.

## Reporting by AD Bank

- AD Category-I banks are required to submit to the RBI the details of transactions such as the number of shares received/allotted, premium paid/received, brokerage paid/received, etc, and also confirmation to the effect that the inward leg of transaction has been as per the permitted route and the valuation has been done as per the laid-down procedure and that the overseas company's shares are issued/transferred in the name of the Indian investing company.

# Investment funded by external commercial borrowings

- One of the ways of funding is raising the funds from outside India by an Indian party as ECBs by following the ECB guidelines. As per ECB guidelines, funds can be raised for direct investment outside India and is included in the permitted uses of the ECB. In case where the investment is funded by ECB, an investment up to 400% of net worth can be made under the automatic route.

# Investment funded by EEFC Account

- EEFC Account is a non-interest-bearing account wherein resident foreign exchange earners can credit up to 100% of their foreign exchange earnings. The account is made of in case where the overseas investment is funded through balance held in EEFC account or through proceeds of ADR/GDR issue in that case the ceiling of 100% of the net worth will not apply.

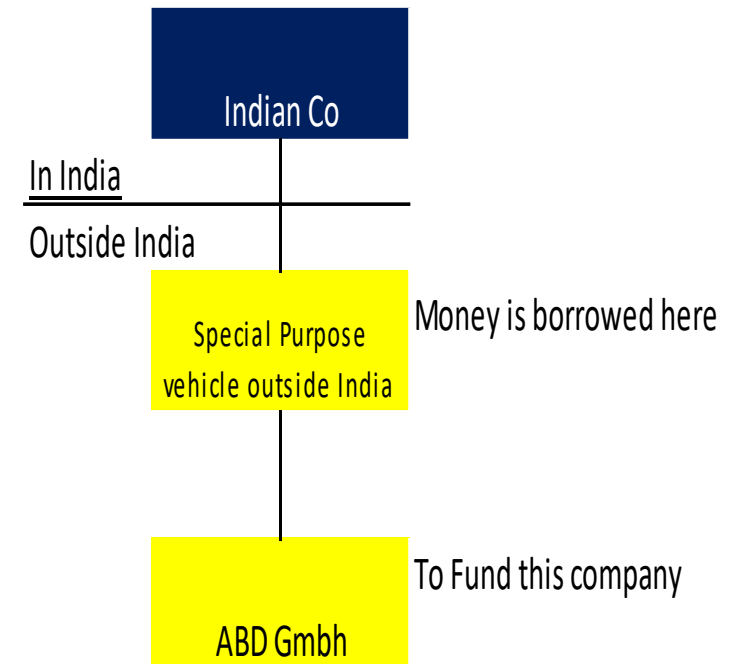
# Investment funded by ADR/GDR issue

- An Indian party may acquire shares of a foreign company engaged in a bona fide business activity, in exchange of ADRs/GDRs issued to the latter



# Leveraged buy out

- One of the other methods used to fund overseas acquisition is leveraged buyout under which a Special Purpose Vehicle (SPV) is created abroad and portion of funding is arranged through the overseas bank on the loan being secured either by shares or assets of the target company and/or guarantee by the Indian parent. Setting up of an SPV under the automatic route is permitted for the purpose of making an investment in JV/WOS overseas.
- Investments in JV/WOS abroad by Indian parties through the medium of an SPV are also permitted under the automatic route subject to the conditions that the Indian party is not included in the RBI's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the RBI/any other Credit Information company as approved by the RBI. Indian parties whose names appear in the Defaulters' list require prior approval of the RBI for the investment.



# Pre-Conditions for ODI



JV/WOS in bona-fide  
business activity

IP not on RBI's caution/  
defaulter list or under  
investigation

IP has submitted APR for  
all overseas investment

All transactions relating to  
Investment to be routed  
through same AD Bank

JV/WOS should not be set up  
in countries regarded as  
'non-cooperative countries  
and territories' by FATF



# Valuation Requirement by ODI

In Existing Entity

## Investment more than USD 5 million

By SEBI registered Cat I Merchant Banker; or

Investment Banker/ Merchant Banker registered outside India

## In all other cases

Chartered Accountant; or

Certified Public Accountant.

# ODI in financial service sector



Can be made only by Indian Party engaged in financial services activities

Earned net profit during the preceding 3 financial years from financial service activities

Registered with regulatory authority in India

Obtained approval from concerned regulatory authorities  
▫both in India and abroad

Fulfilled the prudential norms relating to capital adequacy as prescribed by concerned regulatory authority in India

Conditions applicable even for additional investment by an existing JV/WOS or its step down subsidiary

# Loans and Guarantees by IP





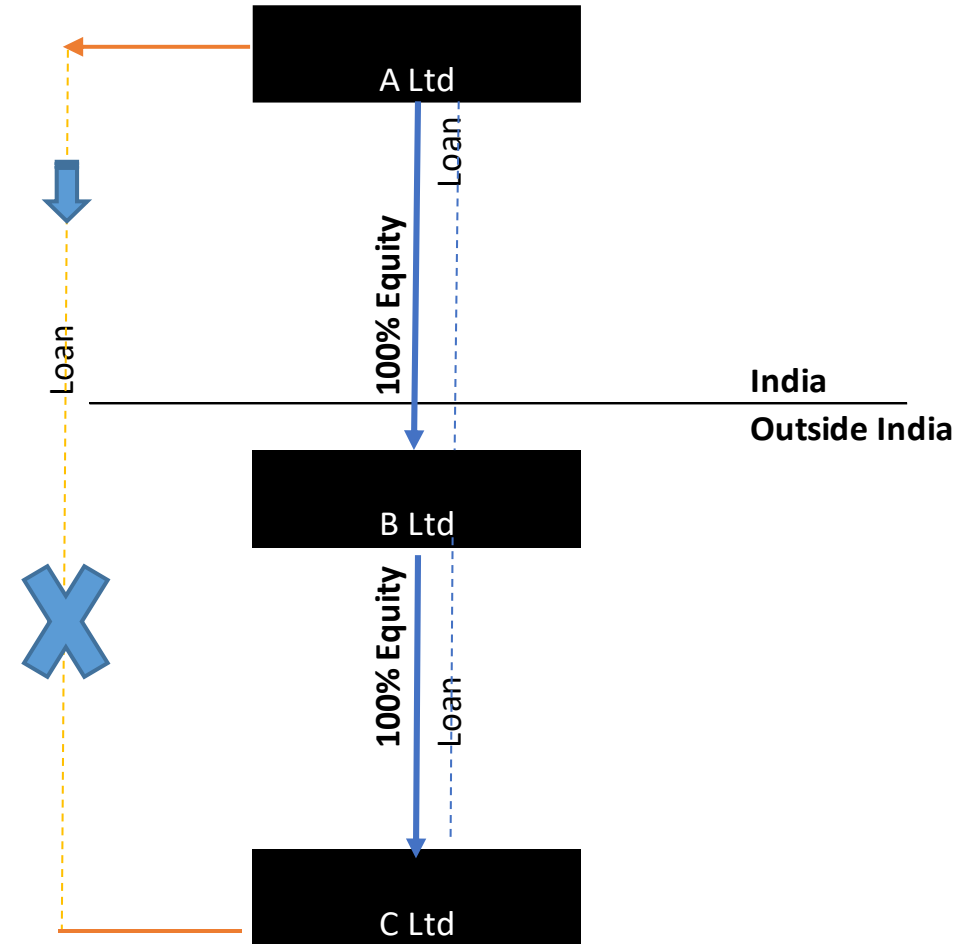
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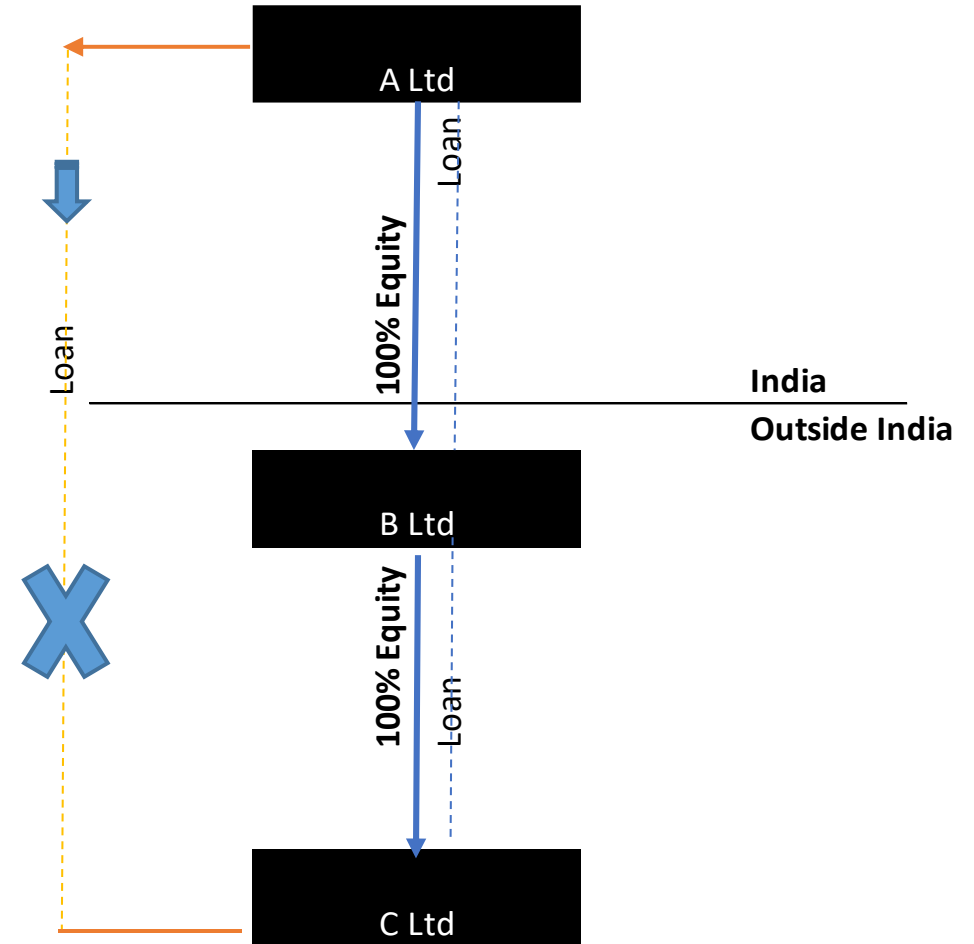
# Example

- *Example:* A Ltd an Indian company has 100% equity capital of B Ltd, a company in Singapore. B Ltd has in turn 100% Equity contribution in C Ltd, another company in Singapore. In this case,
- Can A Ltd extend loan to B Ltd?
- Can A Ltd extend loan to C Ltd?



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- A Ltd can extend loan to B Ltd.
- For extending loan to C Ltd. It needs approval from RBI.



# Guarantees by Indian Party



# First generation SDS operating company



- Corporate guarantee can be extended

# Second or subsequent level SDS



- IP should indirectly hold 51% or more stake
- Under RBI approval route.

Renewal/ Rollover of an existing/ original guarantee that is part of total FC, shall not be regarded as fresh financial commitment; if

the existing / original guarantee was issued in terms of the then extant / prevailing FEMA guidelines

there is no change in the end use of the guarantee, i.e. the facilities availed by the JV / WOS / Step Down Subsidiary

there is no change in any of the terms & conditions, including the amount of the guarantee except the validity period

the reporting of the rolled over guarantee would be done in Form ODI - Part I; and

if the IP is under investigation by any investigation / enforcement agency or regulatory body, the concerned agency / body shall be kept informed about the same

**If conditions not met, RBI approval required.**

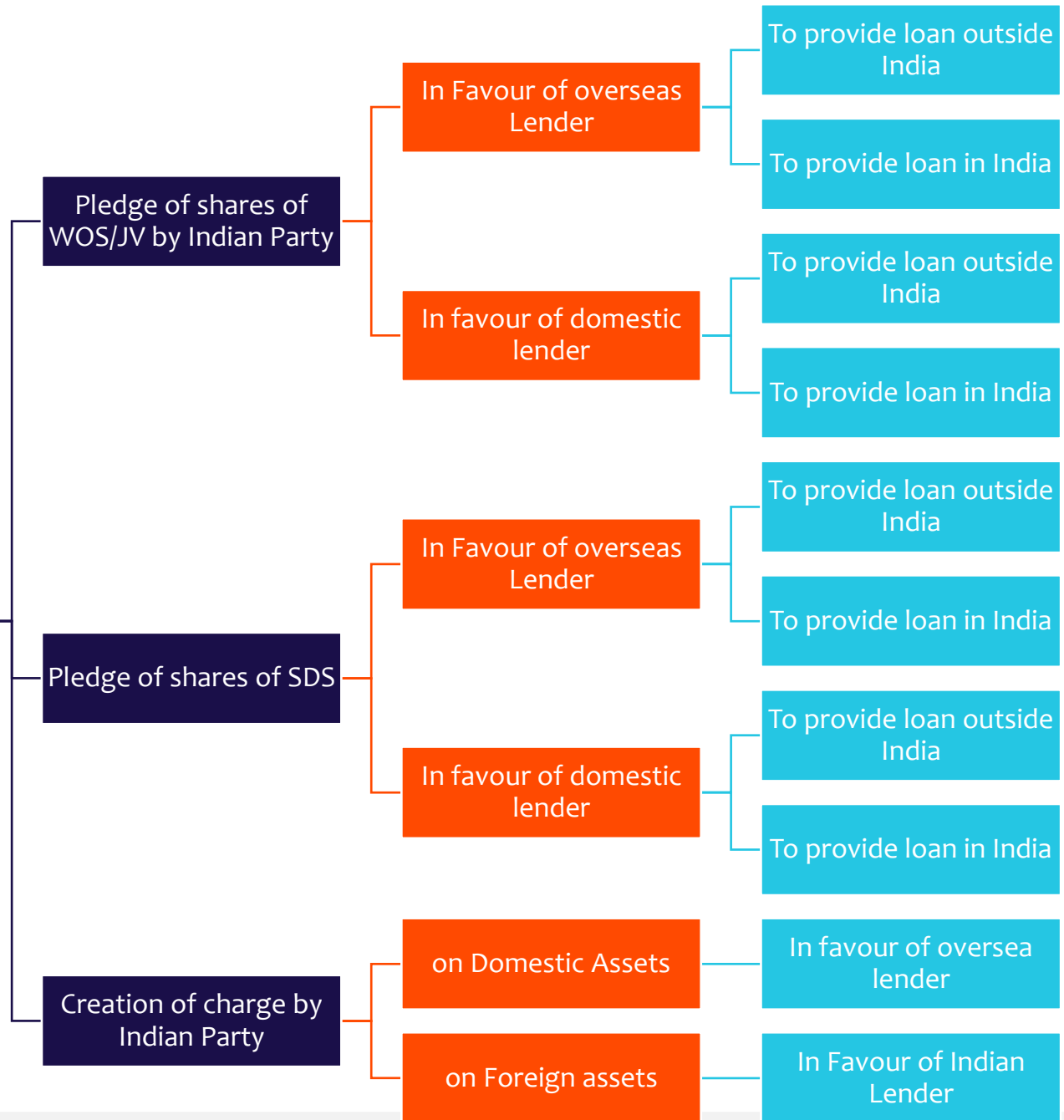


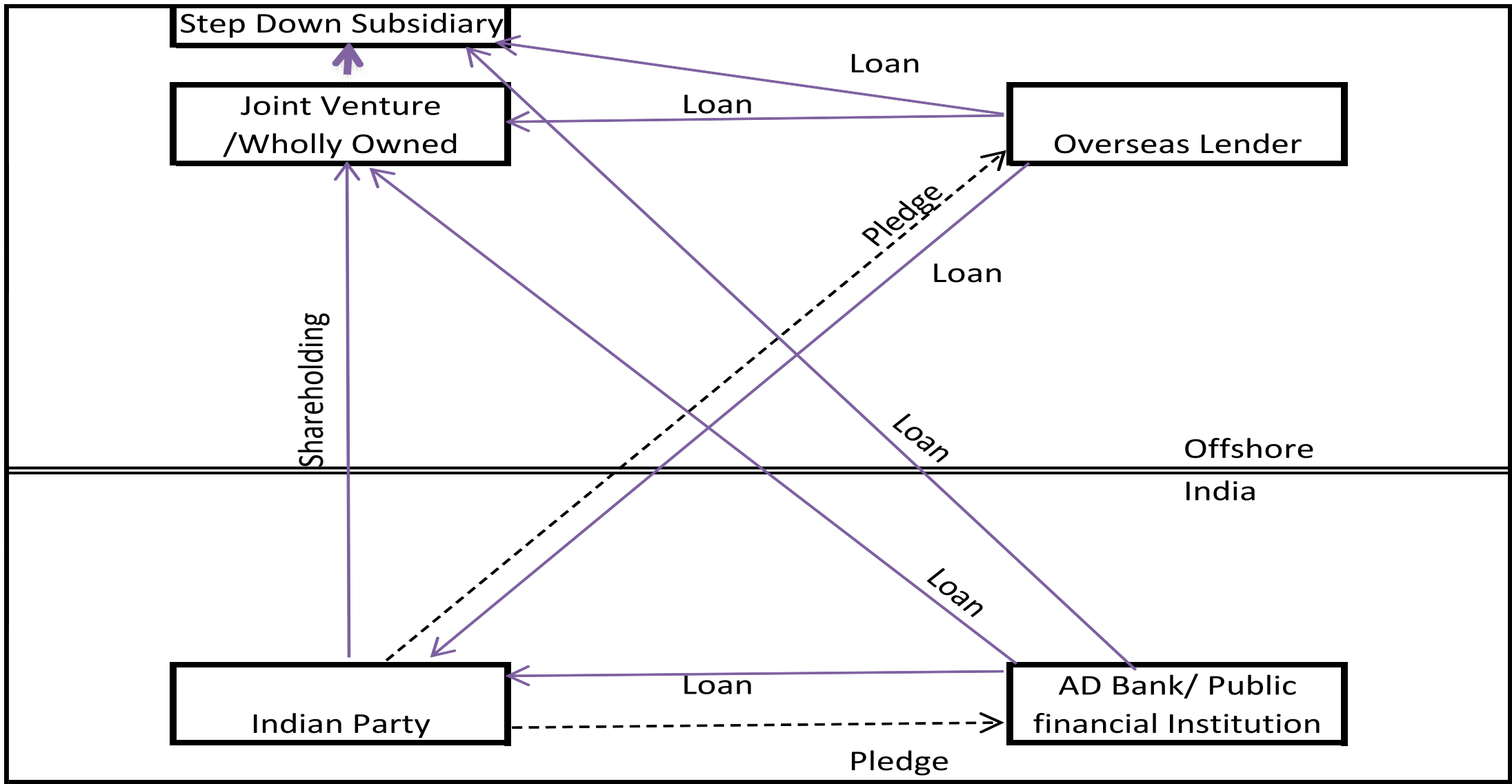


# Pledge of shares Creation of charge



Pledge of shares by Indian company

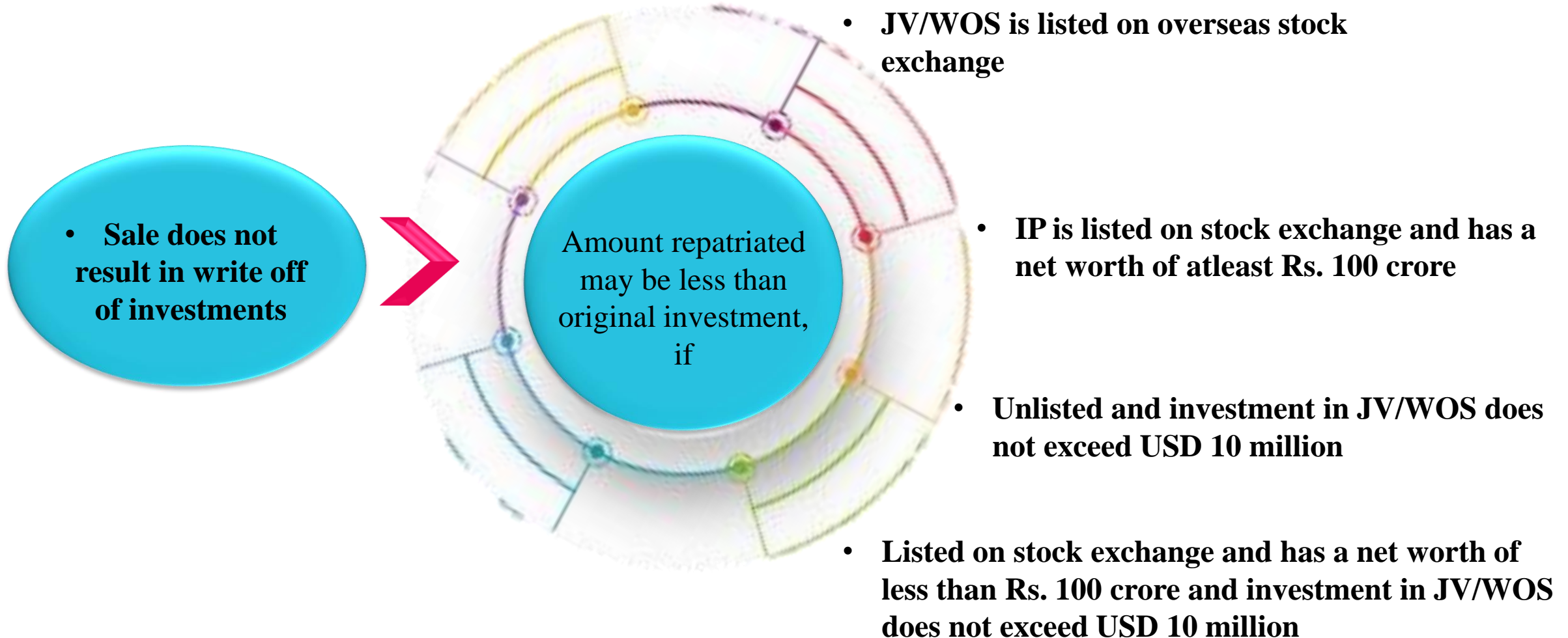




# Sale of Shares of JV/ WOS



# Sale of Shares of JV/ WOS



# Restructuring of B/s of JV/WOS by Listed IP



# Restructuring of B/s of JV/WOS by Listed IP

## Who can do?

- Listed IP having WOS or JV (at least 51% stake)

## What can be written off?

- Capital (equity/preference)
- Other receivables

## To what extent?

- 25% of equity investment in JV/WOS

## Under what Route

- **Automatic Route**
- **Submission to AD Bank**
  - Certified copy of B/S showing the loss in overseas JV/WOS
  - Projection for next 5 years indicating benefit.

## To be reported to RBI?

- Within 30 days of WO/ restructuring.

# Restructuring of B/s of JV/WOS by Unlisted IP

## Who can do?

- Unlisted IP having WOS or JV (at least 51% stake)

## What can be written off?

- Capital (equity/preference)
- Other receivables

## To what extent?

- 25% of equity investment in JV/WOS

## Under which mode

- Under approval of RBI



# Obligations of Indian Party

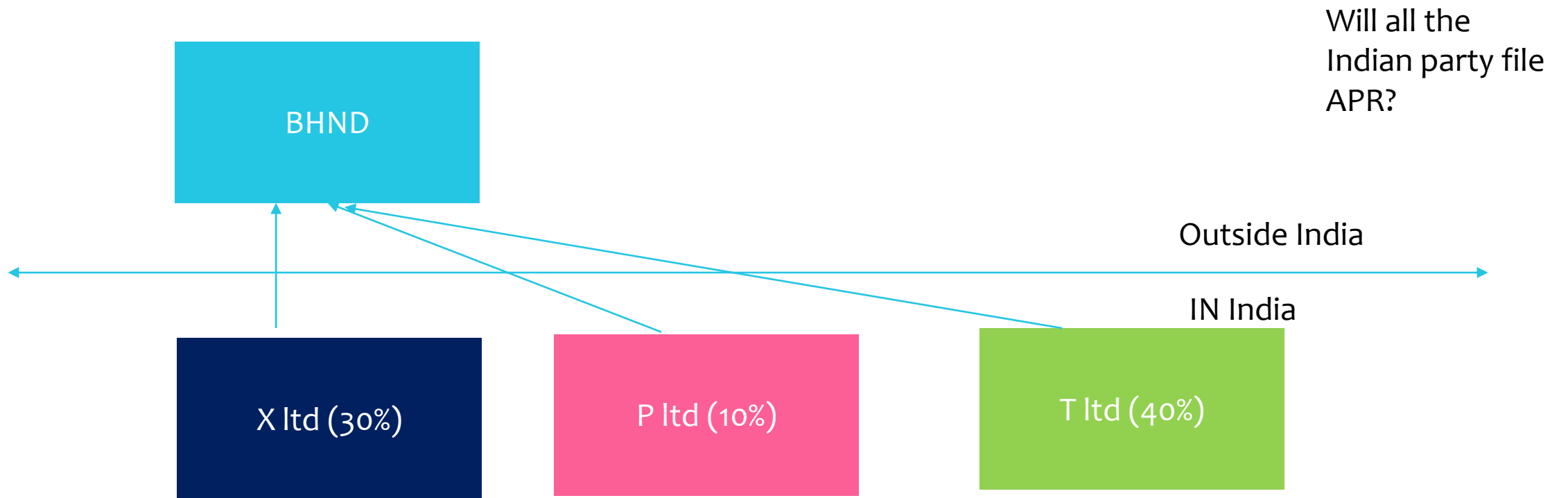


- 1) An IP/ RI which has made direct investment abroad is under obligation to,
- (i) receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised;
- (ii) repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit: and
- (iii) submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before December 31, an Annual Performance Report (APR) in Part II of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV/WOS for the preceding year, unless specifically exempted by the Reserve Bank.

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- (3) Where the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS, the Annual Performance Report (APR) may be submitted by the Indian Party based on the un-audited annual accounts of the JV / WOS provided:
  - a. <sup>6</sup>The Statutory Auditors of the Indian Party certify that law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS and the figures in the APR are as per the un-audited accounts of the overseas JV / WOS; and
  - b. That the un-audited annual accounts of the JV / WOS have been adopted and ratified by the Board of the Indian Party.
  - c. <sup>7</sup>The above exemption from filing the APR based on unaudited balance sheet will not be available in respect of JV/WOS in a country / jurisdiction which is either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or any other country / jurisdiction as prescribed by Reserve Bank of India.

- AD Category - I bank is required to monitor the receipt of such documents and satisfy itself about the bonafides of the documents. It is further advised that -
  - a. the online OID application has been suitably modified to enable the nodal office of the AD bank to view the outstanding position of all the APRs pertaining to an applicant including for those JV / WOS for which it is not the designated AD bank. Accordingly, the AD bank, before undertaking / facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all the JV / WOS of the applicant have been submitted;
  - b. **certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals and self-certification may be accepted;**



in case multiple IPs / RIs have invested in the same overseas JV / WOS, the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS.

Alternatively, the IPs / RIs holding stake in the overseas JV / WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, *ibid*, by furnishing an appropriate undertaking to the AD bank;

- (4) An annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, to the Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India.
- The Annual Return on FLA is available on the RBI website ([www.rbi.org.in](http://www.rbi.org.in) → Forms category → FEMA Forms) which can be duly filled-in, validated and sent by [e-mail](#), by July 15 every year.



# Post investment changes/additional investment in existing JV/WOS

- A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/set up step down subsidiary/alter the shareholding pattern in the overseas entity
- The Indian party should report to the RBI through the AD Category - I bank, the details of such decisions within 30 days of the approval of those decisions by the competent authority of the JV/WOS concerned in terms of local laws of the host country and include the same in the Annual Performance

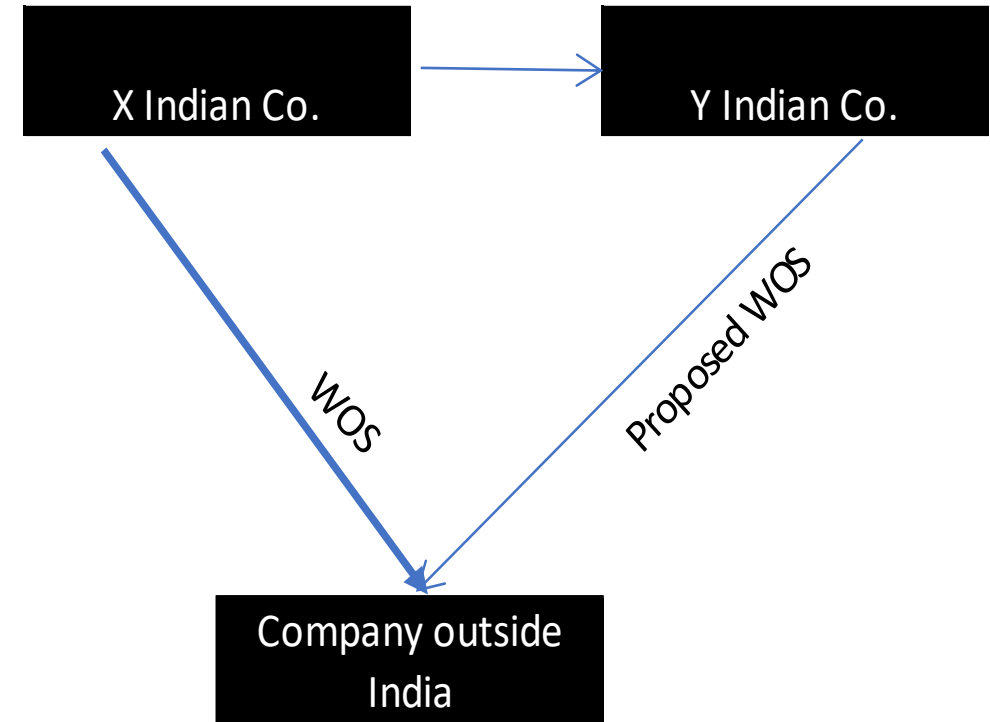


# Exit by Indian party

- An Indian party can exit its investment in the overseas entity by any of the mode like Closure/Disinvestment/Voluntary Liquidation/Winding up of JV/WOS.

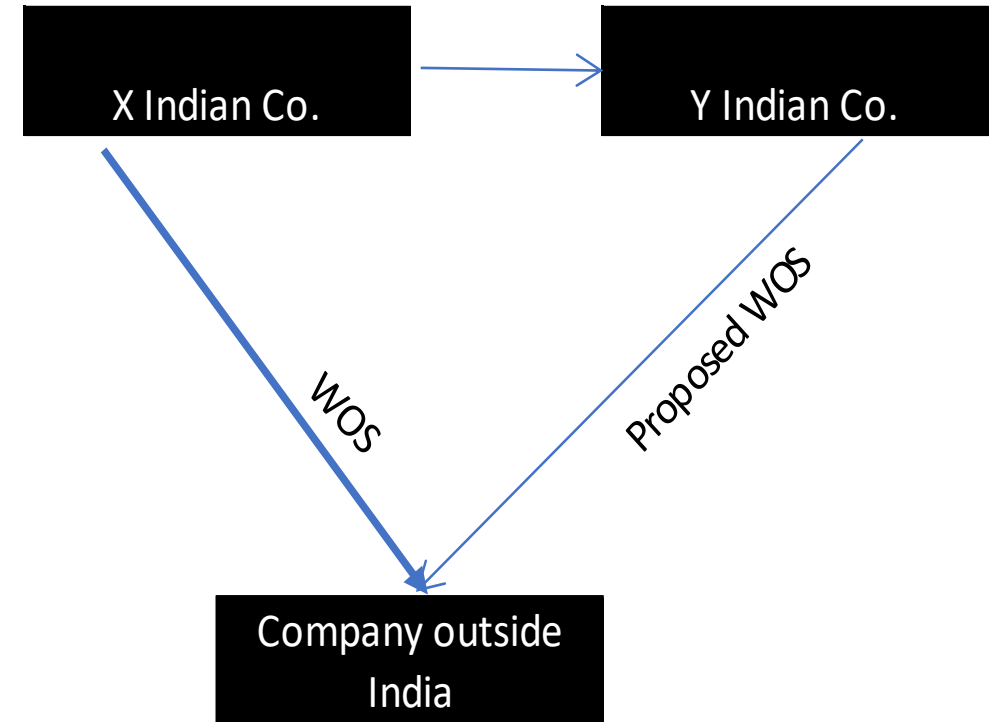
# Example

- X Co. and Y Co. are Indian Companies. X Co. has an existing investment in PQR company, a company outside India. X Co. sold shares of PQR to Y co. Is it possible



# Example

- X Co. and Y Co. are Indian Companies. X Co. has an existing investment in PQR company, a company outside India. X Co. sold shares of PQR to Y co. Is it possible
- Yes, it is possible to sale the shares of JV/WOS outside India held by Indian company to another Indian company subject to specified conditions.





With  
write off



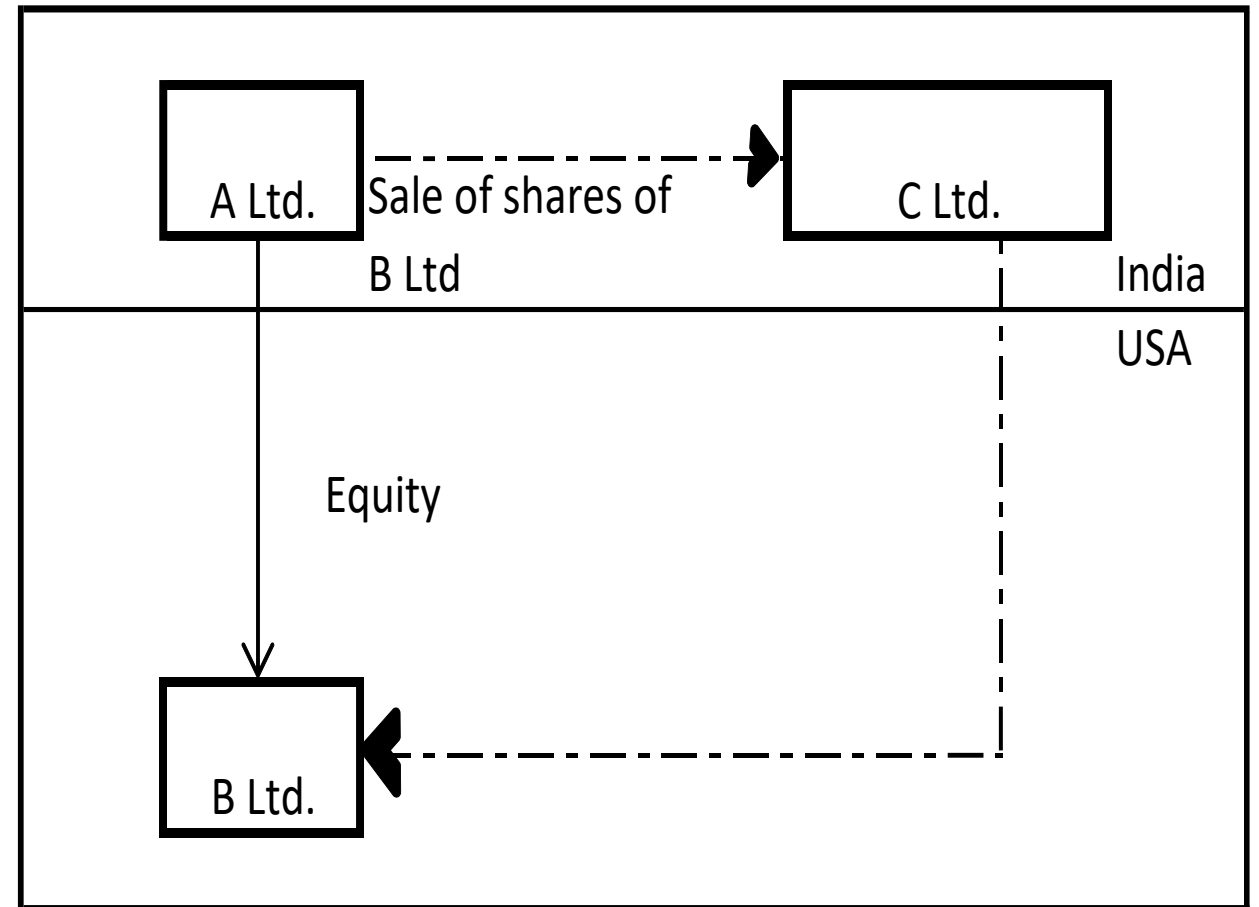
Without  
write off

# Without Write off

- ✓ the sale does not result in any write off of the investment made;
- ✓ the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- ✓ if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant/Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV/WOS;
- ✓ the Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and/or export proceeds from the JV or WOS;
- ✓ the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the RBI;
- ✓ the Indian party is not under investigation by CBI /DoE/ SEBI / IRDA or any other regulatory authority in India; and
- ✓ the Indian party is required to submit details of such disinvestment through its designated AD Category-I bank within 30 days from the date of disinvestment.
- ✓ Conditions relating to transfer needs to be satisfied otherwise the prior approval of the RBI is required to be taken.

# Example

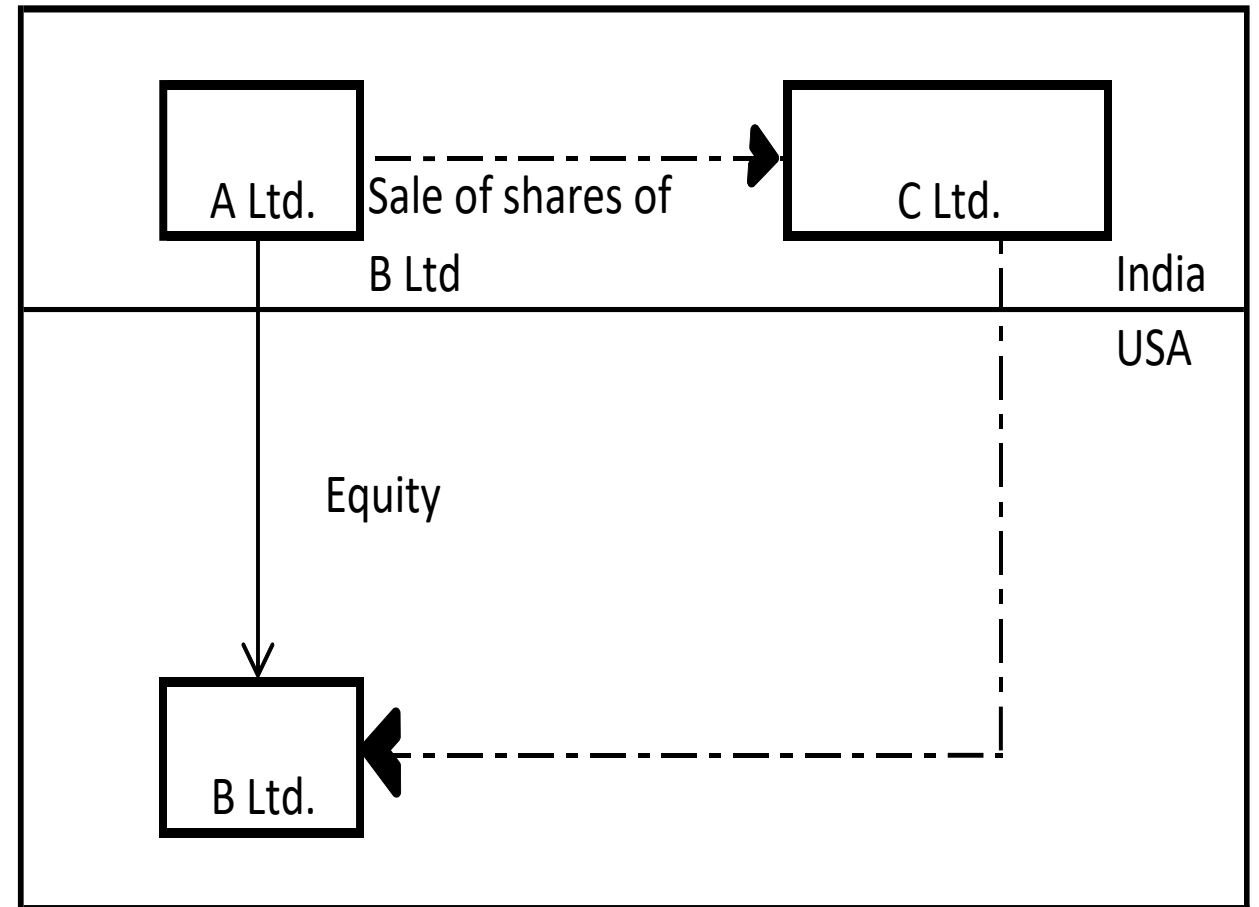
- A Ltd., an Indian unlisted company has subscribed to equity capital of B Ltd, a company incorporated in USA, in Sept 2019. The investment value is less than USD 10 million. B Ltd. has commenced its operations in Oct 2019.
- A Ltd. proposes to sell shares of B Ltd to C Ltd. in June 2020





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- A Ltd. proposes to sell shares of B Ltd to C Ltd. in June 2020
- The Prior approval of RBI is required in this case. As the overseas operation have to be there for at least one full year.



# With write off

where the amount repatriated after disinvestment is less than the original amount invested

- without prior approval of the RBI, :

## where the JV/WOS

- is listed in the overseas stock exchange;

## where the Indian party

- is listed on a stock exchange in India
- and has a net worth of not less than Rs 100 crore;

## Indian party is an unlisted company

- The investment in the overseas venture does not exceed USD 10 million; and

## Indian party is a listed company

- with net worth of less than Rs 100 crore
- but investment in an overseas JV/WOS does not exceed USD 10 million.

➤ in all other cases prior approval of RBI shall be required before writing off the amount of investment.

# With write off

where the amount repatriated after disinvestment is less than the original amount invested

- without prior approval of the RBI, :

where the JV/WOS

- is listed in the overseas stock exchange;

where the Indian party

- is listed on a stock exchange in India
- and has a net worth of not less than Rs 100 crore;

Indian party is an unlisted company

- The investment in the overseas venture does not exceed USD 10 million; and

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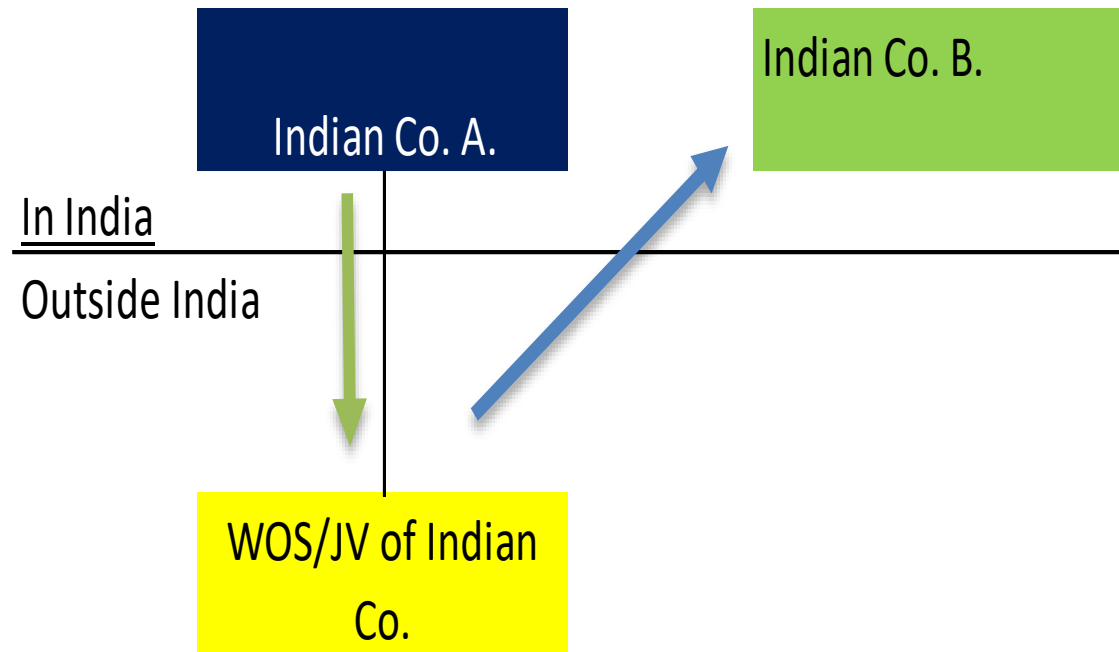
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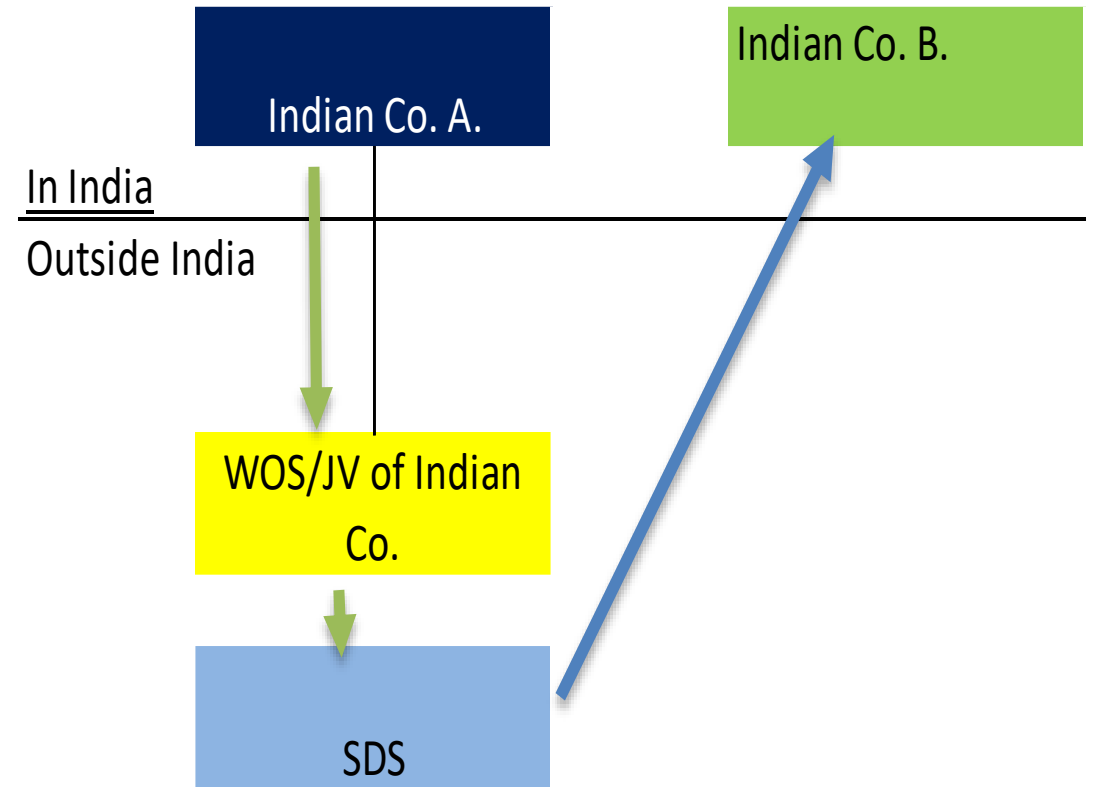
# Round Tripping



# Example



# Example



# FAQ

- *Can an Indian Party (IP) set up a step down subsidiary /joint venture in India through its foreign entity (WOS/JV), directly or indirectly through step-down subsidiary of the foreign entity?*
- **Ans** - No, the provisions of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time, dealing with transfer and issue of any foreign security to Residents do not permit an IP to set up Indian subsidiary(ies) through its foreign WOS or JV nor do the provisions permit an IP to acquire a WOS or invest in JV that already has direct/indirect investment in India under the automatic route.
- **However, in such cases, IPs can approach the Reserve Bank for prior approval through their Authorised Dealer Banks which will be considered on a case to case basis, depending on the merits of the case.**



**Thankyou**  
**Your Queries Please**  
**[Sudha@taxpertpro.com](mailto:Sudha@taxpertpro.com)**



# Creation of Charge



CASE	CHARGE CREATED ON	HELD IN/ OF	IN FAVOR OF	Route
1	SHARES	JV/WOS/SDS (IRRESPECTIVE OF LEVEL)	DOMESTIC/ OVERSEAS LENDER	AUTOMATIC
2	DOMESTIC ASSESTS	IP (OR ITS GROUP/ SISTER/ ASSOCIATE CONCERN OR INDIVIDUAL PROMOTER)	OVERSEAS LENDER TO JV/WOS/SDS	APPROVAL (IF NOT AS PER CONDITIONS SPECIFIED)
3	OVERSEAS ASSESTS	JV/WOS/SDS	DOMESTIC LENDER TO IP/ JV/WOS/ SDS	APPROVAL (IF NOT AS PER CONDITIONS SPECIFIED)

**Value of fund based or non fund based is reckoned as financial commitment for IP**

**Total FC remains within limit.**

**The overseas lender, should be regulated and supervised as a bank**

**'No objection' from domestic lender; or**

**In whose favor charge is already created on domestic assets.**

**'No objection' from domestic/ overseas lender**

**In whose favor charge is already created on overseas assets.**

# Specific Conditions for Creation of Charge on Shares

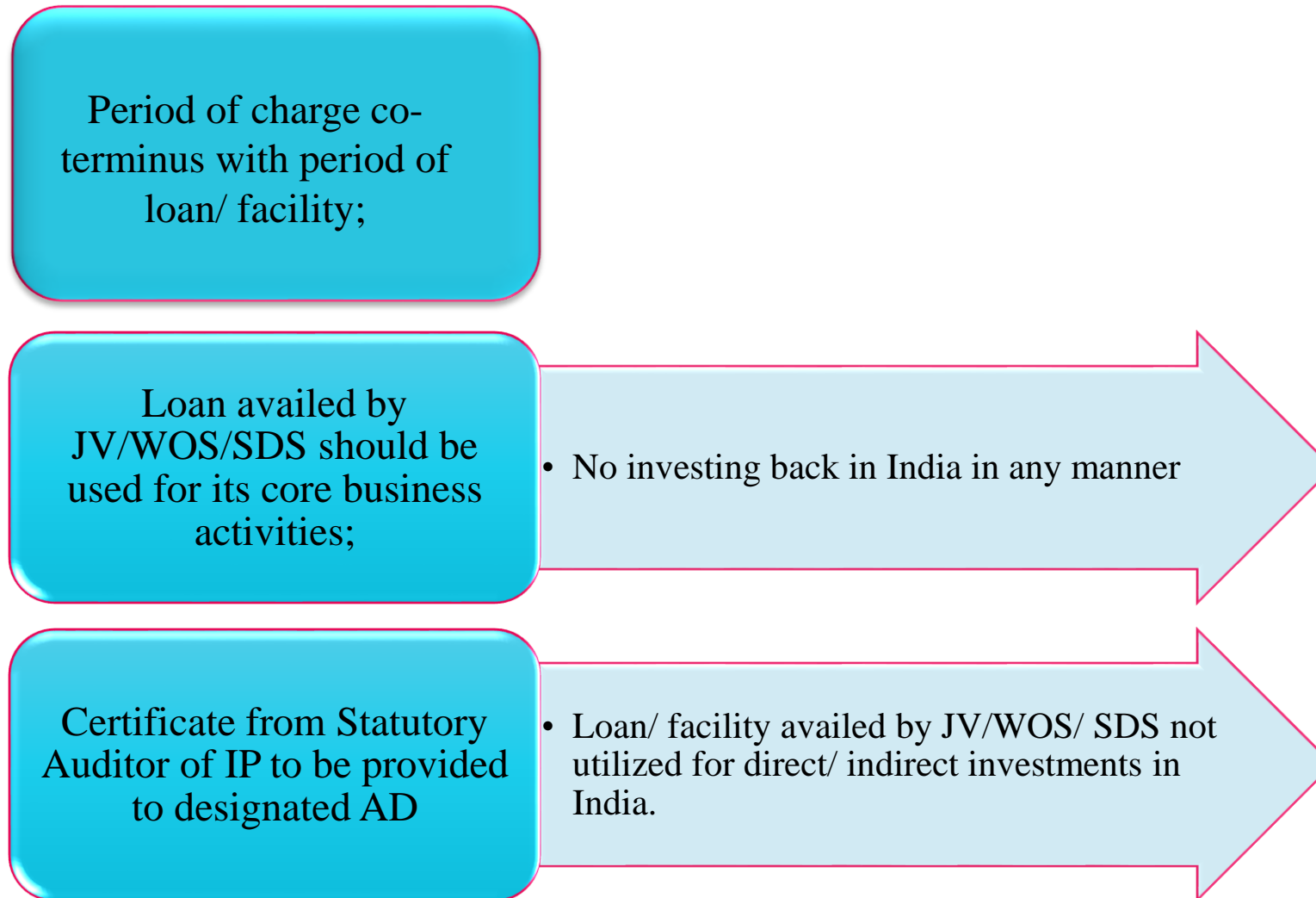


<b>CASE</b>	<b>CHARGE CREATED ON</b>	<b>HELD IN/ OF</b>	<b>IN FAVOR OF</b>	<b>Route</b>
1	SHARES	JV/WOS/SDS (IRRESPECTIVE OF LEVEL)	DOMESTIC/ OVERSEAS LENDER	AUTOMATIC

# Specific conditions for creation of charge on Shares



# Specific conditions for creation of charge on Shares





# Specific conditions for creation of charge on Domestic Assets



Case	Charge created on	Held in/ of	In favor of	Route
1	Domestic Assets	IP (or its group/ sister/associate concern or individual promoter)	Overseas lender to JV/WOS/ SDS	Approval ( if not as per conditions specified )

# Specific conditions for creation of charge on Domestic Assets

Domestic assets, are not securitized.

Period of charge co-terminus with period of loan/ facility

Loan availed by JV/WOS/SDS should be used for its core business activities

- No investing back in India in any manner

Certificate from Statutory Auditor of IP to be provided to designated AD

- Loan/ facility availed by JV/WOS/ SDS not utilized for direct/ indirect investments in India.

Overseas lender to undertake that they shall transfer the domestic assets by way of sale to a resident only;

- In the event of enforcement of charge.

On invocation of charge, resulting remittance exceeds prescribed limit of FC of IP (prevailed at the time of creation of charge)

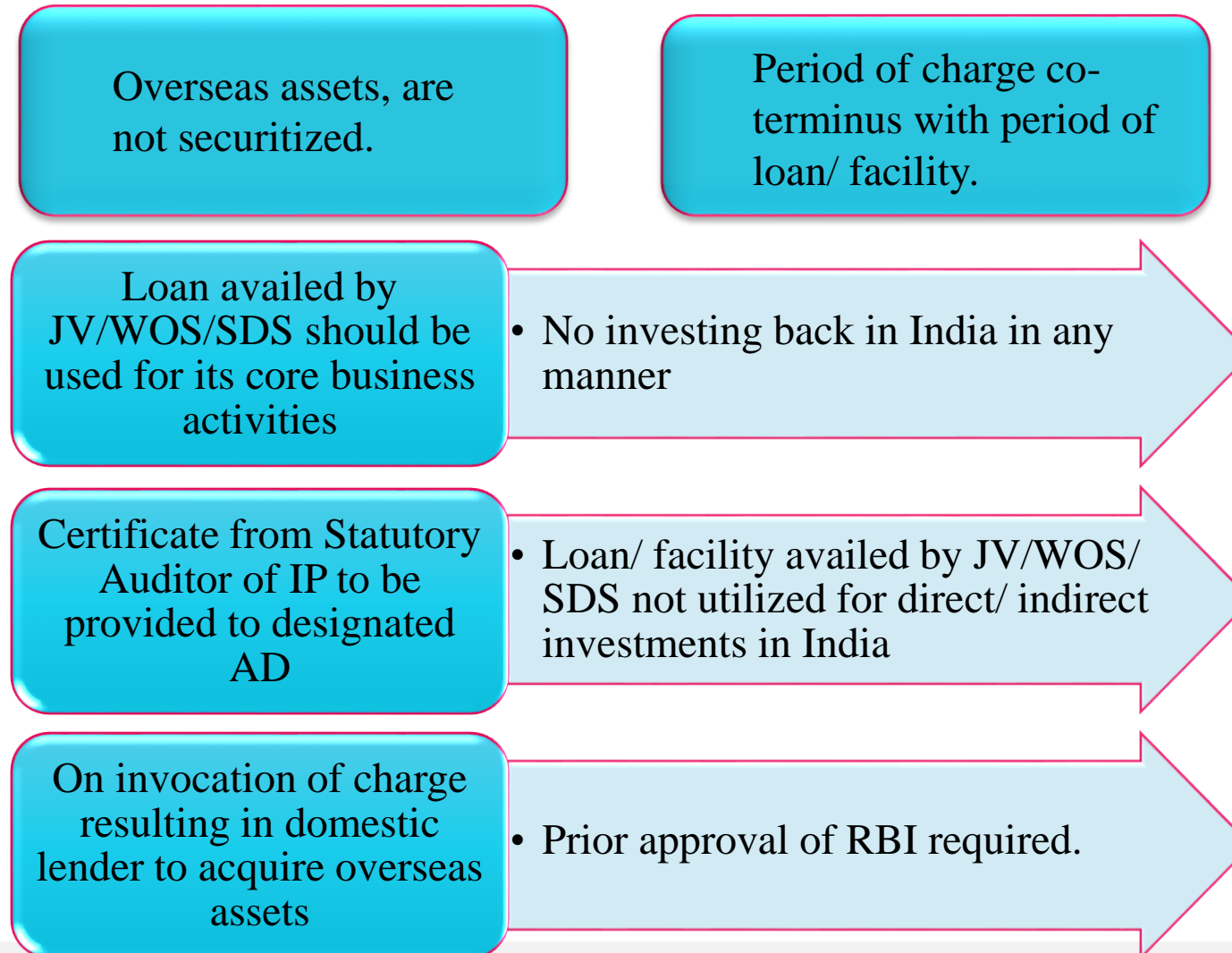
- Shall require RBI approval



# Specific conditions for creation of charge on Overseas Assets

<b>Case</b>	<b>Charge created on</b>	<b>Held in/ of</b>	<b>In favor of</b>	<b>Route</b>
1	Overseas Assets	JV/WOS/SDS	Domestic lender to IP/ JV/WOS/ SDS	Approval ( if not as per conditions specified)

# Specific conditions for creation of charge on Overseas Assets



# ODI by registered trust/ society



# ODI by registered trust/ society

- ✓ Engaged in manufacturing/ educational sector/ set up hospitals in India
- ✓ Trust/ Society is registered
- ✓ Trust deed/ Society's MOA permits overseas investment
- ✓ Trust/ Society in existence for at least 3 years
- ✓ Trust/ Society not under adverse notice of any Regulatory/ Enforcement agency
- ✓ AD Bank is satisfied that Trust/Society is KYC compliant and into bona fide activity.