

# FEMA ke FUNDAE

**Overseas Investment  
Part – II  
(Manner of making OI and Schedule I)**

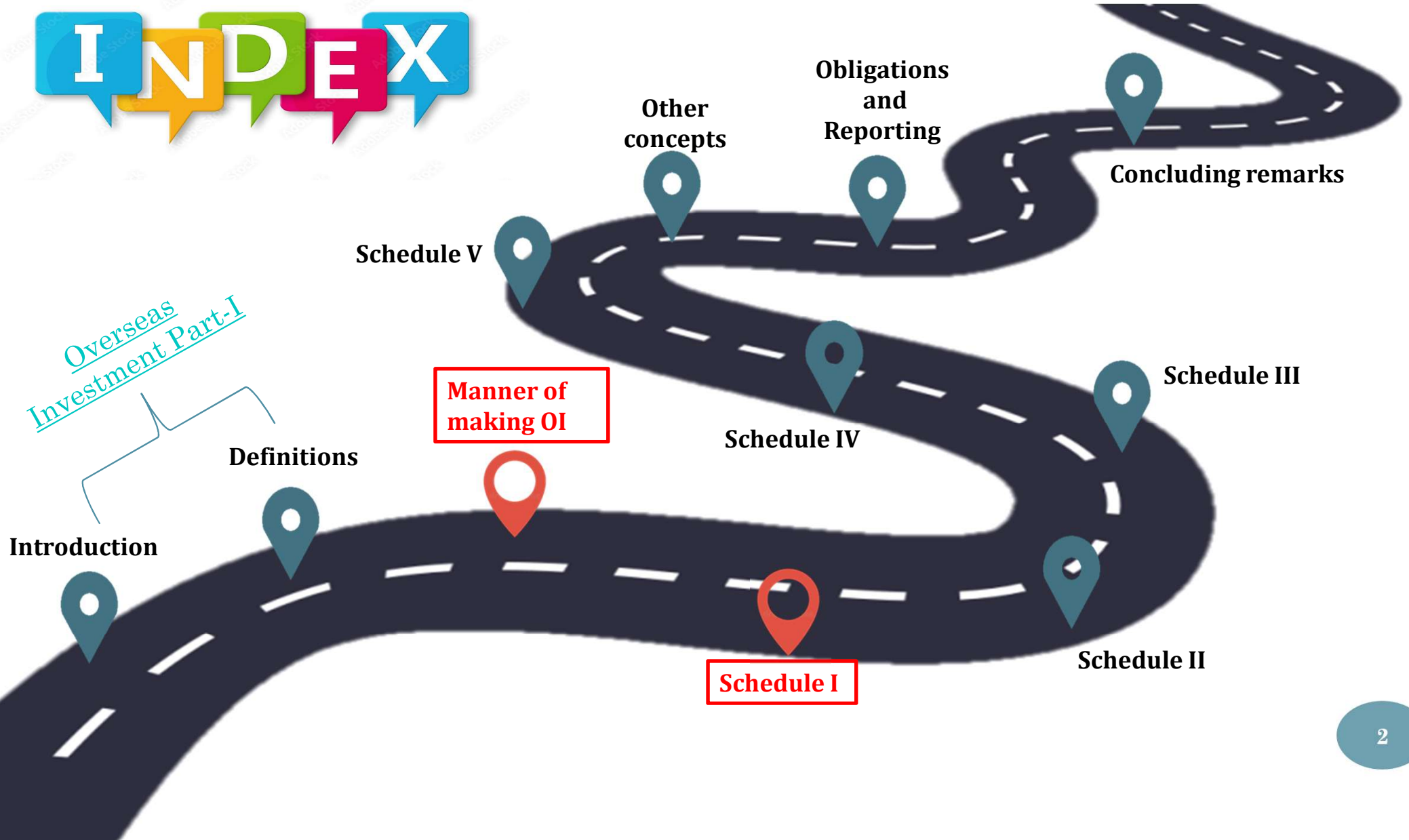
**#FamiliarwithFEMA**

**Date : 05.October.2022**

**Jain Shrimal & Co.**

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# INDEX



# ABBREVIATIONS

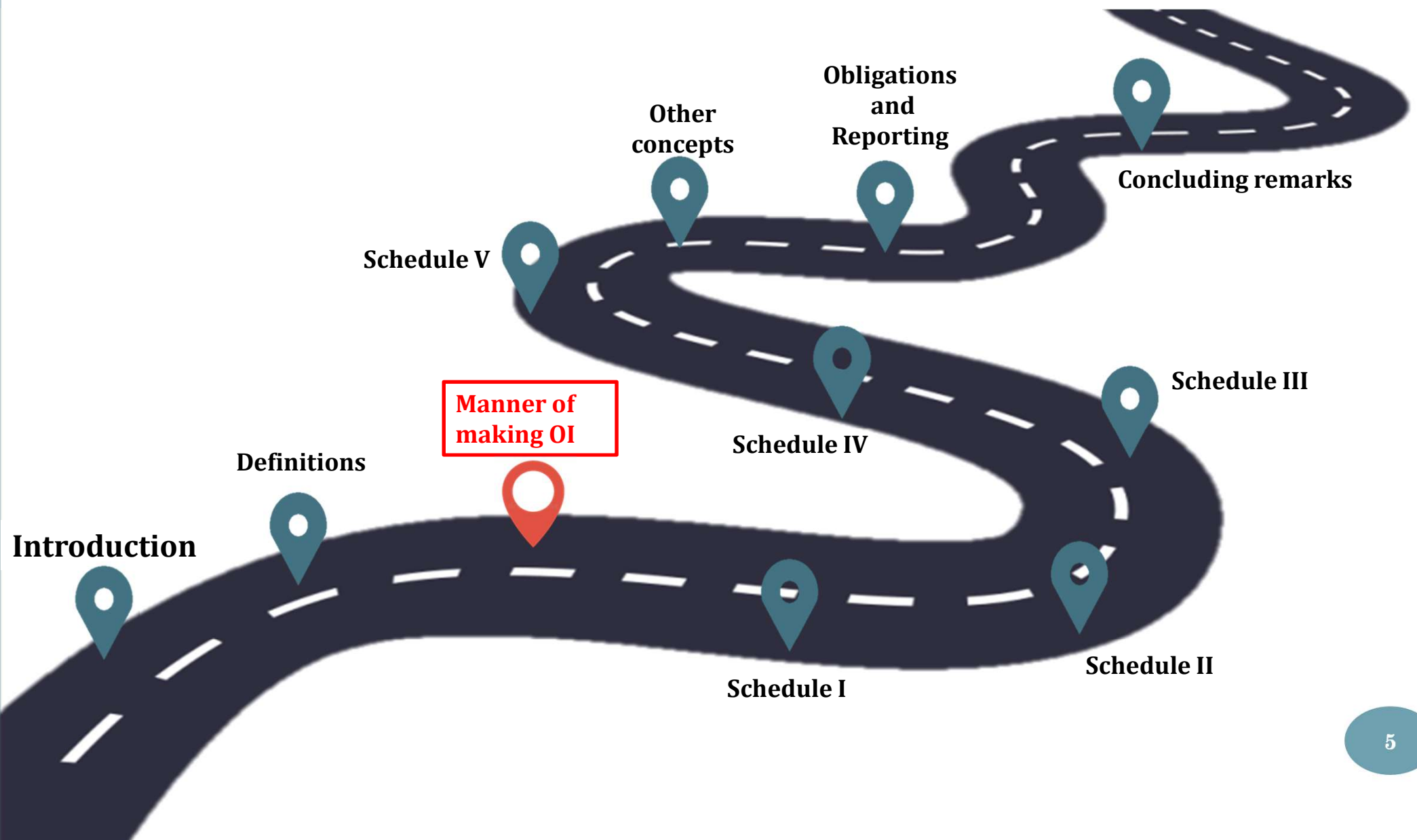
Abbreviations	Key word
<b>ODI</b>	Overseas Direct Investment
<b>OPI</b>	Overseas Portfolio Investment
<b>OI</b>	Overseas Investment
<b>AIF</b>	Alternate Investment Fund
<b>VCF</b>	Venture Capital Fund
<b>IFSC</b>	International Financial Service Centre
<b>SDS</b>	Step-Down Subsidiary
<b>SPV</b>	Special-purpose Vehicle
<b>FC</b>	Financial Commitment
<b>AD bank</b>	Authorise Dealer Bank

Abbreviations	Key word
<b>RBI</b>	Reserve Bank of India
<b>NOC</b>	No Objection Certificate
<b>NPA</b>	Non-performing Asset
<b>JV</b>	Joint Venture
<b>WOS</b>	Wholly Owned Subsidiary
<b>IP</b>	Indian Party
<b>CA</b>	Chartered Accountant
<b>PROI</b>	Person resident outside India
<b>PRIN</b>	Person resident in India
<b>FCRA</b>	Foreign Contribution (Regulation) Act, 2010

# ABBREVIATIONS

Abbreviations	Key word
<b>ESOP</b>	Employee Stock Ownership Plan
<b>FEMA, 1999</b>	Foreign Exchange Management Act, 1999
<b>LRS</b>	Liberalised Remittance Scheme
<b>SEBI</b>	Securities and Exchange Board of India
<b>BDRs</b>	Bullion Depository Receipts
<b>MF</b>	Mutual Fund
<b>ECB</b>	External Commercial Borrowings
<b>ADR</b>	American Depository Receipt
<b>GDR</b>	Global Depository Receipt
<b>UIN</b>	Unique Identification Number
<b>APR</b>	Annual Performance Report

Abbreviations	Key word
<b>FLA</b>	Foreign Liabilities and Assets
<b>IE</b>	Indian Entity
<b>FE</b>	Foreign Entity
<b>LSF</b>	Late Submission Fee
<b>FS</b>	Financial Statements
<b>SWIFT</b>	Society for Worldwide Interbank Financial Telecommunication



**Manner of making OI**

**Introduction**

**Definitions**

**Schedule V**

**Other concepts**

**Obligations and Reporting**

**Concluding remarks**

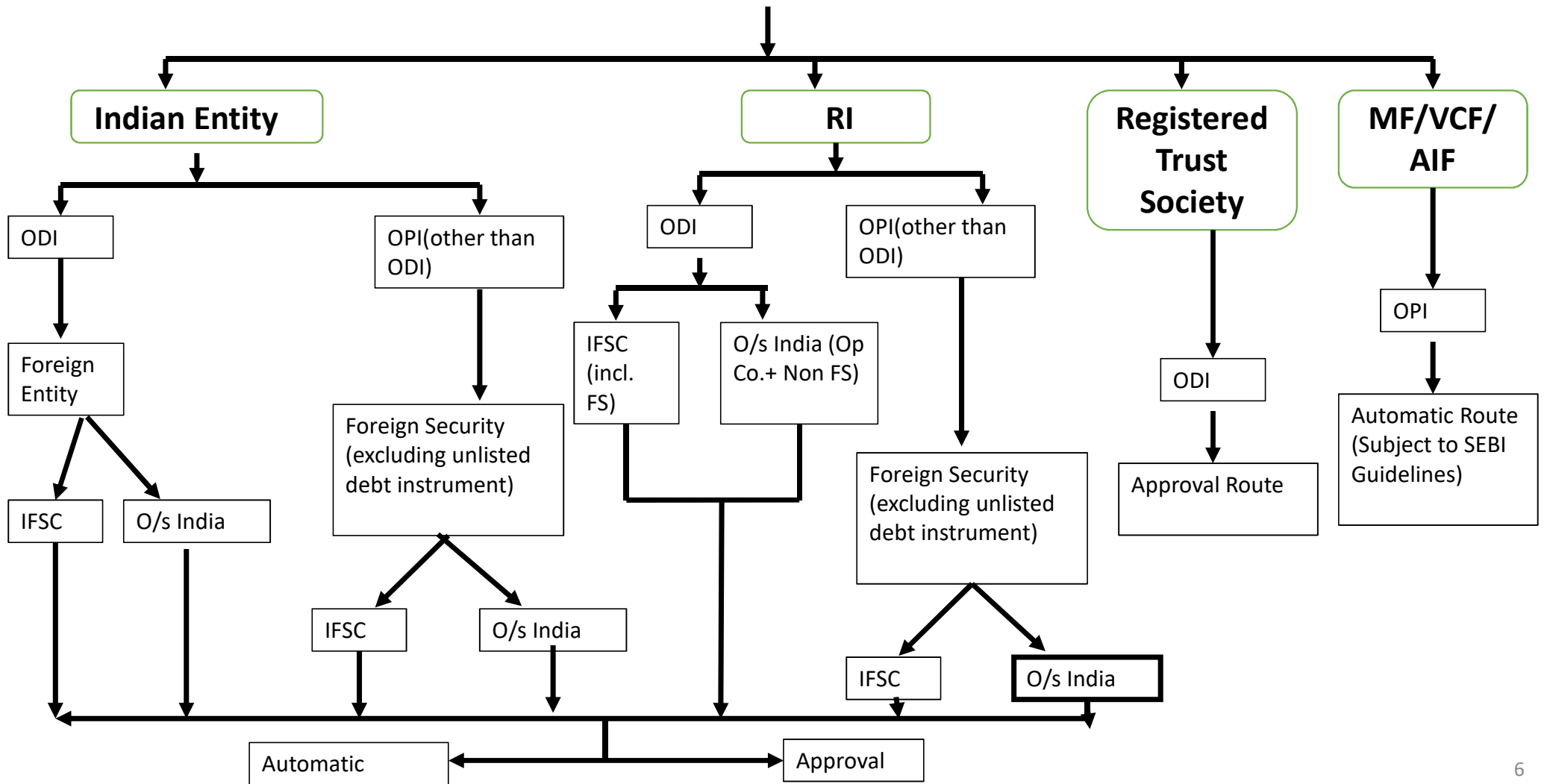
**Schedule IV**

**Schedule III**

**Schedule I**

**Schedule II**

# ROUTES FOR OVERSEAS INVESTMENTS



# MODE OF PAYMENT

**1**

By remittance  
made through banking  
channel

**2**

From funds held in an  
account maintained in  
accordance with the  
provisions of the Act.

**3**

By swap of securities



Payment can  
be made:

**4**

By using the proceeds of  
American Depository Receipt  
or Global Depository Receipt  
or swap of such receipts or  
ECB raised

# IMPORTANT POINTS FOR MODE OF PAYMENT

The mode of payment for making overseas investment shall be made in accordance with **Regulation 8 of the OI Regulations.**



Indian entity can make remittances to its office/branch outside India **only for the purpose of normal business operations** of such branch or office.



A person resident in India **shall not make any payment on behalf of any foreign entity** other than by way of financial commitment as permitted under the OI Rules/Regulations.

Overseas investment by way of **cash** is **not permitted.**

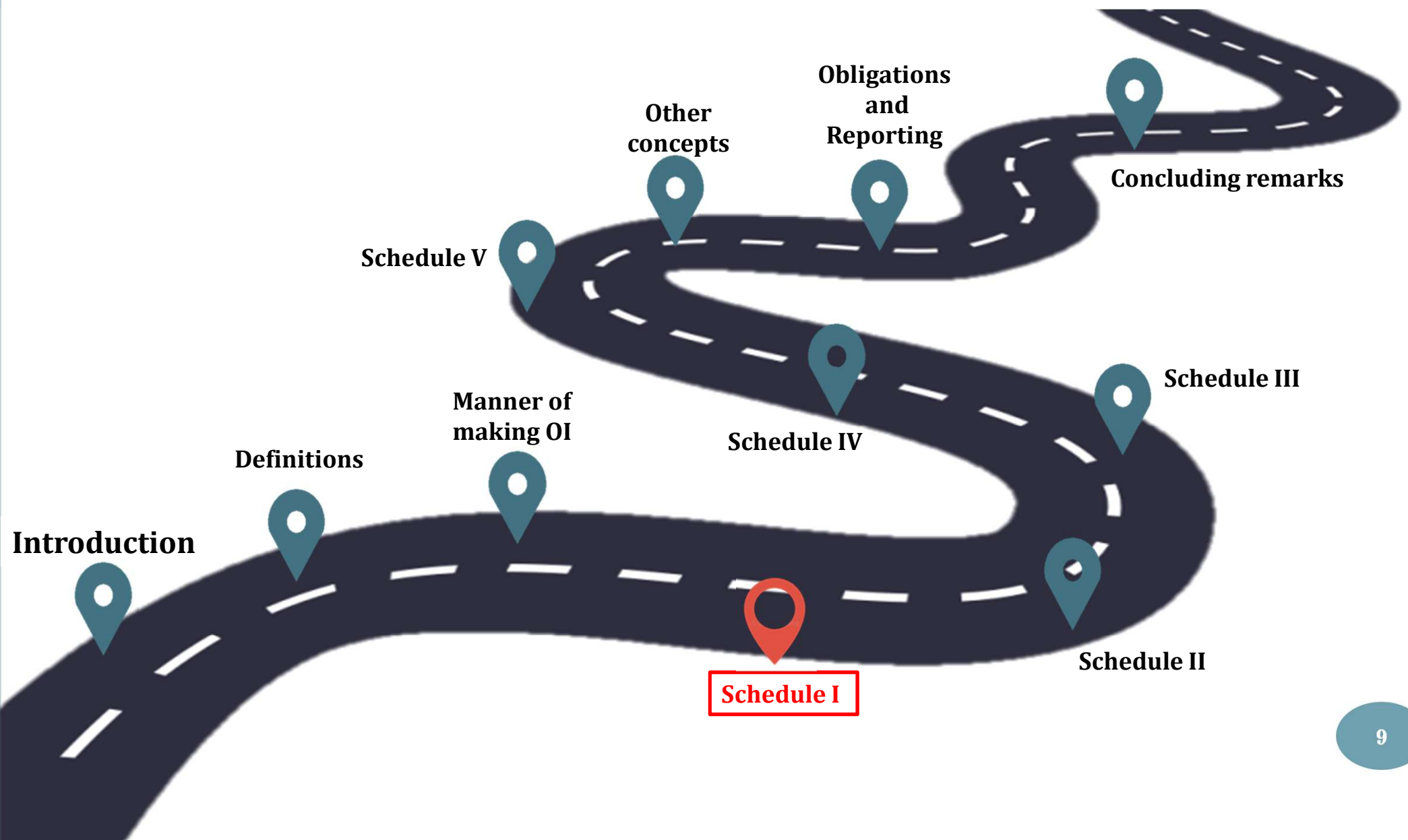


**no remittance** shall be made by any Indian entity to its branch/office outside India **for making any overseas investment.**



Any **investment/financial commitment in Nepal and Bhutan** shall be done in a manner as provided in **FEMA Regulations, 2016**





# MANNER OF MAKING ODI BY IE

An Indian entity may make ODI by way of investment in **equity capital** for the purpose of undertaking bona-fide business activity in the manner and subject to the limits and conditions provided in Schedule I.

The ODI may be made or held by way of

**1**

**subscription** as part of memorandum of association or **purchase** of equity capital, listed or unlisted

**2**

acquisition through **bidding or tender** procedure

**3**

the **swap** of **securities**

**4**

acquisition of equity capital by way of **rights issue** or allotment of **bonus shares**

**5**

**merger, demerger, amalgamation** or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be

**6**

**capitalisation**, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder.

# ODI IN FINANCIAL SERVICES ACTIVITY

1

An Indian entity **engaged in financial services** activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions:

a

the Indian entity has **posted net profits** during the **preceding three financial years**.

b

the Indian entity is registered with or **regulated by a financial services regulator** in India.

c

the Indian entity has obtained **approval** as may be required **from the regulators of such financial services activity**, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services.

2

An Indian entity **not engaged in financial services** activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, **except banking or insurance**, subject to the condition that such Indian entity has posted net profits during the preceding three financial years.

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

3

If an Indian entity does not meet the net profits requirements due to the impact of Covid-19 during the period from 2020-2021 to 2021-2022, then the financial results of such period may be excluded for considering the profitability period of three years

Provided that such period may be extended by the Reserve Bank in consultation with the Central Government, as it may deem necessary



# FINANCIAL COMMITMENT BY WAY OF PLEDGE

An **Indian entity** which has made ODI by way of **investment in equity capital in foreign entity**, may-

**Pledge the equity capital of foreign entity** in which it has made ODI

**Create charge by way of mortgage, pledge, hypothecation or any identical mode on-**



Its **assets in India**

The **assets outside India** of the foreign entity.

# FINANCIAL COMMITMENT BY WAY OF GUARANTEE

- In case of performance guarantee, 50 per cent of the amount of guarantee shall be reckoned towards the financial commitment limit.
- Roll-over of guarantee shall not be treated as fresh financial commitment where the amount on account of such roll-over does not exceed the amount of original guarantee.
- Where the guarantee is extended by a group company, it shall be counted towards the utilization of its financial commitment limit independently
- No guarantee shall be open-ended.
- The guarantee, that cease to be a part of the non-fund based commitment shall be considered as lending.
- Where a guarantee has been extended jointly 100 per cent. of the amount of such guarantee shall be reckoned towards the individual limits of each of such Indian entities.

**Remember!**

## **Types of Guarantees that may be issued-**

- ✓ corporate or performance guarantee
- ✓ personal guarantee
- ✓ bank guarantee



# ODI IN START UPS

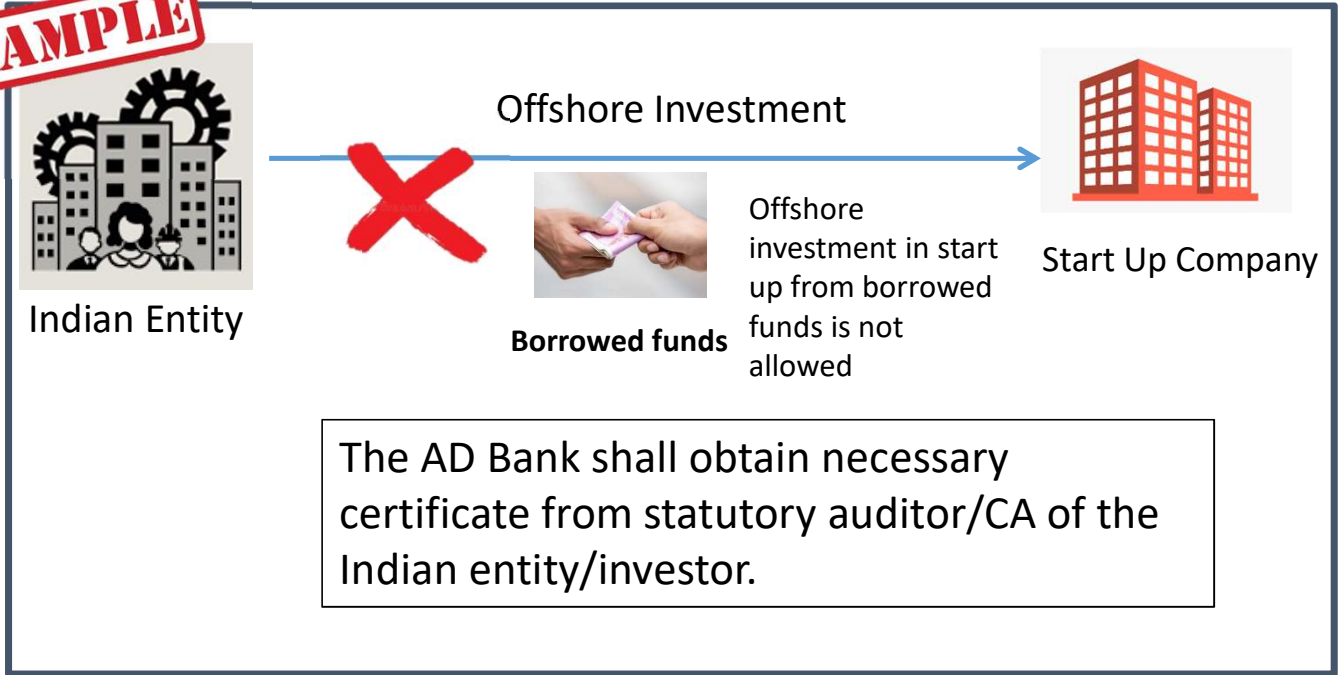
**EXAMPLE**

Investment in start up is included in **strategic sector**.

The **restriction of limited liability** structure of foreign entity shall **not be mandatory** for start up entities.



AD banks may **allow remittances** for ODI in strategic sector after ensuring that Indian entity **has obtained necessary permission from the competent authority**, wherever applicable.

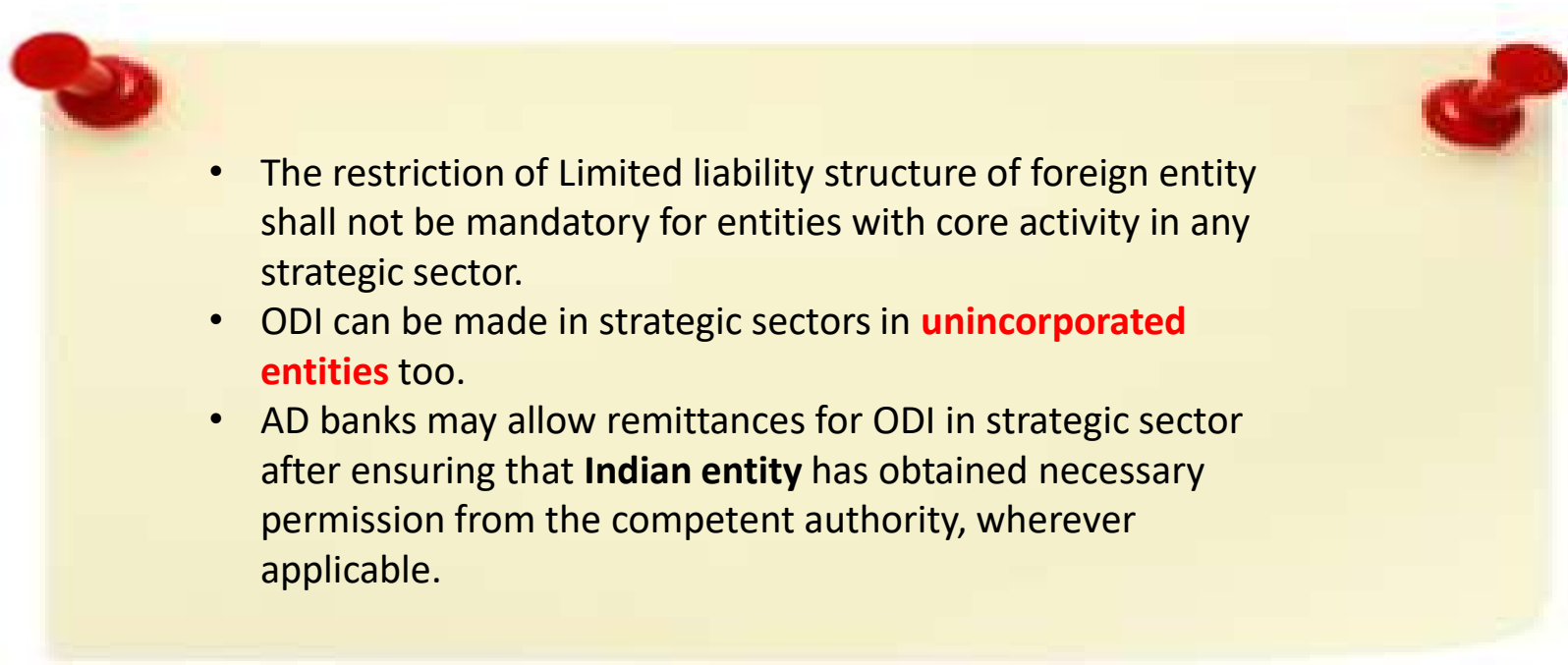




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## ODI IN STRATEGIC SECTOR

ODI can be done in Strategic sector with **approval of central government**.

- 
- The restriction of Limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector.
  - ODI can be made in strategic sectors in **unincorporated entities** too.
  - AD banks may allow remittances for ODI in strategic sector after ensuring that **Indian entity** has obtained necessary permission from the competent authority, wherever applicable.

# ODI by way of Rights and Bonus Issue



## Rights Issue

## Bonus Issue

Shares can be acquired and a **Form FC** is required to be filed.

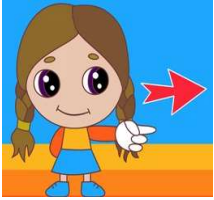
**Renunciation:**  
Shares can be renounced to :

- PROI
- PRIN
- **No reporting is required**

Not treated as fresh financial commitment, so, **No reporting Required**







In the next part, we will cover the **Schedule II** and **Schedule III**.

**To be continued next  
WEDNESDAY...**





We are open to your Queries/Suggestions/Feedbacks



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