

FEMA ke FUNDAE

**Overseas Investment
Part – IV
(Schedule IV, Schedule V and Other
Concepts)**

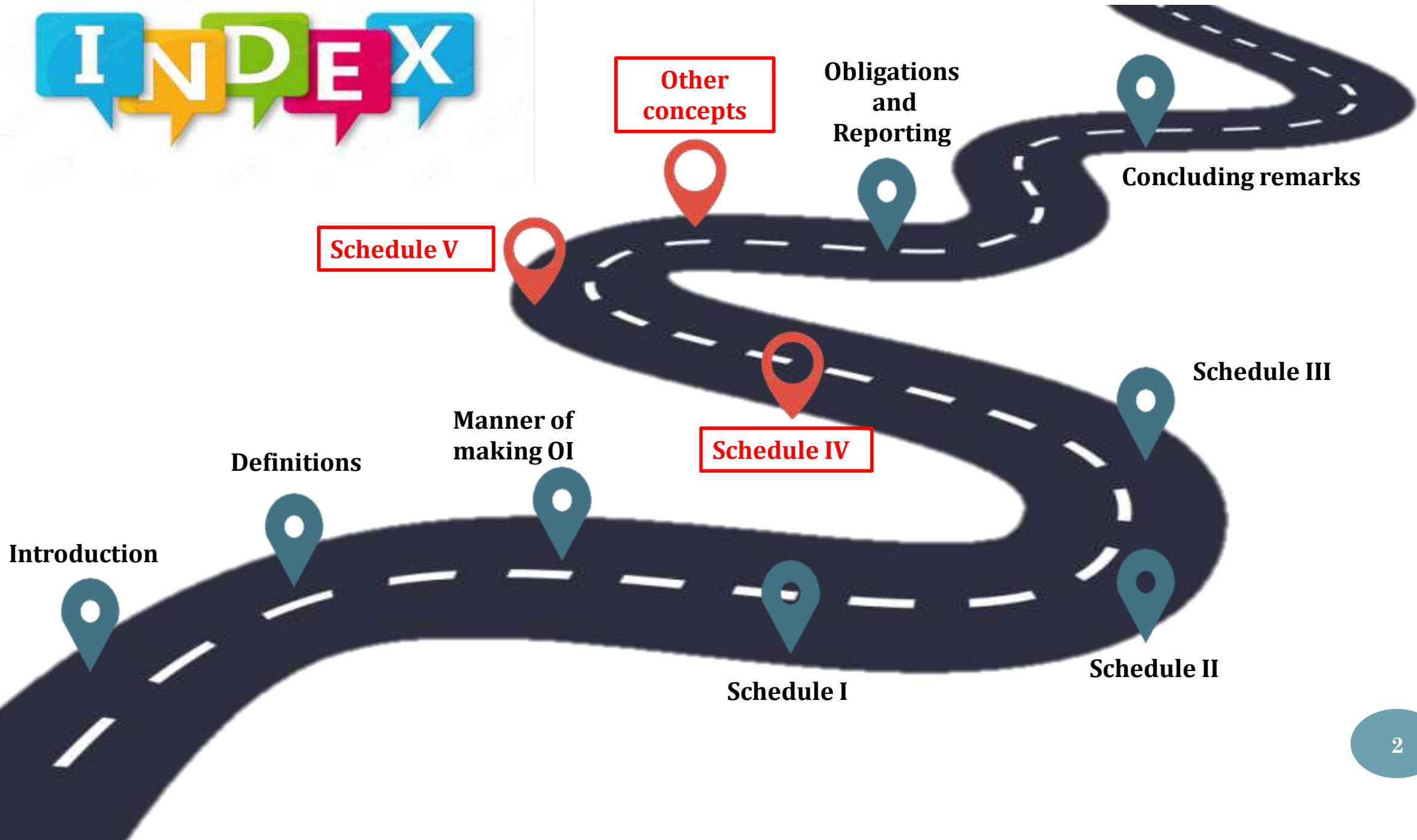
#FamiliarwithFEMA

Date : 19.October.2022

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Issue No. : 19

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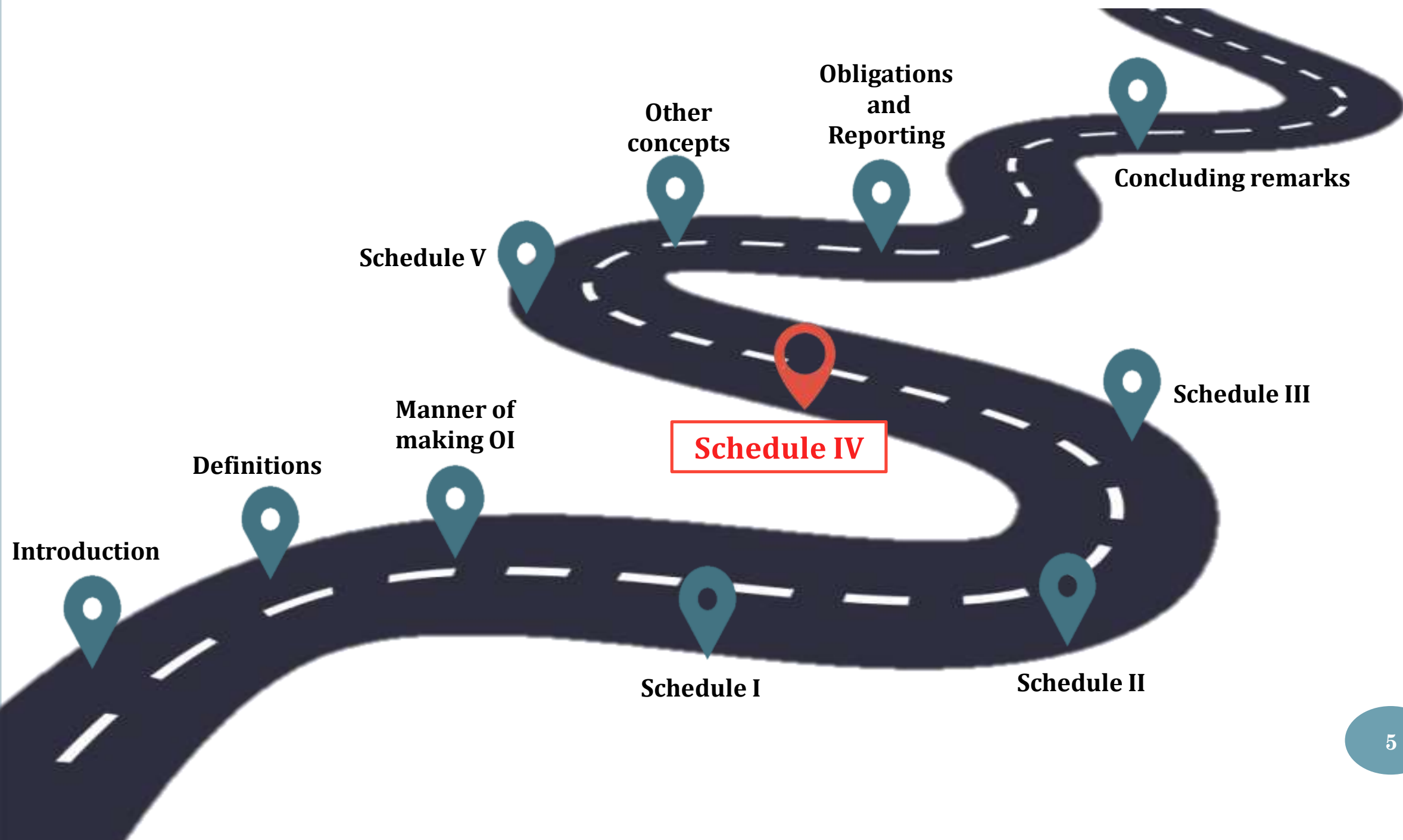
Abbreviations	Key word
ODI	Overseas Direct Investment
OPI	Overseas Portfolio Investment
OI	Overseas Investment
AIF	Alternate Investment Fund
VCF	Venture Capital Fund
IFSC	International Financial Service Centre
SDS	Step-Down Subsidiary
SPV	Special-purpose Vehicle
FC	Financial Commitment
AD bank	Authorise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

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

ABBREVIATIONS

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

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



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OVERSEAS INVESTMENT BY A PERSON RESIDENT IN INDIA

[OTHER THAN AN INDIAN ENTITY OR A RESIDENT INDIVIDUAL]

1

Mutual Funds (MFs), Venture Capital Funds (VCFs), Alternative Investment Funds (AIFs)

Such entities registered with SEBI may invest overseas in securities as stipulated by SEBI **within an overall cap of USD 7 billion and USD 1.5 billion, respectively.**

Further, a **limited number of qualified MFs** are permitted to invest **cumulatively** up to **USD 1 billion** in overseas **Exchange Traded Funds**, as may be permitted by SEBI.

MFs/VCFs/AIFs desirous of availing this facility may **approach SEBI for necessary permission**

Such investment shall be **considered as OPI** (irrespective of whether the securities are listed or not.)

note

An AD bank, including its overseas branch, may acquire or transfer foreign securities in terms of host country regulations/laws, as applicable, in the normal course of its banking business. The provisions contained in OI Rules/Regulations shall not apply to such acquisition or transfer of foreign securities by an AD bank.

2

Banks

A bank in India, may acquire the shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT) as per the **by-laws of SWIFT**, provided the bank **has been permitted** by the **Reserve Bank** for admission to the 'SWIFT User's Group in India' as a member.

3

Sole Proprietorship or Unregistered Partnership Firms

Any overseas investment by the above mentioned entities may be made **within their limit available under the LRS** in accordance with schedule III of the OI Rules.

If the proposed investment is in **strategic sector**, any application for making overseas investment **in excess of the LRS limit** may be made under the **government approval route**.

4

Trust/Society

Overseas investment by **registered trust/society** may be made under the **approval route** in accordance with paragraph 1 of schedule IV of OI Rules.

ACQUISITION AND TRANSFER OF FOREIGN SECURITIES

BY DOMESTIC DEPOSITORY

A domestic depository may **acquire, hold and transfer** foreign securities of a foreign entity



being the **underlying security**



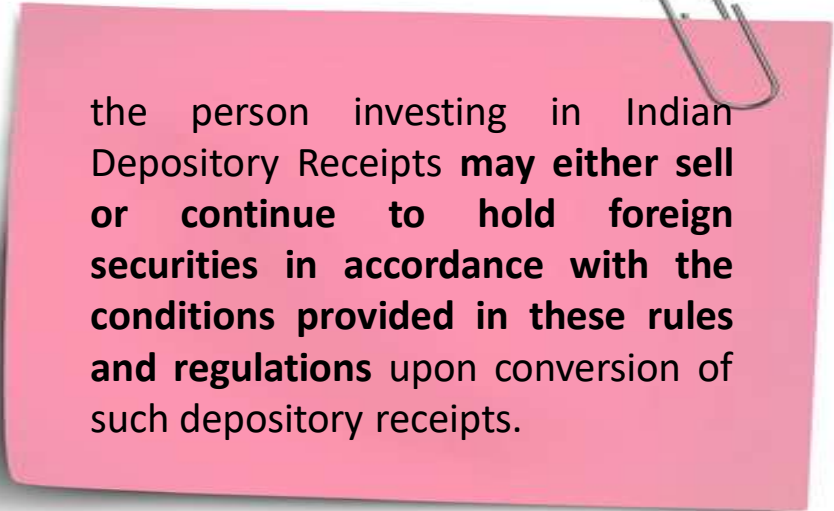
to



issue Indian Depository Receipts



as may be **authorised** by such **foreign entity or its overseas custodian bank**



the person investing in Indian Depository Receipts may **either sell or continue to hold foreign securities** in accordance with the **conditions provided in these rules and regulations** upon conversion of such depository receipts.

BY AD Bank

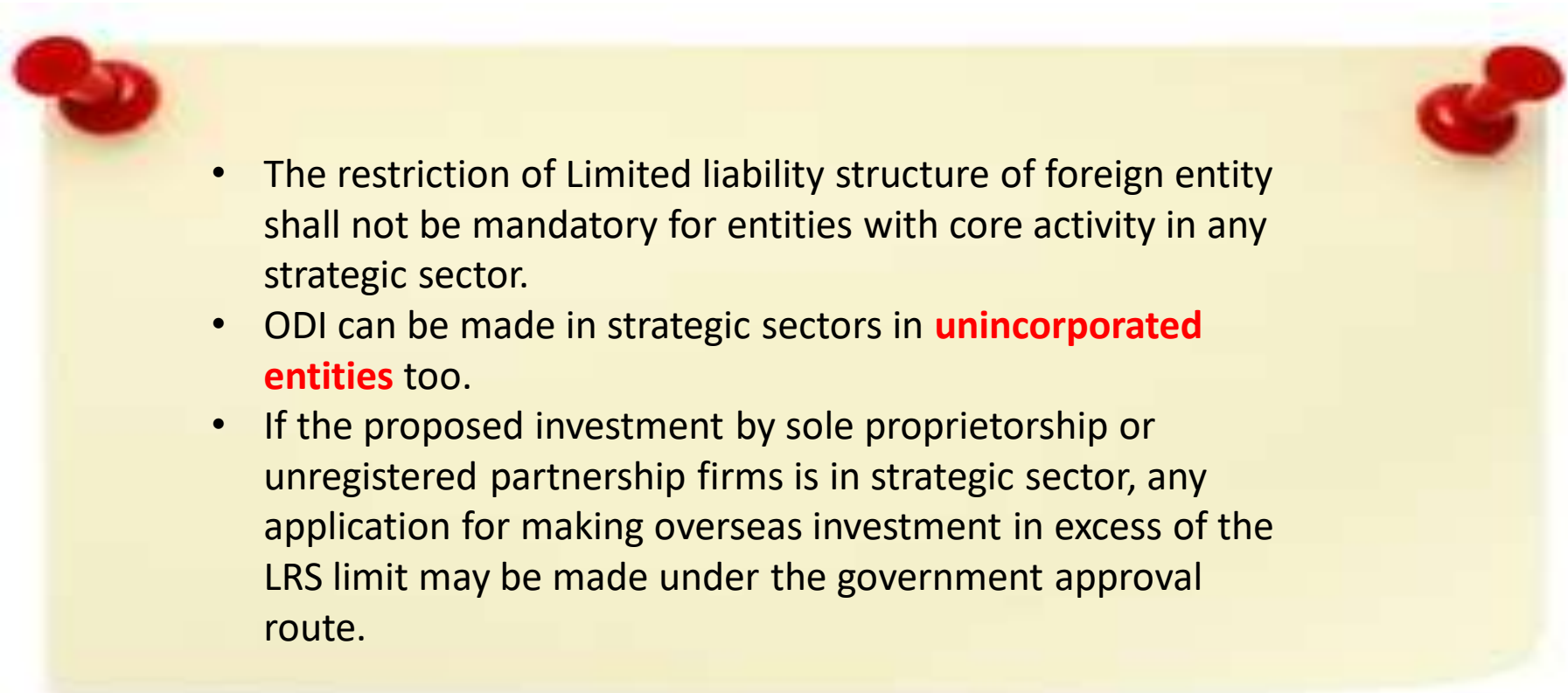
An AD bank including its overseas branch may **acquire or transfer foreign securities** in accordance with **the terms of the host country or host jurisdiction**, as the case may be, **in the normal course of its banking business**.

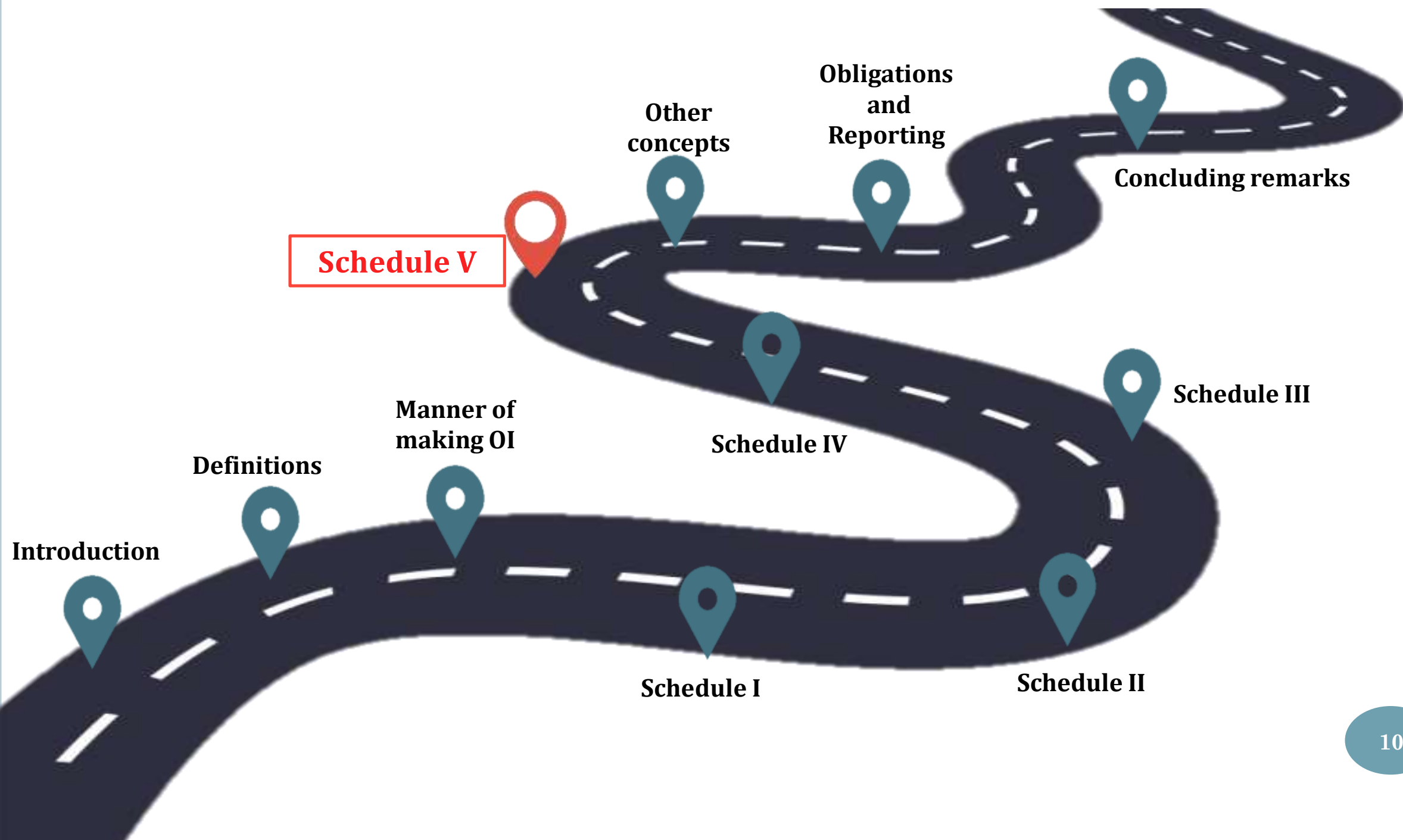


NEW

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.
 - If the proposed investment by sole proprietorship or unregistered partnership firms is in strategic sector, any application for making overseas investment in excess of the LRS limit may be made under the government approval route.



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OVERSEAS INVESTMENT IN AN IFSC BY A PERSON RESIDENT IN INDIA

A person resident in India may make overseas investment in an IFSC in India in accordance with Schedule V of OI Rules. The following is further provided:

1 A person resident in India, being an **Indian entity (listed and unlisted)** or a **resident individual**, may make investment (**including sponsor contribution**) in the units of an investment fund or vehicle set up in an IFSC as OPI.

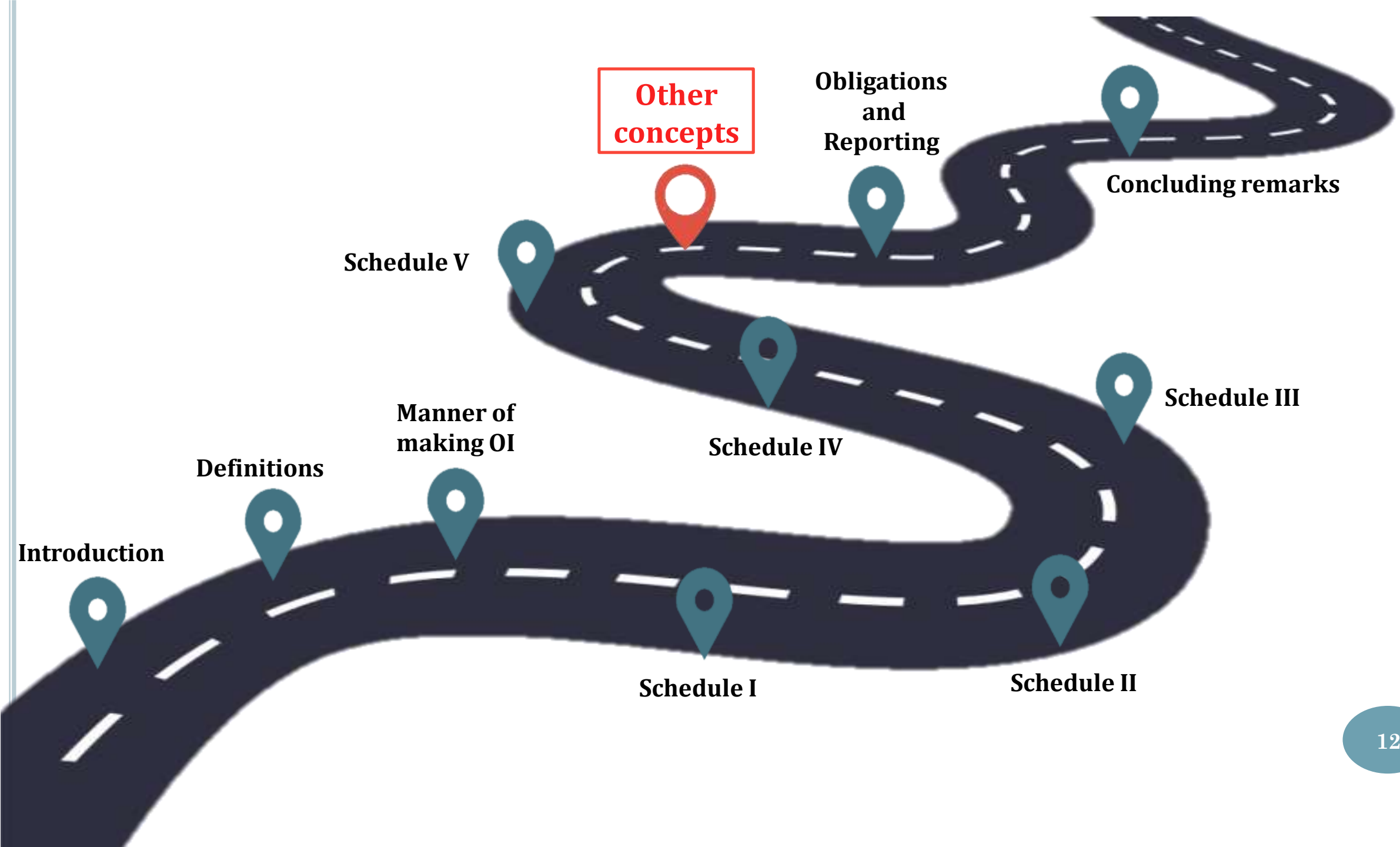
2 The restriction of making ODI only in an operating foreign entity or not making ODI in a foreign entity engaged in financial services activity by resident individuals, shall not apply to an investment made in IFSC.



Such investment, however, shall not be made in any foreign entity engaged in banking or insurance.



Such foreign entity in IFSC may have subsidiary/SDS in IFSC



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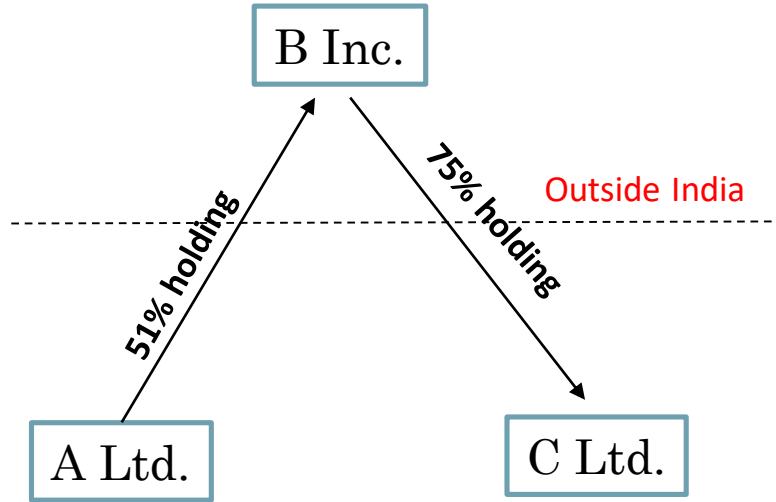
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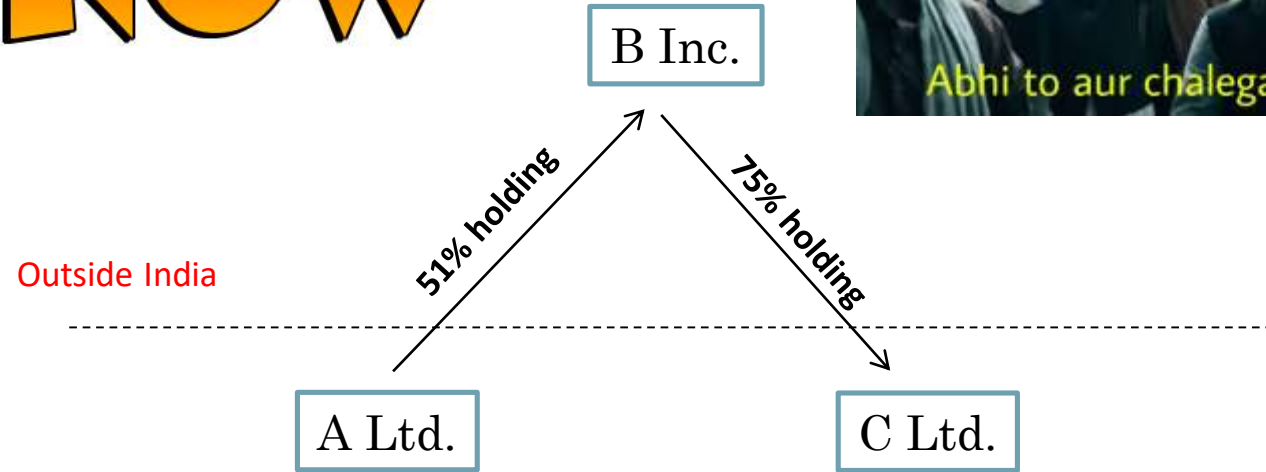


ROUND TRIPPING

EARLIER



NOW



ALLOWED

The structure should not exceed two layers of subsidiaries.

RESTRUCTURING



A person resident in India who has made ODI in a foreign entity, may permit restructuring of the **Balance Sheet** by such foreign entity in accordance with rule 18 of OI Rules.

The **aggregate investment** in both the **equity and debt** of the foreign entity shall be taken into consideration for computing the proportionate amount of **accumulated losses**. However, in case the restructuring involves only equity, investment only in **equity** may be taken into consideration.

REMEMBER

These provisions shall not be used where the assets are simply revalued in the books of the Indian entity without any restructuring of the balance sheet of the foreign entity.

A **certificate** is required to be furnished in accordance with rule 18 of OI Rules. It shall mention:

- The amount of **accumulated losses** as per the audited balance sheet of the foreign entity.
- The **proportionate amount of accumulated losses** based upon the share of Indian entity/investor
- The **amount of diminution** in the value of the outstanding dues towards the Indian entity/investor post restructuring AND
- Such diminution does **not exceed** the proportionate amount of accumulated losses.

RESTRUCTURING

NEW

- Restructuring of the balance sheet by a foreign entity is permitted.
- A person resident in India who has made ODI in a foreign entity can permit restructuring of the balance sheet by a foreign entity, which has been incurring losses for the previous two years as per its last audited balance sheets.

Points to Remember

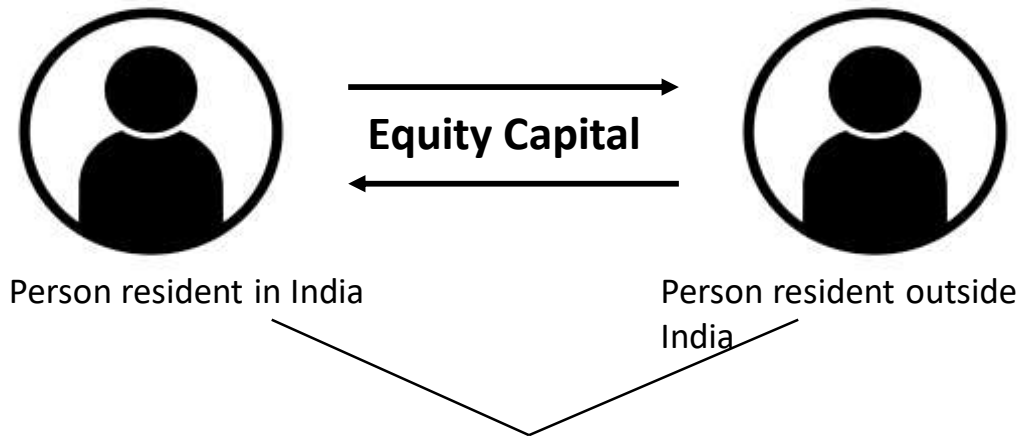
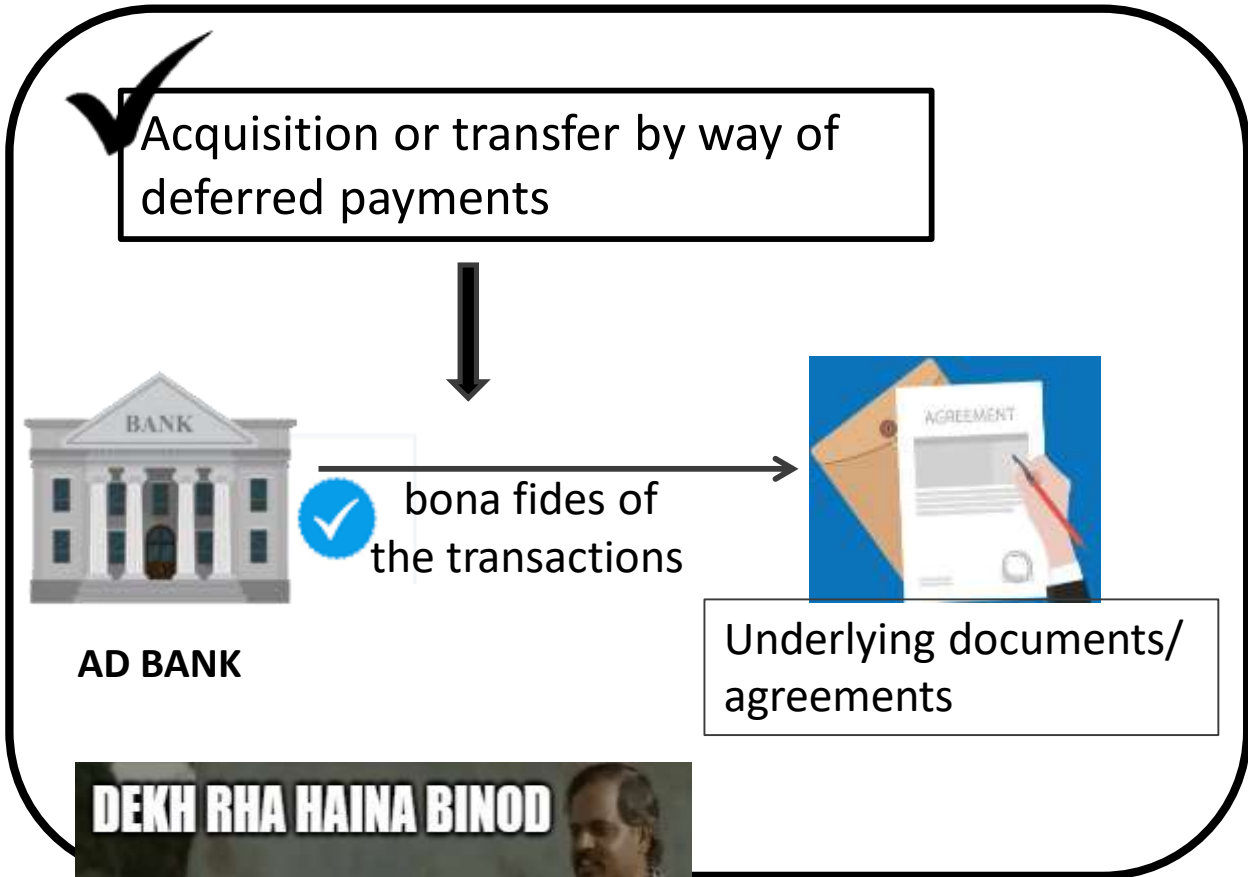
The diminution in value is required to be duly certified on an arm's length basis by a registered valuer:

- (a)** where the amount of original investment is more than USD 10 million or
- (b)** where the amount of such diminution exceeds 20% of the total value of the outstanding dues towards the Indian entity or investor,

It must be noted that the certificate dated not more than 6 months shall be submitted to the AD bank.



DEFERRED PAYMENT



Amount of Consideration

1. The foreign securities equivalent to the amt of total consideration shall be transferred upfront by the seller to buyer.
2. The full consideration shall be compliant with pricing guidelines.



GENERAL POINTS TO BE CONSIDERED



Pre incorporation expenses

AD bank may allow remittance towards pre incorporation expenses upto a maximum of USD 100,000 per foreign entity. Such remittances made by resident individual shall be reckoned towards their LRS limit.

Pricing Guidelines:

- The issue or transfer of equity capital of a foreign entity shall be subject to a price arrived on **arm's length basis**
- The AD Bank before facilitating a transaction shall **ensure compliance with arm's length pricing** taking into consideration the **valuation as per any internationally accepted pricing methodology** for valuation.

In case of ODI by way of **capitalisation of export proceeds**, Indian entity shall make an application in Form FC, compliance with OI Regulations wherever applicable

AD Banks shall render themselves liable for penal action under section 11 and 13 of FEMA, 1999 if they facilitate remittance without obtaining the duly completed form FC.





In the next part, we will cover **Obligations and Reporting and Concluding Remarks.**

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





We are open to your Queries/Suggestions/Feedbacks



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