Overseas Direct Investment

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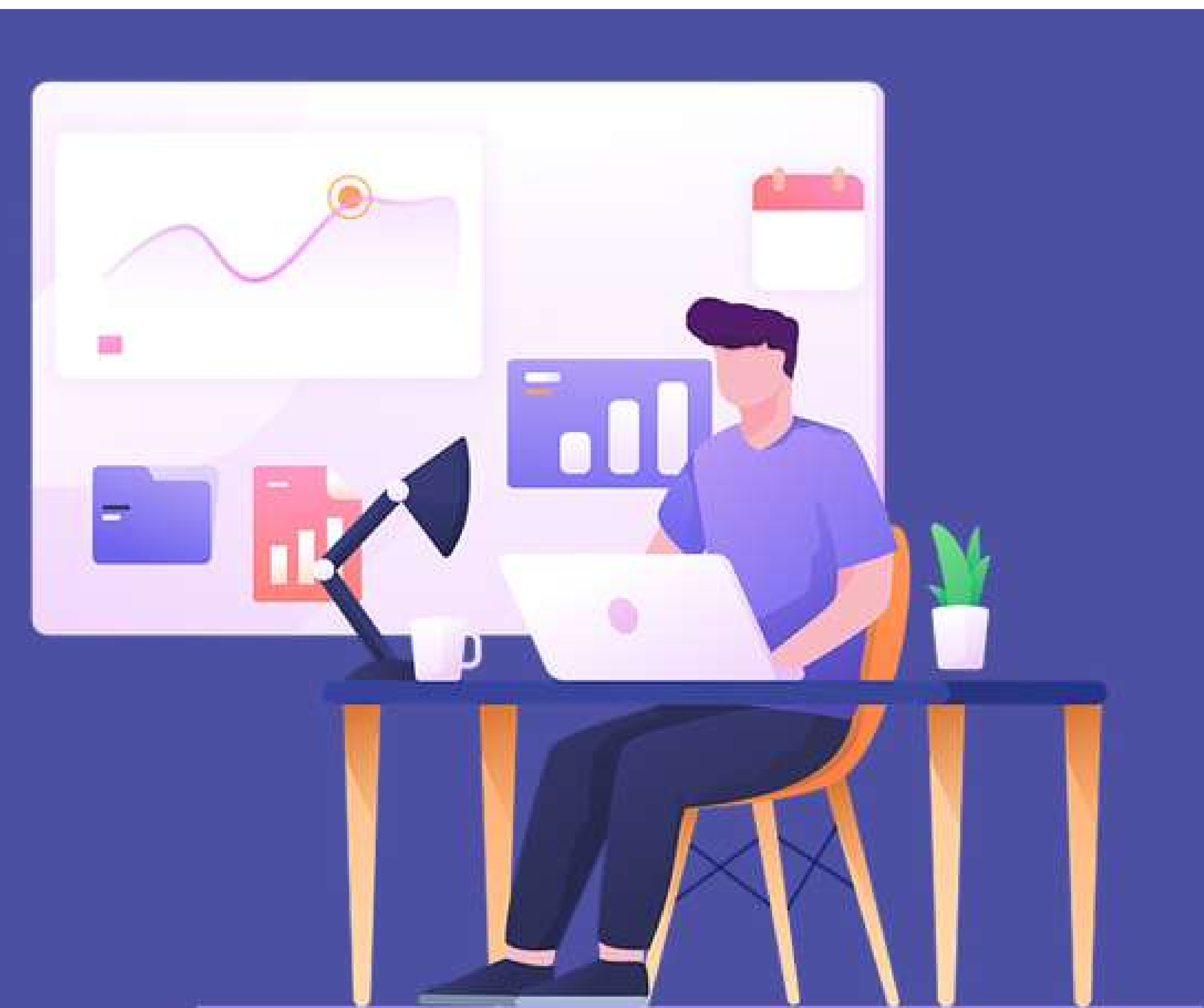

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Basic Concepts of Overseas Direct Investment (ODI)

Overseas Direct Investment (ODI) by Indian Parties and Resident Individuals through Joint Venture (JV) and Wholly Owned Subsidiary (WOS)

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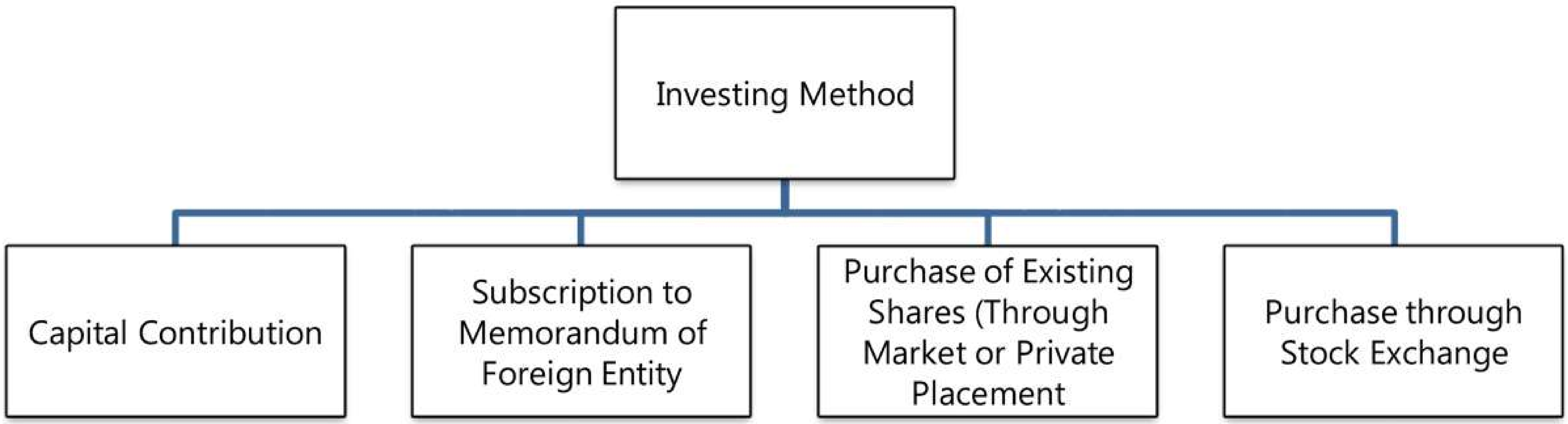
What is Overseas Direct Investment (ODI)?

Overseas Direct Investment is done with the view to diversify the business outside country. It enables businesses to take opportunity given by the overseas market by utilizing the full capacity. There are numerous benefits of overseas investments.

Overseas investments involve transfer of significant benefits such as:

- Technology & Skill
- Sharing R&D
- Market Access
- Brand Image
- Employment Generation
- Utilization of Raw Material
- Technology & Skill

It does not only provide benefit to businesses but also provide benefit to country as it promotes economic co-operation with the host countries and much more. In simplified words, Overseas Direct Investment is an investment made by Indians outside India. Investment can be made either by way of subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign.



What are the benefits of Overseas Direct Investment (ODI)?

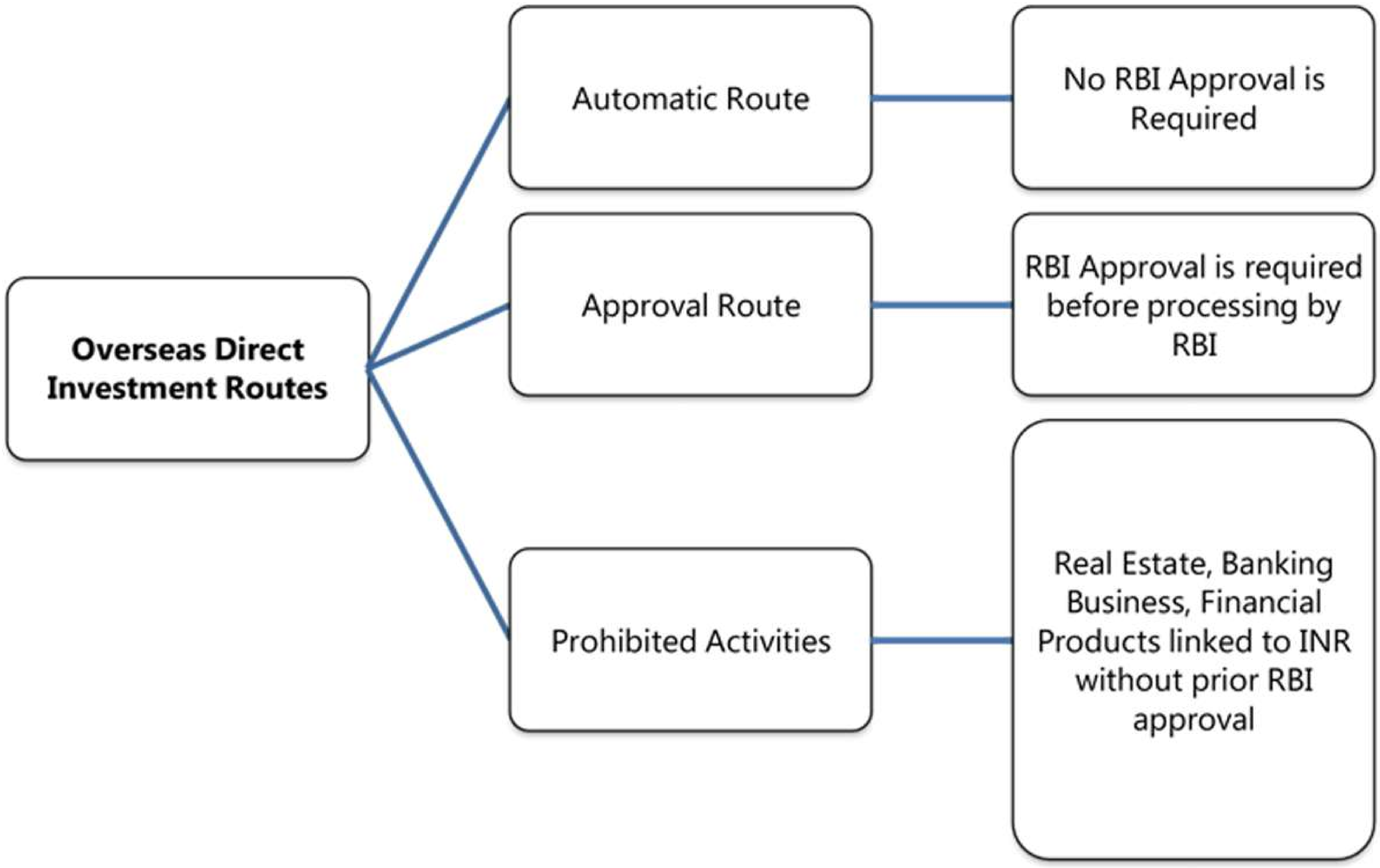
Here are the following benefits of Overseas Direct Investment (ODI):

- Indian Companies get better access of technological know-how
- Global Expansion of Business
- Extensive Market Access
- Global Customer Base

Overseas Direct Investment (ODI) Framework in India

- Section 6(3)(a) of Foreign Exchange Management Act (FEMA) 1999 read with FEM (Permissible capital Account Transactions) Regulations, 2000
- FEM (Transfer or Issue of any Foreign Security) Regulations, 2000
- A.P. (DIR Series) Circulars issued by RBI
- Guidelines released by RBI on Overseas Direct Investment
- Liberalized Remittance Scheme & FAQ (Applicable for resident Individuals)

Routes for Overseas Direct Investment (ODI)



Eligibility for Overseas Direct Investment (ODI)

An Indian Party is eligible to make Overseas Direct Investment (ODI) into a Joint Venture or Wholly Owned Subsidiary.

Indian Party

An Indian Party covers the following:

- A Company
- A Body created under an act of Parliament
- A Partnership Firm registered under Partnership Act 1932
- A Limited Liability Partnership incorporated under LLP Act, 2008
- Any other entity as notified by the Reserve Bank of India

Joint Venture

A foreign entity created by the Indian party where foreign promoters are holding stake with Indian Party is termed as Joint Venture.

Wholly Owned Subsidiary

In wholly owned subsidiary company, entire capital is owned by the Indian Party.

Overseas Direct Investment (ODI) under Automatic Route

- In overseas joint venture / wholly owned subsidiary company, financial commitment shall not exceed 400% of the net worth as per the last audited financial statement.
- If the financial commitment exceeds USD 1 billion in financial year then prior approval of RBI is required.
- The wholly owned subsidiary company should engage in bonafide business activity.
- Indian Party should not be on the Reserve Bank's exporters' caution list of defaulters or under investigation by the Directorate of Enforcement or any other regulatory authority.
- Routing of all the transactions by the Indian Party related to the investment in a foreign entity through only one branch of an authorized dealer.
- An application shall be made to RBI after obtaining an NOC from the existing authorized dealer (AD) for switching over to another AD.

ODI Route in Following Countries:

- Pakistan – Approval Route
- Nepal – Only in Indian Rupees
- Bhutan - Only in Indian Rupees and in freely convertible currencies

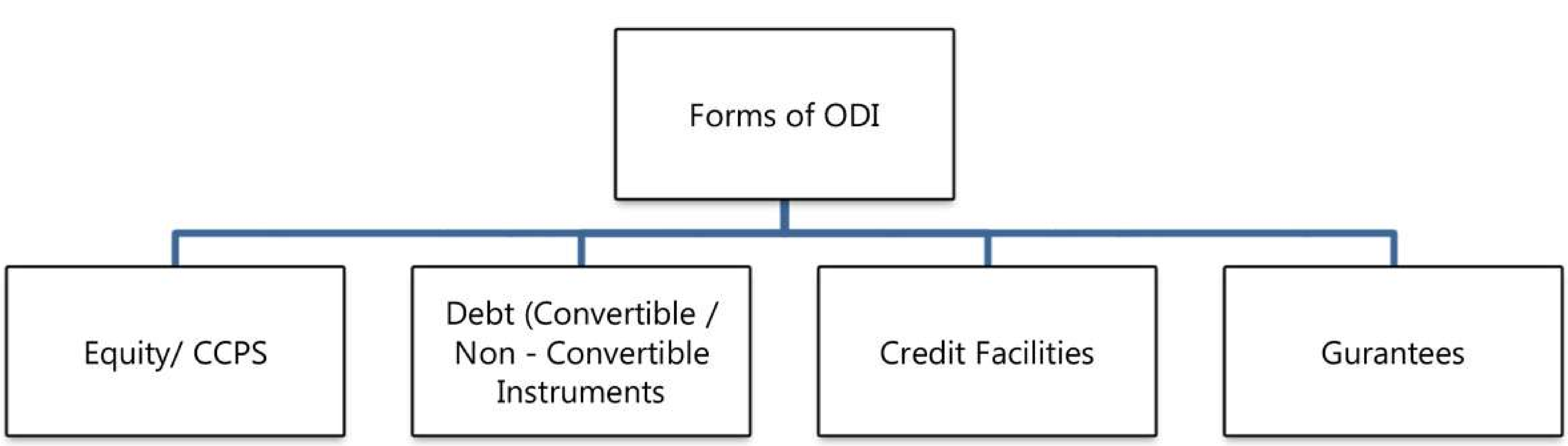
Overseas Direct Investment (ODI) under Approval Route

- In energy and natural resources sector exceeding the prescribed limit
- In unincorporated entities in the oil sector
- Investment made by proprietorship concerns and unregistered partnership firms which are fulfilling the eligibility criteria
- Investment made by registered trusts / societies engaged in the manufacturing / educational /hospital sector in the same sector in a JV / WOS outside India which are fulfilling the eligibility criteria.
- Corporate guarantee made by the Indian Party to Second and succeeding level of immediate subsidiary;
- All other forms of guarantee which is offered by the Indian Party to its first and subsequent level of SDS;
- Balance sheet restructuring of joint venture / wholly owned subsidiary involving write-off of capital and receivables fulfilling eligibility criteria
- Export proceeds capitalization
- Without equity contribution in Joint Ventures/ Wholly Owned Subsidiary, undertaking financial commitment

Routes for Overseas Direct Investment (ODI) by Indian Parties

Automatic Route	Approval Route
Prior approval is not required from the RBI.	Prior approval of the RBI is required in prescribed Form along with the specified documents.
An Indian Party is required to approach AD Category – 1 bank.	Not meeting the prescribed conditions for automatic route.
ODI within the prescribed limit of 400% of the net worth of Indian Party.	Overseas investments by the below mentioned fulfilling the eligibility criteria: - Proprietorship concerns - Unregistered partnership firms - Registered Trusts/ Societies
ODI made by the Indian Party engaged in Financial sector subject to the conditions prescribed.	Indian Party undertaking financial commitment, without contributing in Joint Venture / Wholly Owned Subsidiary
ODI in oil sector subject to prescribed conditions.	

Components of Overseas Direct Investment (ODI)



Overseas Direct Investment (ODI) in Financial Sector

Trading in overseas commodities exchanges and for trading in overseas exchanges setting up joint ventures / wholly owned subsidiary will be considered as financial activity.

Pre – Conditions

- Proper registration with the regulatory authority in India.
- Net profits earned from the financial services during the preceding 3 financial years.
- For making such investment, concerned regulator's approval in India and abroad.
- Compliance with the capital adequacy norms prescribed by the regulatory authority in India.

What are the Procedural Compliances?

- Form ODI with annexure to be submitted to Authorized Dealer along with Form A2.

Annexure: Certified Copy of the Board Resolution, Statutory Auditors Certificate and Valuation Report as per the valuation norms (in case of acquisition of an existing company).

- Form ODI is required to be submitted individually by all the investing entities in case where the investment is being made jointly by more than one Indian Party or Resident Individuals.
- An Unique Identification Number (UIN) is allotted by the RBI in respect of Joint Venture / Wholly Owned Subsidiary.

- Only after allotment of the UIN subsequent investments in the same foreign entity can be made.
- The UIN allotment does not constitute RBI approval.

Contents of the Form ODI

- **Part 1 –** Details of the Indian Party, Transaction Details, Capital Structure, Statutory Auditor Certificate, Declaration
- **Part 2 –** Annual Performance Report (APR)
- **Part 3 –** Disinvestment Report

What are the Post ODI Compliances?

- The Indian Party shall receive share certificate and other documentary evidence and submit it to the AD within the period of 6 months.
- All dues receivable from the overseas JV / WOS repatriate to India such as dividend, royalty, technical fees etc.
- In respect of the each JV/ WOS, file APR by the 31st December every year.
- Reporting of the decision taken by the JV / WOS in respect of the diversification of the activities / alteration in share holding within 30 days of the approval.
- Repatriate the sale proceeds immediately or not later than 90 days from the date shares /securities have been sold on disinvestment.
- Filing of the Foreign Liabilities and Assets (FLA) return by 15 July every year with the RBI even if the APR has been filed.

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Thank You!