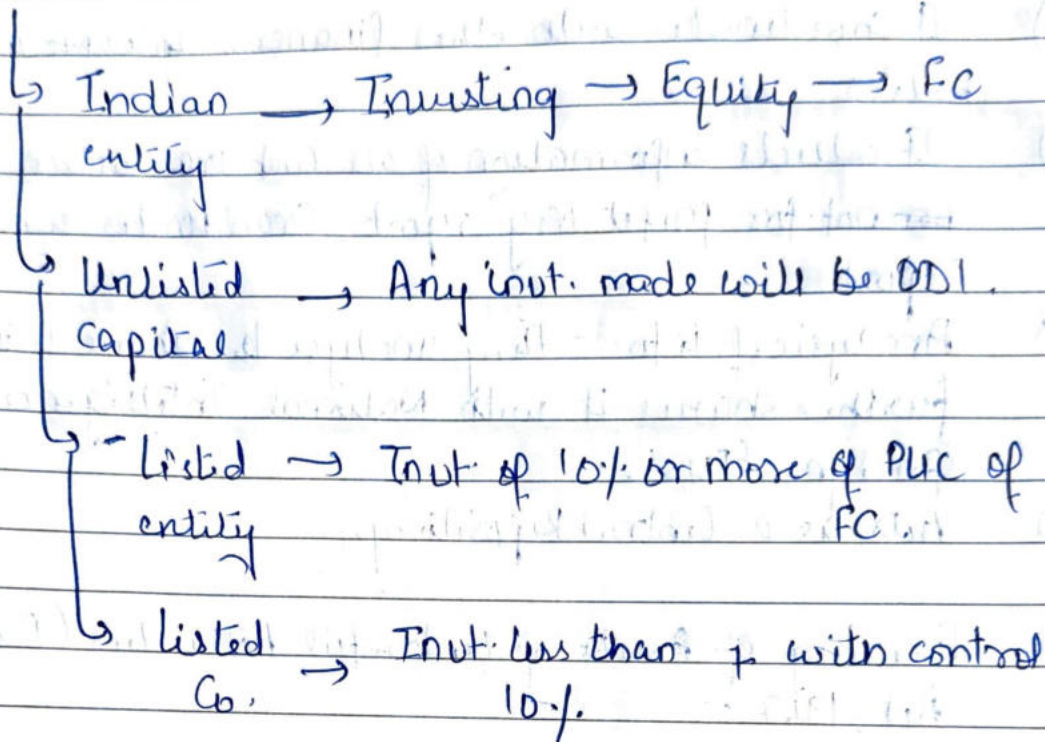


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### 3. Overseas direct Investment

# ODI



**Note** → If less than 10% → OPI

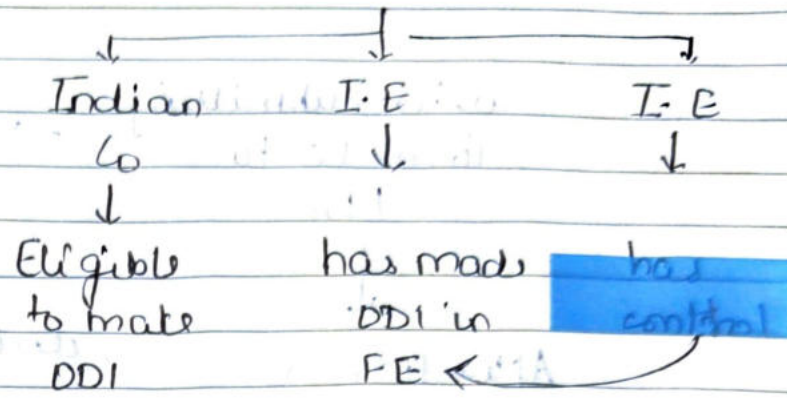
$$OI = FC + OPI$$

$$FC = \underbrace{ODI + debt + NFB}_{(-) OPI}$$

$$\therefore OI = \underbrace{ODI + debt + NFB}_{(-) OPI} + OPI$$

$$\therefore OI = FC + OPI$$

**Note** → To provide NFB to any FE → following conditions must be complied with



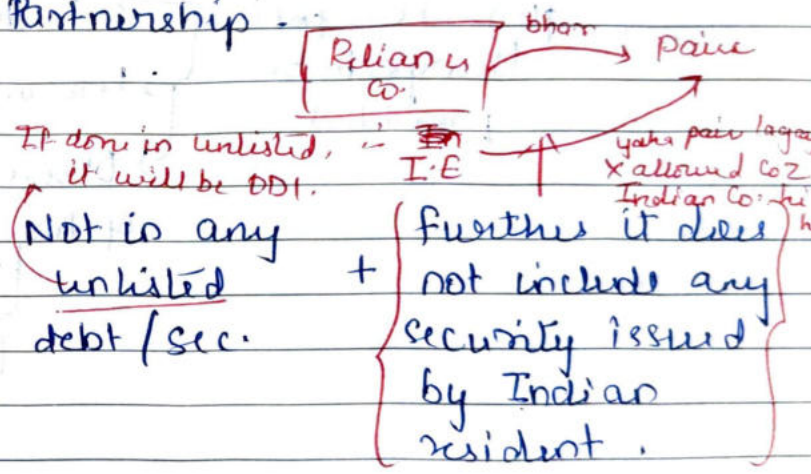
Entities eligible to invest:-

- ↳ Co / BC
- ↳ LLP
- ↳ Registered Partnership

#

DPI :-

↳ Investment other than ODI



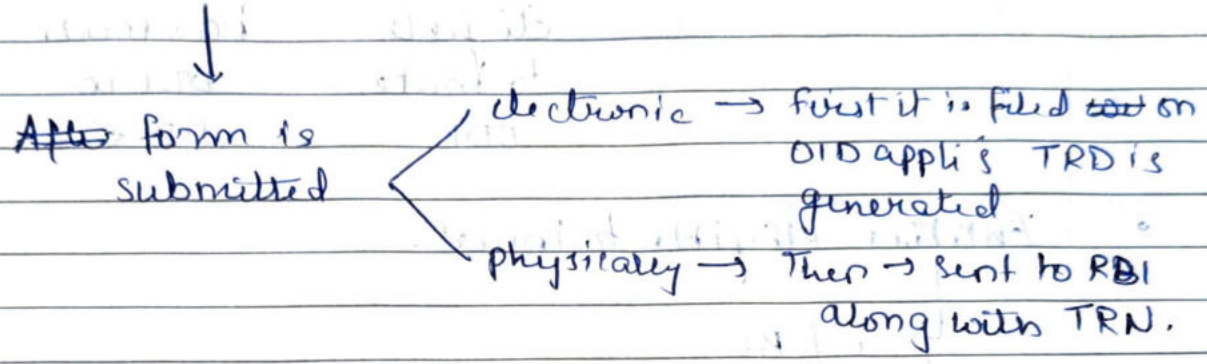
#

Process for making OI :-

↳ for making OI invest. → file form FC → with AD Cat I Bank. [automatic route]

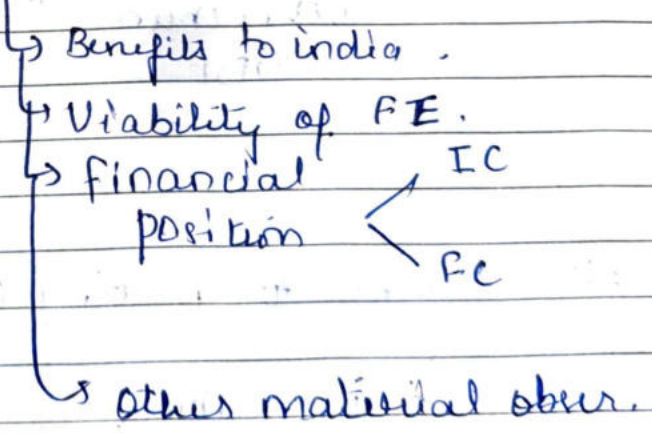
↳ If the proposal comes under approval route → form FC filed with AD Cat I Bank → who submits the same to RBI.

While submitting form FC to RBI → AD Cat I Bank submits his commutations.



While sending form FC, following things to be provided

- Background & details of transaction.
- Reasons for approval.
- Observations of AD bank



↓

Recomm. of AD Bank → BR is approved before investing.

↓

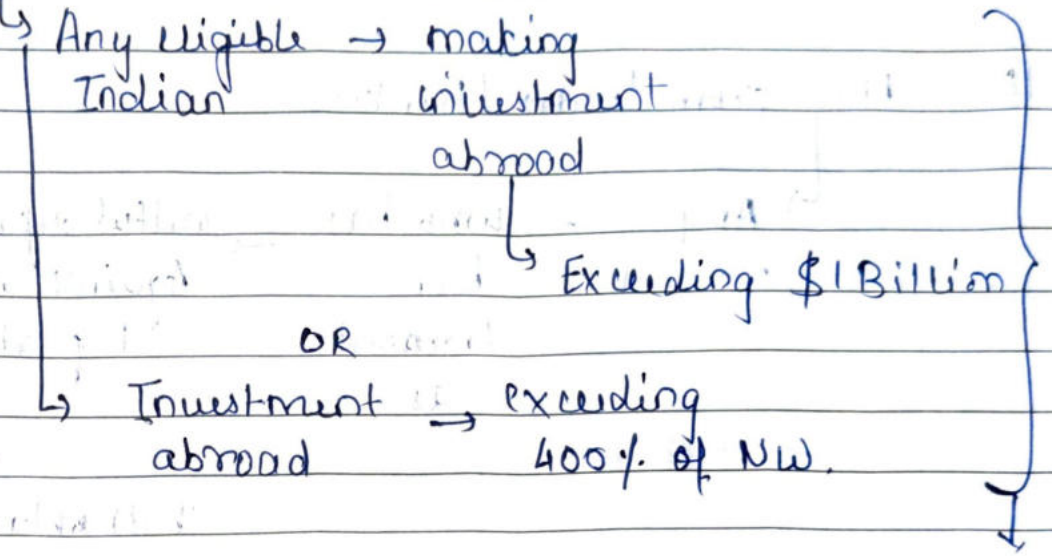
Diagrammatic representation of Holdings → Vertical  
→ Horizontal.



### Valuation certificate for FC.

#

#### Approval of RBI :-



Whichever is earlier requires RBI approval.

#

#### Approval in CI :-

Investment → Pakistan is in

OR

In any strategic sectors

- Oil / Coal / Gas / Energy / Natural Resources
- Mineral Ores, Submarine system & startups

**Note** → The requirement of limited liability structure is not required when a ~~the~~ strategic sector company in India invest in any ~~any~~ country outside India which is in strategic sector.

# **NOC from lender / Banker :-**  
 ↳ Any resident → who has been declared as wilful defaulter / NPA / Against whom investi. is pending  
 ↓  
 shall obtain NOC from before making any Fe.

However NOC not req. → whenever guarantee is invoked → before being classified as  
 ↳ NPA      ↳ WD      ↳ Investig. Pending

# **Modes of payment :-**  
 ↳ Remittances through Banking channels.  
 ↳ Swap of securities.  
 ↳ Capitalisation of exports.

- Funds held in any A/c as per FEMA.
- ~~Foreign~~ proceeds of ADR / GDR / ECB.

**Not** → investment by cash → not allowed.

→ Remittances by I.E to its branch outside India - allowed for purpose of ordinary course of business & not for O.I

### # Pricing ~~guidance~~ guidelines :-

- AD bank → before approving any OI → shall ensure compliance with OI rules.

- AD bank → guided by its Board Approved Policy.

- AD bank may req. → Valuation certificate → As per internationally accepted methodology.

- Valuation certificate will not <sup>be</sup> req. → price is available on SE.
- Transfer is on mer/demerger.

where price is approved by Court / Tribunal

# # Restructuring:-

allowed by Resident → if Trustee → making losses for 2 consecutive F.Y  
 Co. → it is in compliance with reporting & disclosures.

India → cap ↓  
 holding & kma

Also, diminution of holding (e.g. Restaurant) → is → in proportionate → to the o/s due / liab. being written off.

**Note** → In the following 2 cases

valuation of certificate is issued by reg. values → Indian / Foreigner.

Investment exceeds \$10M

amt. of diminution exceeds 20% of total o/s Liab./amt.

valuation certificate

→ Amt of loss being written off.  
 → Amt of diminution in the holding of Resident India.

That both are in proportionate.

↓  
Certificate → should not be older than 6m.

↓  
Above provision does not apply → in case of revaluation.

# Obligations of person resident in India:-

↳ can invest in F.E → provided he has submitted within 6m → Evidence of Invt.

↳ failing which → Amt. to be repatriated within next 6m.

↳ AD bank → monitor & keeps all the documents with it. At the time of invt

↳ form FC → needs to be filed → automatic route

↓  
Appro. route → Before Invt.

OID app. ← submits ← AD bank

↳ UIN is generated.

↳ UIN → is not an approval of RBI for invt.





Registered Trust / Society

Education  
Hospitals

can make ODI



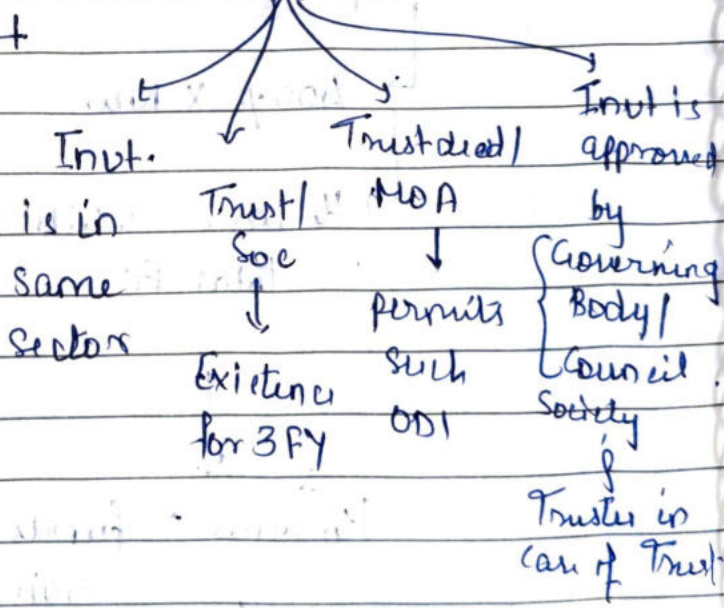
in a FE → which is involved in same sector.



provided prior approval of RBI is obtained

+

const conditions



# OI in IFSC

By way of ODI / OPI → allowed in IFSC.

In case of ODI → Approval of financial service regulator → obtained → Response in 45d. → failing which deemed approved.

In case of a person other than in FS Sector → does not fulfil the 3y. NP Condition → still eligible to invest in IFSC.

#

Reporting :-

AU reporting → made with AD Bank → in prescribe format & manner given by RBI.

ODI / FC → Proof of investment → submitted with AD Bank within 6m.

disinvestment → 30d. of dis.  
Restructuring → 30d. of restructuring.

OPI → By a person other than resident individual → shall report within 60d. from the end of half year (FY) in which such OPI is made.

OPI → Acquisition of sh. by Individual under ESOP / EBS

Reporting to be done by → office in India, branch in Ind, subci. in Ind. (if it has control)

However, if a person fails/delays in submitting req. form/doc, such person may file the same & pay LSF (late submit fee) through AD Bank

→ provided further → he shall not make any FC or transfer or invest in FE until such delay in reporting is ~~not~~ regularised

## # Restrictions & Prohibitions :-

ODI cannot be made in foreign entity

→

involved in

Real estate sector

→ Gambling.

→ dealing with financial products in India except RBI approval.

In case of DDI in startups

→ Amt should be out of Internal accrual or own funds.

No Inv. in FE shall be allowed

which results into more than 2 layers of subsidiary.

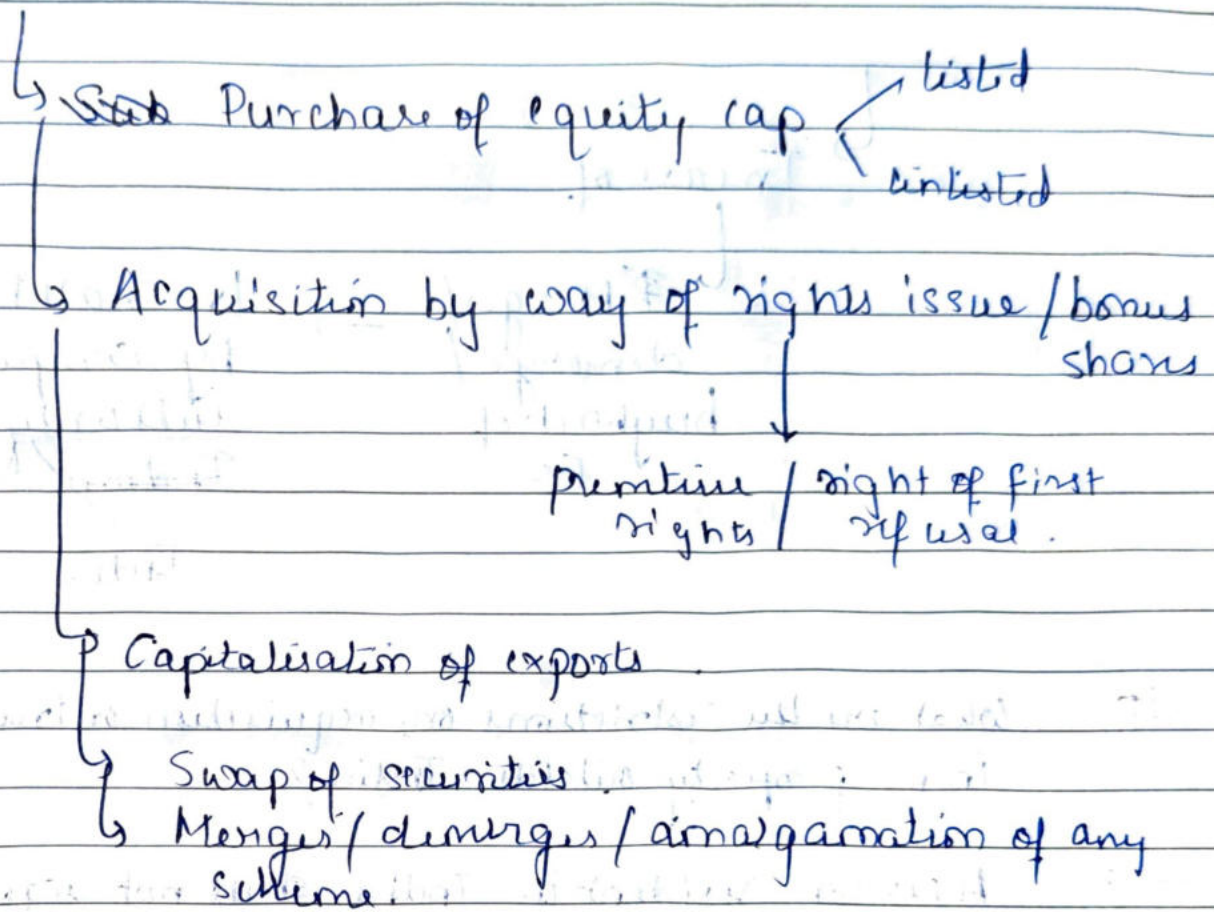
Nothing above applies to

→ Govt Co.  
→ Insurance Co.  
→ Banking Co.  
→ NBFC.

## # Modes of making ODI by Indian entity :-

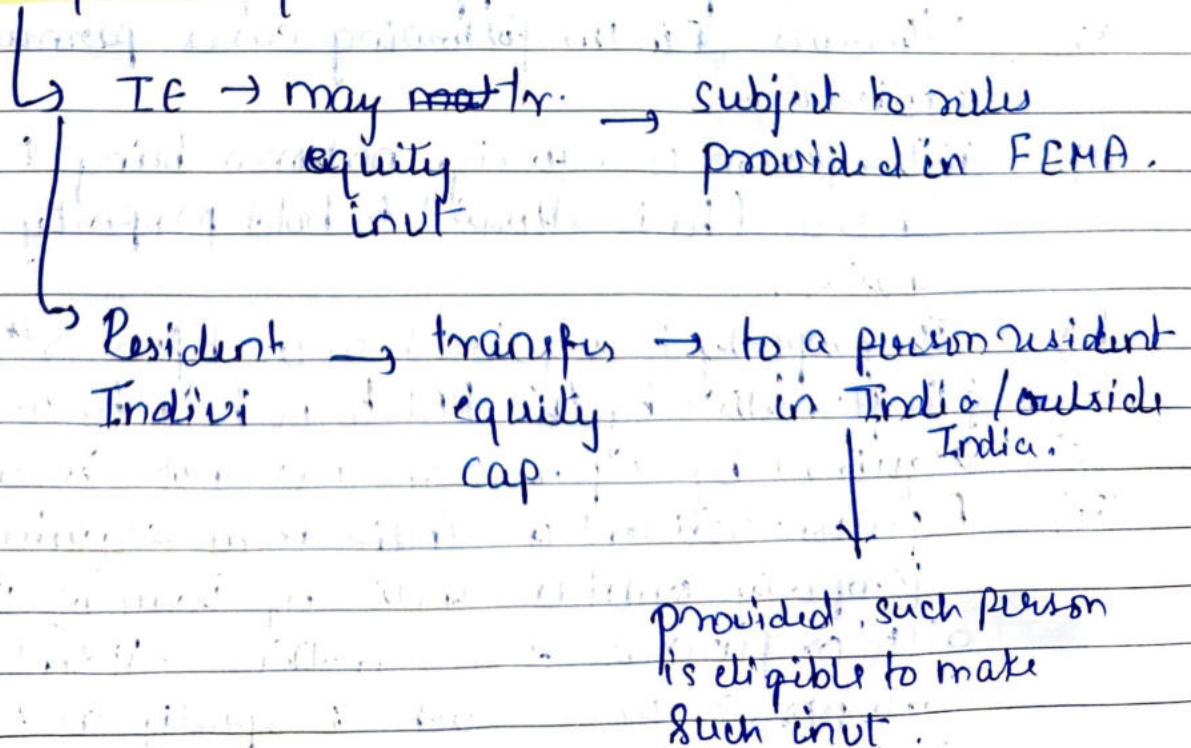
→ ODI may be done in the following ways.

→ Acquisition through bidding.



#

Transfer or liquidation:-



In case of

→ Mergers/  
demerges/  
buyback of  
F/E

tr. shall be approved  
by competent  
authority ~~of~~  
India

India      Outside  
                India

#

What are the restrictions on acquisition or transfer of imm. property outside India?

- i) A person resident in India shall not acquire an immovable property outside India except with the general / special approval of RBI.
- ii) However, in the following cases, permission is not required:
- a) if the person is a foreign national being a resident in India (he is allowed to hold property outside India).
- b) The property is acquired on or before 8th July, 1947 & is permitted by the RBI to be held by such person.
- c) acquired by a person on lease not exceeding 5 yrs.
- ii) A person resident in India may acquire imm. property outside India by way of inheritance or gift or purchase from another resident in India, who has acquired such property as per the foreign exchange provisions in force.

- i(v) Further a resident in India may acquire immovable property outside India from a person resident outside India by way of:
  - a) Inheritance.
  - b) Purchase out of RFC A/c.
  - c) purchase under LRS scheme.
  - d) jointly with a relative outside India.
  - e) out of the sale proceeds of any asset acquired overseas.
- v) An Indian entity, which has overseas office can acquire immovable property for business as well as for residential purpose of its staff.
- vi) A person resident in India may transfer a property outside India by way of sale to any person. However, he can gift this property only to a person resident in India.
- vii) The holding of the prop. or its transfer will become invalid if the initial investment was not in line of FEMA.

- Q1) Jun 2021 -> Permissible sources of making ODI
- Q2) Dec 2023 (5m) Chandu.....
- Q3) Dec 2024 (5m) diff. b/w ODI & OPI.