

Overseas Investment

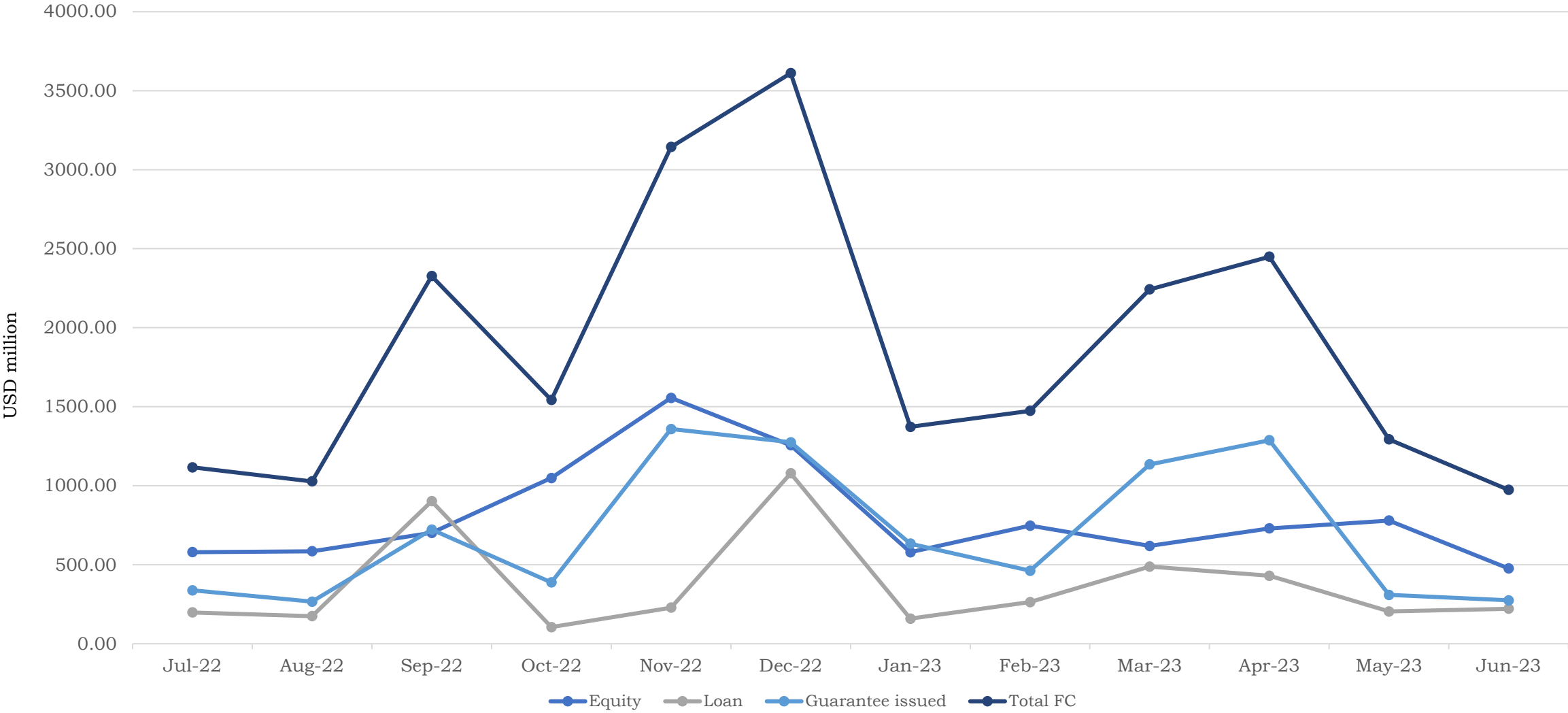
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Outline

- Outbound Investment by India Inc
- Governing Law
- Overview of Overseas Investment (OI) framework
- Applicability & Non-applicability of OI framework
- Important terms under OI framework
- OI
- Financial Commitment (FC)
- Overseas Direct Investment (ODI)
- Overseas Portfolio Investment (OPI)
- Round-tripping

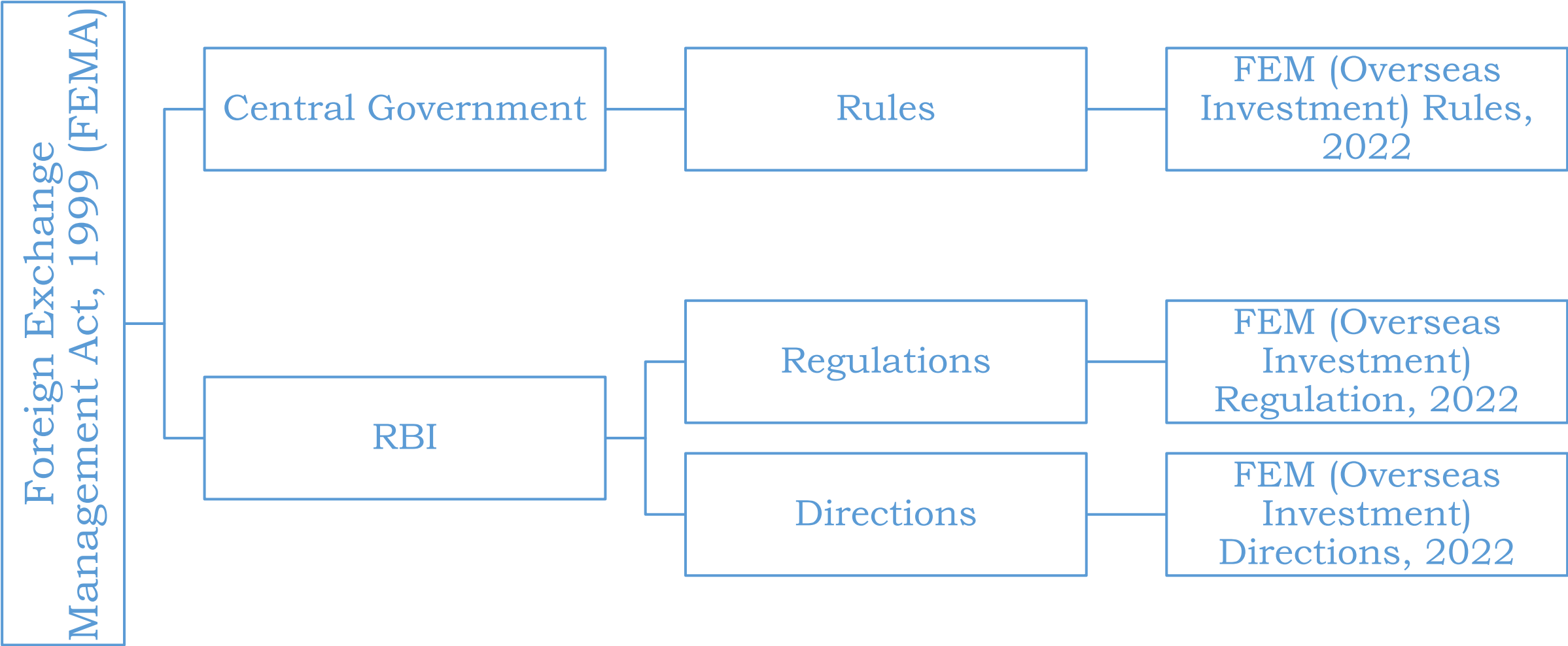
Outbound Investment by India Inc



FC during the period of July 2022 to June 2023

Source:

Governing Law



Overview of Overseas Investment Framework

- Overseas Direct Investment
- Financial Commitment
- Overseas Portfolio Investment
- Immovable Property
- Restructuring
- Deferred Payment
- Liquidation
- Transfer
- Pricing Guidelines
- Mode of Payments
- Reporting requirements
- Approval requirements

Applicability & Non-Applicability of OI Framework

Applicability

- Capital account transactions
 - Outbound investment
 - Securities
 - Immovable Property

Non-Applicability

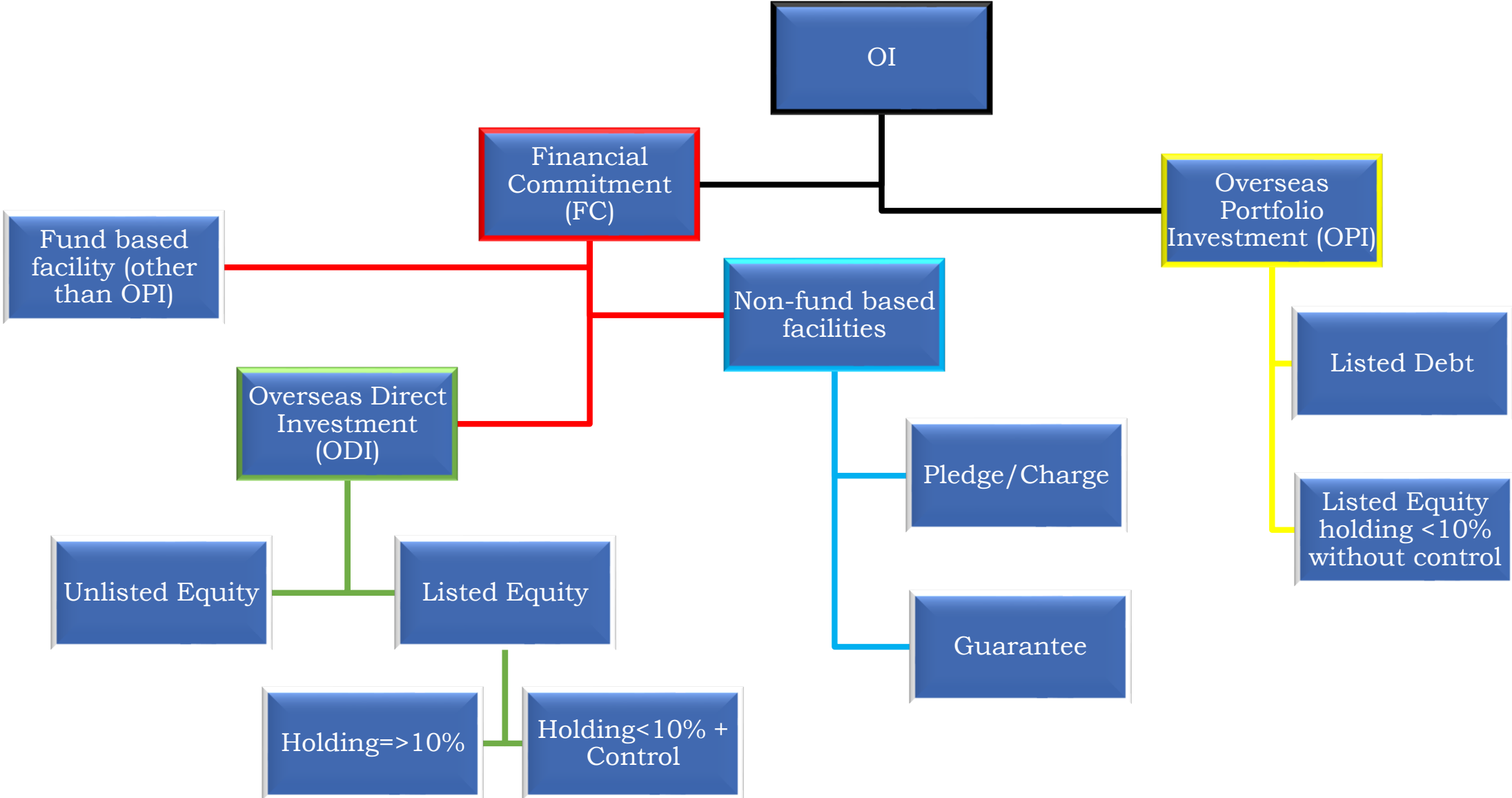
- Any investment made outside India by a financial institution in an IFSC;
- Acquisition or transfer of any investment outside India made,
 - Out of Resident Foreign Currency Account; or
 - Out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
 - In accordance with sub-section (4) of section 6 of the Act.

(“A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India”)

Important terms under OI framework

- “Indian Entity (IE)” means–
 - a company;
 - a body corporate;
 - a LLP; and
 - a registered partnership firm
- “Foreign Entity (FE)”
 - entity registered/incorporated outside India, including IFSC
 - limited liability
 - NA in case of strategic sector
- “Strategic sector” shall include
 - energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and
 - start-ups and any
 - other sector as deemed necessary by the Central Government
- “Bonafide business activity”
 - Any business activity permissible under
 - any law in force in India and
 - the host country
- “Control” means the right
 - to appoint majority of the directors or
 - to control management or
 - policy decisions
 - exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their
 - shareholding or
 - management rights or
 - shareholders’ agreements or
 - voting agreements that entitle them to 10% or more of voting rights or
 - in any other manner in the entity
- “Subsidiary” or “step down subsidiary” (SDS) of a foreign entity means an entity in which the foreign entity has control

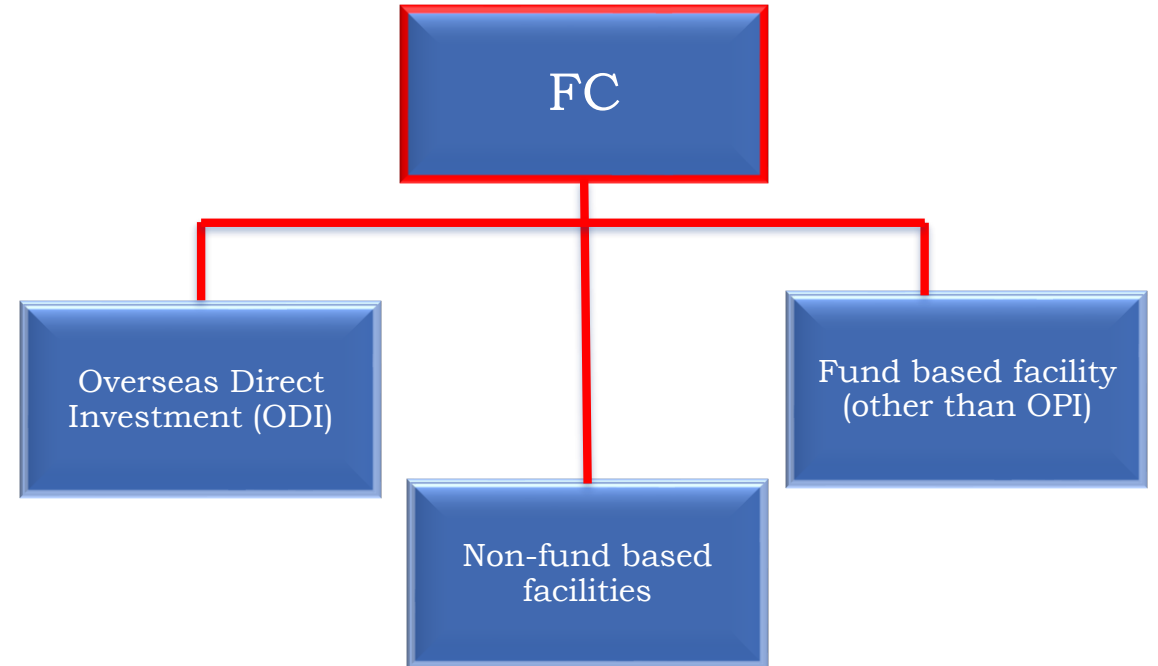
Overseas Investment



Financial Commitment

Meaning

“financial commitment” means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the nonfund-based facilities extended by such person to or on behalf of such foreign entity or entities;



Case: 1



\$ 2,00,000 Loan



Case: 2



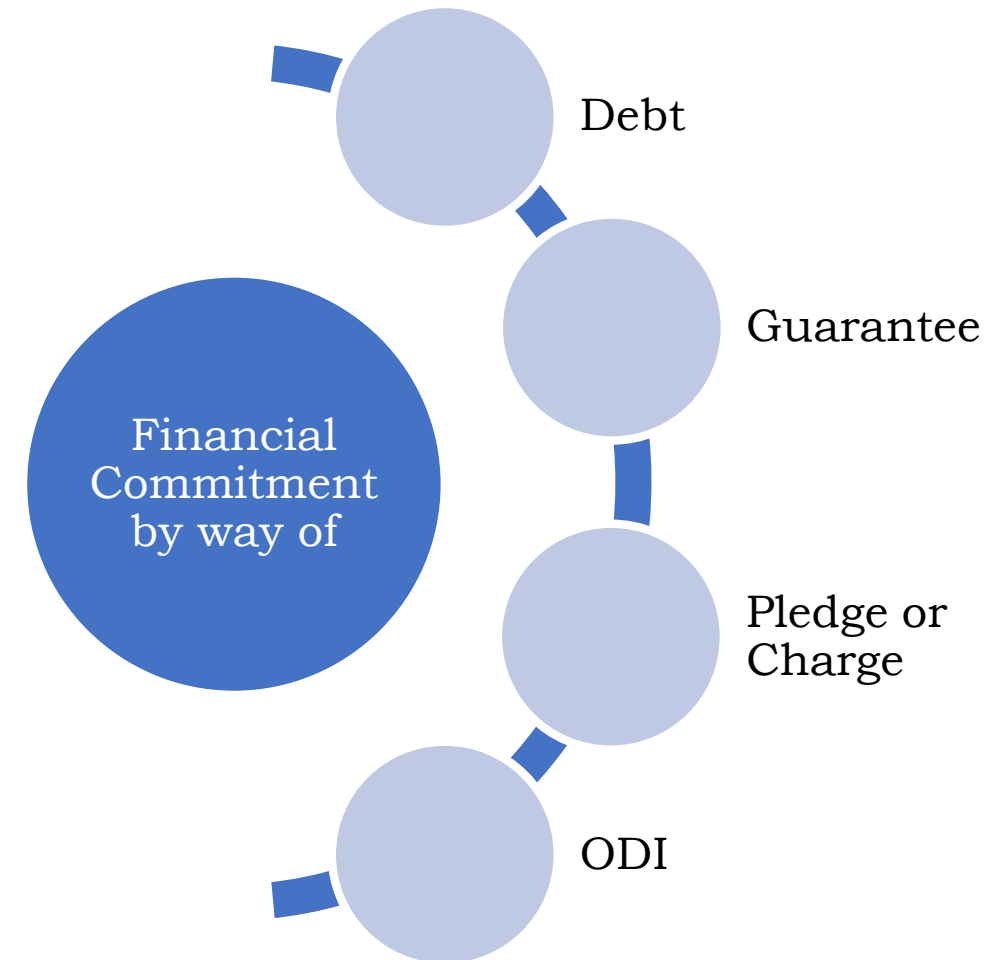
Guarantee



Financial Commitment

- Conditions for providing fund/non-fund based facility
 - IE eligible to make ODI
 - IE has made ODI in FE
 - IE has acquired control in such FE at the time of making such FC
- Limit:
 - 400% of the networth of IE for FC
- Reporting:
 - Submit Form FC at the time of sending outward remittance or making FC, whichever earlier
- FC by way of Debt
 - Loan agreement
 - Rate of interest charged on an arm's length basis
 - IE cannot lend directly to its overseas SDS

Modes of FC by IE



FC by way of non-fund based commitment

- FC by way of guarantee
 - Who can give guarantee?
 - IE
 - Group company (Holding, subsidiary, promoter group which is a body corporate) (provided such entity is eligible to make ODI)
 - Resident individual promoter of IE
 - Bank guarantee backed by IE/group company
 - Guarantee by group company will be counted towards that entities FC limit & for resident individual promoter towards IEs FC limit.
 - In case of guarantee given by two or more IEs, 100% amount of guarantee reckoned towards the individual FC limits of such IEs
 - In case of performance guarantee, 50% amount reckoned towards FC limit.
 - In case of invocation of guarantee, the amount will be considered as lending and cease to be non-fund based guarantee
 - File from FC at the time of invocation

FC by way of non-fund based commitment

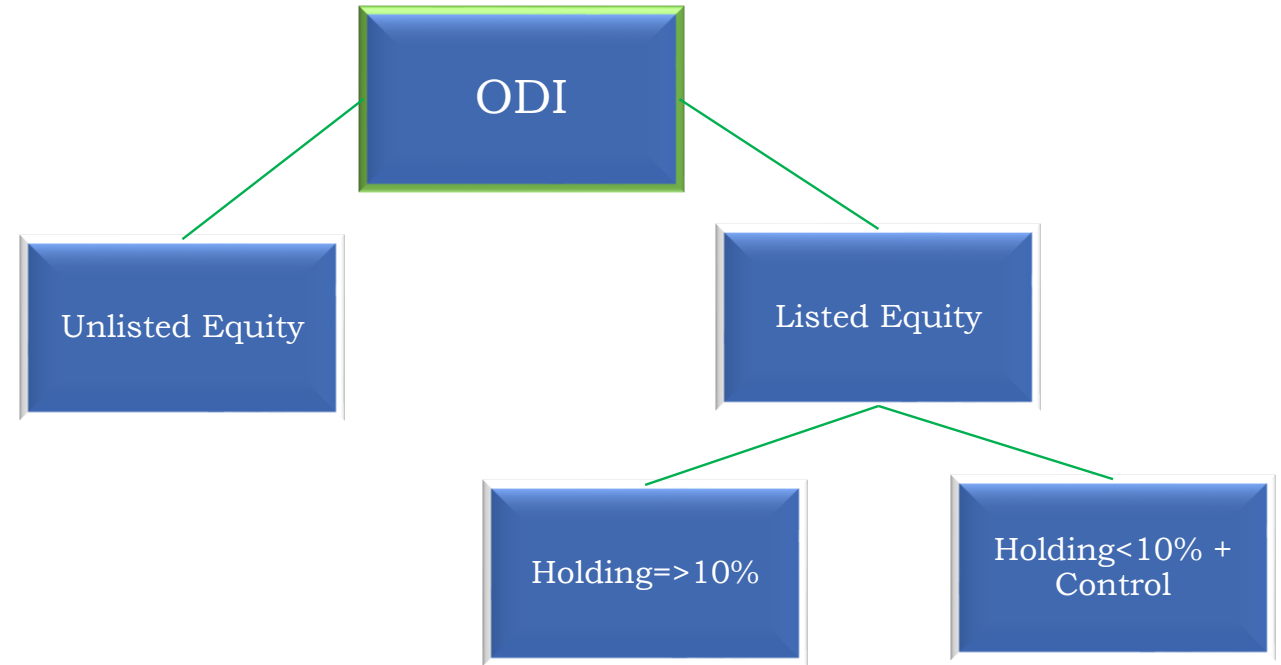
- FC by way of pledge/charge

Type of asset	Assets of	Facility for	Lender	FC Limit
Equity capital	FE/SDS	FE/SDS	AD Bank, Public Financial Institution	Amount of pledge/loan WEL
Equity capital	FE/SDS	IE	AD Bank, Public Financial Institution	Nil
Equity capital	FE/SDS	IE	Debenture Trustee	Nil
Other asset	IE/Group	FE/SDS	AD Bank, Public Financial Institution, Overseas Lender	Amount of charge/loan WEL
Other asset	FE/SDS	FE/SDS	AD Bank, Public Financial Institution	Amount of charge/loan WEL
Other asset	FE/SDS	IE	Debenture Trustee	Nil

Overseas Direct Investment

Meaning

“ODI” means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity;



Case: 1



8% Equity



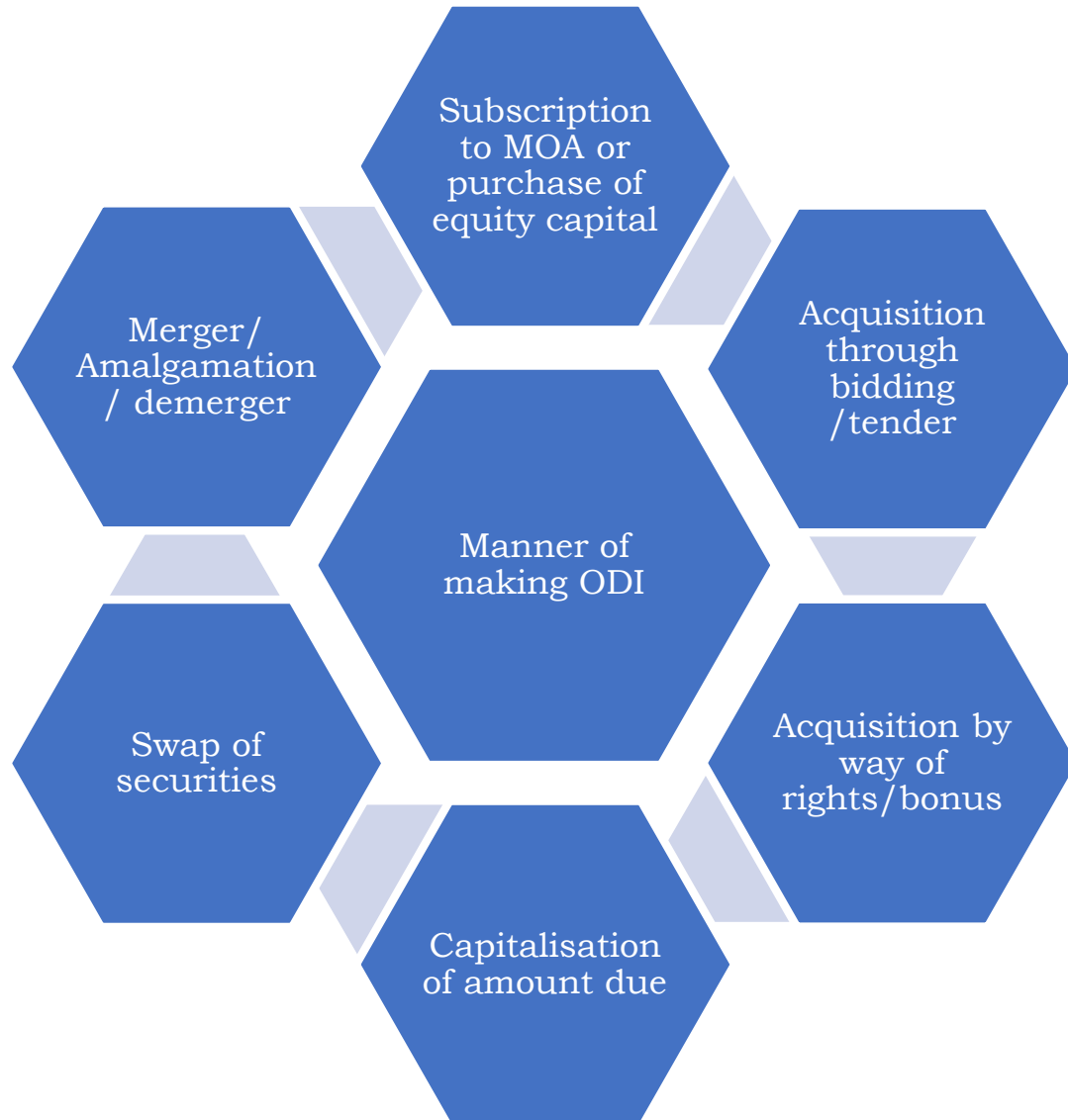
Case: 2



25% Equity



Overseas Direct Investment



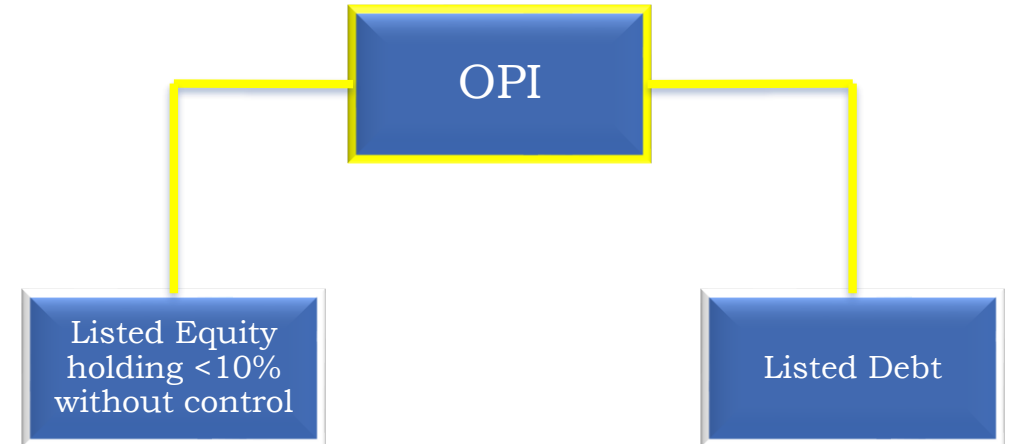
- Limit: 400% of the networth of IE for FC
 - Acquisition through bonus shares not considered as fresh FC
- Reporting:
 - Submit evidence of investment to AD Bank within 6 months
 - Submit Form FC before making ODI to AD Bank
 - In case of renouncement of rights & bonus allotment no reporting required
 - Annual Performance Report (APR) with respect to each FE to be filed by 31st December
 - Annual Return on Foreign Liabilities and Assets (FLA)
- ODI in startups to be done from internal accruals only of IE or of group/associate companies
- Approval from CG required
 - In case of OI in Pakistan/other jurisdictions as specified
 - In case of FC beyond the limits in strategic sectors or geographies
- Prohibited sector:
 - Real estate activity;
 - Gambling; and
 - Dealing with financial products linked to the Indian rupee without specific approval of RBI

Overseas Portfolio Investment

Meaning

“OPI means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity



Case: 1



5% Equity
No control



Case: 2



5% Equity
Right to appoint director

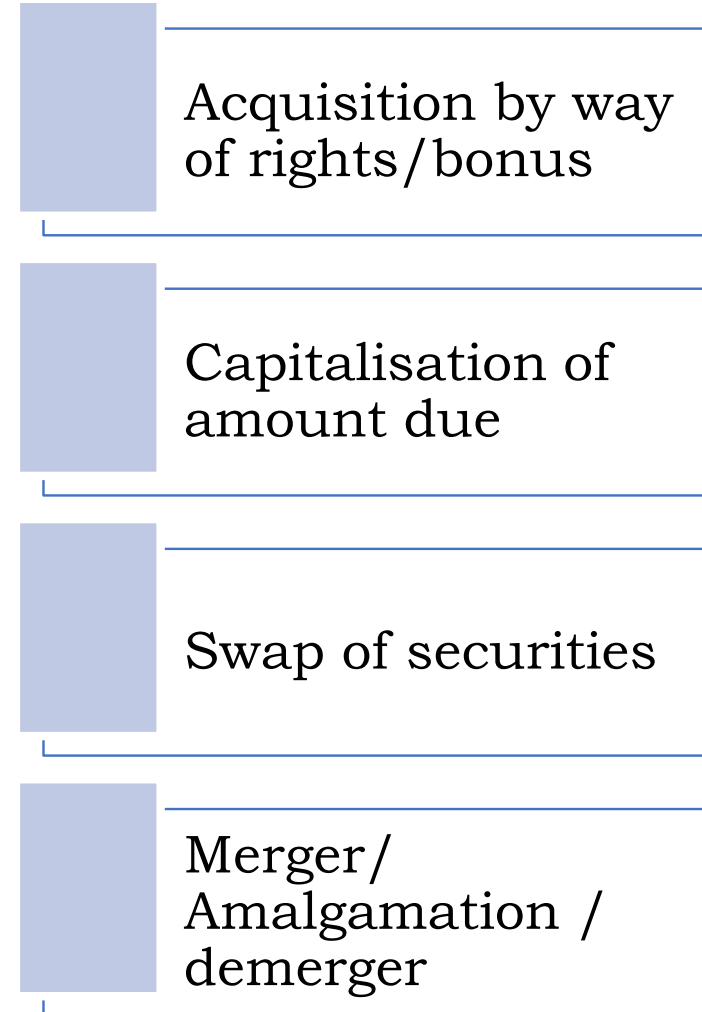


Overseas Portfolio Investment

Modes of OPI by IE

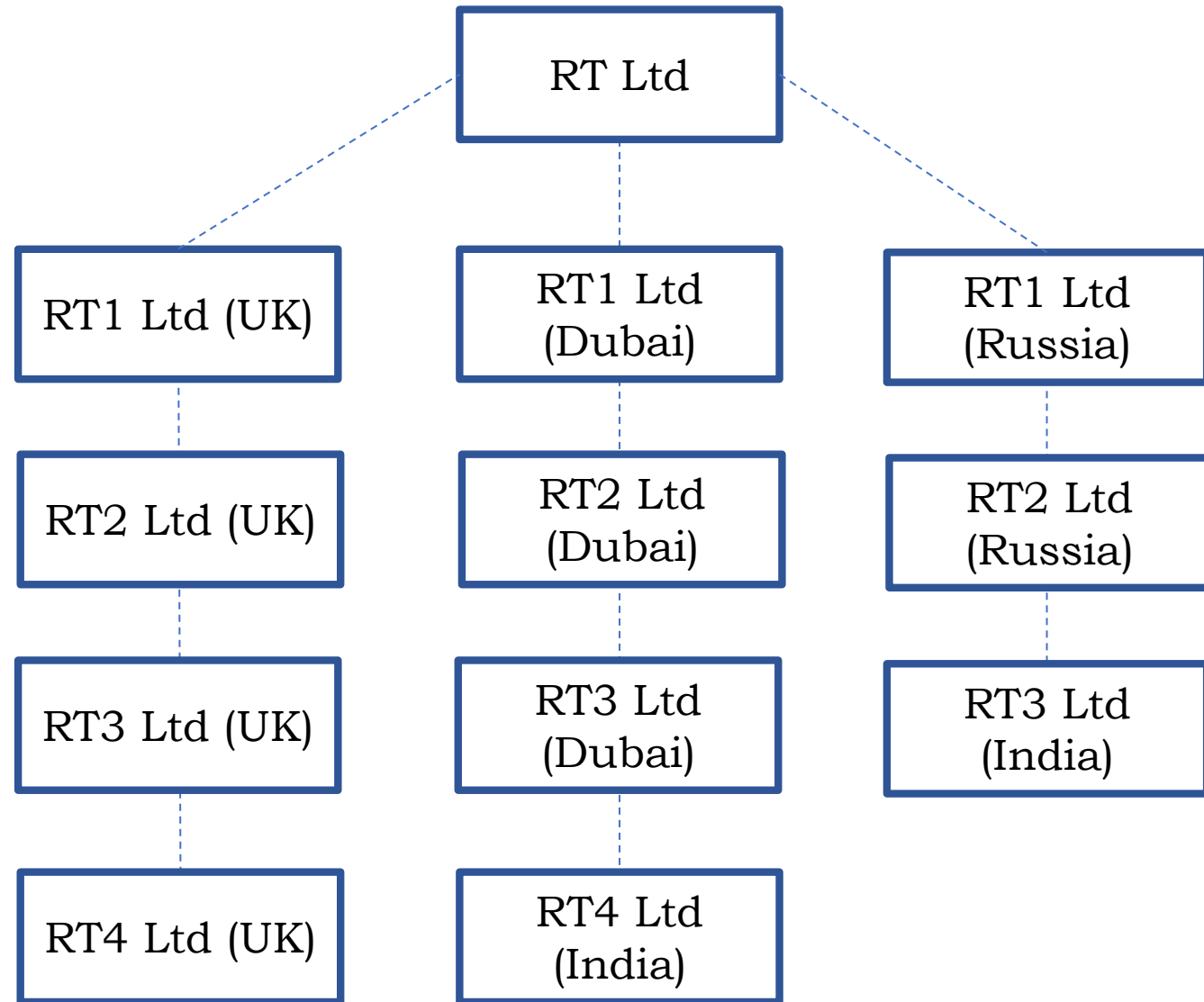
- For Indian Listed Company
 - Including by way of reinvestment
 - Reinvestment' means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within the time specified for realisation and repatriation.
- For unlisted Indian Entity
 - Acquisition by way of rights/bonus
 - Capitalisation of amount due
 - Swap of securities
 - Merger/ Amalgamation / demerger
- Limit: 50% of the networth of IE for OPI.
- OPI in listed equity capital shall remain OPI even after delisting until further investment is made
- Reporting: Form OPI to be filed within 60 days from the end of half year in which investment or transfer is made.

Modes of investment by unlisted Indian Entity



Round Tripping

- *“No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:”*
- Exemption to
 - Banking Company
 - NBFC (Systematically Important)
 - Insurance Company
 - Government Company



Thank You