

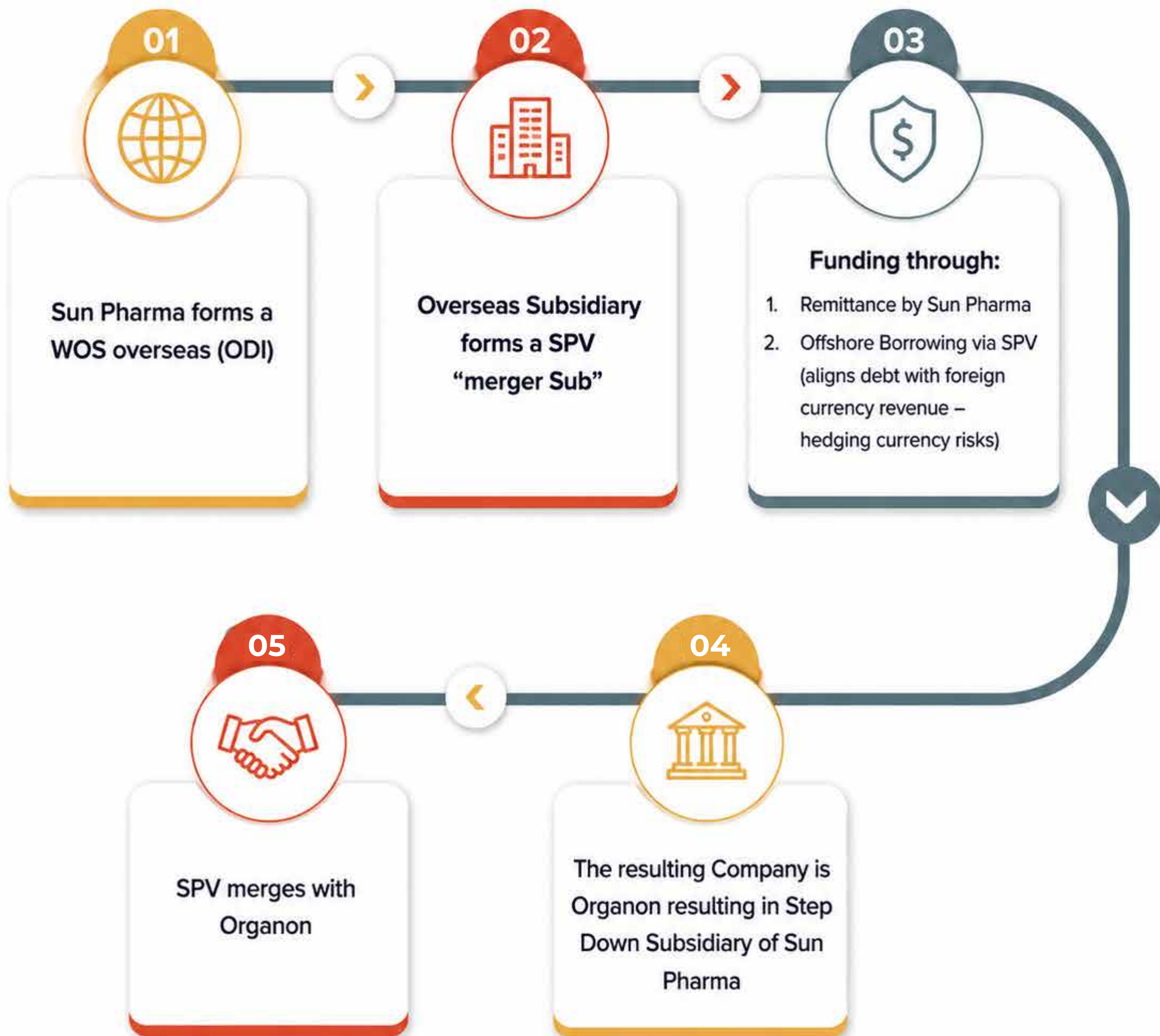


Sun Pharma-Organon Deal-

FEMA Lens



Reverse Triangular Merger



Limits on Financial Commitment (FC)

₹ FC Limits



ODI Framework
limits FC to 400% of
Net Worth

✓ FC included while calculating Limits



➤ **Fund based:**
ODI by way of
equity/ loan



➤ **Non Fund based:**
Creation of charge/
pledge on domestic
assets

✗ Not included while calculating FC limits



**Funds raised by foreign
entities directly from
global lenders**










(Provided such borrowings
are not backed by Indian
entities by way of pledge/
guarantee)



**ODI under automatic route= FC within prescribed limits
(Limits based on Net Worth of Indian Entity)**



Sun Pharma within limits?

 Aspect	 Transaction	 Impact on ODI route
 Direct equity	If With in 400% Sun Pharma NW	 Automatic
 Offshore Debt	Non-recourse to Indian Parent (Considering no guarantee issued by Indian Entity)	 Exempt From FC Limit
 Guarantees	Minimal or none provided by India	 Automatic



Effective outbound structuring requires a balance between **jurisdictional flexibility** and **FEMA adherence**





Deal Structuring Considerations



Round Tripping-

Routing Investment back to India through more than 2 layers of overseas subsidiary not allowed under ODI framework



Bona-fide Intent -

To ensure the SPV has real commercial purpose.



Indirect Liabilities:

hidden parent exposure in "non-recourse" debt.



Substance over form -

compliance with limits doesn't prevent qualitative re-characterization.



Aligning Practices with FEMA Framework



Automatic route, Approval not required but reporting intact

MMJC



➤ Form FC

Financial Commitment by the Indian entity in overseas JV/ WOS to be reported in Form FC



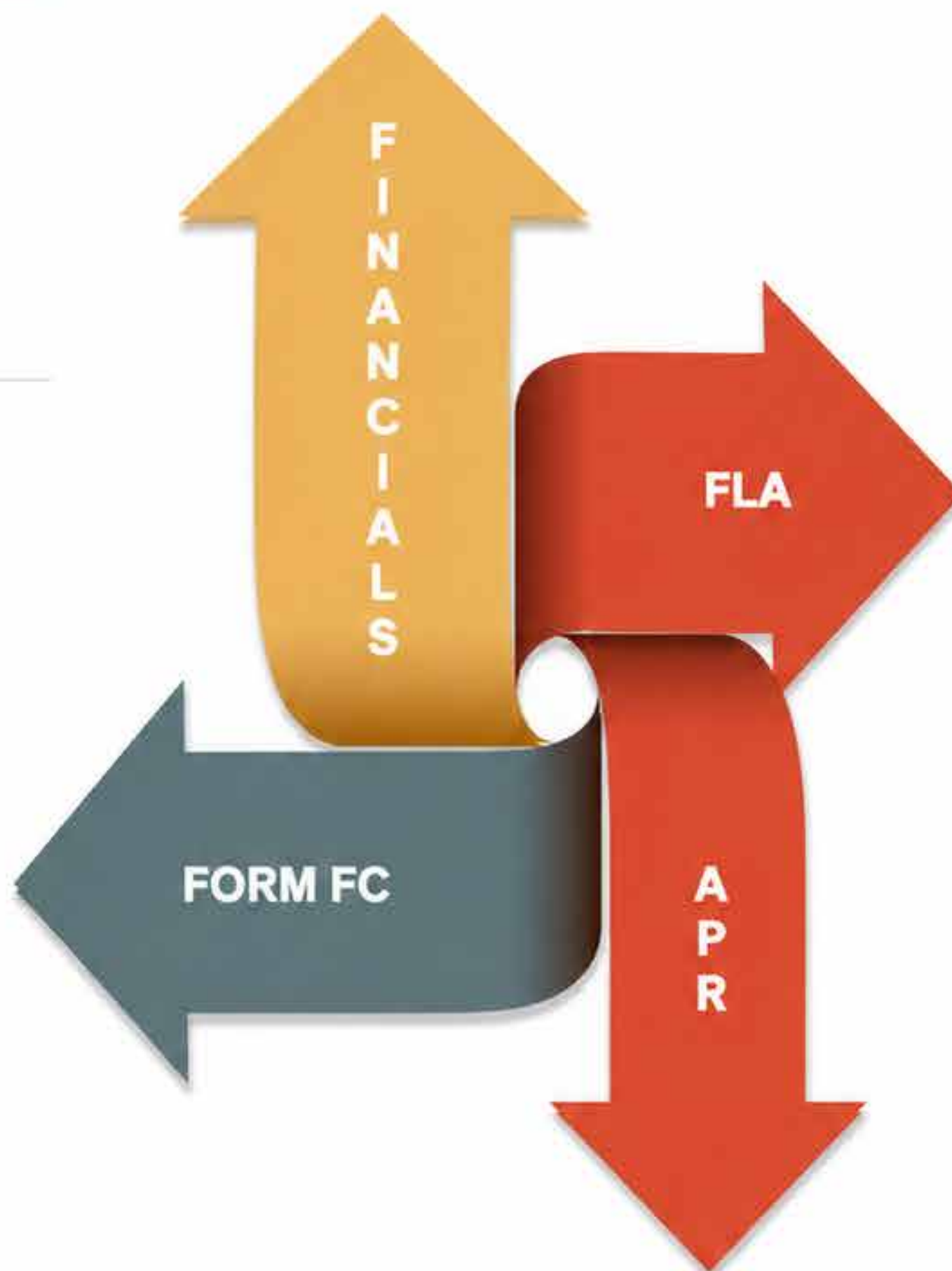
➤ Form APR

- Submitted Annually on or before 31st December.
- Capture changes in shareholding pattern, overseas structure, setting up or transfer/ closure of SDS



➤ Form FLA

To be submitted by the Indian entity having ODI on or before 15th July each year.



No further FC allowed until pendency of regularization of reporting delays- Delayed reporting attract late filing fees or compounding penalty



Reviewing FEMA Applicability crucial for overseas deal structuring

Regulator oversight- Transactions even if under automatic route, Foreign currency remittances and liability exposure of Indian entity reviewed by RBI from time to time basis.

