



## Azadi Ka Amrit Mahotsav Activity

### “Sky High- Symposium -22 Webinar” conducted by Women Members Empowerment Committee of ICAI on 14<sup>th</sup> September 2022

The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)

Women Members Empowerment Committee Organises

**Sky High - Symposium-22**  
Live Webinar  
for Women by Women Every Wednesday

**14<sup>th</sup> Sept., 2022**  
5.00 PM to 7.00 PM

FEES NIL

2 CPE Hours Unstructured

Registration and participation link:  
<https://live.icai.org/wmec/14092022>

Revised Overseas Direct Investment (ODI) Regulatory framework

Schedule 3 of Companies Act & CARO

CA. Sheetal Shah

CA. L. Madhumathi

Welcome Address

Introductory Remarks

CA. Sripriya Kumar  
Chairperson, WMEC & CL&CGC  
Vice-Chairperson, IBC Committee

CA. Priti Paras Savla  
Vice-Chairperson, WMEC, CL&CGC,  
Sustainability Reporting Standards Board

Co-ordinators

CA. Anagha Kirloskar

CA. Roshni Bhawnani

CA. Divya Trikoti

Questions related to the topic may be sent in advance at [wmec@icai.in](mailto:wmec@icai.in) or LIVE at the time of Webinar itself at the same link

As part of country wide Azadi ka Amrit Mahotsav initiatives, envisaged by Government of India, to commemorate and celebrate 75 years of India's Independence, the Women Members Empowerment Committee (WMEC) of ICAI organized “Sky High- Symposium -22 Webinar” on 14<sup>th</sup> September 2022.

CA. Sheetal Shah and CA. L Madhumathi were speakers of the said webinar. Coordinators for the day were CA. Anagha Kirloskar, CA. Roshni Bhawnani and CA. Divya Trikoti.

The webinar was conducted by CA. Priti Savla- Vice-Chairperson, WMEC.

The webinar covered discussion on “Revised ODI Regulatory framework”. Deliberations were made on Financial Commitments, Overseas Investments, Investment & Disinvestment, Overseas Direct Investment, Round Trip Structures, OPI, etc.

### Broad Framework

Investment by:	Listed		Unlisted
	Investment >10% equity or control	Investment <10% equity & no control	
Corporate	ODI	OPI	ODI
Individual	ODI	OPI	ODI

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### Investments

- Investment in a foreign entity engaged in bona fide business activity can be either in the form of ODI or OPI
- What is bona fide business activity?
- Investment can be done:
  - Directly (structure 1), or
  - Indirectly through step-down subsidiary or SPV (structure 2)
- Does this answer historical questions around impermissibility of multi-layer structure?
- What are the limits to financial commitment?
  - ODI: In all foreign entities taken together at the time of commitment shall not exceed 400% of net worth of investing Indian entity
  - OPI: Not exceed 50% of net worth of investing Indian entity
- Financial commitment made by Memoranda or Norms or Minutia or subsidiaries of such FPIs in foreign entities outside India engaged in strategic sectors and not be subject to above mentioned limits which sectors qualify as "strategic sector"?
- What are the modes and forms of ODI? Subscription as part of memorandum of association or purchase of equity capital, rights issue, swap of securities, etc. (where swap approval required RBI approval)

FE should have Unlisted Equity (Private Ltd, LLP structure) for application of entities not now within the strategic sector and not under any other sector as may be notified by RBI

### Disinvestment

#### TRANSFER & LIQUIDATION

- Permitted under automatic route
- Transfer on account of merger/demerger/ amalgamation/ buyback/ liquidation – approval by competent authority in India or host jurisdiction
- Transferor must hold such investments for 1 year before any disinvestments
- Repatriation of all the dues before disinvestment on account in investment of equity/debt (exception others e.g. export receivables)
- Deferred payment – Permissible subject to certain conditions

#### RESTRUCTURING OF BALANCE SHEET

- Foreign entity incurring losses for previous two years as evidenced by audited balance sheets - No RBI approval required
- Diminution in value of invested equity or debt post structuring shall not exceed proportionate amount of accumulated losses. Limits shall be calculated separately for stakeholder equity and debt restructuring
- Arms length certification requirement where original investment > USD 10m, OR diminution > 20% of outstanding dues
- Rules not applicable in case simple revaluation in the books of Indian entity without any restructuring of the balance sheet of the foreign entity

### Structure 1: ODI

- Investment in real estate/gambling etc prohibited
- ODI in financial services permitted on satisfying conditions
- Multiple layers of F Co / subsidiaries appears fine – control not relevant
- Debt is possible, subject to ODI / control
- 400% net-worth limitation applies
- ODI in financial services generally not permitted
- Multiple layers of F Co permitted where no control
- Subsidiary(ies) under F Co 1 not permitted where control established, except for ODI due to inheritance, ESOP, etc
- Debt not permitted
- USD 25M LRS limit applies (except out of RFC a/c or foreign funds acquired when individual was resident outside India)

### Structure 2: Round Trip Structures

- Where resident individual has control, foreign entity (unlisted) not permitted to have subsidiary(ies)
- For resident individuals (no control) and Indian entity, round trip permitted up to two layers

Note: All holding below F Co 1 are 100%

Round tripped structures have now been permitted for resident individuals and Indian entities subject to two-layer restriction

### Structure 3: OPI

- OPI in listed securities permissible without restriction on sector and layer of subsidiary(ies) in India or overseas
  - For individuals USD 25M LRS limit applies
  - For Indian entities – 50% of Net worth limit
- OPI in listed foreign entity generally not permitted by unlisted Indian entity
- Contribution to investment fund in IFSC is OPI
- OPI in unlisted equity permissible only by resident individual in case of ESOP / qualification shares (<10%)

The webinar also covered Session on “Schedule 3 & CARO”. Topics discussed were Changing Regulatory Landscape in India, Multiplicity of Laws & Regulations, Evolving laws, Regulations & Regulators, Regulatory Actions, Amendments to Schedule III – Division II to Companies Act, 2013, Companies (Auditor’s Report) Order 2020, etc.



## Glimpses of the Webinar held on 14<sup>th</sup> September 2022

