



Azadi Ka Amrit Mahotsav Activity

“Sky High- Symposium -19 Webinar” conducted by Women Members Empowerment Committee of ICAI on 24th August 2022

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

Women Members Empowerment Committee Organises

Sky High - Symposium-19
Virtual Program
for Women by Women Every Wednesday

24th August, 2022
5.00 PM to 7.00 PM

FEES NIL

Registration and participation link:
<http://live.icai.org/wmec/24082022/>

Questions related to the topic may be sent in advance at wmec@icai.in or LIVE at the time of Program itself at the same link

Overview of FDI & External Commercial Borrowing under FEMA

Practice Management Skills and Benefits

Chief Guest
CA. Prafulla Chhajed
Past President, ICAI & Chairman- Executive Committee on WCOA, IFAC

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

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

Co-ordinators
CA. Swaroopa S Wazalwar **CA. Moushmi Shaha** **CA. Hiloni Savla**

CA. Tanvi Vora
Welcome Address

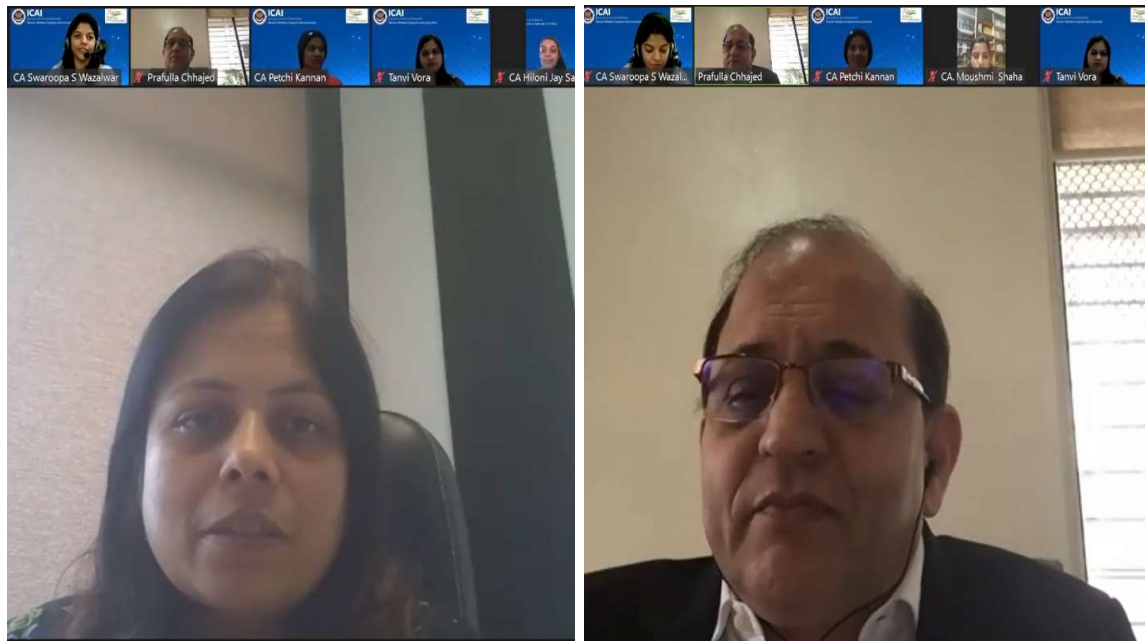
CA. Petchi Thangavel
Introductory Remarks

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 -19 Webinar" on 24th August 2022.

CA. Tanvi Vora and CA. Petchi Thangavel were speakers of the said webinar. Coordinators for the day were CA. Swaroopa S Wazalwar, CA. Moushmi Shaha and CA. Hiloni Jay Savla

Special address was given by CA. Prafulla Chhajed to all the participants.

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



The webinar covered discussion on “Overview of FDI & ECB under FEMA”. Deliberations were made on Capital Account Transactions & its Framework, Foreign Direct Investment (FDI), Routes for Investment, Evolution of FDI, Important Definitions, Regulation 6(a) of NDI Rules 2019, Recent Changes in FDI Regulations, Impact of Press Note No. 3, General Prohibitions, Acquisition through Right Issue or Bonus Issue, Issue of Capital Instruments, Transfer of Equity Instruments by or to a PROI, Downstream Investment, Bird’s Eye View of Pricing Guidelines, Investments by NRIs on Non-Repatriation Basis, Compliances under FDI, Overview of Process of Filing Form SMF, External Commercial Borrowings (ECB)- its Types, Forms Routes, Amount & Maturity, Minimum Average Maturity Period, ECB- All in Cost Ceiling, Compliances under ECB, Practical Issues in Compliances under ECB, etc.

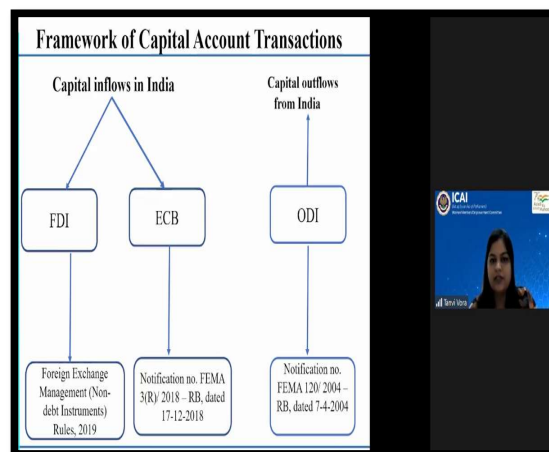
Capital Account Transactions

*Section 6 (2) of FEMA, 1999
“The Reserve Bank may, in consultation with the Central Government, specify-

- a) Any class or classes of capital account transactions, involving debt instruments, which are permissible;*
- b) the limit up to which foreign exchange shall be admissible for such transactions;*
- c) Any conditions which may be placed on such transactions:*

Provided that the Reserve Bank or the Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.”

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Evolution of FDI

- Notification No. 20/2000-RBI dated 03.05.2000 viz. the FEM (TISPRO) Regulations, 2000 originally dealt with FDI.
- Later, Notification No. 20R/2017-RB dated 07.11.2018 replaced the above notification.
- Subsequently, the Central Government, vide notification dated 17.10.2019, notified FEM (Non-Debt Instruments) Rules, 2019 in suppression of FEM (TISPRO) Regulations, 2017 and FEM (Acquisition & Transfer of Immovable Property) Regulations, 2018.
- The RBI has also, vide FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 laid down the mode of payment and attendant conditions.

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Foreign Direct Investment – Important Definitions

- **Foreign Investment**
 - **'Foreign Investment'** means any investment made by a person resident outside India on a **repatriable basis** in equity instruments of an Indian company or to the capital of an LLP;
 - **Note:** A PROI may hold foreign investment either as Foreign Direct Investment or as Foreign Portfolio Investment in any particular Indian company.
 - **Explanation:** If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.
- **Foreign Direct Investment (FDI)**
 - **FDI** means investment through equity instruments by a person resident outside India in an **unlisted Indian company**;
 - Or
 - in **10 percent or more** of the post issue paid-up equity capital on a fully diluted basis of a **listed Indian company**;
 - **Note:** In case, an existing investment by a PROI in equity instruments of a listed Indian company falls to a level below 10% of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI.
 - **Explanation:** Fully diluted basis means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

Downstream Investment

Important Definitions

- **Total Foreign investment in a company** = Direct + Indirect Foreign Investment
- **'Downstream investment'** means indirect foreign investment, by an eligible Indian entity, into another Indian company, by way of subscription or acquisition.
- **'Ownership'** shall mean:
 - A **Company** shall be considered as owned by resident Indian citizens if more than 50% of the equity in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens.
 - A **Limited Liability Partnership** will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.
- **'Control'** shall include:
 - **Company** – Right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.
 - **Limited Liability Partnership** – Right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over all the policies of Limited Liability Partnership.

Bird's Eye View of Pricing Guidelines

Valuation of Equity Instruments

For convertible equity instruments, price conversion formula to be determined against. Further, price at the time of conversion cannot be 'fair value' determined at the time of issuance.

External Commercial Borrowings

- **Types of ECB**
 - Any freely convertible Foreign Currency
 - Indian Rupee (INR)
- **Forms of ECB**
 - 1) Loans including bank loans;
 - 2) Securitised instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares / debentures);
 - 3) Trade credit beyond 3 years;
 - 4) Foreign Currency Convertible Bonds (FCCBs);
 - 5) Financial Lease; and
 - 6) Foreign Currency Exchangeable Bonds (FCEBs)
 - 7) Rupee Bonds – popularly known as the masala bonds (in case of Rs ECB)

Minimum Average Maturity Period

- MAMP for ECB is 3 years
- For below specific categories, MAMP will be:

(Calculation of MAMP)

| Sr.No | Category | MAMP |
|-------|---|----------|
| (a) | ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year. | 1 year |
| (b) | ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans | 5 years |
| (c) | ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes | 10 years |
| (d) | ECB can be availed for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose. | 7 years |
| (e) | ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose | 10 years |

Practical Issues in Compliances under External Commercial Borrowings

- Outstanding import payables beyond three years
- Loans from NRIs
- All in cost ceilings for INR denominated ECBs
- **ECBs by LLPs**
- Recent changes in ECBs and Trade Credits

| Sr. No. | Type of Return/Form | Period of delay | Applicable LSP |
|---------|---------------------|---|----------------------|
| 1 | Form ECB 2 | Up to 30 calendar days from due date of submission | INR 5,000 |
| 2 | Form ECB 3/Form ECB | Up to three years from due date of submission/date of drawdown | INR 50,000 per year |
| 3 | Form ECB 2/Form ECB | Beyond three years from due date of submission/date of drawdown | INR 100,000 per year |

Compliances under External Commercial Borrowings

- **Form ECB** – For applications both under automatic and approval route is to be filed and submitted with RBI.
- Borrower has to submit Form ECB for obtaining **Loan Registration Number (LRN)**. Any draw down in respect of ECB as well as payment of any fees/charges for raising ECB should happen only after obtaining LRN.
- **ECB 2 Returns** – Borrowers have to report actual ECB transactions through ECB 2 returns. ECB 2 returns have to be filed monthly and same shall reach before 7th of next month.

The webinar also covered Session on “Practice Management skills and benefits”. Topics discussed were Gender Equality, Women in Arm Forces, Women CAs in the year 2000, 2012 & 2020, ICAI for Empowerment of Women CAs, Management Skills- Planning, Team Building, Delegation, Leading, Time Management, etc.

The screenshot shows two adjacent slides from a webinar. The left slide is titled "Present Position" and contains a bulleted list of topics and statistics. The right slide is titled "Management Skills" and features a central illustration of a woman with multiple arms, each holding a different management tool or concept.

Present Position

- Gender Equality
- Women in Arm Forces
- Women CAs in the year 2000 (8%), 2012 (20%) and in 2020 (25%)
- ICAI is having more commitment to develop Women CAs empowerment

Management Skills

Time Management, Planning, Leading, Team Building, Delegation

The screenshot shows two adjacent slides. The left slide contains an inspirational quote. The right slide features a quote by Pinky Pradhan over a background image of a hand watering a small green plant.

Don't wait for extra-ordinary opportunities seize common occasions and make them great.

Save nature today.
Many life will be saved in future.
— Pinky Pradhan

The webinar concluded by giving Vote of Thanks to the Speakers and the participants.

Glimpses of the Webinar held on 24th August 2022

