

KEY FORMS & COMPLIANCES UNDER FEMA

CA Alwin Jacob

CONTENTS

- FEMA Rules & Regulations
- Liberalised Remittance Scheme (LRS)
- LRS - TCS Applicability
- Overseas Investment (OI)
- Overseas Investment (OI) by Res Individuals
- Reporting Requirements

FEMA RULES & REGULATIONS

Sr No	Particulars	Rules/ Regulations/ Notifications
1	Current & Capital Account Transactions	<ul style="list-style-type: none">• FEM (Current Account Transactions) Rules, 2000• FEM (Capital Account Transactions) Regulation, 2000 – FEMA 1
2	Foreign Direct Investment	<ul style="list-style-type: none">• FEM (Non-Debt Instruments) Rules, 2019• FEM (Debt Instruments) Regulations, 2019• FEM (Mode of payment and Reporting of Non- Debt Instruments) Regulations , 2019 – FEMA 395• Consolidated FDI Policy, 2020• Master Directions on Foreign Investment in India• FAQs on Foreign investment in India
3	Overseas Direct Investments and Outward remittances by Resident Individuals	<ul style="list-style-type: none">• FEM (Overseas Investment) Rules, 2022• FEM (Overseas Investment) Regulations, 2022• FEM (Overseas Investment) Directions, 2022• Master Direction on Liberalised Remittance Scheme• FAQs on LRS

FEMA RULES & REGULATIONS

Sr No	Particulars	Rules/ Regulations/ Notifications
4	Import and Export of Goods & Services	<ul style="list-style-type: none">• FEM (Export of Goods and Services) Regulations, 2015 – FEMA 23R• Master Direction on Export of Goods and Services• FEM (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015 – FEMA 10R• FEM (Manner of Receipt and Payment) Regulations, 2016• Master Direction on Import of Goods and Services
5	Borrowing and Lending in INR and Foreign Exchange (ECB)	<ul style="list-style-type: none">• FEM (Borrowing and Lending) Regulations, 2018 – FEMA 3R• Master Directions on ECB, Trade credits and structured Obligations• FAQs on ECB and Trade Credits

LIBERALISED REMITTANCE SCHEME

LIBERALISED REMITTANCE SCHEME

- Introduced on 04th February 2004 vide A.P Circular No. 64
- The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions.

Date	Feb 4, 2004	Dec 20, 2006	Mar 8, 2007	Sept 26, 2007	Aug 14, 2013	June 3, 2014	May 26, 2015
LRS limit per FY (USD)	25,000	50,000	100,000	200,000	75,000	125,000	250,000

- Transactions – **any permitted current or capital account transactions or a combination of both.**
- Not available to Corporates, Partnership firms, HUF, Trust etc.
- Available to all **RI including minors.**

COMPLIANCES UNDER LRS

- **Form A2** has to be submitted with AD bank by Individual.
- PAN is mandatory irrespective of the amount of remittance (Vide A.P DIR Circular No.32 dtd 19th June 2018).
- AD banks are required to submit information on remittances under LRS to RBI every month under Online Return Filing System (ORFS).
- Form 15CA/ CB – mandatory on the part of ADs to comply with the requirement of applicable tax laws.

- Limit of USD 250,000 under LRS is for both current and capital account transactions.
- Remittance exceeding USD 250,000 requires prior permission from RBI
- Any amount spent by a person on a visit outside India through use of International credit card would be out of LRS limit.

[Recent amendment to FEM (Current Account Transactions) Rules, 2000.
w.e.f 16th May 2023.]

RBI PURPOSE CODES

Sr. No.	Items under LRS	FETERS Purpose codes
1	Opening of Foreign Currency Account abroad	S0023
2	Purchase of Immovable Property	S0005
3	Investment in equity, debt, JV, WOS	S0001, S0002, S0003, S0004, S0021, S0022
4	Gift	S1302
5	Donations	S1303
6	Travel (business, pilgrimage, medical treatment, education, others)	S0301, S0303, S0304, S0305, S0306
7	Maintenance of Close Relatives	S1301
8	Medical Treatment	S1108
9	Studies Abroad	S1107
10	Emigration	S1307
11	'Others' such as loan to NRI close relative and health insurance	S0011, S0603

LRS – PROHIBITED TRANSACTIONS

- Schedule I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or items restricted in Schedule II of FEM (CAT) Rules, 2000
- Remittance for margins or margin calls to overseas exchanges/overseas counterparty.
- Remittance for purchase for FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in Foreign exchange abroad.
- Capital account remittances to countries identified by Financial Action Task Force (FATF) as non-co-operative countries and territories.
- **R to R Gift of forex in foreign a/c not permitted.**

LRS – PERMISSIBLE TRANSACTIONS

Nature of transaction	Remarks
Private visits to any country (except Nepal & Bhutan)	All tour related expenses be included (irrespective of whether tour operator has taken sums in INR or in foreign currency)
Gift/donation	
Going abroad on employment	
Emigration	Amount in excess of the limits shall be allowed only it is for meeting incidental expenses, and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise
Maintenance of relatives abroad	
Business Trip	Excluded if the expenditure is borne by the Business Enterprise
Medical Treatment Abroad	Amount in excess of the limits is permitted based on the estimate of doctor (both Indian/ foreign)
Facilities available to students for pursuing their studies abroad.	Amount in excess of the limits can be drawn based on the estimate from the Foreign University

LRS – PERMISSIBLE TRANSACTIONS

- Opening of foreign currency account abroad with a bank;
- Acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in ODI Rules & Regulations;
- Extending loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

LRS – CONSOLIDATION (AS MODIFIED ON 24TH AUG 2023)

- Remittance under LRS can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.
- Clubbing is not permitted for capital account transactions such as opening a bank account/investment/ ~~purchase of property~~, if they are not co-owners/ co-partners of the account/ investment/ ~~property~~.
- Remittances for purchase of property shall be in accordance with the OI rules.
- **Rule 21(2)(ii) OI Rules states** : (ii) a person resident in India may acquire immovable property outside India from a person resident outside India by way of purchase out of the remittances sent under the LRS instituted by the Reserve Bank:
- Provided that such remittances under the LRS may be consolidated in respect of relatives if such relatives , being **persons resident in India**, comply with the terms and conditions of the Scheme;”

Whether Consolidation of the facility is possible without relatives becoming co-owner of the property?

LRS – OUT OF BORROWED FUNDS

- Banks should not extend any kind of credit facilities to RI to facilitate **capital account remittance** under LRS.
- AD banks may extend, fund and non-fund based facilities to RIs to facilitate **Current account remittances** under LRS – FAQ 16 on LRS updated on 6th April 2023
- Underlying principle under LRS is that remittance should be from own funds
→ Para 8 of part B of MD on LRS and declaration in Form A2
- Are loans from other parties for Current account transactions permissible ? –
- Eg: Relatives or third parties for education or medical treatment which are most common.

LRS – IDLE FUNDS

MD on LRS updated on 22nd Dec 2023 (Para 17)

- *Investor, who has remitted funds under LRS can retain, **reinvest the income earned on the investments.***
- *The received/ realised/ unspent/ unused foreign exchange, **unless reinvested**, shall be repatriated and surrendered to an authorised person within a **period of 180 days** from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India.*
- *How to interpret expression “unless reinvested”*
- *Whether the funds can be spent for any permissible purpose?*
- *Whether the funds can be invested in permissible mode?*
- *Does this amount to Change of use ? Is it permissible*

TCS APPLICABILITY – S. 206C(1G)

Nature of payment	TCS Rate
LRS for education financed by loan	Nil up to Rs 7 lakh 0.5% above Rs 7 Lakh
LRS for Medical treatment/ education (other than financed by loan)	Nil up to Rs 7 lakh 5% above Rs 7 Lakh
Purchase of Overseas tour program package	5% till Rs 7 Lakh 20% thereafter
LRS for other purposes	Nil up to Rs 7 lakh 20% above Rs 7 Lakh

International transactions made in India using International credit cards will be counted for LRS

OVERSEAS INVESTMENT

OI - NEW REGIME FROM 22ND AUGUST 2022

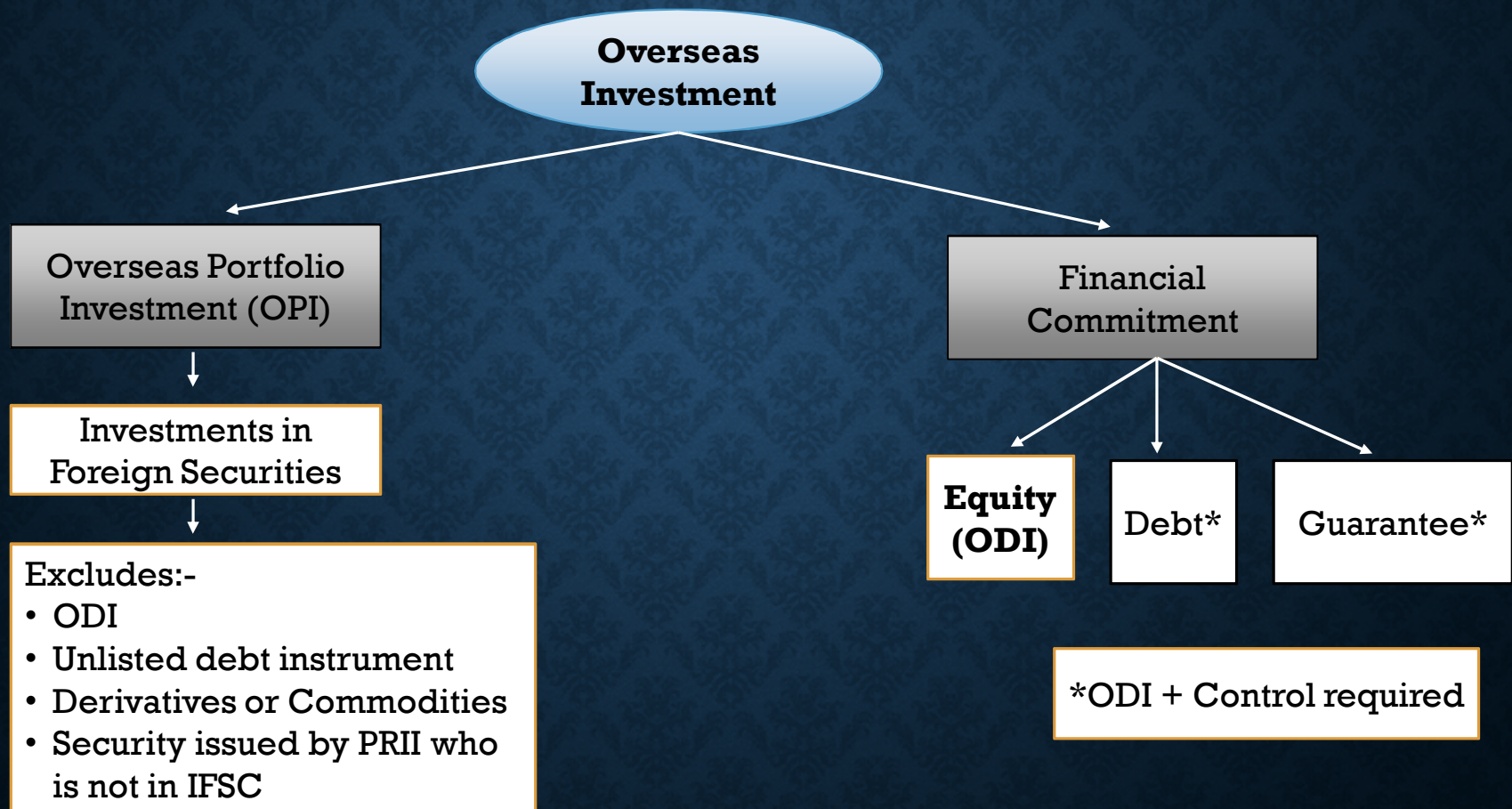
- New OI regime has replaced a very old set of regulations
 - FEMA 120 (Transfer or Issue of Foreign Security)
 - 7(R) (Acquisition or Transfer of Immovable property outside India)

Title	Content	Notified by
FEM (Overseas Investment) Rules, 2022	Dealing with Non Debt instruments and general principles of New OI regime	CG
FEM (Overseas Investment) Regulations, 2022	Dealing with Debt instruments	RBI
FEM (Overseas Investment) Directions, 2022	Directions to be followed by AD banks. Additional clarifications on OI rules & Regulations	RBI

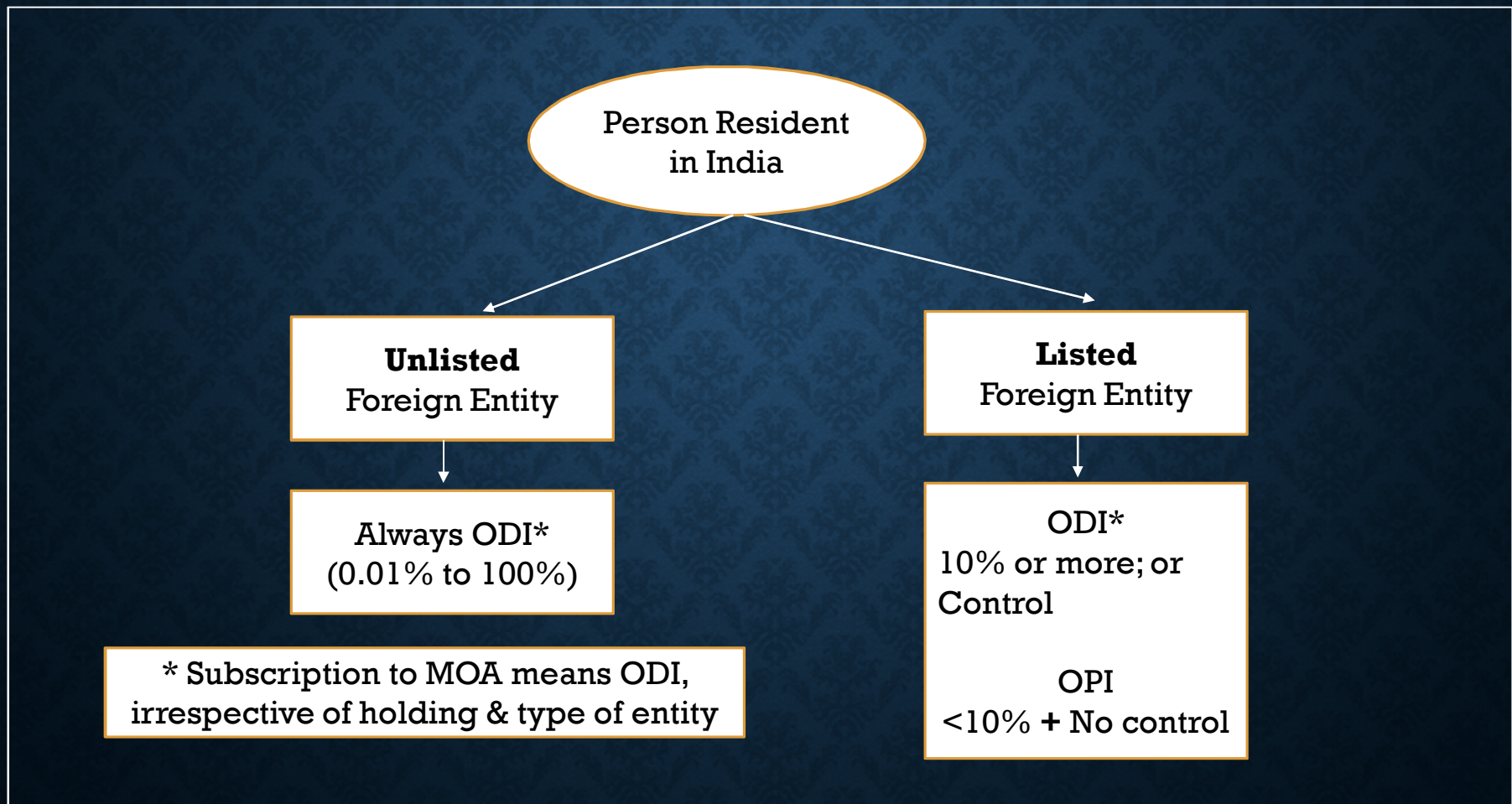
OI - NEW REGIME FROM 22ND AUGUST 2022

- Covers all Overseas investments including immovable property outside India
- Clarifications, simplifications, relaxations
- Removal of requirement of approvals in certain cases
- Relaxation for investment in strategic sector
- Changes in compounding regime to LSF

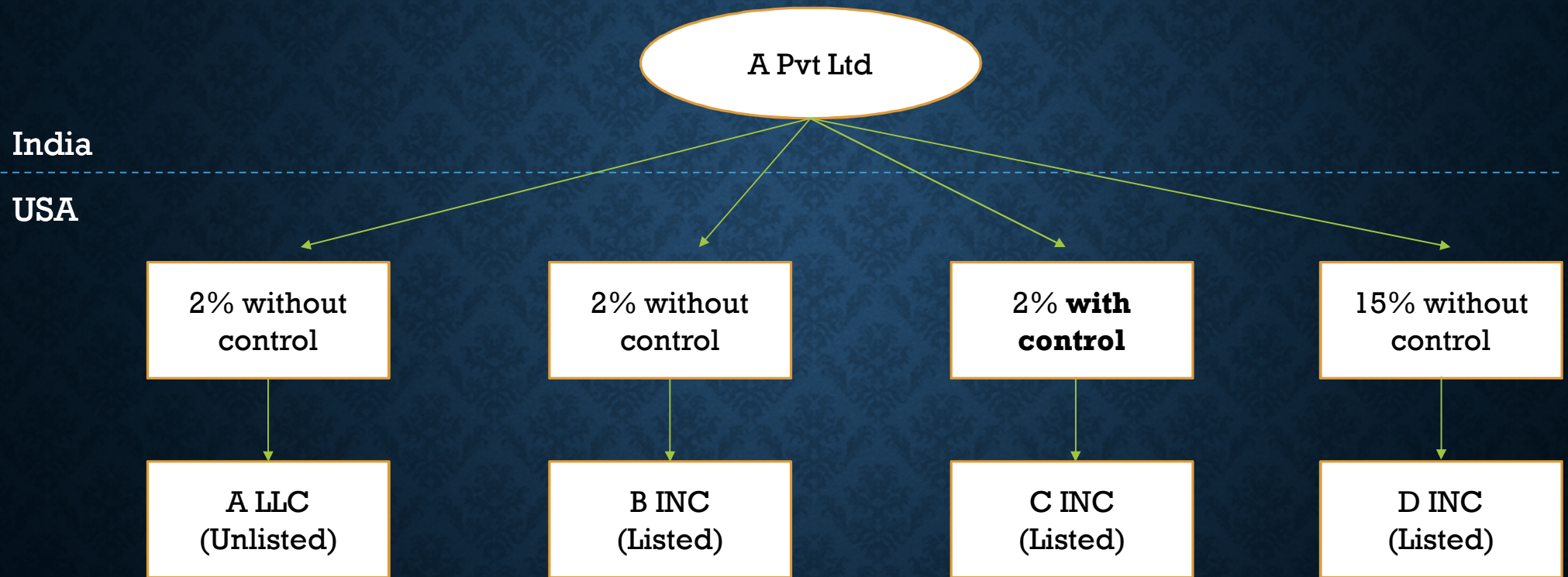
OVERSEAS INVESTMENT – CLASSIFICATION UNDER NEW REGIME



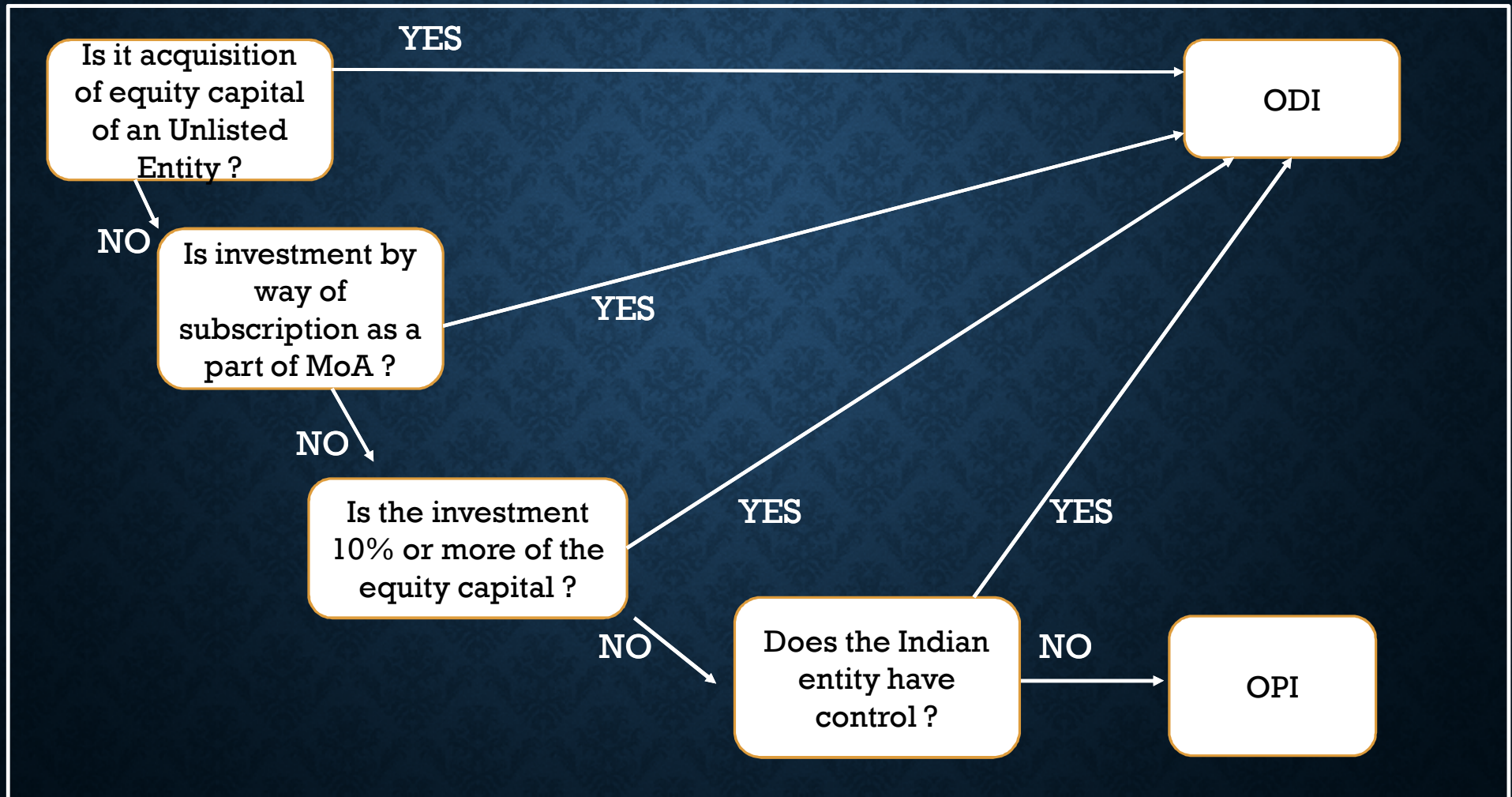
LISTED VS UNLISTED ENTITIES



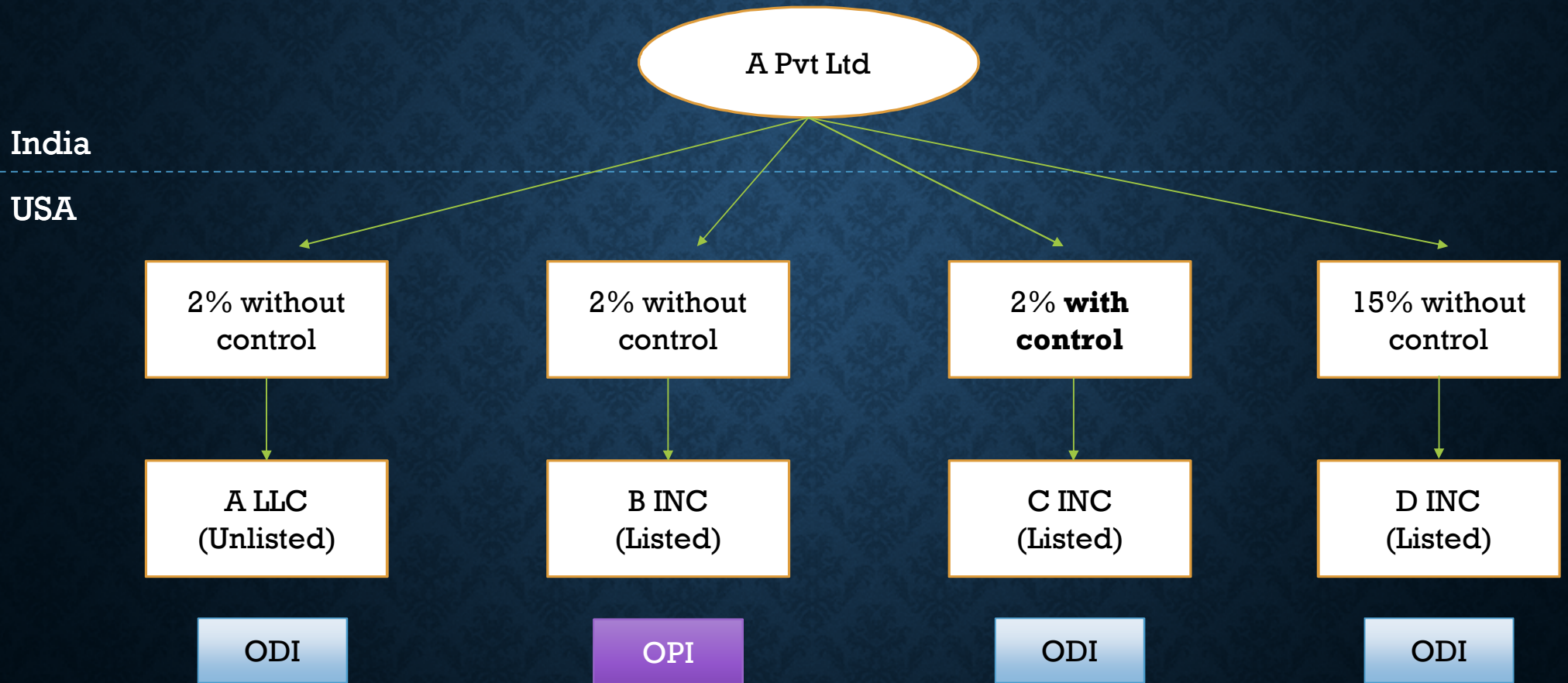
CASE STUDY -



ODI VS OPI

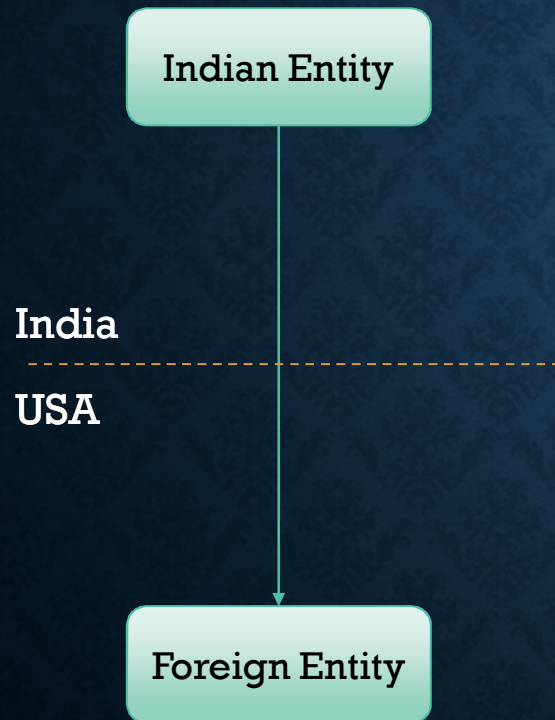


CASE STUDY -



OVERSEAS DIRECT INVESTMENT (ODI) - EQUITY

WHO CAN INVEST AND IN WHICH ENTITY ?



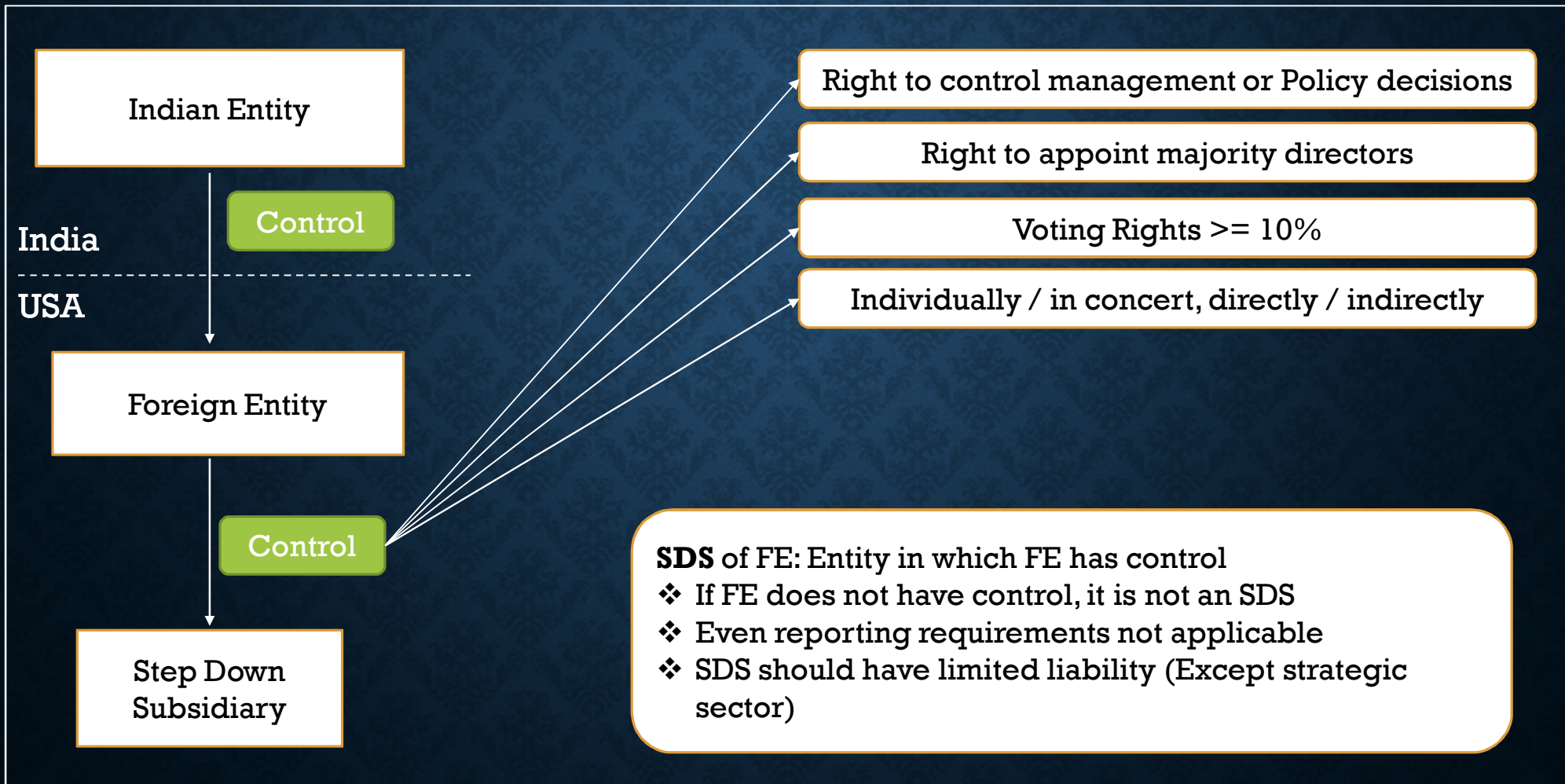
Indian Entity – Co./ LLP/ Regd. Partnership / Body Corporate

- Replaces Indian Party
- Indian Party included all investors from India together
- Now, each resident investor is separately considered as Indian entity.

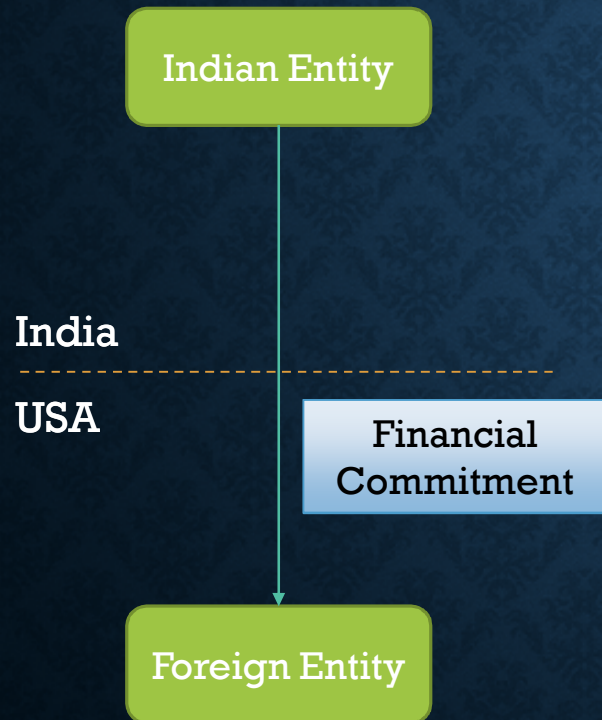
Foreign Entity – Entity formed or Registered or incorporated

- Outside India/ in an IFSC; and
- Having limited liability (except entity having core activity in strategic sector)
- Investment in strategic sector allowed even in unincorporated entity
- Replaces JV/ WOS

HOW TO INVEST ? CONTROL & SDS



HOW TO INVEST ? FINANCIAL COMMITMENT & NET WORTH



Financial Commitment –

- ODI in FE
- Debt in FE in which ODI is made
- Non fund based facilities to/ on behalf of FE
- Allowed up to 400% of NW or USD 1 billion per FY, which ever is less.

Net Worth –

- **Company:** S 2(57) of CA, 2013
- **Regd. Firm/ LLP:**
- Capital + undistributed profits
- Reduced by accumulated losses and exp not written off.
- As per last audited BS. (not exceeding 18 months before the transaction)

WHAT BUSINESS CAN BE DONE?

- FE to be engaged in “ Bonafide business activity”
- Activity permissible under any law in India **and** host jurisdiction. [Expl to R 9(1)]
- The activities of investee company should be checked for even portfolio investment.
- Investment in listed equity shares of a US Company engaged in drugs, gambling, etc – **Not Permitted**

WHAT CANNOT BE DONE ?

- **Gambling** not permitted (in any form)
- Dealing in **Financial products linked to INR** not permitted.
- **Real estate activity not permitted:**
- Means -
 - Buying and selling of real estate
 - Trading in TDRs

Excludes –

- Development of townships
- Construction of Residential/ Commercial premises, roads or bridges
- for selling or leasing

MANNER OF MAKING ODI

- **Indian entity can make or hold ODI by way of –**
- Subscription to MoA
- Purchase of Equity capital
- Acquisition through bidding or tender procedure
- Capitalisation of amount due from the FE provided
 - It is with in the time period specified under FEMA
 - Remittance of such amount should be permitted or should not require prior approval of CG/ RBI
- Swap of Securities
- Merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or of the host country.

MODE OF PAYMENT FOR MAKING OI

- Remittance through banking Channels
- From funds held in an account as per FEMA
- Swap of securities
- ADR/ GDR proceeds
- Not through credit card or cash withdrawals made abroad.

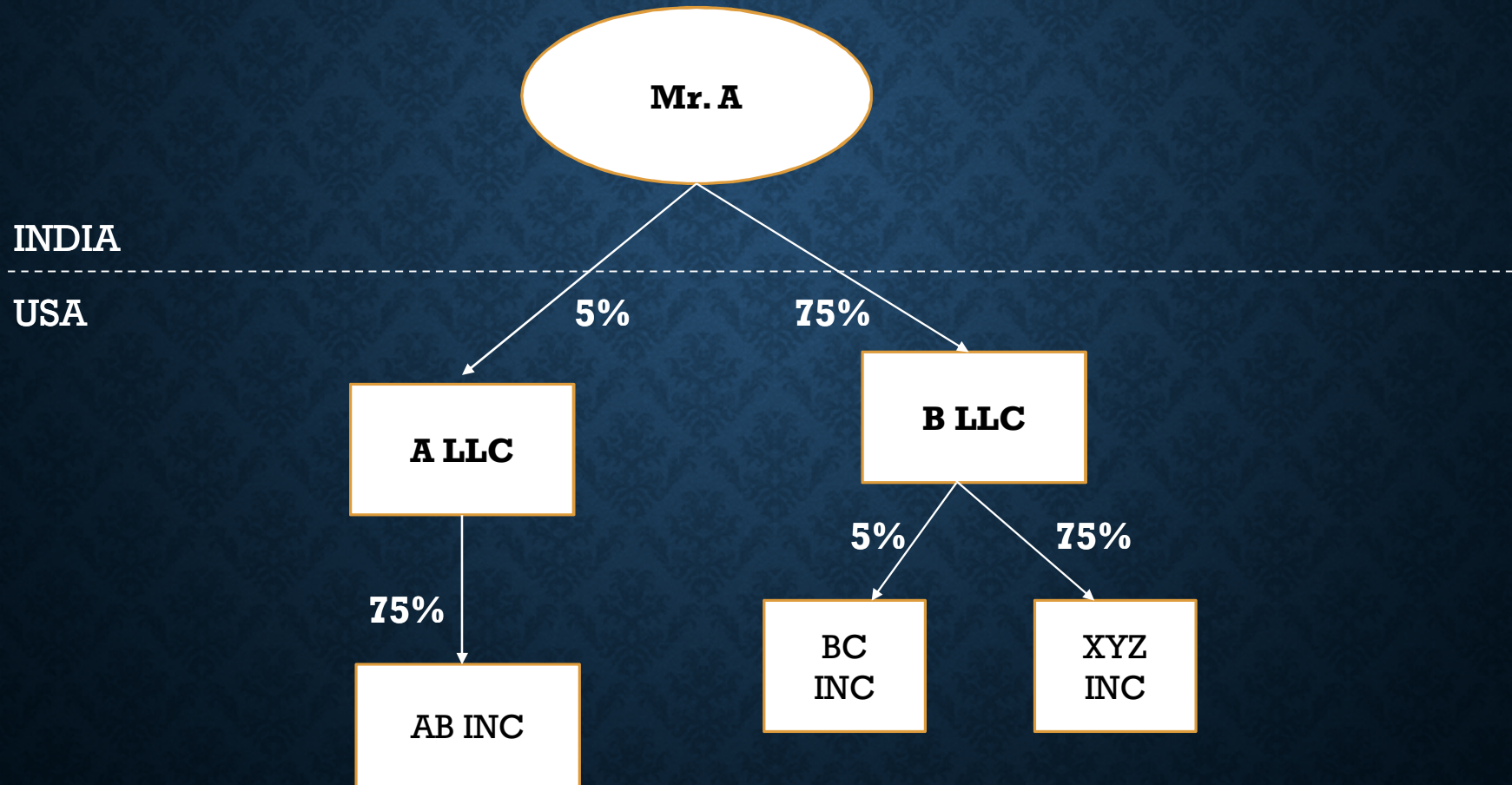
OVERSEAS DIRECT INVESTMENT – RES INDIVIDUALS

OVERSEAS DIRECT INVESTMENT – RES INDIVIDUALS

- LRS-ODI formally introduced from 5th August 2023.
- **LRS limit** is applicable to individuals for all capital and current account transactions **including ODI**.
- **Schedule III to OI Rules:** ODI in an “**Operating**” foreign entity -
- **Subsidiary/ SDS not allowed – If RI has control** in FE
- **Subsidiary/ SDS allowed – If RI does not have control** in FE

- Financial Services activities not allowed except through:
 - **IFSC (Sch V to OI rules)**
 - Inheritance, Sweat equity, ESOP, EBS
- ODI in recognised start ups – Allowed only from own funds [Rule 19(2)]

CASE STUDY -

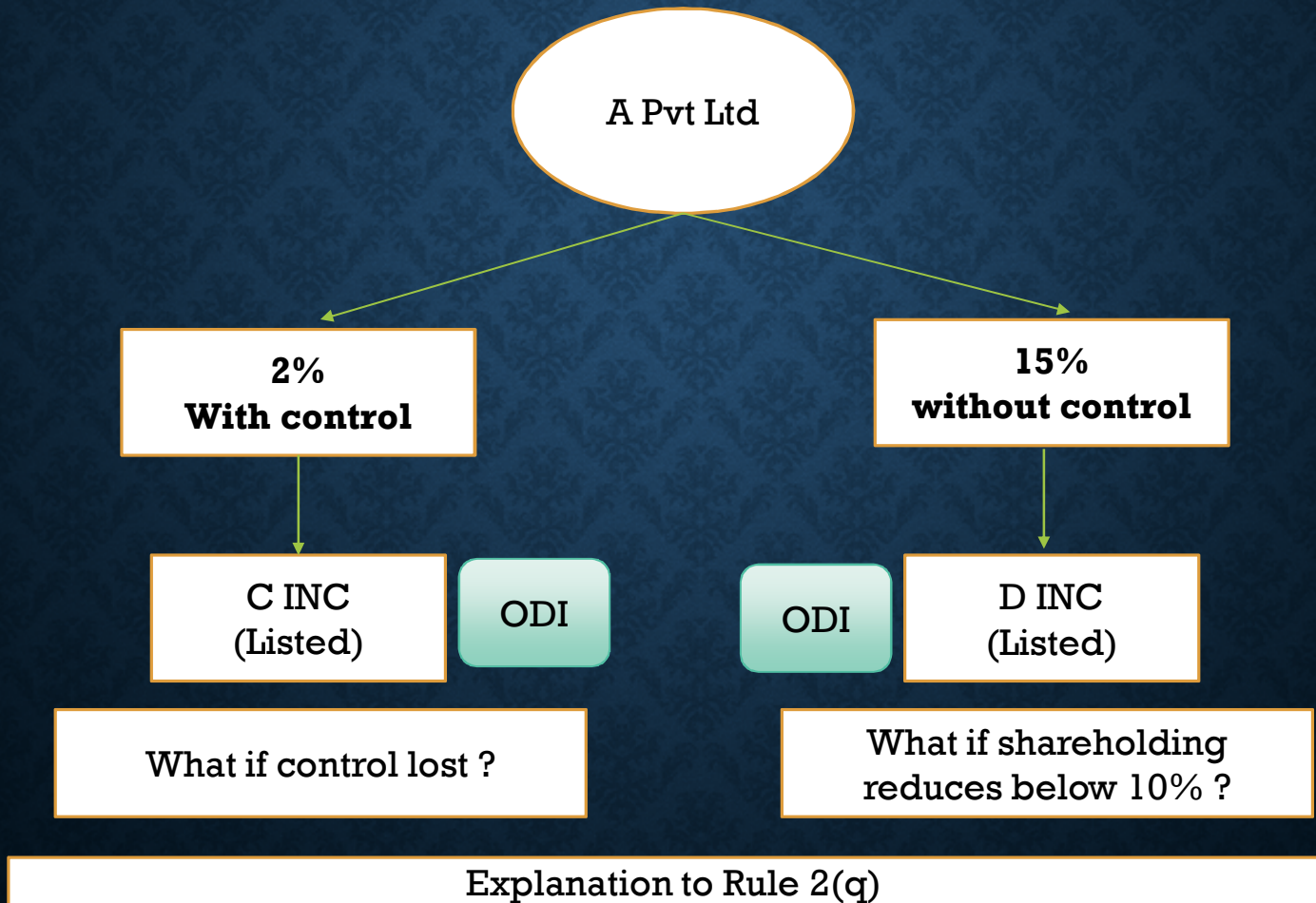


MANNER OF MAKING OI BY RES INDIVIDUAL

- Capitalisation of amount due from the FE provided
 - It is with in the time period specified under FEMA
 - Remittance of such amount should be permitted or should not require prior approval of CG/ RBI
- Swap of securities due to merger, demerger, amalgamation / liquidation.
- Right issue or allotment of bonus shares
- Inheritance
- Sweat equity shares
- Gift s.t specific conditions
- ESOP or EBS

- Can be ODI or OPI, as the case may be.

ONCE ODI, ALWAYS ODI



REPORTING REQUIREMENTS

REPORTING REQUIREMENTS

Form	Who has to file	When
Form FC	PRII which has made ODI	<ul style="list-style-type: none"> i) ODI ii) Making Financial Commitment iii) Undertaking restructuring iv) Undertaking disinvestment
Form APR	PRII which has made ODI	On or before 31 st December every year.
Form OPI	PRII other than Resident Individual	<ul style="list-style-type: none"> i) Making OPI ii) Transferring OPI
Form FLA	Indian Entity which has made ODI; Indian Company which has received FDI; LLP received capital contribution.	On or before 15 th July every year.

FORM FC

Section	Particulars
Section A	Details of the Indian entity/ resident individuals/ Trust/ Society
Section B	Details of the foreign entity/ step-down subsidiaries
Section C	Details of transaction/ remittance/ financial commitment of the person resident in India
Section D	Declaration furnished by the Indian entity/ resident individual, undertaking financial commitment
Section E	Certificate by the Statutory Auditors of the Indian entity (IE)/ group company.
Section F	Details to be reported at the time of restructuring of the balance sheet of the foreign entity involving diminution in the total value of the outstanding dues towards the person resident in India on account of investment in equity and debt
Section G	Details to be reported at the time of disinvestment in the foreign entity by way of sale or transfer of equity capital/ buyback of equity capital/ closure/ liquidation/ winding up/ merger/ amalgamation

MAJOR CHANGES IN APR

- APR to be based on the **Audited Financials of FE.**
- Audited FS not required if –
 - the host country does not mandate audit; **and**
 - **investor does not have control.**
- Certificate from statutory Auditor (In case of IE) / Chartered Accountant (even for RI)
 - that APR is based on audited/ unaudited balance sheet and reason for unaudited balance sheet.
 - Repatriation of all dues from FE.

(FEMA 120: RI – Self declaration only)

FORM OPI

- **All persons resident in India except Individuals –**
 - **Making OPI or transferring OPI through sale**
 - **ESOP/EBS to RI employee/ Director – reporting to be done by office/ branch/ subsidiary/ Indian entity of the NR.**
- **Half yearly reporting**
- **60 days from September and March ending**

FORM FLA

- web-portal <https://flair.rbi.org.in>
- Year for this purpose shall be reckoned as **April to March.**

DELAYS IN REPORTING

- LSF introduced for ODI (w.e.f 30/09/2022)
- LSF option available till 3 years from due date of submission.
- APR/ FLA return/ Form OPI/ Share Certificate/ Annual reporting -
 - INR 7,500
- Form FC/ Form ODI Part I or III/ other transactional reporting –
 - INR 7,500 + (0.025% * amount involved * no. of years of delay)
 - Amount of LSF restricted up to amount involved.

Q&A

THANK YOU!