

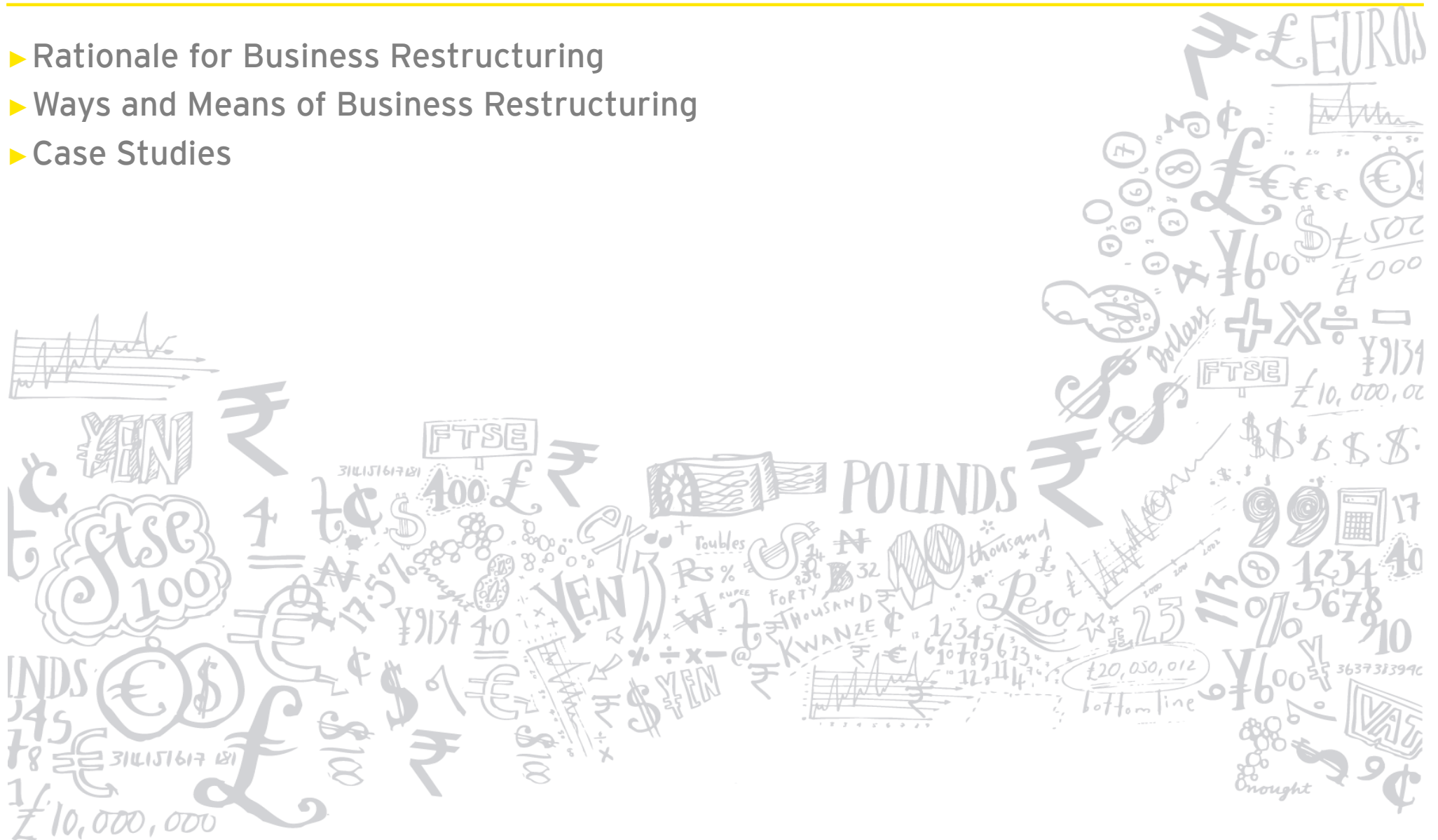
Business Restructuring and M&A

Purpose, Ways and Means including Case Studies

8 August 2015
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Agenda

- ▶ Rationale for Business Restructuring
- ▶ Ways and Means of Business Restructuring
- ▶ Case Studies



Rationale for business restructuring

Commercial

- ▶ Business synergies
- ▶ Inorganic growth
- ▶ Unlocking value
- ▶ Exit
- ▶ Strategic alliances/
partnerships
- ▶ Focus on core
competencies
- ▶ Greater control over
assets and operation
- ▶ Liquidity and choice of
ownership to
shareholders

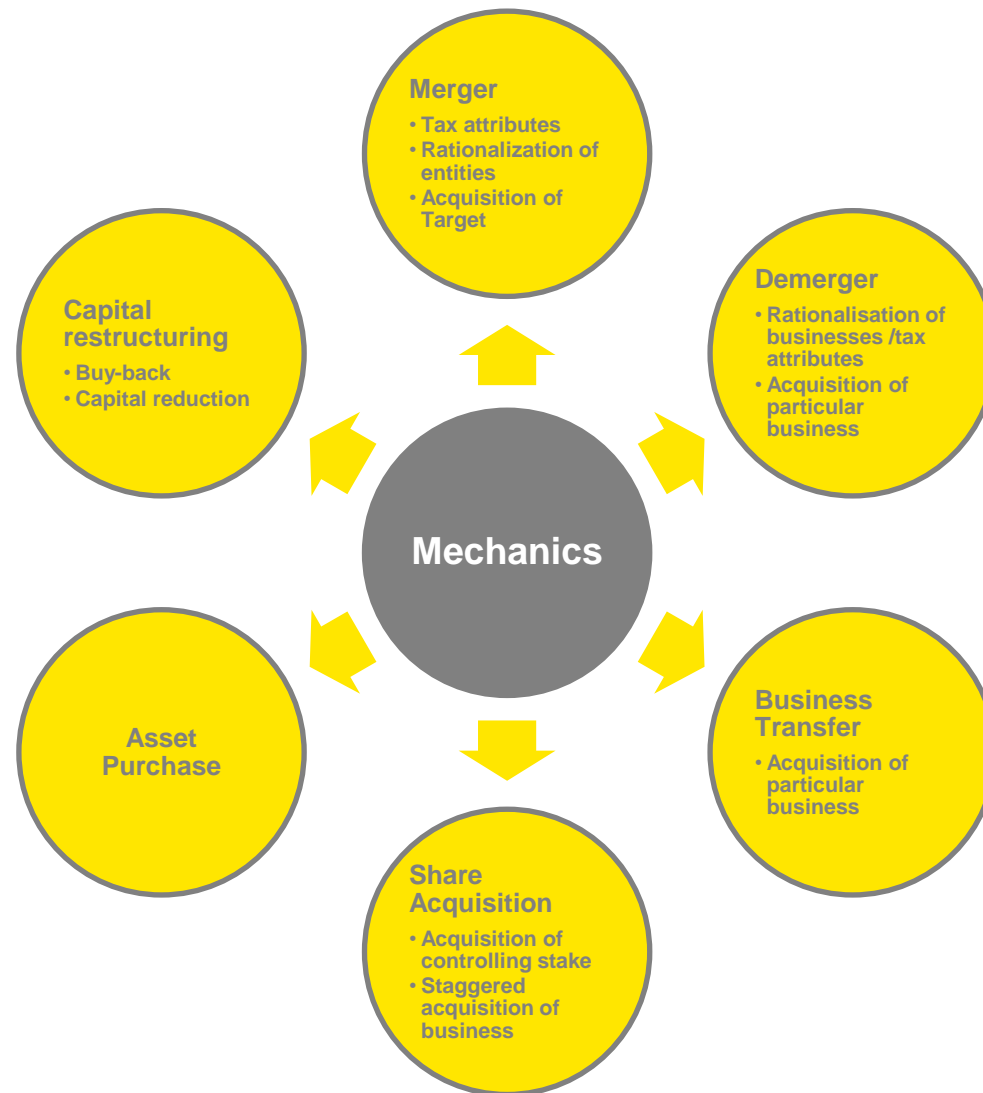
Financial

- ▶ Tax savings
- ▶ Reducing administrative
and management costs
- ▶ Upstreaming cash
- ▶ Encashing value
- ▶ Cash infusion in
operations
- ▶ Projecting stronger
financials

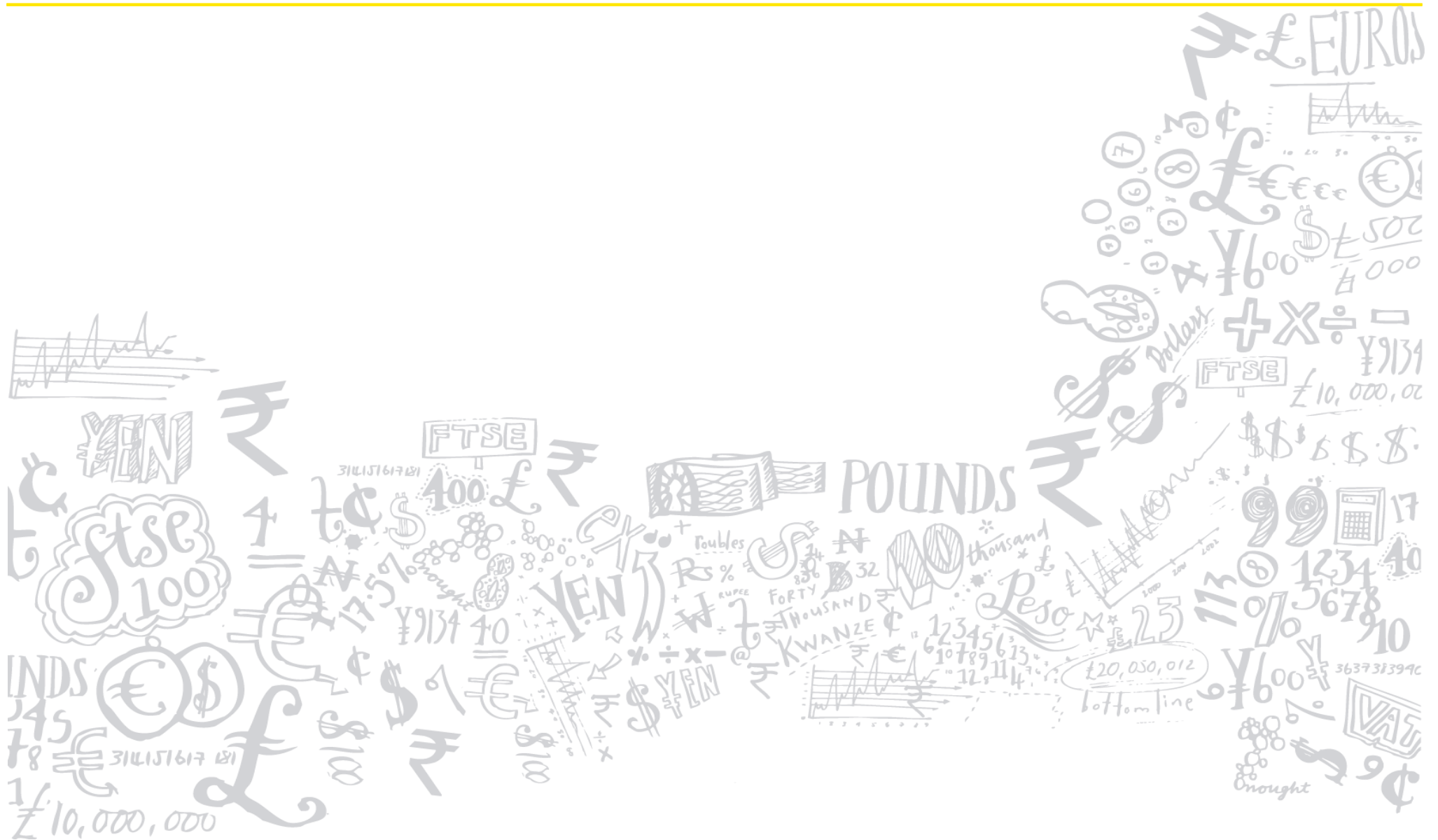
Regulatory

- ▶ Banking Guidelines
- ▶ Restricted sectors under
FDI guidelines

Ways & means of business restructuring and M&A



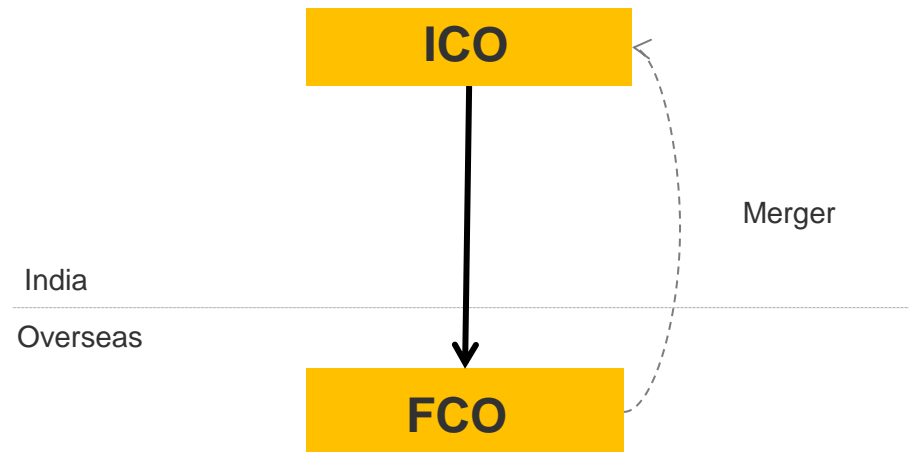
Case Studies



Case Study 1- Inbound merger of Foreign Company

Facts:

1. ICO holds 100% equity of FCO
2. FCO is merged with ICO pursuant to court approved scheme and in compliance of Indian Company Law (ICL)
3. No issuance of shares on merger, ICO being shareholder of FCO



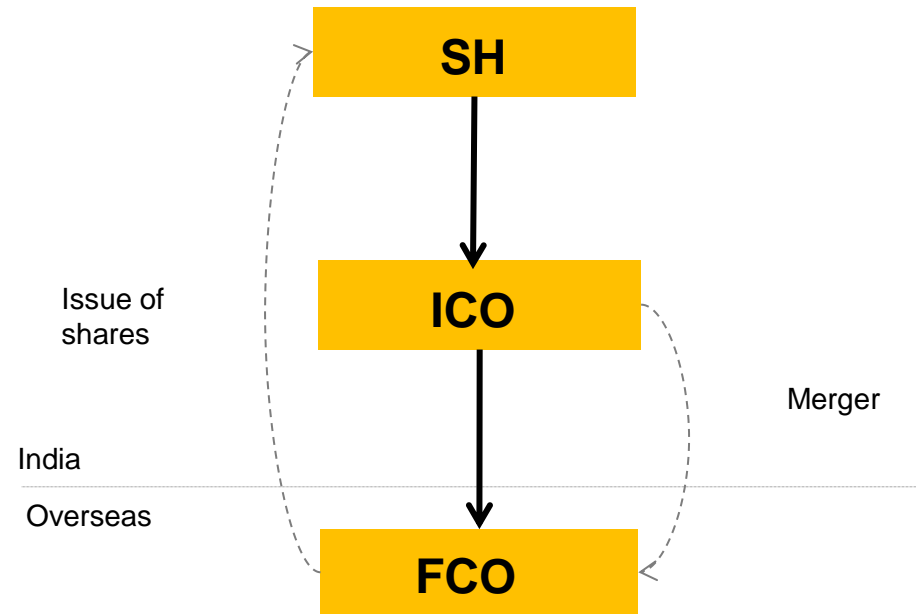
Key discussion points:

- ▶ Corporate law feasibility - Cos Act 1956 vs Cos Act 2013?
- ▶ Tax implications for FCO and ICO?
 - ▶ Conditions of section 47(vi) and section 47(vii) satisfied? ▶
 - ▶ Permissibility of outbound merger under corporate laws prevailing in country where FCO is situated - whether relevant?
- ▶ Whether feasible to make the merger with retrospective effect?
- ▶ Tax base for depreciable asset of FCO for ICO?
- ▶ Allowability of carry forward and set off of tax losses of FCO in India?

Case Study 2- Outbound merger of an Indian Company

Facts:

1. ICO holds 100% equity of FCO
2. ICO is to be merged with FCO
3. FCO to issue shares to the shareholders of ICO, SH



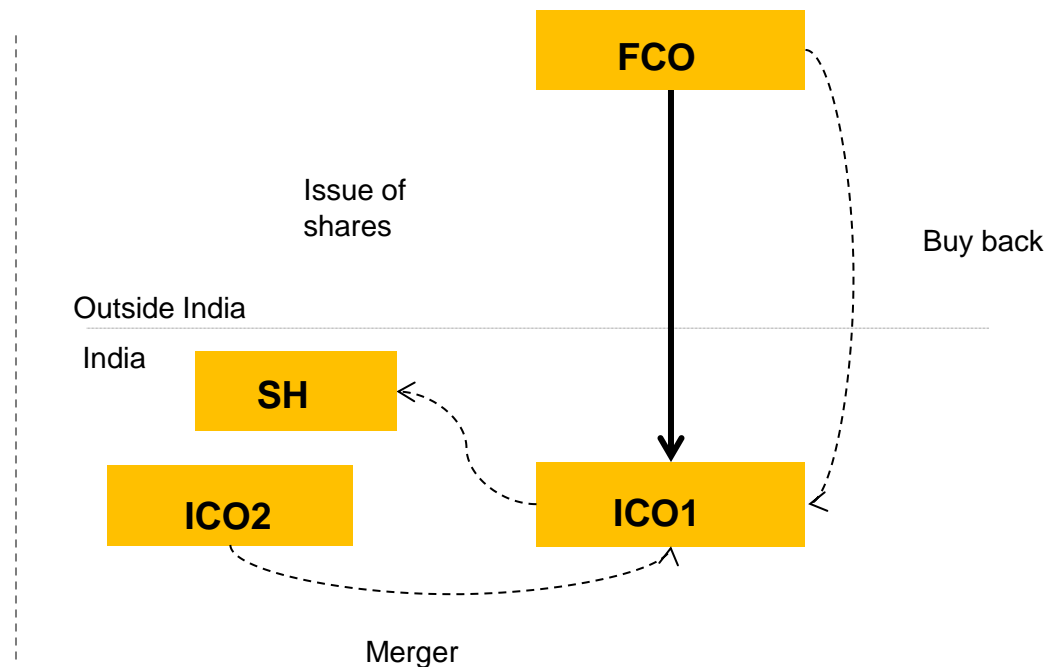
Key discussion points:

- ▶ Corporate law feasibility - Cos Act 1956 vs Cos Act 2013?
- ▶ Tax implications for FCO, ICO and SH?
 - ▶ Conditions of section 47(vi) and section 47(vii) satisfied? ▶

Case Study 3- Buyback

Facts:

1. FCO holds 100% stake in ICO1
2. ICO1 buys back its shares from FCO at fair value
3. SH hold 100% stake in ICO2
4. ICO2 merges with ICO1 and ICO issues shares to SH



Key tax implications:

- ▶ Mode of computation of buyback tax? ▶
- ▶ Difference between primary infusion and secondary acquisition for buy back tax purpose?
- ▶ Buy-back of shares held by SH - taxation for ICO 1 or SH?

Case Study 4 – Cash repatriation

- ▶ Company X engaged in the consulting business
 - ▶ Owned by non-resident shareholders based out of Mauritius and Singapore and USA in 30:40:30 ratio
 - ▶ Intends to repatriate excess cash to the shareholders in a tax efficient manner
- Financial Position:**
- ▶ Equity Shares 2000 (200 shares)
 - ▶ Free Reserves 6000
 - ▶ Excess cash 4000
 - ▶ Fair Value of Shares 50 per share
 - ▶ Cost of shares for SH 10 per share

Options available with the company

- ▶ Dividend
- ▶ Capital Reduction
- ▶ Buy-back of shares under [section 77A](#)
- ▶ Any other?

Buyback – Key considerations

Under section 68 of Companies Act, 2013

- ✓ Ceiling of 25% of paid up capital and free reserves as well as 25% of equity capital in a year
- ✓ Special resolution required for buy-back exceeding 10% of paid up capital and free reserves
- ✓ Does not entail High Court process
- ✓ Cooling period of one year from date of closure of last buy-back offer

Under section 77A of the Companies Act, 1956

- ✓ Ceiling of 25% of paid up capital and free reserves as well as 25% of equity capital in a year
- ✓ Special resolution required for buy-back exceeding 10% of paid up capital and free reserves
- ✓ Does not entail High Court process
- ✓ Cooling period of one year from date of closure of last buy-back offer - excluding buy-back done by board resolution

Is it possible to undertake buy-back under section 391 without triggering buy-back tax?

Case Study 5 – Acquisition through merger

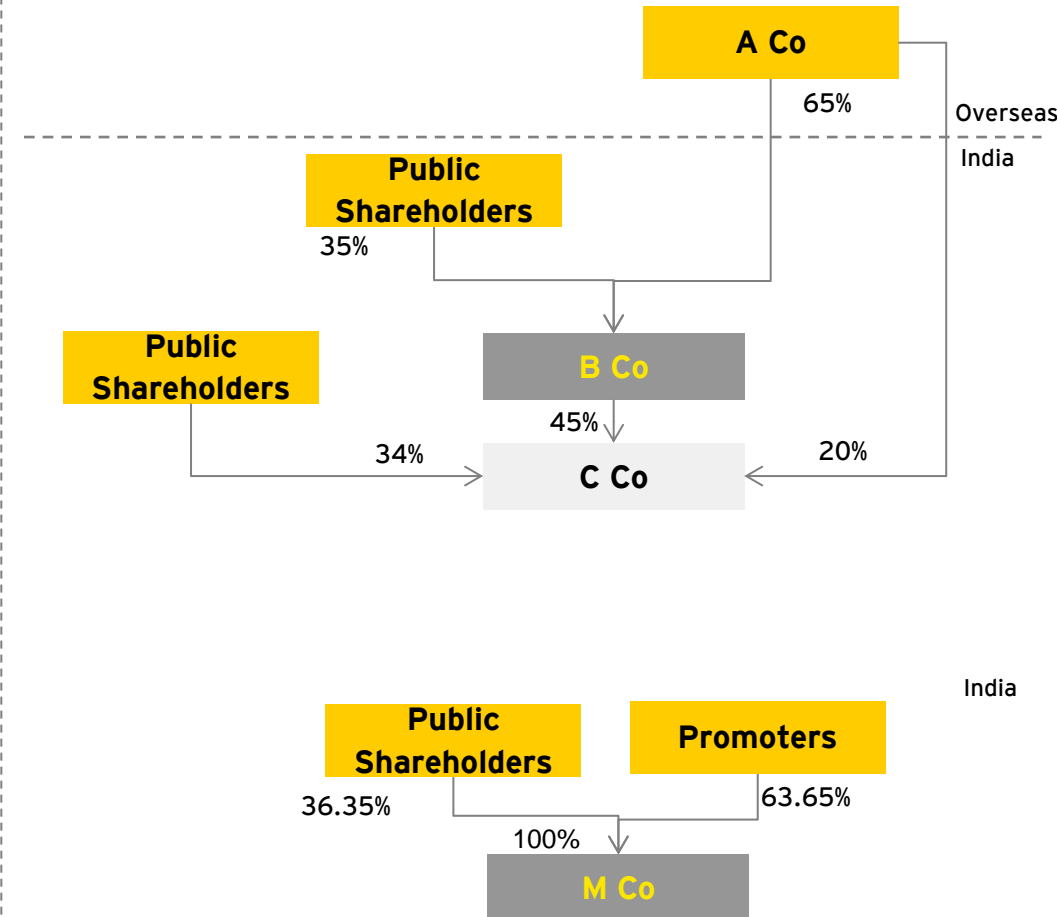
Facts of the Case

- ▶ B Co is an Indian listed company - shareholding pattern:
 - ▶ A Co (Promoter) - 65%
 - ▶ Public - 35%
- ▶ C Co is an Indian listed company - shareholding pattern:
 - ▶ B Co (Promoter) - 45%
 - ▶ A Co (Promoter) - 20%
 - ▶ Public - 35%
- ▶ M Co is an Indian listed company - engaged in similar business as that of B Co
- ▶ Shareholding pattern of M Co:
 - ▶ Promoters - 63.65%
 - ▶ Public - 36.35%

Objective

- ▶ Acquisition and consolidation of B Co with M Co with minimal funding
- ▶ Facilitate exit to the shareholders of B Co

Relevant structure prior to transaction

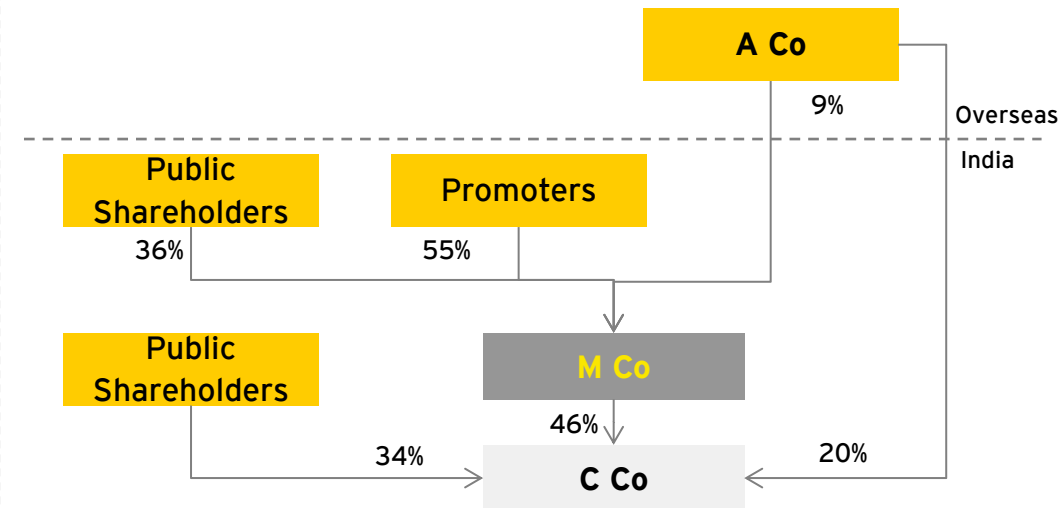


Case Study 5 – Acquisition through merger

Transaction Mechanics

- ▶ B Co merges with M Co.
- ▶ Key considerations of the scheme:
 - ▶ M Co to issue shares to shareholders of B Co as per share entitlement ratio (SER)
 - ▶ Employees of B Co. to receive new ESOPs of M Co proportionate to the SER
 - ▶ Holders of GDRs to be provided an option to get equity or cash exit
- ▶ A Co to exit post the scheme

Relevant structure post to transaction



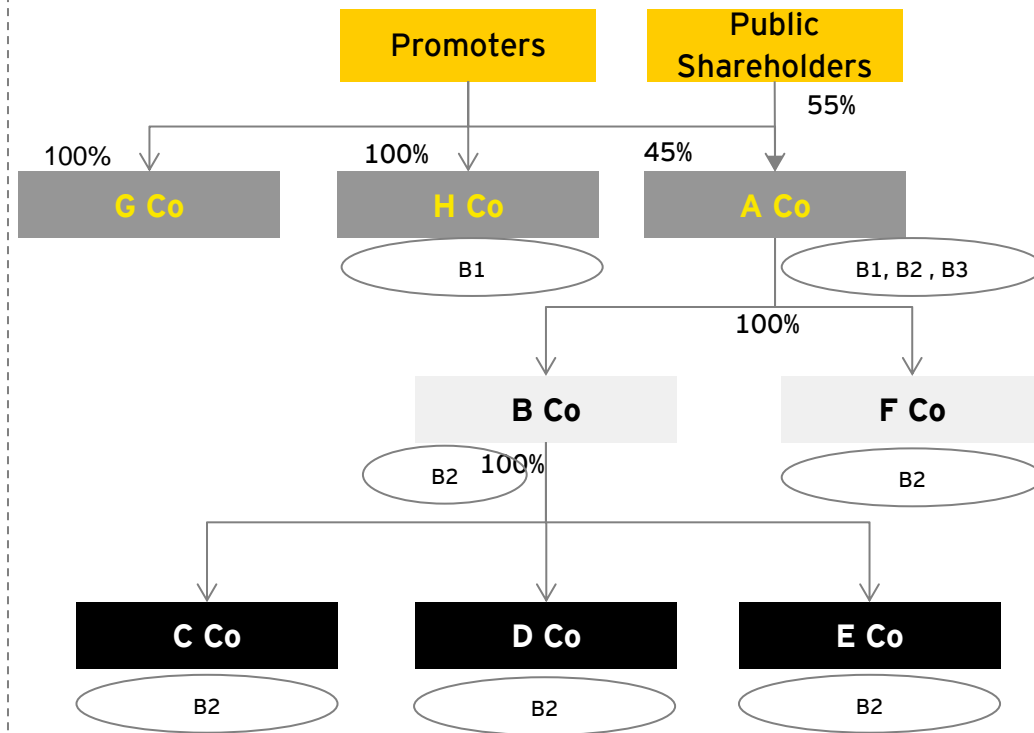
Points for discussion

- ▶ Taxation of B Co, equity shareholders including GDR holders
- ▶ Possibility of tax break on "Goodwill"
- ▶ Direct acquisition of B Co - Trigger of open offer?
- ▶ Indirect acquisition of C Co. Trigger of open offer?

Case Study 6 – Segregation of business lines followed by automatic listing

Facts of the Case

- ▶ A Co is a listed entity engaged in media and entertainment business with 55% public shareholding
- ▶ A Co has three businesses - Publication, Broadcasting, Content production & syndication
- ▶ G Co and H Co are held 100% by the Promoters of A Co.
- ▶ G Co incorporated to carry Publication business
- ▶ H Co is engaged *amongst other* in Publication business



Objective

- ▶ Consolidation of Broadcasting business in B Co
- ▶ Automatic listing of Publication and Broadcasting Business

B1 - Publication
 B2 - Broadcasting
 B3 - Content production and syndication

Case Study 6 – Segregation of business lines followed by automatic listing

Transaction Mechanics

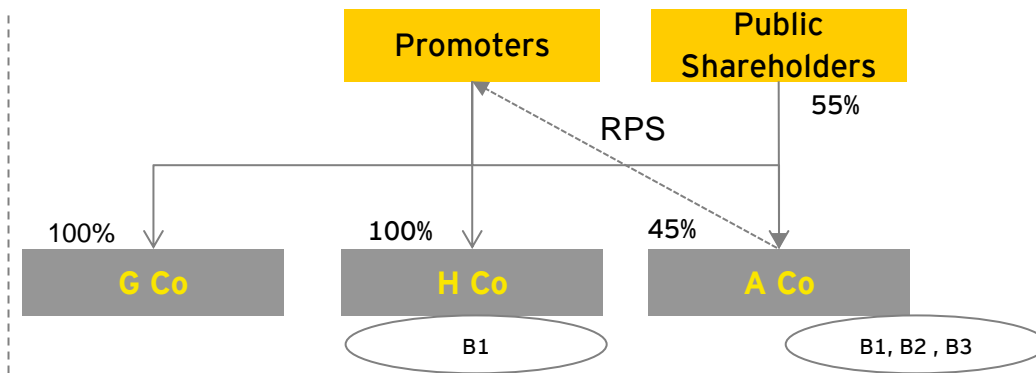
▶ Consolidated scheme of arrangement involving:

For Publication Business

- ▶ H Co to demerge Business 1 into A Co
 - ▶ Issue of RPS to shareholders of H Co
- ▶ A Co to demerge Business 1 into G Co
 - ▶ G Co to issue shares to shareholders of A Co
 - ▶ Equity for Equity and nominal preference shares for RPS
 - ▶ Cancellation of existing shareholding of G Co held by Promoters - Mirror shareholding of A Co created
 - ▶ *Listing of G Co on stock exchange*

First Demerger - retrospective

Second Demerger - prospective



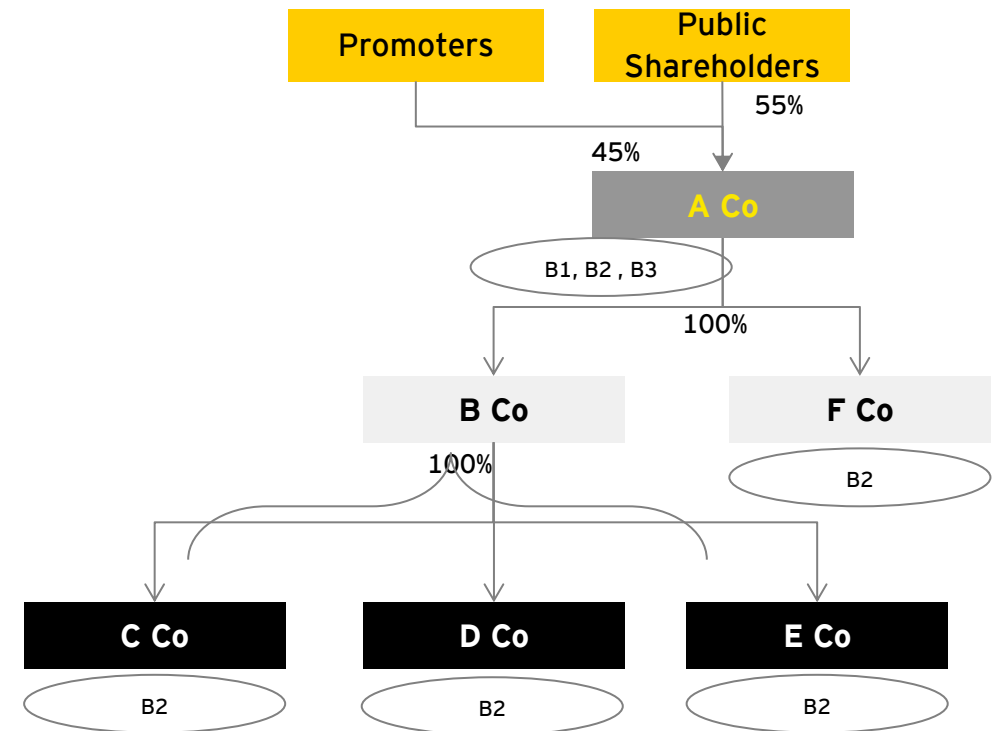
B1 - Publication
B2 - Broadcasting
B3 - Content production
and syndication

Case Study 6 – Segregation of business lines followed by automatic listing

Transaction Mechanics

For Broadcasting Business

- ▶ F Co to merge into A Co
 - ▶ No issue of shares on merger of WOS into parent company
 - ▶ **Purchase Method of accounting proposed**
- ▶ A Co to demerge Business 2 into B Co
 - ▶ B Co to issue shares to shareholders of A Co
 - ▶ B Cos to cancel existing shares held by A Co
 - ▶ Issuance of Equity shares and Redeemable Preference shares
 - ▶ A Co to cancel RPS equivalent to value of RPS issued by B Co
 - ▶ Listing of B Co on stock exchange
- ▶ C Co, D Co and E Co to demerge Business 2 into B Co
 - ▶ No issue of shares on demerger into holding company
- ▶ Appointed Date:- F Co merger - specified date
A Co Demerger - prospective date



B1 - Publication
B2 - Broadcasting
B3 - Content production and syndication

Case Study 6 – Segregation of business lines followed by automatic listing

Points for discussion

- ▶ Tax Neutrality
 - ▶ No issue of shares on demerger from WOS to parent
 - ▶ No issue of shares on merger of WOS into parent
 - ▶ Merger followed by Demerger - Broadcasting business
 - ▶ Cancellation of RPS issued on Demerger of Publication business - become shareholder requirement
 - ▶ Issuance of RPS on merger
- ▶ Accounting aspects
 - ▶ WoS Merger - method of accounting
- ▶ Listing requirement
 - ▶ Listing on demerger - relaxation availability

Case Study 7 – Buyout followed by consolidation

Background

A Co

- ▶ Indian public listed company engaged in travel, forex business

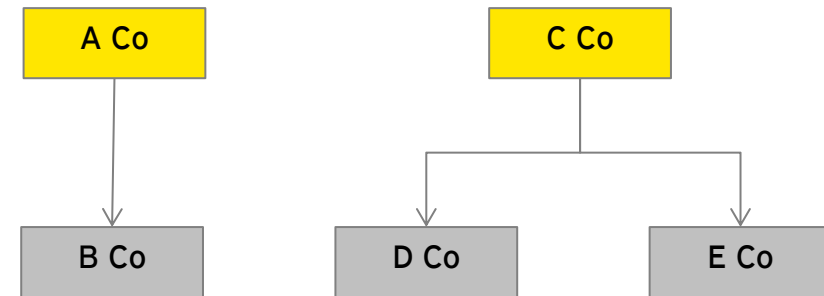
B Co

- ▶ Indian public unlisted company - a WOS of A Co

C Co

- ▶ Indian public listed company engaged in travel /tour and time share/vacation ownership and leisure business
- ▶ D Co and E Co are WOS of C Co engaged in time share/vacation ownership business

Relevant structure prior to transaction



Objective

- ▶ Acquisition of entire business of C Co
- ▶ Consolidation of business operation while providing flexibility to manage different businesses
- ▶ Smooth exit to the existing promoters of C Co

Challenges

- ▶ Keeping travel and timeshare business separate for commercial as well as financial reasons
- ▶ Avoiding multiple listed entities in the group

Case Study 7 – Buyout followed by consolidation

Transaction mechanics

Acquisition of equity stake in C Co by B Co

- ▶ B Co to acquire equity stake in C Co by way of share subscription, SPA, open offer and open market purchase

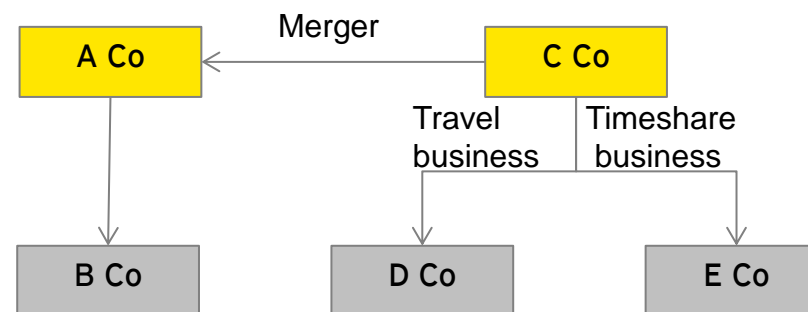
Scheme of arrangement

- ▶ C Co to demerge timeshare business including shares in D Co and E Co into B Co
- ▶ C Co along with its residual business will be merged into A Co
 - ▶ Shareholders of C Co would receive equity shares of A Co as a consideration for demerger and merger

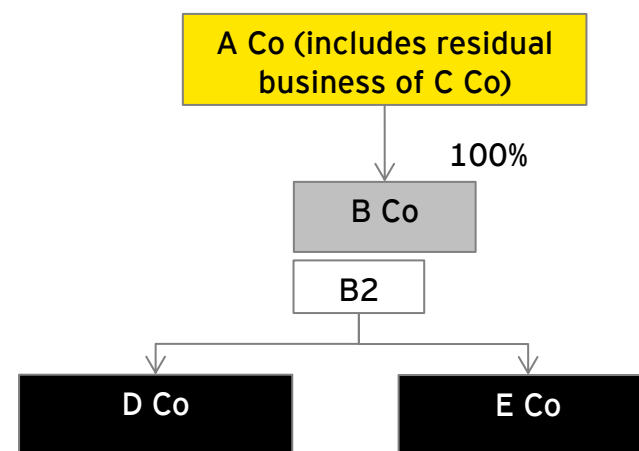
Points for discussion

- ▶ Tax neutrality of demerger and merger

Relevant structure prior to transaction



Relevant structure post transaction



Case Study 8 – Group restructuring to enable listing abroad

Background

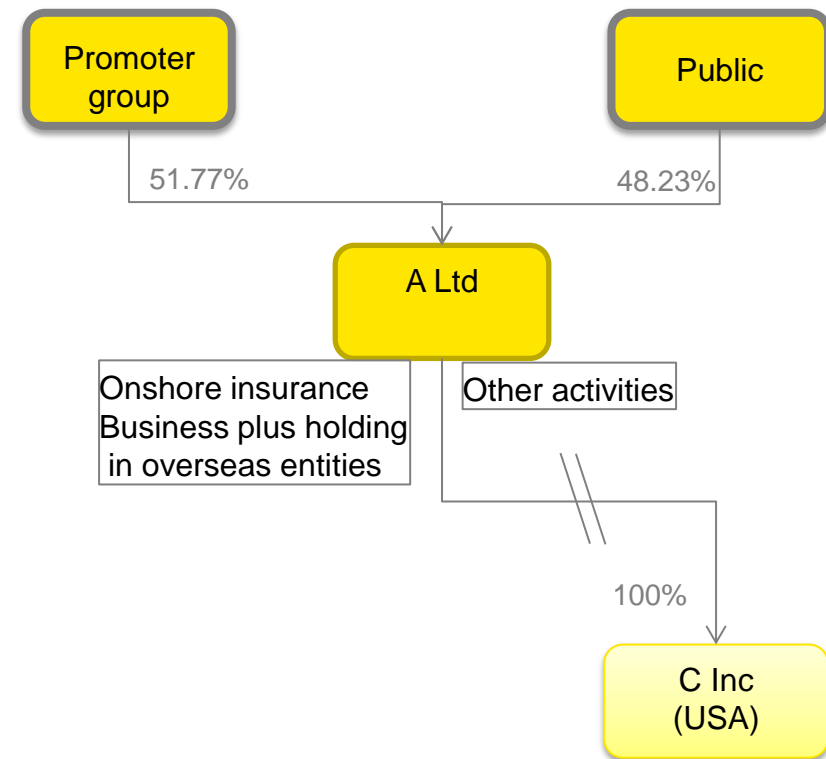
- ▶ A Ltd is a listed company, engaged multiple business segments B1 - Insurance Products and B2 - Vertical Solution Business
- ▶ Insurance Products conducted to overseas co as well as operations in India

Objectives

- ▶ Unlock value in Insurance Products Business separately by listing in India as well as overseas

Options

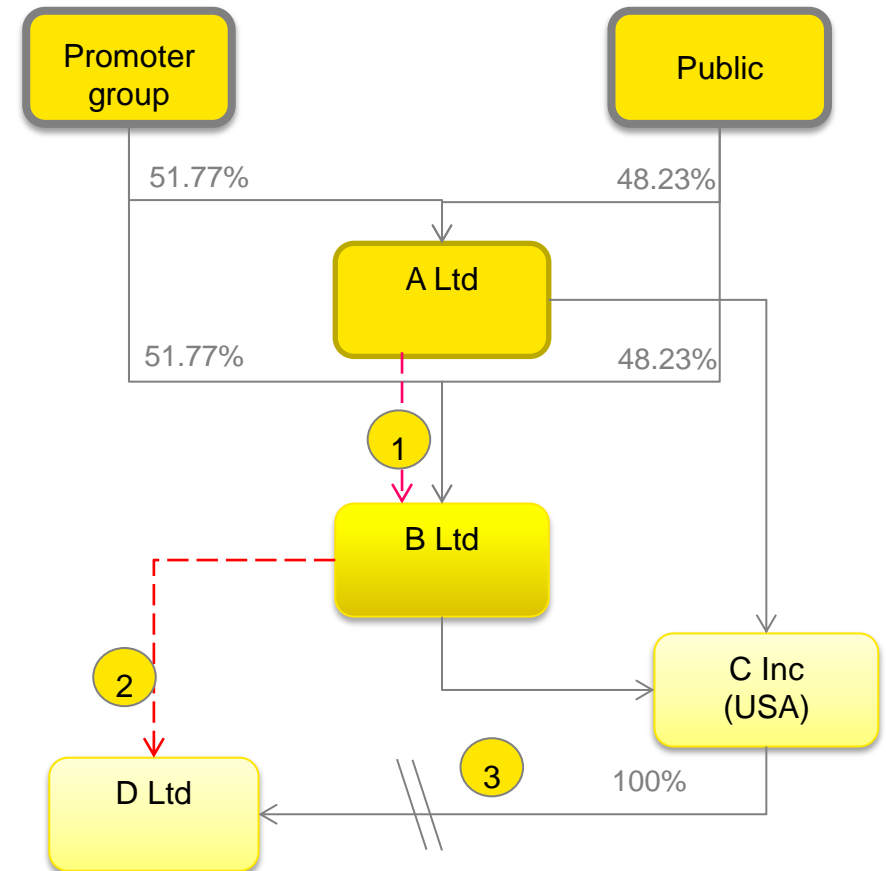
- ▶ Hive off Insurance business and listing
- ▶ Demerger
- ▶ Subsidiarisation of onshore business and transfer of shares as a part of merger



Case Study 8 – Group restructuring to enable listing abroad

Transaction Mechanics

1. Demerger of B1 business into a new company named B Ltd, including transfer of 83.5% of the shareholding in C Inc (USA)
2. Slump sale of offshore business related to B2 business to D Ltd
3. Transfer of 100% shares of D Ltd to C Inc.
4. Listing of C Inc in the USA





Thank you



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Section 77A

Conditions required to be satisfied for a buyback under the companies act are as follows:

- ▶ No offer of buy-back shall be made within a period of 365 days from the date of the preceding offer of buy-back.
- ▶ A buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company :
- ▶ The ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buyback :
- ▶ All the shares or other specified securities for buy-back are fully paid-up ;
- ▶ The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf



Section 47(vi), 47(vii)

Section 47(vi)

- ▶ Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company

Section 47(vii)

- ▶ Any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company if -
 - ▶ The transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder himself is the amalgamated company, and
 - ▶ The amalgamated company is an Indian company.



Explanation 7 to Section 43(1)

Explanation 7 to Section 43(1)

- ▶ Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.



Regulation 10 of SEBI ToC – Relevant Extract

The following acquisitions shall be exempt from the obligation to make an open offer under the takeover code regulations:

- ▶ Acquisition pursuant to a scheme of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign.
- ▶ Acquisition pursuant to a scheme of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign, subject to,—
 - (A) the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and
 - (B) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.



Section 2(19AA) and section 2(41A)

Per the section 2(19AA), in order for a demerger to be tax neutral, following conditions need to be satisfied in a transaction:

- ▶ All the property and liabilities of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property and liability of the resulting company;
- ▶ The property and the liabilities being transferred are transferred at book values per the books of account immediately before the demerger;
- ▶ In consideration of the demerger, the resulting company issues its shares to the shareholders of the demerged company on a proportionate basis;
- ▶ The shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein become shareholders of the resulting company or companies by virtue of the demerger,
- ▶ The transfer of the undertaking is on a going concern basis.

Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company



Section 115QA and Section 10(34A)

Section 115QA

- ▶ Notwithstanding anything contained in any other provision of this Act, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount of distributed income by the company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder shall be charged to tax and such company shall be liable to pay additional income-tax at the rate of twenty per cent on the distributed income.

Explanation.—For the purposes of this section,—

- (i) "buy-back" means purchase by a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956);
- (ii) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

Section 10(34A)

- ▶ any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in section 115QA

