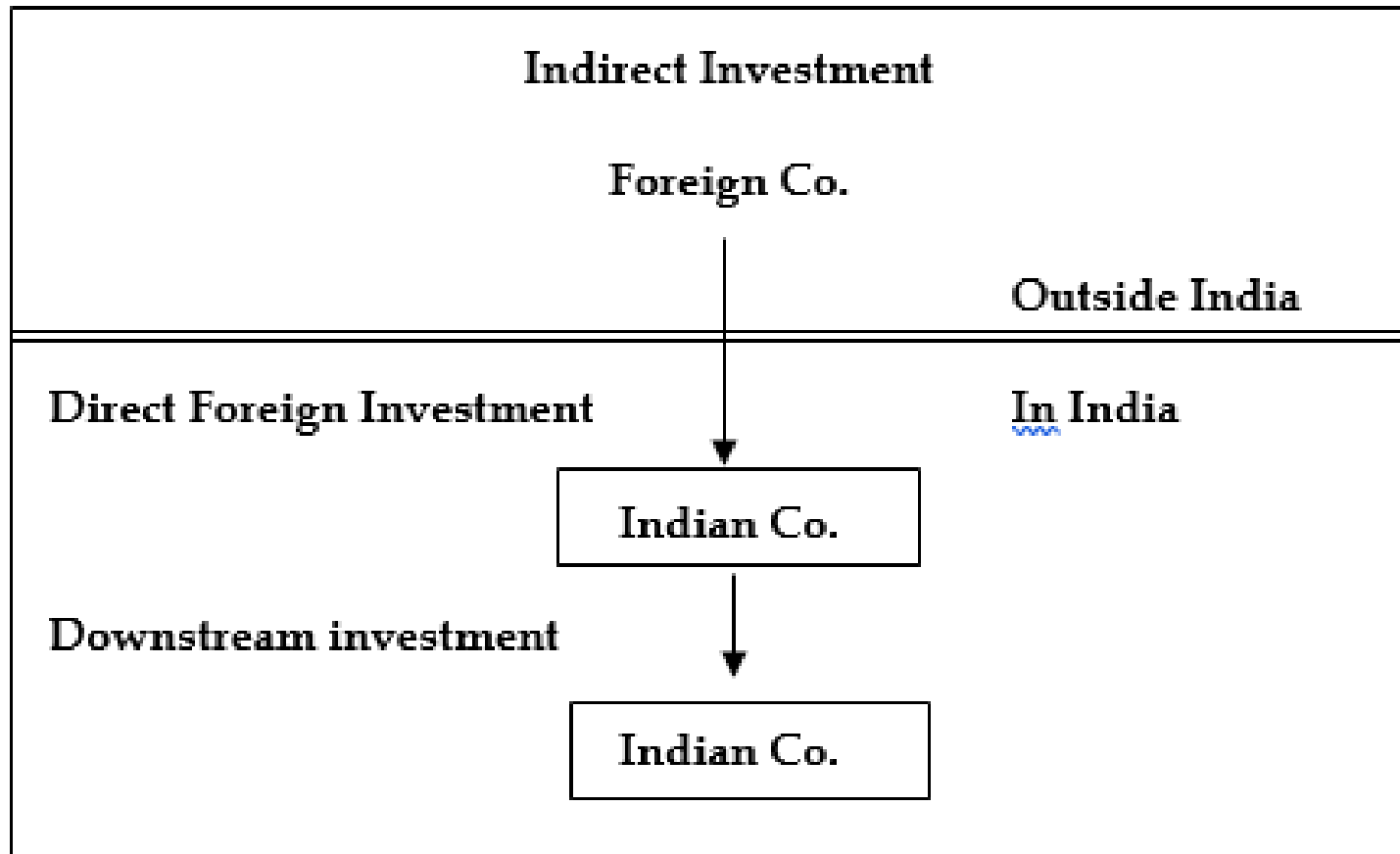




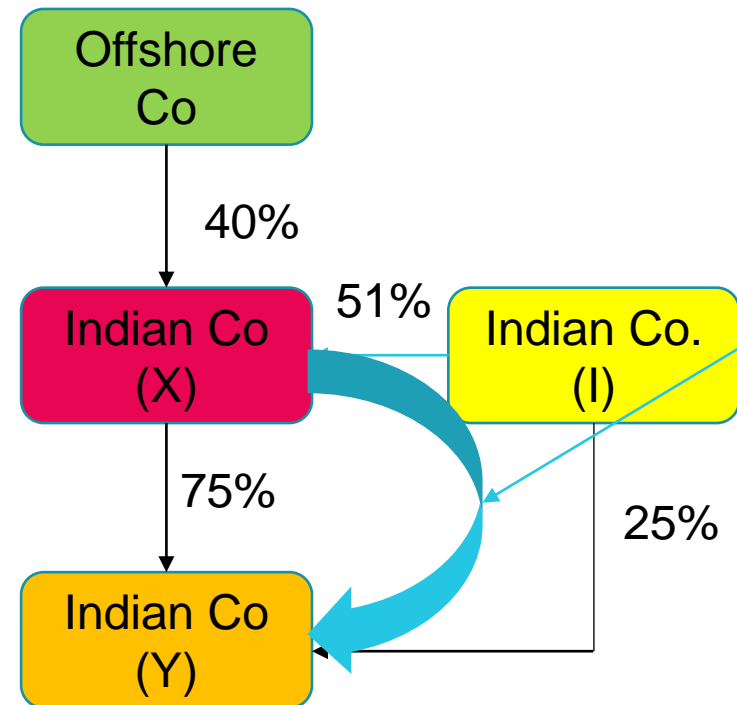
# Downstream Investment



Indian entity which has received Indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as are applicable for foreign investment

# Case Studies

A



The investment from Indian co. X to Indian co. Y is Downstream Investment in all cases:

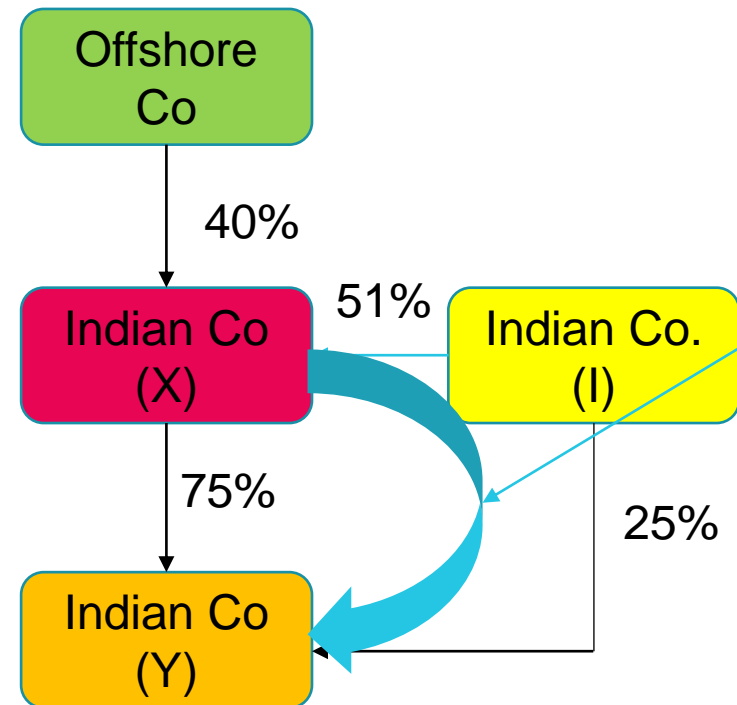
"downstream investment" shall mean investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity;



What needs to be seen if this investment from Indian co. X to another Indian co. Y is an Indian Foreign Investment

# Case Studies

A



What needs to be seen if this investment from Indian co. X to another Indian co. Y is an Indian Foreign Investment

"indirect foreign investment" means downstream investment received by an Indian entity from another Indian entity (IE)

- ✓ which has received foreign investment
- ✓ and the IE is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India;

# Important definitions

‘Ownership of an Indian company’ shall mean

- beneficial holding of more than 50 percent
- of the equity instruments of such company.

Company owned by resident Indian citizens shall mean an Indian company

- where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

‘Company owned by persons resident outside India’

- shall mean an Indian company that is owned by persons resident outside India.

# Important definitions – contd...

‘Control’ shall mean

- the right to appoint majority of the directors or
- to control the management or policy decisions
- including by virtue of their shareholding or management rights or shareholders agreement or voting agreement.

‘Company controlled by persons resident outside India’

- shall mean an Indian company that is controlled by persons resident outside India.

# Manner of computing indirect foreign investment

To illustrate, if the indirect foreign investment is being calculated for Company X which has investment through an investing Company Y having foreign investment, the following would be the method of calculation:

(A) where Company Y has foreign investment less than 50%- Company X would not be taken as having any indirect foreign investment through Company Y.

(B) where Company Y has foreign investment of say 75% and:

(I) invests 26% in Company X, the entire 26% investment by Company Y would be treated as indirect foreign investment in Company X;

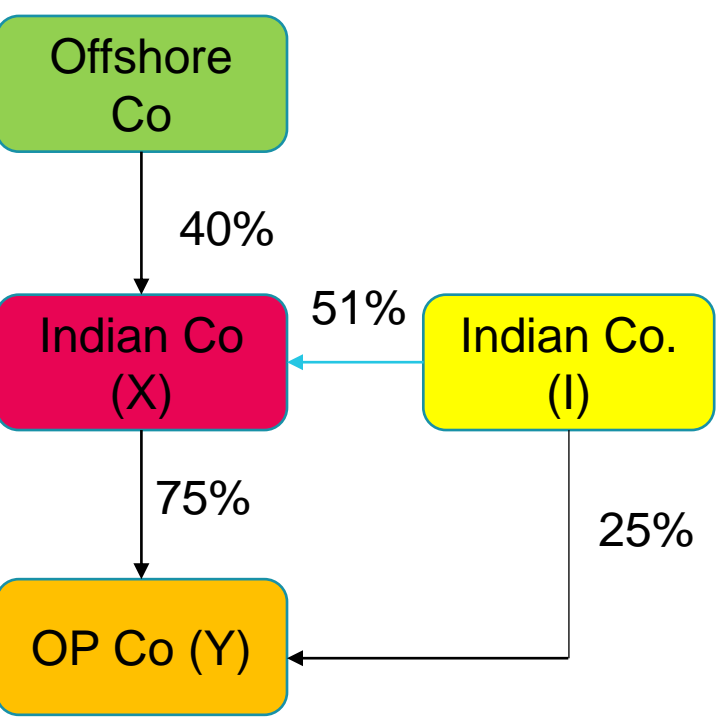
(II) invests 80% in Company X, the indirect foreign investment in Company X would be taken as 80%;

(III) where Company X is a wholly owned subsidiary of Company Y (i.e. Company Y owns 100% shares of Company X), then only 75% would be treated as indirect foreign equity and the balance 25% would be treated as resident held equity. The indirect foreign equity in Company X would be computed in the ratio of 75:25 in the total investment of Company Y in Company X.

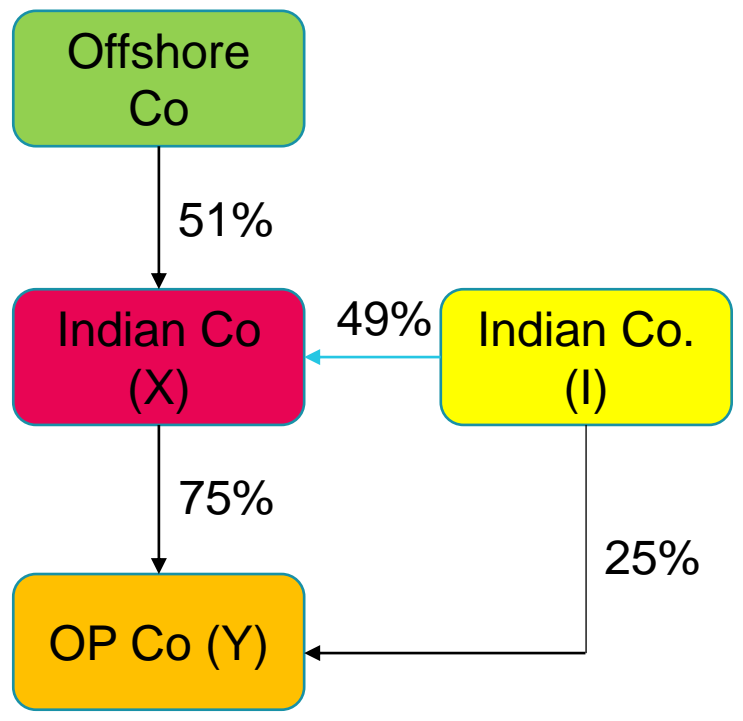


# Case Studies

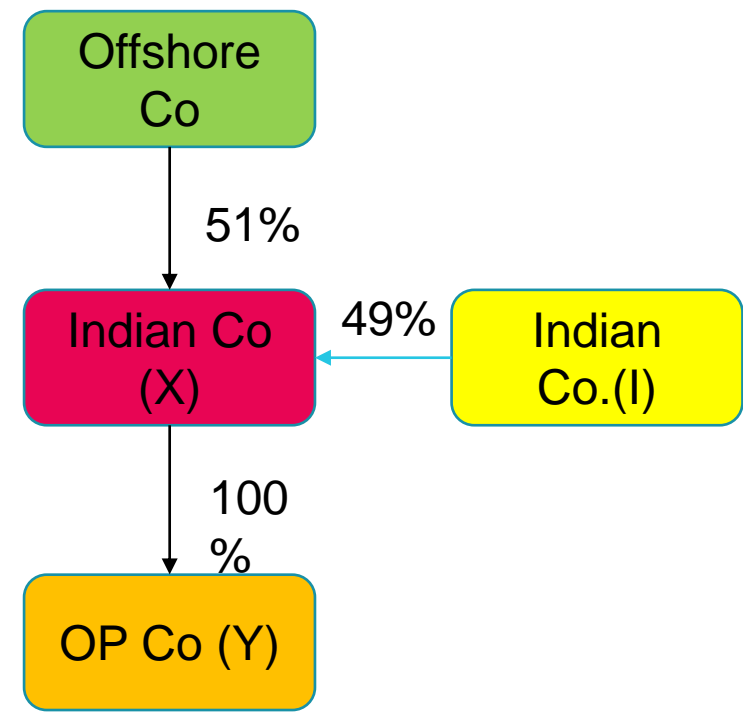
**A**



**B**

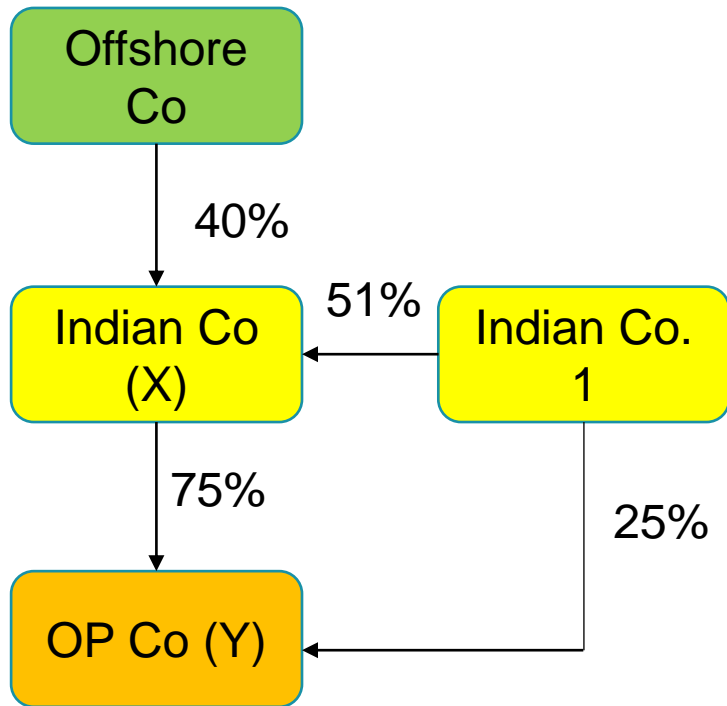


**C**



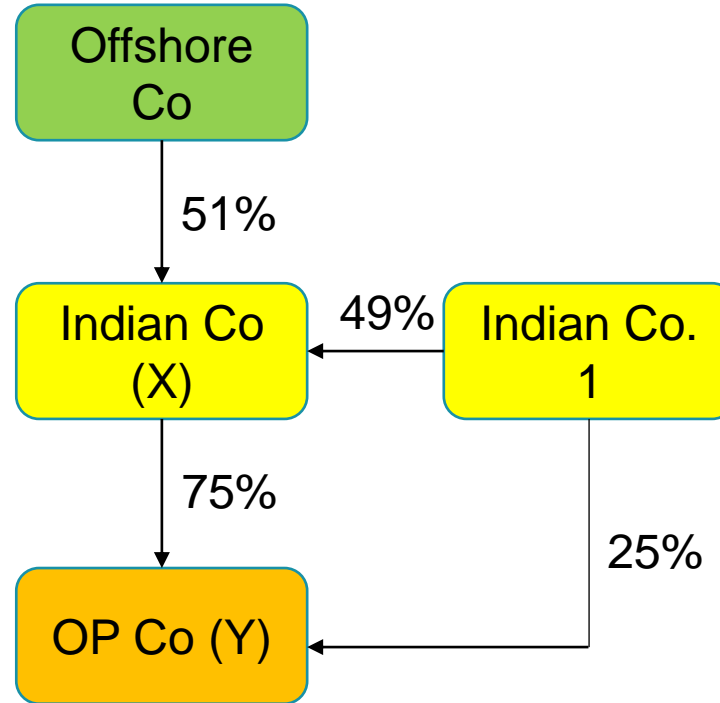
# COMPUTATION OF DOWNSTREAM INVESTMENT

**A**



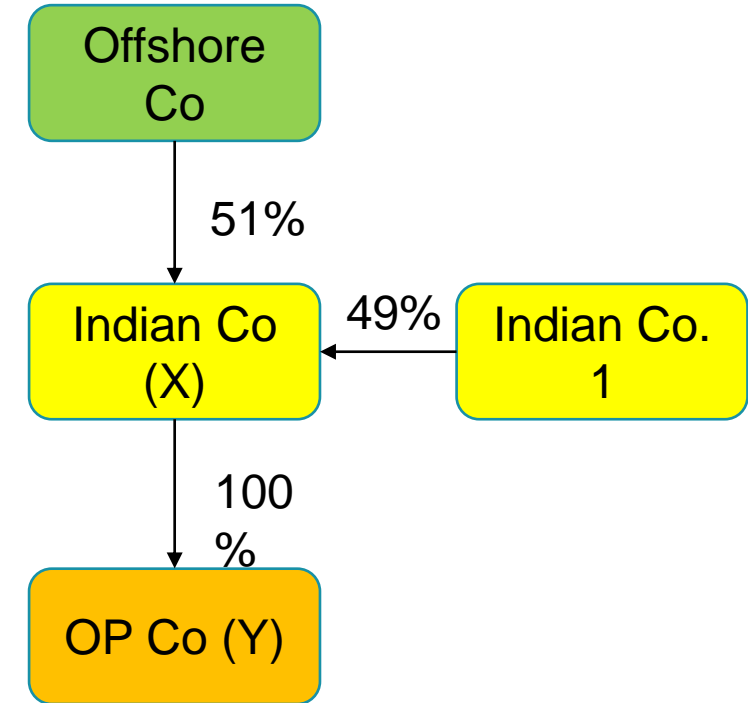
Foreign investment in Y = zero

**B**

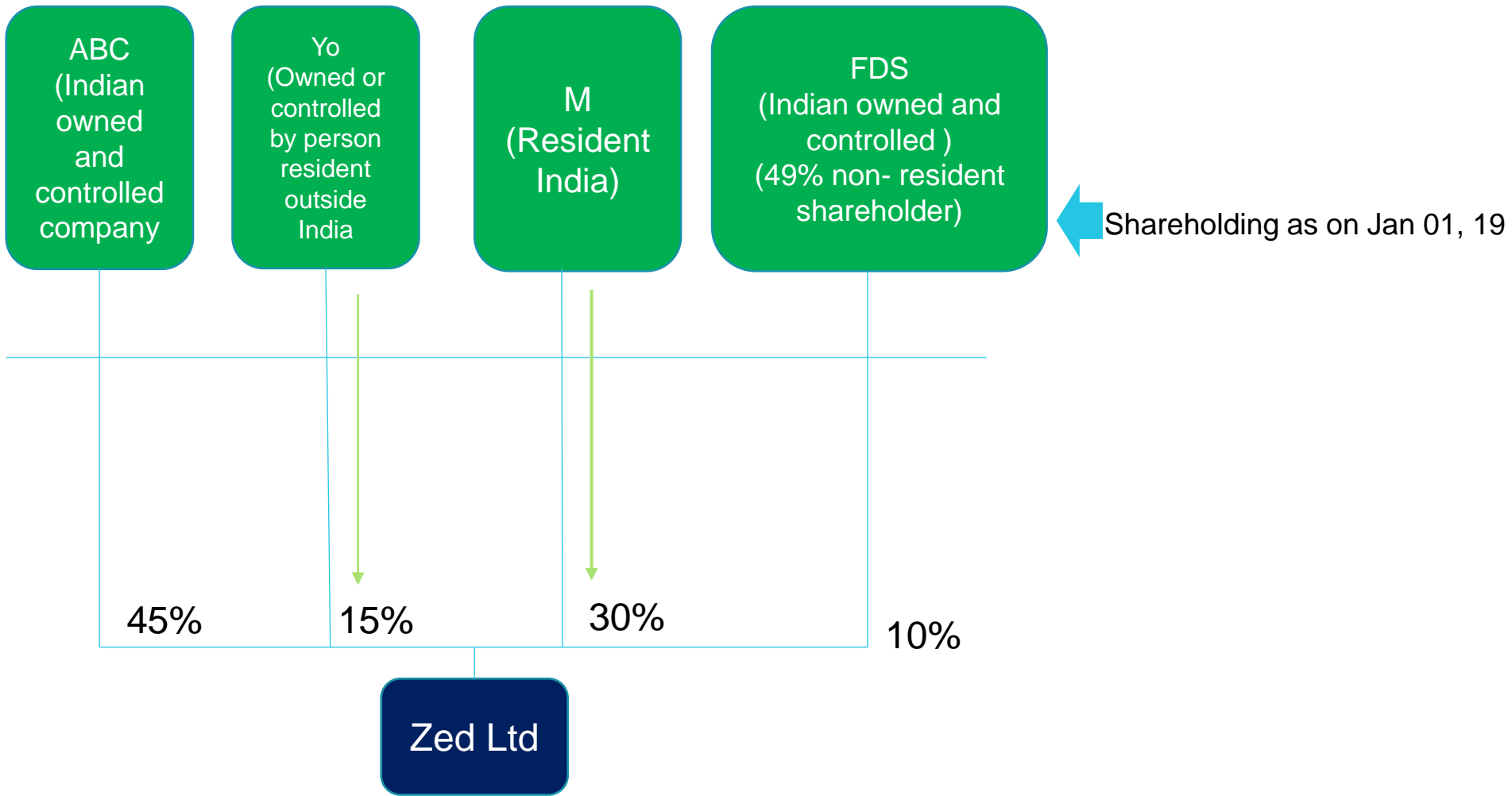


Foreign investment in Q = 75%

**C**



Foreign investment in X = 51%



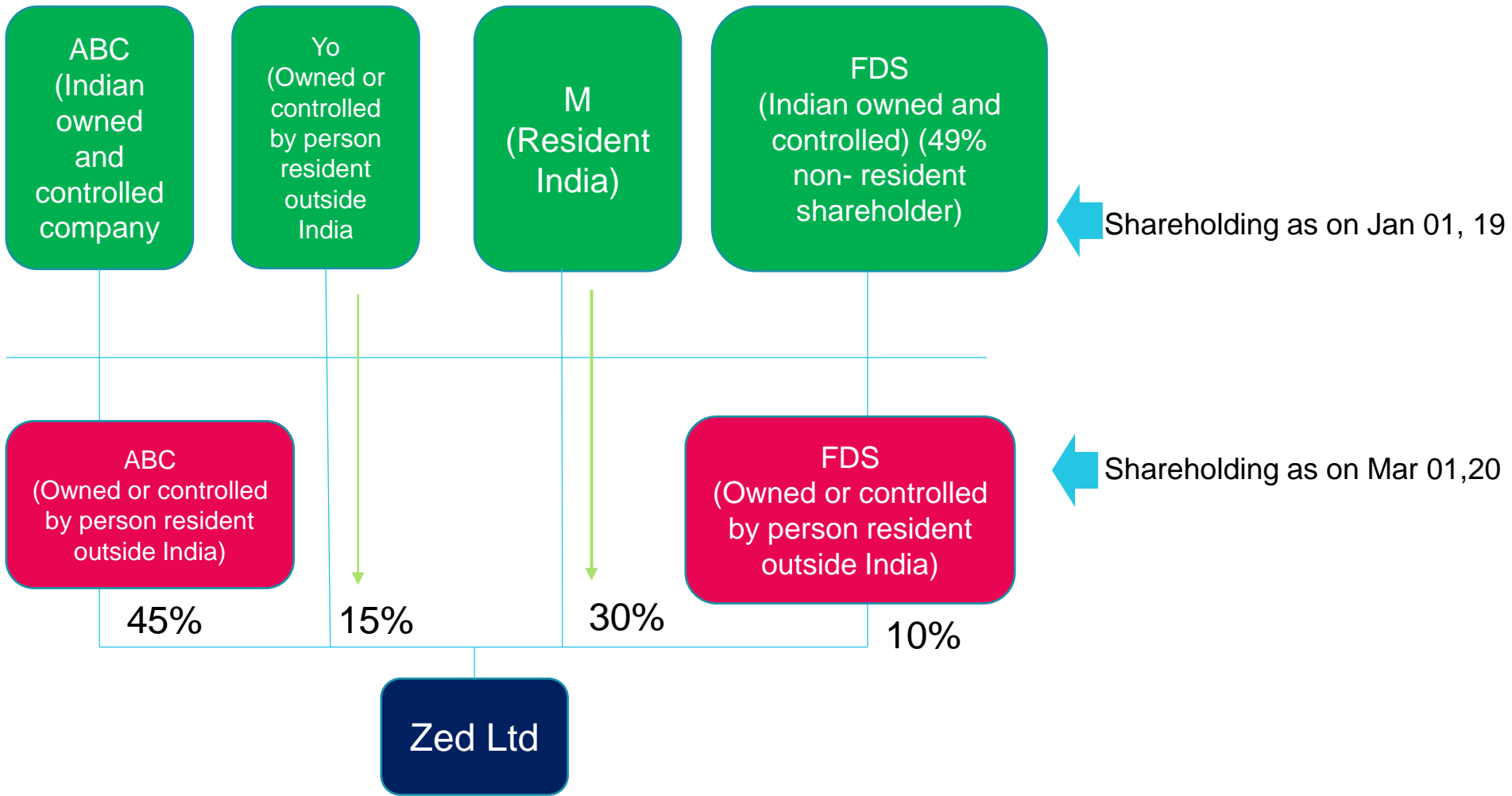
## Facts of the case

The shareholding of Zed Ltd, an Indian company on 1 Jan 2019 is as follows:

- (a) 45% is held by ABC which is person – Indian Owned and controlled company
- (b) 15% is held by YO person Owned or controlled by person resident outside India
- (c) 30% an Indian resident citizen
- (d) 10% by FDS, Indian Owned and controlled company [ 51% is held resident Indian citizens and 49% is held by Foreign company]

Kindly discuss what shall be status of investment on 1 Jan 2019 from

- ABC to Zed
- Yo to Zed
- M to Zed
- FDS to ZED



There is no change in shareholding of Z Ltd as on 01 March 2020. However, the shareholding of its shareholders has changed as follows

As on 1 March 2020

- ABC is not owned and controlled by resident Indian citizens or entities owned and controlled by resident Indian citizens
- Also, the FDS has become an entity which is owned or controlled by person outside India [ assume there is an investment of 2% from Foreign portfolio investor in FDS]

What is the consequence of this change?

In case of Indian Co. ABC – Following requirements needs to be complied with

(4) Downstream investment that is treated as indirect foreign investment for the investee entity shall be subject to the following conditions, namely:

- (a) downstream investment shall have the approval of the Board of Directors as also a shareholders' Agreement, if any;
- (b) for the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets and the downstream investments may be made through internal accruals and for this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes. Further raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder.

## Reporting Requirements

### To notify Secretariat for Industrial Assistance, DIPP

- Within 30 days of investment;
- even if equity instruments have not been allotted
- along with the modality of investment in new/existing ventures

### Submit form DI

- on SMF portal
- Within 30 days of investment.

### Onus of compliance

- First level Indian company making DI

### Annual compliance

- Certificate from statutory auditors;
- In case of qualified report, information to be reported to regional office of RBI
- Acknowledgement to be obtained from RBI.
- Same to be stated in the Director's Report.



In case of Yo

Notification No. FEMA.20(R) (3)/2018-RB dated 30 August 2018

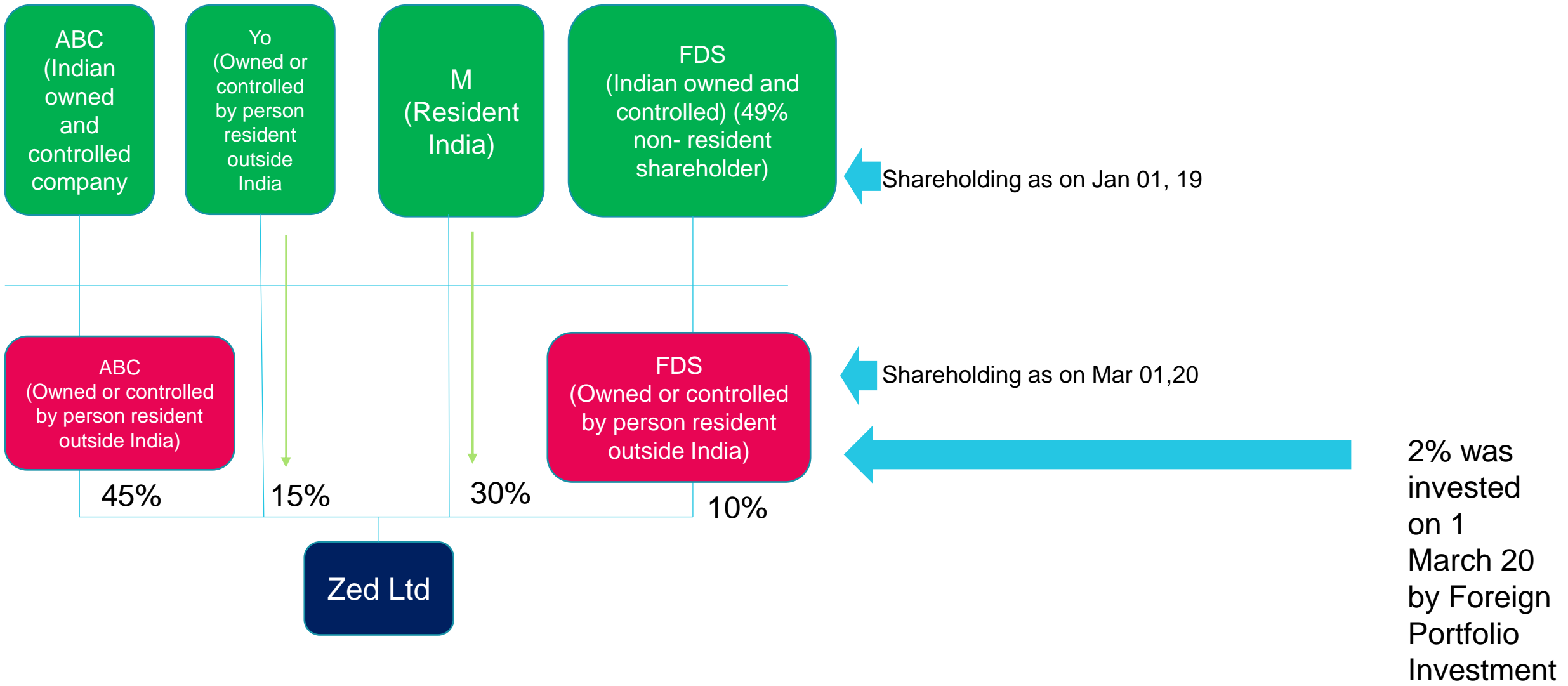
“Form DI: An Indian entity or an investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of Regulation 14 of these Regulations shall file Form DI with the Reserve Bank within 30 days from the date of allotment of capital instruments.”

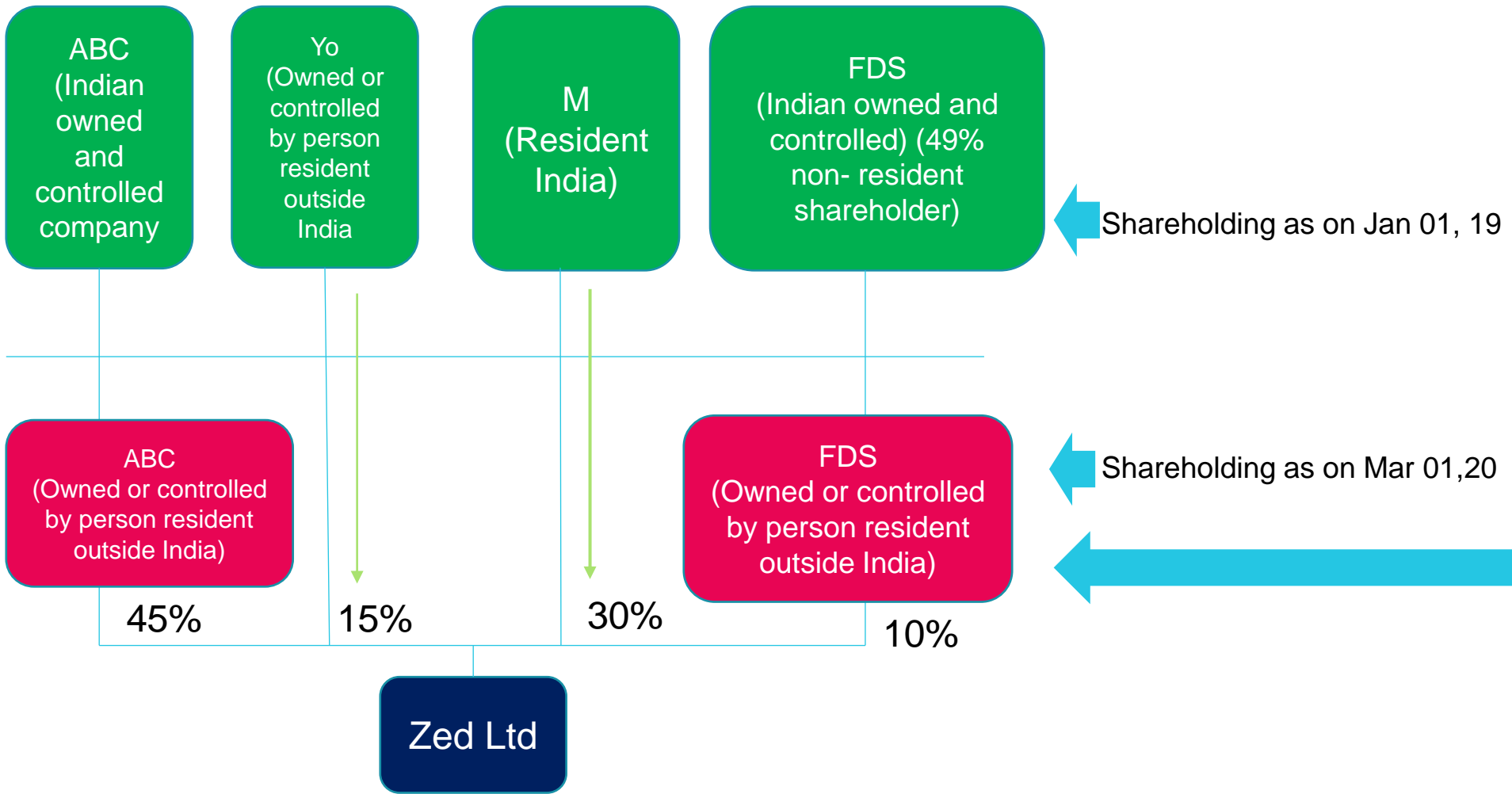
If Zed Y needs to file the Form FC GPR

Rule 23

The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of these rules for the downstream investment made by it at second level and so on and so forth

Foreign Currency – Gross Provisional Return (FC- GPR):An Indian company issuing capital instruments to a person resident outside India, and where such issue is reckoned as Foreign Direct Investment under FEMA 20(R), shall report such issue in Form FC-GPR 22in the Single Master Form not later than thirty days from the date of issue of the capital instruments. Issue of ‘participating interest/ rights’ in oil fields shall be reported in Form FC-GPR.

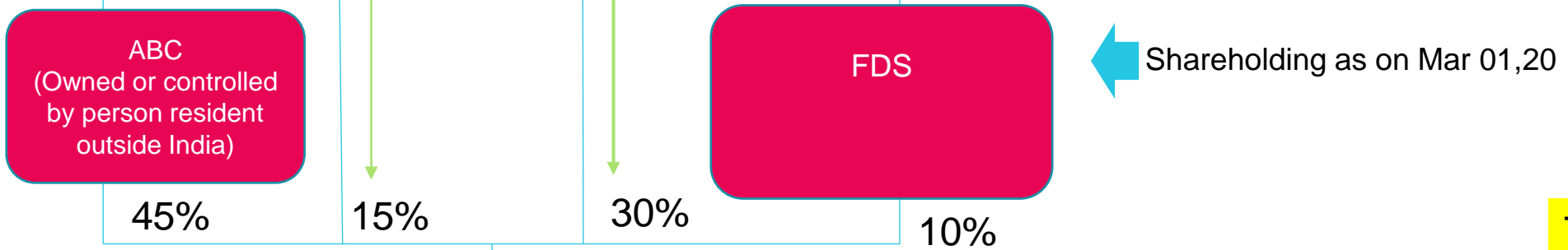
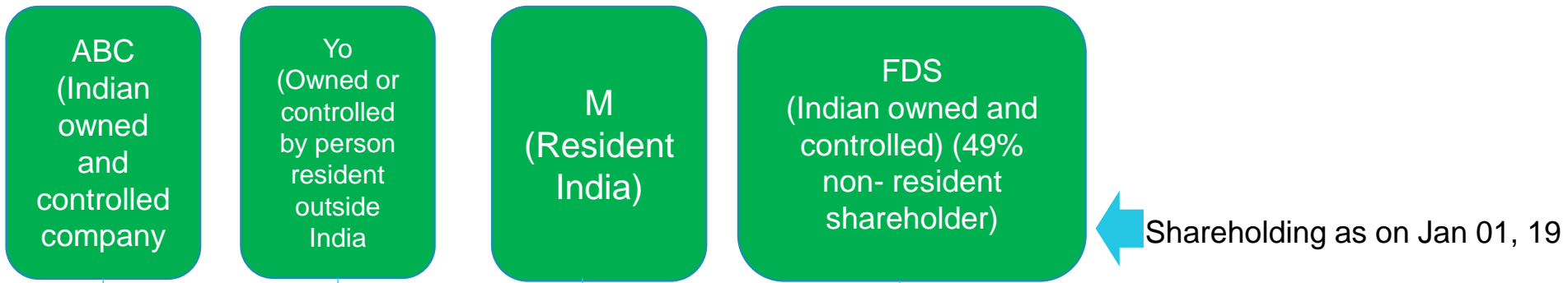




2% was invested on 1 March 20 by Foreign Portfolio Investment And on 31<sup>st</sup> March 2020 it was withdrawn

Guidelines for calculating total foreign investment in Indian companies are as follows :

- (a) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment;
- (b) FCCBs and DRs having underlying of instruments in the nature of debt shall not be reckoned for total foreign investment;
- (c) the methodology for calculating total foreign investment shall apply at every stage of investment in Indian companies and thus in each and every Indian company;
- (d) for the purpose of downstream investment, the portfolio investment held as on 31" March of the previous financial year in the Indian company making the downstream investment shall be considered for computing its total foreign investment;
- (e) indirect foreign investment received by a wholly owned subsidiary of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment.



Zed Ltd

Sector in which FDI is prohibited/Approval Route

There is no change in shareholding of Zed Ltd. However, because of change in shareholding of ABC the investment by Zed Ltd comes in contravention



**Thankyou !!**  
**Sudha@taxpertpro.com**