PAPER 4: CORPORATE AND ECONOMIC LAWS

PART –I: RELEVANT AMENDMENTS FOR MAY 2023 EXAMINATION

The October 2021 Edition of the Study Material on Final Paper 4: Corporate and Economic Laws [comprising of 3 Modules – Modules 1 – 2 on Part I: Corporate Laws and Module 3 on Part II: Economic Laws] contains amendments made uptil 30th April, 2021. Besides, notifications, circulars and other legislative amendments made uptill 31st October 2022 shall also be relevant and applicable for May 2023 examination.

Here is the list of the relevant amendments made during the period of 1st May 2021 to 31st October 2022:

I. COMPANIES ACT, 2013

1. Ministry of Corporate Affairs Vide **Notification G.S.R. 409(E), dated 15th June, 2021** hereby amend the Companies (Meetings of Board and its Powers) Rules, 2014, through enforcement of **the Companies (Meetings of Board and its Powers) Amendment Rules, 2021**.

According to which, in the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be omitted. This rule 4 dealt with the "**Matters not to be dealt with in a meeting through video conferencing or other audio visual means"**

See Page no. 3.4 of the Study material

2. Ministry of Corporate Affairs Vide **Notification S.O. 3156(E), Dated 5th August, 2021**, in exercise of the powers conferred by section 393A of the Companies Act, 2013, **the Central Government hereby exempts, from the provisions of sections 387 to 392 (both inclusive), the following**:-

(a) foreign companies;

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.

See Page no. 9.17 of the Study material

3. Ministry of Corporate Affairs, Vide **Notification G.S.R. 538(E), dated 5th August, 2021**, in exercise of the powers conferred by clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390, read with section 469 of the Companies Act, 2013, Central Government hereby enforces **the Companies**

(Registration of Foreign Companies) Amendment Rules, 2021 to amend the Companies (Registration of Foreign Companies) Rules, 2014.

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2, the following explanation shall be inserted, namely:-

"Explanation- For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act."

See Page no. 9.2 of the Study material.

4. Ministry of Corporate Affairs Vide Notification **G.S.R. 579(E), Dated 19th August, 2021,** in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013, the Central Government hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, through the enforcement of **the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021**.

Accordingly, in the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4),— (i) in the first proviso, for clause (B), the following clause shall be substituted, namely:—

"(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

(i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

(ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.".

(iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that the following individuals, who are or have been, for at least ten years :—

(A) an advocate of a court; or

(B) in practice as a chartered accountant; or

(C) in practice as a cost accountant; or

(D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.".

See Page no. 1.45 of the Study material. For Clause (B), above clause shall be replaced with. Further after point (c) to explanation, second proviso is inserted.

5. Nidhi (Amendment) Rules, 2022 - Amendment in Rules 3, 4, 5, 6, 8, 9, 14, 15 and Substitution of Rule 18

Vide Notification G.S.R. 301(E) [F. NO. 5/28/2020-CL-VII], dated 19-4-2022, in exercise of the powers conferred by sub-section (1) of section 406, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, further to amend the Nidhi Rules, 2014, namely:-

Short title and commencement.

1. (1) These rules may be called the Nidhi (Amendment) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Nidhi rules, 2014 (hereinafter referred to as the said rules), in rule 3, in sub-rule (1), after clause (*a*), the following clause shall be inserted, namely:—

"(aa) 'Branch' means a place other than the registered office of Nidhi",

3. In rule 4 of the said rules, in sub-rule (1), —

(a)	**for the words "five lakh rupees", the words "ten lakh rupees" shall be substituted;**
(b)	**the following proviso shall be inserted, namely: —**
	"Provided that every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement".

4. In rule 5 of the said rules, the following sub-rule shall be inserted, namely: —

"(5) The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022".

5. In rule 6, of the said rules,

(i)	**for clause (d), the following clause shall be substituted, namely: —**
	"(d) acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management";
(ii)	**after clause (k), the following clause shall be inserted, namely : —**
	"(l) raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi".

6. In rule 8, of the said rules, after sub-rule (3), the following sub-rule shall be inserted, namely: —

"(4) A member shall not transfer more than fifty percent of his shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit, as the case may be.

Provided that the member shall retain the minimum number of shares required under sub-rule (3) of rule 7 at all times".

7. In the said rules, in rule 9,

(a)	**for the words "ten lakh", the words "twenty lakh" shall be substituted;**
(b)	**the following proviso shall be inserted, namely: —**
	"Provided that every Nidhi existing as on the date of commencement of the Nidhi (Amendment) Rules, 2022 shall comply with this requirement within a period of eighteen months from the date of such commencement".

8. In rule 14, of the said rules, in the proviso, after the words, "approval of the Regional Director", the words "by making application in Form NDH- 2 along with fee specified in the Companies (the Registration Offices and Fees) Rules, 2014" shall be inserted.

9. In rule 15, of the said rules, in sub-rule (1), the following proviso shall be inserted, namely *:* —

"Provided that in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members".

10. For rule 18 of the said rules, the following rule shall be substituted, namely: —

"A Nidhi shall not declare dividend exceeding twenty five per cent in a financial year".

Page no. of the study material: Module 2: 10.19 - 10.28

6. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022

Ministry of Corporate Affairs vide Notification dated 1st June, 2022 Vide Notification G.S.R. 410(E) hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, vide enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022. (2) They shall come into force on the date of their publication in the Official Gazette.

In the Companies (Appointment and Qualification of Directors) Rules, 2014, —

(i) in **rule 8**, after the proviso, the **following proviso shall be inserted**, namely:-

"Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India shall also be attached along with the consent.";

Page no. 1.7-Module 1 –Under point (c)

(ii) in **rule 10**, in sub-rule (1), the **following proviso shall be inserted**, namely: -

"Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number."

Page no. 1.15-Module 1 –Under point "Allotment of DIN"

7. The Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022

Ministry of Corporate Affairs vide **Notification G.S.R. 439(E),** dated **10th June**, 2022, in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013, the Central Government hereby further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, through the enforcement of **the Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022**.

In the Companies (Appointment and Qualification of Directors) Rules, 2014, **in rule 6, after sub-rule (4), the following sub-rule shall be inserted**, namely: -

"(5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely :-

(i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and

(ii) in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.".

Page no. 1.46 -Module 1 –Under main point 13 –at the end after explanation

II. SEBI (LODR) Regulations, 2015

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021 and through the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022.

Through the enforcement of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021, and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022, there was further amendments made in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Following are the relevant amendments in the principal regulation made vide the notification of the mentioned amendments regulations:

(A) In regulation 3

ii. the existing provision under regulation 3 shall be numbered as sub-regulation (1).

iii. under the newly numbered sub-regulation (1), the word "the" appearing after the word "to" and before the word "listed" shall be substituted with the word "a" and the word "who" shall be substituted with the word "which".

iv. under the newly numbered sub-regulation (1), under clause (a), the words "Institutional Trading Platform" shall be substituted with the words "Innovators Growth Platform".

v. after the newly numbered sub-regulation (1), a new sub-regulation (2) shall be inserted,

vi. Substituted clause (b) of sub-regulation (1), with the following:

[(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;" with the "non-convertible securities]

vii. Inserted the following Sub-regulation (3):

[(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.]

Amended Regulation 3

[3.*(1)* Unless otherwise provided, these regulations shall apply to ***a*** listed entity ***which*** has listed any of the following designated securities on recognised stock exchange(s):

(a) specified securities listed on main board or SME Exchange or **Innovators Growth Platform**;

(b) non-convertible securities;

(c) Indian depository receipts;

(d) securitised debt instruments;

(da) security receipts

(e) units issued by mutual funds;

(f) any other securities as may be specified by the Board.

(2) The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds.

(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15]

See Page no. 2.51 –Module 2 of the Study material. Replace Para under heading "Applicability" with this amended Regulation.

(B) In regulation 6

In regulation 6, in the heading, the symbol and word "/her" shall be inserted after the word "his".

Amended Regulation heading

[Compliance Officer and ***his /her*** Obligations]

See Page no. 2.57 –Module 2 of the Study material. Heading of Regulation 6.

(C) In regulation 17A

The paragraph after clause (2) shall be converted as "Explanation" and the word "sub-regulation" in the paragraph shall be substituted with the word "regulation".

Amended Regulation

[Explanation: For the purpose of this ***regulation***, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.]

See Page no. 2.53 –Module 2 of the Study material.

(D) In regulation 18(1)(b) and 18(1)(d)

In regulation 18, in sub-regulation (1), in clause (b), the word "At least" is inserted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. **1-1-2022**.

Amended Regulation

[At least two-thirds of the members of audit committee shall be independent directors] .

In regulation 18, in sub-regulation (1), in clause (d), the symbol and word "/she" shall be inserted after the word "he".

Amended Regulation

[(d) The chairperson of the audit committee shall be an independent director and he/she shall be present at Annual general meeting to answer shareholder queries.]

See Page no.2.62-point A-sub-point (b) and on 2.63 –sub-point (d) –Module 2 of the Study material.

(E) In regulation 19(1)

In the sub-regulation (1) word "fifty percent" is substituted with "two-thirds" by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. **1-1-2022**.

Amended Regulation

[At least ***two-thirds*** of the directors shall be independent directors]

See Page no. 2.64 –point B –Module 2 of the Study material.

(F) In regulation 21

i. The existing sub-regulation (2) shall be substituted with the following -

[The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.]

ii. In sub-regulation (3A), the word "once" shall be substituted with the following word ***[twice]***

(iii) after sub-regulation (3A) and before sub-regulation (4), the following new sub-regulations (3B) and (3C) shall be inserted –

[(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.]

iv. after sub-regulation (4), the following new proviso shall be inserted--

[Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.]

v. in sub-regulation (5), the number "500" shall be substituted with ["1000"]

vi. after sub-regulation (5), the following new sub-regulation (6) shall be inserted .

Amended regulation

[Risk Management Committee.

21. (1) The board of directors shall constitute a Risk Management Committee.

(2) ***The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.***

(3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

(3A) The risk management committee shall meet at least [**twice**] in a year.

(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.

(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security:

Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.

(5) The provisions of this regulation shall be applicable to:

i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,

ii. a 'high value debt listed entity'.

(6) The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.]

See Page no. 2.65 –Module 2 of the Study material.

(G) Regulation 24(5)

In regulation 24, in sub-regulation (5), the words "or equal to" shall be inserted after the words "less than" and before the words "fifty percent".

Amended Regulation

[(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than ***[or equal to]*** fifty per cent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved]

See Page no. 2.54 –Module 2 of the Study material.

(H) Regulation 26

i. in **sub-regulation (1),** the symbol and word "/she" shall be inserted after the word **"he"**.

ii. **In Sub-regulation (1)(a), the word "high value debt listed entities"** has been added after the word "foreign companies".

Amended Regulation

[26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which ***he /she*** is a director which shall be determined as follows:

(*a*) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies ***['high value debt listed entities']*** and companies under Section 8 of the Companies Act, 2013 shall be excluded;]

See Page no. 2.53 –Module 2 of the Study material.

(I) Regulation 27(2)

Substituted for word **"fifteen"** and inserted the word **"the end of each"** before the quarter.

[(2) (*a*) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within ***[twenty one]*** days from **[*the end of each*]** the quarter.]

See Page no. 2.57 –Module 2 of the Study material.

(J) Regulation 29(1)(f)

Words "where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers." is omitted.

See Page no. 2.65- bullet point 5- –Module 2 of the Study material.

(k) In Schedule V,

i. In Paragraph C, clause (5), shall be substituted with the following, namely, -

["(5) Stakeholders' relationship committee

(a) name of the non-executive director heading the committee;

(b) name and designation of the compliance officer;

(c) number of shareholders' complaints received during the financial year;

(d) number of complaints not solved to the satisfaction of shareholders;

(e) number of pending complaints."

ii. In Paragraph C, after clause (5) a new clause shall be inserted, namely, -

"(5A) Risk management committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

(c) meetings and attendance during the year;"]

See Page no. 2.55 –point 5 -Module 2 of the Study material.

III. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

(1) The Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Reserve Bank of India, Vide Notification No. FEMA 23(R)/(5)/2021-RB, Dated September 08, 2021 through the enforcement **of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021** the following amendments in the

Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations') has been amended:

In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

"ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and".

See Page no. 1.58 of the Study material.

(2) **External Commercial Borrowings (ECB's) - Changes Due To Libor Transition**

Vide A.P. (Dir Series 2021-22) Circular No. 19, Dated 8-12-2021, the following changes have been made in the Master Direction No. 5 dated March 26, 2019, on "External Commercial Borrowings, Trade Credits and Structured Obligations", prescribing the benchmark rates and the maximum spread over benchmark for calculating the all-in-cost for foreign currency (FCY) ECBs and TCs.

"In view of the imminent discontinuance of LIBOR as a benchmark rate, the following changes to the all-in-cost benchmark and ceiling for FCY ECBs:

i.	Redefining Benchmark Rate for FCY ECBs: Currently, the benchmark rate is defined in paragraph 1.5 of the master direction as "benchmark rate in case of FCY ECB/TC refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, e.g., EURIBOR". Henceforth, benchmark rate in case of FCY ECB/TC shall refer to any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing.
ii.	Change in all-in-cost ceiling for new ECBs/TCs: To take into account differences in credit risk and term premia between LIBOR and the ARRs, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.
iii.	One Time Adjustment in all-in-cost ceiling for existing ECBs/TCs: To enable smooth transition of existing ECBs/TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

See Page no. 1.34 –point vi and the footnote-Module 3 of the Study material.

3. The Foreign Exchange Management (Overseas Investment) Rules, 2022

Vide Notification G.S.R. 646(E) dated 22 August 2022, through Ministry of Finance, in exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 and sub-section (3) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

1. Short title and commencement.– (1) These rules may be called the Foreign Exchange Management (Overseas Investment) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.– (1) In these rules, unless the context otherwise requires,–

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "Authorised Dealer Category-I bank or "AD bank" means a person authorised as such under subsection (1) of section 10 of the Act and for the purposes of these rules, shall mean only the domestic branches of such AD bank;

(c) "control" means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;

(d) "disinvestment" means partial or full extinguishment of right, title or possession of equity capital acquired under these rules;

(e) "equity capital" means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments;

(f) "financial commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the nonfund-based facilities extended by such person to or on behalf of such foreign entity or entities;

(g) "financial service regulator" means a financial service regulator established under any law in force in India and include the Reserve Bank, the Securities and

Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority;

(h) "foreign entity" means an entity formed or registered or incorporated outside India, including International Financial Services Centre that has limited liability:

Provided that the restriction of limited liability shall not apply to an entity with core activity in a strategic sector;

(i) "host country" or "host jurisdiction" means the country or jurisdiction, including the International Financial Services Centre, in which the foreign entity is formed, registered or incorporated, as the case may be;

(j) "Indian entity" means–

(i) a company defined under the Companies Act, 2013 (18 of 2013);

(ii) a body corporate incorporated by any law for the time being in force;

(iii) a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009); and

(iv) a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932).

(k) "International Financial Services Centre" or "IFSC" shall have the same meaning as assigned to it in clause (g) of section 3 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);

(l) "last audited balance sheet" means audited balance sheet as on date not exceeding eighteen months preceding the date of the transaction;

(m) "listed foreign entity" means a foreign entity whose equity shares or any other fully and compulsorily convertible instrument is listed on a recognised stock exchange outside India;

(n) "listed Indian company" means an Indian company that has equity shares or any of its fully and compulsorily convertible instruments listed on a recognised stock exchange in India and the expression "unlisted Indian company" shall be construed accordingly;

(o) "mutual fund" means any fund registered as such with the Securities and Exchange Board of India;

(p) "net worth" shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013.

Explanation.– For the purposes of this clause, "net worth" of registered partnership firm or Limited Liability Partnership shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting

therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet;

(q) "**Overseas Direct Investment**" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity;

Explanation.– For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity;

(r) "**Overseas Investment"** or "OI" means financial commitment and Overseas Portfolio Investment by a person resident in India;

(s) "**Overseas Portfolio Investment"** or "OPI" means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.

Explanation.– For the purposes of this clause, the expression "debt instruments" means the instruments specified as such in clause (A) of rule 5;

(t) "relative" shall have the same meaning as assigned to it in clause (77) of section 2 of the Companies Act, 2013, (18 of 2013);

(u) "resident individual" means a person resident in India who is a natural person;

(v) "Resident Foreign Currency Account" or "RFC Account" shall have the same meaning as assigned to it in the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015;

(w) "SEBI" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(x) "Society" means a society registered under the Societies Registration Act, 1860 (21 of 1860);

(y) "Subsidiary" or "step down subsidiary" of a foreign entity means an entity in which the foreign entity has control;

(z) "strategic sector" shall include energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector or sub-sector as deemed necessary by the Central Government;

(za) "sweat equity shares" means such equity shares as are issued by an overseas entity to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights like intellectual property rights or value additions, by whatever name called;

(zb) "Trust" means a trust registered under the Indian Trust Act, 1882 (2 of 1882);

(zc) "Venture Capital Fund" means a fund registered as such with the SEBI.

(2) The words and expressions used but not defined in these rules shall have the meanings respectively assigned to them in the Act or the rules or regulations made thereunder.

3. Administration of these rules.– (1) These rules shall be administered by the Reserve Bank. (2) The Reserve Bank may issue such directions, circulars, instructions and clarifications as it may deem necessary for the effective implementation of the provisions of these rules.

4. Non-applicability of rules and regulations relating thereto in certain cases.– Nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–

(a) any investment made outside India by a financial institution in an IFSC; (b) acquisition or transfer of any investment outside India made,–

(i) out of Resident Foreign Currency Account; or

(ii) out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or

(iii) in accordance with sub-section (4) of section 6 of the Act.

*Explanation.– F*or the purposes of this rule, the expression "financial institution" shall have the same meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019).

5. Debt instruments and non-debt instruments.– The following shall be the debt instruments and nondebt instruments as determined by the Central Government under sub-section (7) of section 6 of the Act, namely:–

(A) Debt instruments:

(i) Government bonds;

(ii) corporate bonds;

(iii) all tranches of securitisation structure which are not equity tranche;

(iv) borrowings by firms through loans; and

(v) depository receipts whose underlying securities are debt securities; (B) Non-debt instruments:

(i) all investments in equity in incorporated entities (public, private, listed and unlisted);

(ii) capital participation in Limited Liability Partnerships;

(iii) all instruments of investment as recognised in the Foreign Direct Investment policy from time to time;

(iv) investment in units of Alternative Investment Funds and Real Estate Investment Trust and Infrastructure Investment Trusts;

(v) investment in units of mutual funds and Exchange-Traded Fund which invest more than fifty per cent in equity;

(vi) the junior-most layer (i.e. equity tranche) of securitisation structure;

(vii) acquisition, sale or dealing directly in immovable property;

(viii) contribution to trusts; and

(ix) depository receipts issued against equity instruments;

6. Continuity of certain investments.– Any investment or financial commitment outside India made in accordance with the Act or the rules or regulations made thereunder and held as on the date of publication of these rules in the Official Gazette, shall be deemed to have been made under these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

7. Rights issue and bonus shares.– (1) Any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

(a) may invest in the equity capital issued by such entity as a rights issue; or

(b) may be granted bonus shares subject to the terms and conditions under these rules.

(2) The person resident in India acquiring the rights under sub-rule (1) may renounce such rights in favour of a person resident in India or a person resident outside India.

8. Prohibition on investment outside India.– Save as otherwise provided in the Act or these rules or the regulations made or directions issued under the Act, no person

resident in India shall make or transfer any investment or financial commitment outside India.

9. Overseas Investment.– (1) Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations:

Provided that the structure of such subsidiary or step down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity:

Provided further that Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

Explanation.– For the purposes of this sub-rule, "bonafide business activity" shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction**,** as the case may be:

(2) Notwithstanding anything contained in these rules or Foreign Exchange Management (Overseas Investment) Regulations 2022 –

(i) the Central Government may, on an application made to it through the Reserve Bank, permit financial commitment in strategic sectors or geographies, above the limits laid down in these rules and subject to such terms and conditions as it considers necessary**.**

(ii) the Reserve Bank may, on an application made to it through the designated AD bank and for sufficient reasons, permit a person resident in India to make or transfer any investment or financial commitment outside India subject to such conditions as may be laid down by it:

Provided that Overseas Investment by a person resident in India shall not be made in a foreign entity located in a country or jurisdiction as may be decided by the Central Government from time to time.

(3) The Reserve Bank, if it considers necessary may, in consultation with the Central Government,–

(i) stipulate the ceiling for the aggregate outflows during a financial year on account of financial commitment or Overseas Portfolio Investment;

(ii) stipulate the ceiling beyond which the amount of financial commitment by a person resident in India in a financial year shall require its prior approval.

10. No Objection Certificate.–

(1) Any person resident in India who,–

(i) has an account appearing as a non-performing asset; or

(ii) is classified as a wilful defaulter by any bank; or

(iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds

Investigation Office, shall, before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, obtain a No Objection Certificate from the lender bank or regulatory body or investigative agency by making an application in writing to such bank or regulatory body or investigative agency concerned:

Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.

(2) The No Objection Certificate issued under sub-rule (1) shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

11. Manner of making Overseas Direct Investment by Indian entity.– An Indian entity may make Overseas Direct Investment in the manner and subject to the terms and conditions prescribed in Schedule I.

12. Manner of making Overseas Portfolio Investment by an Indian entity.– An Indian entity may make Overseas Portfolio Investment in the manner and subject to the terms and conditions prescribed in Schedule II.

13. Manner of making Overseas Investment by resident individual.– A resident individual may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule III.

14. Overseas Investment by person resident in India other than Indian entity and resident Individual.– A person resident in India, other than an Indian entity and a resident individual, may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule IV.

15. Overseas Investment in IFSC by person resident in India.– A person resident in India may make Overseas Investment in an IFSC in India in the manner and subject to the terms and conditions prescribed in Schedule V.

16. Pricing guidelines.– (1) Unless otherwise provided in these rules, the issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall be subject to a price arrived on an arm's length basis.

(2) The AD bank, before facilitating a transaction under sub-rule (1), shall ensure compliance with arm's length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

17. Transfer or liquidation.– (1) Unless otherwise provided in these rules, a person resident in India holding equity capital in accordance with these rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

(2) A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident outside India.

(3) In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the foreign entity, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.

(4) Where the disinvestment by a person resident in India pertains to ODI–

(i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which such transferor is entitled to receive from the foreign entity as an investor in equity capital and debt**;**

(ii) the transferor, in case of any disinvestment must have stayed invested for at least one year from the date of making ODI:

Provided that the above conditions shall not be applicable in case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or indirectly, by the Indian entity or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

(5) The holding of any investment or transfer thereof in any manner shall not be permitted if the initial investment was not permitted under the Act.

18. Restructuring.– A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been

incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses:

Provided that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction:

Provided further that the certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank.

19. Restrictions and prohibitions.– (1) Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in–––

(a) real estate activity;

(b) gambling in any form; and

(c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Explanation.– For the purposes of this sub-rule, the expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(2) Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

(3) No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries:

Provided that such restriction shall not apply to the following classes of companies mentioned in sub-rule (2) of rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:-

(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and

(d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

20. Requirements to be specified by Reserve Bank.– The mode of payment, deferred payment of consideration, reporting, realisation, and other requirements for any investment outside India by a person resident in India shall be as per the regulations made in this behalf by the Reserve Bank under the Act.

21. Restriction on acquisition or transfer of immovable property outside India.–

(1) Save as otherwise provided in the Act or this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank: Provided that nothing contained in this rule shall apply to a property– (i) held by a person resident in India who is a national of a foreign State;

(ii) acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;

(iii) acquired by a person resident in India on a lease not exceeding five years.

(2) Notwithstanding anything contained in sub-rule (1)–

(i) a person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition;

(ii) a person resident in India may acquire immovable property outside India from a person resident outside India–

(a) by way of inheritance;

(b) by way of purchase out of foreign exchange held in RFC account;

(c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

(d) jointly with a relative who is a person resident outside India;

(e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) an Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time;

(iv) a person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may–

(a) transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;

(b) create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.

(3) The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Act.

Schedule I

[See rule 11]

Manner of making Overseas Direct Investment by Indian entity

1. Manner of making ODI.— (1) An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and conditions provided in this Schedule. (2) The ODI may be made or held by way of,–

(i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;

(ii) acquisition through bidding or tender procedure;

(iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;

(iv) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the

Act or any rules or regulations made or directions issued thereunder;

(v) the swap of securities;

(vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

2. ODI in financial services activity.– (1) An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely:--

(i) the Indian entity has posted net profits during the preceding three financial years;

(ii) the Indian entity is registered with or regulated by a financial services regulator in India;

(iii) the Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services:

(2) An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years:

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

(3) If an Indian entity does not meet the net profits required under sub paragraph (1) & (2) of this paragraph due to the impact of Covid-19 during the period from 2020-2021 to 2021-2022, then the financial results of such period may be excluded for considering the profitability period of three years:

Provided that such period may be extended by the Reserve Bank in consultation with the Central Government, as it may deem necessary:

(4) Notwithstanding anything contained in this paragraph, Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions laid down by the Reserve Bank under applicable laws in this regard.

3. Limit for financial commitment.– (1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment

shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

(2) The total financial commitment referred to in sub-paragraph (1) shall not include capitalisation of retained earnings for reckoning such limit but shall include–

(i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depositary Receipts and stock-swap of such receipts; and

(ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit:

Provided that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down under this paragraph.

Explanation.– For the purposes of this Schedule, a foreign entity shall be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

Schedule II

[See rule 12]

Manner of making Overseas Portfolio Investment by an Indian entity

(1) **OPI by an Indian entity.–** (1) An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet, in the manner and subject to the conditions laid down in this Schedule.

(2) A listed Indian company may make OPI including by way of reinvestment.

(3) An unlisted Indian entity may make OPI only under clauses (iii), (iv), (v) and (vi) of sub-paragraph (2) of paragraph 1 of Schedule I.

Schedule III

[See rule 13]

Manner of making Overseas Investment by resident individual

(1) **Manner of making OI.–** (1) Any resident individual may make ODI by way of investment in equity capital or OPI in the manner provided in this Schedule and unless otherwise provided hereunder, shall be subject to the overall ceiling under the Liberalised Remittance Scheme of the Reserve Bank.

(2) A resident individual may make or hold Overseas Investment by way of,–

(i) ODI in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity:

(ii) OPI, including by way of reinvestment;

(iii) ODI or OPI, as the case may be, by way of–

(a) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank;

(b) swap of securities on account of a merger, demerger, amalgamation or liquidation;

(c) acquisition of equity capital through rights issue or allotment of bonus shares;

(d) gift as per the conditions laid down under this Schedule;

(e) inheritance;

(f) acquisition of sweat equity shares;

(g) acquisition of minimum qualification shares issued for holding a management post in a a. foreign entity;

(h) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme:

Provided that ODI in respect of clauses (e), (f), (g) and (h) may be made in a foreign entity whether or not such foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control:

Provided further that the acquisition of less than ten per cent. of the equity capital, whether listed or unlisted, of a foreign entity without control under clauses (f), (g) and (h), shall be treated as OPI.

Explanation.–– For the purposes of this Schedule, a foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

2. Acquisition by way of gift or inheritance.– (1) A resident individual may, without any limit, acquire foreign securities by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India.

(2) A resident individual, without any limit, may acquire foreign securities by way of gift from a person resident in India who is a relative and holding such securities in accordance with the provisions of the Act.

(3) A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder.

3. **Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares.–** (1) A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis. *Explanation.*– For the purposes of this paragraph, the expression,–

(i) "indirect equity holding" means indirect foreign equity holding through a special purpose vehicle or step down subsidiary;

(ii) "Employee Benefit Scheme" means any compensation or incentive given to the directors or employees of any entity which gives such directors or employees ownership interest in an overseas entity through ESOP or any similar scheme.

(2) Notwithstanding anything contained in these rules, a resident individual may acquire Employee Stock Ownership Plans under any scheme of the Central Government.

Schedule IV

[See rule 14]

Overseas Investment by person resident in India other than Indian entity and resident Individual

1. **ODI by Registered Trust or Society.–** Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely:–

(i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;

(ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;

(iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;

(iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;

(v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

2. OI by Mutual Funds or Venture Capital Funds or Alternative Investment Funds.– (1) A mutual fund or Venture Capital Fund or Alternative Investment Fund may acquire or transfer foreign securities as stipulated by SEBI from time to time in accordance with the provisions of these rules and subject to such other terms and conditions as may be laid down by the Reserve Bank and the SEBI under applicable laws from time to time:

Provided that the aggregate limit for such investment shall be decided by the Reserve Bank in consultation with the Central Government:

Provided further that the individual limits for such investments shall be as per the instructions issued by the SEBI from time to time.

(2) Every transaction relating to the purchase and sale of foreign security by the funds referred to in sub- paragraph (1) shall be routed through the designated AD bank in India:

(3) Notwithstanding anything contained in these rules, any investment under these rules by mutual funds, Venture Capital Funds and Alternative Investment Funds shall be treated as OPI.

Explanation.– For the purposes of this paragraph, "Alternative Investment Fund" means any fund registered as such with the SEBI.

3. Opening of Demat Accounts by clearing corporations of stock exchanges and clearing members.– Any person, being a SEBI approved clearing corporation of a stock exchange and its clearing members, may acquire, hold and transfer foreign securities, offered as collateral by foreign portfolio investors and**,** subject to the guidelines issued by the SEBI from time to time**,**– (i) open and maintain Demat Account with foreign depositories;

(ii) remit the proceeds arising due to such action, if any; and

(iii) liquidate such foreign securities and repatriate the proceeds thereof to India.

4. Acquisition and transfer of foreign securities by domestic depository.– A domestic depository may acquire, hold and transfer foreign securities of a foreign entity, being the underlying security to issue Indian Depository Receipts as may be authorised by such foreign entity or its overseas custodian bank and the person investing in Indian Depository Receipts may either sell or continue to hold foreign securities in accordance with the conditions provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022 upon conversion of such depository receipts.

5. Acquisition and transfer of foreign securities by AD bank.– An AD bank including its overseas branch may acquire or transfer foreign securities in accordance with the terms of the host country or host jurisdiction, as the case may be, in the normal course of its banking business.

Schedule V

[See rule 15]

Overseas Investment in IFSC by person resident in India

1. **Overseas Investment in IFSC by person resident in India**.– (1) Subject to the provisions of these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India within the limits provided in these rules .

(2) A person resident in India may make Overseas Investment in an IFSC in the manner as laid down in Schedule I or Schedule II or Schedule III or Schedule IV: Provided that –

(i) in the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved;

(ii) an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under these rules, may make ODI in an IFSC.

(iii) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;

(iv) a resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step down subsidiary outside IFSC where the resident individual has control in the foreign entity.

(3) A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

(4) Foreign Exchange Management (Overseas Investment) Regulations, 2022

1. RBI through Notification No. FEMA 400/2022-RB, dated 22nd August 2022, in exercise of the powers conferred by sub-section (1) and clause (a) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank hereby the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

2. Definitions.– (1) In these regulations, unless the context otherwise requires,–

(a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "debt instruments" shall have the same meaning as assigned to it in the Foreign Exchange Management (Overseas Investment) Rules, 2022;

(2) The words and expressions used but not defined in these regulations shall have the meanings respectively assigned to them in the Act or the Foreign Exchange Management (Overseas Investment) Rules, 2022.

3. Financial commitment by Indian entity by modes other than equity capital,– (1) The Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity including overseas step down subsidiaries of such Indian entity subject to the following conditions within the financial commitment limit as prescribed in the Foreign Exchange

Management (Overseas Investment) Rules, 2022:–

(i) the Indian entity is eligible to make Overseas Direct Investment (ODI);

(ii) the Indian entity has made ODI in the foreign entity;

(iii) the Indian entity has acquired control in such foreign entity at the time of making such financial commitment.

(2) The financial commitments under regulations 4, 5, 6 and 7 shall be reckoned towards the financial commitment limit referred to in sub-regulation (1).

4. Financial commitment by Indian entity by way of debt.– An Indian entity may lend or invest in any debt instruments issued by a foreign entity subject to the condition that such loans are duly backed by a loan agreement where the rate of interest shall be charged on an arm's length basis.

Explanation.–– For the purpose of this regulation, the expression "arm's length" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

5. Financial commitment by way of guarantee.– (1) The following guarantees may be issued to or on behalf of the foreign entity or any of its step down subsidiary in which the Indian entity has acquired control through the foreign entity, namely:–

(i) corporate or performance guarantee by such Indian entity;

(ii) corporate or performance guarantee by a group company of such Indian entity in India, being a holding company (which holds at least 51 per cent. stake in the Indian entity) or a subsidiary company (in which the Indian entity holds at least 51 per cent. stake) or a promoter group company, which is a body corporate;

(iii) personal guarantee by the resident individual promoter of such an Indian entity;

(iv) bank guarantee, which is backed by a counter-guarantee or collateral by the Indian entity or its group company as above, and issued, by a bank in India.

(2) Where the guarantee is extended by a group company, it shall be counted towards the utilisation of its financial commitment limit independently and in case of a resident individual promoter, the same shall be counted towards the financial commitment limit of the Indian entity:

Provided that where the commitment under sub-regulation (1) is extended by a group company, any fund-based exposure to or from the Indian entity shall be deducted from the net worth of such group company for computing its financial commitment limit:

Provided further that where the guarantee under sub-regulation (1) is extended by a promoter, which is a body corporate or an individual, the Indian entity shall be a part of the promoter group.

Explanation.– For the purposes of this sub-regulation, the expression "promoter group" shall have the meaning as assigned to it in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018.

(3) No guarantee shall be open-ended.

(4) The guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based commitment but be considered as lending.

(5) Where a guarantee has been extended jointly and severally by two or more Indian entities, 100 per cent. of the amount of such guarantee shall be reckoned towards the individual limits of each of such Indian entities.

(6) In case of performance guarantee, 50 per cent. of the amount of guarantee shall be reckoned towards the financial commitment limit.

(7) Roll-over of guarantee shall not be treated as fresh financial commitment where the amount on account of such roll-over does not exceed the amount of original guarantee.

6. Financial commitment by way of pledge or charge,– An Indian entity, which has made ODI by way of investment in equity capital in a foreign entity, may—

(a) pledge the equity capital of the foreign entity in which it has made ODI or of its step down subsidiary outside India, held directly by the Indian entity in a foreign entity and indirectly in step down subsidiary, in favour of an AD bank or a public financial institution in India or an overseas lender, for availing fund based or non-fund based facilities for itself or for any foreign entity in which it has made ODI or its step down subsidiaries outside India or in favour of a debenture trustee registered with SEBI for availing fund based facilities for itself;

(b) create charge by way of mortgage, pledge, hypothecation or any other identical mode on–

(i) its assets in India, including the assets of its group company or associate company, promoter or director, in favour of an AD bank or a public financial institution in India or an overseas lender as security for availing of the fund based or non-fund based facility or both, for any foreign entity in which it has made ODI or for its step down subsidiary outside India; or

(ii) the assets outside India of the foreign entity in which it has made ODI or of its step down subsidiary outside India in favour of an AD bank in India or a public financial institution in India as security for availing of the fund based or non-fund based facility or both, for itself or any foreign entity in which it has made ODI or for its step down subsidiary outside India or in favour of a debenture trustee registered with SEBI in India for availing fund based facilities for itself:

Provided that–

(i) the value of the pledge or charge or the amount of the facility, whichever is less, shall be reckoned towards the financial commitment limit in force at the time of such pledge or charge provided such facility has not already been reckoned towards such limit and excluding cases where the facility has been availed by the Indian entity for itself;

(ii) overseas lender in whose favour there is such a pledge or charge shall not be from any country or jurisdiction in which financial commitment is not permissible under the Foreign Exchange Management (Overseas Investment) Rules, 2022;

(iii) the creation or enforcement of such pledge or charge shall be in accordance with the provisions of the Act or rules or regulations made or directions issued thereunder. *Explanation*.– For the purposes of this regulation–

(i) the expression "public financial institution" shall have the same meaning as assigned to it under clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);

(ii) the "negative pledge" or "negative charge" created by an Indian entity or a bid bond guarantee obtained in accordance with these regulations for participation in a bidding or tender procedure for the acquisition of a foreign entity shall not be reckoned towards the financial commitment limit referred to in sub-regulation (1) of regulation 3.

7. Acquisition or transfer by way of deferred payment.– (1) Where a person resident in India acquires equity capital by way of subscription to an issue or by way of purchase from a person resident outside India or where a person resident outside India acquires equity capital by way of purchase from a person resident in India, and where such equity capital is reckoned as ODI, the payment of amount of consideration

for the equity capital acquired may be deferred for such definite period from the date of the agreement as provided in such agreement subject to the following terms and conditions, namely:–

(i) the foreign securities equivalent to the amount of total consideration shall be transferred or issued, as the case may be, upfront by the seller to the buyer;

(ii) the full consideration finally paid shall be compliant with the applicable pricing guidelines:

Provided that the deferred part of the consideration in case of acquisition of equity capital of a foreign entity by a person resident in India shall be treated as non-fund based commitment.

(2) The buyer may be indemnified by the seller up to such amount and be subject to such terms and conditions as may be mutually agreed upon and laid down in the agreement:

Provided that such agreement is in compliance with the provisions of the Act and the rules and regulations made thereunder.

8. Mode of payment. – A person resident in India making Overseas Investment may make payment – (i) by remittance made through banking channels;

(ii) from funds held in an account maintained in accordance with the provisions of the Act;

(iii) by swap of securities;

(iv) by using the proceeds of American Depository Receipts or Global Depositary Receipts or stockswap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

9. Obligations of person resident in India.– (1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

(2) A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number or "UIN" from the Reserve Bank for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD:

Provided that where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) A person resident in India having ODI in a foreign entity, wherever applicable, shall realise and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator.

(5) A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity:

Provided that in case of an open-ended bid bond guarantee, it shall be converted into a close-ended guarantee not later than three months from the date of award of the contract.

10. Reporting requirements for Overseas Investment.– (1) Unless otherwise provided in these regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.

(2) A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely:–

(a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;

(b) disinvestment within thirty days of receipt of disinvestment proceeds; (c) restructuring within thirty days from the date of such restructuring.

(3) A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end:

Provided that in case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

(4) A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an Annual Performance Report (APR) with respect to each foreign entity every year by 31st December and where the accounting year of such foreign entity ends on 31st December, the APR shall be submitted by 31st December of the next year:

Provided that no such reporting shall be required where–

(i) a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or

(ii) a foreign entity is under liquidation.

Explanation.– For the purposes of this sub-regulation–

(a) the APR shall be based on the audited financial statements of the foreign entity:

Provided that where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable;

(b) in case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake in the foreign entity shall be required to submit APR and in case of holdings being equal, APR may be filed jointly by such persons;

(c) the person resident in India shall report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

(5) An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and Information Management, Reserve Bank of India.

11. Delay in reporting.– (1) A person resident in India who does not submit the evidence of investment within the time specified under sub-regulation (1) of regulation 9 or does

not make any filing within the time specified under regulation 10, may make such submission or filing, as the case may be, along with Late Submission Fee within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time:

Provided that such facility can be availed within a maximum period of three years from the due date of such submission or filing, as the case may be.

(2) A person resident in India responsible for submitting the evidence or any filing relating to overseas investment in accordance with the Act or regulations made thereunder before the date of publication of these regulations in the Official Gazette and who has not made or does not make such submission or filing within the time specified thereunder, may make such submission or filing along with Late Submission Fee or make payment of Late Submission Fee where such submission or filing has been done, as the case may be, within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time.

Provided that such facility can be availed within a maximum period of three years from the date of publication of these regulations in the Official Gazette.

12. Restriction on further financial commitment or transfer.– A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

Page no. 1.46 of Module 3

IV. FCRA

1. Foreign Contribution (Regulation) Amendment Rules, 2022 - Amendment In Rules 6, 9, 13, 17a and 20

Vide Notification G.S.R. 506 (E)[F. NO. II/21022/23(04)/2021-FCRA-III], Dated 1-7-2022 in exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010, the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, by enforcement of the Foreign Contribution (Regulation) Amendment Rules, 2022.

In the Foreign Contribution (Regulation) Rules, 2011 (hereinafter referred to as the said rules), in rule 6, —

(i) for the words "**one lakh rupees",** the words "**ten lakh rupees**" shall be substituted;

(ii) for the words "thirty days", the words **"three months**" shall be substituted;

Page no. 4.13-Module 3-under point no.(II)

In the said rules, **in rule 20,** for the words "on a plain paper", the words "in such form and manner, including in electronic form as may be specified by the Central Government" shall be substituted.

Page no. 4.36-Module 3-under point no.(II)

2. Submission of Applications for Revision of Orders under Section 32 of the Foreign Contribution (Regulation) Act, 2010, Read with Rule 20 of the Foreign Contribution (Regulation) Rules, 2011

Vide Order No. 21022/23(04)/2021-FCRA-III, Dated 12-8-2022, **i**n exercise of the powers under rule 20 of the Foreign Contribution (Regulation) Rules, 2011 as amended *vide* gazette notification No. 506(E), dated 1-7-2022, it is hereby ordered that w.e.f. 1st September 2022 an application under section 32 of the Act for revision of an order passed by the competent authority shall be made in electronic form only through the website https://fcraonline.nic.in.

Frequently asked questions regarding online submission of application for revision of an order passed by the competent authority under section 32 of the FCRA, 2010.

Q.1 Who is eligible to submit revision application?

Ans. Any person who is registered under the Foreign Contribution (Regulation) Act, 2010 (FCRA 2010) and rules made thereunder and is aggrieved of an order of the Central Government may prefer revision application in terms of section 32 of the FCRA 2010 and rule 20 of the Foreign Contribution (Regulation) Rules, 2011 (FCRR 2011).

Q.2 How can an association file an application for revision of an order passed by the competent authority under FCRA, 2010?

Ans. An application for revision of an order shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi in electronic form only.

Q.3 Can revision application be sent through physical mode (on paper mode)?

Ans. No. With effect from 15 August 2022, applications are acceptable only in electronic mode.

Q.4 What is the procedure for an association to file an application for revision of an order passed by the competent authority under FCRA, 2010?

Ans. Any organization who wants to file an application for revision of an order passed by the competent authority may upload a scanned copy of its application on the FCRA web portal (https://fcraonline.nic.in/). Under main heading "Services under FCRA", Sub heading "Revision Application against Section 32, FCRA 2010".

Q.5 Is it required to send physical copy of electronically filed revision application to Ministry of Home Affairs (MHA)?

Ans. There is no need to send physical copy of revision application or any related document to MHA.

Q.6 Is there any format of revision application?

Ans. No. Scanned copy of duly signed application in plain paper is acceptable.

Q.7 Is applicant required to submit justification for revision of Order?

Ans. Yes. Justification for revision of Order must be submitted online along with the supporting documents, if any.

Q.8 What is the fee for making an application for revision of an order passed by the competent authority under FCRA, 2010?

Ans. A fee of Rs.3000/- (Three Thousand only) must be paid through the payment gateway specified by the Central Government.

Q.9 What is the time limit for making an application for revision of an order passed by the competent authority under FCRA, 2010?

Ans. The application must be made within one year from the date on which the order in question was communicated or the date on which it otherwise came to know of it, whichever is earlier.

Page no. 4.36-Module 3-under point no.(II)

V. The Insolvency and Bankruptcy Code, 2016

1. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 - Substitution of Regulations 18

Vide NOTIFICATION F. NO. IBBI/2021-22/GN/REG/080, DATED 9-2-2022, the Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by enforcement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 w.e.f. 9-2-2022.

Prior to its substitution Rule 18, read as under:

"18. *Meetings of the committee*. A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights."

Said regulation shall be substituted with the following:

"18. Meetings of the committee.

(1)	A resolution professional may convene a meeting of the committee as and when he considers necessary.
(2)	A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.
(3)	A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights."

See Page no. 6.49 -Module 3 of the Study material.

2. Vide **NOTIFICATION F. NO. IBBI/2022-23/GN/REG.081, DATED 5-4-2022**, through the enforcement of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022, following amendment made in the Regulation 5(2) of IBBI (Voluntary Liquidation Process) Regulations, 2017.

In the principal regulations, in regulation 5, in sub-regulation (2), for the word "three", the word "seven" shall be substituted.

Amended regulation

"(2) The insolvency professional shall, within seven days of his appointment as liquidator, intimate the Board about such appointment."

See Page No. 6.95- Module 3- Point No. (7)- Replacement of Liquidator

3. **Vide Amendment in the Rule 4 under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

Amended Law may be read as:

The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, **by registered post or speed post or by hand or by electronic means**, before filing with the Adjudicating Authority.

See Page No. 6.25-Module 3 – Point 2- 2nd Last line

4. **Vide** Notification No. IBBI/2022-23/GN/REG094, dated 16th September 2022, **the Insolvency and Bankruptcy Board of India makes the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022**,further to amend the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

In the principal regulations, in **regulation 30**, the following proviso shall be inserted, namely: –

"Provided that the liquidator shall also verify the claims collated during the corporate insolvency resolution process but not submitted during the liquidation process, within thirty days from the last date for receipt of claims during liquidation process and may either admit or reject the claim, in whole or in part."

See Page No. 6.71-Module 3 – under point no. V

5. **Vide Notification No. IBBI/2022-23/GN/REG093 through the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 dated 16th September, 2022**, following are the relevant amendments :

In the principal regulations, in **regulation 18,** after sub-regulation (2), the following explanation shall be inserted, namely:-

"**Explanation**: For the purposes of sub- regulation (2) it is clarified that meeting (s) may be convened under this sub-regulation till the resolution plan is approved under sub-section (1) of section 31 or order for liquidation is passed under section 33 and decide on matters which do not affect the resolution plan submitted before the Adjudicating Authority."

See Page no. 6.49-Module 3-under heading "Meetings of the Committee"

PART – II : QUESTIONS AND ANSWERS

DIVISION A: MULTIPLE CHOICE QUESTIONS

Case Scenario

The Central Government is empowered under Section 212(1)(c) to order investigation into the affairs of a company in public interest by the Serious Fraud Investigation Office (SFIO). For this purpose SFIO is established under section 211, comprising director, expert and other officers as Government consider necessary. Director of SFIO shall be officer of the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

Any person who is booked for offence investigated by SFIO is punishable under section 447. In order to bring ease for SFIO in conducting investigation, the power of inspector vested upon it, therefore SFIO may examine the person on oath.

An order issued by the Central Government for investigation in the Modern Furniture Limited. Sufficient and convincing evidences has been found against Ms. Smriti Shah, who is finance director, prima facie such evidences are enough to order the recovery through attachment of asset obtained by her out of fraud apart from other action. Ms. Smriti examined on oath, wherein

she admit her involvement in fraud and misappropriation. Investigating officers are following this lead to identify who are all involved in trail thereof.

Officers and Employees are expected to provide required assistance to SFIO in investigation, but assistance as well as required information not provided. As a result delay in completion of investigation took place, therefore it is not possible to submit the report to government by the date specified in order issued by the Central Government. The director of SFIO approached to you 'a young professional, and functional expert at SFIO' and willing to know the recourse if they not able to complete investigation and submit the report specified in the order.

Your preliminary answer to Director is;

A question regarding the scope of Section 212 of the Companies Act, 2013 was considered by hon'ble Apex Court in matter of Serious Fraud Investigation Office v. Rahul Modi. Court observed that Section 212(3) provides that the investigation orders are required to be completed within the specified time. If it not so done, what should be the consequences and whether further proceedings or investigations shall be unlawful.

Court was of opinion that "the provision has to be seen in the context in which it occurs in the statute. Therefore, the stipulation of Section 212(3) regarding submission of the report 'within such period as may be specified in the order' is not to be taken as mandatory, but as purely directory. On the objective interpretation of the statutory provision, it cannot be said that on the expiry of that period the mandate in favour of SFIO must come to an end. If it was to come to an end, the legislation would have contemplated certain results thereof. In the absence of any clear stipulation, an interpretation that with the expiry of the period, the investigation must come to an end, will cause great violence to the scheme of legislation and with the expiry of mandate SFIO would also be powerless which would lead to an incongruous situation that serious frauds would remain beyond investigation".

You are required to pick correct option for following MCQs (1 – 5):

1. Director of Serious Fraud Investigation Office, shall be an officer to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs, not below the rank of -

   (a) Assistant Secretary

   (b) Deputy Secretary

   (c) Joint Secretary

   (d) Additional Secretary

2. The investigation conducted under section 212(3) wherein investigation continues beyond the time prescribed in the order of investigation and report has not been submitted to central government, shall be -

   (a) Void

(b) Valid

(c) Irregular

(d) Invalid

3. Considering the expression of Section 212(6), an offence under Section 447 of the Companies Act, 2013 shall be -

I. Cognizable

II. Non-cognizable

III. Bailable

IV. Non-bailable

(a) I and III

(b) I and IV

(c) II and III

(d) II and IV

4. The expression 'officers and employees' under Section 212(5) denotes -

(a) Persons who are in employment of the company.

(b) Persons who have been in employment of the company during period for which investigation is taking place.

(c) Persons who are or have been in employment of the company.

(d) Persons who are deemed to be in employment of the company, in opinion of SFIO

5. The note of examination of Ms. Smriti shah, wherein she admitted her involvement in fraud and misappropriation can be used as evidence against her if -

I. Taken down in wiring

II. Read over to Mr. Smriti

III. Signed by Ms. Smriti

IV. A copy of same handed over to Ms. Smriti

(a) I and III is fulfilled

(b) I, II and III is fulfilled

(c) I, III and IV is fulfilled

(d) All of I, II, III and IV fulfilled.

Independent MCQs

6. Modern Furniture Limited is in expansion mode. Recently it has established the branches and showroom in 25 different cities of India. Following are the balances shown on 9th December 2022 when board of Modern Furniture is considering to borrow money for expansion activities:

Particulars	Amount (in 'crore)
Share Capital	50000
Free Reserves	116000
Capital Redemption Reserve	28000
Revaluation Reserve	59400
Security Premium	32000
Secured Debt/Loans	98500
Unsecured Debt/Loan	33200

Unsecured Debt/Loan includes temporary loans of 30 lakhs, out which 13 lakhs raised for the purpose of financial expenditure of a capital nature, whereas 8 lakhs repayable on demand and remaining 9 lakhs will be repayable in three equal installment starting from next month. Advice the board of directors how much they can borrow, with board resolution only.

(a) 3.60 Crore

(b) 3.73 Crore

(c) 6.80 crore

(d) 6.93 crore

7. In September, 2020, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US$ 50,000 from his banker, State Bank of India, New Delhi branch. In December, 2020 he further, withdrew US$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2021, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2021, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2021 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2021, he again withdrew US$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave

an estimate of US$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker, State Bank of India.

(a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2020-21, Mr. Purshottam Saha is not required to obtain any prior approval.

(b) In respect of withdrawal of US$ 35,000 in the last week of March, 2021, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US$ 1,75,000.

(c) After withdrawing US$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

(d) After withdrawing US$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

8. W Ltd. made the following compliances for the June 2022 quarter, as required by SEBI(LODR) Regulations, 2015 :-

(1) It submitted its unaudited quarterly financial statements to the recognised stock exchange on 31st July, 2022.

(2) It submitted its quarterly compliance report on corporate governance on 10th July, 2022.

What shall be the last date of submission of quarterly financial statements to the stock exchange for W Ltd., in case W Ltd. was not able to submit the same on 31st July, 2022, and whether it can be submitted in unaudited form also?

(a) 15th August, 2022 and no, it needs to be submitted in audited form.

(b) 31st August, 2022 and yes, it can be submitted in unaudited form.

(c) 31st July, 2022 and no, it needs to be submitted in audited form.

(d) 15th August, 2022 and yes, it can be submitted in unaudited form.

9. Mr. Abhilash, Mr. Benjamin and Mr. Chandan are partners in a partnership firm named M/s Abenchan Agro Products & Co. An agreement in writing was reached among the partners to refer any business dispute among them to an arbitrator. In spite of this written agreement, Mr. Benjamin files a suit against Mr. Abhilash and Mr. Chandan disputing certain decisions in a Magistrate Court. Out of the following options, select the one which correctly depicts as to the admission of the suit filed by Mr. Benjamin against Mr. Abhilash

and Mr. Chandan by the Magistrate Court in the light of the Arbitration and Conciliation Act, 1996.

(a) The suit filed by Mr. Benjamin against Mr. Abhilash and Mr. Chandan can be admitted by the Magistrate Court, since the said Court has jurisdiction over the disputed matter and it overpowers arbitration agreement.

(b) The suit filed by Mr. Benjamin against Mr. Abhilash and Mr. Chandan can be admitted by the Magistrate Court, only in the case of challenge to the Arbitral Award in appeal.

(c) The suit filed by Mr. Benjamin against Mr. Abhilash and Mr. Chandan can be admitted by the Magistrate Court only if both Mr. Abhilash and Mr. Chandan mutually agree for filing of such suit by Mr. Benjamin.

(d) The suit filed by Mr. Benjamin against Mr. Abhilash and Mr. Chandan cannot be admitted by the Magistrate Court since the jurisdiction of the said Court is ousted because of existence of a valid arbitration agreement.

10. Alexander Philip, a foreign citizen, has made donations in kind to his known resident Indians for their personal use. When shall such donation in kind be excluded from the definition of 'foreign contribution' considering the relevant provisions of Foreign Contribution (Regulation) Act, 2010?

(a) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than ₹ 1,00,000 but less than ₹ 5,00,000.

(b) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than ₹ 5,00,000 but less than ₹ 10,00,000.

(c) Any donation in kind given by a foreign citizen to a resident Indian for personal use is always excluded.

(d) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is not more than ₹ 1,00,000.

Section B: Descriptive Questions

11. Mr. Srinath, Ms. Smriti and Mr. Irfan are directors of Protease Sports Limited (PSL), which is renowned brand of sports items. Mr. Rahul is a Managing Director there. Mr. Irfan is Whole time director whose 4 years of tenure is still there. The annual average remuneration of Mr. Rahul, Mr. Srinath, Ms. Smriti and Mr. Irfan are ₹ 84 lacs, ₹ 21 lacs, ₹ 18 lacs, and ₹ 48 lacs respectively.

PSL acquired by Rockman Sports. Mr. Srinath, Ms. Smriti and Mr. Irfan lost their office of director. Mr. Rahul also lost his office but he is appointed as the Managing director of the

body corporate resulting from the restructuring. All of them demanding the compensation for loss of office.

Enumerate and analyze as per the given situation in the light of the provisions of Companies Act, 2013 whether they are eligible to get compensation? If yes, then what will be amount of compensation for the same?

12. Modern Furniture Limited (MFL) is dealing in designer office and household furniture, MFL was incorporated in 2014, until 2018 MFL made huge profits and declares the dividend at extremely high rate nearly 400% i.e. (four time to the paid-up face value).

In 2019 MFL came-up with public issue of equity, therefore share capital was increased 3 times from 12 crores to 36 crores. The number of total registered member increased to 7680. The company drastically reduced the rate of dividend payment and paid only at average rate of 25% during 2019 to 2022.

Handful of the shareholders raised this issue and their concerns related to it, in all 4 annual general meetings (from 2019 to 2022), but they were not supported by large chunk of shareholders. They reached to chairman with their concern that they made investment after considering the rate of dividend which MFL was offering between 2014 and 2018. The chairman reverted back that MFL is aspired to open furniture showroom in 40+ cities in upcoming two years, in line of board's recommendations, hence declare the dividend at rate recommended by board.

The share capital of MFL consists of equity shares only.

Such minor chunk of shareholder (members), which are 84 in numbers and holding around 6% of the issued share capital (fully called and duly paid-up); approached you (a legal consultant) for advice on;

(a) Can minor chunk of shareholders object to lower dividend? Does lower rate of dividend amounts to oppression on minority?

(b) Is there any forum where at this minor chuck can register their grievance? Are they eligible to file petition?

13. Dr. Kishore Krishnan has opted to join as Independent Director in Rosemary Pharmaceuticals Limited which manufactures various kinds of medicines under the brand name "ROSE". As an Independent Director, Dr. Krishnan is of the view that he needs to be paid amount ten thousand more than the sitting fees which is being paid to other directors for attending board meetings. You are required to comment on the viability of the proposal as per the Companies Act, 2013.

14. Modern Furniture Limited (MFL) is a listed company dealing in furniture, with expertise in Space-saving foldable furniture items. Board of MFL through its chairman instructs the secretary to call and convene board meeting to consider certain agenda items.

If board meeting to be taken place on 9th January 2023, then after explaining the relevant SEBI Regulation regarding prior intimations to Stock Exchanges of the Board Meetings,

where certain proposals are to be considered, you are required to list the cut-off date of intimation in each of following cases considering these as independent case from each other.

(a) Consider quarterly financial results

(b) Proposal for buy-back

(c) Change in interest cycle of debenture

(d) Conversion of securities

(e) Reconsidering redemption date of preference shares

15. Article 14 of the Constitution of India reads as "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Modern Engineering Limited (MEL) enters into the Insolvency Resolution Process. Resolution professional prepare the list of claims, wherein it place operational creditors after financial creditors in priority order. Operational creditors was annoyed with this priority order, hence advance a writ petition to declared the Insolvency and Bankruptcy Code, 2016 (IBC) unconstitutional on the ground, it is discriminatory and unfair to an operational creditor as compared to the financial creditor.

Recommended in your opinion, whether IBC is constitutional or unconstitutional w.r.t Article 14 and support your answer in the light of relevant provisions of IBC.

16. Grand Father of Mr. Narendra Kamal was farmer in undivided India and own large chunk of land. Due to partition, his grand-father along other family members evacuated from west Punjab, hence got a piece of agricultural land in compensation under Displaced Persons (Compensation and Rehabilitation) Act, 1954 in that area of east Punjab which is present day Haryana touching NCT.

Such land was inherited by Mr. Saurabh Kamal and Mr. Varun Kamal (both resides in India) in equal portion as per the testament of their Narendra' Grandfather. Mr. Narendra is only child of Mr. Saurabh. At death of Mr. Saurabh in 2005, his will was executed and piece of land belong to him transferred to Mr. Narendra.

Mr. Narendra in 2002, shifted to New Zealand, there he operate an accounting KPO firm. Mr. Narendra surrender Indian citizenship and hold kiwi passport. Now the children of Mr. Narendra is also grown-up. His son want to enter in film-making hence need funds, Mr. Narendra decided to sell the land inherited by him from his father (in-turn from his Grandfather). He approached Mr. Balraj, a property linker for identifying buy for said land. It was decided that part of proceed will be used by son of Mr. Narendra and rest will be planned to invest in New Zealand only.

You are required to advise Mr. Narendra can he sell/transfer the land he owned in India as per the relevant provisions of FEMA.

17. Mr. Vijay, Sanjay and Ajay are sons of Mr. Kulbushan Yadav. Mr. Sanjay who is professor reside in India, rest both the brothers settled in abroad.

    Mr. Sanjay Yadav on his 25th wedding anniversary received a gift from his elder brother who is American national currently. Gift includes i-phone and an old chain of their father, with which emotional memories of Mr. Sanjay attached, he immediately wear that chain. I-phone in Indian rupee worth ₹ 1 lac 10 thousands, while chain worth ₹ 80 thousand.

    While younger brother of Mr. Sanjay who is British national and investment banker by profession, present him securities worth ₹ 2 lacs.

    Regarding the intimation of foreign contribution received by Mr. Sanjay, you are required to to give the legal position of Mr. Yadav in the light of the FCRA .

18. Mr. Ranga allegedly handed over a sum of ₹ 50,000,000 (Rupees five crore) to a public servant Mr. Billa. An FIR was registered under Indian Penal Code, 1860 for criminal conspiracy and Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Later, a case was registered by the Enforcement Directorate against Mr. Billa including Mr. Ranga under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002.

    It may be decided between Mr. Ranga and Mr. Billa, that Mr. Ranga will leave suitcase carrying money in the car, parked in parking space. Even before Mr. Billa could project the sum of ₹ 50,000,000 as untainted money, the CBI intervened and seized the money in the parked car.

    Mr. Ranga moved a petition to the hon'ble High Court. The High Court allowed the petition of Mr. Ranga and quashed the PMLA proceedings against him. According to the High Court, the sum of ₹ 50,000,000 as long as it was in the hands of Mr. Ranga could not have been stated as tainted money. The sum of ₹ 50,000,000 became the proceeds of a crime only when Mr. Billa accepted it as a bribe.

    Enforcement Directorate approached you (a leading consultant on Economic Law Matters) for advice. Analyse the given situation and state the legal position of Mr. Ranga.

19. Modern Furniture Limited (MFL) of India going to sign an agreement with the Gruppo Molteni & C. (GMC) of Italy for development of contemporary designs of furniture. In the agreement both parties willing to insert a clause on conciliation in said agreement, because they admit that "Conciliator provide amicable resolution to dispute (if arise any)". While writing such clause in said agreement, the MFL is of opinion that single conciliator will be enough, but Italian counter-part GMC willing to have provision for two conciliators. It was decided that, there shall be two conciliator.

    You are required to answer;

    (a) Can conciliators be appointed in multiple and in even number by MFL and GMC?

    (b) Who shall elect the conciliator(s) in given case?

(c) How conciliator(s) make decision in given case, to reach out at amicable solution?

20. Zell Power LLC (ZPL), is foreign company as per definition provided in the Companies Act 2013, carrying business in India also. It is strictly observing the provisions stated for foreign companies in Companies Act 2013, while Registrar (ROC, Delhi) is of opinion that ZPL apart from observing the provision prescribed for foreign companies (section 380 to 386 along section 392 and 393) ZPL also need to observe other provisions of the Companies Act, 2013 with regard to the business carried on by it in India as if it were a company incorporated in India.

ZPL is not agreed to opinion of Registrar and continue to observe only those provisions which are applicable to foreign companies. ZPL also furnish the following details to ROC. ZPL capital includes;

Ordinary Share (6 Million @ Face Value £ 5 with £ 2 Paid-up) – £12 Million

Preference Stock (1.2 Million @ £10 fully Paid-Up) - £ 12 Million

Debt Fund - £ 21.25 Million

Out of which;

Mr. Trishi who is an Indian citizen and Residing in India being part of promoter group own 2,932,780 ordinary shares of ZPL

Mr. Nirav who is an Indian citizen but residing in UAE own 109,205 preference stock of ZPL

Modern Engineering Limited that an Indian Company own 67,220 ordinary shares and 142,320 preference stocks of ZPL

Raj Investment Limited, which is an Indian Company holds 393,475 preference stocks of ZPL

You are required to evaluate the facts, and determine whose opinion hold legal validity in the light of the relevant provisions of the Companies Act, 2013.

SUGGESTED ANSWER

DIVISION A: MCQ's Answers

1. (c)

2. (b)

3. (b)

4. (c)

5. (b)

6. (c)

7. (a)

8. (d)

9. (d)

10. (d)

DIVISION B: Descriptive Answers

11. Section 202 of the Companies Act 2013, deals with the compensation for loss of office of managing or whole-time director or manager.

According to Sub-section 1, it provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. Hence, Mr. Srinath and Ms. Smriti are not eligible for any compensation for loss of the office.

Further sub-section 2 provides that in certain cases wherein no payment shall be made as compensation, the clause (a) of sub-section 2 states, where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation, hence Mr. Rahul is not eligible for any compensation for loss of the office of MD at PSL.

Therefore, only Mr. Irfan will get the compensation for loss of office (Whole Time Director).

Besides, Sub-section 3 impose the limit on the amount of compensation. It states that any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period. So the maximum amount of compensation that can be paid to Mr. Irfan is ₹ 1.44 crore (₹ 48 lacs* 3 i.e. Unexpired period subject maximum of 3 year).

12. (a) Dividend is undoubtedly declared at AGM every year, but it is declared based upon the recommendation made by Board of Directors in this regards. Members (Shareholders) neither declare for dividend at higher rate than recommend by Board of Directors (refer entry 80 of table F given in schedule I to the Companies Act 2013) nor can they pressurize Board to recommend dividend at some higher rate, although they may declare dividend at some lower rate. Hence, minor chuck of shareholder can't object to lower dividend.

Further, the lower rate of dividend shall not considered as oppression on the minority. However, if it can be proved that minorities are being deprived of genuine benefits,

then can be amounts to oppression. Even failure to declare dividend doesn't amount to oppression. (Thomas Veddon V.J. v. Kuttanad Robber Co. Ltd).

If issue document of public issue of shares by MFL contains any commitment regarding high rate of dividend than actions for misstatement in prospectus can be taken, even if no one (investor) subscribe the share considering that commitment. (Actual loss to investor is not necessary for make any person liable for misstatement made by him in prospectus).

(b) Minority chunk of shareholders can seek redressal by advancing a petition to NCLT under section 241 of the Companies Act, 2013. In case of listed companies minorities may register their grievances for resolution in Investor Relations committee of the Board or file petition in NCLT.

Further under section 244 of the Companies Act, 2013, it is provided that in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241;

(i) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or

(ii) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

But in given the case, there are only 84 members i.e. 1.09% of total of 7680 members, and holding nearly 3% of issued share capital, hence petition can't be advanced to NCLT.

13. Section 197(5) of the Companies Act, 2013, states that a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed.

Further, Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides as under:

"A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors."

In view of the above provisions, Dr. Kishore Krishnan may be paid Rs. ten thousand more than the sitting fees which is being paid to other directors for attending board meetings but in no case the maximum payment shall exceed one lakh rupees per meeting of the Board or committee thereof. Thus, if other directors are being paid Rs. one lakh per meeting,

Dr. Krishnan, as Independent Director, will also be paid Rs. one lakh only and not Rs. one lakh ten thousand

14. Provisions related to prior intimation of Board Meeting where any of the following proposals is to be considered are included in Regulation 29 of SEBI (LODR) Regulations, 2015 are;

(i) At least **5 clear Days** excluding the date of the intimation and date of the meeting in which financial results viz. quarterly, half yearly, or annual to be considered.

(ii) At least **2 clear Working Days** excluding the date of the intimation and the meeting for the given proposals.

(a) proposal for buyback of securities

(b) proposal for voluntary delisting

(c) fund raising by way of

1. Further public offer
2. Rights Issue
3. American Depository Receipts
4. Global Depository Receipts
5. Foreign Currency Convertible Bonds
6. Qualified institutions placement
7. Debt issue
8. Preferential issue and
9. Determination of issue price.

(d) Any AGM or EGM or Postal Ballot proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.

(e) Declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.

(f) The proposal for declaration of bonus securities, if part of Agenda papers.

(iii) At least **11 Working Days** before

(a) Any alteration in the form or nature of any of its securities or in the rights or privileges of the holders thereof.

(b) Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

Accordingly, the cut-off date for intimation to SEBI shall be as following (Saturday and Sunday are non-working days);

Case	Agenda	Cut-off date for intimation
a	Consider quarterly financial results	3rd January 2023
b	Proposal for buy-back	4th January 2023
c	Change in interest cycle of debenture	23rd December 2022
d	Conversion of securities	4th January 2023
e	Reconsidering redemption date of preference shares	23rd December 2022

15. Looking at the constitutional validity of the Code as per Article 14 of the Constitution of India, IBC is constitutional in entirety and not discriminatory and unfair to an operational creditor as compared to the financial creditor in the light of section 3(6) of the Code.

According to the Code, 'Claim' gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor. Though debt means a liability/obligation in respect of a claim which is due from any person & includes a financial debt and operational debt. [Sections 3(11)].

Further financial creditors are clearly different from operational creditors and therefore, there is obviously a clear difference between the two which has a direct relation to the objects sought to be achieved by the Code.

The excessive power given to the Committee of Creditors (CoCs) is controlled through approval/rejection of the plan with the large majority (rather a simple majority) and the Adjudicating Authority, if required, can set aside the arbitrary decisions of CoCs.

Since there is a difference in the relative importance of two types of debts when it comes to objects sought to be achieved by the insolvency code, hence Article 14 of the Constitution of India (equality before the law) does not get infracted.

16. According to Section 6 (5) of The Foreign Exchange Management Act 1999, it is provided that a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or the property was acquired, held, or owned by such person when he was resident in India or inherited from a person who was resident in India (like in given case inherited by Mr. Narendra in 2005).

Further, a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section as per the second schedule of the FEM (Permissible Capital Account Transaction) Regulation, 2000.

Hence Mr. Narendra allowed transfer (sale) the agriculture land and after seeking permission of RBI can repatriate the sale proceeds, outside India.

17. According to Rule 6 and 6A of Foreign Contribution (Regulation) Rules, 2011, the Central Government has notified the Foreign Contribution (Regulation) Amendment Rules, 2022 vide GSR No. 506(E) on 1st July, 2022 to further amend the Foreign Contribution (Regulation) Rules, 2011.

As per amended Rule 6, any person receiving foreign contribution in excess of ten lakh rupees or equivalent thereto in a financial year from any of his relatives (as defined in section 2(1)(r) of the Foreign Contribution (Regulation) Act, 2010) shall inform the Central Government regarding the details of the foreign contribution received by him in electronic form in Form FC-1 within three months from the date of receipt of such contribution.

Earlier such monetary threshold limit was ₹ 1 Lakh and intimation to Central Government was required within thirty days.

Further rule 6A provides when any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed one lakh rupees shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2).

I-phone (even for personal use, but value more than 1 lac; hence foreign contribution) and Shares together amounts to only 3 lacs and 10 thousands, which less than threshold of ten lacs; hence no intimation is required by Mr. Sanjay in given case.

However with respect to chain having worth of ₹ 80,000 is not foreign contribution at all.

18. As per the definition of money laundering and proceeds of crime given under the PMLA, 2002, it can be advised as follows:

(i) so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money.

(ii) If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offense would be of misappropriation or species thereof but certainly not of bribe. The crucial part, therefore, is the requisite intent to hand over the amount as a bribe and normally such intent must necessarily be antecedent or prior to the moment, the amount is handed over.

(iii) Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter-alia, the aspects of possession or acquisition thereof.

(iv) By handing over the money with the intent of giving bribes, such a person will be assisting or will knowingly be a party to an activity connected with the proceeds of

crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime.

(v) The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such a person.

Therefore Mr. Ranga being 'Bribe Giver' is connected party to proceed of crime and is liable for proceeding under the Prevention of Money Laundering Act, 2002.

19. **S**ection 63 and 64 of the Arbitration and Conciliation Act 1996 deals with number of conciliators and Appointment of conciliators respectively. While section 67 highlights their role.

(a) Section 63 (1) states there shall be one conciliator unless the parties agree that there shall be two or three conciliators. Therefore MFL and GMC can have two Conciliators.

Where there is more than one conciliator. The provision provides multiple conciliators ought to act jointly.

(b) Section 64 requires in conciliation proceedings with two conciliators, each party may appoint one conciliator

Section provides conditions or cautions that shall be observed by the contracting parties, while appointing conciliator to ensure their independence.

(c) As said earlier that multiple conciliators ought to act jointly, Further the decision making process guided by their role stated in section 67.

The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

20. Section 379 of the Companies Act 2013 deals with application of Act to foreign companies.

Sub-section 2 to section 379 provides where **not less than fifty percent** of the **paid-up share capital** (whether equity or preference or partly equity and partly preference) of a foreign company is held by

(i) one or more citizens of India or

(ii) one or more companies or bodies corporate incorporated in India, or

(iii) one or more citizens of India and one or more companies or bodies corporate incorporated in India,

Whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Total of **ordinary shares** held by **Indian citizen or corporation** in aggregate are 3 million (i.e. 2932780 and 67220) whose paid-up value is £6 million

Total of **preference stock** held by **Indian citizen or corporation** in aggregate are 0.645 million (i.e. 109,205, 142,320, and 393,475) whose paid-up value is £6.45 million

Since out of paid-up capital of £24 (i.e. £12 million ordinary share capital + £12 million preference share capital) of ZPL, £12.45 million held by citizens of India along with companies incorporated in India, in aggregate hence ZPL shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. Opinion of Registrar is legally valid and shall prevail.