

PAPER 6D: ECONOMIC LAWS

PART –I: RELEVANT AMENDMENTS FOR MAY 2023 EXAMINATION

The October 2021 edition of the Study Material on Final Paper 6D: Economic Laws contains amendments made upto 31st October, 2021. Besides, notifications, circulars and other legislative amendments made upto 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 November 2021 to 31st October 2022:

I. The Competition Act, 2002

1. Section 54 of the Competition Act, 2002 - power to exempt - exemption to specified enterprise from provisions of section 5 of said Act for a specified period - Amendment in Notification No. S.O. 988(e) [F. No. 5/33/2007-Cs], Dated 27-3-2017

Vide Notification No. S.O. 1192(E) [F. No. COMP-05/3/2022-COMP-MCA], Dated 16-3-2022, in exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in the public interest, hereby extends the validity of the exemptions and for the said purpose amends the notification of the Ministry of the Corporate Affairs published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide S.O. 988(E), dated the 27th March, 2017, namely:—

In the said notification, in paragraph 1, in the long line, for the words "**five years**", the words "**ten years**" shall be substituted.

See page no. 1.40 of the Study Material

2. Section 5, Read with Sections 6, 43a and 54, of the Competition Act, 2002 - Combinations - Notified Person Or Enterprise - Amendment in Notification No. So 2039(E), Dated 29-6-2017

Vide Notification S.O. 1193(E) [F. No. COMP-05/4/2022-COMP-MCA], Dated 16-3-2022, in exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in the public interest, hereby extends the validity of the exemption and for the said purpose amends the notification of the Ministry of the Corporate Affairs published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. 2039(E), dated the 29th June, 2017, namely:

In the said notification, for the words "**five years**", the words "**ten years**" shall be substituted.

See page no. 1.42 of the Study Material

II. 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,

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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. 3.74 -Module 3 of the Study material.

2. Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2022 - Amendment in Regulation 13

Vide Notification No. IBBI/2022-23/GN/REG087, Dated 14-6-2022, the Insolvency and Bankruptcy Board of India hereby makes the Insolvency and Bankruptcy Board of India (Inspection and Investigation) (Amendment) Regulations, 2022, further to amend the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

(1) In the principal regulations, **in regulation 13, for sub-regulation (2)**, the following shall be substituted:

"(2) The Disciplinary Committee shall endeavour to dispose of the show-cause notice within a period of thirty-five days of the date of the issuance of the show-cause notice."

(2) In the principal regulations, **in regulation 13, in sub-regulation (3)**, after clause (b), the following clause shall be inserted, namely: —

"(ba) suspension or cancellation of authorisation for assignment of an insolvency professional;"

(3) In the principal regulations, **in regulation 13, for the sub-regulation (5)**, the following sub-regulation shall be substituted, namely: —

"(5) The order passed under sub-regulation (1) shall be served upon the service provider in an electronic form and be published on the website of the Board:

Provided that where the service provider is an insolvency professional, a copy of the order shall be sent to the insolvency professional agency of which he is a professional member."

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(4) In the principal regulations, **in regulation 13, for the sub-regulation (6)**, the following sub-regulations shall be substituted, namely: —

"(6) The Disciplinary Committee shall in the order passed under sub-regulation (1) require the service provider—

- (a) to discharge pending obligations, if any;
- (b) to continue its functions till such time as may be directed, only to enable stakeholders to shift to another service provider; and
- (c) to comply with any other directions.

(7) In case where the service provider is an insolvency professional, the Board shall intimate the order to all the members of committee of creditors of the insolvency resolution processes in which he is acting as an interim resolution professional or resolution professional, as the case may be, and to the Adjudicating Authority."

See page no. 3.189 of the Study Material

3. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022 - Amendment in Regulations 4, Insertion of Regulation 2B & 2C

Vide Notification No. IBBI/2022-23/GN/REG084, Dated 14-6-2022, In exercise of the powers conferred by clause (t) of sub-section (1) of section 196, read with sections 7, 9 and 240 of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India hereby makes the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022, further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), **after regulation 2A, the following regulations shall be inserted**, namely: —

"2B. *Record or evidence of transaction, debt and default by operational creditor.* — The operational creditor shall, along with application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:

Provided that provisions of this regulation shall not apply to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

2C. *Submission of information along with application.* — The financial creditor or operational creditor shall, while filing application under section 7 or 9, as the case may be, also furnish details of his/ its—

- (a) Permanent Account Number; and
- (b) Email-ID."

3. In the principal regulations, **in regulation 4**, after sub-regulation (1), the following sub-regulations shall be inserted, namely: —

"(2) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the interim resolution professional or the resolution professional, as the case may be.

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(3) The creditor shall provide to the interim resolution professional or resolution professional, as the case may be, the information in respect of assets and liabilities of the corporate debtor from the last valuation report, stock statement, receivables statement, inspection reports of properties, audit report, stock audit report, title search report, technical officers report, bank account statement and such other information which shall assist the interim resolution professional or the resolution professional in preparing the information memorandum, getting valuation determined and in conducting the corporate insolvency resolution process."

See page no. 3.33 and 3.57 of the Study Material

4. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022 - Substitution of Regulation 11

Vide Notification No. IBBI/2022-23/GN/REG088, Dated 4-7-2022, in exercise of the powers conferred by sections 196, 207 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2022, further to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), **for regulation 11**, the following shall be substituted, namely: —

"*Disciplinary Proceedings.* — 11. The disciplinary proceedings shall be conducted in accordance with the provisions of Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017."

See page no. 3.181 of the Study Material

5. Section 55 of the Insolvency and Bankruptcy Code, 2016 - Fast Track Corporate Insolvency Resolution Process - Amendment in Notification S.O. 1911(E), Dated 14-6-2017

Vide Notification S.O. 4142(E) [F.NO. 30/4/2017-INSOLVENCY], Dated 30-8-2022, in exercise of the powers conferred by sub-section (2) of section 55 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby makes the following amendment in the notification of the Government of India, in the Ministry of Corporate Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide S.O. 1911(E), dated the 14th June, 2017, namely: —

In the said notification, **for clause (b)**, the following clause shall be substituted, namely:—

"(b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 127(E), dated the 19th February, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 19th February, 2019 and as amended from time to time; or"

See page no. 3.140 of the Study Material

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6. Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 - Amendment in Regulation 3

Vide Notification No. IBBI/2022-23/GN/REG095, Dated 16-9-2022, in exercise of the powers conferred by clause (t) of sub-section (1) of section 196, read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 further to amend the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, namely: —

In the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as 'the principal regulations'), in **regulation 3**, after sub-regulation (4), the following sub-regulation shall be inserted, namely: —

"(5) The declaration under sub-regulation (1)(a) or under section 59(3)(a) shall provide that the corporate person has made provision for preservation of its records after its dissolution."

See page no. 3.144 of the Study Material

7. Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022 - Amendment in Regulations 4 and 34

Vide Notification No. IBBI/2022-23/GN/REG094, Dated 16-9-2022, in exercise of the powers conferred by clause (t) of sub-section (1) of section 196 read with section 240 of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India hereby 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 4**,

- (i) after sub-regulation (1), the following sub-regulation shall be inserted, namely: —
"(1A) Where no fee has been fixed under sub-regulation (1), the consultation committee may fix the fee of the liquidator in its first meeting."
- (ii) in sub-regulation (2), after the figure and brackets "(1)", the word, figure, letter and brackets "and (1A)" shall be inserted

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In the principal regulations, in **regulation 34**,

- (i) for sub-regulation (1), the following shall be substituted, namely: —
"(1) For cases under sub-regulation (1) of regulation 35, the liquidator shall, within thirty days from the liquidation commencement date, prepare an asset memorandum in accordance with this regulation based on the information memorandum prepared under section 29, with suitable modifications."
- (ii) after sub-regulation (1), the following sub-regulation shall be inserted, namely: —

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"(1A) For cases covered under sub-regulation (2) of regulation 35, the liquidator shall prepare an asset memorandum in accordance with this Regulation within seventy-five days from the liquidation commencement date."

See page no. 3.100 of the Study Material

8. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 - Amendment in Regulations 18 and 36

Vide Notification No. IBBI/2022-23/GN/REG093, Dated 16-9-2022, the Insolvency and Bankruptcy Board of India hereby makes the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022, further to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(1) 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."

(2) In the principal regulations, in **regulation 36**,

(i) in sub-regulation (1), for the words "within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.", the words "on or before the ninety-fifth day from the insolvency commencement date" shall be substituted.

(ii) in sub-regulation (2),

(a) for the opening words, the following shall be substituted, namely:—

"(2) The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor— "

(b) in clause (a) after the words "assets and liabilities", the words "including contingent liabilities" shall be inserted.

(c) in Explanation to clause (a), the words "geographical coordinates of fixed assets" shall be inserted before the words "and any other relevant details"

(d) the following clauses shall be inserted after clause (i), namely:—

"(j) company overview including snapshot of business performance, key contracts, key investment highlights and other factors which bring out the value as a going concern over and above the assets of the corporate debtor such as brought forward losses in the income tax returns, input credit of GST, key employees, key customers, supply chain linkages, utility connections and other pre-existing facilities.

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(k) Details of business evolution, industry overview and key growth drivers in case of a corporate debtor having book value of total assets exceeding one hundred crores rupees as per the last available financial statements."

See page no. 3.74 and 3.66 of the Study Material

9. Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2016

Vide Press Release No. IBBI/PR/2022/36, Dated 17-9-2022, the Insolvency and Bankruptcy Board of India (IBBI/Board) notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)(Fourth Amendment) Regulations, 2016 (CIRP Regulations) on 16th September, 2022.

- With the objective to maximise value in resolution, the amendment enables the resolution professional (RP) and the Committee of creditors (CoC) to issue request for resolution plan a second time for sale of one or more of assets of the corporate debtor (CD) in cases where no resolution plan has been received for the corporate debtor as a whole. It enables for a resolution plan to include sale of one or more assets of CD to one or more successful resolution applicants submitting resolution plans for such assets and providing for appropriate treatment of the remaining assets.
- Further to improve the value received in the resolution plan, the amendment enables marketing of assets of the CD. It provides for formulating a strategy for marketing of assets of CD in consultation with the CoC to disseminate information about the asset to a wider and targeted audience of potential resolution applicants. The amendment also enables a longer time for the asset in the market as the invitation for expression of interest in Form G has been advanced to 60th day from insolvency commencement date (ICD). Changes have also been made to Form G to provide more relevant information to persons for expressing interest.
- The amendment provides for the following changes to improve information availability to stakeholders:
 - (i) • Changes timeline for filing application for preferential and other transactions on or before 130th day of ICD. It provides that a copy of application made regarding preferential and other transactions be shared with the prospective resolution applicants to enable them to account for such information while proposing the resolution plan.
 - (ii) • Changes the timeline for submission of information memorandum to on or before 95th day from the ICD from 54th day. It also mandates that information memorandum should also include further relevant information such as operations of CD, financial statements, contingent liabilities, geographical coordinates of fixed assets, company overview. It also includes details of business evolution for CDs with asset size of more than Rs.100 crore.
- With the aim to reduce delays in the process and enhance efficiency of available time the amendment the amendment enables the CoC to examine whether it wants to explore option of compromise or arrangement and file such recommendation with AA while applying to AA for liquidation order. In cases where it decides to explore, it should explore the option during the period, order for liquidation is awaited from the AA. The amendment also introduces

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guiding factors that may be considered by CoC while making an early decision to liquidate the CD. It also provides that the reasons be recorded based on these factors and presented to AA as part of the application for liquidation.

- The amendment also provides the following to make the resolution process more transparent and robust:
 - (i) A common email address be used throughout the CIRP, and Liquidation of a CD and this email needs to be handed over to the succeeding IP conducting the process.
 - (ii) The IRP/RP to communicate to the creditors of corporate debtor (CD), as per the last available books of accounts, the public announcement and invite claims through post or electronic means.
 - (iii) It has been clarified that a meeting of COC can be convened till resolution plan is approved or an order for liquidation is passed and matters which do not affect the resolution plan can be decided upon.
- The amended regulations are effective from 16-9-2022. These are available at www.ibbi.gov.in.

10. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Fourth Amendment) Regulations, 2022

Vide Notification No. IBBI/2022-23/GN/REG099, Dated 28-9-2022, the Insolvency and Bankruptcy Board of India hereby makes **the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Fourth Amendment) Regulations, 2022** further to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, namely: —

In the principal regulations, in **regulation 4**,

- (i) the existing regulation shall be renumbered as "4.(1)", and
- (ii) after sub-regulation (1), the following sub-regulation shall be inserted, namely: —

"(2) No insolvency professional entity, recognised by the Board under regulation 13, shall be eligible to be registered as an insolvency professional, if the entity and/or any of its partner or director, as the case may be, is not fit and proper person under clause (g) of sub-regulation (1)."

See page no. 3.173 of the Study Material

11. Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Vide Press Release No. IBBI/PR/2022/37, dated 20-9-2022, the Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022 ('Amendment Liquidation Regulations') and Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022 ('Amendment Voluntary Liquidation Regulations') on 16th September, 2022.

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To enable better participation of stakeholders and streamline the liquidation process to reduce delays and realise better value, the amendment in Liquidation Regulations make the following major modifications:—

- ◆ The Committee of Creditors (CoC) constituted during Corporate Insolvency Resolution Process (CIRP) shall function as Stakeholders Consultation Committee (SCC) in the first 60 days. After adjudication of claims and within 60 days of initiation of process, the SCC shall be reconstituted based upon admitted claims.
- ◆ The liquidator has been mandated to conduct the meetings of SCC in a structured and time bound manner with better participation of stakeholders.
- ◆ The scope of mandatory consultation by liquidator, with SCC has been enlarged. Now, SCC may even propose replacement of liquidator to the Adjudicating Authority (AA) and fix the fees of liquidator, if the CoC did not fix the same during CIRP.
- ◆ If any claim is not filed during liquidation process, then the amount of claim collated during CIRP shall be verified by the liquidator.
- ◆ Wherever the CoC decides that the process of compromise or arrangement may be explored during liquidation process, the liquidator shall file application only in such cases before Adjudicating Authority for considering the proposal of compromise or arrangement, if any, within thirty days of the order of liquidation.
- ◆ Specific event-based timelines have been stipulated for auction process.
- ◆ Before filing of an application for dissolution or closure of the process, SCC shall advise the liquidator, the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, shall be pursued after closure of liquidation proceedings.

The Amendment Liquidation Regulations and Amendment Voluntary Liquidation Regulations further lay down the manner and period of retention of records relating to liquidation and voluntary liquidation of a corporate debtor or corporate person, respectively.

The Amendment Liquidation Regulations and Amendment Voluntary Liquidation Regulations are effective from 16th September, 2022. These are available at www.mca.gov.in and www.ibbi.gov.in.

12. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Third Amendment) Regulations, 2022 - Amendment in Regulations 6 and 7

Vide Notification No. IBBI/2022-23/GN/REG97, Dated 20-9-2022, in exercise of the powers conferred by sections 196, 207 and 208, read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Insolvency and Bankruptcy Board of India hereby makes the **Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Third Amendment) Regulations, 2022** further to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, namely: —

They shall come into force with effect from 1st October, 2022.

In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), in **regulation 6**, in sub-regulation (1), for the words "ten", the words "**twenty**" shall be substituted.

In the principal regulations, in **regulation 7**, in sub-regulation (2),

(a) for clause (c), the following shall be substituted, namely: —

"(c) pay to the Board, a fee of twenty thousand rupees, in case the insolvency professional is an individual or a fee of two lakh rupees, in case the insolvency professional is an insolvency

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professional entity, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due.

Illustration

Where registration is granted on 2nd February, 2022 in the year 2021-22, the fee shall become due on 1st April, 2027, after five years (2022-23, 2023-24, 2024-25, 2025-26 and 2026-27) and it shall be paid on or before the 30th April, 2027."

- (b) in clause (ca),
- (i) for the decimal, number and word "0.25 percent", words "one per cent." shall be substituted.
 - (ii) after second proviso, the following shall be inserted, namely:-
"Provided further that where the insolvency professional is an insolvency professional entity, it shall pay to the Board, a fee calculated at the rate of one per cent of professional fee earned for the services rendered as an insolvency professional in the preceding financial year on or before the 30th day of April every year, along with a statement in Form G of the Second Schedule."

- (c) after clause (ca), the following sub-clause shall be inserted, namely: —

"(cb) pay to the Board, a fee specified under sub-regulation (2) of regulation 31A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, within a period of thirty days, after end of each quarter or upon closure of the processes whichever is earlier, along with a statement in Form EA of the Second Schedule.

Explanation : "quarter" means the period of three months commencing on the first day of January, April, July or October of a financial year."

See page no. 3.173 of the Study Material

III. The Prevention of Money Laundering Act, 2002

1. Section 73 of the Prevention of Money-Laundering Act, 2002, read with Rule 9A of the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 - Power to make Rules - Rule 9 Shall not apply to Foreign Portfolio Investor

Notification No. G.S.R. 5(E) [F. No. P-12011/3/2020-Es Cell-Dor], Dated 4-1-2022

In exercise of the powers conferred by sub-clause (i) of clause (h) of sub-rule (2) of rule 9A of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, the Central Government in consultation with the regulatory authority, namely the Securities and Exchange Board of India, in the public interest and in the interest of the regulated entity, namely the Foreign Portfolio Investor, hereby directs that the provisions of sub-rule (1A) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 shall not apply to the Foreign Portfolio Investor.

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2. Section 49, read with Section 13 of the Prevention of Money-Laundering Act, 2002 - Authorities and other officers - Appointment and Powers of - Appointment of Director to Exercise Power with Regard to Specified Dealers

Notification S.O. 5475(E)[F. No. P-12011/6/2022-Es Cell-Dor] , Dated 24-11-2022, in exercise of the powers conferred by sub-sections (1) and (3) of section 49 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby appoints the Principal Additional Director General (Audit), Central Board of Indirect Taxes and Customs, as the Director, to exercise the powers conferred under section 13 of the said Act with regard to the dealers in precious metals and precious stones and the real estate agents, with effect from the 15th day of November, 2022.

See page no. 4.25 of the Study Material

IV. The 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 ARR, the all-in-cost ceiling for new FCY

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	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 ARR, 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

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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.– For 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

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(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

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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

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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 Depository 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;

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(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 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.

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

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.

1. 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;

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(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—

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- (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 Depository 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

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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.

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