PAPER 4: CORPORATE AND ECONOMIC LAWS

PART – I: RELEVANT AMENDMENTS FOR NOVEMBER 2023

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

Here is the list of the relevant amendments made during the period of 1st May 2021 to 30th April 2023, arranged chronologically.

I. COMPANIES ACT, 2013

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

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

See Page no. 3.4 of the Study material

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

(a) foreign companies;

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

See Page no. 9.17 of the Study material

3. Ministry of Corporate Affairs, Vide **Notification G.S.R. 538(E), dated 5th August, 2021**, in exercise of the powers conferred by clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390, read with section 469 of the Companies Act, 2013, Central Government hereby enforces **the Companies (Registration of Foreign Companies) Amendment Rules, 2021** to amend the Companies (Registration of Foreign Companies) Rules, 2014.

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

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

See Page no. 9.2 of the Study material.

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

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

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

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

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

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

(A) an advocate of a court; or

(B) in practice as a chartered accountant; or

(C) in practice as a cost accountant; or

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

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

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

Vide Notification G.S.R. 301(E) [F. NO. 5/28/2020-CL-VII], DATED 19-4-2022, in exercise of the powers conferred by sub-section (1) of section 406, read with sub-sections (1) and (2) of

section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, further to amend the Nidhi Rules, 2014, namely:-

Short title and commencement.

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

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

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

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

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

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

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

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

V. In rule 6, of the said rules,

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

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

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

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

VII. In the said rules, in rule 9,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. The Companies (Registered Valuers and Valuation) Amendment Rules, 2022 - Amendment in Rules 3, 8 & Insertion of Rules 7A

Vide Notification No. G.S.R. 831(E) [F.NO.1/27/2013-CL-V(PART)], Dated 21-11-2022

1. The Central Government hereby makes the following rules further to amend the Companies (Registered Valuers and Valuation) Rules, 2017, through enforcement of the Companies (Registered Valuers and Valuation) Amendment Rules, 2022.

In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereafter referred to as the said rules), in rule 3, in sub-rule (2),-

(i) in clause (c), for the word "ineligible", the word "eligible" shall be substituted;

(ii) after clause (e), the following clause shall be inserted, namely:-

"(f) it is not a member of a registered valuers organisation:

Provided that it shall not be a member of more than one such registered valuers organisation at a given point of time:

Provided further that the partnership entity or company, already registered as valuers, on the date of commencement of the Companies (Registered Valuers and Valuation) Amendment Rules, 2022, shall comply within six months of such commencement with the conditions specified under this clause.".

Refer Page no. 10.4 & 10.5- in Module 2

2. In the said rules, after rule 7, the following rule shall be inserted, namely:-

"7A. *Intimation of changes in personal details etc., by registered valuer to authority.*—A registered valuer shall intimate the authority for change in the personal details, or any modification in the composition of partners or directors, or any modification in any clause of the partnership agreement or Memorandum of Association, which may affect registration of registered valuer, after paying fee as per the Table -I in Annexure V."

Refer Page no. 10.6 in Module 2 after point no. 4

3. In the said rules, in rule 8, in the proviso, in clause (*a*), for the word, "standards;", the words, "standards; or" shall be substituted.

Refer Page no. 10.6 in Module 2 under point no. 5 –sub-heading (1)-in sub-point (a)

9. The Companies (Registration of Foreign Companies) Amendment Rules, 2023 - Amendment in Rule 3

Vide Notification No. G.S.R. 36(E) [F. NO. POLICY-01/11/2022-CL-V-MCA], DATED 20-1-2023, Central Government hereby amends the Companies (Registration of Foreign Companies) Rules, 2014 through the enforcement of the Companies (Registration of Foreign Companies) Amendment Rules, 2023 w.e.f. 23rd January 2023.

In the Companies (Registration of Foreign Companies) Rules, 2014

(a) in sub-rule 2 of rule 3, for clause (*c*), the following clause shall be substituted, namely: —

"(c) father's name or mother's name **or** spouse's name;";

Refer: Page 9.4 in point no. 3 under clause (c)

II. SEBI (LODR) Regulations, 2015

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

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

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

(A) In regulation 3

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

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

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

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

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

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

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

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

Amended Regulation 3

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

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

(b) non-convertible securities;

(c) Indian depository receipts;

(d) securitised debt instruments;

(da) security receipts

(e) units issued by mutual funds;

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

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

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

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

(B) In regulation 6

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

Amended Regulation heading

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

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

(C) In regulation 17A

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

Amended Regulation

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

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

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

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

Amended Regulation

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

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

Amended Regulation

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

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

(E) In regulation 19(1)

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

Amended Regulation

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

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

(F) In regulation 21

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

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

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

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

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

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

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

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

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

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

Amended regulation

[Risk Management Committee.

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

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

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

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

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

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

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

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

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

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

ii. a 'high value debt listed entity'.

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

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

(G) Regulation 24(5)

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

Amended Regulation

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

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

(H) Regulation 26

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

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

Amended Regulation

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

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

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

[I] Regulation 27(2)

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

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

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

[J] Regulation 29(1)(f)

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

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

[k] In Schedule V,

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

["(5) Stakeholders' relationship committee

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

(b) name and designation of the compliance officer;

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

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

(e) number of pending complaints."

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

"(5A) Risk management committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

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

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

III. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

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

Reserve Bank of India, Vide Notification No. FEMA 23(R)/(5)/2021-RB, Dated September 08, 2021 through the enforcement **of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021** the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations') has been amended:

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

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

See Page no. 1.58 of the Study material.

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

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

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

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

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

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

Vide Notification G.S.R. 646(E) dated 22 August 2022, through Ministry of Finance, in exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 and sub-section (3) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management

(Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

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

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

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

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

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

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

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

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

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

(g) "financial service regulator" means a financial service regulator established under any law in force in India and include the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority;

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

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

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

(j) "Indian entity" means–

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

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

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

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

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

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

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

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

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

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

Explanation.– For the purposes of this clause, "net worth" of registered partnership firm or Limited Liability Partnership shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) out of Resident Foreign Currency Account; or

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

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

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

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

(A) Debt instruments:

(i) Government bonds;

(ii) corporate bonds;

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

(iv) borrowings by firms through loans; and

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

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

(ii) capital participation in Limited Liability Partnerships;

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

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

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

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

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

(viii) contribution to trusts; and

(ix) depository receipts issued against equity instruments;

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

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

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

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

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

8. Prohibition on investment outside India– Save as otherwise provided in the Act or these rules or the regulations made or directions issued under the Act, no person resident in India shall make or transfer any investment or financial commitment outside India.

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

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

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

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

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

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

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

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

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

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

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

10. No Objection Certificate.–

(1) Any person resident in India who,–

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that the above conditions shall not be applicable in case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or

indirectly, by the Indian entity or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

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

18. Restructuring.– A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses:

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

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

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

(a) real estate activity;

(b) gambling in any form; and

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

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

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

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

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

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

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

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

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

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

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

(1) Save as otherwise provided in the Act or this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank:

Provided that nothing contained in this rule shall apply to a property– (i) held by a person resident in India who is a national of a foreign State;

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

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

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

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

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

(a) by way of inheritance;

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

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

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

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

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

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

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

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

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

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

Schedule I

[See rule 11]

Manner of making Overseas Direct Investment by Indian entity

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

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

(ii) acquisition through bidding or tender procedure;

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

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

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

(v) the swap of securities;

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

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

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

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

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

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

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

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

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

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

3. Limit for financial commitment– (1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

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

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

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

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

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

Schedule II

[See rule 12]

Manner of making Overseas Portfolio Investment by an Indian entity

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

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

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

Schedule III

[See rule 13]

Manner of making Overseas Investment by resident individual

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

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

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

(ii) OPI, including by way of reinvestment;

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

(a) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the

Act or does not require prior permission of the Central Government or the Reserve Bank;

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

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

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

(e) inheritance;

(f) acquisition of sweat equity shares;

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

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

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

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

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

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

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

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

3. Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares.– (1) A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such

overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis. *Explanation*.– For the purposes of this paragraph, the expression,–

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

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

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

Schedule IV

[See rule 14]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule V

[See rule 15]

Overseas Investment in IFSC by person resident in India

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

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

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

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

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

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

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

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

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;

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

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

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

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

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

(3) No guarantee shall be open-ended.

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

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

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

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

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

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

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

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

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

Provided that–

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

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

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

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

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

7. Acquisition or transfer by way of deferred payment.– (1) Where a person resident in India acquires equity capital by way of subscription to an issue or by way of purchase from a person resident outside India or where a person resident outside India acquires equity capital by way of purchase from a person resident in India, and where such equity capital is reckoned as ODI, the payment of amount of consideration for the equity capital acquired may be deferred for such definite period from the date of the agreement as provided in such agreement subject to the following terms and conditions, namely:–

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

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

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

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

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

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

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

(iii) by swap of securities;

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

9. Obligations of person resident in India.– (1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share

certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that no such reporting shall be required where–

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

(ii) a foreign entity is under liquidation.

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

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

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

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

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

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

11. Delay in reporting.– (1) A person resident in India who does not submit the evidence of investment within the time specified under sub-regulation (1) of regulation 9 or does not make any filing within the time specified under regulation 10, may make such submission or filing, as the case may be, along with Late Submission Fee within such period as may be advised, and at the rates and in the manner as may be directed by the Reserve Bank, from time to time:

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

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

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

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

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IV. The Prevention of Money Laundering, 2002

1. Section 2(1)(Sa)(iii) of the Prevention of Money-Laundering Act, 2002, read with section 2(zm) of the Real Estate (Regulation And Development) Act, 2016 - Person carrying on designated business or profession - Notified Real Estate Agent

Vide Notification G.S.R. 855(E) [F.NO.P-12011/7/2022-ES CELL-DOR)], Dated 29-11-2022, in exercise of the powers conferred under sub-clause (*iii*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002, the Central Government hereby notifies that 'real estate agents' as defined under clause (*zm*) of section 2 of the Real Estate (Regulation and Development) Act, 2016 and as a person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs and above, as a "person carrying on designated business or profession".

Refer Page no. 3.6 in Module 3 under the heading "Other definitions".

2. Section 2(1)(Sa)(iii) of the Prevention of Money-Laundering Act, 2002, Read With Section 2(zm) of the Real Estate (Regulation And Development) Act, 2016 - Person carrying on designated business or profession - Notified Real Estate Agent - Rescission of Notification G.S.R. 798(E) [F.No.P.12011/14/2020-Es Cell-Dor)], Dated 28-12-2020.

Vide Notification G.S.R. 854(E) [F.NO.P-12011/7/2022-ES CELL-DOR)], Dated 29-11-2022, in exercise of the powers conferred under sub-clause (*iv*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue, No. F.No.P-12011/14/2020-ES Cell-DOR, dated 28th December, 2020, published in the Gazette of India, Part II, Section 3, Sub-section (*i*), Extra-ordinary, vide G.S.R. 798(E), dated the 28th December, 2020.

Refer Page no. 3.6 in Module 3 under the heading "Other definitions".

3. Section 2(1)(Sa)(iv) of the Prevention of Money-Laundering Act, 2002 - Person carrying on designated business or profession - Dealings in Virtual Digital Asset - Notified activity for purpose of said clause.

Vide Notification S.O. 1072(E) [F. NO. P-12011/12/2022-ES-CELL-DOR], Dated 7-3-2023, in exercise of the powers conferred by sub-clause (*vi*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to the as the Act), the Central Government hereby notifies that the following activities when carried out for or on behalf of another natural or legal person in the course of business as an activity for the purposes of said sub sub-clause, namely:—

(i) exchange between virtual digital assets and fiat currencies;

(ii) exchange between one or more forms of virtual digital assets;

(iii) transfer of virtual digital assets;

(iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and

(v) participation in and provision of financial services related to an issuer's offer and sale of a virtual digital asset.

Explanation:—. For the purposes of this notification "virtual digital asset" shall have the same meaning assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

Refer Page no. 3.6 in Module 3 under the heading "Other definitions".

V. FCRA

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

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

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

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

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

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

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

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

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

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

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

Question 1. Who is eligible to submit revision application?

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

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

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

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

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

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

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

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

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

Question 6. Is there any format of revision application?

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

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

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

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

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

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

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

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

VI. The Insolvency and Bankruptcy Code, 2016

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

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

Prior to its substitution Rule 18, read as under:

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

Said regulation shall be substituted with the following:

"18. Meetings of the committee.

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

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

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

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

Amended regulation

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

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

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

Amended Law may be read as:

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

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

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

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

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

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

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

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

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

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

PART – II : QUESTIONS AND ANSWERS

CASE SCENARIO - The Regional Director while carrying out the processing of the DIR-5 form which dealt with the Application for surrender of Director Identification Number, pursuant to section 153 & Rule 11(f) of Companies (Appointment and Qualification of Directors) Rules, 2014, observed that Mr. Brij, an individual, had applied for and obtained two Director Identification Numbers on the Ministry of Corporate Portal as per details given below:

Sr. No	No of DINs	Director Identification Number	Obtained On
1	First one	DIN 02191513	23 August, 2010
2	Second one	DIN 08028478	04 January, 2021

Upon observing the two DINs by an individual, the Regional Director issued directions to the Registrar of Companies (RoC) of the jurisdiction, vide the office letter dated 5th September, 2022 to take necessary action for violation of section 155 of the Companies Act, 2013.

Upon receipt of the directions from the Regional Director, the RoC having reason to believe that the Mr. Brij, had violated the provisions of the Companies Act, 2013, by obtaining more than one DIN. RoC issued a show cause notice to the Mr. Brij on 19th October, 2022 for violation of Provisions of section 155 of the Companies Act, 2013 asking him to show cause as to why penal actions could not be initiated against him for the alleged violation.

Mr. Brij had admitted having obtained two DIN(s) in the first place and further he stated that one of the DIN being surrendered and justified his action.

Answer the following questions in the light of the given facts as per the Companies Act, 2013:

1. Does the surrender of DIN in the given case scenario by Mr. Brij is justifiable and held no liability under the Companies Act, 2013.

   (a) Yes, by surrender of one of the DIN, he justified his action and will not be liable for any penal action.

   (b) No, as Mr. Brij has already been allotted a DIN under section 154, he shall not apply for, obtain or possess another DIN and will be liable for penal action.

   (c) Yes, paying fine and surrendering DIN, will be considered as good to compliance and make him not liable for any penal action.

   (d) Yes, on an application made by Brij to surrender his DIN along with declaration that said DIN has never been used, can exonerate him from penal action.

2. State which of the following may be the valid reasons for surrender of the DIN by Mr. Brij in the provided situation-

Statement I: the DIN found is not duplicated

Statement II: DIN was not obtained in a wrongful manner/by usage of fraudulent means here.

Statement III: On an application made by him to surrender his DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority.

(a) Both Statement I and II are correct

(b) Both Statement II and III are correct

(c) Statement III only is correct

(d) All the Statement I,II &III are correct

3. Who shall be considered as liable for issue of more than one DIN to Mr. Brij:

(a) The Central government who allotted a Director Identification Number (DIN) to the applicant, Mr. Brij.

(b) Regional director, who examined, application of Mr. Brij and verified to be completed in all the sense.

(c) Mr. Brij, himself for default in compliance with the provisions of section 152, section 155 and section 156.

(d) The Registrar or any other officer or authority who issued the DIN as authorised by the Central Government.

4. Compute the total penalty levied on person as per above question by the RoC, if the default after the first default continued by further period of 907 days :

(a) 5,02,000

(b) 5,00,500

(c) 5,04,000

(d) 5,03,500

Independent MCQS

5. ABHI Limited, a listed company, proposed Mr. Arun and Mr. Raj, before the Board to appoint one of them as a Small Shareholder Director (SSD).

Particulars about proposed SSD's

Mr. Arun	He holds 50 preferential shares of ABHI Limited. Also, currently working as Small Shareholder's Director in Sona Limited, which is not competing in business to ABHI Limited.
Mr. Raj	He is not holding any shares of ABHI Limited. He is currently representing two different companies, one as a director and another as a Small Shareholder Director.

Requirement: Examine in the light of the given facts as per the Companies Act, 2013, the correct statement on the validity of the proposal of appointment of Mr. Arun and Mr. Raj as a Small Shareholder Director in ABHI Limited?

(i) Proposal to appoint Mr. Arun is only valid and he can be appointed as Small Shareholder Director as he is holding shares of ABHI Limited though he is a SSD in Sona Ltd.

(ii) Proposal to appoint Mr. Raj is invalid as he is not eligible to be appointed as a SSD as already he is holding a directorship in two different companies and also having no shares in ABHI Ltd.

(iii) Proposal of appointment of Mr. Raj and Mr. Arun, both is valid as they are eligible to be appointed as SSD's in ABHI Ltd., irrespective of their holding as a Small Shareholder Directorship in one of the companies.

(iv) Proposal of appointment of Mr. Raj and Mr. Arun in invalid as both are ineligible to be appointed as SSD's as they are being a director in more than two companies.

(a) Statement (i) only

(b) Statements (i) & (ii)

(c) Statement (iii) only

(d) Statement (iv) only

6. ABC Limited was dissolved on January 1, 2020. After two years, on January 1, 2022, the company creditor, Mr. Patel, applies to the Tribunal to declare the dissolution void. Mr. Patel, had an outstanding amount of ₹ 1 crore owed by ABC Limited. However, before the dissolution of ABC Limited, the company write off the outstanding amount in its books of accounts.

Requirement: Suggest your opinion, what will the Tribunal do as per the provision of the Companies Act, 2013 from amongst the given act:

I. The Tribunal will make an order declaring the dissolution to be void.

II. Ask the Liquidator to forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same.

III. Certified copy of the dissolution order is to be filed by Mr. Patel with the Registrar.

IV. The Tribunal will not grant the application.

Choose the correct option.

(a) I and II

(b) II only

(c) I and III

(d) IV only

7. Bhola Ltd. is a company that was registered on 1st January, 2015. However, the company has not been carrying on any business or operation since the financial year ending on 31st March, 2021. The Registrar is of view, that if a company does not carry on any business or operation and has not applied for obtaining the status of a dormant company, he has the right to issue a notice to the company and all its directors regarding the intention to remove the company's name from the register of companies. Hence, the Registrar issued the so called notice on 21st February, 2023.

Requirement: Choose the correct option, as regards issue of notice to the Bhola Ltd.

(a) The Registrar need to issue such notice only after financial year ending on 31st March 2023.

(b) The Registrar need to issue such notice within thirty days, after financial year ending on 31st March 2021.

(c) The Registrar can issue such notice immediately after the financial year ending on 31st March 2021.

(d) The Registrar can issue such notice within ninety days, after the financial year ending on 31st March 2022.

8. Supriya is one of the directors of Paridhi Tours and Travels Limited (PTTL) whose paid-up share capital is ₹ 4,50,00,000. She holds shares worth ₹ 13,50,000 in Swikriti Bus Suppliers Limited (SBSL) whose paid-up capital is of ₹ 2,00,00,000 and is in the business of supplying tourist buses. Being in need of adding three more tourist buses in its existing fleet of ten buses, PTTL through Supriya approached SBSL for the purpose of purchasing the required buses knowing fully well that Supriya holds certain amount of shares in SBSL making her an interested director.

Requirement: Out of the following four options, which one is applicable in the given situation:

(a) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹ 1,00,000 but not exceeding 1,50,000.

(b) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹ 1,50,000 but not exceeding 2,00,000.

(c) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹ 2,00,000 but not exceeding 3,00,000.

(d) Supriya, as interested director, must be holding shares exceeding ₹ 4,00,000 in SBSL.

9. Mr. Suraj, is an editor of Dailybird Newspaper. One of his relative Mr. Chand, who is residing abroad remitted foreign contribution of around ₹ 1.5 lakhs to him for arrangement of a Medical camp in a village for needy people. In what manner will you justify this remittance as per the provision of the FCRA, 2010?

(a) The remittance shall be deemed as a foreign contribution and needs to be reported to the Central Government.

(b) The remittance received from the relative cannot be deemed as a foreign contribution but needs to be reported to the Central Government.

(c) The remittance received from the relative cannot be deemed as a foreign contribution and it is not required to be reported to the Central Government.

(d) Being an editor of the newspaper, Mr. Suraj is not entitled to receive such remittance and it will be treated as foreign contributions.

10. ABC Corporation, a listed public company is engaged in the manufacturing sector. The company's shares are traded on a recognized stock exchange. The Securities and Exchange Board of India (SEBI), the regulatory authority for securities markets, receives credible information suggesting the involvement of certain key executives of ABC Corporation in insider trading activities. Based on the provisions of the Act, which amongst the stated measure can SEBI undertake, during the investigation:

I. SEBI can suspend the trading of ABC Corporation's shares on the recognized stock exchange.

II. SEBI can impound and retain the proceeds or securities related to the insider trading transactions.

III. SEBI can attach the bank accounts of the intermediary & executives involved in insider trading for a period of two month.

IV. SEBI can suspend the office bearer of ABC Corporation's involved in insider trading.

Choose the correct option-

(a) I only

(b) I & II

(c) I, II & III

(d) I, II & IV

11. Jain Ltd., a corporate debtor classified as a Small Enterprise, is facing financial difficulties and owes ₹ 75 lakh to its creditors. Despite efforts, Jain Ltd. is unable to recover the money it lent to its debtors in times of need, leading to default in settling dues to its creditors. ABC Ltd. (a Financial Creditor) decides to initiate the Pre-Packaged Insolvency Resolution Process (PPIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The Financial Creditors, who are not related parties, proposed Mr. Q as the Resolution Professional (RP) to conduct the PPIRP. Such Financial Creditors of the corporate debtor, representing sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal.

Requirement: Based on the given scenario, is the act of Financial Creditors proposing and approving, Mr. Q as the Resolution Professional, valid for initiating pre-packaged insolvency resolution process under the Insolvency and Bankruptcy Code?

(a) Yes, because the Financial Creditors approving the proposal of appointment of RP were representing the required percentage of financial debt due to them against the limit specified.

(b) No, because the Corporate Debtor is classified as a Small Enterprise, and therefore, the PPIRP cannot be initiated.

(c) No, because the Financial Creditors should propose the name of the Resolution Professional only if they are related parties.

(d) Yes, because the Corporate Debtor has committed default as per Section 4 of the IBC, and the Financial Creditors have the authority to propose the Resolution Professional.

Descriptive Questions

12. HUB Limited, an unlisted public company is neither a subsidiary nor a holding company of any other company. The company is also not a part of any joint venture.

From the latest audited financial statements of the company relating to the Financial Year 2022-2023, the following financial figures have been revealed:

(i)	The paid-up capital of the company is ₹ 9 crore, consisting of 9,00,000 equity shares of ₹ 100 each.
(ii)	The turnover of the company for the financial year 2022-2023 was ₹ 99 crore.
(iii)	The amount of loans, debentures and deposits of the company was ₹ 99 crore.

The company has never appointed any Independent Director. After completion of statutory audit of the company for the Financial Year 2022-2023, Board felt need for expertise opinion on various financial matters in coming time. So, one of director, Mr. A, insisted the company to have at least one Independent Director. On the contrary, Mr. B, another director advised for having at least two Independent Directors. However, Mr. C, another director opined for not having any Independent Director.

Requirements: (i) Referring to the relevant provisions of the Companies Act, 2013, and the relevant rules made thereunder, advise the company whether the contention of any of the above directors is correct.

(ii) Applying relevant law in the given circumstances, decide, whether the contention of any of the directors is correct, in case, HUB Limited is a subsidiary of SUB Limited.

13. BPLUS Limited, engaged in the manufacturing of readymade garments, is having sufficient profits to make payment to its managerial personnel. The company in order to provide proper justification to the efforts of the Managing Director of the company intends to pay him the maximum remuneration permissible under the provisions of the Companies Act, 2013, but without seeking any permission from the members of the company.

The Net Profit after Tax was calculated at ₹ 3,20,00,000 for the Financial Year 2022-2023.

Over and above the normal allowable Income and Expenses, the Statement of Profit and Loss of the Company included the following Income and Expenses. Referring to the applicable provisions of the Companies Act, 2013, calculate the maximum remuneration permissible for the Managing Director, for which no permission from the members of the company will be required to be taken by the Board.

Credit Side:

Sl. No.	Items	Amount
1.	Subsidies received from the Central Government (Not in capital nature and no direction has been given by the Central Government with regard to the subsidies)	₹ 24,00,000
2.	Profits earned by way of premium on issue of shares	₹ 10,00,000

3.	Profits earned by way of premium on issue of debentures	₹ 20,00,000
4.	Profit on sale of forfeited shares	₹ 8,00,000
5.	Profit on sale of Fixed Assets of the company (Cost Price ₹ 20,00,000, written down value on the date of sale ₹ 15,00,000 and the Fixed Asset was sold for ₹ 22,00,000)	₹ 7,00,000

Debit Side:

Sl. No.	Items	Amount
1.	Interest on debentures issued by the Company	₹ 20,00,000
2.	Interest on unsecured loans	₹ 12,00,000
3.	Provision for Income-Tax	₹ 50,00,000

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

Particulars	Amount in INRs (in '000)
Share Capital	50000
Free Reserves	116000
Capital Redemption Reserve	28000
Revaluation Reserve	59400
Security Premium	32000
Secured Debt/Loans	98500
Unsecured Debt/Loan	33200

Unsecured Debt/Loan includes temporary loans of ₹ 30 lakh, out of which ₹ 13 lakh raised for the purpose of financial expenditure of a capital nature, whereas ₹ 8 lakh repayable on demand and remaining ₹ 9 lakh will be repayable in three equal instalment starting from next month.

Advice the Board of Directors how much they can borrow as per the requirement of the section 180(1)(c) of the Companies Act, 2013.

15. Based on an application under Section 272 of the Companies Act, 2013 made by Goodluck Limited, the Tribunal appointed a provisional liquidator on 26th May, 2023. The Company seeks your advice about the consequences of the legal actions already or yet to be initiated in the following circumstance-.

    (i) A request letter was already issued to Goodluck Limited with reference to a cheque bounce case by a creditor. The creditor now wants to go to the appropriate court of law to take legal action.

    (ii) A case relating to encroachment of land already initiated by Mr. A against Goodluck Limited, which is pending and hearing is in progress in the District Court.

    (iii) A case relating to acquisition of a building against Goodluck Limited is pending before the jurisdictional High Court.

16. The requisite number of shareholders of Common Limited, which has been incorporated under the Companies Act, 2013, filed an application with the National Company Law Tribunal (NCLT) under Section 241 highlighting the mismanagement in the conduct of the affairs of the company. Taking cognizance of the application, NCLT passed an order under Section 420 on 20th October, 2022 providing the sought after relief to the shareholders of Common Limited. On finding some mistake in the order, the shareholders brought the same to the notice of NCLT for rectification. Discuss in the light of the provisions of the Companies Act, 2013.

    (i) What is the maximum time period within which NCLT can amend the order?

    (ii) What will be your answer if the group of shareholders makes an appeal against the order on 15th November, 2022?

17. ZIZA Software Limited, a company registered in New Zealand, which has recently started its operations in India through a branch office located in Mumbai. The Company has appointed Mr. Ziyan to look after the operations in India. Mr. Ziyan seeks your advice regarding the following matters in respect of ZIZA Software Limited so that the compliance requirements are not violated. Referring to the applicable provisions of the Companies Act, 2013, advise him regarding the following:

    (i) The Registrar office where all the documents relating to the Company are required to be filed.

    (ii) The mode of service of documents by the RoC on a foreign company.

    (iii) The time period within which financial statements relating to each financial year are required to be filed with Registrar of Companies.

(iv) Requirement of filing other financial statements if any, with the RoC along with the financial statements relating to Indian business operations, in case the Government has not given any specific exemption or direction in this regard.

(v) Persons by whom the accounts pertaining to the Indian business operations shall be required to be audited.

18. An order for investigation was issued by the Central Government against RSK Limited by virtue of a report submitted by the Registrar of Companies against the Company. Since the Company was not in good shape, the members being informed about the investigation order, passed a Special Resolution for voluntary winding up of the Company. The Inspector who has arrived for investigation was informed that the Company is heading for voluntary winding up and therefore no investigation proceedings should be initiated. He did not listen to the plea of the Company and decided to move ahead with the investigation process. One director of RSK Limited rushed to you and seeks your advice whether the contention of the inspector is tenable .

Referring to and analyzing the applicable provisions of the Companies Act, 2013, advise the director.

Will you differ in case a special resolution was not passed for voluntary winding up of the Company, rather an application was made by 101 members of the company before the Tribunal for relief against oppression after the order for investigation was passed?

19. Examine on the legal validity of the given situations in the light of the relevant FEMA Rules/Regulations:

(i) Mr. A, a resident individual, acquires foreign securities by way of inheritance from a person resident in India who is holding such securities.

(ii) Mr. A was prohibited to acquire foreign securities by way of gift from a person resident outside India.

20. (i) Mr. P managed to transfer his proceeds of crime abroad and converted the proceeds into immovable properties in his wife's name with the help of his friend residing abroad. Explain, referring to the provisions of the Prevention of Money Laundering Act, 2002, will he succeed in escaping the investigation proceedings and the property situated abroad not being subjected to confiscation?

(ii) Wealth Bank Limited is a banking company which has been recently incorporated. One of the directors of the Company rushed to you for your advice regarding the requirement of maintenance of certain records and furnishing of certain information relating to the transactions of banking company in terms of the provisions of the Prevention of Money Laundering Act, 2002.

21. Bharat Sevak, a NGO which is a holder of certificate for receiving foreign contribution, has received foreign contribution amounting ₹ 80,00,000 during the financial year 2022-2023 for the purpose of providing health facilities to the people residing in rural areas of India for conducting survey in this regard. Out of the above amount, the NGO has spent the following amount which it treats as an administration expenses. Referring to the applicable provisions of the Foreign Contribution (Regulation) Act, 2010 and Rules made thereunder, decide whether the following amount spent by the NGO is within the permissible limit as stipulated for administration expenses:

(i)	Salaries, wages and travelling expenses incurred for the employees of Executive Committee of the NGO- ₹ 10,00,000
(ii)	Salaries, wages and travelling expenses incurred for persons engaged in training, collecting and analyzing data of people of rural areas- ₹ 5,00,000
(iii)	Cost of electricity, water charges, telephone and internet charges, printing and stationery and repair & maintenance of NGO furniture used in the office of the Executive Committee of the NGO-₹ 6,00,000
(iv)	Cost of counting for the funds- ₹ 2,00,000 and
(v)	Salary of Doctors of hospitals where health facility is provided- ₹ 10,00,000

Also advise Bharat Sevak about the steps which should have taken to spend any amount in excess of the stipulated administration expenses.

22. XYZ Ltd. is a leading producer of garments and has a good reputation in the market. A dispute has been aroused between the management of XYZ Ltd. and its labours related to the basic facilities at the workplace such as working hours, air-conditioned environment, etc. The management of the company has sent a written invitation to the leader of labour union to conciliate on the issue raised by the labour on 20th January, 2023. The union accepted the invitation in writing and management received the reply on 10th February, 2023.

Examine the following situation as per the provisions of the Arbitration and Conciliation Act, 1996-

(i) Whether the conciliation proceedings shall be said to be commenced in the given case?

(ii) What if, the management received the reply on 26th February, 2023?

23. An application completed in all respect was filed by an operational creditor before the NCLT for initiating corporate insolvency resolution process against Triumph Limited. The NCLT after detailed examination of the application admitted the application and accepted the proposal of the operational creditor to appoint the person proposed in the application as the Interim Resolution Professional. The operational creditor along with his application had attached the consent of the proposed Interim Resolution Professional. Referring to the

provisions of the Insolvency and Bankruptcy Code, 2016 advise the matters relating to the following:

(i) Who will constitute the Committee of Creditors?

(ii) The time period within which the first meeting of the Committee of Creditors will be held.

(iii) The majority required for appointment of the Resolution Professional.

(iv) In a situation where it has been resolved to replace the Interim Resolution Professional with another Resolution Professional, what further steps are to be taken. When it will be required to continue with the Interim Resolution Professional in spite of the fact that it has been resolved to replace the Interim Resolution Professional with another Resolution Professional?

SUGGESTED ANSWER/HINTS

Multiple Choice Answers

1. (b)

2. (c)

3. (c)

4. (d)

5. (c)

6. (d)

7. (a)

8. (d)

9. (b)

10. (b)

11. (a)

Descriptive Answers

12. (i) In terms of the provisions of Section 149(4) of the Companies Act, 2013 read with Rule 4(1) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the following class or classes of companies (not being listed companies) shall have at least two directors as an Independent Directors.

(i) the Public Companies having paid up share capital of ₹ 10 crore or more; or

(ii) the Public Companies having turnover of ₹ 100 crore or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crore:

Provided that in case a company covered under this rule is required to appoint a higher number of Independent Directors due to composition of its audit committee, such higher number of Independent Directors shall be applicable to it.

In terms of the above provisions, since HUB Limited is an unlisted public company and as per the latest Audited Financial Statements of the company relating to the financial year 2022-2023, the amount of loans, debentures and deposits of the company was ₹ 99 crore which in excess of ₹ 50 crore. Accordingly in the light of the stated legal provision, the Company will have to appoint at least two Independent Directors. Therefore, the contention of Mr. B is tenable.

(ii) As per Rule 4(2) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the following classes of unlisted public companies shall not be covered under sub-rule (1), namely:-

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under Section 455 of the Act.

In case where HUB Limited is a subsidiary (not a wholly owned subsidiary) of SUB Limited, in terms of the above Rules, the provisions of Rule 4(1) will be applicable to HUB Limited and so accordingly Independent Directors will be required to be appointed by the Company. Hence in this situation also, contention of Mr. B, is correct.

13. As per the second proviso to sub-section (1) of Section 197 of the Companies Act, 2013, except with the approval of the company in general meeting, the remuneration payable to any one managing director, or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director, remuneration shall not exceed ten per cent. Of the net profits to all such directors and manger taken together.

While calculating the net profits for the purpose of Section 197, the **following debit** as charged to the Statement of Profit and Loss in the instant case shall not be considered and therefore will be added to the calculated profit.

Provision for Income Tax -₹ 50,00,000

While calculating the net profits for the purpose of Section 197, **following credits** as given to the Statement of Profit and Loss in the instant case shall not be considered and therefore will be deducted.

1.	Profits by way of premium on issue of shares	-	₹ 10,00,000
2.	Profits by way of premium on issue of debentures	-	₹ 20,00,000

3. Profits by sale of forfeited shares - ₹ 8,00,000

4. Profits on sale of Fixed Assets of the Company - ₹ 2,00,000

[Profit amount (on sale of fixed assets) allowed limited to the difference between the original cost of the fixed asset and its written-down value]. Thus Profit earned ₹ 7,00,000 but it is allowed upto the maximum of ₹ 5,00,000. Therefore amount disallowed and thus to be deducted is ₹ 7,00,000 – ₹ 5,00,000 = ₹ 2,00,000.

Thus the profit as per the provisions of Section 198 of the Companies Act, 2013 will be calculated as follows:

Net Profit as given	₹ 3,20,00,000
Add:	₹ 50,00,000
Less:	₹ 40,00,000
Profit as per Section 198	₹ 3,30,00,000

Maximum Remuneration that is allowed to be paid to the Managing Director is 5% of ₹ 3,30,00,000 = ₹ 16,50,000.

14. According to Section 180(1)(c) of the Companies Act 2013, the Board of Directors of a company shall borrow money only with the consent of the company by a special resolution, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Meaning thereby in case, "not exceeding" board resolution is sufficient.

Explanation to clause (c) provides for the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

Permissible Limit – ₹ 19.80 crore i.e. paid-up share capital, free reserves and securities premium (₹ 5+ ₹ 11.60+ ₹ 3.20)

Existing Borrowing – ₹ 13.00 crore i.e. Secured and Unsecured Debt/Loan excluding **"**temporary loans" means loans repayable on demand or within six months, other than loans raised for the purpose of financial expenditure of a capital nature" [₹9.85 Crore + ₹ 3.32 Crore – ₹ 0.17 (i.e. 0.30-0.13 crore]

Hence, till further borrowing of ₹6.80 crore (i.e. ₹ 19.80 - ₹ 13.00) board resolution is sufficient. In case of exceeding the permissible limit, special resolution at general meeting, is required.

15. As per the provisions of sub-section (1) of Section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

However, as per the requirement, such an application to the Tribunal seeking leave under this section, shall be disposed of by the Tribunal within sixty days.

As per the provisions of sub-section (2) of Section 279 of the Companies Act, 2013, nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

(i) In terms of the provisions of sub-section (1) above, since no legal action was initiated by the creditor before appointment of the provisional liquidator by the Tribunal, no suit or other legal proceeding can be initiated by the creditor.

(ii) In terms of the provisions of sub-section (1) above, since legal proceedings have already been initiated by Mr. A against the Company, it can be proceeded with against the Company only with the leave of the Tribunal and subject to such terms as the Tribunal may impose. As per the proviso, application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(iii) In terms of the provisions of sub-section (2) above, since the case relating to acquisition of a building against Goodluck Limited is pending before the jurisdictional High Court, provisions of sub-section (1) will not apply and therefore the legal proceeding will continue without any interference of the Tribunal.

16. As per section 420 of the Companies Act, 2013, the Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties.

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

So, in the given case:

(i) Tribunal can amend the order passed by it within a period of 2 years from the date of the order passed.

(ii) If the group of members makes an appeal against the order on 15th November, 2022, then no such amendment shall be made. Application made by the party for rectification of an error in the order, cannot be made.

17. (i) As per Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014 any document which any foreign company is required to deliver to the Registrar, shall be delivered to the Registrar having jurisdiction over New Delhi.

(ii) As per the provisions of Section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

(iii) As per Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, the financial statements relating to each financial year which are required to be filed with the Registrar of Companies, shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate.

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

(iv) As per Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014, documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country are also required to be filed along with the financial statements relating to the Indian operations.

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

(v) As per sub-rule (1) of Rule 5 of the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall get its accounts, pertaining to the Indian business operations audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing Chartered Accountants.

Mr. Ziyan should be advised in line with the above provisions.

18. As per Section 226 of the Companies Act, 2013, an investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that-

(a) an application has been made under section 241,

(b) the company has passed a special resolution for voluntary winding up, or

(c) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit.

In terms of the above provisions, the contention of the inspector is tenable since a special resolution for voluntary winding up cannot stop or suspend investigation proceedings.

In case a special resolution was not passed for voluntary winding up of the Company, rather an application was made by 101 members of the Company before the Tribunal for relief against oppression, such investigation shall not be stopped or suspended.

19. As per the Schedule III dealt with the FEMA Overseas Rules, 2022:

(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 b**y way of gift from a person resident outside India** in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 and the rules and regulations made thereunder.

Following shall be the answers:

(i) In this case, the acquisition of foreign securities by way of inheritance from a person resident in India, by Mr. A is in line as per given above provision under point (1). Hence this is a valid statement.

(ii) In this case, as per the provision given under point no. (3) above, Mr. A may acquire foreign securities by way of gift from a person resident outside India, in compliance of the provisions of the Foreign Contribution (Regulation) Act, 2010 and the related rules/Regulations made thereunder. Hence the given statement is invalid.

20. (i) According to section 57 of the Prevention of Money Laundering Act, 2002 a Special Court if satisfied, may issue a letter of request to a court or an authority in the Contracting State abroad to deal with such request to examine facts and circumstances of the case, take such steps as the Special Court may specify in a such letter of request, and forward all the evidence so taken or collected to the Special Court issuing a such letter of request.

As per section 60 of the Act, a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub-section (6) of section 8, and such property is suspected to be in a Contracting State, the Special Court on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the Contracting State for the execution of such order.

In the given case, Mr. P has transferred the proceeds of the crime into Contracting State, a Special Court by order to confiscate the property situated abroad and take steps to enforce his order by following the above procedures. Thus, Mr. P will not succeed in escaping the process of investigation and property being confiscated.

(ii) As per the provisions of sub-section (1) of Section 12 of the Prevention of Money Laundering Act, 2002, all banking companies, financial institutions and intermediaries shall-

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

The director of Wealth Bank Limited should be advised on the above lines.

21. As per Section 8 of the Foreign Contribution (Regulation) Act, 2010, every person who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall not defray as far as possible such sum, not exceeding twenty per cent of such contribution, received in a financial year to meet administrative expenses without prior approval of the Central Government.

Out of the expenses stated in the question, only the following expenses will be treated as part of administration expenses.

i. Salaries, wages and travelling expenses incurred for the employees of Executive Committee of the NGO - ₹ 10,00,000

ii. Cost of electricity, water charges, telephone and internet charges, printing and stationery and repair & maintenance of NGO furniture used in the office of the Executive Committee of the NGO - ₹ 6,00,000

iii. Cost of accounting for the funds - ₹ 2,00,000

In terms of the above provisions, the total administration expenses incurred by the NGO during the financial year 2022-2023 comes to ₹ 10,00,000 + ₹ 6,00,000 + ₹ 2,00,000 = ₹ 18,00,000

The limit of administration expenses is 20% of ₹ 80,00,00.0, i.e. ₹ 16,00,000.

The step that should have been taken by the NGO to spend the extra amount of ₹ 2,00,000, the NGO should have taken prior approval of the Central Government.

22. According to section 62 of the Arbitration and Conciliation Act, 1996 the process of the commencement of conciliation proceedings is as follows-

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

(4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

In the light of the above provisions

(i) Commencement of conciliation proceedings took place on acceptance of an invitation as it has been received by the management is within thirty days.

(ii) As the reply is not received by the management within thirty days, it will be treated as rejected in this case.

23. The question can be answered based on the provisions contained in Section 21 and Section 22 of the Insolvency and Bankruptcy Code, 2016.

(i) As per the provisions of sub-section (1) of Section 21, the interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(ii) As per the provisions of sub-section (1) of section 22, the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(iii) As per the provisions of sub-section (2) of Section 22, the committee of creditors, may, in the first meeting, by a majority vote of not less than sixty-six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(iv) As per the provisions of sub-section (3), sub-section (4) and sub-section (5) of Section 22, where the committee of creditors resolves under sub-section (2) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional. The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and shall make such appointment after confirmation by the Board. Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.