

CA Final Economic / Allied Laws

Amendments for Nov 2018 Exams and Onwards

Amendments applicable for both Old and New Syllabus

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Amendments applicable for both Old and New Syllabus

Foreign Exchange Management Act, 1999 (FEMA, 1999)

Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

As per the Notification dated 26th of March, 2018, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26th of March, 2018.

2. Relevant Definitions:- In these Regulations, unless the context otherwise requires -

- 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India;
- 'Overseas Citizen of India (OCI)' means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;
- 'Repatriation outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency;

3. Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-

- An NRI or an OCI may-
 - a) acquire immovable property in India other than agricultural land/ farm house/ plantation property:
 - Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.
 - Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.
 - b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
 - c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
 - d) transfer any immovable property in India to a person resident in India;
 - e) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

4. Acquisition of Immovable Property for carrying on a permitted activity:-

- A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -
 - a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;
- Provided that
 - i all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and
 - ii the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.
- b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).
- Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

5. Purchase/ sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals:-

- A Foreign Embassy/ Diplomat/ Consulate General may purchase/ sell immovable property in India other than agricultural land/ plantation property/ farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

6. Joint acquisition by the spouse of an NRI or an OCI:-

- A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.
- Provided that
 - (i) The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
 - (ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
 - (iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;

- (iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

7. Acquisition by a Long-Term Visa holder:-

- A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self - employment subject to the following conditions:
 - (a) the property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas; the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on LTV;
 - (b) the registration documents of the property should mention the nationality and the fact that such person is on LTV;
 - (c) the property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities;
 - (d) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
 - (e) such person shall be eligible to sell the property only after acquiring Indian citizenship. However, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP/FRO/FRRO concerned.

8. Repatriation of sale proceeds:-

- (a) A person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;
- (b) In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
 - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;
 - (ii) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non- Resident Account or out of funds held in Non-Resident External account;
 - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- (c) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or

Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

9. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:-

- No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.
- Provided this prohibition shall not apply to an OCI.
- Explanation: For the purpose of this regulation the term "ci tizen" shall include natural persons and legal entities.

10. Prohibition on transfer of immovable property in India:-

- Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India:-
- Provided that
 - (i) The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
 - (ii) A bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.
 - (iii) An Authorized Dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender.
- Provided
 - (a) the funds shall be used by the borrowing company only for its core business purposes overseas;
 - (b) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

11. Miscellaneous:-

- Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:
 - (a) through banking channels in India;
 - (b) subject to payment of applicable taxes and other duties/ levies in India.

12. Saving:-

- Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these regulations.

Prevention of Money Laundering Act, 2002

1) Proceeds of crime [Section 2(1)(u)]

- "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country **or abroad**;

2) Attachment of property involved in money- laundering [Third Proviso to Section 5(1)]

- **Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date or order of vacation of such stay order shall be counted.**
- **Section 5(3)** - Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under ~~sub-section (2)~~ **sub-section (3)** of section 8, whichever is earlier.

3) Confirm the attachment of the property, etc. [Section 8(3)]

- Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property under section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—
 - i) continue during **investigation for a period not exceeding ninety days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]
 - ii) become final after an order of confiscation is passed by the Special Court.

4) Special Court, may direct the Central Government to restore such confiscated property or part thereof of a claimant [Second Proviso to Section 8(8)]

- after the proviso, the following proviso shall be inserted, namely:— **"Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed."**;

5) Power to arrest [Section 19]

- 1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
- 2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a

sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

- 3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken **Special court or** to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the **Special court or** Magistrate's Court.

6) Offences to be cognizable and non-bailable [Section 45]

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence **under this Act** [~~"punishable for a term of imprisonment of more than three years under Part A of the Schedule"~~] shall be released on bail or on his own bond unless—
 - i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail :
 - Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, **or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees** may be released on bail, if the Special Court so directs :
 - Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—
 - i) the Director; or
 - ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the central government by a general or special order made in this behalf by that government.

7) Powers of authorities regarding summons, production of documents and to give evidence, etc.— (Section 50)

- (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
- a) discovery and inspection;
 - b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
 - c) compelling the production of records;
 - d) receiving evidence on affidavits;
 - e) issuing commissions for examination of witnesses and documents; and
 - f) any other matter which may be prescribed.
- (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
- (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may

be required.

- (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).
- (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not—
- a) impound any records without recording his reasons for so doing; or
 - b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the ~~Director~~ **Joint Director**.

8) Disclosure of information [Section 66(2)] (Newly inserted sub-section 2)

- **If the Director or other authority specified under section 66(1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.**

9) Part A of the Schedule, Paragraph 29

- **Punishment for fraud u/s 447 of the Companies Act, 2013**

Insolvency and Bankruptcy Code, 2016

1) Enforcement of clause (a) to clause (d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

- The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

- The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

A) Manner of initiating fast track corporate insolvency resolution process. (Section 57)

- An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, alongwith-
 - a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and
 - b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process. Manner of initiating fast track corporate insolvency resolution process.

B) Applicability of Chapter II to this Chapter. (Section 58)

- The process for conducting a corporate insolvency resolution process under Chapter II and the provisions relating to offences and penalties under Chapter VII shall apply to this Chapter as the context may require.

3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code Vide Notification S.O.1911(E) dated 14th June 2017

- In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-
 - b) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
 - c) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or
 - d) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25th October 2017

- Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

- Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.
- Through the issue of this circular, it has been clarified that the approval of shareholders /members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

- Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.
- Significant relevant changes are as follows:

A) Applicability of the Code (Section 2)

- The Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-
 - a) Any company incorporated under the Companies Act, 2013 or under any previous law.
 - b) Any other company governed by any special act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
 - c) Any Limited Liability Partnership under the LLP Act 2008.
 - d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf and;
 - e) ~~Partnership firms and individuals.~~ **personal guarantors to corporate debtors;**
 - f) **partnership firms and proprietorship firms; and**
 - g) **individuals, other than persons referred to in clause (e),"**

B) Resolution plan (Section 5, clause 26)

- Resolution plan means a plan proposed by ~~any person~~ **Resolution Applicant** for insolvency resolution of the corporate debtor as a going concern in accordance with Part II

C) Submission of resolution plan [Section 30(4)]

- ~~The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors~~
- The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:
- Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may

require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

- Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:
- Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.”

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

1) Conditions for qualified institutions placement [Regulation 82]

- A listed issuer may make qualified institutions placement if it satisfies the following conditions:
- Clause (c) omitted by the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. **12-2-2018**. Prior to its omission, said clause, as amended by the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011, w.e.f. 23-9-2011, read as under:
- ~~*"(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;"*~~

Amendments applicable only for both Old Syllabus

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

1) “Qualified Institutional Buyer” (Regulation 2 – Sub Regulation 1 – Clause zd)

- Qualified institutional buyer means:
 - (i) a mutual fund, venture capital fund[, Alternative Investment Fund]9 and foreign venture capital investor registered with the Board;
 - (ii) a [foreign portfolio investor other than Category III foreign portfolio investor], registered with the Board;
 - (iii) a public financial institution as defined in section 4A of the Companies Act, 1956;
 - (iv) a scheduled commercial bank;
 - (v) a multilateral and bilateral development financial institution;
 - (vi) a state industrial development corporation;
 - (vii) an insurance company registered with the Insurance Regulatory and Development Authority;
 - (viii) a provident fund with minimum corpus of twenty five crore rupees;
 - (ix) a pension fund with minimum corpus of twenty five crore rupees;
 - (x) National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
 - (xi) insurance funds set up and managed by army, navy or air force of the Union of India;]
 - (xii) insurance funds set up and managed by the Department of Posts, India;
 - (xiii) **Systemically important non-banking financial companies.**

2) “systemically important non -banking financial company” (Regulation 1za)

- **systemically important non -banking financial company” means a non -banking financial company registered with the Reserve Bank of India and having a net - worth of more than five hundred crore rupees as per the last audited financial statements.**

3) Monitoring agency. (Regulation 16)

A) Sub Regulation 1

- If the issue size **excluding the size of offer for sale by selling shareholders**, exceeds **five hundred one hundred** crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:
- Provided that nothing contained in this clause shall apply to ~~an offer for sale or~~ an issue of specified securities made by a bank or public financial institution 56[or an insurance company].

B) Sub Regulation 2

- **The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilised.”**

C) Sub Regulation 3

- **The Board of Directors and the management of the company shall provide their**

comments on the findings of the monitoring agency as specified in Schedule IX.

D) Sub Regulation 4

- The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed."

4) Chapter VII not to apply in certain cases (Regulation-70)

- 1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:
 - a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub- sections (3) and (4) of sections 81 of the Companies Act, 1956 114[or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable];
 - b) pursuant to a scheme approved by a High Court under section 391 to 394 of the Companies Act, 1956 or a Tribunal under sections 230 to 234 of the Companies Act, 2013, whichever applicable
 - Provided that the pricing provisions of this Chapter shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;
 - c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or **the resolution plan approved by** the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable:
 - Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).
- 2) The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993).
- 3) provisions of regulation 73 and regulation 76 shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has grant- ed relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or regulation 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, whichever applicable, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.
- 4) The provisions of sub-regulation (2) of regulation 72 and sub-regulation (6) of regulation 78 shall not apply to a preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with the Board or Insurance Company registered with Insurance Regulatory and Development Authority of India or a **Scheduled Bank listed under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013.**

- 5) a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013
- b) The conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder.
- c) specified securities so allotted shall be locked -in for a period of one year from the date of their allotment:
- Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;
- d) the lock- in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked -in;
- e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution."
- 6) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:
- a) the guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;
- b) the issue price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:
- Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;
- c) the specified securities so allotted shall be locked- in for a period of at least three years from the date of their allotment;
- d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
- e) a special resolution has been passed by shareholders of the issuer before the preferential issue;
- f) the issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory statement to the notice for the general meeting proposed for passing the special resolution as stipulated at clause (e) of this sub-regulation:
- a. the identity including that of the natural persons who are the ultimate beneficial owners of

the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);

- b. the business model;
- c. a statement on growth of business over the period of time;
- d. summary of audited financials of previous three financial years;
- e. track record in turning around companies, if any;
- f. the proposed roadmap for effecting turnaround of the issuer.
- g. the applicable provisions of the Companies Act, 2013 are complied with.

The Competition Act, 2002

1) Exemption from giving notice in section 6(2) under the Competition Act, 2002 vide notification S.O. 2039(E) dated 29th June 2017

- In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts every person or enterprise who is a party to a combination as referred to in section 5 of the said Act from giving notice within thirty days mentioned in sub-section (2) of section 6 of the said Act, subject to the provisions of sub-section (2A) of section 6 and section 43A of the said Act, for a period of five years from the date of publication of this notification in the Official Gazette.

2) Exemption to Regional Rural Banks from application of provisions of sections 5 & 6 of the Competition Act, 2002 vide notification S.O. 2561(E) dated 10th August, 2017

- In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts the Regional Rural Banks in respect of which the Central Government has issued a notification under sub-section (1) of section 23A of the Regional Rural Banks Act, 1976, from the application of provisions of sections 5 and 6 of the Competition Act, 2002 for a period of five years from the date of publication of this notification in the Official Gazette.

3) Exemption to the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said Competition Act, 2002 Vide Notification S.O. 1933(E) 16th June 2017

- In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said Act, for a period of one year with effect from the 20th June, 2017, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers.
- During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with applicability during the said period along with other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping .

4) Exemptions to all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002, Vide Notification S.O. 2828(E) dated 30th August, 2017

- In exercise of the powers conferred by clause (a) of Section 54 of the Competition Act, 2002 , the Central Government in the public interest hereby exempts, all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 for a period of ten years from the date of publication of this notification in the Official Gazette.

5) Exemption to all cases of combinations under section 5 of the Competition Act, 2002 involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors vide notification S.O. 3714(E), dated 22nd November 2017

- In exercise of the powers conferred by clause (a) of Section 54 of the Competition Act, 2002 (12 of 2003) (herein after referred to as the Act), the Central Government in the public interest hereby exempts all cases of combinations under section 5 of the Act involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors under the Petroleum Act, 1934 (30 of 1934) and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, from the application of the provisions of sections 5 and 6 of the Act, for a period of five years from the date of publication of this notification in the Official Gazette.

Banking Regulation Act, 1949

Insertion of new sections 35AA and 35AB-

- In the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), after section 35A, the following sections shall be inserted, namely:—

1) Section 35AA.

- Power of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process: The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.
- Explanation.—For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

2) Section 35AB.

- Power of Reserve Bank to issue directions in respect of stressed assets:
 - (1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.
 - (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.’