Author's Note

- **→** Amendments in this pdf are applicable for May 2020.
- → If you do not have much time to study whole RTP then I recommend to use these amendment notes along with my amendment notes of Nov 2019.
- **→** It is highly recommended to practice the questions given in RTP of May 2019, Nov. 2019 & May 2020.
- + If you want to score exemption in Law & Audit then I recommend to make optimum use of my Fast track lectures, Free voice clips and Sanjeevani Course and do not forgot to write High Quality Tests organised by Apnamentor.
- + I have tried my best to make it <u>concise and error free.</u> However, if you find any error then do mail me at <u>sanidhyasaraf@gmail.com</u>.
- + For getting regular updates and more pdfs you all can be part of my <u>Apnamentor</u> family on telegram by clicking on below links of my channels.
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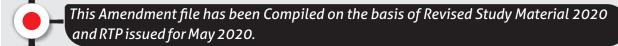
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Amendment Sheet For May 2020 (Corporate and Economic/Allied Laws)



This Amendment Sheet is applicable for both old and new syllabus students.

Student's are also advised to Refer Nov 2019 RTP Sheet compiled by the Author available at www.apnamentor.com.

Best care has been taken to make this Amendment Sheet Error Free, concise and student friendly. However, if any student comes across any human error while going through the amendment file or like to give any feedback, you can mail us at auditsaga@gmail.com.

Probable questions have also been highlighted after the Amendments.

All the students {including Sanidhya Saraf Sir's Student's are requested to go through these Amendment Sheet }. Video of the same is available in Sir's You Tube Channel "Law and Audit Saga by CA Sanidhya Saraf".

Changes/Additions has been observed in the Following Chapters:

- Directors and Board Meeting { Minor changes}
- Compromise, Arrangement and Amalgamation { Minor changes}
- Prevention of Oppression and Mismanagement { Important Changes for May 2020}
- Miscellaneous Provisions { Minor Changes}
- FEMA Act, 1999 { Most Important Changes for May 2020}
- Prevention of Money Laundering Act {Important Changes for May 2020}
- Foreign Contribution Regulation Act { Minor Changes only for New Syllabus Students}
- Arbitration and Conciliation Act {Minor Changes only for New Syllabus Students}
- Other Changes given in RTP for Old Syllabus have mostly been copied again from Nov 2019 RTP or are not relevant for exam perspective in opinion of Author.

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APPOINTMENT AND QUALIFICATION OF **DIRECTORS**

Rule 12A of Companies (Appointment and Qualification of Directors) Rules, 2014

Every individual who holds DIN as on 31st March of the Financial Year is supposed to file e-form DIR-KYC on or before 30th September. { Earlier it was 30th June }

A new web-form DIR -3 KYC-WEB has been introduced. { i.e a pre-filed form which the director is just required to authenticate by entering OTP number received. He is not required to manually enter same information every year}



If an individual who has already submitted e-form DIR -3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be the compliance of the provisions of this rule for the said financial year

However, in case an individual desires to update his personal mobile number or the email address, as the case may be, he shall update the same by submitting e-form DIR KYC only.

The fees for filing e-form DIR -3 KYC or web-form DIR-3 KYC-WEB through the webservice , as the case may be, shall be payable in Companies(Registration Offices and Fees) Rules, 2014.

Probable Questions

-Can an director update his personal mobile number using web-form DIR -3?

-What is the last date for filing e-form DIR-KYC?

Write a short note on e-form DIR -3 KYC.

MCQ based questions can be asked.



02/Meeting of Board and its Powers

Rule 11 w.r.t. Section 186 (Loans & Investments by Company)

Provisions of Section 186 shall not be applicable to Companies engaged in business of financing industrial enterprises. { Earlier the words used were "business of financing of companies".} So the ambit of the exclusion has been increased.



Probable Question



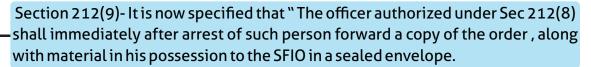
-Can an director update his personal mobile number using web-form DIR -3?



Inspection, Enquiry & Investigation

Section 212 -SFIO Investigation

Section 212(8)-Earlier the power to arrest person was confined to Director or Additional Director or Assistant Director. Now the ambit of the Section has been increased. Now it is specified, "Any officer not below the rank of Assistant Director" shall exercise the power to arrest persons if accused for the offences specified in the Section.



Section 212(10)-Every person arrested under sub-section (8) shall within twenty -four hours, be taken to a Special Court or Judicial Magistrate or Metropolitan Magistrate within 24 hours. { Earlier the word "Special Court was not used".}

New insertion after Section 212 (14)

Before understanding the new insertion let us understand the background.

Section 212(12) states that On completion of Investigation, The SFIO shall submit the investigation report to the CG.

Section 212(14) provided that On receipt of investigation report, the Central Government may, after examination of the report direct SFIO to initiate prosecution against the company and its officers or employees.

Now Section 212(14A) has been inserted which states that: -

Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."

Probable Question



MCQ based questions can be asked.

Section 212 becomes important from exam point of view.

Compromises, Arrangements and **Amalgamations**

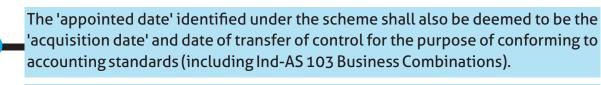
What is Appointed date?

I.e What is the effective date on which scheme of compromise and arrangement has been implemented?

MCA Clarification

It may a specific calendar date or it is tied to occurrence of event {For example; the date when resolution shall be passed or licence is granted or when any other requirement is meet as agreed by the parties}

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Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. • However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest

Probable Question

-Probability of framing any question from this part is very less.



Section 241(2)-Application to Tribunal for relief in cases of oppression etc

CG may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

"If in the opinion of the Central Government there exist circumstances suggesting that":-

- any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust.
- the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices.
- a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government

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Section 242-Power's of Tribunal

After sub-section (4), the following sub-section shall be inserted, namely:-

"(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company."

Section 243-Consequence of termination or modification of certain agreements

New Insertion after sub-section 1

If it is concluded at the hearing of the case u/s 241(3), that the person is not a fit or proper person such a person shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision.

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

Further that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

Section 245-Class Action

The requisite number of members/depositors eligible to file a class action suit to the Tribunal has now been specified

In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be –

- a t least five per cent. of the total number of members of the company; or
- one hundred members of the company, whichever is less; or
- a member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company.
- b member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be –



- at least five per cent. of the total number of depositors of the company; or
- one hundred depositors of the company, whichever is less; or

depositor or depositors to whom the company owes five per cent. of total deposits of the company."

?

Probable Questions



What are the circumstances in which CG may file an application to Tribunal asking relief from Oppression and Mismanagement?

What is the eligibility criteria for members and depositors to file a class action suit to the Tribunal under Section 245?

MCQ based question's can be framed from these Amendments.

06

Winding Up

Section 272-Petition for Winding Up

The ROC shall be entitled to present a present a petition for winding up under Section 271 except on grounds specified in Section 271(a). { Earlier ROC was not entitled to present a petition for winding up on ground specified in clause (a) and (e) of Section 271}. So the change is that ROC is now entitled to present a petition for winding up on ground specified in clause e of Section 271. Hence the powers of ROC has been enhanced. { Now it can also file petition to Tribunal on any just and equitable ground.}



Probable Questions



Probable MCQ or Case Study on Grounds under which ROC is entitled to file a petition to Tribunal for Winding up.

07 Miscellaneous Provision

1 Enforcement of the Nidhi (Amendment) Rules, 2019.

If Nidhi company is incorporated before the enforcement of Nidhi (Amendment) Rules, 2019, Application must be given to the CG within 1 year from the date of incorporation or within 6 months of enforcement of Rules whichever is earlier in form NDH-4.

The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette.

Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:-

- (a) one year from the date of its incorporation; or
- (b) the period up to which extension of time has been granted by the Regional Director.

Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment)."

- 2 Nidhi companies can issue only fully paid up shares.
- 3 Most of the powers exercised by Regional Director earlier has been now conferred to CG.
 - ?- Probable Questions -?
 - <u>MCQ based questions can be asked.</u>
 - Probability of asking any descriptive question from this part is very less.



Foreign Exchange Management Act

Addition/Changes in FEMA

- Section 6
- Overseas Direct Investment { Study Material}
- External Commercial Borrowings (RTP May 2020)
- Import of Goods and Services (Study Material)
- Borrowing and Lending in Foreign currency by persons other than authorized

Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f. 15.10.2019.

Amended section with the changes marked in bold, is as follows:-

- Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- **2** The Reserve Bank may, in consultation with the Central Government, specify
 - any class or classes of capital account transactions, involving debt instruments, which are permissible
 - the limit up to which foreign exchange shall be admissible for such transactions.
 - any conditions which may be placed on such transactions.

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

- **2** The Central Government may, in consultation with the Reserve Bank, prescribe
 - any class or classes of capital account transactions, not involving debt instruments, which are permissible.
 - the limit up to which foreign exchange shall be admissible for such transactions; and
 - any conditions which may be placed on such transactions.

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For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

In a nutshell, RBI has the power to specify class of transactions involving debt instruments as Capital Account Transactions and CG has power to specify class of transactions as Capital Account Transactions, not involving debt instruments. {Earlier such classification was not there. RBI exercise the power to specify class of transactions as capital account transactions for both debt and non-debt instruments).

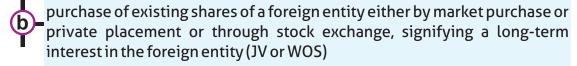
Section 6 (3) has now been omitted.

Overseas Direct Investment (ODI)

Relevant Definitions:

"Direct investment outside India" means investments, either under the Automatic Route or the **Approval Route**, by way of:





However, it does not include Portfolio investment

'Joint Venture'

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.

"Wholly Owned Subsidiary (WOS)"

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party.

"Indian Party"

means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank.

NOTE

In the definition of Indian Party , resident individual is not covered. Resident individual will be separately covered later on.

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"Host Country"

means the country in which the foreign entity receiving the direct investment from an Indian Party is registered or incorporated.

"Financial Commitment"

means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

Please Note

An Indian Party can make overseas direct investment in any bonafide activity. Real Estate and Banking business are prohibited sectors for overseas direct investment.

A resident individual may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. However, the limit of overseas direct investment by the resident individual is prescribed by RBI under the Liberalized Remittance Scheme.



Mode of direct investment outside India

Automatic route for direct investment or financial commitment outside India

Under the Automatic route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investment in a JV/WOS abroad. He should approach an Authorized Dealer Category -1 bank with prescribed application and documents.

All the transactions relating to investment in a JV/WOS must be routed through one branch of the authorized dealer to be designated by the Indian Party.

The total financial commitment(FC) of Indian Party in overseas JV/WOS shall not exceed 400 % of its networth { as per the last audited Balance Sheet \}. \{ Currently 400 \% has been revised to 100 percent by RBI but not yet notified by ICAI. Please check the RTP before your attempt to confirm whether there are changes applicable for your exams).

Net worth here means aggregate of paid up capital and free reserves.

FC made out of balances held in EEFC account of the Indian Party or out of the funds raised through ADR's/GDR's will not be taken into consideration for the purpose of the aforesaid calculation.

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However, if the financial commitment exceeds USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit given under the automatic route.

Overseas JV/WOS shall carry out bonafide activity permitted as per the laws of the host country.

Indian Party shall not be on the Reserve Bank's exporter's caution list/list of defaulters/under investigation by the Director of Enforcement or any investigative agency or regulatory authority.

ODI in Pakistan is allowed under the approval route only. ODI in Nepal can be only in Indian Rupees. ODI in Bhutan is allowed only in Indian Rupees and in freely convertible currencies.

In a nutshell, The total financial commitment of the Indian Party in JV/WOS in any country is uptoUSD 1 (one) billion { or 100 million} (or its equivalent) in any one financial year or 400 % of networth whichever is lower and investment is a lawful activity permitted by a host country.

Approval Route

Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

Reserve Bank would, inter alia, take into account the following factors while considering such applications.

- Prima facie viability of the JV/WOS outside India.
- O Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment)
- Financial position and business track record of the Indian Party and the foreign entity, and
- Expertise and experience of the Indian Party in the same or related line of activity as of the JV/WOS outside India

Prohibitions on direct investment in abroad by an Indian party

- Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the ReserveBank.
- 2 An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the ReserveBank.

Meaning of Financial Commitment (Understanding with help of a case study)

The total financial commitment of the Indian Party in all the Joint Ventures/Wholly Owned Subsidiaries shall comprise of the following:-

- a 100% of the amount of equity shares and/or Compulsorily Convertible Preference Shares (CCPS):
- 100% of the amount of other preference shares
- C 100% of the amount of loan
- 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party
- 2 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter quarantee / collateral by the Indian Party
- 50% of the amount of performance guarantee issued by the Indian Party.

CASE STUDY 1:

- An Indian Company(I Ltd) formed a WOS in USA (U Ltd, an Limited Liability Company).
- I Co remitted sum as under to U Co on various dates:-
 - Subscription to Equity Shares-USD 100
 - Subscription to Redeemable Preference Shares-USD 250
 - Extended Corporate Guarantee on behalf of U Co with Midtown Mutual Bank to the extent of USD 50 (value of loan extended by the Bank to U Co)
 - Performance Guarantee on behalf of U Co-USD 50

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Question

What is the Financial Commitment of I Co?

Answer

Financial Commitment of I Co is USD 100(Equity) + USD 250(Preference Shares) + USD 50 (Corporate Guarantee) + USD 25 (Performance Guarantee)=USD 425.

CASE STUDY 2:



Yes, the Indian Party is permitted to issue performance guarantee and 50 % of the amount of the performance guarantees will be reckoned for the purpose of computing financial commitment.

- 2 Can an Indian Party extend guarantee to an overseas entity without any equity participationin that entity?
 - No, Indian Party can extend Loan and guarantee to an overseas entity only if there is already an existing equity participation by way of direct investment.
- 3 Can an Indian Party make foreign direct investment in real estate?

Real Estate sector and Banking are the prohibited sectors for overseas investment. { Real estate business means buying and selling of real estate or trading in transferable development rights but does not include development of township, construction of residential/commercial premises. roads and bridges.

✓ Can ECB raised be utilized for ODI?

Yes, ECB raised can be utilized for ODI.

Overseas Direct Investments by resident individuals

Resident individuals may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India.

The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme{LRS}, as prescribed by the Reserve Bank from time to time. {i.e. USD 2,50,000 per Financial year}

Investment from EEFC and RFC Account shall also be included in the limit of USD 2,50,000 under the provisions of LRS.

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External Commercial Borrowing

New Guidelines w.r.t ECB were introduced in the Revised Study Material for May 2020 and Nov 2020.

However, within 2 months of issue of new edition, the guidelines have been again Amended in RTP for May 2020.

The guidelines for ECB has been given in a very detailed manner in RTP. However, a few guidelines have been simplified in this amendment sheet and a few has been omitted from this Amendment Sheet and the amendment sheet has been strictly made from Exam point of view. Student can refer May 2020 RTP for more details.

It has been decided, in consultation with the Government of India, to rationalise the framework for ECB and Rupee Denominated Bonds in light of the experience gained to improve the ease of doing business.

Meaning of ECB's

ECB's are commercial loans raised by eligible resident entities from recognized nonresident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

The term 'All-in-Cost' includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but will not include commitment fees, pre-payment fees / charges, withholding tax payable in INR.

Salient features of the New Guidelines

Merging of Track 1 and II as "Foreign Currency Denominated ECB "and merging of Track III and Rupee Denominated Bonds framework as "Rupee" Denominated ECB"

List of Eligible borrowers has been expanded to include all entities eligible to receive FDI. Additionally, Port Trust, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities and non-government organizations can also borrow under this framework.

The lender shall be resident of FATF (Financial Action Task Force) or IOSCO {The International Organization of Securities Commissions} compliant country. Multilateral and Regional Financial Institutions, Individuals and Foreign branches/subsidiaries of Indian banks can also be lenders.

Minimum Average Maturity Period will be 3 years for all ECB's. However, in special cases it may be different.

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Framework on Raising Loans through ECB's

The framework for raising loan through ECB comprises of the following 2 options:-

- 1 FCY denominated ECB (Foreign currency risk is involved)
- 2 INR denominated ECB (Foreign currency risk is not involved)

Eligible Borrowers

All entities eligible to receive FDI are eligible to raise funds via ECB. Further, the following entities are also eligible to raise ECB:

Port Trusts -Units in SEZ -SIDBI EXIM Bank

Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).

Minimum Average Maturity Period.

Minimum Average maturity period will be 3 years.

Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.

Category	MAMP
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year	1 Year
ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 Year
ECB raised for working capital purposes or general corporate purposes & onlending by NBFCs for working capital purposes or general corporate purposes.	10 Year
ECB raised for repayment of Rupee loans availed domestically for capital expenditure & on-lending by NBFCs for the same purpose	7 Year
ECB raised for repayment of Rupee loans availed domestically for purposes other than capital expenditure & on-lending by NBFCs for the same purpose	10 Year

Available routes for raising ECB

a Automatic Route

No approval of RBI is needed to raise funds via ECB upto USD 750 million or equivalent per Financial Year.

The application to raise funds under Automatic Route shall be examined by Authorized Dealer Category - I Bank.

The designated AD Category 1 bank while considering the ECB proposal is expected to ensure compliance with applicable ECB guidelines.

ECB liability -equity ratio for ECB raised under the Automatic Route cannot exceed 7: 1

Approval Route-To raise funds, above exceeding the limits given in automatic route, borrowers shall approach RBI to seek its approval. RBI shall submit the proposal before the Empowered Committee set by RBI. The RBI shall take a final decision based on the recommendation of Empowered Committee.



Authorized Dealer category 1 banks are basically authorized money changers approved by RBI under section FEMA, 1999. Examples - SBI, Canara Bank, Axis Bank.

Negative List w.r.t ECB

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities
- -Investment in capital market
- **Equity investment**
- -Working capital purposes
- General corporate purposes
- Repayment of Rupee loans

NOTE

However if the ECB was raised specifically for Working Capital Purposes/General corporate Purposes/Repayment of Rupee Loans, the proceeds realized can be utilized for the same

Hedging Provisions w.r.t. ECB

The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.

Infrastructure space companies shall have a Board approved Risk management policy.

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Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure {principal as well as the coupon} in case the average maturity of the ECB is less than 5 years.



Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India.

Change of currency of borrowing



Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.

Change of currency from INR to any freely convertible foreign currency is not permitted.

Loan Registration Number



Funds can be raised via ECB Route only after obtaining the Loan Registration Number from the Reserve Bank.



To obtain the Loan Registration Number, borrowers are likely to submit duly certified FORM ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category 1 Bank.



AD Category 1 bank will forward one copy to the concerned department in RBI.

Monthly Reporting of Actual Transections

The borrowers are required to report actual ECB transactions through FORM ECB 2 Return through the AD Category 1 bank on monthly basis so as to reach DSIM {Department of Statistics and Information Management} within seven working days from the close of month to which it relates.

 $Changes\,, if any, in \,ECB\, parameters\, should\, also\, be\, incorporated\, in\, FORM\, ECB\, 2\, Return.$

Late submission fee for delay in reporting

S.L. NO	Type of return/form	Period of delay	Applicable LSF
1	Form ECB 2	Upto 30 calender days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Upto 3 years from due date of submission	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond 3 years from due date of submission	INR 1,00,000 per year

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Standard operating procedure (SOP) for untraceable entities

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

Definition of untraceable entities

Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:-



Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

Entities have not submitted Statutory Auditor's Certificate for last two years or more;

Action

The followings actions are to be undertaken in respect of 'untraceable entities;

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

No fresh ECB application by the entity should be examined/processed by the AD bank.

Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and

No inward remittance or debt servicing will be permitted under auto route

Conversion of ECB into equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions;-



The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received.

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The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy.

Applicable pricing guidelines for shares are complied with

If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with

Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/raised by the borrower, subject to satisfying themselves that:-

the underlying ECB is in compliance with the extant ECB guidelines.

there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and

No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

ECB Facility for Sturtups

Framework

AD Category 1-banks are permitted to allow Startups to raise ECB under the automatic route.

Eligibility

An entity recognised as a Startup by the Central Government as on the date of raising ECB.

Recognized lender

Lender/Investor shall be resident of FATF compliant country.

Forms

The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

Maturity

Minimum Average maturity period will be 3 years.

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Currency

The borrowing should be denominated in any freely convertible currency or in Indian Rupees or a combination thereof.

Amount

The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

End Uses

For any expenditure in connection with business of the borrower.

Security

The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities etc . However, issuance of guarantee , standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFC's is not permitted.

ECB facility with Oil Marketing Companies

Public sector Oil Marketing Companies can raise ECB's for working capital purposes with minimum average maturity period of 3 years from all recognized lenders under the Automatic Route without mandatory hedging and individual limit requirements.

The overall ceiling for such ECB's shall be USD 10 billion or equivalent.

ECB by entities under restructuring/ECB facility for refinancing stressed assets:

An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route.

Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders.

The applicable MAMP will have to be strictly complied with under all circumstances.

Contravention of ECB Guidelines and Transparency Requirement

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA.

Import of Goods and Services

Import

The term 'Import' means bringing into India any goods or services.

Governing Regulation

Section 5 of FEMA Act 1999, read with Foreign Exchange Management (Current Account Transaction) Rules, 2000.

Guidelines to be remembered

- 1 The Authorised Dealer (AD) shall adhere to "Know Your Customer" (KYC) guidelines issued by RBI while undertaking import transactions.
- 2 AD may allow remittance for making payments for imports into India, after ensuring that all the requisite details are made available by the importer and the remittance is for bonafide trade transactions as per applicable laws in force.
- 3 AD should ensure that the importer furnishes evidence of import viz., as in IDPMS, Postal Appraisal Form or Customs Assessment Certificate, etc., and satisfy himself that goods equivalent to the value of remittance have been imported. AD should ensure that all import remittances outstanding on the notified date of IDPMS are uploaded in IDPMS (Import Data Processing and Monitoring System)



A person resident in India may make payment for import of goods in foreign exchangethrough an international card held by him/in rupees from international credit card/ debit card through the credit/debit card servicing bank in India against the charge slip signed by the importer, or as prescribed by Reserve Bank from time to time

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- 5 Any person resident in India may also make payment In rupees towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit tolndia; by means of a crossed cheque or a draft as consideration for purchase of gold or silver in any form imported by such person
- 6 A company or resident in India may make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India. However such payment shall be in accordance with Memorandum of Association or Articles of Association or any agreement entered into by it or any resolution passed in General Meeting or by BOD.
- 7 Time Limit for Settlement of Import Payments:
 - remittances against imports should be completed not later than six a months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.
 - Deferred payment arrangements (including suppliers' and buyers' credit) up to five years, are treated as trade credits.
- 8 Extension of Time for settlement of Import Payments
 - AD can consider granting extension of time for settlement of import dues up to a period of six months at a time (maximum up to the period of three years) irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against the seller.
 - However, Extension cannot be granted by the AD, if the import transactions **b** are under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies.
 - While considering extension beyond one year from the date of remittance, the total outstanding of the importer does not exceed USD one million or 10 percent of the average import remittances during the preceding two financial years, whichever is lower.
- 9 Import for Foreign Exchange into India
 - A person may **send into India**, without limit, foreign exchange in any form (other than currency notes, bank notes and travellers cheques).

A person may **bring into India** from any place outside India, without limit, foreign exchange (other than unissued notes). However, on arrival in India, a declaration must be given to custom authorities about the same. However, declaration is not needed if aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any one time does not exceed USD 10,000 and/or the aggregate value of foreign currency notes (cash portion) alone brought in by such person at any one time does not exceed USD 5,000.

10 Import of Indian Currency and Currency Notes

Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside **a** > India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000 (Rupees twenty five thousand only)

A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in **b** denominations upto Rs.100/- {The reason for the same is that post demonetization Nepal Government has banned the notes of Rs 200, 500 and 2000}.

11 Issue of Guarantees by an Authorised Dealer in favour of importer

An authorized dealer is permitted to provide a guarantee in respect of any debt, obligation or other liability incurred by a PRI as an importer, in respect of imports undertaken on deferred payment terms in accordance with approval of RBI.

It is also clarified that AD may give a guarantee, Letter of Undertaking or Letter of Comfort in respect of any debt, obligation or other liability **b** incurred by a person resident in India and owned to a overseas supplier of goods, banks, or financial institution in respect of permitted import of goods.

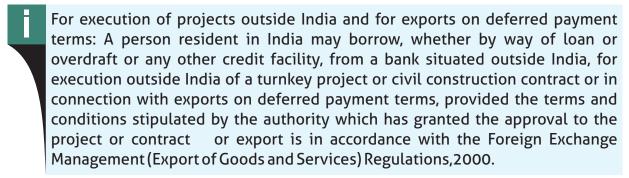
AD, may subject to the directions of RBI also permit a person resident in c India to issue corporate guarantee in favour of an overseas lessor for financing import.

An AD may also give guarantee in favour of a service importer upto USD **d**) = 1,00,000 if such service importer is a PSU or a department/undertaking of Government of India /State Government and upto USD 5,00,000 if such service importer is other than PSU or a department/undertaking of Government of India / State Government.

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Borrowing and Lending in Foreign currency by persons other than authorized dealer

Borrowing in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding borrowing in foreign currency by persons other than an authorised dealer are mentioned below:



- For imports: An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.
- Borrowing by resident individual: An individual resident in India may borrow a Borrowing by resident individual. All individual resident from his close relative outside sum not exceeding US\$ 250,000/- or its equivalent from his close relative outside India, subject to the conditions that:
 - a —the minimum maturity period of the loan is one year.
 - b—the loan is free of interest; and

the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account to the non-resident lender.

Lending in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding lending in foreign currency by persons other than an authorised dealer are mentioned below:-

- Lending to WOS / JV: An Indian entity may lend to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or issue of foreign security) Regulations, 2000.
- Lending by Select Institutions: Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited or any other institution in India may extend loans to their constituents in India out of the foreign currency borrowings raised by these institutions with the approval of the Central Government for the purpose of onward lending.

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Lending by Indian companies to their employees: Indian companies in India may grant loans to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms

and conditions as applicable to its staff resident in India and abroad.

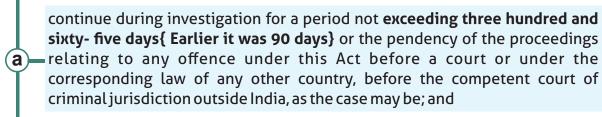
Probable Questions Time limit for settlement of import payments and extension of the same. What are the routes available for raising ECB's? •Can ECB raised be utilized for real estate activities? -Short Note on ECB facility for start up's Who are the eligible borrowers to raise funds via ECB route? -Can ECB raised be utilized for ODI? What is the total financial commitment that a Indian Party can make in its overseas JV/WOS? -Modes of Direct Investment outside India? Which authority can prescribe capital account transaction's for Non-debt instruments?



Prevention of Money Laundering Act, 2002

Amendment in section 8 vide Finance Act, 2019, w.e.f. 20 -3-2019

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 made under section 5(1) 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—



b—become final after an order of confiscation is passed

Explanation

For the purposes of computing the period of three hundred and sixty- five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

<u>Insertion of section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f.</u> 25-7-2019

Every reporting entity shall verify the identity of its clients and the beneficial owner, by

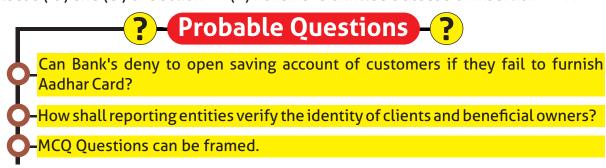
- authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or
- offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
- **b**—use of passport issued under section 4 of the Passports Act, 1967
- use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf

The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

If, for identification of a client or beneficial owner, authentication or offline verification is used, neither his core biometric information nor his Aadhaar number shall be stored.

<u>Omission of Section 12 vide Aadhaar and Other Laws { Amendment} Act, 2019 w.e.f. 25-7-2019</u>

Clause (c) and (d) of Section 12 (1) have have omitted because of Insertion 11 A





Insolvency and Bankruptcy Code, 2016

Clarification on Resolution Plan

Resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;" { Just a clarification issued via Explanation to Section 5(26).

Time limit for completion of corporate insolvency resolution process

The corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

The insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019".

Can AA admit application if it has not ascertained existence of default?

If the Adjudicating Authority has not ascertained the existence of default{as required} under Section 7} and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

Voting Right of Authorised Representative

The authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote. { Section 25 A}

Contents of Resolution Plan

The Resolution Plan shall now provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

the amount that would have been paid to such creditors, if the amount to be ii — distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53

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whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

Powers of Committee of Creditors Now Enhanced

Committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.



-What is the time limit for completion of Insolvency Resolution Process?

Can Adjudicating Authority admit application if it has not ascertained existence of default?

The resolution plan made provides that operational creditors shall be paid 50 % of dues. Comment on the validity of resolution plan.



Foreign Contribution Regulation Act, 2010 (only for new syllabus)



in rule 6A, for the words "rupees twenty-five thousand", the words "one lakh rupees" shall be substituted Implications of change

Foreign contribution means any donation, delivery or transfer made by a foreign source of any article excluding any article given as gift or personal use and value of gift does not exceed Rs.1,00,000.{ Earlier it was Rs 25,000 }.



in rule 7, in sub-rule (4), for the words "sixty days", the words "one month" shall be substituted *Implications of changes*

A person who is entitled to receive foreign hospitality in a foreign country shall after receiving the such hospitality the person is required to intimate within one month from the date of receipt of such hospitality to the central Government about source and the manner in which, he received such hospitality. { Earlier it was 60 days specified in Rules }.



Arbitration and Conciliation Act, 1996 (only for new syllabus)

In section 1 which deals with the Short title, extent and commencement, provisio is omitted by the Jammu and Kashmir Reorganisation Act, 2019, dated 9-8-2019, w.e.f. **31-10-2019**. Prior to its omission read as under:-

"Provided that Parts I, III and IV shall extent to the State of Jammu and Kashmir only insofar as they relate to international Commercial arbitration or, as the case may be, international Commercial Conciliation."