

AMENDMENTS FOR LAW (CA-FINAL)

[NOV-2016 Examination]

**[Incorporated between 1st November
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By

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CORPORATE LAWS

Dividend

1. Investor Education and Protection Fund [Section 125 (5-7)] [Notified on 13th January 2016]

- ❖ **Composition of Authority [Sec 125(5)]:**-The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.
- ❖ **Manner of Administration and Appointment:**-The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.
- ❖ **Assistance by CG:**-The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016

- ✚ **Establishment of the Authority.**- The Authority shall be established on such date as may be notified by the Central Government.
- ✚ **Composition of the Authority.**-
 - (1) The Authority shall consist of the following, namely:-
 - (a) Chairperson
 - (b) six members
 - (c) Chief Executive Officer
 - (2) The Chief Executive Officer shall be the convenor of the Authority.
- ✚ **Chairperson of the Authority.**- The Secretary, Ministry of Corporate Affairs shall be the *ex-officio* Chairperson of the Authority.
- ✚ **Chief Executive Officer of the Authority.**- The Central Government shall appoint a person to be the Chief Executive Officer of the Authority.
- ✚ **Members of the Authority.**- The Central Government may appoint the following as the members of the Authority, namely:—
 - a person not below the rank of Executive Director to be nominated by the Reserve Bank of India as *ex-officio* member;
 - a person not below the rank of Executive Director to be nominated by the Securities and Exchange Board of India as *ex-officio* member;
 - four persons having special knowledge and experience of not less than fifteen years, in finance, management, accountancy or law with one person from each discipline and such person shall have

special knowledge, or professional experience, which shall in the opinion of the Central Government shall be useful to the Authority.

✚ **The term of office of members of the Authority.-**

- **Tenure:-**The members of the Authority appointed shall hold office for a period of three years and shall be eligible for reappointment;

Provided that no member shall hold office for more than three terms.

Provided further that a member shall be eligible for reappointment after expiration of cooling off period of three years after his term.

- **Termination by CG:-**Notwithstanding anything contained above, the Central Government shall have the right to terminate the services of a member appointed, at any time before the expiry of the period specified, by giving him notice of not less than three months in writing for reasons mentioned, and a member shall also have the right to relinquish his office, at any time before the expiry of the period specified, by giving to the Central Government notice of not less than three months in writing.
- **Maximum Age:-**The members appointed shall hold office for a period of three years or till attaining the age of 65 years whichever is earlier.
- **Grounds of removal:-**The Central Government shall remove a member from office if he—
 - (a) is, or at any time has been, adjudicated as insolvent;
 - (b) is of unsound mind and stands so declared by a competent court;
 - (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
 - (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

Provided that no member shall be removed under this sub-rule unless he has been given a reasonable opportunity of being heard in the matter.

- ✚ **The number of officers and employees of the Authority.-** The Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day to day functions as are set out in Schedule I to these rules.

✚ **Functions of the Authority.-**

- Subject to the provision of the Act, the Authority shall have the duty to administer the Fund for Investor Education and Protection.
- The general management of the affairs of the Authority shall vest in the Chief Executive Officer, who may exercise powers, which may be authorised by the Authority.
- The Chief Executive Officer shall function under superintendence and direction of the Chairperson.
- Without prejudice to the generality of the provisions, the functions of the Authority shall include the following, namely:-
 - (a) The Authority may constitute permanent Committees for overseeing its functions;
 - (b) Each Committee shall comprise two members, Chief Executive Officer and concerned functional head, who shall be the secretary of the Committee. The Committee shall be headed by an ex-officio member;
 - (c) The Committee may invite experts with special knowledge and expertise, as and when required to assist it on any specific issue
 - (d) The Authority may outsource, if required, work related to Funds and Shares Management.
 - (e) The broad functional divisions of the Authority shall be as per Schedule II to these rules.

Meetings.-

- The Authority and its Committees shall meet at such times and places as it may consider necessary.
- The Authority and its Committees shall determine its own procedure for holding of meetings.
- If the Authority or its Committees has to hold a meeting elsewhere than in New Delhi, the approval of the Chairperson of the Authority shall be obtained indicating the reasons thereof.
- The Authority and the Committees shall meet at least once in a quarter and at least four such meetings shall be held in a financial year:
- Provided that not more than one hundred and twenty days shall intervene between two consecutive meetings.
- The meeting of the Authority shall be presided over by the Chairperson.
- If for any reason, the Chairperson is unable to attend a meeting, any other Member chosen by the Members present from amongst themselves at the meeting shall preside over the meeting.
- In case of difference in opinion on any question before the Authority, or any of its Committees, the views of the majority shall be taken as the final decision.
- More than fifty percent appointed Members of the Authority shall constitute the quorum for the transaction of business at a meeting of the Authority.
- Two members of a Committee shall constitute the quorum for the transaction of business at a meeting of the Committee.
- For journeys performed by a non-official member of the Authority or Committee or a special invitee in connection with the work of the Authority or Committee, the actual expenditure for attending the meeting shall be reimbursed, subject to maximum of such expenditure limit applicable to a Senior Administrative Grade officer of Government of India.

 **Member not to participate in meetings in certain cases.-** A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority and its Committees, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority and its Committees, and the member shall not take any part in any deliberation or decision of the Authority and its Committees with respect to that matter.

 **Vacancies, etc., not to invalidate proceedings of Authority.-** No act or proceeding of the Authority and its Committees shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of the Authority and its Committees;
- (b) any defect in the appointment of a person acting as a member of the Authority and its Committees;
- (c) any laches in the procedure of the Authority and its Committees not affecting the merits of the case.

 **Protection of action taken in good faith.-** No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything, which is in good faith done or intended to be done under these rules.

Audit and Auditors

Duties of Auditor (in case of fraud) [Section 143 (12)]

Rule 13 of Companies (Audit and Auditors) Rules, 2014

- (1) If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.
- (2) The auditor shall report the matter to the Central Government as under:-
- (a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
 - (b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
 - (c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;
 - (d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
 - (e) the report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
 - (f) the report shall be in the form of a statement as specified in Form ADT-4.
- (3) In case of a fraud involving lesser than the amount specified in sub-rule (1), the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:-
- (a) Nature of Fraud with description;
 - (b) Approximate amount involved; and
 - (c) Parties involved.
- (4) The following details of each of the fraud reported to the Audit Committee or the Board under sub-rule (3) during the year shall be disclosed in the Board's Report:-
- (a) Nature of Fraud with description;
 - (b) Approximate Amount involved;
 - (c) Parties involved, if remedial action not taken; and
 - (d) Remedial actions taken.
- (5) The provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.”;

Directors

Related Party Transactions (Section 188)

Rule 6A of Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015

Omnibus approval for related party transactions on annual basis.- All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely:-

(1) The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:-

- (a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
- (b) the maximum value per transaction which can be allowed;
- (c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
- (d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
- (e) transactions which cannot be subject to the omnibus approval by the Audit Committee.

(2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -

- (a) repetitiveness of the transactions (in past or in future);
- (b) justification for the need of omnibus approval.

(3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(4) The omnibus approval shall contain or indicate the following: -

- (a) name of the related parties;
- (b) nature and duration of the transaction;
- (c) maximum amount of transaction that can be entered into;
- (d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
- (e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

(5) Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

(6) Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.

(7) Any other conditions as the Audit Committee may deem fit.”.

ALLIED LAWS

Foreign Exchange Management Act, 2002

1. In Classes of Prohibited Capital Account Transaction for PROI, real estate business” shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014”

2. Special Scheme for resident Individuals:-The resident individuals can make remittances upto USD **2,50,000 per annum** for any transaction, whether capital or current account, or both, under the “Liberalised Remittance Scheme’. Only individuals can avail this facility. Other persons cannot avail this facility.

3. Foreign Exchange Management (Export of Goods & Services) Regulations, 2015

1. Short title and commencement

- (i) These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions

- (i) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- (ii) 'authorised dealer' means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act, and includes a person carrying on business as a factor and authorised as such under the said section 10 ;
- (iii) 'EXIM Bank' means the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981 (28 of 1981);
- (iv) 'export' includes the taking or sending out of goods by land, sea or air, on consignment or by way of sale, lease, hire-purchase, or under any other arrangement by whatever name called, and in the case of software, also includes transmission through any electronic media ;
- (v) 'export value' in relation to export by way of lease or hire-purchase or under any other similar arrangement, includes the charges, by whatever name called, payable in respect of such lease or hire-purchase or any other similar arrangement;
- (vi) 'form' means form annexed to these Regulations;
- (vii) 'schedule' means schedule appended to these Regulations;
- (viii) 'software' means any computer programme, database, drawing, design, audio/video signals, any information by whatever name called in or on any medium other than in or on any physical medium ;

(ix) 'specified authority' means the person or the authority to whom the declaration as specified in Regulation 3 is to be furnished;

(x) the words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

3. Declaration of exports

(1) In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing –

(i) the full export value of the goods or software; or

(ii) if the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.

(2) Declarations shall be executed in sets of such number as specified.

(3) For the removal of doubt, it is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

(4) Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.

4. Exemptions

Notwithstanding anything contained in Regulation 3, export of goods / software may be made without furnishing the declaration in the following cases, namely:

a) trade samples of goods and publicity material supplied free of payment;

b) personal effects of travellers, whether accompanied or unaccompanied;

c) ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;

d) by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value

e) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;

f) goods imported free of cost on re-export basis;

g) the following goods which are permitted by the Development Commissioner of the Special Economic Zones, Electronic Hardware Technology Parks, Software Technology Parks or Free Trade Zones to be re-exported, namely:

i. imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators;

ii. goods imported from foreign suppliers/collaborators on loan basis;

- iii. goods imported from foreign suppliers/collaborators free of cost, found surplus after production operations.
- (ga) goods listed at items (1), (2) and (3) of clause (i) to be re-exported by units in Special Economic Zones, under intimation to the Development Commissioner of Special Economic Zones / concerned Assistant Commissioner or Deputy Commissioner of Customs
- (h) replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy in force, for the time being.
- (i) goods sent outside India for testing subject to re-import into India;
- (j) defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorised dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.
- (k) exports permitted by the Reserve Bank, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.

5. Indication of importer-exporter code number

The importer-exporter code number allotted by the Director General of Foreign Trade under Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 (22 of 1992) shall be indicated on all copies of the declaration forms submitted by the exporter to the specified authority and in all correspondence of the exporter with the authorised dealer or the Reserve Bank, as the case may be.

6. Authority to whom declaration is to be furnished and the manner of dealing with the declaration

A. Declaration in Form EDF

- (1) (i) The declaration in form EDF shall be submitted in duplicate to the Commissioner of Customs.
- (ii) After duly verifying and authenticating the declaration form, the Commissioner of Customs shall forward the original declaration form/data to the nearest office of the Reserve Bank and hand over the duplicate form to the exporter for being submitted to the authorised dealer.

B. Declaration in Form SOFTEX

- (i) The declaration in Form SOFTEX in respect of export of computer software and audio/video/ television software shall be submitted in triplicate to the designated official of Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.
- (ii) After certifying all three copies of the SOFTEX form, the said designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter. The triplicate shall be retained by the designated official for record.

C. Duplicate Declaration Forms to be retained with Authorised Dealers

On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers.

7. Evidence in support of declaration

The Commissioner of Customs or the postal authority or the official of Department of Electronics, to whom the declaration form is submitted, may, in order to satisfy themselves of due compliance with Section 7 of the Act and these regulations, require such evidence in support of the declaration as may establish that –

- a) the exporter is a person resident in India and has a place of business in India;
- b) the destination stated on the declaration is the final place of the destination of the goods exported;
- c) the value stated in the declaration represents –

- i. the full export value of the goods or software; or
- ii. where the full export value of the goods or software is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods in the overseas market.

Explanation:

For the purpose of this regulation, 'final place of destination' means a place in a country in which the goods are ultimately imported and cleared through Customs of that country.

8. Manner of payment of export value of goods

Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

Explanation:

For the purpose of this regulation, re-import into India, within the period specified for realisation of the export value, of the exported goods in respect of which a declaration was made under Regulation 3, shall be deemed to be realisation of full export value of such goods.

9. Period within which export value of goods/software/ services to be realised

(1) The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months from the date of export, provided

- a. that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months from the date of shipment of goods;
- b. further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of nine months or fifteen months, as the case may be.

(2)

(a) Where the export of goods / software / services has been made by Units in Special Economic Zones (SEZ) / Status Holder exporter / Export Oriented Units (EOUs) and units in Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) as defined in the Foreign Trade Policy in force, then notwithstanding anything contained in sub-regulation (1), the amount representing the full export value of goods or software shall be realised and repatriated to India within nine months from the date of export.

Provided further that the Reserve Bank, or subject to the directions issued by the Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of nine months.

(b) The Reserve Bank may for reasonable and sufficient cause direct that the said exporter/s shall cease to be governed by sub-regulation (2);

Provided that no such direction shall be given unless the unit has been given a reasonable opportunity to make a representation in the matter.

(c) On such direction, the said exporter/s shall be governed by the provisions of sub-regulation (1), until directed otherwise by the Reserve Bank.'

Explanation:

For the purpose of this regulation, the "date of export" in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.

10. Submission of export documents

The documents pertaining to export shall be submitted to the authorised dealer mentioned in the relevant export declaration form, within 21 days from the date of export, or from the date of certification of the SOFTEX form:

Provided that, subject to the directions issued by the Reserve Bank from time to time, the authorized dealer may accept the documents pertaining to export submitted after the expiry of the specified period of 21 days, for reasons beyond the control of the exporter.

11. Transfer of documents

Without prejudice to Regulation 3, an authorised dealer may accept, for negotiation or collection, shipping documents including invoice and bill of exchange covering exports, from his constituent (not being a person who has signed the declaration in terms of Regulation 3) :

Provided that before accepting such documents for negotiation or collection, the authorised dealer shall –

a) where the value declared in the declaration does not differ from the value shown in the documents being negotiated or sent for collection, or

b) where the value declared in the declaration is less than the value shown in the documents being negotiated or sent for collection, require the constituent concerned also to sign such declaration and thereupon such constituent shall be bound to comply with such requisition and such constituent signing the declaration shall be considered to be the exporter for the purposes of these Regulations to the extent of the full value shown in the documents being negotiated or sent for collection and shall be governed by these Regulations accordingly.

12. Payment for the Export

In respect of export of any goods or software for which a declaration is required to be furnished under Regulation 3, no person shall except with the permission of the Reserve Bank or, subject to the directions of the Reserve Bank, permission of an authorised dealer, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing –

(i) that the payment for the goods or software is made otherwise than in the specified manner; or

(ii) that the payment is delayed beyond the period specified under these Regulations; or

(iii) that the proceeds of sale of the goods or software exported do not represent the full export value of the goods or software subject to such deductions, if any, as may be allowed by the Reserve Bank or, subject to the directions of the Reserve Bank, by an authorised dealer;

Provided that no proceedings in respect of contravention of these provisions shall be instituted unless the specified period has expired and payment for the goods or software representing the full export value, or the value after deductions allowed under clause (iii), has not been made in the specified manner within the specified period.

(iv) Export of services to which no Form specified in these Regulations apply, the exporter may export such services without furnishing any declaration, (i), (ii) & (iii) above shall apply.

13. Certain Exports requiring prior approval :- Exports under trade agreement/rupee credit etc.

(i) Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt. of a foreign state shall be governed by the terms and conditions set out in the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.

(ii) An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by the terms and conditions advised by the Reserve Bank to the authorised dealers from time to time.

14. Delay in Receipt of Payment

Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing,

(a) the payment therefor if the goods or software has been sold and

(b) the sale of goods and payment thereof, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf ;

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

15. Advance payment against exports

(1) Where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that –

i) the shipment of goods is made within one year from the date of receipt of advance payment;

ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and

iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

16. Issue of directions by Reserve Bank in certain cases

(1) Without prejudice to the provisions of Regulation 3 in relation to the export of goods or software which is required to be declared, the Reserve Bank may, for the purpose of ensuring that the full export value of the goods or, as the case may be, the value which the exporter having regard to the prevailing market conditions expects to receive on the sale of goods or software in the overseas market, is received in proper time and without delay, by general or special order, direct from time to time that in respect of export of goods or software to any destination or any class of export transactions or any class of goods or software or class of exporters, the exporter shall, prior to the export, comply with the conditions as may be specified in the order, namely ;

a) that the payment of the goods or software is covered by an irrevocable letter of credit or by such other arrangement or document as may be indicated in the order ;

b) that any declaration to be furnished to the specified authority shall be submitted to the authorised dealer for its prior approval, which may, having regard to the circumstances, be given or withheld or may

be given subject to such conditions as may be specified by the Reserve Bank by directions issued from time to time.

c) that a copy of the declaration to be furnished to the specified authority shall be submitted to such authority or organisation as may be indicated in the order for certifying that the value of goods or software specified in the declaration represents the proper value thereof.

(2) No direction under sub-regulation (1) shall be given by the Reserve Bank and no approval under clause (b) of that sub-regulation shall be withheld by the Authorised Dealer, unless the exporter has been given a reasonable opportunity to make a representation in the matter.

17. Project exports

(1) Where an export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time.

(2) In case a guarantee is required to be given prior to post award approval, the same may be issued by an authorized dealer bank/ a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract / Letter of Award stipulates such requirements. Explanation:

For the purpose of this Regulation, 'approving authority' means the EXIM Bank of India or the authorised dealer.

4. Operational instructions to Authorised Persons by RBI as per Master Direction dated 1st January 2016

1. Authorized Persons may carefully study the provisions of the Act / Regulations / Notifications issued under Foreign Exchange Management Act, 1999.

2. The Reserve Bank will not, generally, prescribe the documents which should be verified by the Authorised Persons while releasing foreign exchange for current account transactions. In this connection, attention of authorized persons is drawn to sub-section (5) of Section 10 of the FEMA, 1999 which provides that an authorised person shall require any person desiring to transact in foreign exchange to make such a declaration and to give such information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of the FEMA or any rule, regulation, notification, direction or order issued there under.

3. With a view to maintaining uniform practices, Authorized Dealers may consider requirements or documents to be obtained by their branches to ensure compliance with provisions of sub-section (5) of section 10 of the Act.

4. Authorised Dealers are also required to keep on record any information / documentation, on the basis of which the transaction was undertaken for verification by the Reserve Bank. In case the applicant refuses to comply with any such requirement or makes unsatisfactory compliance therewith, the Authorised Dealer shall refuse, in writing, to undertake the transaction and shall, if he has reasons to believe that any

contravention / evasion is contemplated by the person, report the matter to the Reserve Bank.

5. Reserve Bank of India will not issue any instructions under the FEMA, regarding the procedure to be followed in respect of deduction of tax at source while allowing remittances to the non-residents. It shall be mandatory on the part of Authorised Dealers to comply with the requirement of the tax laws, as applicable.

6. While allowing the facility to resident individuals, Authorised Dealers are required to ensure that “Know Your Customer” guidelines have been implemented in respect of bank accounts. They should also comply with the Anti-Money Laundering Rules in force while allowing the facility.

7. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittances for capital account transactions. If the applicant seeking to make the remittances is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the Authorised Dealers should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained.

8. The Authorised Dealer should ensure that the payment is received out of funds belonging to the person seeking to make the remittances, by a cheque drawn on the applicant’s bank account or by debit to his account or by Demand Draft / Pay Order. Authorised Dealer may also accept the payment through credit /debit/prepaid card of the card holder.

9. The Authorised Dealer should certify that the remittance is not being made directly or indirectly by /or to ineligible entities and that the remittances are made in accordance with the instructions contained herein.

10. AD bank should not extend any kind of credit facilities to resident individuals to facilitate remittances for capital account transactions under the Scheme.

11. Authorised Dealer may keep a record of the countries identified by FATF as non-co-operative countries and territories and accordingly update the list from time to time for necessary action by their branches handling the transactions under the Liberalised Remittance Scheme. For this purpose, they may access the website www.fatf-gafi.org to obtain the latest list of non-co-operative countries notified by FATF.

12. The remittances made under this Scheme will be reported in the R-Return in the normal course. The Authorised Dealers may also prepare and keep on record dummy Form A2, in respect of remittances less than USD 25,000. In addition, AD banks would also furnish information on the number of applicants and total amount remitted under the Scheme, on a monthly basis, to the Reserve Bank of India, through the Online Return Filing System (ORFS).

13. A number of foreign banks operating in India as well as Indian banks have been soliciting (through advertisements) foreign currency deposits (from residents under LRS) [on behalf of overseas mutual funds] or for placing at their overseas branches. These advertisements may not always contain appropriate disclosures to guide potential depositors giving rise to concerns from the point of view of protecting the

interest of the resident individuals. Further, marketing in India of schemes soliciting foreign currency deposits by foreign entities, not having operational presence in India, also raises supervisory concerns. Therefore, all banks, both Indian and foreign, including those not having an operational presence in India, should seek prior approval from RBI for the schemes being marketed by them in India to residents either for soliciting foreign currency deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company. The applications in this regard may be addressed to the Chief General Manager-in-Charge, Department of Banking Regulations, Reserve Bank of India, Central Office, 12th Floor, Fort, Mumbai -400001.

Competition Act, 2002

MCA's Notification dated 4th March 2016

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 'Group' exercising less than fifty per cent. of voting rights in other enterprise from the provisions of section 5 of the said Act for a period of five years with effect from the date of publication of this notification in the official gazette

MCA's Notification dated 4th March 2016

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 an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India from the provisions of section 5 of the said Act for a period of five years from the date of publication of the notification in the official gazette.

MCA's Notification dated 4th March 2016

In exercise of the powers conferred by sub-section (3) of Section 20 of the Competition Act, 2002, the Central Government in consultation with the Competition Commission of India, hereby enhances, on the basis of the wholesale price index, the value of assets and the value of turnover, by hundred per cent for the purposes of section 5 of the said Act, from the date of publication of this notification in the Official Gazette.

SEBI (ICDR) Regulations, 2009

1. Conditions and manner of providing exit opportunity to dissenting Shareholders

Applicability (Regulation 69A)

(1) The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the prospectus.

(2) The provisions of this Chapter shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

Definitions (Regulation 69B)

-  **Dissenting shareholders:-**Dissenting shareholders means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer;
-  **Frequently traded shares:-**Frequently traded shares shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
-  **Relevant date:-**Relevant date means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders' approval.

Conditions for exit offer (Regulation 69C)

The promoters or shareholders in control shall make the exit offer in accordance with the provisions of this Chapter, to the dissenting shareholders, if:

- (a) the public issue has opened after April 1, 2014; and
- (b) the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least ten per cent. of the shareholders who voted in the general meeting; and
- (c) the amount to be utilized for the objects for which the prospectus was issued is less than seventy five per cent. of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

Eligibility of shareholders for availing the exit offer (Regulation 69D)

Only those dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer made under this Chapter.

Exit Offer Price (Regulation 69E)

The 'exit price' payable to the dissenting shareholders shall be the highest of the following:

- (a) the volume-weighted average price paid or payable for acquisitions, whether by the promoters or shareholders having control or by any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date;
- (b) the highest price paid or payable for any acquisition, whether by the promoters or shareholders having control or by any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date;
- (c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;

(d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers.

Manner of providing exit to dissenting Shareholders (Regulation 69F)

(1) The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.

(2) In addition to the disclosures required under the provisions of section 102 of the Companies Act, 2013 read with rule 32 of the Companies (Incorporation) Rules, 2014 and rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and any other applicable law, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement to the notice for passing special resolution.

(3) After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s), in terms of the provisions of regulation 44(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(4) The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognised stock exchange(s).

(5) The promoters or shareholders in control, shall appoint a merchant banker registered with the Board and finalize the exit offer price in accordance with these regulations.

(6) The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.

(7) The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.

(8) To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.

(9) The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.

(10) The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.

(11) The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognised stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.

(12) The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.

(13) Within a period of two working days from the payment of consideration, the issuer shall furnish to the recognised stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

Offer not to exceed maximum permissible non-public shareholding (Regulation 69G)

In the event, the shares accepted in the exit offer were such that the shareholding of the promoters or shareholders in control, taken together with persons acting in concert with them pursuant to completion of the exit offer results in their shareholding exceeding the maximum permissible non-public shareholding, the promoters or shareholders in control, as applicable, shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.”