

LESSON 1 – TYPES OF CORPORATE RESTRUCTURING

Mergers & Acquisitions (M&A)

- **M&A = ownership transfer/combo** of cos/org units
- **Strategic Mgmt tool** → grow, shrink, change biz model
- **Consolidation** → 2 cos = 1 stronger entity
- **Aim: Wealth max., market reach, brand, sales, tech access**
- **Merger** = combo into 1 new entity
- **Acquisition** = 1 co. buys another; target co. becomes part of acquirer
- Part of **Corporate Finance, Strategic Mgmt, Restructuring**
- Results: ↑ **Profitability, Market share**

Examples

- **Zomato–Blinkit Merger:**
 - All-stock deal → Blinkit valued \$700–750M
 - Blinkit (prev. Grofers) = instant grocery focus
- **Zomato–Uber Eats Acquisition:**
 - All-stock deal in 2020
 - Covid benefit: discounts, wider customer base
 - Zomato became food market leader
- **Indiabulls Real Estate Ltd (IBREL)–Embassy Group Merger:**
 - Approved by NCLAT, reversed NCLT order
 - **DCF method** of valuation valid
 - NCLT erred by ignoring **commercial wisdom** of stakeholders
- **Reliance–Disney JV:**
 - Combine media assets (Hotstar, JioCinema)
 - 750M+ viewers in India + diaspora
 - **Entertainment & Sports content**
- **Air India–Vistara Merger:**
 - Air India owned by Tata Sons
 - Vistara + AI merger = 2nd after AI Express & AIX Connect
 - Acquisition via Talace Pvt Ltd (subsidiary of Tata)

CASE LAWS – M&A

1. CMS Info Systems Ltd v. Bharatiya Kamgar Karamchari Mahasangh

- **Sec 231 CA, 2013:** NCLT cannot modify approved Scheme
- Clause 7.1 + Board action = workmen continued service
- **No retrenchment** → Manpower Supply Agreements ensured continuity
- **Intention** of Scheme respected

2. Indiabulls Real Estate Ltd & Ors v. Income Tax Dept

- **DCFM = valid valuation method**
- **Approval = 100% shareholders + creditors**
- **Regulatory Clearances:** CCI, MCA, SEBI, ROC, NSE, BSE
- Objection by IT Dept withdrawn → Scheme protected Revenue interest
- **No variation** in project cash flow post rectification
- **Valuation by experts** → Tribunal must not interfere

Amalgamation

Definition:

- **Welding/Blending** → form 1 new co. or absorbed into another
- **Post-Amalgamation:** Transferor co. ceases to exist
- **No joint liability** of Transferor–Transferee
- **No express def. in CA 2013** → only procedure + legal effect

Effect:

- **Corporate identity of Transferor ends**
- Transferee co. **inherits biz, assets, liabilities**
- **Protection of public interest** esp. in banking
- Late intervention = **run on bank**, loss of confidence

- **Clause 3(3):** Only existing directors liable for pending prosecutions
- **New mgmt (DBS)** not criminally liable

CASE LAWS – Amalgamation

1. Religare Finvest Ltd v. State of NCT Delhi

- SC cited **General Radio & Appliances v. M.A. Khader**
- **After amalgamation** → Transferor co. ceases
- New co. ≠ jointly liable
- Amalgamation = **statutory scheme under Banking Act**
- Aim: **Depositor protection**, avoid systemic risk

2. PCIT v. Mahagun Realtors (P) Ltd

- **Amalgamation ≠ winding up**
- **Outer shell ends**, but venture lives on in Transferee
- Courts check **successor/rep** for liability continuation
- Assessment can continue if **assets/liabilities devolved** to Transferee

Here is your summarized revision note on the **HDFC Ltd & HDFC Bank Merger**, based on your preferred format:

HDFC Ltd & HDFC Bank Merger

Type: Inorganic Growth | Composite Scheme u/s 230-232 Co. Act, 2013

Deal Size: ~\$40 billion (2022)

Mode: Amalgamation of 4 entities → 1

Entities Involved

Transferor Co. 1: HDFC Investments Ltd

Transferor Co. 2: HDFC Holdings Ltd

→ Both: **NBFC-ND-SI**, RBI registered, engaged in **equity & MF investments**, 100% subs of Transferee Co.

Transferee Co. (Amalgamating): Housing Development Finance Corp. Ltd (HDFC Ltd)

→ Business: **Home loans, construction finance**, ~464 offices

Amalgamated Co.: HDFC Bank Ltd

→ Business: Full-fledged **Banking ops**, **6.8 Cr+ customers**, listed on BSE/NSE

Scheme Structure

1. **Transferor Cos.** → merged into **HDFC Ltd** (Transferee Co.)
2. Then, **HDFC Ltd** → merged into **HDFC Bank** (Amalgamated Co.)
 - Both mergers w.e.f. **Appointed Date**
 - **Dissolution without winding-up**
 - **New Equity Shares** to shareholders of HDFC Ltd per **Share Exchange Ratio**

Rationale & Benefits

- Housing portfolio + Customer base ↑
- **Complementary businesses** → banking + housing finance
- Access to **low-cost CASA deposits** for housing loans
- Use of HDFC Ltd's **offices, tech & analytics**
- **Priority Sector Lending (PSL)** boost via rural housing
- **Reduced unsecured loan exposure**
- Larger **Balance Sheet + Net Worth** → Big-ticket lending
- Simplified **corporate structure**
- Scale synergies → **Revenue + Efficiency + Underwriting gains**
- No adverse effect on stakeholders or public

Key Approvals & Timeline

- **Board Approvals:** 3–4 April 2022
- **Implementation Agreement:** 4 April 2022
- **CCI Approval:** 12 Aug 2022
- **RBI NOC:** 4 July 2022
- **BSE & NSE NOC:** 2 July 2022
- **NCLT Direction (Shareholders' Meeting):** 14 Oct 2022

- **Shareholders' Meeting:** 25 Nov 2022
- **SEBI In-principle (NCD transfer):** 13 Dec 2022
- **Petition Filed to NCLT:** post-16 Dec 2022
- **RD Report:** 21 Dec 2022
- **Joint Affidavit by Cos.:** 9 Jan 2023
- **OL Clarification:** 4 Jan 2023 | Response: 9 Jan 2023

Let me know if you want a line-wise PDF version or a diagrammatic summary as well.

Here is a **summarized version in bullet points** for fast revision, as per your style (minimal grammar, more keywords, short format, bold terms, with separators):

Demerger of Reliance Industries Ltd. – Financial Arm
 → **RSIL** renamed as **Jio Financial Services Ltd. (JFSL)**
 → **NCLT (Mumbai) Order Date: 28-Jun-2023**
 → **Demerger u/s 2(19AA) of Income Tax Act, 1961**

Scheme of Arrangement

- **Demerger + Vesting of Financial Services Business** from RIL → RSIL
- **Going concern basis**
- **Swap Ratio:** 1:1 → 1 Equity Share of RSIL (₹10) for 1 Equity Share of RIL (₹10)
- **Pre-scheme capital of RSIL = Cancelled**
- **Record Date: 20-Jul-2023**

Companies Involved

Reliance Industries Ltd. (RIL)

- **Incorporation:** 08-May-1973 as **Mynylon Ltd.**
- Name changed to **Reliance Textiles Industries Ltd.** (11-Mar-1977)
- Final name: **Reliance Industries Ltd.** (27-Jun-1985)
- Registered office: shifted from Karnataka → Maharashtra
- **Businesses:** Digital, Retail, Financial, Composites, Renewables, E&P, Oil-Chem
- **Listings:** BSE, NSE, Luxembourg SE, SGX, IOB, OTC (US), IFSC

Reliance Strategic Investments Ltd. (RSIL) → Now JFSL

- **Wholly owned subsidiary** of RIL
- **NBFC – Systemically Important (non-deposit taking)**
- Renamed as **Jio Financial Services Ltd.** on **25-Jul-2023**

Rationale of Scheme

- Financial services need **separate strategy**
- Distinct **risk, market dynamics, investor base**
- Attract **strategic partners, lenders**
- Enable **focused growth, better valuation unlocking**

Cost Apportionment (per RIL Filing)

Company % of Cost

RIL **95.32%**

RSIL/JFSL **4.68%**

◆ Example: Buy Price = ₹2000

→ Post Demerger: RIL = ₹1906.40, RSIL = ₹93.60

Chronology & Approvals

1. **Oct 2022:** RIL announces demerger → RSIL → JFSL
2. **Sections 230–232, CA, 2013** → Tribunal approval sought
3. **Observation Letters:** BSE (27-Feb-2023), NSE (28-Feb-2023)
4. **NCLT Application Order:** 27-Mar-2023
5. **Appointed Date:** 31-Mar-2023 (closing business hours)
6. **Meetings held:** RIL creditors & shareholders – 02-May-2023
7. **RSIL meetings dispensed** – Consents via affidavit
8. **Chairperson Report:** 04-May-2023

9. **Petition Admitted by NCLT:** 12-May-2023 → Hearing on 22-Jun-2023
10. **RD Report:** 30-May-2023
11. **Notice Publication:** 02-Jun-2023
12. **Notice Served To:**
 - Central Govt (RD), RoC
 - Income Tax Dept, GST Dept
13. **Affidavit:** 08-Jun-2023 (confirming compliance)
14. **NCLT Final Order:** 28-Jun-2023 – Scheme Sanctioned
15. **ROC Name Change Certificate:** 25-Jul-2023 – JFSL

Conclusion

- Creation of **independent FS entity** – JFSL
- **Focus** on FS sector, **attract investors**
- Enable **higher leverage** for FS growth
- **Value unlocking** for RIL shareholders
- Scheme is **fair, legal & in public interest**

Let me know if you want this converted into a handwritten notes layout or diagram.

Here's a **summarized case study** of the **Demerger of ITC's Hotel Business** for fast exam revision in bullet points with minimal grammar and technical terms:

□ Scheme of Arrangement

U/s 230–232, Companies Act, 2013 between:

- **Demerged Co.:** ITC Ltd
- **Resulting Co.:** ITC Hotels Ltd
- **Transfer:** Hotels Business of ITC to ITC Hotels on going concern basis
- **Share Entitlement:** 1 share of ITC Hotels (₹1 FV) for every 10 shares of ITC Ltd (₹1 FV)

■ About ITC Ltd

- Diversified conglomerate: **FMCG, Hotels, Paper, Agri, IT**
- **Revenue:** ₹69,481 Cr, **Net Profit:** ₹18,753.31 Cr (FY23)
- Leading brands: **Aashirvaad, Sunfeast, Yippee!, Bingo!, Savlon, Fiama, Vivel**
- ITC Hotels started in **1975**, grown to 115+ properties
- Brands: **ITC Hotels, Mementos, Welcomhotel, Storii, Fortune, WelcomHeritage**
- New Intl. venture: **Luxury hotel in Colombo, Sri Lanka**

📌 Hotels Business (Demerged Undertaking)

- Includes: **Ownership, licensing, operation, mgmt. of hotels**
- Services: **Accommodation, dining, banquets, marketing, supervision**

★ Rationale for Demerger

- Hotels Business **matured** and can pursue **independent growth**
- Enables **sharper strategy, focus, flexibility**
- Continued use of ITC's **brand, goodwill, synergies**
- **Listing benefits:** Independent valuation, investor flexibility
- Better alignment with **hospitality sector dynamics**
- Attracts sector-specific **investors, partners, capital**
- Unlocks **shareholder value** via separate listing
- Resulting Co. can raise **equity/debt** independently

📅 Key Approvals & Timeline (Indicative)

1. **24 Jul 2023:** In-principle Board approval
2. **14 Aug 2023:** Final Board approval
3. **Sep 2023:** Filing with Stock Exchanges (Reg. 30 SEBI LODR)
4. **Dec 2023:** SE approvals + NCLT filing
5. **Mar 2024:** Shareholders/Creditors meeting
6. **Aug 2024:** NCLT & regulatory approvals
7. **Sep 2024:** NCLT Order + ROC Filing + Effective date
8. **Nov 2024:** Issuance & Listing of ITC Hotels shares

□ Regulatory Approvals Needed

- Shareholders, Creditors, SEBI, Stock Exchanges, NCLT, ROC
- ~15 months timeline from Board approval to listing

Let me know if you want this compared with **Demerger of Reliance Jio Financial Services** or **Adani Green Energy Ltd** case, or a one-pager chart format.

Here's a **detailed, summarized, and exam-oriented note** for fast revision on the topics you shared, as per your preferred format (short points, minimal grammar, technical keywords, all relevant points covered). Each section ends with a line for clarity.

□ Amalgamation of IDFC Ltd with IDFC FIRST Bank

◆ **Date of Board Approval:** 03-Jul-2023

◆ **Type:** Reverse Merger – IDFC Ltd (Holding Co) into IDFC FIRST Bank (Subsidiary)

◆ **Approvals reqd from:** RBI, SEBI, CCI, NCLT, BSE, NSE, Shareholders

◆ **Share Exchange Ratio:**

155 shares of IDFC FIRST Bank (₹10 FV) : 100 shares of IDFC Ltd (₹10 FV)

◆ **Share Impact:**

- 264.64 Cr shares of IDFC FIRST Bank (held by IDFC Ltd) extinguished
- 248 Cr new shares issued to IDFC Ltd shareholders

◆ **Book Value Impact:**

↑ by 4.9% (based on 31-Mar-2023 audited financials)

◆ **Key Benefits:**

a) **Value Unlocking** – IDFC Ltd shareholders to directly hold bank shares

b) **Corporate Structure Simplification** – IDFC FHCL, IDFC Ltd, IDFC FIRST Bank into 1 entity

c) **Diversified Shareholding** – Align with large private banks

d) **Capital Raising Easier** – More access to market capital

◆ **Background:**

- IDFC Ltd – Infra financing DFI since 1997 → Got “in-principle” bank license from RBI in 2014 → Created IDFC Bank
- IDFC Bank started: Oct 2015
- Merged with Capital First Ltd (MSME + Consumer lending) → Dec 2018
- Post-merger renamed **IDFC FIRST Bank**
- IDFC Ltd (via FHCL) held **39.93%** in IDFC FIRST Bank (as on 30-Jun-2023)

◆ **Financials & Operational Highlights (31-Mar-2023):**

- **Deposits:** ₹136,812 Cr (4-yr CAGR 36%)
- **CASA Ratio:** ↑ from 8.6% (2018) to 49.77%
- **Branches/ATMs:** 809 / 925
- **Loan Book:** ₹1,60,599 Cr
- **Balance Sheet:** ₹2,39,942 Cr
- **PAT:** ₹2,437 Cr
- **CRAR:** 16.82%
- **Asset Quality:**
 - Retail GNPA: 1.65%, NNPA: 0.55%
 - Infra GNPA: 25.11%, NNPA: 15.73% (book winding down)
 - Overall GNPA: 2.51%, NNPA: 0.86%
 - Excl. Infra GNPA: 1.84%, NNPA: 0.46%
- **PCR (incl. tech write-off):** 80.29%
- **Credit Rating:** Upgraded to AA+ by CRISIL & India Ratings

◆ Amalgamation of Fincare Small Finance Bank with AU Small Finance Bank

◆ **Type:** Voluntary Amalgamation

◆ **Transferor Bank:** Fincare SFB

◆ **Transferee Bank:** AU SFB

◆ **Authority:** Sanctioned by RBI u/s 44A(4) of Banking Regulation Act, 1949

◆ **Effective Date:** 01-Apr-2024

◆ **Post-Amalgamation:** All Fincare SFB branches → AU SFB branches

■ SEBI (Buy-Back of Securities) Regulations, 2018 – Key Summary

◆ **Reg. 3 – Applicability:**

- Buy-back of shares or specified securities incl. superior voting equity shares, ESOPs, etc.

◆ Reg. 4 – Conditions & Requirements

1. **Max Buy-back Limit:**

- ≤ 25% of paid-up capital + free reserves (based on standalone/consolidated, whichever lower)
- For no. of shares – 25% of paid-up equity shares in FY

2. **Debt-Equity Ratio Post Buy-back:**

- ≤ 2:1 (Standalone or Consolidated, lower)
- Excl. NBFCs/HFCs if they have ≤ 6:1 debt-equity (standalone)

3. **Only Fully Paid-up Securities allowed**

4. **Modes of Buy-back:**

a) **Tender Offer** (Proportionate basis)

b) **Open Market** – via:

- i) **Book Building**
- ii) **Stock Exchange**

▪ **Limit:**

- ≤ 15% till 31-Mar-2023
- ≤ 10% till 31-Mar-2024
- ≤ 5% till 31-Mar-2025

▪ **Prohibited from 01-Apr-2025**

5. **Not for Delisting**

6. **No Negotiated/Spot/Private Deals**

7. **1-Year Gap** reqd between 2 Buy-backs

8. **Capital Reduction** mandatory post Buy-back

9. **Sources for Buy-back:**

- Free reserves
- Securities premium
- Proceeds of other securities (not same kind)

10. **Buy-back Not Allowed if:**

- Through subsidiary / investment company
- Co in **default** in repayment of deposits, loans, debentures, dividends (unless 3 yrs passed post rectification)

◆ Reg. 5 – Compliance & Filings

1. **Authorisation:**

a) Articles of Co must permit

b) Special Resolution at GM (unless ≤ 10% → Board Reso sufficient)

c) Prior Lender Consent if any covenant breach

2. **Completion:** Within 1 year from approval

3. **Post Buy-back Return:** To ROC & SEBI within 30 days

4. **Explanatory Statement at GM:**

- Mandatory disclosures incl. Sec 68(3) of CA, 2013
- Need for buy-back
- Material facts

Let me know if you want the remaining part of **Reg. 5** or any other topic next.

Here's a **summarized version in bullet points** of the key provisions under **SEBI (Buy-Back of Securities) Regulations, 2018** (as amended), focusing on **Regulations 17, 19, 22B, 24, 28 & Schedule II** — formatted for **quick revision** in your style:

Reg. 17 – Opening of Buy-back Offer on Stock Exchange

- **Company identity** must appear on **electronic screen** during order.

- Buy-back offer to open **within 4 working days** of **Public Announcement (PA)**.
- **Buy-back closing timelines:**
 - $\square \leq 6$ months → If opened **on/before 31 Mar 2023**
 - $\square \leq 66$ working days → If opened **1 Apr 2023–31 Mar 2024**
 - $\square \leq 22$ working days → If opened **1 Apr 2024–31 Mar 2025**
- **Post 1 Apr 2025** → **Open market buy-back via stock exchange NOT allowed** (unless opened \leq 31 Mar 2025)

Reg. 19 – Compliances for Physical Shares (Stock Exchange Buy-back)

- **Separate window** by stock exchange for physical share buy-back.
- **Buy-back allowed** from holders of **physical shares** via separate window only **after KYC (ID & address proof)** verification.
- **Buy-back price:**
 - \square = **VWAP** of securities **bought back (non-physical)** in **calendar week** of receipt.
 - \square If in **1st week** → Use **VWAP of preceding week**.
 - \square If **no trade that week** → Use **VWAP of last week with buy-back**.
 - \square **Material price movements/events** may be excluded per **Reg 30(11)** of LODR.

Reg. 22B – Offer Procedure

- Must disclose **max buy-back price** (upper end), as approved by **BoD/shareholders**.
- Must disclose **book value** of shares.
- **Offer opening announcement** to be published on **commencement date**.
- **Frequently traded securities** → **Lower price** \geq Higher of:
 - a) Closing price on Notice date (Sch VI)
 - b) VWAP for 15 trading days before BoD meeting intimation
- **Infrequently traded securities** → Lower end \geq Valuer's price.
- Final price depends on **bid discovery** within price range.
- Material price movements may be **excluded per Reg 30(11)** of LODR for lower end calculation.

Reg. 24 – Obligations of Company

- Docs (LOF, PA, ads etc.) → **True, factual, no mislead**, BoD holds responsibility.
- No issue of new securities (incl. bonus) **till buy-back ends**, except:
 - a) Conversion of existing **warrants, ESOP, sweat equity, debentures, pref shares**.
 - b) Such obligations & impact must be disclosed in PA.
- **Only cash** for buy-back consideration.
- **No withdrawal** post draft LOF filing or PA.
- **Promoters/associates – No dealing** in shares during:
 - From date of resolution (BoD/EGM) **till offer close**.
- **No capital raise** for 1 year post buy-back, except for **subsisting obligations**.

Reg. 28 – Relaxation of Strict Enforcement

- SEBI may relax provisions (except Companies Act parts) if:
 - a) **Procedural**, or
 - b) **Causes undue hardship**
- Co. to file **self-attested application** to SEBI with reasons.
- **Fee: ₹50,000** (non-refundable) via **NEFT/RTGS/IMPS/SEBI Payment Gateway**.

- SEBI may pass **reasoned order** (approval/rejection) after hearing.

Schedule II – Public Announcement (PA)

- **PA must be dated & signed:**
 - By **Manager/Secretary**, and
 - ≥ 2 **directors**, incl. **Managing Director**, if applicable.
- Must include:
 - **Full material disclosures** (incl. as per Schedule I).
 - **Details & impact of subsisting obligations**, if any.

Lesson 2: Acquisition of Company/Business

★ Primary Object of Takeover Code – SAT (Nirvana Holdings v. SEBI, 2011)

- **Exit route to public shareholders** during **substantial acquisition/takeover**
- **Right to exit = invaluable**, can't be denied easily
- **Mandate of Reg. 10, 11, 12** → acquirer must make **public announcement**
- **SEBI can deviate** under **Reg. 44** if **investor/market interest demands**
- **Deviation** → **Reason recording mandatory**
- In this case → **No reason recorded**, hence deviation **invalid**

★ General Exemptions – Reg. 10 of SEBI (SAST) Regulations, 2011

◆ *Reg. 10(1): Exempt from Open Offer (Reg. 3 & 4)*

(a) Inter se transfer among:

- (i) **Immediate relatives**
- (ii) **Promoters** (min. 3 yrs disclosed in filings)
- (iii) **Holding/Subsidiary cos** with $\geq 50\%$ equity held, same control
- (iv) **PACs** for ≥ 3 yrs & disclosed
- (v) **PAC shareholders** (≥ 3 yrs) & 100% owned cos (same proportion)
- **Conditions:**
 - For **frequently traded shares** → price $\leq 25\%$ of 60-day VWAP
 - For **infrequently traded** → $\leq 25\%$ of price per Reg. 8(2)(e)
 - **Disclosures** as per **Chapter V**

(b) Ordinary course acquisitions by:

- (i) **Underwriter** (SEBI registered, ICDR Reg. 2009)
- (ii) **Stock broker via lien**
- (iii) **Merchant banker / nominated investor** (market making/subscription)
- (iv) **Safety net** schemes
- (v) **Stabilising agent** / promoter under ICDR Reg.
- (vi) **Market-maker** (SE registered)
- (vii) **Escrow agent** (Scheduled Bank)
- (viii) **Pledge invocation** by Banks/FIs

(c) Subsequent stage acquisition after disinvestment agreement

- Same acquirer/seller
- Disclosed in **public announcement & letter of offer**

(d) Schemes of arrangement (Court/Tribunal order):

- (i) Under **SICA**
- (ii) Target co. as **transferor/transferee**
- (iii) Target **not directly involved**
 - Cash $\leq 25\%$ of consideration
 - Post-scheme $\geq 33\%$ voting power → same persons as before

(da) Resolution plan u/s **31, IBC 2016**

(e) Acq. under **SARFAESI Act, 2002**

(f) Acq. under **Delisting Reg.**

(g) Acq. by **transmission/succession/inheritance**

(h) Voting rights on **pref. shares** (Sec 47(2), CA, 2013)

(i) Acq. by **lenders** via **debt conversion**

- Must comply with **Reg. 158(6), ICDR 2018**
- “Lenders” = SCBs (except RRBs) + AIFIs

(j) Voting rights via **Sec 106(1)** (CA, 2013) or **forfeiture**

- Must comply with CA, 2013 + AoA

◆ **Reg. 10(2A)**

- **Increase in voting rights** (beyond threshold of Reg. 3(1)/(2)) via conversion of **SVR shares to ordinary shares** = **Exempt**

◆ **Reg. 10(2B)**

- Acq. via **preferential issue** (complies with Reg. 164A, **ICDR 2018**) = **Exempt**
- Also applies to **infrequently traded shares** if compliant with Reg. 164A(2)-(8)
- Pricing → as per Reg. 165, **ICDR 2018**

◆ **Reg. 10(3): Post Buy-Back Exemption**

- Increase beyond Reg. 3(1) threshold due to **buy-back** = **Exempt**
- **Condition** → SH must reduce holding < **threshold** within **90 days**

◆ **Reg. 10(4): Exemption under Reg. 3(2)**

(a) Acq. by SH **up to entitlement** in **rights issue**

(b) Acq. **beyond entitlement**, if:

- **No renunciation**
- Rights price ≤ **ex-rights price**
 - Formula includes **60-day VWAP** + Rights price component

(c) Voting right ↑ due to **buy-back**, if:

- SH **did not vote in favour** of buy-back
- Voting by **postal ballot**
- If board approval → SH/director **did not vote**
- **No acq. of control**
- If not met → reduce shareholding < **threshold** in **90 days**

Let me know if you want the **rest of the lesson** or summaries from any **specific Reg. (3/4/5/8/44)** etc.

■ **OFFER PRICE – SEBI (SAST) REGULATIONS, 2011 – REG. 8 (1) to (17)**

Reg. 8(1)

- **Open offer price** ≥ price under **Reg. 8(2)** or **8(3)** (as applicable)

Reg. 8(2): Direct/Indirect Acquisition (Reg. 5(2) applicable) – Offer Price = Highest of:

- (a) **Highest negotiated price** under agreement triggering open offer
- (b) **VWAP** (Vol. Weighted Avg. Price) in **52 weeks** before **PA**
- (c) **Highest price paid** in **26 weeks** before **PA**
- (d) **VWAP** for **60 trading days** before **PA** on stock exchange with **max volume** (if **frequently traded**)
 - ↳ **Not applicable** in case of **PSU disinvestment** involving change in **control**
- (e) If **not frequently traded**, price by acquirer + manager based on:
 - **Book value, Trading multiples, other valuation parameters**
- (f) **Per share value** under **Reg. 8(5)**, if applicable

Definitions

- **Disinvestment** – Direct/indirect sale by **Govt./Govt. Co.** of shares/voting rights/control in **PSU** [Reg. 2(1)(g)]

- **PSU** – Co. where **Govt. holds majority** shares/votes/control [Reg. 2(1)(u)]
- **Frequently Traded Shares** – ≥10% turnover in 12 months before PA month [Reg. 2(1)(j)]

Reg. 8(3): Indirect Acquisition (Reg. 5(2) NOT met) – Offer Price = Highest of:

- (a) **Highest negotiated price** under triggering agreement
- (b) **VWAP** in 52 weeks before earlier of:
 - Contract date or public domain announcement of **primary acquisition**
- (c) **Highest price paid** in 26 weeks before earlier of above
- (d) **Highest price paid** from above to date of **public announcement**
- (e) **VWAP** for 60 trading days before earlier of above (if **frequently traded**)
 - ↳ **Not applicable** for **PSU disinvestment** w/ change in **control**
- (f) **Per share value** under **Reg. 8(5)**

Reg. 8(4)

- If price can't be determined under Reg. 8(3):
 - Use **Fair Price** based on:
 - **Book Value, Trading Multiples, other valuation methods**

Reg. 8(5): Indirect Acquisition (Reg. 5(2)) – Disclosure if any % >15%

- (a) **Net asset value** of Target Co. ÷ Total NAV of acquired entity
- (b) **Sales turnover** of Target Co. ÷ Total sales of acquired entity
- (c) **Market Cap** of Target Co. ÷ EV of acquired entity
 - Based on **audited financials**
 - **Market Cap** = VWAP of shares for 60 trading days before earlier of contract/announcement

Reg. 8(6)

- If **convertible instruments** exist → **Conversion price** = price parameter under 8(2)/8(3)

Reg. 8(7)

- Include **any price paid** in any form (control premium, non-compete fees, etc.) for shares/votes/control

Reg. 8(8)

- If **acquisition price** > **offer price** during offer period → **Offer price revised** to highest price
 - No acquisition allowed: **3 working days before tendering** till end of tendering

Reg. 8(9)

- Price params under 8(2)/8(3) can be **adjusted** for:
 - **Rights, Bonus, Split, Consolidation, Dividend, Demerger, Capital reduction**
 - If **record date** is **before 3 working days before tendering**
 - No adjustment for **dividends** unless:
 - Dividend > **50% higher** than avg. dividend of last 3 FYs

Reg. 8(10)

- If **post-offer acquisition** (within 26 weeks) at **higher price**
 - **Diff. paid** to all accepted shareholders **within 60 days**
 - **Not applicable** for:
 - Other open offer
 - Delisting
 - **Ordinary course market buys** (not bulk/block/negotiated)

Reg. 8(11)

- If **minimum acceptance condition** exists
→ Acquirer may set **lower price** (\geq min offer price) for all acceptances

Reg. 8(12)

- In **indirect acquisition** (other than Reg. 5(2))
→ Offer price **enhanced** by **10% p.a.** for delay > 5 working days
(from earlier of contract/announcement → DPS)

Reg. 8(13)

- For **partly paid shares**:
→ Offer Price = Offer price – unpaid amount + interest on arrears

Reg. 8(14)

- For **DVR shares**:
→ Price set by acquirer + manager with full **justification** in DPS + Letter of Offer
→ Min price \geq premium % \times VWAP of DVR (60 days), using same formula as 8(2)(d)/8(3)(e)

Reg. 8(15)

- If price param not in **INR** → Convert using **prevailing exchange rate** on day before **PA**
→ Must disclose **source** of exchange rate in PA, DPS, LoO

Reg. 8(16)

- For Reg. 8(2)(e)/8(4):
→ **SEBI** may require **independent valuation** by:
Merchant Banker (not Offer Manager), or
• CA (10+ yrs exp)

Reg. 8(17)

- Price effects due to **material price movement** & event confirmation
→ May be **excluded** as per **Reg. 30(11) of Listing Regulations**

Let me know if you want a memory sheet format or diagrammatic structure.

Here is a **bullet-point summary** of the key provisions and case law related to **Completion of Acquisition under SEBI (SAST) Regulations, 2011, Mode of Payment, and interpretation of Persons Acting in Concert**, formatted for quick revision:

Regulation 22 – Completion of Acquisition

- **Reg. 22(1):**
 - Acquirer **cannot complete acquisition** of shares/voting rights/control until **expiry of offer period**.
 - **Exceptions:**
 - **Preferential allotment:** Follow timeline in **Reg. 170(1), ICDR Regulations, 2018**, subject to **Reg. 7(4), SAST**.
 - **Delisting offer:** Acquisition only after **public announcement of successful delisting** under **Reg. 17(4), Delisting Regulations**.
- **Reg. 22(2):**
 - Acquisition allowed **before offer period ends**, if:
 - Acquirer deposits **entire open offer consideration** in **escrow** (cash or irrevocable bank guarantee).
 - Acquisition permitted **after 21 working days** from **DPS**.
- **Bank Guarantee Condition:**
 - Must be from **scheduled commercial bank** with **'AAA' rating** by SEBI-registered credit rating agency.
- **Proportionate Reduction:**

- If applicable under **Reg. 7(4)**, acquirer must complete **scaled-down acquisition**.

• **Reg. 22(2A):**

- Acquisition via **preferential issue/stock exchange** permitted if:
 - Shares kept in **escrow**.
 - **No voting rights** exercised until compliance with **Reg. 22(2)**.

• **Reg. 22(3):**

- Acquisition must be completed **within 26 weeks from expiry** of offer period.
- **Extension allowed** by SEBI in case of **extraordinary/supervening circumstances** (with reasons published).

Regulation 9(5) – Mode of Payment (Listed Securities as Consideration)

- Value of listed securities offered = **Higher of:**
 - 6-month average** of weekly high/low closing prices.
 - 2-week average** of weekly high/low closing prices.
 - 60-day VWAP** on stock exchange with highest trading volume in 6 months before relevant date.
- **Exchange Ratio Certification** by:
 - Independent **merchant banker** (not manager to open offer), or
 - Independent **chartered accountant** (10+ years experience).
- **Relevant Date:**
 - 30 days prior to shareholder meeting under **Sec 81(1A), Companies Act, 2013**.
- **Reg. 9(6):**
 - Material price movements may be excluded per **Reg. 30(11), LODR Regulations**.

Supreme Court Interpretation: Person Acting in Concert

Case: Daiichi Sankyo Co. Ltd. v. Jayaram Chigurupati & Ors., CA Nos. 7148 & 7314 of 2009

- **PAC Definition (Reg. 2(e)(1))** requires:
 - **Target Company.**
 - **Two or more persons** with **shared common objective/purpose** of **substantial acquisition** of shares/control.
- **PAC relationship must be by design**, not accidental/fortuitous.
- **Shared objective can be:**
 - Formal/informal agreement/understanding.
 - Direct/indirect acquisition.
 - Cooperation or agreement to cooperate.
- **Ranbaxy and Daiichi not PAC** regarding Zenotech:
 - No evidence of **shared intent** to acquire Zenotech.
 - Acquisition of Zenotech by Ranbaxy was **independent** and not part of shared plan.
- **Timing of PAC relationship matters:**
 - Must exist at **time of share purchase**, not necessarily at **time of public announcement**.
- **Conclusion:**
 - **Ranbaxy not PAC** with Daiichi for Zenotech.
 - **Offer price valid.**
 - **SAT judgment set aside.**

Lesson 3: Planning & Strategy – Cash Deal vs. Stock Deal for Acquisition:

Cash Deal

- **Definition:** Acquirer pays **cash per share** to target company shareholders.
- **Example:** Company A acquires Company B for **\$100M**, offering **\$10/share**.

Advantages

- **Certainty of payment:** Fixed cash amount, immediate liquidity.

- **Simplified valuation:** Based on cash offer per share.
- **Minimal dilution:** No issue of new shares, existing shareholders not diluted.

Stock Deal

- **Definition:** Acquirer offers **its own shares** to target shareholders.
- **Example:** Company X offers **1 share for every 2 shares** of Company Y.

Advantages

- **Tax benefits:** May be tax-efficient (jurisdiction-dependent).
- **Valuation flexibility:** Based on acquirer's fluctuating stock price.
- **Synergy potential:** Share ownership aligns interests, encourages collaboration.

Key Considerations

- **Market conditions:** Affects deal structure choice.
- **Shareholder preferences:** Must be considered by both companies.
- **Regulatory requirements:** Antitrust & securities laws may influence structure.

Lesson 8: Regulation of Combination under the Competition Act, 2002

◆ Regulation of Combination – Overview

- **Combination** includes:
 - Acquisition of **control, shares, voting rights, or assets**
 - Acquisition of **control over competing enterprises**
 - **Mergers/amalgamations**
- Combination is **void** if it causes/likely to cause **Appreciable Adverse Effect on Competition (AAEC)**.

◆ Section 5 – Definition of Combination

A. Acquisition:

- If **acquirer + target** (jointly):
 - **India:** Assets > ₹1000 Cr or Turnover > ₹3000 Cr
 - **Global:** Assets > USD 500 Mn (incl. ₹500 Cr in India) or Turnover > USD 1500 Mn (incl. ₹1500 Cr in India)
- If part of a **group** post-acquisition:
 - **India:** Assets > ₹4000 Cr or Turnover > ₹12,000 Cr
 - **Global:** Assets > USD 2 Bn or Turnover > USD 6 Bn

B. Control over similar business (horizontal acquisition):

- If acquirer already has **direct/indirect control** over similar/identical/substitutable business:
 - Same thresholds as above

C. Merger/Amalgamation:

- Surviving/created entity or group post-merger:
 - Same thresholds as above

D. Value of Transaction Threshold:

- If **transaction value** exceeds **₹2000 Cr**, with **substantial business operations in India**, it qualifies as a combination.

◆ Value of Transaction – Includes:

- All **considerations** (cash, deferred, indirect)
- Payments for **covenants, tech assistance, IPR, branding**, etc.
- **Call option values**, future outcome-based payments
- Inter-connected transactions (Reg. 9(4)-(5))
- Includes **past 2 years' acquisitions** in the target
- Open offer – assume **full subscription**

- **Excludes** transaction costs (legal, banking fees)

◆ Substantial Business Operations in India

Deemed if any of the following:

- **Digital services:** ≥10% of global **business/end users** in India
- **GMV in India:** ≥10% global GMV & > ₹500 Cr (not for digital services)
- **Turnover in India:** ≥10% global turnover & > ₹500 Cr (not for digital services)

◆ Key Definitions

- **Control:** Ability to exercise **material influence** over management/decisions
- **Group:** Enterprises where one can:
 - Hold ≥26% voting rights
 - Appoint >50% board
 - Control affairs
- **Turnover:** As per **audited accounts**, excludes **intra-group sales, indirect taxes**
- **Assets:** **Book value**, includes **IP, goodwill, brand, etc.**

◆ Thresholds (Revised 2024 – 150% Enhanced)

Enterprise-Level:

- **India:**
 - Assets > ₹2500 Cr
 - Turnover > ₹7500 Cr
- **Global:**
 - Assets > USD 1.25 Bn with at least ₹1250 Cr in India
 - Turnover > USD 3.75 Bn with at least ₹3750 Cr in India

Group-Level:

- **India:**
 - Assets > ₹10,000 Cr
 - Turnover > ₹30,000 Cr
- **Global:**
 - Assets > USD 5 Bn with at least ₹1250 Cr in India
 - Turnover > USD 15 Bn with at least ₹3750 Cr in India

◆ De-Minimis Exemption (2024 Revised)

- **Target enterprise:**
 - Assets < ₹450 Cr OR Turnover < ₹1250 Cr
- Exemption applies to:
 - Acquisitions under **Section 5(a)**
 - Control acquisitions under **Section 5(b)**
 - Mergers/amalgamations under **Section 5(c)**
- Valid for **2 years** from notification (March 7, 2024)

◆ Special Points:

- For **partial acquisitions**, only the **relevant division's** assets/turnover is considered
- **Transaction value** may be estimated by **Board or approving authority**; if not, **maximum value** is taken
- **Currency conversion:** 6-month RBI average rate
- **No discounting** of future payments

Let me know if you'd like a **visual summary chart, MCQs**, or a **memory trick** for this!

Here's your **bullet-point summary** for **inquiry and investigation of combinations** under the **Competition Act, 2002** and **CCI (Combinations) Regulations, 2024**, as per your revision format:

Section 20 – Inquiry into Combination

- **20(1):** CCI may *suo motu* inquire into combinations (Section 5 clauses a–d) if it may cause **AAEC** in India.
 - **Time limit:** No inquiry after **1 year** from the effective date of combination.

- **20(2):** CCI shall inquire into combinations upon receipt of **notice under Section 6(2)**.
- **20(3):** Every **2 years**, Central Govt. may revise asset/turnover thresholds for combinations, based on **WPI, exchange rates**, etc.
- **20(4):** Factors to assess **AAEC**:
 - (a) **Import competition**
 - (b) **Barriers to entry**
 - (c) **Market concentration**
 - (d) **Countervailing power**
 - (e) **Price/profit increase likelihood**
 - (f) **Sustainability of competition**
 - (g) **Availability of substitutes**
 - (h) **Market share (individual + combined)**
 - (i) **Removal of effective competitors**
 - (j) **Vertical integration**
 - (k) **Failing business**
 - (l) **Innovation**
 - (m) **Contribution to economic development**
 - (n) **Net benefit over adverse impact**

Section 29 – Procedure for Investigation

- **29(1):** Prima facie opinion → issue **show cause notice** (reply within **15 days**).
- **29(1A):** CCI may seek **DG report** post response.
- **29(1B):** Prima facie opinion to be formed within **30 days** of notice under Sec 6(2).
- **29(2):** If CCI still sees AAEC → parties must **publish details** within **7 days** of direction.
- **29(3):** **Public objections** invited within **10 days** of publication.
- **29(4–5):** CCI may seek **additional info** → to be furnished in **10 days**.
- **29(6):** Proceed under **Sec 29A** or **Sec 31**.
- **29(7):** Modifications may be accepted **before prima facie opinion** (voluntary/suo motu).

Section 29A – Statement of Objections & Modifications

- **29A(1):** If AAEC found, CCI issues **Statement of Objections (SOO)** → reply within **25 days**.
- **29A(2):** Parties may **propose modifications** with explanation.
- **29A(3):** If rejected:
 - CCI gives **reasons within 7 days**
 - Parties may submit **revised modification in 12 days**
 - CCI must evaluate within **12 days**
 - CCI may also **propose suo motu modification**

Section 30 – Notice under Section 6(2)

- CCI shall examine **notice** and follow **Section 29 procedure**.

Section 31 – Orders of the Commission

- **31(1):** If no AAEC → **approve combination**
 - If no prima facie opinion under **29(1B)** → **deemed approval**
- **31(2):** If AAEC found → **reject combination**
- **31(3):** If AAEC removable by modification → **approve with conditions**
- **31(4):** Parties must implement **modifications within time** specified.
- **31(5):** If parties fail or AAEC is unremovable → CCI may:
 - Prohibit, **declare void**, or
 - Frame **remedial scheme**
- **31(6):** If no order in **150 days** → **deemed approval**

CCI (Combinations) Regulations, 2024

Regulation 5 – Notice (Form I / II)

- **Form I (default)** → always acceptable

- **Form II (preferred if):**
 - **Horizontal overlap** & combined market share >**15%**
 - **Vertical integration** & market share >**25%**
- **Timing:**
 - For open offers/stock exchanges (Sec 6A) → **within 30 days**
 - Sec 6(4) → in **Form I**

Regulation 6 – Open Offer Rights

- Acquirer may:
 - **Receive economic benefits**
 - **Vote only on liquidation/insolvency**
 - **No influence** over target or affiliates

Regulation 7 – Confidentiality

- Allowed if:
 - **Reasons & impact** explained
 - Considered per CCI (**General**) Regulations, 2024

Regulation 8 – Failure to File Notice

- CCI may **suo motu inquire** under Sec 20(1)
- CCI may direct filing of **Form I/II** within **30 days**

Regulation 9 – Obligation to File

- **Acquirer** must file notice (Form I/II)
- To be **signed by authorised person** per **General Regs, 2024**

Let me know if you'd like a **separate revision sheet** just for **Forms I & II**, **timelines**, or **Section-wise comparison**.

Here's a **crisp bullet-point revision** of **The Competition (Criteria for Exemption of Combinations) Rules, 2024** as per **MCA Notification G.S.R. 549(E)** dated **9th Sept 2024**, for quick reference:

Effective Date

- **Effective from:** 10th September 2024
- **Issued under:** Section 63 of the Competition Act, 2002
- **Exemption from:** Section 6(2), 6(2A), and 6(4) – requirement to notify combinations to CCI

Categories of Exempted Combinations (Schedule)

1. Acquisition in ordinary course of business:

- **Underwriting agreement** (SEBI-registered or foreign equivalent):
 - ☑ **Max 25% shares/voting rights**
- **Stockbroker acquisition** (SEBI-registered or equivalent):
 - ☑ **Max 25% shares/voting rights**
- **Mutual fund acquisition** (SEBI-registered or equivalent):
 - ☑ **Max 10% shares/voting rights**

2. Solely as investment (Max 25%)

☑ Not resulting in control

+Conditions:

- **✗** No board seat/observer rights
- **✗** No access to sensitive info
- **✗** No horizontal, vertical, complementary business linkages
 - ➡ If such linkages exist, exemption applies **only if post-acquisition <10% holding**

3. Additional acquisition (Up to 25%)

☑ If prior holding <25%, and

☑ No control, board seat, sensitive info

☑ In case of business linkages (horizontal/vertical/complementary):

➡ Incremental acquisition ≤ 5%, and

➡ Post-acquisition holding must **remain <10%**

4. Additional acquisition (25%-50%)

☑ Prior holding >25% but <50%,

☑ Post-acquisition holding ≤ 50%,

☑ No change in control

5. Acquisition beyond 50%

- ✓ Acquirer already holds >50%,
- ✓ No change in control

6. Asset acquisition in ordinary course of business

- ✓ Covers stock-in-trade, raw materials, trade receivables, etc.
- ✓ Should not constitute business

7. Asset acquisition not related to business

- ✓ Made solely as investment or
- ✓ Not leading to control, and
- ✓ Assets do not represent substantial business operations

8. Bonus issue / rights issue / stock splits / buyback

- ✓ If no change in control

9. Intra-group asset transfer

- ✓ Within same group,
- ✓ No change in control

10. Intra-group merger/amalgamation

- ✓ Within same group,
- ✓ No change in control

11. CCI-approved purchaser acquisition

- ✓ In line with order under Section 31

12. Demerger & share issue by resulting company

- ✓ Shares issued in proportion to old holding
- ✗ Except for fractional consideration

Definitions for clarity

- **Group entities** = Ultimate controlling person + all entities in same group
- **Affiliate** = Entity with:
 - ≥10% **shareholding/voting rights**, or
 - Right to **board representation**, or
 - Access to **sensitive information**

Let me know if you want a visual summary table, case examples, or explanation of terms like *control*, *horizontal/vertical linkage*, or *substantial business operations*.

Here's a quick bullet-point revision of **The Competition (Criteria of Combination) Rules, 2024** under MCA Notification G.S.R. 548(E) dated 9th Sept 2024, for exam prep:

Effective Under:

- **Section 63(2)(ac)** of the Competition Act, 2002

Purpose:

- Provides **criteria for filing notice under Section 6(4)** of the Act (i.e., **short form notice** for combinations)

Applicability:

- **Parties to the combination**, their **group entities**, and **affiliates**

Eligibility Criteria to file notice under Section 6(4):

1. **No horizontal relationship**
 - ✓ Parties do not produce or provide similar, identical, or substitutable products/services
2. **No vertical or complementary relationship**
 - ✓ Parties are not engaged in:
 - (i) Products/services at **different levels** of the production/distribution chain (**vertical**)
 - (ii) **Complementary** products or services

This essentially applies to **purely unrelated combinations**, making them eligible for a **simplified notice** procedure under **Section 6(4)**.

Lesson 11: Cross-Border Mergers

CROSS BORDER MERGERS – CONCEPT

- Involves **M&A between companies of two countries**
- **Foreign investor** acquires/merges with **Indian company**
- **Merger**: Assets/liabilities of both combined into new legal entity
- **Acquisition**: Assets/liabilities of Indian company transferred to foreign acquirer
- **Home Country**: Origin of acquiring company
- **Host Country**: Location of target company

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023

Applies to: **Fast-track mergers under Section 233**

Rule 25(5): No Objection

- If **no objection** from RoC/OL within **30 days**, CG may issue confirmation order in **15 days**
- If no action within **60 days** from receipt of scheme → **Deemed no objection** → Confirmation order to be issued (Form CAA.12)

Rule 25(6): Objections Received

- If **objections not sustainable**, CG may still confirm in **30 days** (Form CAA.12)
- If scheme **not in public/creditor interest**, CG to apply to **NCLT in 60 days** (Form CAA.13)
- If CG fails to act within **60 days** → **Deemed approval**

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022

Deals with: **India's national security (border country clause)**

Rule 25A(4): Border Country Clause

- **Declaration in Form CAA-16** required under Section 230
- Applies when **Indian company merges** with entity **incorporated in a country sharing land border with India**

Rule 25A – Cross-Border Merger Conditions

1. **Foreign Co. → Indian Co.**
 - Must get **RBI approval**
 - Comply with **Sections 230-232**
2. **Indian Co. → Foreign Co. (Listed Jurisdictions in Annexure B)**
 - Must get **RBI approval**
 - **Valuation by foreign professionals** as per **global standards**
 - Declaration of valuation compliance to RBI
3. **Filing with NCLT** only after getting RBI and other approvals
4. **CAA-16 mandatory** if merging with entity from border-sharing country

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024

(G.S.R. 555(E) dated 9-Sept-2024, effective 17-Sept-2024)

New Sub-rule in Rule 25A: Foreign Holding Co. → Indian WOS

- Applies when **foreign company (parent)** merges with **Indian wholly owned subsidiary**
- Requirements:
 1. **Both companies must get RBI approval**
 2. Indian WOS must comply with **Section 233**
 3. Application to CG under **Section 233**, follow **Rule 25**
 4. **CAA-16 declaration** to be submitted

Key Benefit:

- **NCLT approval NOT required**
- **Faster process** via CG + RBI route only

LESSON 12 OVERVIEW OF BUSINESS

VALUATION

Conditions of Registration as Valuer (Rule 7)

- **Eligibility:** Must always meet criteria in **Rule 3 & 4**.
- **Compliance:** Must follow the **Act, Rules, RVO Bye-laws/internal regulations**.
- **Scope:** Can value **only registered asset classes**.
- **RVO Shift:** Requires **prior permission** from authority.
- **Grievance Redressal:** Must take adequate steps.
- **Record-Keeping:** Maintain **assignment records for 3 years** post-completion.
- **Code of Conduct:** Must comply with RVO Code.
- **Partnership/Company Valuers:**
 - Only **registered partner/director** can act and sign.
 - Must **disclose capital contribution** of signing partner/director.
 - **Joint/several liability** with signing partner (partnership).
 - **Company also liable** with signing director.
 - Must **inform authority** on removal of registered partner/director with reasons.
- **Other Conditions:** As may be imposed by authority.

Model Code of Conduct for Registered Valuers

1. Integrity & Fairness

- Be **honest, fair, forthright** in dealings.
- Provide **true and adequate info**, no misrepresentation.
- Avoid actions **harming profession's reputation**.
- **Public interest** to be kept foremost.

2. Professional Competence & Due Care

- Ensure **high standards**, due diligence, independent judgment.
- Follow **technical/professional standards**.
- **Update skills & knowledge** continuously.
- Cannot **disclaim liability** for expertise (except on provided/public facts).
- Reject client instructions **against integrity/objectivity**.
- Clarify **scope of services vs. other professionals**.

3. Independence & Disclosure of Interest

- Be **objective**, free of **bias/conflict/coercion**.
- Decline if **not independent** or related to company.
- Disclose **potential conflicts**.
- No dealing in company securities during/around assignment.
- Avoid "**mandate snatching**"/"**convenience valuations**".
- **No success fee**.
- Disclose **prior engagements in last 5 yrs** in fairness opinions.

4. Confidentiality

- No disclosure/use of **confidential info** unless legally required.

5. Information Management

- Maintain **written records & rationale** for decisions.
- Cooperate in **inspections/investigations**.
- Provide records/info to **regulators/tribunals/RVOs**.
- Keep **working papers for 3 years** (or more if contract/case pending).

6. Gifts & Hospitality

- No **gifts/hospitality** that affect independence.
- Cannot offer **benefits** to get/retain work or advantage.

7. Remuneration & Costs

- Charges must be **transparent, reasonable, contractual**.
- Only accept **disclosed fees** in written agreement.

8. Occupation & Restrictions

- Avoid **over-committing assignments**.
- Avoid businesses that **discredit the profession**.

Let me know if you want a **print-ready chart, mind map**, or quiz-style flashcards** for this too!

Here's a **revision-friendly bullet point summary** for:

Lesson 13 – Valuation of Business & Assets for Corporate Restructuring (IBBI Circular dated 12th August, 2024 – VRIN)

Valuation Report Identification Number (VRIN)

- **Issued by:** **IBBI** under powers of **Section 196, IBC 2016 & Valuation Rules**.
- **Purpose:**
 - Ensure **authenticity** of valuation reports.
 - Provide a **unique reference number (VRIN)** for each valuation.
- **Applicability:**
 - All valuation reports **dated on/after 12 August 2024**.
 - **IPs must reject** reports without VRIN for these cases.
- **Online Module:**
 - Hosted at <https://www.ibbi.gov.in>.
 - Developed in consultation with **Registered Valuers Organisations (RVOs)**.
 - Accessed by **RV/RVE** using IBBI-provided **login credentials**.
- **Process:**
 1. **RV/RVE logs in** to the module.
 2. **Generates VRIN** before submitting the valuation report.
 3. **Mentions VRIN** on the **front page** of report.
- **Verification:**
 - Stakeholders can **verify report authenticity** on IBBI site using VRIN.

Lesson 16 Role, Functions and Duties of IP, IRP & RP:

Role, Functions & Duties of IP, IRP, and RP

Regulation 3A – Assistance & Cooperation by Personnel (IBBI CIRP Regulations, 2016)

(1) Custody & Control by IRP/RP

- IRP/RP must take **custody/control** of:
 - Records of **assets, finances, operations** (Sec 18(a), Reg 36)
 - **Assets** recorded in **balance sheet or records** (Sec 18(f))

(2) Duty of Personnel/Promoters

- Must **hand over** custody & provide **list of assets and records**

(3) IRP/RP to Prepare List

- If no list given, IRP/RP shall **prepare own list** during custody takeover

(4) Signature Requirement

- Lists under (2) & (3) must be **signed by parties + 2 witnesses**

(5) Requisition for Missing Info (Sec 18(a), Reg 36)

- IRP/RP shall **requisition missing info** not handed over

(6) Requisition for Assets in Records but Not Handed Over

- IRP/RP to demand such **assets** from personnel/promoters

(7) Application under Sec 19(2)

- Must show:
 - **Presence** in requisition notice
 - **Absence** in asset/record list taken under (2)/(3)

Eligibility for Registration of IPs (Reg 4(1))

Not eligible if individual:

- (a) Is a **minor**
- (b) **Not resident in India**
- (c) Lacks qualification/experience (Reg 5 or 9)
- (d) Convicted of offence (>6 months or moral turpitude, 5 yrs not elapsed)
 - If >7 years, **permanent ineligibility**
- (e) Undischarged **insolvent** / Applied for insolvency
- (f) Declared of **unsound mind**
- (g) Not a **fit and proper person**

"Fit and Proper" Criteria:

- Integrity, reputation, character
- No convictions/restraint orders
- Competence, financial solvency/net worth

Additional Points

Real Estate Project (Reg 4D)

- **Separate bank account** for each project must be operated by IRP/RP

Application for Certificate (Reg 6)

- **Individual:**
 - Apply in **Form A (Part II)** through IPA
 - Fee: **₹20,000**
- **IPE:**
 - Apply in **Form AA (Part II)** through IPA
 - Fee: **₹2,00,000**
 - IPA must **acknowledge in 7 days, forward in 30 days**

Surrender of Certificate (Reg 10A)

- Written request + **original certificate**
- **IBBI may cancel within 30 days**
- After cancellation, cannot act as IP
- **Legal heirs/assignees** must deliver records/assets to IBBI

Special Procedure for Surrender/Expulsion (Reg 10A)

- No need to follow Reg 11 procedure
- **IBBI may issue notice** → IP has **21 days** to reply
- IBBI can:
 - **Cancel** registration
 - Allow **completion of pending tasks**
- Deemed cancellation if IP is **deceased/dissolved**
- Legal heirs must **handover records/assets**

Recognition of IPEs (Reg 12)

Entity eligible if:

- **Company/LLP/Partnership firm**
- Main object: support/carry out IP activity
- **Net worth ≥ ₹1 crore**
- **Majority:**
 - Equity/voting (company) held by IPs (who are directors)
 - Capital (firm) contributed by IPs (who are partners)
 - **Partners/directors** are IPs
 - **Whole-time directors** are IPs (if company)

- No partner/director in another IPE

Net Worth:

- **Company:** Sec 2(57) of Companies Act, 2013
- **Firm/LLP:** Partner capital + undistributed profits – accumulated losses

Let me know if you'd like a **flowchart for registration/surrender process** or a **quick summary table for duties of IRP/RP!**

Here's a **quick revision-ready bullet point summary** of the **Code of Conduct for Insolvency Professionals**, along with key judicial and guideline references:

Integrity and Objectivity

- **Maintain integrity:** Be honest, forthright, and avoid disrepute.
- **No misrepresentation** or misleading actions.
- **Act objectively:** No bias, conflict, coercion, or undue influence.
- **Disclose conflict of interest** when identified.
- **No asset acquisition:** IP or relatives cannot acquire debtor's assets.

Independence and Impartiality

- **Complete independence** from external influence.
- **No asset acquisition** in liquidation/bankruptcy unless approved by Board.
- **Reject assignment** if IP or connected persons lack independence.
- **Disclose relationships** with stakeholders under Sec 53/178.
- **Disclose past employment** or panel membership with creditors.
- **Disclose relationships** with CD, professionals, creditors, etc., to IPA.

Disclosure Timelines:

Relationship With	Disclosure Due
Corporate Debtor	On appointment
Professionals Engaged	On their appointment
Financial Creditors	On COC constitution
Interim Finance Providers	On agreement signing
Resolution Applicants	On IM supply
Later Arising Relationships	Within 3 days of notice

- **4 Relationship Categories (A to D):** Revenue, managerial link, relative ties, and LLP/company partner connections.
- **Confirm arms' length** engagement of all professionals.
- **No undue influence** or preference to stakeholders.

Professional Competence

- **Maintain & upgrade knowledge** regularly.

Representation of Facts

- **Correct misapprehensions** promptly.
- **No concealment/misleading** of material info to Board/AA/stakeholders.

Timeliness

- **Follow prescribed time limits** under the Code.
- **Avoid negligence or mala fide conduct.**

Information Management

- **Clear, simple communication** to stakeholders.
- **Include IP's credentials** in all stakeholder communications.
- **Maintain written records** of decisions with reasoning.
- **No private communications** unless legally allowed.
- **Cooperate in inspections/investigations.**

- Provide records/info to Board/IPA.
- Participate in studies/research/audits.

Confidentiality

- Maintain information confidentiality unless required by law or consented.

Occupational Limits & Restrictions

- **Limit assignments:** Max 10 CIRP (only 3 with > ₹1000 Cr admitted claims).
- **Resignation** allowed only with approval of AA & stakeholder recommendation.
- **No employment** during valid AFA or assignment.
- **Post-assignment restriction** (1 year): No employment/professional services to successful RA, >10% voting creditors, CD, etc.
- **No engagement of relatives** in work, except certain conditions for IPEs.
- **No services for relatives' assignments** (except IPEs with limits).
- **Avoid disreputable business** as per Board's view.

Remuneration & Costs

- **Transparent, reasonable fees** reflecting actual work.
- **Disclose fees** (IP, IPE, professionals) to IPA; IPA must publish.
- **Raise invoices in own name**, payment via bank only.
- **Professionals engaged must bill independently**, pay through bank.
- **No undisclosed fees** or charges.
- **No fee sharing** with engaged professionals/service providers.
- **Disclose and ensure reasonableness** of all process costs.
- **Take care that IP does not include penalties/losses** in IRP/liquidation costs.
- **Ensure corporate person follows laws** during process.

Gifts & Hospitality

- No acceptance of gifts/hospitality that affect independence.
- No offering of gifts/advantages to gain work or favor.

Judicial Pronouncement

- **Pooja Menghani v. IBBI (Delhi HC, Nov 20, 2023):** IP is heart and brain of CD during CIRP; slightest disqualification makes IP ineligible.

Guidelines – 2024

- Issued on June 5, 2024
- Applies to IPs acting as IRP, RP, Liquidators, Bankruptcy Trustees
- Covers: Eligibility, EOI, Panel creation, Sorting criteria, Conditions.
- Repeals 2023 Guidelines (Dec 8, 2023); actions under old guidelines remain valid.

Lesson 18: Convening & Conducting Meeting of Committee of Creditors (CoC)

1. Replacement of Authorised Representative (AR)

- Regulation 16A(3A) of IBBI (CIRP) Regulations 2016:
 - 10% voting share of financial creditors in a class can request replacement of AR.
 - Request sent to IRP/RP → circulated to class creditors.
 - Voting window: Minimum 24 hours.

2. Fees Payable to AR

A. For CoC Meetings Attended by AR

No. of Creditors in Class	Fee per Meeting (₹)
10-100	30,000
101-1000	40,000
>1000	50,000

B. For Class Meetings Convened by AR

No. of Creditors in Class	Fee per Meeting (₹)
10-100	10,000
101-1000	12,000
>1000	15,000

C. Fee Structure Rules

- **First 2 meetings:** Fee part of IRP cost.
- **Additional meetings:** Fee part of IRP cost only if approved by CoC.

3. Duties of AR

- Assist creditors in understanding CoC discussions.
- Review minutes prepared by RP & provide comments.
- Help creditors in marketing strategy for corporate debtor's assets (Reg. 36C(1)).
- Enhance marketability of assets (Reg. 36C(3)).
- Evaluate resolution plans submitted by applicants.
- Ensure creditors have access to required documents/info.
- Update creditors on CIRP progress.
- Suggest modifications to resolution plans.
- Record minutes of class meetings (same rules as CoC meetings).
- Represent creditors before NCLT, NCLAT, regulatory authorities.
- Additional responsibilities may be proposed by creditors.

Note: All provisions as per IBBI (CIRP) Regulations 2016.

Lesson 19: Preparation & Approval of Resolution Plan

1. Regulatory Fee (Reg. 31A, IBBI CIRP Regulations 2016)

- 0.25% of realisable value to creditors (if > liquidation value) payable to IBBI.
 - Applicable if plan approved under S.31 on/after 01.10.2022.
 - Exemption: No fee if plan approved by real estate allottees' association.
- 1% of professional service costs (hired by IRP/RP) payable to IBBI (as per Reg. 7(2)(cb), IP Regulations 2016).

2. Approval of IRP Costs (Reg. 31B)

- IRP/RP must seek CoC approval for all IRP costs in every meeting.

3. Fee for IRP/RP (Reg. 34B & Schedule-II)

- Minimum fee for IRP/RP (appointed on/after 01.10.2022) as per Schedule-II.
- Higher fee allowed if justified (based on business size, sector, complexity).
- Post-Schedule-II period: Fee decided by applicant/CoC.
- Performance-linked incentive (max ₹5 crore) for plans approved on/after 01.10.2022.
- Fee payable from:
 - Corporate debtor's funds,
 - Applicant/CoC contributions,
 - Interim finance.
- Included in IRP costs.

4. Information Memorandum & Resolution Plan (Reg. 36B)

- RP must issue within 5 days of final list (Reg. 36A(12)):
 - Information memorandum,
 - Evaluation matrix,
 - Request for resolution plans.

- **Provisional list applicants** may also receive documents if available.

5. Marketing Strategy for Assets (Reg. 36C)

- **Mandatory** if assets > ₹100 crore (per last financials).
- **Optional** for smaller cases.
- **Strategy & cost** require CoC approval.
- **CoC members** may assist in marketing.

6. Assessment of Compromise/Arrangement (Reg. 39BA)

- **Before liquidation (S.33)**, CoC must explore:
 - **Compromise/arrangement** (per Reg. 2B, Liquidation Regulations).
- RP submits CoC's recommendation to Adjudicating Authority (AA).
- **Continue exploring compromise** while liquidation application is pending before AA.

Key Terms: IBBI, CIRP, CoC, IRP/RP, realisable value, liquidation value, performance-linked incentive, information memorandum, evaluation matrix, compromise/arrangement.

Lesson 22: Liquidation on or After Filing of Resolution Plan

1. Time for Completion of Compromise or Arrangement (Reg. 2B, Liquidation Regulations 2016)

- Must be completed within **90 days** of liquidation order (S.33).
- **Ineligible persons** (as per IBC) cannot participate in compromise/arrangement.
- **Liquidator can file proposal only if:**
 - Recommended by CoC (Reg. 39BA, CIRP Regulations).
 - Filed within **30 days** of liquidation commencement date (LCD).
- **Exclusion from liquidation period:** Time taken for compromise (max **90 days**).

2. Stakeholders' Consultation Committee (Reg. 31A, Liquidation Regulations 2016)

- **Formed within 60 days** of LCD (based on stakeholder list under Reg. 31).
- **Advisory role on:**
 - **Remuneration of professionals** (Reg. 7).
 - **Asset sale (Reg. 32):** Manner, pre-bid qualifications, reserve price, marketing, auction.
 - **Liquidator's fees.**
 - **Valuation (Reg. 35(2)).**
 - **Post-closure pursuit of preferential/undervalued/fraudulent transactions.**
 - **Review of marketing strategy** if going concern sale fails.
 - **Continuation/institution of legal proceedings.**
 - **Extension of sale payment beyond 90 days** (disclosed in auction notice).

3. Exclusion of Assets from Liquidation Estate (Reg. 46A, Liquidation Regulations 2016)

- **Real estate assets** already handed over to allottees are **excluded** from liquidation estate (S.36(4)(e)).

4. Early Dissolution (Reg. 14, Liquidation Regulations 2016)

- **Conditions:**
 - **Realizable assets insufficient** to cover liquidation costs.
 - **No further investigation** required.
- **Process:**
 - **Liquidator consults committee** → If advised, files application to AA for early dissolution with detailed report.

5. Centralized Electronic Listing & Auction Platform (IBBI Circular, 29.10.2024)

- **Platform: eBKray** (managed by PSB Alliance Pvt. Ltd., a consortium of 12 PSBs).

- **Purpose:**
 - **Enhanced transparency** (photos, videos, geo-coordinates of assets).
 - **Increased bidder participation.**
 - **Maximized creditor returns.**
- **Background:**
 - Previously used for SARFAESI Act auctions.
 - New IBC module for liquidation asset sales.

Key Terms: Compromise/arrangement (S.230, Companies Act), liquidation commencement date (LCD), Stakeholders' Consultation Committee, early dissolution, eBKray platform, SARFAESI Act, PSB Alliance.

Lesson 23: Voluntary Liquidation

1. Applicability

- Governed by IBBI (Voluntary Liquidation Process) Regulations, 2017 under Chapter V, Part II, IBC 2016.

2. Initiation of Liquidation (Reg. 3)

Conditions for initiation:

- **Declaration by majority** (designated partners/governing body) via **affidavit**, stating:
 - No debt **OR** ability to repay debts from asset sales.
 - **No fraudulent intent.**
 - **Provision made for pending obligations.**

Documents required:

- **Audited financials** (last 2 years/since incorporation).
- **Valuation report** (if assets exist).
- **Disclosure of pending litigations/assessments.**

Approval process:

- **Within 4 weeks:**
 - **Special majority resolution** by partners/contributories for liquidation + **appointment of liquidator (IP).**
 - **Creditor approval** (if debt exists): **2/3rd by value** within **7 days** of resolution.

- **Notification:** Registrar & IBBI informed within **7 days** of resolution/creditor approval.

- **Commencement date:** Date of resolution passing.

3. Reporting Requirements (Reg. 8 & 37)

Liquidator submits:

- **Preliminary Report.**
- **Status Report(s).**
- **Minutes of stakeholder consultations.**
- **Final Report.**

Timeline for completion:

- **270 days** (if creditors approved resolution).
- **90 days** (all other cases).

If delayed:

- **Stakeholder meetings** every **270/90 days** (as applicable) with **Status Report** covering:
 - Stakeholder settlements.
 - Unsold assets.
 - Distributions made.
 - Litigation updates.
 - Reasons for delay.
- **Audited liquidation accounts** enclosed.
- **Report filed with IBBI** within **7 days** of meeting.

4. Electronic Reporting (IBBI Circular, 28.06.2024)

Forms for monitoring:

Form	Purpose	Timeline
VL-1	CD details + liquidation process	By 10th day of 2nd month post-public announcement.
VL-2	Contributories' meetings + delays/replacement of	By 10th day of next month post-meeting/replacement.

	liquidator.	
VL-3	Dissolution application, unclaimed proceeds, distributions, pending litigations, fraud detection.	By 10th day of next month post-application to AA.
VL-4	Dissolution order details (proceeds distribution, receipts/payments).	Within 14 days of dissolution order.

Benefits:

- **Efficiency boost** via online submission.
- **Reduced errors** and **transparent record-keeping**.

Key Terms: Voluntary liquidation, special majority resolution, liquidation commencement date, Status Report, VL forms, IBBI monitoring.

case laws

1. Ramkrishna Forgings Ltd. vs. RP of ACIL Ltd. (SC, 2023)

- **Commercial Wisdom of CoC is Paramount:** NCLT/NCLAT cannot interfere with CoC's approved resolution plan unless it violates IBC provisions (Sections 30/31).
- **No Revaluation Needed if:**
 - No objections raised by RP/appellant/CoC.
 - Two approved valuers' reports show no significant variance.
- **Precedents Cited:** *K. Sashidhar, Essar Steel, Maharashtra Seamless* - CoC's decisions not subject to judicial scrutiny.

2. Shiv Charan vs. Adjudicating Authority (Bombay HC, 2024)

- **Section 32A IBC Immunity:**
 - Post-resolution plan approval (S.31), corporate debtor's assets are **immune from attachment/seizure** under PMLA/other laws.
 - Applies to **pre-CIRP offenses** after change in management.

3. Greater Noida Authority vs. Prabhjit Soni (SC, 2024)

- **NCLT's Inherent Power to Recall Orders:**
 - Permissible under **Rule 11, NCLT Rules 2016** and **S.60(5)(c) IBC**.
 - Grounds: Lack of jurisdiction, no notice, fraud/misrepresentation.
 - **Limited Scope:** Not for re-hearing merits.

4. Dilip B. Jiwrajka vs. UoI (SC, 2023)

- **Constitutional Validity of S.95-100 IBC (Personal Guarantors) upheld:**
 - **No judicial adjudication** at RP's stage (collates facts only).
 - **Natural Justice** applies only at Adjudicating Authority stage (S.100).
 - **Interim Moratorium (S.96)** protects debtor from legal actions.

5. Sunil Kumar Agarwal vs. NOIDA (NCLAT, 2023)

- **Moratorium (S.14 IBC):**
 - Prohibits recovery of property but **excludes** statutory dues (license/permit fees).
 - **Lease rent/premium** not covered under "similar grant or right".

6. Shri Guru Containers vs. Jitendra Palande (NCLT, 2023)

- **Creditors' Duty to Cooperate:**
 - IRP not solely liable for CIRP delays; creditors must actively participate.
 - **Operational Creditor** triggering CIRP but not filing claims = **abdication of responsibility**.

7. Vallal RCK vs. Siva Industries (SC, 2022)

- **S.12A Withdrawal:**
 - Requires **90% CoC approval** (stricter than 66% for resolution plans).
 - Judicial interference only if CoC decision is **arbitrary/capricious**.

8. NOIDA vs. Anand Sonbhadra (SC, 2022)

- **Financial Debt (S.5(8)):**
 - **Lease ≠ Financial Debt** unless it meets **Indian Accounting Standards** (capital/finance lease).
 - NOIDA not a financial creditor as no "disbursement" occurred.

9. Ashish Ispat vs. Primuss Pipes (NCLAT)

- **S.12A Withdrawal:**
 - **90% CoC approval not needed** if application filed **before CoC constitution**.

10. Jaypee Kensington (SC)

- **Limited NCLT Role:**
 - Cannot interfere with **commercial terms** of CoC-approved plans.
 - **Multiple plans** can be voted on simultaneously by CoC.

11. Lalit Kumar Jain vs. UoI (SC)

- **Personal Guarantors:**
 - Resolution plan approval **does not discharge guarantor's liability**.

12. Ghanashyam Mishra (SC)

- **Binding Effect of Resolution Plans:**
 - Extinguishes **all claims not part of the plan**, including statutory/government dues.
 - No post-approval surprises for resolution applicants.

13. Vbuiltfine Properties (NCLAT, 2023)

- **Company Restoration (S.252 Companies Act):**
 - Must file within **3 years** of striking off.
 - NCLT must record **reasons for cost imposition** (₹5L set aside for vagueness).

14. SBI vs. Jalan-Fritsch Consortium (SC, 2024)

- **No Plan Modifications Post-Submission:**

- CoC-approved plan is **binding** once submitted to NCLT (*Ebix Singapore* precedent).
 - **No withdrawals/modifications** permitted after Adjudicating Authority approval.
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Key Themes:

- **CoC's Commercial Wisdom** > Judicial Intervention.
 - **S.32A IBC** shields assets post-resolution.
 - **Strict Timelines** for withdrawals/restorations.
 - **Guarantor Liability** survives resolution.
 - **No Post-Hoc Plan Changes.**
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Abbreviations: CoC (Committee of Creditors), RP (Resolution Professional), IRP (Interim RP), CIRP (Corporate Insolvency Resolution Process), NCLT/NCLAT (Adjudicating/Appellate Tribunal).

For main notes –

<https://drive.google.com/drive/folders/10vIMvsQBN7u1EwyXfuCnfv-OSYrT6RnY?usp=sharing>

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