

Q1 Director 8 public  
 13 private → 2 Sub of Public  
 1 Dormant

Q2 FEMA → 10% listed → 10% Unlisted  
 some Sector → Hospital  
 Education  
 → RBI approval

FEMA { Q3 Limit for 10 years  
 Q4 Maximum Investment 1000 Cr, 850 Cr, 800 Cr, 750 Cr.

Q5 funded / non funded → OC / FC 

funded 25	nonfunded 10
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 also Debt restructuring

Q6 Paid of some creditor 4 months before Insolvency  
 → till before when can company do avoid fraud

Q7 Dissets Shareholder Limit → days when date

40000	30000	8500	8 Feb, 8 Jan,
↓	↓		30 / 35
300000	12,50,000		
<u>x 5</u>			
15,00,000			

Q8 ID requirement → 8 directors  
↓  
Public / Listed  
3 ID → One woman  
How many required → SEBI

Q9 IBC → J Bank appoints / assigns J ABC Ltd  
as creditor → Time limit

(Answer)  
Q10 Registered Value Ms Neta → PRI & )  
Completed 3 years

Q11 cannot do / wrong ) Reg Value  
→ Proceed with terms as per engagement

Q12 FEMA 10 years

Q13 FCRA form FC 4 with 9 months

SEBI Penalty 25 Crores higher  
Excess brokerage

Director embezzlement → No Remedy )  
→ Company files with ROC  
→ Or apply to tribunal within \_\_\_\_\_ days

Q14 SEBI Penalties

### ADMINISTRATIVE EXPENSES LIMIT → Section 8(1)(b)

Limit	Cannot spend > 20% of FC in a FY on administrative expenses	
Exception	Can exceed 20% only with prior approval of CG	
<b>Administrative Expense</b>		
Include:	<b>Category</b>	<b>Includes</b>
	Accounting costs	Bookkeeping, audit, etc.
	Wages/Remuneration/Travel	a. Members of executive committee/governing council b. Personnel responsible for management of activities (including hiring expense)
	Legal/Professional fees	Lawyers, consultants, etc.
	Reports	Writing/filing activity-related reports
	Salaries/Travel	Of executive/governing body members and admin personnel
	Utilities/Consumables	Electricity, water, phone, repair, etc.
	Vehicle	Running & maintenance of vehicles used for admin
Exclude:	1) Salaries/remuneration of personnel engaged in (a) training or (b) collection/analysis of field data of an association primarily engaged in research or training 2) Expenses incurred directly in furtherance of welfare objectives → of welfare-oriented organisation such as salaries to doctors of hospital, salaries to teachers of school etc.	

### > Section 17 - Receipt of Foreign Contribution (FC) via Bank

1. Designated Bank A/c	<ul style="list-style-type: none"> <li>FC must be RECEIVED only in "FCRA Account"</li> <li>This FCRA Account must be OPENED with SBI, New Delhi (Main Branch - Sansad Marg)</li> <li>For HOLDING / UTILISING FC -                             <ul style="list-style-type: none"> <li>one additional FCRA A/c in ANY BANK</li> <li>one or more → normal accounts</li> </ul>                             can be opened (after remittance to main FCRA A/c)                         </li> </ul>
2. Exclusive Use	No funds other than FC shall be deposited in such accounts
3. Reporting Requirement by Bank:	SBI New Delhi / other Scheduled Bank → must: <ul style="list-style-type: none"> <li>Report to Central Government within 48 hours → For any transaction related to receipt/utilization of FC</li> <li>Reporting is mandatory even if recipient is not registered or does not have prior permission</li> </ul>
4. Segregation Rule	✗ FC must not be mixed with local receipts in any account

Q: Can foreign contribution be received in and utilised from multiple Bank Accounts? → must be received only in SBI NDMB [However, ☐ One linking FCRA account (for transfer) ☐ Multiple utilization accounts (for spending)]

17	Case Study : ECB	
18	1) MAMP of ECB raised by manufacturing Co for working Capital purpose of USD 55 million	Normally: 3 years Manufacturing Co less than \$50M : 1 year Taken for WC purpose: 10 year So, MAMP = 10 years
19	2) eligible amt of ECB loan	\$750M

Additional Points on Claim Submission:	<b>Point</b>	<b>Details</b>
	Deadline	Claims to be submitted on or before the last date mentioned in the public announcement (u/s 15).
	Verification Timeline	IRP shall verify each claim within 7 days from the last date for receipt of claims.
	After Verification, Report to AA	Within 2 days of completing verification → IRP must file a report with the AA → certifying the constitution of the CoC.
Late Claims	Any person who fails to file claim on time can still file a claim with IRP/RP on or before the 90th day from ICD.	

### LIMIT & LEVERAGE

Automatic Route:	Eligible borrowers can raise up to \$750 Million or equivalent per FY under automatic route.
FCY ECB raised from direct foreign eq. holder	<p>In case of FCY ECB raised from direct foreign eq. holder :</p> <ul style="list-style-type: none"> <li>• ECB liability : equity ratio → for ECB raised under automatic route cannot exceed 7:1.</li> <li>• Ratio N.A. if o/s ECB (total including proposed) &lt; \$5 Million</li> </ul>
Guideline of Debt Equity ratio:	Borrowing entities to be governed by guidelines on debt equity ratio, issued by concerned regulator

### Schedule IV - OI by PRI other than IE and Resident Individual (X)

ODI by Registered Trust or Society:	<p>A person being regd. trust, or regd. society → engaged in educational sectors, or which has set up hospitals in India may make ODI with prior approval of RBI subject to following conditions:</p> <ol style="list-style-type: none"> <li>1) Trust or society should be in Existence for at least 3 FYs before the year of investment</li> <li>2) FE is engaged in same Sector as that of the Indian trust or society,</li> <li>3) Trust deed or MOA or Rules or bye-laws shall Permit proposed ODI</li> <li>4) Such investment has Approval of trustees (trust) and governing body (society)</li> <li>5) In case the trust or society requires special Licence either from MHA, CG or local authority, such license has been obtained and submitted to designated AD.</li> </ol>
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Minimum Average Maturity Period (MAMP)

- MAMP of ECB = 3 years (Except Specified Cases mentioned in the Below Table)
- Call/Put options not to be exercised prior to completion of MAMP

➤ For Specified Cases, Separate MAMP			MAMP (in yrs)
ECB raised by:	For Purpose:		
(a) By manufacturing co	of amount ≤ \$ 50Mn / FY (or equivalent)		1
* (b) From a Foreign Equity holder	Working Capital (WC), General Corporate (GC) or For Repayment of Rupee loans		5
* (c) Other than Foreign Equity Holder (MCQ)	(i) WC or GC (ii) on-lending by NBFCs for WCP/GCP		10
* (d) Other than Foreign Equity Holder	repayment of Rupee loans availed domestically for capex or on-lending by NBFC for the same		7
* (e) For Purpose 3	repayment of domestic Rs. loans availed for purpose other than capex or on-lending by NBFCs for other than capex		10

For \* (b) to \* (e) above, → ECB cannot be raised from → foreign branches /subsidiaries of Indian banks

9. **"listed foreign entity"** means a foreign entity whose equity shares or any other fully and compulsorily convertible instrument is **listed** on a recognised stock exchange outside India; [Regulation 2(1)(m)]
10. **"listed Indian company"** means an Indian company that has equity shares or any of its fully and compulsorily convertible instruments **listed** on a recognised stock exchange in India and the expression **"unlisted Indian company"** shall be construed accordingly [Regulation 2(1)(n)]
11. **"Overseas Direct Investment"** or "ODI" means investment by way of acquisition of **unlisted** equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a **listed** foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a **listed** foreign entity;

Explanation– For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity [Regulation 2(1)(q)]

## Schedule IV [See rule 14]

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

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

- (i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
- (ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
- (iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;
- (iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- (v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

Relevant Time		Effect
Related Party (other than employee)	2-years preceding CIRP commencement	Where liquidator or RP is of the opinion that debtor has at a relevant time given a preference, he shall apply to NCLT for avoidance of preferential transactions
Other than a related party	1-year preceding CIRP commencement	
<b>Deemed Preferential Transaction</b>		<b>Exceptions</b>
→ Transfer of property for the benefit of creditor, and → such transfer has the effect of putting such creditor in a beneficial position than it would have been as per waterfall arrangement		1. Transfer in the ordinary course of business 2. Transfer creating a security interest to the extent that <ul style="list-style-type: none"> <li>▪ Security interest secures new value &amp; was given at or after signing of security agreement &amp; was used by debtor to acquire such property; and</li> <li>▪ Such transfer was registered with information utility within 30 days of receiving possession of property</li> </ul>
Relevant Time		Effect
Related Party	2-years preceding insolvency commencement	Liquidator or RP shall apply to NCLT to declare such transaction void
Other than a related party	1-year preceding insolvency commencement	

### Section 328: Fraudulent Preference:

What is it about?	Giving unfair advantage to a creditor / surety / guarantor (CSG) before Winding Up.
When does it apply?	If company gives preference to CSG within 6 months before filing WUP application (not WUP order)

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What kind of preference?	Any act that puts CSG in a better position during liquidation compared to others
Remedy by Tribunal	Tribunal can declare the transaction invalid and restore the earlier position as if preference was not given
Condition for action	Only if the preference is with dishonest / mala fide intent to give undue advantage to the creditors over others.
Important Note	More preference is not fraudulent → unless there is dishonest intention
Example	<input checked="" type="checkbox"/> Preference given to bank → to increase its loan limit may not be a Fraudulent Preference (benefits the company, not creditor) <input checked="" type="checkbox"/> Repaying a friendly creditor to save them before WUP can be fraudulent preference

Q: OT Ltd. was wound up on 10th March 2022. → The MD sold company property on 15th October 2021 → to a private company (son's interest) at a loss of INR 50 lakhs  
 → Sale date (15th October 2021) to winding-up date (10th March 2022) is within 6 months (146 days)  
 → Sec 328 → Fraudulent preference → transaction will be invalidated, & the position restored as if no transfer occurred

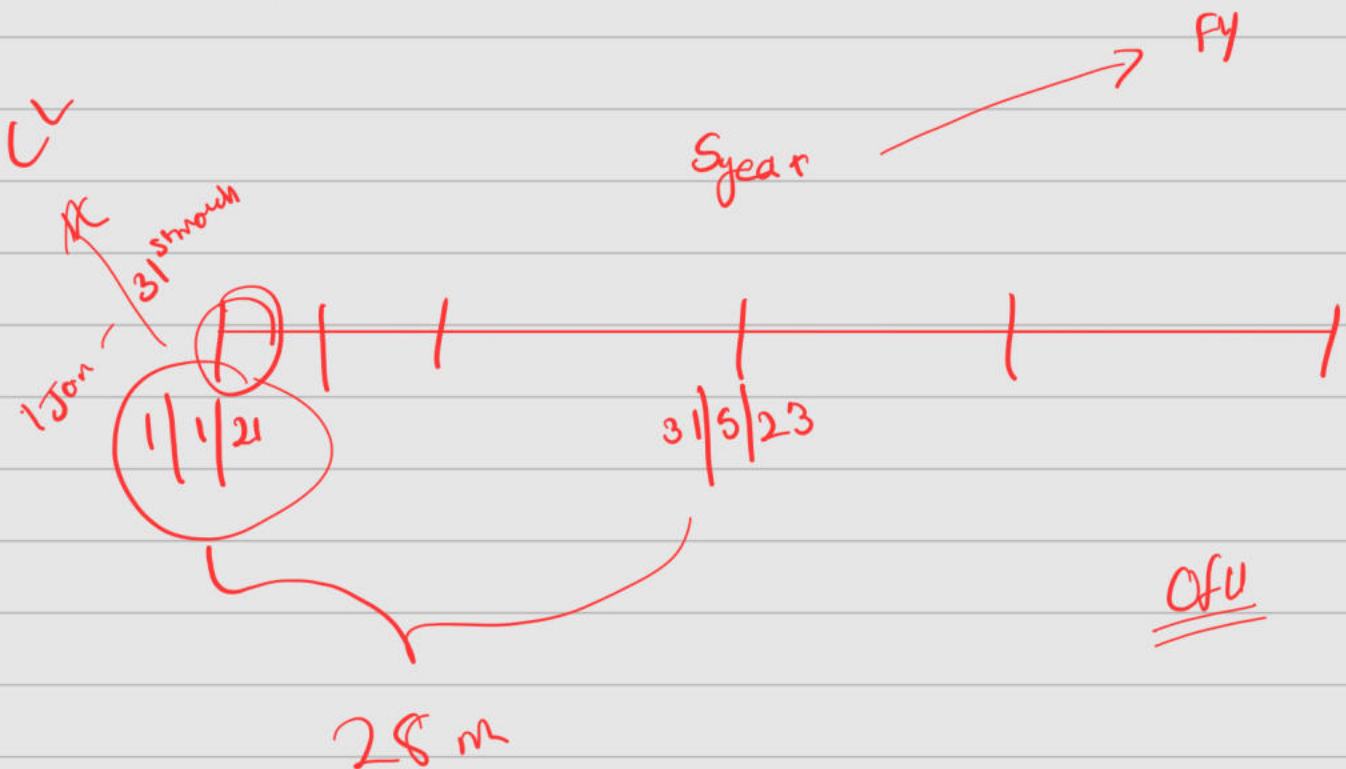
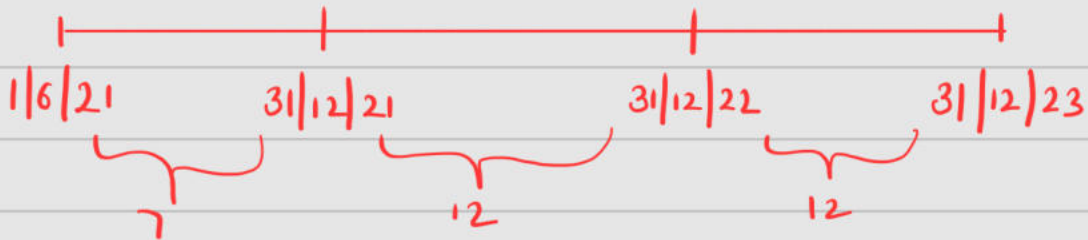
Refer Case Scenario 23 for calculation question asked in exam

Fy 19 55  = 9 mths

Fy 20 62 = 12 mths

Fy 21 13 (for 5 mths only) = 5 mths  
26 mths

remaining tenure 7 mths + 12 mths + 12 mths



**Case Laws**

1. National Company Law Tribunal, Mumbai Bench in *Bank of India v. Future Retail Ltd.* in 2022, came with an issue, where a financial creditor had provided various credit facilities and non-fund-based limits to corporate debtor. It were restructured under a sanctioned letter and framework agreement. Corporate debtor defaulted in repayment and account of corporate debtor was classified as a non-performing asset (NPA). Meanwhile, corporate debtor issued a letter to financial creditor and certain other lenders for one-time restructuring (OTR) facilities under 'resolution frame work agreement for Covid 19 related stress as per RBI Circular. Financial creditor considered corporate debtor's request allowing OTR and executed a framework agreement for restructuring of existing outstanding amount. However, corporate debtor again defaulted in repayment of an outstanding amount. Financial creditor filed petition under section 7. It was noted that corporate debtor, on payment obligation under OTR scheme, admitted default of its repayment and further, corporate debtor admitted outstanding amount in its meeting with lenders that events of default continued to subsist. It was held, in view of facts, that existence of debt and default had been proved and, therefore, petition filed by financial creditor to initiate CIRP against corporate debtor was admitted.

Institute of Chartered Accountants of India

Refer Sec 232

**THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

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2. National Company Law Appellate Tribunal, New Delhi, in 2022 in *Siti Networks Ltd. v. Assets Care and Reconstruction Enterprises Ltd.* decided on continuation of proceeding by assignee on an application seeking substitution as financial creditor in place of original financial creditor.

In the given case, financial creditor sanctioned a loan to corporate debtor, however, corporate debtor failed and was classified as non-performing asset. Financial creditor filed an application under section 7 against corporate debtor and same was admitted by NCLT. Later, financial creditor vide registered assignment deed, assigned debt of corporate debtor to respondent i.e. assignee. Corporate debtor was informed about aforesaid assignment. Subsequently, assignee filed an application seeking substitution as financial creditor in place of original financial creditor and was permitted by NCLT to pursue application filed by original financial creditor. Challenging said order, instant appeal was filed by corporate debtor. It was held that section 5(7) of the Code defines financial creditor, also includes a person to whom such debt has been legally assigned or transferred to. Therefore by virtue of assignment, assignee became financial creditor and had stepped in shoes of original financial creditor and assignee had every right to continue proceeding, which was initiated by original financial creditor.

3. SC in *Manish Kumar v. Union of India* in 2021 came up with a decision on section 7 by section 3 of IBC (Amendment) Act, 2020 requiring minimum threshold for initiation of proceedings (class action) by certain categories of financial creditors against corporate debtors such as real estate developers, are Constitutionally Valid.

In the given case, CIRP was initiated by the Financial creditors requiring minimum threshold for initiation of proceedings (class action) by certain categories of financial creditors against corporate debtors such as real estate developers.

According to Provisos of section 7, it was required that in case of a real estate project, being conducted by a corporate debtor, an application can be filed by either one hundred allottees or allottees constituting one-tenth of allottees, whichever is less, if they are able to establish a default in regard to a financial creditor and it is not necessary that there must be default *qua* any of Applicants. It was held that since default can be *qua* any of applicants and even a person who is not an applicant and action is one which is understood to be in rem, in that, procedures under Code would bind entire set of stakeholders including whole of allottees.

Manner & Period of payment of export value of goods										
Manner:	<ul style="list-style-type: none"> <li>FEV must be paid through AD as per FEM (Manner of Receipt and Payment) Regulations, 2000</li> <li>Re-import into India → within the realization period shall be deemed realization of FEV</li> </ul>									
Period of Realisation of Export value:	<table border="1"> <thead> <tr> <th colspan="2">General Rule:</th> <th>Export is made by SEZ / Export oriented Units / EHTP / STP &amp; Bio-Technology Park as per FTP:</th> </tr> </thead> <tbody> <tr> <td>Normal Export (Goods / Service / Software):</td> <td>Goods Exported to warehouse established outside India with RBI Permission:</td> <td>Realize &amp; Repatriate FEV within 9 Month from Export Date</td> </tr> <tr> <td>Realize &amp; Repatriate FEV within 9 Month from Export Date</td> <td>Realize &amp; Pay to AD-FEV within 15 Month from Shipment Date</td> <td></td> </tr> </tbody> </table>	General Rule:		Export is made by SEZ / Export oriented Units / EHTP / STP & Bio-Technology Park as per FTP:	Normal Export (Goods / Service / Software):	Goods Exported to warehouse established outside India with RBI Permission:	Realize & Repatriate FEV within 9 Month from Export Date	Realize & Repatriate FEV within 9 Month from Export Date	Realize & Pay to AD-FEV within 15 Month from Shipment Date	
	General Rule:		Export is made by SEZ / Export oriented Units / EHTP / STP & Bio-Technology Park as per FTP:							
Normal Export (Goods / Service / Software):	Goods Exported to warehouse established outside India with RBI Permission:	Realize & Repatriate FEV within 9 Month from Export Date								
Realize & Repatriate FEV within 9 Month from Export Date	Realize & Pay to AD-FEV within 15 Month from Shipment Date									
Note:	<ul style="list-style-type: none"> <li>RBI/AD may → for sufficient and reasonable cause extend the period</li> <li>If software exported in other than physical form, Date of Export = Date of Invoice</li> </ul>									

Sec 197: Managerial Remuneration (PUBLIC COMPANIES → N/A to Pvt / Govt Co.):				
Sec 197 (1) → Remuneration Limit in case of Adequate Profit				
Net Profit:	Meaning of Net Profit for Below Calculation is: Net Profit → as per Sec 198 → without deducting director's remuneration from Gross Profit			
Overall limit:	Remuneration to:	Particulars:	Limit of Remuneration:	Approval Required If Exceeded:
	All Directors:	Total rem to all directors (including MD/WTD/mngr and IDs)	≤ 11% of Net Profit	Ordinary Resolution (OR) • Schedule V
	MD/WTD/Mngr:	If there is only 1 MD/WTD/Manager →	≤ 5% of Net Profit	If >5%, SR needed
	MD/WTD/Mngr:	If there is more than 1 MD/WTD/Manager → (Aggregate remuneration)	≤ 10% of Net Profit	If >10%, SR needed
Other Directors:	Other Directors (Other than MD/WTD/Manager)			
	Case	Limit	If above Limit ?	
	If there is MD/WTD/Manager →	1% of Net Profit	SR	
	If no MD/WTD/Manager →	3% of Net Profit	SR	
Nidhi Co. / Special Case:	When Directors are rendering Special Services to NIDHI:			
	Situation	Permission Required:		
(When Dir. Rendering additional services) (X)	Remuneration to Dir. (Other than MD/WTD/mngr) for rendering special services to Nidhi →	<ul style="list-style-type: none"> <li>Allowed as per ADA by monthly payment</li> <li>subject to GM Approval</li> <li>subject to Sec 197 approval</li> </ul>		
	No GM Approval Required When:	1) Nidhi Co. does not have MD/WTD/Manager & Remuneration is Lower of: <ul style="list-style-type: none"> <li>a) ≤ 10% of NP</li> <li>b) ≤ ₹15 lakhs . &amp;</li> <li>3) Such remuneration is approved by SR</li> </ul>		

> Section 32 - Revision by Central Government (CG) (X)

Who can revise?	Central Government (CG), either: <b>Suo moto</b> (on its own) or <b>On application by person registered under FCRA</b> (application to be in e-form only)
What can CG do?	Call for & examine records   Conduct inquiry   Pass such revision orders as deemed fit
Time Limits	CG (on its own): <b>Cannot revise orders older than 1 year</b> Registered person: <b>Must apply within 1 year of receipt of order</b> (Condonation possible)
When NOT allowed?	If appeal is possible, but → Time to appeal is not yet expired, + No waiver of right to appeal

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Application Process: Apply to: **Secretary, MHA** Fees: **Rs. 3,000** via payment gateway

Ministry of home affairs

Annual Return [Form FC-4]

1. Who should file?	Every person with → COR / prior permission receiving FC
2. What to submit?	Signed and CA-certified Form FC-4, along with: Income & Expenditure Statement   Receipt & Payment A/c   Balance Sheet
3. Due Date [MCQ]	Within 9 months → from end of each Financial Year
4. FC Transfer Reporting	Must reflect FC received in exclusive FC bank account & transferred for utilization

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5. FC in Kind (Articles/Securities)	File Form FC-1 (FC-4 only for currency)
6. Bank Certification	Attach certified bank statement of exclusive FC a/c (preserve for 6 years)
7. Nil Return	Even if no FC is received, Form FC-4 must still be filed [NIL Return] (No Balance Sheet/CA declaration needed)
8. Website Disclosure	Every person receiving FC must publish FC details on their website within 15 days of quarter-end

> Section 13 - Suspension of Certificate of Registration (COR)

When can CG suspend COR?	When cancellation is under consideration under Section 14, + If CG is satisfied that suspension is necessary, it may suspend the COR.
Order Format	Suspension must be through written order with reasons recorded in writing.
Duration	Up to 180 days (extendable by another 180 days).
During Suspension	1. Cannot receive any foreign contribution (FC). 2. CG may allow receipt of FC on specified terms and conditions, if applied. 3. Utilization of existing FC in custody only with prior approval of CG.

Rule 14 - Utilization of FC During Suspension

Usage Limit	Conditions
Up to 25% of unutilized FC	Allowed only with prior approval of CG + only for declared aims and objectives.
Balance 75%	Can be utilized only after revocation of suspension. (Not allowed even with CG approval)

> Section 14 - Cancellation of COR

CG may cancel COR when:	Central Government (CG) May cancel the COR by order, if the holder of COR has committed any of the following: 1) False/Incorrect statement during application or renewal of COR 2) Violated terms & conditions of COR or renewal thereof 3) Violated provisions of the Act or Rules 4) Inactive → Not engaged in any reasonable activity in its chosen field for the last 2 consecutive years or has become defunct
(MCQ)	

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OOBH:	5) Cancellation is necessary in the Public Interest No order of cancellation unless Opportunity of Being Heard (OOBH) is given to the concerned person.
Cooling: (MCQ)	After cancellation, the person is not eligible to apply for COR or prior permission for 3 years.

> Section 14A - Surrender of COR → Voluntary Surrender Process: (Amendment)

Step	Description
1. Application	Person can apply to Central Government (CG) to surrender COR using Form FC-7
2. Inquiry by CG	CG will conduct an inquiry to ensure: a. No contravention of FCRA provisions b. Assets and FC are properly managed and transferred to authority as per Section 15
3. Approval	If satisfied → CG may permit surrender of COR
Effect of Surrender → COR is deemed expired from the date CG accepts the request.	

> Section 203 - Appointment of Key Managerial Personnel (KMP):

Applicability (1)	Listed Companies	All Listed Co.
	Public Companies →	PUSC ≥ ₹10 crores must appoint whole-time KMP
	Private Co. →	PUSC ≥ ₹10 crores must appoint whole-time Company Secretary (CS)
Definition of Whole-Time KMP	3 Chairs in company	
	MD/WTD/Manager Or CEO	CS CFO
Same Person as Chairman and MD/CEO?	Not allowed unless:	
	Articles of Association (AOA) permit it, or	
	Company runs only a single business	
	Or,	
	Public Companies Having:	<ul style="list-style-type: none"> <li>• PUSC ≥ ₹100 crores, &amp;</li> <li>• Annual Turnover ≥ ₹1,000 crores (as per latest audited FS)</li> </ul> Engaged in multiple businesses & Appointed different CEO for each business
Appointment Procedure (2)	Whole-time KMP appointed by Board Resolution with Terms & Conditions.	
Holding Office in Other Companies (3)	<ul style="list-style-type: none"> <li>• Whole-time KMP cannot hold office in more than one company, except in its subsidiary.</li> <li>• KMP can become NED with Board's permission.</li> </ul>	
Can a Person be MD/mngr in Two Companies? (3)	Yes, if conditions met: <ul style="list-style-type: none"> <li>• MD/Manager in only one other company.</li> <li>• Appointment approved by Board Resolution with consent of all directors present.</li> <li>• Specific Notice (agenda required) sent to all directors in India.</li> </ul> Important Note: <ul style="list-style-type: none"> <li>• All directors present must vote in favor → if anyone is abstained from voting → Resolution can't be passed.</li> <li>• Remember Sec 188 → that also Mandated the Agenda required to be sent</li> </ul>	
Vacancy in KMP: (4)	Must be filled by Board → within 6 months Special Relaxation for Government Companies No need to fill → MD/Manager/CEO vacancy within 6 months if absent.	
Penalty for Non-Compliance (5)	Company	₹5 lakh.
	Every director/KMP in default	₹50,000 + ₹1,000 per day (Max ₹5 lakh)
Other Points	<ul style="list-style-type: none"> <li>• One person cannot hold two KMP posts (e.g., CFO &amp; CS) in same company.</li> </ul>	
N/A to Govt Co:	This Section is Not applicable to Govt Company → i.e., Not mandatory require to appoint not apply to MD/Manager/CEO Or Vacancy to fulfill in 6m.	

MCQ → WTD resigned → BOD to fill vacancy within 6 months

MCQ → Our company hold 51% share of another company → so Our CFO can hold office of CFO in that Co. also

## Inspection , Investigation (6 Mark) - - -

- Can Ex – Company Director be called w/o giving notice in writing

- What are the cases when notice cant be issued u/s 206 (3)

- What are the proper grounds on which notice can't be issued in Investigation

↘ Section 206 to 212  
watch YT

Section 152(6) → Retirement by Rotation (RBR): (N.A to Unlisted Govt Co & It's Subsidiary)					
Applicable to:	Public Companies (unless AOA Provides specifically that all directors to RBR)				
2/3 <sup>rd</sup>	<b>At every AGM:</b> <ul style="list-style-type: none"> <li>At least 2/3<sup>rd</sup> of total directors (excluding I.D) → must be those liable to retire by rotation</li> <li>These directors are appointed by shareholders in a GM</li> </ul> Round off → higher rounding off is done for fraction come from 2/3 <sup>rd</sup>				
1/3 <sup>rd</sup>	1/3 <sup>rd</sup> of such RBR directors must retire at each AGM Round off → to nearest whole number (Maths rule)				
Who retires	<ul style="list-style-type: none"> <li>Those who have been longest in office since their last appointment</li> <li>If multiple were appointed on the same day, then retirement is:               <ul style="list-style-type: none"> <li>Either if any Mutual Understanding / agreement,</li> <li>Otherwise, decided by draw of lots</li> </ul> </li> </ul>				
Vacancy:	Company may fill up the vacancy in office as per Sec 152 (7)				
Inclusion / Exclusion:	Included / Excluded in:				
	Type of Director:	Total No. of Directors	Rotational		
	MD/KMP whether Resident/NR	✓	✓		
	Small Shareholder Director (Sec 151)	✓	X		
	Additional Director (Sec 161)	✓	X		
	Nominee Director (Sec 161)	✓	X		
	Casual Vacancy (Sec 161)	✓	X		
	Alternate Director (Sec 161)	X	X		
	Independent Director	X	X		
	Nominee Director (Sec 161)	✓	X		
Nominee director appointed by an institution	✓	X			
Nominee director appointed by a financial inst. set up under Act of parliament (E.g. SBI)	X	X			
Nominee directors appointed pursuant to LIC Act (this is as per LIC Act)	X	X			
i.e., Only those directors who are appointed in GM can retire in GM					
Sec 152(7): Reappointment & Meeting	On retirement of a director as per Sec 152 (6), the company has to either: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Reappoint the retiring Director, Or,</td> <td style="width: 33%;">Appoint a New Director, Or,</td> <td style="width: 33%;">Expressly Resolve to not fill the Vacancy</td> </tr> </table>		Reappoint the retiring Director, Or,	Appoint a New Director, Or,	Expressly Resolve to not fill the Vacancy
Reappoint the retiring Director, Or,	Appoint a New Director, Or,	Expressly Resolve to not fill the Vacancy			

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Adjournment:	Further,						
(N.A to Unlisted Govt Co & It's Subsidiary)	<b>Adjourned:</b> If vacancy is not filled in AGM & the meeting has not resolved to not fill the vacancy → then Meeting is Adjourned: <ul style="list-style-type: none"> <li>Next week → same time &amp; Same place</li> <li>If it's national holiday → Next succeeding day which is not a holiday</li> </ul>						
	<b>Automatic reappointment:</b> If vacancy is not filled or it is not resolved not to fill the vacancy at adjourned meeting → retiring director stands <b>automatically reappointed UNLESS</b> (i.e., Not automatically reappointed in following Cases): <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Resolution for his appointment was Lost</td> <td style="width: 33%;">Expressed his unwillingness in Writing</td> <td style="width: 33%;">Disqualified U/s 164</td> </tr> <tr> <td>Section 162 is applicable (1 resolution = 1 director)</td> <td>OR or SR is required for his appointment as per provision of the Act</td> <td></td> </tr> </table>	Resolution for his appointment was Lost	Expressed his unwillingness in Writing	Disqualified U/s 164	Section 162 is applicable (1 resolution = 1 director)	OR or SR is required for his appointment as per provision of the Act	
	Resolution for his appointment was Lost	Expressed his unwillingness in Writing	Disqualified U/s 164				
Section 162 is applicable (1 resolution = 1 director)	OR or SR is required for his appointment as per provision of the Act						
<b>If AGM not held:</b> If AGM is not held up to last due date - "Dir. liable to retire" shall vacate office on last due date							
<b>Some Less Important Points: X</b>							
<b>If Company Failed to Hold AGM u/s 96, then:</b> → <ol style="list-style-type: none"> <li>Any member of the company can apply to the NCLT</li> <li>The Tribunal may call or direct the company to call the AGM</li> <li>The meeting held as per NCLT direction → Shall be deemed to be the AGM of the company (All provisions relating to AGM will apply)</li> </ol>							
<b>If AGM extended by ROC (Grant extension), then →</b> <ol style="list-style-type: none"> <li>Then the AGM can be held within the extended time</li> <li>And all consequences (like retirement by rotation, final accounts approval, etc.) will apply based on the extended AGM date</li> </ol>							

**ICAI Ex:** Public Company → Total 12 directors in which 2 directors are independent directors and 1 director is a nominee director → so  $12 - 3 = 9 \rightarrow 9 \times (2/3) = 6$  Liable for rotation →  $6 \times (1/3) = 2$  shall actually retire by rotation

**ICAI Ex:** Total 6 Dir → 2/3<sup>rd</sup> will be 4 → directors to retire at AGM:  $4 \times 1/3$ , i.e. 1.33 or nearest to 1/3<sup>rd</sup> is 1

**ICAI Ex:** Total 7 Dir → 2/3<sup>rd</sup> will be 4.7 (i.e., 5) → Dir to retire:  $5 \times 1/3$ , i.e. 1.67 or nearest to 1/3<sup>rd</sup> is 2

**SM Q:** (i) If vacancy not filled + resolution not passed to not fill + adjourn AGM → retiring Dir deemed reapt.

(ii) If reappointment resolution is put and lost → deemed reappointment does not apply.

(iii) If AGM not held → retiring director vacates on due date → cannot continue beyond term.

Sec 196 Appointment of Managerial Personnel (MD/WTD or Manager) :					
Meaning of MP:	Managerial Personnel Covered Here are → MD / WTD Or Manager (Not Covered → CEO/CFO/CS/ Other KMP's)				
Not at Same Time: [Sec 196(1)]	MD and Manager cannot be appointed at the same time.				
Restrictions on Appointment: [Sec 196(2)]	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Term Limit</td> <td>Appointment/reappointment for max 5 years at a time</td> </tr> <tr> <td>Reappointment:</td> <td>allowed only within 1 year before term expiry</td> </tr> </table>	Term Limit	Appointment/reappointment for max 5 years at a time	Reappointment:	allowed only within 1 year before term expiry
Term Limit	Appointment/reappointment for max 5 years at a time				
Reappointment:	allowed only within 1 year before term expiry				
Disqualifications: [Sec 196(3)]	A person cannot be appointed/continued as MD/WTD/Manager if he/she is: <ul style="list-style-type: none"> <li>Age &lt; 21 years <b>or</b></li> <li>≥ 70 years (unless conditions met)</li> </ul>				

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For Full Notes: Telegram: <https://t.me/cahamantsonani>

Insolvent	Undischarged or adjudged insolvent
Creditor	Suspended payments to creditors
Defaults:	Made a composition with them
Convicted:	By a court and sentenced to > 6 months
<b>Special Case - Appointment at age ≥ 70 years:</b>	
Option 1:	Pass SR + ES → Pass Special Resolution (SR) with Explanatory Statement (ES) justifying appointment
Option 2:	Pass OR + CG → If SR not passed, but votes in favour against (Ordinary Resolution) → Central Government (CG), on application, may allow if appointment is beneficial to the company

Point to Note:	
MD and WTD at same time?	✓ Yes. Company can have both simultaneously
Two MDs together?	✓ Yes. As long as they don't hold whole power individually, multiple MDs allowed.
Two Managers together?	✗ No. Only one Manager at a time is allowed by law.
MD + Mangr Or WTD + Mngr	✗ No. not allowed simultaneously
MD + Manager of Finance	✓ Yes. Allowed → As Sec 2(53) says Manager must have whole management control. A Finance head is not considered a "Manager" under the Act. So, valid.
Can MD be appointed for life?	✗ No. → Max term = 5 years.
Normal Director's < 21 Yr	✓ Yes, if age ≥ 18.
	✗ No, if < 18.
Can Insolvent become manager with CG approval?	✗ No. CG approval is only for Schedule V variance. → It cannot override Section 196 disqualifications.
Disqualified U/s 164 → Can Be MD?	✗ No. Must be qualified under Sec 164 to be MD.
Age < 21 (SR applicable)	Age < 21 → Can be appointed via SR2
	✗ No. SR waiver only works for age ≥ 70, not for age < 21.

**MCQ:** WTD appointed as on 28<sup>th</sup> Aug 2019 → for 5 Year → but he re-appointed in Advance on 28<sup>th</sup> Sept 2021 (for 2<sup>nd</sup> Term) → Wrong. He can't be appointed before 1 yr of ending of 1<sup>st</sup> period

**MCQ:** CFO can be Re-appointed even before 3 years of expiry of term (there is no restriction of 1 yr here)

➤ **Sec 247 - REGISTERED VALUER (Read with Companies RV and Valuation Rules, 2017)**

When RV is Required?	Valuation is required under sections Like (Below are mandatory, but RV requires in other cases also)							
	Sec 192	Non-cash transactions involving directors						
	Sec 230 & 232	Schemes of compromise/arrangement						
	Sec 236	Purchase of minority shareholding						
	Other cases also.							
Valuation of: (1)	When valuation is required for:							
	Property	Stock / Shares	Debentures	Securities	Goodwill	Other Asset	Net Worth of Co	Liabilities
Valuation Shall be done by: (1)	In Above Cases, Valuation shall be Done by a RV, Who:							
	Qualification	Has prescribed qualification & experience						
	RVO	Is a member of a Registered Valuer Organization (RVO)						
MCQ →	Appoint by:	Is appointed by Audit Committee, or BOD (if Audit Committee isn't there)						
Role of RV (FDI Rules) (2)	RV must:							
	<ul style="list-style-type: none"> <li>• Give impartial, true &amp; fair valuation</li> <li>• Do due diligence</li> <li>• Follow prescribed valuation rules</li> <li>• Not do valuation if he is interested (directly/indirectly) → i.e., Involved in asset during:                             <ul style="list-style-type: none"> <li>✓ 3 years before appointment, Or</li> <li>✓ 3 years after valuation</li> </ul> </li> </ul>							
Contravention by Valuer: (3)	No intention to defraud				Had intention to Defraud Company / Member:			
	Fine - Rs. 50,000				<ul style="list-style-type: none"> <li>• Jail upto 1 year and</li> <li>• Fine of Rs. 1 lakh to Rs. 5 lakhs</li> </ul>			
If RV is convicted (for fraud): (4)	He must:							
	<ul style="list-style-type: none"> <li>• Refund fee/remuneration received</li> <li>• Pay for damages caused to company or others due to wrong/misleading valuation</li> </ul>							

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Meeting	Date & Place of the meeting	No. of member of committee, who attended the meeting
A	18 <sup>th</sup> May 2021, RO	All 6 members
B	10 <sup>th</sup> August 2021, RO	All 6 members
C	30 <sup>th</sup> October 2021, RO	5 members including 3 independent directors
D	10 <sup>th</sup> Jan 2022, RO	All 6 members
E	15 <sup>th</sup> March 2022, RO	All 6 members
1	12 <sup>th</sup> April 2022, RO	All 6 members
2	17 <sup>th</sup> June 2022, RO	5 members including 3 independent directors
3	8 <sup>th</sup> July 2022, Shimla (HP, India)	4 members including 2 independent directors
4	11 <sup>th</sup> Nov 2022, RO	5 members including 2 independent and 1 non-executive directors
5	28 <sup>th</sup> December 2022, Kannauj (UP, India)	3 director including 1 independent and 1 non-executive directors
6	13 <sup>th</sup> Jan 2023, Grasse (France)	All 6 members
7	10 <sup>th</sup> March 2023, RO	1 independent and 1 non-executive director only

Q. Which of following is the correct option that represents those meetings of audit committee convened during 2022-23, which was supposed to be adjourned for want of quorum?

**Answer: 5th and 7th meetings only**

Q. How many instances of default by Venus Limited in context to number of meetings of audit committee and time gap between such meetings took place during 2021-22 and 2022-23:

**Answer: "Once only in 2022-23"** i.e., The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings. The time gap between 3th (8th July 2022) and 4th meeting (11th Nov 2022) is more than 120 days.

29 Financial results of first quarter of 2023-24 need to be reported to stock exchange → "14th August, 2023"