

Index- IBS Law



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Appointment and Qualifications of Directors



Board of Directors (Section-149)

(1) Constitution of Board of Directors

Every company shall have a Board of Directors consisting **only Individuals** as directors

- Minimum No. of Director —————
 - Public Company - 3 Directors
 - Private Company - 2 Directors
 - One Person company- 1 Director
- Maximum No. of Directors - **15 Directors** (Can be increased by passing **special resolution**)

Note:

Following Companies are exempted from restriction of maximum 15 directors if has not committed any default in filing FS u/s 137 and annual return u/s 92

- ✓ Government company
- ✓ Section-8 company

(2) Women Director

Following companies shall have at least **one women director** on their Board of Directors

- Every **Listed Company**
- Every other **public company** having as on last date of latest audited financial statement
 - ✓ Paid up capital of **Rs. 100 crore** or more
 - ✓ Turnover of **Rs. 300 crore** or more

Note:

- (i) A newly incorporated company shall comply with above requirement within 6-month period
- (ii) Any intermittent vacancy shall be filled at not later than immediate **next Board Meeting** or **3 months** from the date of such vacancy whichever is later

(3) Independent Director

(A) Minimum number of independent directors

- Every **Listed** public company: **1/3rd of total** directors (any fraction rounded off as one)
- Following **public companies** shall have **at least 2** independent directors if having
 - ✓ Paid up share capital of **10 crores** or more
 - ✓ Turnover **100 crores** or more
 - ✓ Outstanding loan, debenture or deposit exceeding **50 crores** in aggregate

Note:

- (i) Any intermittent vacancy shall be filled at not later than immediate **next Board**

Meeting or 3 months from the date of such vacancy whichever is later

- (ii) Company shall not be required to appoint independent directors if ceases to fulfil above criteria for 3 consecutive years
- (iii) Joint venture, wholly owned subsidiary, dormant company if unlisted not covered above

(B) Qualifications for being independent director

- Who is **not a managing director**, whole-time director, or nominee director of such company
- Who is **not a promoter** or not related to promoter or director in the company, its holding, subsidiary, or associate company
- Who had **no pecuniary relationship** other than remuneration or having transaction not **exceeding 10%** of his total income with the company, its holding, subsidiary or associate company, or their promoters, or directors, during last 2 FY or during current FY
- Whose no relative is
 - ✓ **Holding any security** or interest in the company, its holding, subsidiary, or associate company during last 2 FY or during current FY. (However **relative may hold up to** face value of **not exceeding Rs. 50 lakhs or 2% of paid-up capital**)
 - ✓ **Indebted** to the company, its holding, subsidiary or associate company or their promoters, or directors, **in excess of Rs. 50 Lakhs** during last 2 FY or during current FY
 - ✓ Given a **guarantee** or provided any **security** for loan given by 3rd person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, **in excess of Rs. 50 Lakhs** during last 2 FY or during current FY
 - ✓ Having **pecuniary transaction** or relationship with the company, or its subsidiary, or its holding or associate company amounting to **2% or more of its gross turnover** or total income singly or in combination with the transactions referred above
- Who, neither himself nor any of his relatives
 - ✓ holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary, or associate company in any of the last 3 FY (relative can be in employment in last 3 FY)
 - ✓ Is or has been an employee or proprietor or a partner in any of the last 3 FY:
 - A firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary, or associate company
 - any legal or a consulting firm that has or had any transaction amounting to 10% or more of its gross turnover with the company, its holding, subsidiary, or associate company
 - ✓ holds together with his relatives 2% or more of the total voting power
 - ✓ Is a Chief Executive or director of any non- profit organisation that receives 25% or

more of its receipts from the company, any of its promoters, directors, or its holding, subsidiary, or associate company or that holds 2% or more of the total voting power of the company

Note:

Associate Company means company in which other company has significant influence (More than 20% shares or voting power) but it's not a subsidiary, but includes joint venture company

(C) Remuneration of Independent Director

Independent director is eligible for remuneration by way of sitting fees, reimbursement for attending board meetings, profit related commission approved by member, however **not entitled to any stock options**

Sitting fees payable to independent directors should **not be less than fees paid to another director**

(D) Tenure of Independent Director

- ✓ Independent director shall hold office for **up to 5 consecutive years**, May be **re-appointed** for second term after passing **special resolution** (term of less than 5 years shall also be counted as 1 term)
- ✓ A re-appointed independent director may be removed only by-passing **special resolution**
- ✓ Independent director shall not hold office for more than 2 consecutive terms, again eligible for re-appointment after **3 years of cooling off period**

Appointment of Directors (Section-152)

(1) First Director

- Articles of company consist of names of first directors, if not subscribers to the memorandum shall be considered as first directors
- In OPC the only individual (not any corporate bodies) member shall be deemed its first director

First directors shall hold office till holding of first Annual General Meeting (AGM).

(2) Subsequent Directors

- Every Director shall be **appointed in AGM** except Companies Act provide separate procedure

(3) Retirement of Directors by Rotation:

- This Provision is applicable only to public company and any private company which is subsidiary of public company
- Unless the articles provide for retirement of all directors at every AGM, **not less than 2/3rd of the total number** of directors shall be person whose office is liable to be determined for

rotation

- Total no. of director shall **not include independent and nominee directors** as they can't be retired by rotation
- In Every AGM except first AGM, **1/3rd of Directors liable** to be determined **for rotation** as per above point shall be liable to retire by rotation. (if 1/3rd is coming in decimal, no. nearest shall retire)
- Director who served longest shall retire first, if same, to be decided mutually or by lot
- Vacancy created by retirement, may be filled by company at the AGM by reappointing retiring director or others but requirement of minimum director must be fulfilled
- In case AGM is not held on due date, directors liable to retire shall vacate their office on due date of AGM.

(4) Deemed Re-appointment of retiring director

- If vacancy of retiring director not filled and not resolved expressly not to fill, meeting shall be adjourned to same day in next week at same time and place (if national holiday- next day)
- If vacancy of retiring director not filled up in adjourned meeting also then retiring director shall be deemed to be reappointed Except in below mentioned cases
 - If in the meeting or previous meeting **resolution for re-appointment** of such director has **been put and lost**
 - If he has **expressed unwillingness** to be re-appointed in writing
 - If he is **disqualified** for such appointment
 - If an ordinary or special **resolution is required** for re-appointment
 - If section 162 is applicable (i.e., Where single resolution passed to appoint 2 or more person as director without first moving proposal against which no vote has been cast)

Note:

Following Companies are exempted from provisions of rotation and re-appointment as above if it has not committed any default in filing FS u/s 137 and annual return u/s 92

- ✓ Government company (not listed) in which CG/SG hold at least 51% of the Paid-up capital
- ✓ Subsidiary of a above mentioned government company

Appointment of Director elected by small shareholders (Section-151)

A listed company **may (optional)** have one director elected by small shareholders (shareholders holding shares of **nominal value of not more than 20,000**)

- Listed company may appoint director elected by small shareholders on notice of at least 14 days by **not less than 1000 small shareholders or 1/10th of total number of small shareholders**, whichever is lower

- Such director shall be **considered as independent director** hence should meet eligibility criteria prescribed for independent director
- Such director not liable to retire by rotation and maximum **tenure shall not exceed 3 consecutive years** also on expiry of tenure such director shall not be liable to eligible for re-appointment

Appointment of Additional Director, Alternate Director, A Director to fill casual vacancy and Nominee Director (Section-161)

(1) Additional Director:

Considering urgent requirements, Board of directors may appoint any person as additional director only if empowered by articles of association

Following person **cannot be appointed** as additional director:

- Person who fails to get appointed in general meeting
- Person not having DIN
- Person should not be a retiring director

Such Additional director **tenure shall be limited to coming AGM** (In case such AGM is not held on due date, tenure ends on due date of AGM)

(2) Alternate Director:

The Board of Directors may, if authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, to act as an alternate director for a director during his absence for a period of **not less than three months** from India

Some condition to meet for being alternate director:

- Person **not being director or alternate director** for some other director **in same company**
- Person for being appointed as alternate director to independent director must fulfil criteria for independent director

Note:

- (i) Such alternate director **shall not hold office longer than permissible to original director**
- (ii) Such person shall vacate office as soon as original director return to India or even on death of the original director
- (iii) Provision for automatic reappointment to original director shall not be applied to alternate director
- (iv) Such person shall accept appointment only if his existing directorship doesn't exceed maximum limit

(3) Director to fill casual vacancy:

If directors appointed in general meeting vacate office before expiry of its term (I.e. death, resignation, removal) such situation is called casual vacancy, in such case board may fill such

vacancy which must be approved in immediate next meeting

Note:

- (i) Filling casual vacancy is not mandatory
- (ii) If casual vacancy filled get vacated again due to some casual occurrence same can't be said as casual vacancy (in such case casual vacancy can't be filled however additional director can be appointed)
- (iii) Even after approval in general meeting such person shall continue his term only for the unexpired term of the original director

Maximum Number of Directorship (Section-165)

A person cannot hold office as director including alternate directorship in **more than 20 companies** at a time, out of 20 companies, **public companies should not exceed 10** (public companies include private companies holding or subsidiary company of public company)

However dormant and section-8 companies shall not be counted in the limit

A company may specify lower limit for its directors through special resolution

Appointment and Remuneration of KMPs



Definitions (Section-2)

(i) **Key Managerial Person (KMP)** : Means

- ✓ Chief executive officer (CEO) or Managing director (MD) or Manager
- ✓ Whole time director (WTD)
- ✓ Chief financial officer (CFO)
- ✓ Company secretary (CS)
- ✓ Other officer designated as KMP

(ii) **Manager** means individual who under control and direction of the BoD, has the management of the whole, or **substantially the whole, of the affairs** of a company

Hence person appointed as manager to head one of the sections of the company (say, marketing department) cannot be said to be a 'manager'.

Appointment of Managing Director, Whole Time Director, or Manager (Section-196)

- A company shall appoint managing director **and** whole-time director **or** manager, in other words
 - Company **cannot appoint** managing director (MD) and manager at same time
 - Company **can appoint** both managing director (MD) and Whole-time director (WTD) at same time
- **Maximum term would be 5 years** at a time, no reappointment shall be made earlier than one year before expiry of tenure

Note:

- (i) Person below age of 21 years and beyond 70 years is not eligible to appointed or continued, age relaxation beyond 70 years may be provided if
- Passed **special resolution** along with explanatory statement for justification
 - Special resolution could **not be passed** but votes in favour is more than against and **Central government approval** taken
- (ii) Procedure for taking approval from central government
- Application in **Form MR-2 within 90 days** from date of appointment
 - Before application, general notice to be given to members about application proposed
 - Publish such notice in one English and one principal language newspapers of district of registered office of such company and attach such notice with application

Appointment of Key Managerial Person (Section-203)

- Every **Listed company** and other **public company with paid up capital of 10 crores** or more shall have following whole time key managerial person:
 - MD/CEO/Manager in absence of them a Whole-time director
 - Company secretary
 - Chief financial officer
- Further every **private company with paid up capital of 10 crores or more** shall have a whole-time company secretary

Conditions for Appointment

- (i) Appointment shall be made by **board resolution** which contains terms of appointment
- (ii) Whole-time key managerial personnel **shall not hold office in more than one company** at the same time **except in its subsidiary company** (However can become director in any company with permission of board)
- (iii) If any person is MD or manager in some other company, it is permissible for a company to appoint him as its managing director by following way:
 - ✓ MD/Manager in only one company not more than one
 - ✓ Approved by board resolution with consent of all director present
 - ✓ Specific notice of meeting given to all the directors then in India
- (iv) Vacancy of any whole time KMP shall be filled by the board within 6 months from such vacancy

Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits (Section-197) – Applicable to only public company

A) Overall Maximum Managerial Remuneration (Company having adequate profits)

<u>Scenario</u>	<u>Maximum Remuneration payable to directors in in FY</u>
A. Overall Limit	11% of Net profit of that FY
B. Remuneration to MD, WTD or Manager	
a. If there is only one MD/WTD/Manager	5% of Net profit of that FY
b. If there is more than one MD/WTD/Manager	10% of Net profit of that FY
C. Remuneration to Directors who are neither MD nor WTD	
a. If there is MD or WTD	1% of Net profit of that FY
b. If there is no MD/WTD	3% of Net profit of that FY

Note:

- (i) Above Limits can be extended by passing special resolution in general meeting

- (ii) Sitting fees shall be in addition to above percentages
- (iii) Net profit shall be calculated u/s 198 for which proforma given at the end of the chapter
However, Director remuneration shall not be reduced for calculating net profit for the purpose of determination of director remuneration.

B) Overall Maximum Managerial Remuneration (Company having no or inadequate profits)

A company having no profit, or inadequate profits shall pay to its director and KMPs remuneration as below

<u>Effective Capital in such FY</u>	<u>Annual remuneration limit for managerial remuneration</u>	<u>Annual remuneration limit for other directors</u>
a. Negative or less than 5 Crore	60 Lakhs	12 Lakhs
b. Less than 100 Crore	84 Lakhs	17 Lakhs
c. Less than 250 Crore	120 Lakhs	24 Lakhs
d. 250 Crore or more	120 Lakh + .01% of effective capital more than 250 lakhs	24 Lakh + .01% of effective capital more than 250 lakhs

Note:

- (i) Above limit may be **increased by special resolution** passed by shareholders
- (ii) Effective Capital means

Paid up share capital (excluding share application money)	XXX
Add: Share premium and Reserve & surplus (except revaluation reserve)	xxx
Add: Long term loans and deposits >1 year (except working capital loan, overdraft, or short-term arrangement etc.)	xxx
Less: Investment (unless main business is investment)	(xxx)
Less: Accumulated loss and preliminary expenses not written off	(xxx)

- (iii) Effective capital calculated on **last day of preceding financial year**, if appointment made in first year, effective capital calculated on the day of appointment
- (iv) In case appointment for part year, Remuneration shall be calculated pro-rated

Notes: Managerial person may draw remuneration from one or both companies, provided total remuneration shall not exceed higher maximum permissible limit in any one of the in which he is a managerial person.

C) Sitting Fees to Directors

Director may be paid fee for attending meetings subjected to following conditions:

- Sitting fees shall **not exceed 1 lakh per board or committee meeting**
- Sitting fees independent director and women director shall not be less than other directors

D) Determination of Remuneration

- Remuneration of directors including MD/WTD shall be determined either
 - ✓ By the articles of company or
 - ✓ By a resolution in general meeting or
 - ✓ By special resolution in general meeting if required by articles
- Such remuneration shall include remuneration paid for services in any other capacity except:
 - ✓ Services are of professional nature
 - ✓ As per Board or nomination committee such director possesses requisite qualifications

Compensation for loss of office of MD, WTD or Manager (Section-202)

Company may make payment of **compensation for loss of office** or consideration for retirement **only to Managing director, Whole time director and Manager** (not to other director) **except:**

- ✓ Where director **resign due to reconstruction** or amalgamation and appointed as MD, WTD, manager or other officer of reconstructed entity
- ✓ Where director **resign due to reason other than reconstruction** or amalgamation
- ✓ **Casual vacancy** in director's office
- ✓ **Company is being wound up** due to negligence or **default of such director**
- ✓ Director **guilty of fraud, breach of trust**, negligence, gross misconduct

Calculation of compensation:

Compensation shall not exceed remuneration he would have earned

- ✓ For remainder of his term or
- ✓ Three years

Whichever is shorter

*Compensation shall be calculated based on average of remuneration earned for 3 years immediately preceding date on which cease to hold office

Calculation of Net profit (Section-198)

<u>Particulars</u>	Amount
Profit as per Profit and loss	XXXX
<u>Add:</u> If already not included in Profit	
✓ Subsidy or Bounties received from Govt./ public authority	XXX
<u>Less:</u> if already included in profit	
✓ Profit by way of premium on shares or debenture of company issued or sold	XXX

✓ Profit on sale of forfeited shares, sale of undertaking or part thereof	XXX
✓ Profit on sale of any immovable property or fixed asset amount shall be lower of (Sale Value- WDV) or (Original cost- WDV)	XXX
✓ Unrealised gain, Notional gains, Revaluation of assets	XXX
<u>Less:</u> Following items shall be reduced from profit if not reduced already	
✓ All the usual working charge, Director remunerations, bonus or commissions paid	XXX
✓ Interest, depreciation, contributions u/s 181	XXX
✓ Compensation/Damage due to legal liability including insurance for such liability	XXX
✓ Debts classified as bad and written off	XXX
<u>Less:</u> Following items shall not be reduced from profit, add back if reduced already	
✓ Income tax or super tax	XXX
✓ Compensation/damage or payments made voluntarily	XXX
✓ Loss on sale of undertaking or asset, amount shall be WDV- sale value	XXX
Net Profit as per section 198	XXXX

Meetings of Board and Its Powers



Meeting of Board (Section-173)

Every company shall hold

- First Board meeting - **Within 30 days** of incorporation
- Subsequent Board meeting - **4 meetings** every calendar year (No gap of more than 120 days between two meetings)

Exceptions:

- One person company (OPC) - May not hold a single meeting during the year
- Small company, dormant company, Private startup - May hold 1 Board meeting in each half calendar year (gap should not be less than 90 days)
- Section 8 company may hold at least 1 board meeting in every 6 calendar months

Note:

- (i) Directors of a company may attend board meeting in following manner
 - ✓ In Person
 - ✓ Through Video conferencing
 - ✓ Other audio-visual means as prescribed

Quorum for Meetings of Board (Section-174)

Quorum of Meeting shall be **higher** of the following (except OPC):

- **1/3rd of total** strength of its directors
- **2 Directors**

Note:

- (i) Interested directors and vacant post shall **not be counted** in total strength
- (ii) While calculating quorum any fraction will be **rounded off as one**
- (iii) Above mentioned quorum can be enhanced by the company
- (iv) In case of section-8 company quorum shall be 25% of its total strength or 8 members whichever is less but subjected to minimum 2 members

If meeting is not held due to lack of quorum, meeting shall stand adjourned to same day, same time, and place in next week (if that day is national holiday, same time, and place next day)

Audit Committee (Section-177)

- (1) **Requirement of Audit Committee:** Following companies are required to constitute

- Every **Listed Company** **or**
- Public company with Paid up share capital of **10 crore or more** **or**
- Public company with Turnover of **100 crore or more** **or**
- Public company with outstanding loan, debenture, and deposits in aggregate **exceeding 50 crore**

Note:

- (i) A joint venture, wholly owned subsidiary, dormant company not required to constitute audit committee
- (ii) If ceases to fulfil above conditions for three consecutive years, not required to constitute audit committee, however if again meet then again need to constitute
- (iii) Amounts shall be taken as on last date in latest audited financial statement.

(2) Composition of Audit Committee:

Audit committee shall consist of **minimum 3 directors, independent directors forming majority**

Note:

- Majority members including chairperson shall be person with ability to read and understand financial statements

(3) Responsibilities of Audit Committee:

- Recommendation for appointment, remuneration and terms of **appointment of auditors**
- Review and monitor the **auditor's independence** and performance
- Examination of the **financial statement** and the auditors' report
- Evaluation of **internal financial controls**
- **Valuation** of undertakings or assets
- Scrutiny of **inter-corporate loans** and investments
- Approval or any subsequent modification of transactions of the company with related party

(4) Role of Auditors in Audit Committee:

- Auditor has **a right to be heard in the meetings** of the Audit Committee when it considers the auditor's report, but he shall not have the right to vote
- The auditor must **ensure that he communicates frequently** and openly with Audit Committee on key accounting or auditing issues based on judgement of risk
- The auditor should contribute to assisting and advising the Audit Committee on **improving corporate governance, oversight of financial reporting process** etc.
- The auditor must devote substantial professional time in assisting the management and the Audit Committee **in certification of corporate governance**

Note: Registered Valuer must be appointed by the Audit Committee if audit committee is not there Board shall appoint registered valuer

Restrictions on Powers of board (Section-180)

This section contains some matters where power of board shall be subjected to some restrictions
(This section does **not apply to private companies**)

(1) Matters for which powers shall be exercised after obtaining consent by a special resolution

- (A) To sell, lease or dispose of the whole or substantially whole of any undertaking of the company** - Such special resolution must contain conditions regarding use, disposal, or investment of proceeds from such transaction

Notes:

- (i) **No special resolution if ordinary business** of company is selling leasing etc. only
- (ii) Undertaking means undertaking in which (Figures as per audited FS of last FY)
 - ✓ Investment of company exceeds **20% of its net worth**
 - ✓ Generates **20% of the total income** of the company
- (iii) "Substantially whole of any undertaking" means 20% or more of value of undertaking as per audited balance sheet of preceding financial year

- (B) To borrow money** Where money to be borrowed along with money already borrowed exceeds aggregate of its paid-up share capital and free reserve and security premium

Notes:

- (i) Borrowing does **not include temporary loans*** obtained from company's banker in the ordinary course of business
 - *Temporary loan means loan **repayable on demand** or **within 6 months** from the arrangement and should **not be raised for capital nature** expenditure)
- (ii) Such special resolution shall **specify total amount** that can be borrowed
- (iii) Such provisions do not apply to borrowing of money by a banking company

- (C) To remit, or give time for the repayment of, any debt due from a director**

- (D) To invest in other than trust securities of compensation received by it as a result of any merger or amalgamation**

(2) Contribution to bona-fide and charitable funds etc. by a company beyond certain limit requires passing of ordinary resolution

Company to Contribute to Bona Fide and Charitable funds (Section-181)

Board of directors of public or private company are authorised to contribute to bona fide charitable and other funds in a financial year **up to 5% of its average net profit for three preceding financial years**, if exceeded needs to be permitted by company through passing an ordinary resolution.

Hence contribution can be made even there is a loss in any financial year subjected to above limit

Prohibition and Restriction regarding Political Contributions (Section-182)

A company shall make the contribution to a political party only **after passing a resolution** authorising such contribution in the board of director's meeting, it **may contribute any amount** (without any limit) **except following companies**:

- ✓ Government company
- ✓ Company which has been in existence for less than 3 financial years

Company shall disclose such total amount contributed to its profit and loss account of the year to which it relates.

Loan to Directors Etc. (Section-185)

A company is not permitted, directly or indirectly, to advance any loan, give any guarantee or provide any security for any loan taken by

- ✓ Any Director of company, holding company or partner/relative of director
- ✓ Any firm in which any director or his relative is partner

Exceptions

- (i) Subjected to conditions company is permitted to advance loan, provide guarantee or security in relation to loan to "any person in whom any of the director is interested"

"Any person in whom any of the director is interested" means:

- (a) Any private company in which such director is a director or member
- (b) Any body corporate of which 25% or more voting power controlled by such director himself or along with other directors
- (c) Any body corporate of which BOD, MD, or manager act on direction of any director or directors of lending company

Specified conditions

- ✓ **Special resolution passed** in general meeting along with statement detailing full particulars of loan/guarantee/security provided and purpose for which it is to be used by recipient
- ✓ Loans are **used** by borrowing company **for its principal business activities**
- (ii) Where loan is given **to Managing or whole-time director (MD/WTM) as part of service conditions extended to employees** or due to scheme approved by members by special resolution
- (iii) Where company provides loan/guarantee **in their ordinary course of business** (i.e. Banks, NBFC etc.) and charge interest rate not less than the rate of prevailing yield of government security
- (iv) Where loan/guarantee provided by holding company **to wholly owned subsidiary company**

- (v) Where guarantee/security provided by holding company to its subsidiary company
- (vi) Following private company:
 - ✓ In whose share capital no other body corporate invested
 - ✓ If borrowing of such company is less than 2 times of its paid-up share capital or 50 crore whichever is lower
 - ✓ No default in repayment of such borrowing
 - ✓ No default in filing its financial statement u/s 137 or annual return u/s 92.

Loan and Investment by Company (Section-186)

No Company shall:	
✓ Give any loan	Exceeding: • 60% of (Paid up share capital, free reserve, and securities premium) <u>or</u> • 100% of (Free reserve and securities premium) <u>Whichever is Higher</u>
✓ Give any guarantee/security in relation to any loan	
✓ Acquire/purchase securities of any other body corporate	

Notes:

- (i) If above limit does not exceed any investment shall be made or loan or guarantee or security may be given by the company only after resolution passed at Board meeting with consent of all the directors present at the meeting
- (ii) If aggregate of existing and proposed loan, investment, guarantee, or securities exceeds the above limit no such proposed transaction shall be carried out unless authorised by special resolution in general meeting
- (iii) Requirement of special resolution shall not apply if
 - ✓ Loan, guarantee, or security provided to its wholly owned subsidiary/ joint venture company
 - ✓ Holding company acquired/purchased securities of its wholly owned subsidiary company

Related Party Transactions (Section-188)

- (1) As per Companies Act, 2013 related party means:
 - Director or Key managerial person and their relatives
 - Firm or private company in which a director, manager or his relative is a partner or member or director
 - Public company in which a director or manager is a director and holds along with relatives more than 2% of paid-up capital
 - Body corporate which is (NA to private company if not defaulted u/s 92 and 137)

- ✓ Holding, subsidiary or an associate of such company
- ✓ Subsidiaries of a same holding company
- ✓ Investing company or venture of the company

(2) Any transaction of sale/purchase of goods or services or property, leasing, agency service, appointment to any office or place of profit in company and underwriting with related party is called **related party transaction**.

"Any office or place of profit" means

- ✓ Where held by director, anything received more than remuneration he is entitled as director by way of salary, commission, fee perquisites etc.
- ✓ Where held by other than director, Received anything as remuneration by way of salary, fee, commission, perquisites etc.

(3) This section **does not bar** a company from entering into 'related party transactions', but procedures have to be followed if required by law

- No company shall enter into any contract or arrangement with a related party with respect to sale, purchase or supply of any goods or materials **except with resolution passed at a meeting of the Board**
- In the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums as under Rule 15, no contract or arrangement shall be entered into **except with the prior approval of the company by an ordinary resolution**. (member as related party shall not vote on such resolution) for example:
 - ✓ Where contract is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a **monthly remuneration exceeding ₹ 2.5 lakh**, approval by an **ordinary resolution is required**.
- This section **doesn't apply to transactions** entered into by company in the ordinary course of business **on arm's length basis**

(4) Other Points

- If above procedure not followed and also transaction not ratified board/members within 3 months from contract, such contract shall be voidable at the option of board/members
- Company may proceed against a director or employee who entered into such contract in contravention of the Act, for recovery of loss
- Penalty may be imposed as following on concerned individual involved of:
 - ✓ If Listed company - Up to 25 Lakh Rs.
 - ✓ Other company - Up to 5 Lakh Rs.

Contract of Employment with managing or whole-time director (Section-190)

Every Company (except private company) shall **keep contract of employment** with managing or whole-time director **at its registered office**

- ✓ If Contract is in writing the copy of contract
- ✓ If contract is not in writing, written memorandum specifying its terms

The contract of service shall be kept **open for inspection by members during business hours**. The members shall have the **right to take extracts** and copies thereof on request and the same will be provided to them within 30 days free of cost

Restriction on Non-Cash Transactions involving Directors (Section-192)

No company shall enter any contract to acquire or sell any asset for consideration other than cash with:

- ✓ Director of the company or its holding, subsidiary or associate company or person connected with him

However, can enter if following conditions met:

- Prior approval is given through **resolution in general meeting**
- Where director or connected person is director of holding company, approval also to be taken through **resolution in general meeting of holding company**
- Notice for approval of resolution in general meeting shall include the details of the arrangement. Including value of assets involved in such arrangement duly calculated by a registered valuer
- Registered valuer must be registered from Insolvency and Bankruptcy Board of India (IBBI).

Companies Act- Miscellaneous Provisions



Non-Permissible Services by Auditors (Section-144)

An Auditor of the company shall provide services only approved by Board or Audit committee but shall not provide certain services mentioned below:

- Accounting and Book-Keeping services
- Internal Audit
- Design and implementation of any financial information system
- Actuarial services and Management services
- Investment advisory services or Investment banking services
- Outsourced financial services

Note:

- (i) In case individual auditor, either himself or through his relative or any other person connected or through any other entity, in which such individual has significant influence or control, or whose name or trademark or brand is used by such individual, shall be termed as rendering of services directly or indirectly by the auditor
- (ii) In case firm auditor, either itself or through any of its partners or through its parent, subsidiary, or associate entity or through any other entity, in which the firm or any partner of the firm has significant influence or control, or whose name or trademark or brand is used by the firm or any of its partners, shall be termed as rendering of services directly or indirectly by the auditor

Application to Tribunal for Relief in case of Oppression (Section-241 and 244)

Any member of a company may apply to tribunal if complains that:

- Affairs of the company is conducted affecting prejudicial:
 - ✓ Public Interest
 - ✓ Member himself
 - ✓ Interest of the company
- There is material change in management or control which may lead to affecting its interest or its members or class of members

Note: Eligibility criteria for applying as above under section 241 (Section 244)

- In case of company having share capital: Lowest of the following
 - ✓ 100 Members
 - ✓ 1/10th of the Total Members

✓ Holding 1/10th of the total **issued share capital**

Provided applicant has paid all the calls and any other sum due

- In case company not having share capital

✓ 1/5th of total members

However, withdrawal of consent later on by the members won't affect maintainability of application

Cognizance of Offences in Companies Act

Court shall take cognizance of offence under the companies act alleged to be committed by company or officer thereof only on written complaint made by:

- Registrar
- Shareholder
- Member
- Person authorised by central government

Note: In case offence related to issue or transfer of securities or non-payment of dividend, court may take cognizance on complaint made by person authorised by SEBI

Distribution in case of Liquidation (As per Companies Act and IBC laws)

<u>Particulars</u>	<u>Amount</u>
Amount Realised from the Sale or Liquidation of Asset	XXXX
<u>Less:</u>	
• Fees Payable to Resolution professional/Liquidator	XXX
• Expenses incurred by resolution professional to run business	XXX
Balance Available	XXXX
<u>Less:</u> Secured creditors who relinquished securities and Workmen's dues for 24 months preceding liquidation commencement date - Rank equally (distributed proportionately)	XXX
Balance Available	XXXX
<u>Less:</u> Wages and dues to employees (other than workmen) for 12 months preceding liquidation commencement date	XXX
Balance Available	XXXX
<u>Less:</u> Unsecured Financial Creditors	XXX
Balance Available	XXXX
<u>Less:</u> Dues Payable to Government or debt due to secured creditor for unpaid amount who enforced security interest	XXX

Balance Available	XXXX
<u>Less:</u>	XXX
- Any remaining debts and dues - Due to preference share holders	
Balance Available for Equity shareholders	XXXX

Investigation into Affairs of the Company (Section-210)

If Central government opines that investigation is necessary into affairs of the company it **may** (not bound) order an investigation based on following:

- On receipt of report of registrar or inspector u/s 208
- On intimation of a **special resolution** passed by company for investigation of affairs
- Suo moto in public interest

Where order is passed by court or tribunal in any proceeding for investigation of affairs of company, central government **shall** order an investigation

➤ Security before appointing inspector for investigation

Central government before appointing inspector for investigation may require applicant to provide security not exceeding 25,000/- for payment of costs and expenses of investigation based on turnover criteria below:

<u>Turnover as per previous year balance sheet</u>	<u>Amount of Security</u>
1. Up to 50 Crore	10,000/-
2. More than 50 Crore and up to 200 Crore	15,000/-
3. More than 200 Crore	25,000/-

Compromises, Arrangements and Amalgamations



Power to Compromise or make Arrangement with Creditors or Members (Section-230)

- (i) Where a **compromise or arrangement is proposed** between company and its creditors or members, tribunal may on application of company, member, creditor, or liquidator, **order a meeting creditors or members**.
- However, if **90% of creditors agree by affidavit** to the scheme, **tribunal may not call meeting**
- (ii) Person making application shall **disclose following information**:
- All material facts related to company i.e., financial position, pendency of investigation etc.
 - Reduction in share-capital proposed if any
 - Any scheme of Corporate debt restructuring consented by 75% or more creditors in value
- (iii) **Notice of such meeting** shall be given to all creditors, members, debenture holders also affected sectoral regulators along with following details:
- Details of compromise or arrangement
 - Copy of valuation report
 - Effect on creditors, KMPs, Promoters and non-promoter members and debenture holders
 - Effect on material interest of directors, debenture trustee
- Sectoral regulator shall make **representations if any within 30 days** from receipt of notice
- (iv) Any **objections may be made** to proposed compromise or arrangement only **by**
- Person holding **10% or more of shareholding** or
 - Person having **5% or more of outstanding debt**
- (v) Scheme of compromise or arrangement **shall be binding** on company, all creditors, members, liquidators, and contributors if
- **Agreed by**
 - ✓ **Majority of person** voting in meeting in person or by proxy or postal ballot **and**
 - ✓ **3/4th in value of creditors or members** as the case may be voting in meeting in person or by proxy or postal ballot
 - **Approved by tribunal** by an order
- (vi) Order of tribunal shall provide for following matters:
- If conversion of preference shares into equity involved, shall give an option to obtain arrears of dividend in cash or in equity
 - Protection for creditors
 - Variation of shareholder's rights under provisions of sec-48

- Proceeding under BIFR shall abate

No compromise or arrangement shall be ordered by tribunal unless certificate given by company's auditor that accounting treatment proposed in scheme is as per accounting standards

Merger and Amalgamation of Companies (Section-232)

- Where an application is made for scheme of compromise or arrangement and shown that scheme involves merger or amalgamation may order a meeting of creditors or members and provision of point (iii),(iv) & (v) applicable
- The scheme shall clearly indicate **an appointed date** from which it shall be effective, and the **scheme shall be effective** from such date only

Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract approved by Majority (Section-235)

This section deals with procedure of acquiring shares of shareholder dissented (who did not agreed to the scheme) from scheme approved under section 230 or 232. Procedure is as below

- Scheme** involving transfer of shares in transferor company to transferee company has been **approved by shareholders not less than 9/10th in Value** of shares involved, such approval will be **required within 4 months** of offer made by transferee company
- Transferee company shall give **notice to dissenting shareholders within 2 months** from end of the above 4 months with desire to purchase their shares
- Such dissenting shareholders may file an **application to tribunal within one month** from the receipt of notice from transferee company

• If not made any application within 1 month	✓ Transferee company is entitled and bound to acquire such shares
• If made application but tribunal made order in favour of company (nothing to be done if application is pending)	✓ Shall send the copy of instrument to transfer, to be executed on behalf of such shareholders by person appointed by company on behalf of transferee company

- Transferor company shall
 - Register the transferee company as holder of such shares
 - Inform within one month from such registration about such transfer, receipt of amount payable to dissenting shareholder
- Any sum received by transferor company from transferee company shall be paid into **separate bank account** and shall be **disbursed to entitled shareholder within 60 days**

Purchase of Minority Shareholding (Section-236)

- (i) In case an acquirer, person acting with acquirer, any person or group of persons become holder of 90% of issued share capital of a company by way of amalgamation, share exchange, conversion of security or any other reason

Such person shall notify the company of their intention to buy remaining equity shares at the **price determined by registered valuer** as per rule 27 of the companies' rules.

- (ii) Majority shareholders shall deposit amount of the bank account of the company for at least 1 year for payment to minority shareholders and such amount shall be transferred within 60 days to entitled shareholders.

Means disbursement continue to be made up to 1 year if could not be made within 60 days above

- (iii) **Company** whose share are being transferred **act as transfer agent** for receiving and paying of amount or taking and making delivery of shares

- (iv) Where person have dies or cease to exist and whose heirs, successor, administrators could not be brought on records, offer can be made for a period of 3 years.

- (v) Where prior to acquisition the shareholders holding 75% or more of minority equity shareholding negotiate or reach a higher price for any transfer of shares held by them without disclosing such arrangement.

Majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis

Fast Track mode of Merger or Amalgamation of Certain Companies (Section-233)

Following companies can (optional) enter into merger and amalgamation in fast-track mode:

- Two or more **small companies**
- **A holding company and its wholly owned subsidiary** company (shares can be held on the name of nominee to ensure minimum no. of subscribers)
- Between **Two or more start-up companies** and one or more small company with one or more start-up company

Following conditions need to be followed:

- (i) Notice of proposed scheme with invitation of suggestion or objection shall be given to
- ✓ Registrar where registered office of company is situated and
 - ✓ Official liquidator where registered office of company is situated
 - ✓ Person affected by the proposed scheme

Such suggestion or objection must be given within 30 days from receipt of notice

- (ii) After considering suggestion or objection, Scheme is approved by members holding at least 90% of total no. of shares in general meeting

- (iii) File a declaration of solvency with registrar of place where registered office is situated
 - (iv) Scheme is approved by
 - ✓ Majority of creditors **and**
 - ✓ Creditors holding 90% of value of total creditors
- In meeting convened giving a notice of 21 days

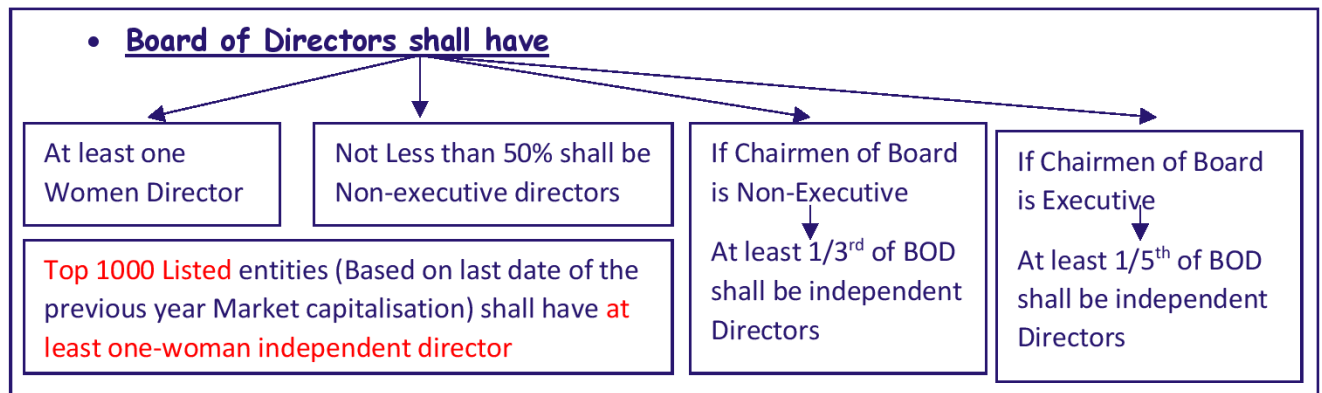
SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015



SEBI (LODR) Regulations, 2015

These regulations shall apply to listed entity which has listed securities on Recognised stock exchange

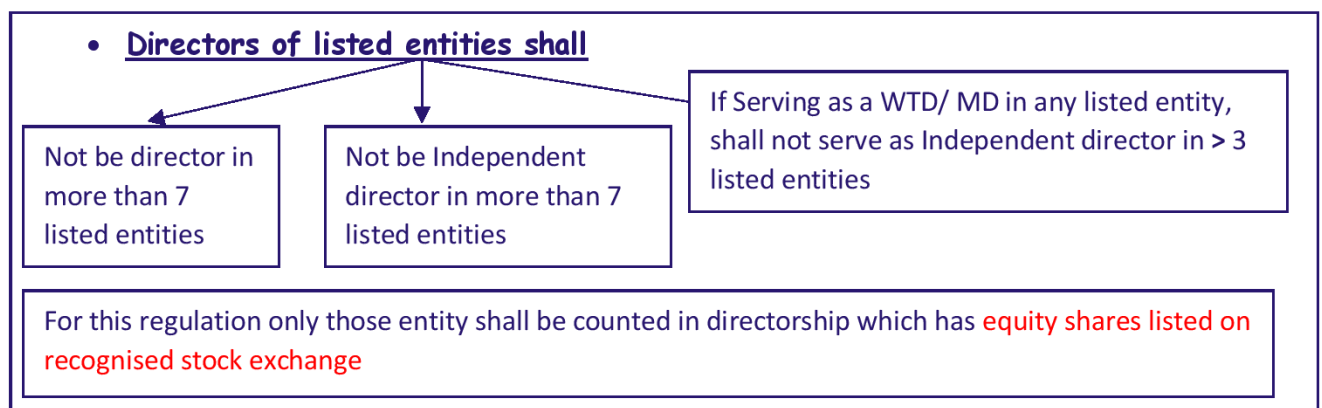
(1) Composition of Board (Regulations 17)



Notes:

- BOD of Top-2000 listed entities shall have at least 6 Directors
- No non-executive directors more than 75 years of age unless special resolution passed
- Board Meeting
 - At least 4 times a year, maximum gap between two meeting shall be 120 days
 - Quorum for Top-2000 listed entities shall be (at least 1 Independent) higher of:
 - ✓ 1/3rd of Total Directors or
 - ✓ 3 Directors

(2) Maximum Number of Directorship (Regulation 17A)



(3) Maximum Number of Membership (Regulation 26)



(4) Filing Related compliances:

A listed entity needs to file following statements with recognised stock exchange and company secretary of such company as compliance officer responsible for correctness of information and procedure followed:

<u>Nature of Filing</u>	<u>Due Date of filing</u>
a. Report on Corporate Governance	✓ Within 21 days from end of quarter
b. Holding of Securities and shareholding pattern for each class of securities	✓ Within 21 days from end of quarter ✓ One day prior to listing ✓ Within 10 days of capital restructuring > 2% of Paid-up share capital
c. Statement of deviation or Variation of Capital proceeds indicating deviation and reasons thereof	✓ Quarterly statement for such period till which the issues proceeds are fully utilized or purpose achieved
d. Quarterly and YTD financial statements	✓ Within 21 days from end of quarter except last quarter

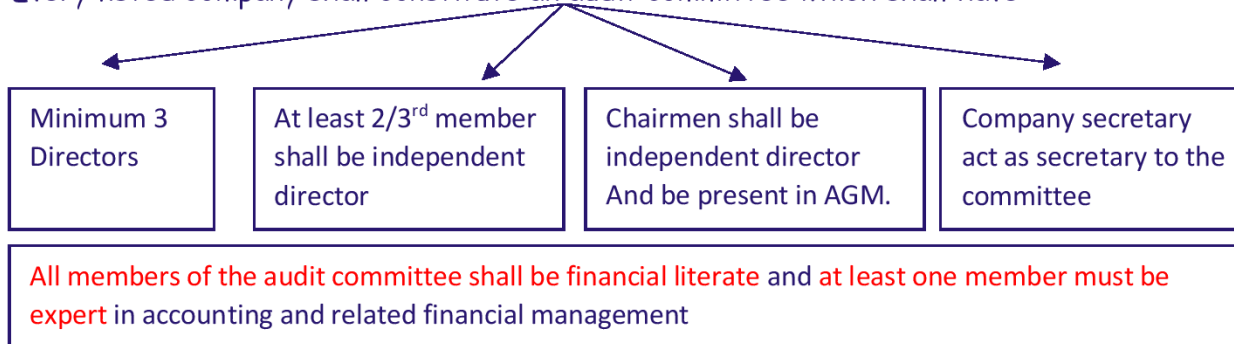
(5) Prior Intimation of Board Meetings to Recognised stock exchange:

<u>Agenda of Proposal in the BOD meeting</u>	<u>Intimate days before Board meeting</u> (exclude intimation and meeting date)
- Buyback of Securities - Voluntary delisting - Fund raising by FPO, ADR, GDR, Bonds etc. - Dividend recommend/ declare	2 Working Days

• Issuance of convertible securities	
• Declaration of bonus securities	
• Financial Results	5 Days
• Notice of Record date	7 Working days prior to record date
• Any alteration in the form, nature of any security or date of payments	11 Working Days

(6) Audit Committee (Regulation 18)

- Every listed company shall constitute an audit committee which shall have



Note:

(i) *Audit committee Meetings*

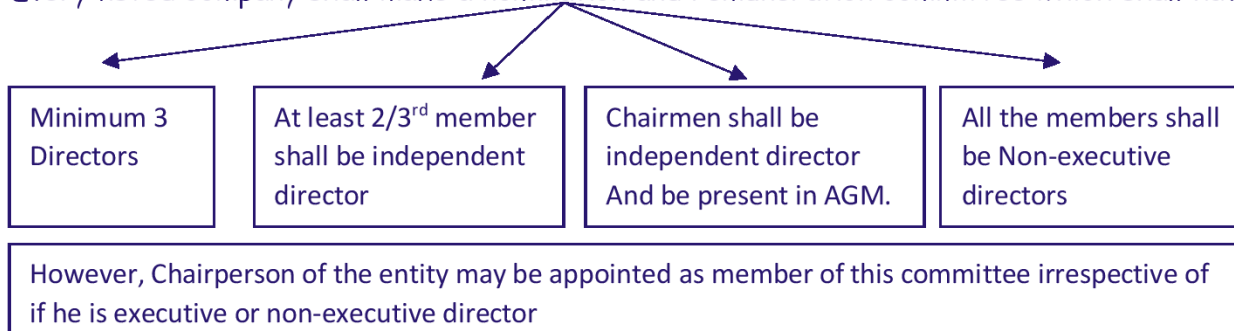
- At least 4 times a year, maximum gap between two meeting shall be 120 days
- Quorum shall be higher of:
 - ✓ 1/3rd of members of committee or
 - ✓ 2 Independent Directors

(ii) Audit committee may invite finance director, internal audit head and a representative of statutory auditor or other executive to be present at committee meetings

(iii) Audit committee has power to investigate any activity and obtain expert advises

(7) Nomination and Remuneration Committee (Regulation 19)

- Every listed company shall make a nomination and remuneration committee which shall have

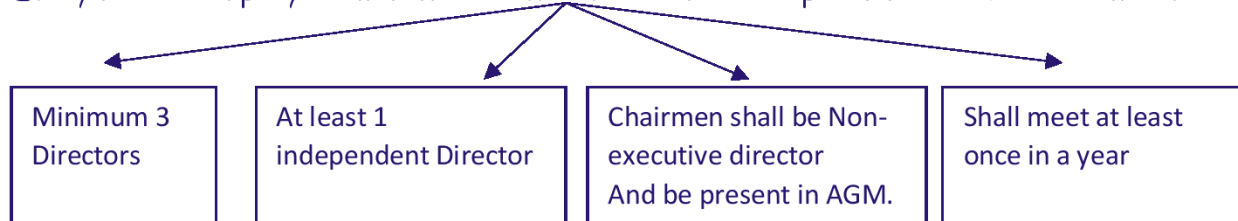


Note:

- (i) Committee shall meet at least once in a year
- (ii) Quorum of meeting shall be (at least one independent director)
 - ✓ 1/3rd of members of committee or
 - ✓ 2 Members of committee
- (iii) Audit committee may invite finance director, internal audit head and a representative of statutory auditor or other executive to be present at committee meetings
- (iv) Audit committee has power to investigate any activity and obtain expert advises

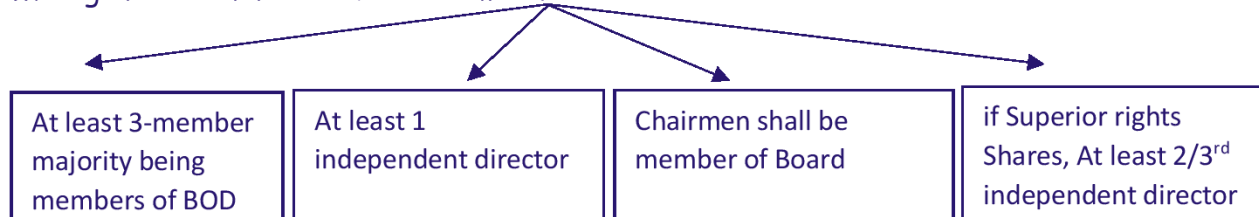
(8) Stakeholders Relationship committee (Regulation 20)

- Every listed company shall make a stakeholder relationship committee which shall have



(9) Risk Management committee:

- Top 1000 listed entities and high value debt listed entities shall constitute an Risk Management committee which shall have



Note:

- (i) Risk Management committee meetings
 - At least 2 times a year, maximum gap between two meeting shall be 180 days
 - Quorum shall be higher of (at least 1 member of Board):
 - ✓ 1/3rd of members of committee or
 - ✓ 2 members of committee
- (ii) Board of Directors shall define role and responsibilities of the committee
- (iii) Committee has power to seek information from any employee

The Foreign Exchange Management Act, 1999



Definitions (Section-2)

- (i) **Capital Account Transaction**: Transaction which alters
- Asset and liabilities **including contingent liability** outside India of person resident in India
 - Asset and liabilities in India of a person resident outside India
- (ii) **Current Account Transaction**: Transaction other than Capital account transaction including
- Payment related to foreign trade, other current business or services and short-term banking and credit facility in ordinary course (i.e., up to 6 months)
 - Payment due as interest on loan and net income from investment
 - Remittance for living expense Parents, spouse, and children abroad
 - Expenses for foreign travel, education, medical care of parents, spouse, children
- (iii) **Person Resident in India**: (Citizenship is not criteria)
1. Person residing in India for more than 182 days in preceding FY but **does not include**
 - A. Person who gone/stay out of India for (**always be considered Non-Resident**):
 - a. Employment
 - b. Business or vocation
 - c. Other purpose with intention to stay outside India for uncertain period
 - B. Person come to stay in India (**considered Non-Resident**) except if came for following reason (**Always Considered as person resident in India even 182 days criteria not met**):
 - a. Employment
 - b. Business or vocation
 - c. Other purpose with intention to stay in India for uncertain period
 2. Person or body corporate registered or incorporated in India
 3. Office, branch, or agency in India owned or controlled by person resident outside India
 4. Office, branch, or agency outside India owned or controlled by person resident in India

Notes:

- (i) Point 1 applies only to individual person not HUF, AOP, Body corporate, company etc.
- (ii) As per RBI Circular students gone out for study abroad shall also be considered as non-resident, as usually students start working there to take care of their stay and cost of studies
- (iii) In FEMA residential status is not seen for full FY as usually done in income tax, it is evaluated as on particular date

Regulation and Management of Foreign Exchange (Section-3)

This section imposes blanket restriction on financial transactions in foreign exchange, foreign security by any person unless authorised by RBI. Purpose is to regulate inflow and outflow of foreign exchange through authorised dealers. For examples:

- ✓ Purchase/sell of foreign exchange from other than authorised dealers or money changers
- ✓ Purchase/sell of goods or services against foreign exchange without being licenced money changer

Regulation and Management of Foreign Exchange (Section-4)

No Person resident in India shall acquire, hold, own, transfer any foreign exchange, foreign security or any immovable property outside India unless permitted

Current Account Transaction (Section-5)

General rule is current account transactions are freely permitted unless specifically prohibited and capital account transactions are prohibited unless permitted.

Central government has issued current account transaction rules as below:

(1) Schedule-1: Transaction for which forex withdrawal is prohibited

- a. Remittance out of lottery winning and income from racing/riding or any other hobby
- b. Remittance for purchase of lottery ticket, Banned magazines, pools and sweepstakes
- c. Payment of commission on export to JV/WOS abroad of Indian companies
- d. Remittance of dividend where dividend balancing is applicable
- e. Payment of commission on export under "Rupee state credit route" except commission up to 10% of invoice value of export of Tea and tobacco.
- f. Payment related to "call back services"
- g. Remittance of interest income on funds in Non-Resident special rupee scheme account

(2) Schedule-2: Transaction which require Central Government approval for forex withdrawal

<u>Purpose of Remittance</u>	<u>Approving Ministry/Department</u>
a. Cultural Tours b. Prize money/sponsorship of sports abroad by a person other than International/ National /State Level sports bodies, if the amount exceeds US \$ 100,000	Ministry of Human Resource Development
c. Advertisement in foreign print media in excess of 10,000 \$ by State Government or PSU except for promoting tourism,	Ministry of Finance, Department of Economic Affairs

investment, and international bidding	
d. Freight of vessel chartered by PSU e. Payment of import through ocean transport by a Govt. Department or a PSU on CIF basis f. Remittance of container detention charges in excess of rate by DG shipping	Ministry of Surface Transport
g. Remittance of hiring charges of transponders	Ministry of Information and Broadcasting
h. Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

(3) Schedule-3: Transaction which require RBI approval for forex withdrawal

(A) Facility for Individual: Can avail forex facility up to 2,50,000 \$ for only below purposes

- Private visit to any country (except Nepal & Bhutan)
- Gift or Donation
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business or attending a conference/trainings
- For meeting medical and checkup expense abroad or for accompanying as attendant to any patient going abroad for treatment or checkup
- For medical treatment abroad
- Studies abroad
- Any other current account transactions

Notes:

- For additional remittance in excess of above limit, require RBI prior approval
- For purpose in point (d, h, i) above, may avail facility more than limit under Liberalised remittance scheme (LRS) if required by a country of emigration, medical institute offering treatment or the university as the case may be.

(B) Facility for Individual: Following transactions requires prior approval of RBI

- Donation exceeding 1% of forex earning in last 3 FY or 5,00,000\$ whichever is lower for:
 - Creation for chair in education institute
 - Contribution to fund promoted by education institute
 - Contribution to technical institute or body in donor's business line

- b. Commission to agents abroad for sale of flats in India exceeding 25,000\$ or 5% of inward remittance whichever is higher
- c. Remittance for consultancy procured from outside India exceeding
 - 1,00,00,000 \$ per project for infrastructure project consultancy
 - 10,00,000 \$ per project for other projects consultancy
- d. Reimbursement of pre-incorporation expenses exceeding 5% of inward remittance or 1,00,000\$ whichever is higher

Notes:

- (i) Any transaction not in above 3 schedules can be freely undertaken
- (ii) No Approval required if remittance made for transaction listed in schedule 2,3 if made from:
 - RFC account
 - EEFC account except in case transaction "h" of schedule 2 and "b", "d" of schedule 3

Liberalised Remittance Scheme (LRS)

- This scheme is applicable for resident individuals including minors
- Scheme is not available to corporates, partnership firms, HUFs, trusts etc.
- Scheme allows to freely remit up to 2,50,000 \$ in a financial year
- Scheme can be used for any permissible current or capital account transaction
- It is inclusive of facility provide to individual under schedule 3
- In case of minor LRS remittance declaration shall also be signed by their natural guardians
- Remittance under this scheme can be consolidated for family members except for capital account transaction if they are not co-owners

Import of Goods and Services (General Guidelines by RBI)

- (i) Mode of Payment: Person resident in India may make payment of import of goods in forex by:
 - International Card
 - Method prescribed by RBI (In Short payment has to be made through banking channels)
 - In rupee to meet expenses of boarding, lodging and service related or travel to and from and within India of person resident outside India visit to India
 - Through crossed cheque or a draft for purchase of gold and silver
 - Payment in rupee by a company or resident in India to non-whole-time director who is resident outside India for company's work i.e., sitting fees, commission , remuneration
- (ii) Time Limit for settlement of payment:
 - For Normal Exports:

- ✓ Within 6 months from date of shipment except withhold toward performance guarantee
- ✓ AD may allow delay due to dispute, financial difficulty (however interest can be paid for period up to 3 years from date of shipment in such case)

- For Deferred payments arrangements

- ✓ For capital goods up to 3 years
- ✓ For non-capital goods up to 1 year or operating cycle whichever is less

(iii) Extension of Time:

- AD can grant extension up to 6 months at a time (maximum 3 years) on account of above-mentioned reasons irrespective of invoice value
- While granting extension following things must be ensured by the AD:
 - ✓ Such import transactions are not under investigation by ED/CBI or other agency
 - ✓ For extension beyond 1 years from shipment date, total outstanding doesn't exceed 1 million \$ or 10% of average import remittance in last 2 FY whichever is lower
 - ✓ Mention of date up to which extension given is made in remarks column

In cases not covered above RBI permission required for extension

Import of Foreign exchange and Indian rupees

(i) Import of Foreign Exchange into India: A person may

- Send into India forex without any limit (other than currency note, bank note, travellers' cheques)
- Bring into India forex from outside India without any limit except unissued notes Provided declaration made to custom authorities on arrival

However, no need to make declaration in case

- ✓ Aggregate forex brought in form of currency notes, bank notes, traveller cheques doesn't exceed 10,000 \$ and
- ✓ Currency notes doesn't exceed 5,000 \$

(ii) Import of Indian currency:

- Any person resident in India may bring from any place outside India (except Nepal and Bhutan) currency notes of India up to Rs. 25,000
- Any person may bring into India any amount but in denomination up to 100 Rs.

Issue of Guarantee by an Authorised dealers (AD)

An AD may give guarantee in favour of non-resident service provider on behalf of a resident customer who are the service importers subjected to below limits :

<u>Service importer</u>	<u>Amount of Guarantee</u>
a. Other than PSU or department or undertaking of Central or State Government	Up to 5,00,000 \$
b. PSU or department or undertaking of Central or State Government	Up to 10,00,000 \$ (excess may be issued with prior approval of ministry of finance)

Capital Account Transaction (Section-6)

- (i) Person resident in India (PRII) may hold, own, transfer or invest in foreign currency, foreign security, or immovable property outside India if
- ✓ Acquired when he was resident outside India
 - ✓ Inherited from a person who was resident outside India (PROI)

Note: Following transactions will be covered in the points i.e.,

- Foreign currency account opened and maintained by person when he was PROI
 - Income from business or employment started when such person was PROI
 - Income from investments made or gift or inheritance received when such person was PROI
 - Forex and income therefrom held outside India by PRII acquired by way of inheritance from PROI
 - PRII may utilise freely all eligible asset abroad as well as income therefrom for making any making any investment without approval of RBI
 - An Indian entity having an overseas office may acquire for the business and residential purpose for its staff as per RBI Directions
- (ii) Person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property in India if
- ✓ Acquired when he was resident outside India
 - ✓ Inherited from a person who was resident in India (PROI)

Capital Account transactions are split in three categories as per rules

- A. Transaction, which are permissible
- B. Transaction on which restrictions cannot be imposed
- C. Transactions, which are prohibited

A. Transaction, which are permissible

- a. An PRII may make foreign Investments, Foreign currency loans, transfer of immovable property , guarantees, maintaining of foreign currency account, insurance policy, give or take

loans and overdrafts, derivative etc. subjected to Point "C"

- b. An PROI may make Investments, transfer of immovable property , guarantees, maintaining of foreign currency account, insurance policy, deposits, derivative etc. subjected to Point "C"

B. Transaction on which restrictions cannot be imposed

- a. Amortisation of Loan
- b. Depreciation of direct investment in ordinary course of business
- c. Drawl for the purpose of repayment of loan

C. Transactions, which are prohibited

- a. No person shall sell or draw forex from AD for capital account transaction exceeding \$ 2,50,000 for transaction specified in schedule I, However this amount shall not be remitted to non-co-operative countries notified by FATF
- b. PROI shall not make investment in India in any company, partnership or proprietor or any entity which is engaged in:
 - ✓ Business of chit fund (Registrar of chit in consultation with State Government may permit)
 - ✓ As Nidhi Company
 - ✓ Agricultural or plantation activity
 - ✓ Real estate business (shall not include development of township, construction of residential/ commercial premise, road, bridges, and REIT)
 - ✓ Construction of Farmhouse
 - ✓ Trading of Transferable Development rights (TDR)

Oversees Investment Rules, 2022

Definitions

- 1. **Financial Commitment**: Aggregate Investment (Overseas Direct investment+ Debt) not overseas portfolio investment also includes non-fund-based facilities (guarantees etc.)
- 2. **Overseas Direct investment (ODI)**: includes investment by way of :
 - Acquisition of unlisted equity capital of a foreign entity or
 - Subscription as a part of Memorandum of Association of foreign entity or
 - Investment in not less than 10% of the paid-up equity share capital or
 - Investment with control where less than 10% of paid-up share capital of listed foreign entity

Subjected to below rules no PRII shall make or transfer any investment or financial commitment outside India

Manner of Making Oversees Direct Investment (ODI) by Indian entity

- (1) **Limit for Financial commitment**: Total Financial commitment made by Indian entity in all the foreign entity taken together shall not exceed 400% of its net worth as on last date of

audited FS. Total Financial commitment

- Shall not include Capitalization of retained earnings (i.e., Bonus etc.)
- Shall include utilisation of amount raised by ADR/GDR and stock-swap of such receipts
- Shall include utilisation of amount raised from ECB

Such limit does not apply to Maharatna, Navratna, Miniratna or subsidiaries of such PSUs

How to Calculate how much ODI can be made follow below steps

Step-1 Calculate Existing financial commitment made by entity

Step-2 Calculate Net worth and multiply it with 4

Step-3 (Step-2) - (Step-1) shall be permissible financial commitment

Note:

- (i) A person resident in India holding any equity of any foreign entity as per act such person may
 - ✓ Invest in equity of such company through right issue
 - ✓ Be granted Bonus shares
- (ii) These (ODI) rules shall not apply in following circumstances (so no permission required) for:
 - ✓ Investment made outside India by a financial institution in IFSC
 - ✓ Acquisition or transfer of investment outside India made:
 - Out of RFC account
 - Out of foreign currency resource held outside India by person employed in India for duration not more than 3 years
 - In accordance with discussion in section 6

Export of Goods and Services (Section-7)

- (1) Every exporter of goods or software shall in case of any export taking place to outside India except Nepal and Bhutan shall furnish declaration along with details of full export value of the goods and software Except in following cases:
 - ✓ Trade samples and publicity material Free of cost
 - ✓ Personal effect of traveller accompanied or unaccompanied
 - ✓ Ship's store and transit cargo of military, naval, air force
 - ✓ Gifts of goods along with declaration that value doesn't exceed Rs. 5,00,000/-
 - ✓ Goods sent for testing and to be reimported into India etc.
- (2) Period for realisation of export value:
 - In normal case full export value of goods/software/service to be realised within 9 months from date of export
 - However, If goods exported to warehouse outside India, amount to be realised within 15

months from shipment of goods

Notes:

(iii) RBI or AD on direction of RBI may extend above time period on reasonable cause

(iv) In case of export software other than physical form "Date of invoice" shall be considered "Date of export"

(3) Advance payment against export:

- Where payment has been received in advance exporter shall ensure that:

- ✓ Shipment made within 1 year from receipt of advance payment

- ✓ Rate of interest shall not exceed LIBOR+1%

- ✓ Document routed through same bank which received advance payment

In case shipment not made within time period, any remittance toward refund of advance or interest shall be made only after prior approval of RBI

- However, if export agreement itself provides for more than 1 year period for shipment, no such time limit will be applicable

Contraventions and Penalties

(1) **Section-13:** Contravention of any provision of the Act, rules, regulations, notifications, order, directions etc. penalty shall be as below

- ✓ Up to 3 Times of the sum involved, if quantifiable

- ✓ If not quantifiable, up to Rs. 2,00,000 /-

- ✓ If continuing offence further penalty up to 5,000 per day after first day

(2) **Section-14:** Failure to pay penalty as above

- ✓ If demand is exceeding 1 Crore - Civil Imprisonment up to 3 years

- ✓ If demand is up to 1 Crore - Civil Imprisonment up to 6 Months

The Foreign Contribution (Regulation) Act, 2010



Definitions (Section-2)

(i) **Foreign Company:** Company or association or body of individual incorporated outside India and includes:

- A foreign company as per companies Act, 2013
- Company subsidiary of a foreign company
- Registered office or principal place of business of a foreign company
- A multi-national corporation (only if incorporated outside India)

(ii) **Foreign Source:**

- Government of foreign country and their agencies
- Any international agencies i.e., UN, IMF, World bank etc.
- A foreign company
- A company whose more than half of nominal value of share capital held singly or in aggregate by (Except within limit specified by FEMA for investment) :
 - ✓ Government of foreign country
 - ✓ Citizens of foreign country
 - ✓ Corporations incorporated in foreign country
 - ✓ Trust, societies, association of individuals formed or registered in foreign country
 - ✓ Foreign company
- Trade union in any foreign country
- Foreign trust or foreign foundations or trust or foundations financed by foreign country
- Society, club other associations formed or registered outside India
- Citizens of foreign country (Doesn't cover NRIs with Indian passport)

Note:

Few bodies of the UN, World bank (including IMF etc.) exempted from this definition hence funds received from them won't be considered as foreign contributions

(iii) **Foreign Contributions:** means donation, delivery, transfer made by any foreign source of

- Any article (except given as gift for personal use and market value is up to Rs. 1,00,000)
- Any Currency (Indian or foreign)
- Any security including foreign security

<u>Items considered foreign contribution</u>	<u>Items not considered foreign contribution</u>
a. Further donation, delivery of transfer of	a. Any amount received from foreign source

foreign contribution	as fees (Including school fees etc.)
b. Interest on foreign contribution deposited in bank	b. Towards supply of goods and services in the ordinary course of business
c. Any other income derived from foreign contribution	c. Any contribution from agent of foreign source towards point "a" and "b" above

(iv) **Foreign Hospitality:** Means any offer not purely casual made in cash or kind by foreign source for :

- Providing a person with cost of travel to any foreign country
- Free boarding, lodging, transport, or medical treatment

Prohibition to Accept Foreign Contribution (Section-3)

(1) Foreign contribution shall **not be accepted by** any:

- Candidate for elections
- Correspondent, columnist, cartoonist, editor, owner, printer, publisher of a registered newspapers
- Public servant, Judge, Government servant, employee of any government owned body
- Member of any legislature
- Political party or their office bearers
- Organisation of political nature
- Any association or company engaged in production or broadcast of audio, visual news program or other type of mass communication
- Correspondent, columnist, cartoonist, editor, owner of point "g"

(2) Person resident in India and Citizen of India resident outside India shall not accept/ deliver any foreign contribution on behalf of person mentioned above in point 1

Exception to Section-3 (Section-4)

Prohibition under **section-3** shall **not apply** if foreign contribution received

- By way of **salary, wages**, or other remuneration in the ordinary course of business in India
- By way of as payment **in the course of international trade** or commerce in the ordinary course of business outside India
- As an **agent of foreign source** for transaction of such foreign source with CG/SG
- By way of **gift or presentation** to any member of **Indian delegation** if accepted as per rules
- From relatives** (if **exceeds Rs. 10,00,000 in any FY**, inform CG of details **in Form FC-01** within 3

months from receipt of contribution

- (vi) By way of remittance in ordinary course of business through banking channels, post office etc.
- (vii) By way of **scholarship, stipend**, or payment of like nature

Restriction on Acceptance of Foreign Hospitality (Section-6)

Following category of person **requires prior permission of central government** before accepting foreign hospitality while visiting any country outside India:

- a. Member of Legislature
- b. Office bearers of political parties
- c. Judges
- d. Government servants
- e. Employees of any body or corporation owned or controlled by government

Note: Requirement not applicable for an emergent medical aid needed on account of sudden illness during visit outside India (Intimate details within 1 month to central government except if up to Rs. 1,00,000)

Registration for Accepting Foreign contribution

- Foreign contribution can be accepted either obtaining certificate of registration or prior permission from the government
- Every person applying for registration must have opened a FCRA account
- Registration shall be **valid for the 5 years** from the date of its issue
- On expiry of registration certificate, person may apply for **renewal within 6 months before the expiry** of period of certificate
- Fees of Rs. **5,000/-** shall be paid with renewal application

Other Points

- Person receiving foreign contributions with prior permission shall not transfer such contribution to any other person
- Contribution must be utilised for the purpose for which received
 - ✓ Can not be used for speculative activities
 - ✓ Up to 20% of such contribution may be used to meet administrative expense
- Any contribution must be received in "FCRA" account which must be opened with State bank of India, New Delhi branch

However, such person may open another FCRA account with any bank of his choice for keeping and utilising the contribution

The Insolvency and Bankruptcy Code, 2016



Definitions (Section-3)

- (1) **Financial Debt:** Debt along with interest which is given against time value of money including
- Money Borrowed against Interest
 - Any amount raised against notes such as bonds, notes, debentures, or similar instruments
 - Amount in respect of lease or hire purchase contract deemed as finance lease as per IndAS
 - Any forward sale or purchase agreement having commercial effect of a borrowing i.e., amount raised from allottee under Real estate project
- (2) **Financial Debtor:** Any person whom financial debt is owed or legally assigned or transferred to
- (3) **Operational Debtor:** Any person whom operational debt is owed or legally assigned or transferred to

Steps of Corporate Insolvency Resolution Process (CIRP)

Financial debtor, Operational debtor on default made by corporate debtor or corporate debtor itself may initiate process

Note: Minimum amount of default to initiate CIRP is **One Crore Rupee**

A. Initiation of CIRP by Financial Creditor

- (i) Financial creditor itself or jointly with other financial creditor may file an application to initiate CIRP before the NCLT (adjudicating authority) **when default has occurred** (Default need not be related to debt owed to applicant financial creditor only)
- (ii) Copy of application sent to corporate debtor along with furnish:
- Records of default
 - Name of Proposed interim insolvency resolution professional (IRP)
- (iii) Adjudicating authority within 14 days

Admit Application	If NCLT is satisfied that: ✓ Default has Occurred and ✓ Application is complete ✓ No disciplinary proceedings pending against proposed IRP
Reject Application	If NCLT is satisfied that: ✓ Default has not Occurred and ✓ Application is not complete ✓ Disciplinary proceedings pending against proposed IRP

- (iv) Application admission date is called as **CIRP commencement date**

B. Initiation of CIRP by Operational Creditor

- (i) Operational creditors shall first send a **demand notice** (demanding payment for which default has occurred) **along with copy of invoice** to corporate debtor
- (ii) Corporate debtor shall within **10 days** of receipt of notice bring to notice of creditor of:
- Any **Dispute** existence about debt i.e., Pendency of Suit or arbitration etc.
(Dispute may be regarding **existence** of debt, **quality** of goods or service or **breach of warranty** etc.)
 - Payment** of operational debt if already paid along with attested copy of record of electronic transfer
- (iii) If no reply or payment received as per point (ii) or dispute intimated is vague or not tenable, operational creditor may file Application before NCLT for CIRP along with
- Copy of invoice and demand notice served to corporate debtor
 - Affidavit that no intimation of dispute has been received
 - Certificate from bank maintaining account of operational creditor of non-receipt
- (iv) Adjudicating authority shall **within 14 days**

Admit Application	If NCLT is satisfied that: ✓ No payment made of unpaid operational debt and ✓ Application is complete ✓ Invoice and notice given to corporate debtor ✓ No notice of dispute received from corporate debtor ✓ No disciplinary proceedings pending against proposed IRP
Reject Application	If any of the above condition doesn't applicable

C. Initiation of CIRP by Corporate Applicant

- (i) If any corporate debtor has defaulted then corporate debtor, member or partner of corporate debtor authorised to initiate CIRP or management may apply to NCLT with
- Books of Accounts and other documents
 - Name of proposed IRP
 - Special resolution passed by members or partners approving application
- (ii) Adjudicating authority shall within 14 days admit or reject application considering above points and completeness of application and proposed IRP

D. Time-Limit to complete CIRP

- CIRP shall be completed **within 180 days** from the date of admission of application
- IRP file application to Adjudicating authority for **extension of time period** only if instructed by committee of creditor through passing resolution at meeting by a **vote of at least 66%**
- NCLT may extend period by **further not exceeding 90 days**, however extension shall **not be granted for more than once**
- CIRP has to be completed **within 330 days** including time in extension and legal proceeding

E. Effects of Admission of CIRP application: Following events will take place in sequence

- (i) Appointment of Interim Insolvency Resolution Professional
- (ii) Declaration of Moratorium period
- (iii) Formation of Committee of Creditor (CoC)
- (iv) Appointment of Resolution professional

F. Moratorium: After commencement of CIRP a calm period is declared which is called moratorium period

a. Declaration of moratorium: Adjudicating authority shall declare moratorium on the insolvency commencement date during which following acts are prohibited:

- ✓ **Institution of suit or continuation** of suit or proceeding against corporate debtor including execution of judgement or decree etc.
- ✓ **Transferring, encumbering, alienating, or disposing** assets or its beneficial interest in it by the corporate debtor
- ✓ Any action to **foreclose, recover or enforce any security interest** under SARFESI Act against corporate debtor
- ✓ **Recovery of property** by owner or lessor of property occupied by corporate debtor
- ✓ **Licence, permit, quota, or similar rights** given by government or authority shall also not be terminated provided current dues are paid during moratorium period similarly for supply of essential goods and services to maintain corporate debtor as going concern

b. Following acts not prohibited during moratorium period

- ✓ Transaction notified by CG
- ✓ A surety in contract of guarantee to a corporate debtor

c. Period of Moratorium

- ✓ Start from order date by adjudicating authority and shall be having effect up to completion of CIRP process
- ✓ Moratorium cease to effect once resolution plan is passed by the authority or order for liquidation has been passed

Eligibility of Insolvency Professional to be Appointed as Resolution Professional

An insolvency professional shall be **eligible for appointment** as an interim resolution or a resolution professional if

- He and all partners and directors of the insolvency professional entity of which he is partner or director **are independent** of corporate debtor
- He is eligible to be appointed as independent director u/s 149 on the board of the corporate debtor if the corporate debtor is a company
- He is **not related party** to corporate debtor
- He is not an employee or proprietor or a partner of a **firm of auditors** or **secretarial auditors** in practice or **cost auditors** of the corporate debtor **in the last three financial years**
- He is not an employee or proprietor or a partner of a legal or consulting firm which has **transaction with corporate debtor of 5% or more of the of the gross turnover** of such firm **in the last three financial years**

Committee of Creditor (CoC)

Interim Resolution professional shall after receiving all the claims shall constitute a committee of creditors, which shall comprise of all the financial creditor of the corporate debtor

- Financial creditors and authorised representative thereof, if related party of the corporate debtor, shall **not have right to represent and vote** in committee of creditors

However, this provision **shall not apply** to financial creditor regulated by financial sector regulator, if it became related party solely due to conversion of debt into shares or instruments of such corporate debtor prior to insolvency commencement date

Composition of committee of creditors:

Where Financial creditors exist	CoC shall comprise of all the financial creditors
Where Financial creditors don't exist <u>or</u> Where all the financial creditors are related party	CoC shall comprise of ✓ 18 largest operation creditors by value (if less than 18 , all of them) ✓ 1 representative of workmen ✓ 1 representative of Employee

Resolution Plan

Resolution Plan: Means a plan by resolution applicant for resolution of corporate debtor as going concern

- Every Resolution plan first need to be **approved by CoC by not less than 66%** of voting share
- After being approved as above, present it to adjudicating authority (NCLT) for approval

- All the necessary approvals as per law has to be obtained within 1 year of approval of resolution plan by adjudicating authority
However, if resolution plan contains combination as per section 5 of competition act, Resolution professional shall obtain approval from Competition commission of India before approval of such plan by CoC.
- Such Resolution plan shall be applicable and binding on:
 - ✓ Corporate Debtor and its employees
 - ✓ Members, creditors, guarantors and
 - ✓ Other stakeholders involved in plan
 - ✓ Central and state government and local authorities

Liquidation Process

Liquidation process may be initiated in following scenarios:

- Resolution plan not received during CIRP period
- CoC resolved to liquidate with 66% majority before approval of resolution plan
- CoC doesn't not approve resolution plan within 180 days (Can be extended by 90 days)
- NCLT Reject resolution plan on technical ground
- Debtors contravene the agreed resolution plan