PAPER –1: FINANCIAL REPORTING

PART – I : RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

A. Applicable for November, 2019 Examination (not covered in the November, 2018 edition of the study material)

The Companies (Indian Accounting Standards) Second Amendments Rules, 2019 notified on 30th March, 2019

Headings	Details
Appendix C, Uncertainty over Income Tax *Treatments,* to Ind AS 12	MCA has inserted a new Appendix C to Ind AS 12, *Uncertainty over Income Tax Treatments.* The appendix explains how to recognise and measure deferred and current income tax assets and liabilities where there is uncertainty over a tax treatment. In particular, it discusses: ➢ how to determine the appropriate unit of account, and that each uncertain tax treatment should be considered separately or together as a group, depending on which approach better predicts the resolution of the uncertainty; ➢ that the entity should assume a tax authority will examine the uncertain tax treatments and have full knowledge of all related information, i.e. detection risk should be ignored; ➢ that the entity should reflect the effect of the uncertainty in its income tax accounting when it is not probable that the tax authorities will accept the treatment; ➢ that the impact of the uncertainty should be measured using either the most likely amount or the expected value method, depending on which method better predicts the resolution of the uncertainty; and ➢ that the judgements and estimates made must be reassessed whenever circumstances have changed or there is new information that affects the judgements.
Amendments to Ind AS 12 – Income tax consequences of payments on financial	The amendments clarify that the income tax consequences of dividends on financial instruments classified as equity should be recognised according to where the past transactions or events that generated distributable profits were recognised. These requirements apply to all income tax consequences of dividends. Previously, it was unclear whether the income tax consequences of dividends should be

instruments classified as equity	recognised in profit or loss, or in equity, and the scope of the existing guidance was ambiguous
Amendments to Ind AS 19 – Plan amendment, curtailment or settlement	The amendments to Ind AS 19 clarify the accounting for defined benefit plan amendments, curtailments and settlements. They confirm that entities must: ➢ calculate the current service cost and net interest for the remainder of the reporting period after a plan amendment, curtailment or settlement by using the updated assumptions from the date of the change; ➢ any reduction in a surplus should be recognised immediately in profit or loss either as part of past service cost, or as a gain or loss on settlement. In other words, a reduction in a surplus must be recognised in profit or loss even if that surplus was not previously recognised because of the impact of the asset ceiling; and ➢ separately recognise any changes in the asset ceiling through other comprehensive income.
Amendments to Ind AS 23 – Borrowing costs eligible for capitalisation	In computing the capitalisation rate for generally borrowed funds, the entity should exclude borrowing costs on borrowings which are specifically used for the purpose of obtaining a qualifying asset until that specific asset is ready for its intended use or sale. Once such specific asset is ready for its intended use or sale, borrowing costs related to borrowings of such asset shall be considered as part of general borrowing costs of the entity and be used for computation of capitalisation rate on general borrowings.
Amendment to Ind AS 28 - Long-term Interests in Associates and Joint Ventures	An entity's net investment in associate or joint venture includes investment in ordinary shares, other interests that are accounted using the equity method, and other long term interests, such as preference shares and long term receivables or loans, the settlement of which is neither planned nor likely to occur in the foreseeable future. These long term interests are not accounted for in accordance with Ind AS 28, instead they are governed by the principles of Ind AS 109. As per para 10 of Ind AS 28, the carrying amount of entity's investment in its associate and joint venture increases or decreases (as per equity method) to recognise the entity's share of profit or loss of its investee associate and joint venture.

	Para 38 of Ind AS 38 further states that the losses that exceed he entity's investment in ordinary shares are applied to other components of the entity's interest in the associate or joint venture in the reverse order of their superiority. In this context, the amendments to Ind AS 28 clarify that the accounting for losses allocated to long-term interests would involve the dual application of Ind AS 28 and Ind AS 109. The annual sequence in which both standards are to be applied can be explained in a three step process: **Step 1: Apply Ind AS 109 independently** Apply Ind AS 109 (such as impairment, fair value adjustments etc.) ignoring any adjustments to carrying amount of long-term interests under Ind AS 28 (such as allocation of losses, impairment etc.) **Step 2: True-up past allocations** If necessary, prior years' Ind AS 28 loss allocation is trued up in the current year, because Ind AS 109 carrying value may have changed. This may involve recognizing more prior year's losses, reversing these losses or re-allocating them between different long-term interests. **Step 3: Book current year equity share** Any current year Ind AS 28 losses are allocated to the extent that the remaining long-term interest balance allows. Any current year Ind AS 28 profits reverse any unrecognized prior years' losses and then allocations are made against long-term interests.
Amendment to Ind AS 103 – Control over a joint operation achieved in stages	When a party to a joint operation, obtains control of a joint operation business, the transaction will be considered as a business combination achieved in stages. The acquirer should re-measure its previously held interest in the joint operation at fair value at the acquisition date.
Amendment to Ind AS 109 – Prepayment Features with Negative Compensation	Some prepayment options could result in other party being forced to accept negative compensation – e.g. the lender receives an amount less than the unpaid amounts of principal and interest if the borrower chooses to prepay. Earlier, these instruments were measured at FVTPL. However, now after amendment, such financial assets could be measured at amortised cost or at FVOCI if they meet the other relevant requirements of Ind AS 109. In other words, to qualify for amortised cost measurement**, the**

	negative compensation must be 'reasonable compensation for early termination of the contract' and the asset must be held within a 'held to collect' business model. To be eligible for the exception, the fair value of the prepayment feature would have to be **insignificant on initial recognition** of the asset. If this is impracticable to assess based on the facts and circumstances that existed on initial recognition of the asset, then the exception would not be available. Also financial assets prepayable at current fair value would be measured at FVTPL.
Amendment to Ind AS 111 – Joint control over a joint operation achieved in stages	The amendments clarify that the entity, who is a party to joint operation but was not having joint control earlier, now obtains joint control of a business that is a joint operation should not re-measure its previously held interest in the joint operation.

2. Relevant Sections of the Companies Act, 2013

The relevant Sections of the Companies Act, 2013 notified up to 30th April, 2019 are applicable for November, 2019 Examination.

B. Not applicable for November, 2019 Examination

The Companies (Indian Accounting Standards) Amendment Rules, 2019 notified by MCA on 30.3.2019, wherein it has notified Ind AS 116 (by replacing Ind AS 17), is NOT applicable for November, 2019 examination. It implies that for November, 2019 examination, Ind AS 17 is applicable and not Ind AS 116.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Ind AS 34

1. An entity reports quarterly, earns ₹ 1,50,000 pre-tax profit in the first quarter but expects to incur losses of ₹ 50,000 in each of the three remaining quarters. The entity operates in a jurisdiction in which its estimated average annual income tax rate is 30%.

   The management believes that since the entity has zero income for the year, its income-tax expense for the year will be zero. State whether the management's views are correct. If not, then calculate the tax expense for each quarter as well as for the year as per Ind AS 34.

Ind AS 8

2. During 20X4-X5, Cheery Limited discovered that some products that had been sold during 20X3-X4 were incorrectly included in inventory at 31st March, 20X4 at ₹ 6,500.

   Cheery Limited's accounting records for 20X4-X5 show sales of ₹ 104,000, cost of goods sold of ₹ 86,500 (including ₹ 6,500 for the error in opening inventory), and income taxes of ₹ 5,250.

   In 20X3-X4, Cheery Limited reported:

	₹
Sales	73,500
Cost of goods sold	(53,500)
Profit before income taxes	20,000
Income taxes	(6,000)
Profit	14,000
Basic and diluted EPS	2.8

   The 20X3-X4 opening retained earnings was ₹ 20,000 and closing retained earnings was ₹ 34,000. Cheery Limited's income tax rate was 30% for 20X4-X5 and 20X3-X4. It had no other income or expenses.

   Cheery Limited had ₹ 50,000 (5,000 shares of ₹ 10 each) of share capital throughout, and no other components of equity except for retained earnings.

   State how the above will be treated /accounted in Cheery Limited's Statement of profit and loss, statement of changes in equity and in notes wherever required for current period and earlier period(s) as per relevant Ind AS.

Ind AS 102

3. QA Ltd. had on 1st April, 20X1 granted 1,000 share options each to 2,000 employees. The options are due to vest on 31st March, 20X4 provided the employee remains in employment till 31st March, 20X4.

   On 1st April, 20X1, the Directors of Company estimated that 1,800 employees would qualify for the option on 31st March, 20X4. This estimate was amended to 1,850 employees on 31st March, 20X2 and further amended to 1,840 employees on 31st March, 20X3.

   On 1st April, 20X1, the fair value of an option was ₹ 1.20. The fair value increased to ₹ 1.30 as on 31st March, 20X2 but due to challenging business conditions, the fair value declined thereafter. In September, 20X2, when the fair value of an option was ₹ 0.90, the Directors repriced the option and this caused the fair value to increase to ₹ 1.05. Trading conditions improved in the second half of the year and by 31st March, 20X3 the fair value of an option was ₹1.25. QA Ltd. decided that additional cost incurred due to repricing of the options on 30th September, 20X2 should be spread over the remaining vesting period from 30th September, 20X2 to 31st March, 20X4.

   The Company has requested you to suggest the suitable accounting treatment for these transaction as on 31st March, 20X3.

Ind AS 109

4. An entity purchases a debt instrument with a fair value of ₹ 1,000 on 15th March, 20X1 and measures the debt instrument at fair value through other comprehensive income. The instrument has an interest rate of 5% over the contractual term of 10 years, and has a 5% effective interest rate. At initial recognition, the entity determines that the asset is not a purchased or original credit-impaired asset.

   On 31st March 20X1 (the reporting date), the fair value of the debt instrument has decreased to ₹ 950 as a result of changes in market interest rates. The entity determines that there has not been a significant increase in credit risk since initial recognition and that ECL should be measured at an amount equal to 12 month ECL, which amounts to ₹ 30.

   On 1st April 20X1, the entity decides to sell the debt instrument for ₹ 950, which is its fair value at that date.

   Pass journal entries for recognition, impairment and sale of debt instruments as per Ind AS 109. Entries relating to interest income are not to be provided.

Ind AS 23

5. On 1st April, 20X1, entity A contracted for the construction of a building for ₹ 22,00,000. The land under the building is regarded as a separate asset and is not part of the qualifying assets. The building was completed at the end of March, 20X2, and during the

period the following payments were made to the contractor:

Payment date	Amount (₹ '000)
1st April, 20X1	200
30th June, 20X1	600
31st December, 20X1	1,200
31st March, 20X2	200
Total	2,200

Entity A's borrowings at its year end of 31st March, 20X2 were as follows:

a. 10%, 4-year note with simple interest payable annually, which relates specifically to the project; debt outstanding on 31st March, 20X2 amounted to ₹ 7,00,000. Interest of ₹ 65,000 was incurred on these borrowings during the year, and interest income of ₹ 20,000 was earned on these funds while they were held in anticipation of payments.

b. 12.5% 10-year note with simple interest payable annually; debt outstanding at 1st April, 20X1 amounted to ₹ 1,000,000 and remained unchanged during the year; and

c. 10% 10-year note with simple interest payable annually; debt outstanding at 1st April, 20X1 amounted to ₹ 1,500,000 and remained unchanged during the year.

What amount of the borrowing costs can be capitalized at year end as per relevant Ind AS?

Ind AS 115

6. An entity G Ltd. enters into a contract with a customer P Ltd. for the sale of a machinery for ₹20,00,000. P Ltd. intends to use the said machinery to start a food processing unit. The food processing industry is highly competitive and P Ltd. has very little experience in the said industry.

P Ltd. pays a non-refundable deposit of ₹1,00,000 at inception of the contract and enters into a long-term financing agreement with G Ltd. for the remaining 95 per cent of the agreed consideration which it intends to pay primarily from income derived from its food processing unit as it lacks any other major source of income. The financing arrangement is provided on a non-recourse basis, which means that if P Ltd. defaults then G Ltd. can repossess the machinery but cannot seek further compensation from P Ltd., even if the full value of the amount owed is not recovered from the machinery. The cost of the machinery for G Ltd. is ₹ 12,00,000. P Ltd. obtains control of the machinery at contract inception.

When should G Ltd. recognise revenue from sale of machinery to P Ltd. in accordance with Ind AS 115?

Ind AS 1

7. An entity has taken a loan facility from a bank that is to be repaid within a period of 9 months from the end of the reporting period. Prior to the end of the reporting period, the entity and the bank enter into an arrangement, whereby the existing outstanding loan will, unconditionally, roll into the new facility which expires after a period of 5 years.

   (a) Should the loan be classified as current or non-current in the balance sheet of the entity?

   (b) Will the answer be different if the new facility is agreed upon after the end of the reporting period?

   (c) Will the answer to (a) be different if the existing facility is from one bank and the new facility is from another bank?

   (d) Will the answer to (a) be different if the new facility is not yet tied up with the existing bank, but the entity has the potential to refinance the obligation?

Ind AS 10

8. ABC Ltd. received a demand notice on 15th June, 2017 for an additional amount of ₹ 28,00,000 from the Excise Department on account of higher excise duty levied by the Excise Department compared to the rate at which the company was creating provision and depositing the same. The financial statements for the year 2016-17 are approved on 10th August, 2017. In July, 2017, the company has appealed against the demand of ₹ 28,00,000 and the company has expected that the demand would be settled at ₹ 15,00,000 only. Show how the above event will have a bearing on the financial statements for the year 2016-17. Whether these events are adjusting or non-adjusting events and explain the treatment accordingly.

Ind AS 19

9. (All numbers in ₹ '000 unless otherwise stated)

   ABL Ltd. operates a defined retirement benefits plan on behalf of current and former employees. ABL Ltd. receives advice from actuaries regarding contribution levels and overall liabilities of the plan to pay benefits. On 1st April, 20X1, the actuaries advised that the present value of the defined benefit obligation was ₹ 60,000. On the same date, the fair value of the assets of the defined benefit plan was ₹ 52,000. On 1st April, 20X1, the annual market yield on high quality corporate bonds was 5%. During the year ended 31st March 20X2, ABL Ltd. made contributions of ₹ 7,000 into the plan and the plan paid out benefits of ₹ 4200 to retired members. Assume that both these payments were made on 31st March 20X2. The actuaries advised that the current service cost for the year ended 31st March 20X2 was ₹ 6,200. On 28th February, 20X2, the rules of the plan were amended with retrospective effect. These amendments meant that the present value of the defined benefit obligation was increased by ₹ 1500 from that date. During the year ended 31st March, 20X2, ABL Ltd. was in negotiation with employee representatives

regarding planned redundancies. The negotiations were completed shortly before the year end and redundancy packages were agreed. The impact of these redundancies was to reduce the present value of the defined benefit obligation by ₹ 8000. Before 31st March, 20X2, ABL Ltd. made payments of ₹ 7500 to the employees affected by the redundancies in compensation for the curtailment of their benefits. These payments were made out of the assets of the retirement benefits plan. On 31st March, 20X2, the actuaries advised that the present value of the defined benefit obligation was ₹ 68,000. On the same date, the fair value of the assets of the defined benefit plan were ₹ 56,000.

Ind AS 110

10. What will be the accounting treatment of dividend distribution tax in the consolidated financial statements in case of partly-owned subsidiary in the following scenarios:

Scenario 1: H Limited (holding company) holds 12,000 equity shares in S Limited (Subsidiary of H Limited) with 60% holding. Accordingly, S Limited is a partly-owned subsidiary of H Limited. During the year 20X1, S Limited paid a dividend @ ₹ 10 per share and DDT @ 20% on it.

Should the share of H Limited in DDT paid by S Limited amounting to ₹ 24,000 (60% x ₹ 40,000) be charged as expense in the consolidated profit and loss of H Limited?

Scenario 2 (A): Extending the situation given in scenario 1, H Limited also pays dividend of ₹ 300,000 to its shareholders and DDT liability @ 20% thereon amounts to ₹ 60,000. As per the tax laws, DDT paid by S Ltd. of ₹ 24,000 is allowed as set off against the DDT liability of H Ltd., resulting in H Ltd. paying ₹ 36,000 (₹ 60,000 – ₹ 24,000) as DDT to tax authorities.

Scenario 2(B)

If in (A) above, H Limited pays dividend amounting to ₹ 100,000 with DDT liability @ 20% amounting to ₹ 20,000.

Scenario (3):

Will the answer be different for the treatment of dividend distribution tax paid by associate in the consolidated financial statement of investor, if as per tax laws the DDT paid by associate is not allowed set-off against the DDT liability of the investor?

Ind AS 21

11. Global Limited, an Indian company acquired on 30th September, 20X1 70% of the share capital of Mark Limited, an entity registered as company in Germany. The functional currency of Global Limited is Rupees and its financial year end is 31st March, 20X2.

(i) The fair value of the net assets of Mark Limited was 23 million EURO and the purchase consideration paid is 17.5 million EURO on 30th September, 20X1.

The exchange rates as at 30th September, 20X1 was ₹ 82 / EURO and at 31st March, 20X2 was ₹ 84 / EURO.

What is the value at which the goodwill has to be recognised in the financial statements of Global Limited as on 31st March, 20X2?

(ii) Mark Limited sold goods costing 2.4 million EURO to Global Limited for 4.2 million EURO during the year ended 31st March, 20X2. The exchange rate on the date of purchase by Global Limited was ₹ 83 / EURO and on 31st March, 20X2 was ₹ 84 / EURO. The entire goods purchased from Mark Limited are unsold as on 31st March, 20X2. Determine the unrealised profit to be eliminated in the preparation of consolidated financial statements.

Ind AS 12

12. Jeevan India Limited is in the business of development of smart city. For development of smart city, Jeevan India Limited allots its land to customer on 99 years of lease. The customer is required to pay lease premium at the time of execution of lease deed and lease rent on annual basis over a period of 99 years.

The lease premium amount is the market value of land and lease rent is nominal amount say ₹ 1 per square metre per year. The lease premium is non-refundable. As per the lease terms, on completion of 99 years, the lease is renewable at mutual consent of lessor and lessee.

How would income in respect of lease premium collected by Jeevan India Limited (which is the market value of land and is not refundable) at the time of execution of lease deed be recognised as per Ind AS, if for subsequent years, only nominal lease rent is collected.

Ind AS 113

13. Comment on the following by quoting references from appropriate Ind AS.

(i) DS Limited holds some vacant land for which the use is not yet determined. the land is situated in a prominent area of the city where lot of commercial complexes are coming up and there is no legal restriction to convert the land into a commercial land.

The company is not interested in developing the land to a commercial complex as it is not its business objective. Currently the land has been let out as a parking lot for the commercial complexes around.

The Company has classified the above property as investment property. It has approached you, an expert in valuation, to obtain fair value of the land for the purpose of disclosure under Ind AS.

On what basis will the land be fair valued under Ind AS?

(ii) DS Limited holds equity shares of a private company. In order to determine the fair value' of the shares, the company used discounted cash flow method as there were no similar shares available in the market.

Under which level of fair value hierarchy will the above inputs be classified?

What will be your answer if the quoted price of similar companies were available and can be used for fair valuation of the shares?

Ind AS 101

14. Mathur India Private Limited has to present its first financials under Ind AS for the year ended 31st March, 20X3. The transition date is 1st April, 20X1.

The following adjustments were made upon transition to Ind AS:

(a) The Company opted to fair value its land as on the date on transition.

The fair value of the land as on 1st April, 20X1 was ₹ 10 crores. The carrying amount as on 1st April, 20X1 under the existing GAAP was ₹ 4.5 crores.

(b) The Company has recognised a provision for proposed dividend of ₹ 60 lacs and related dividend distribution tax of ₹ 18 lacs during the year ended 31st March, 20X1. It was written back as on opening balance sheet date.

(c) The Company fair values its investments in equity shares on the date of transition. The increase on account of fair valuation of shares is ₹ 75 lacs.

(d) The Company has an Equity Share Capital of ₹ 80 crores and Redeemable Preference Share Capital of ₹ 25 crores.

(e) The reserves and surplus as on 1st April, 20X1 before transition to Ind AS was ₹ 95 crores representing ₹ 40 crores of general reserve and ₹ 5 crores of capital reserve acquired out of business combination and balance is surplus in the Retained Earnings.

(f) The company identified that the preference shares were in nature of financial liabilities.

What is the balance of total equity (Equity and other equity) as on 1st April, 20X1 after transition to Ind AS? Show reconciliation between total equity as per AS (Accounting Standards) and as per Ind AS to be presented in the opening balance sheet as on 1st April, 20X1.

Ignore deferred tax impact.

Ind AS 24

15. Uttar Pradesh State Government holds 60% shares in PQR Limited and 55% shares in ABC Limited. PQR Limited has two subsidiaries namely P Limited and Q Limited. ABC Limited has two subsidiaries namely A Limited and B Limited. Mr. KM is one of the Key management personnel in PQR Limited.

(a) Determine the entity to whom exemption from disclosure of related party transactions is to be given. Also examine the transactions and with whom such exemption applies.

(b) What are the disclosure requirements for the entity which has availed the exemption?

Ind AS 7

16. Following is the balance sheet of Kuber Limited for the year ended 31st March, 20X2

(₹ in lacs)

	20X2	20X1
ASSETS		
Non-current Assets		
Property, plant and equipment	13,000	12,500
Intangible assets	50	30
Other financial assets	145	170
Deferred tax asset (net)	855	750
Other non-current assets	800	770
Total non-current assets	**14,850**	**14,220**
Current assets		
Financial assets		
Investments	2,300	2,500
Cash and cash equivalents	220	460
Other current assets	195	85
Total current assets	**2,715**	**3,045**
Total Assets	**17,565**	**17,265**
EQUITY AND LIABILITIES		
Equity		
Equity share capital	300	300
Other equity	12,000	8,000
Total equity	**12,300**	**8,300**
Liabilities		
Non-current liabilities		
Long-term borrowings	2,000	5,000

Other non-current liabilities	2,740	3,615
Total non-current liabilities	**4,740**	**8,615**
Current liabilities		
Financial liabilities		
Trade payables	150	90
Bank Overdraft	75	60
Other current liabilities	300	200
Total current liabilities	**525**	**350**
Total liabilities	**5,265**	**8,965**
Total Equity and Liabilities	**17,565**	**17,265**

Additional Information:

(1) Profit after tax for the year ended 31st March, 20X2- ₹ 4,450 lacs

(2) Interim Dividend paid during the year - ₹ 450 lacs

(3) Depreciation and amortisation charged in the statement of profit and loss during the current year are as under

(a) Property, Plant and Equipment - ₹ 500 lacs

(b) Intangible Assets - ₹ 20 lacs

(4) During the year ended 31st March, 20X2 two machineries were sold for ₹ 10 lacs. The carrying amount of these machineries as on 31st March, 20X2 is ₹ 60 lacs.

(5) Income taxes paid during the year ₹ 105 lacs

Using the above information of Kuber Limited, construct a statement of cash flows under indirect method. Other non-current / current assets and liabilities are related to operations of Kuber Ltd. and do not contain any element of financing and investing activities.

Ind AS 36

17. East Ltd. (East) owns a machine used in the manufacture of steering wheels, which are sold directly to major car manufacturers.

- The machine was purchased on 1st April, 20X1 at a cost of ₹ 500 000 through a vendor financing arrangement on which interest is being charged at the rate of 10 per cent per annum.
- During the year ended 31st March, 20X3, East sold 10 000 steering wheels at a selling price of ₹ 190 per wheel.

- The most recent financial budget approved by East's management, covering the period 1st April, 20X3 – 31st March, 20X8, including that the company expects to sell each steering wheel for ₹ 200 during 20X3-X4, the price rising in later years in line with a forecast inflation of 3 per cent per annum.
- During the year ended 31st March, 20X4, East expects to sell 10 000 steering wheels. The number is forecast to increase by 5 per cent each year until 31st March, 20X8.
- East estimates that each steering wheel costs ₹ 160 to manufacture, which includes ₹ 110 variable costs, ₹ 30 share of fixed overheads and ₹ 20 transport costs.
- Costs are expected to rise by 1 per cent during 20X4-X5, and then by 2 per cent per annum until 31st March, 20X8.
- During 20X5-X6, the machine will be subject to regular maintenance costing ₹ 50,000.
- In 20X3-X4, East expects to invest in new technology costing ₹ 100 000. This technology will reduce the variable costs of manufacturing each steering wheel from ₹ 110 to ₹ 100 and the share of fixed overheads from ₹ 30 to ₹ 15 (subject to the availability of technology, which is still under development).
- East is depreciating the machine using the straight line method over the machine's 10 year estimated useful life. The current estimate (based on similar assets that have reached the end of their useful lives) of the disposal proceeds from selling the machine is ₹ 80 000 net of disposal costs. East expects to dispose of the machine at the end of March, 20X8.
- East has determined a pre-tax discount rate of 8 per cent, which reflects the market's assessment of the time value of money and the risks associated with this asset.

Assume a tax rate of 30%. What is the value in use of the machine in accordance with Ind AS 36?

Ind AS 37

18. (a) A manufacturer gives warranties at the time of sale to purchasers of its product. Under the terms of the contract for sale, the manufacturer undertakes to remedy, by repair or replacement, manufacturing defects that become apparent within three years from the date of sale. As this is the first year that the warranty has been available, there is no data from the firm to indicate whether there will be claim under the warranties. However, industry research suggests that it is likely that such claims will be forthcoming.

Should the manufacturer recognize a provision in accordance with the requirements of Ind AS 37. Why or why not?

(b) Assume that the firm has not been operating its warranty for five years, and reliable data exists to suggest the following:

- If minor defects occur in all products sold, repair costs of ₹ 20,00,000 would result.
- If major defects are detected in all products, costs of ₹ 50,00,000 would result.
- The manufacturer's past experience and future expectations indicate that each year 80% of the goods sold will have no defects. 15% of the goods sold will have minor defects, and 5% of the goods sold will have major defects.

Calculate the expected value of the cost of repairs in accordance with the requirements of Ind AS 37, if any. Ignore both income tax and the effect of discounting.

Ind AS 12

19. An entity is finalising its financial statements for the year ended 31st March, 20X2. Before 31st March, 20X2, the government announced that the tax rate was to be amended from 40 per cent to 45 per cent of taxable profit from 30th June, 20X2.

The legislation to amend the tax rate has not yet been approved by the legislature. However, the government has a significant majority and it is usual, in the tax jurisdiction concerned, to regard an announcement of a change in the tax rate as having the substantive effect of actual enactment (i.e. it is substantively enacted).

After performing the income tax calculations at the rate of 40 per cent, the entity has the following deferred tax asset and deferred tax liability balances:

Deferred tax asset	₹ 80,000
Deferred tax liability	₹ 60,000

Of the deferred tax asset balance, ₹ 28,000 related to a temporary difference. This deferred tax asset had previously been recognised in OCI and accumulated in equity as a revaluation surplus.

The entity reviewed the carrying amount of the asset in accordance with para 56 of Ind AS 12 and determined that it was probable that sufficient taxable profit to allow utilisation of the deferred tax asset would be available in the future.

Show the revised amount of Deferred tax asset & Deferred tax liability and present the necessary journal entries.

20. H Ltd. acquired equity shares of S Ltd., a listed company, in two tranches as mentioned in the below table:

Date	Equity stake purchased	Remarks
1st November, 20X6	15%	The shares were purchased based on the quoted price on the stock exchange on the relevant dates.
1st January, 20X7	45%	

Both the above-mentioned companies have Rupees as their functional currency. Consequently, H Ltd. acquired control over S Ltd. on 1st January, 20X7. Following is the Balance Sheet of S Ltd. as on that date:

Particulars	Carrying value (₹ in crore)	Fair value (₹ in crore)
ASSETS:		
Non-current assets		
(a) Property, plant and equipment	40.0	90.0
(b) Intangible assets	20.0	30.0
(c) Financial assets		
- Investments	100.0	350.0
Current assets		
(a) Inventories		
(b) Financial assets	20.0	20.0
- Trade receivables		
- Cash held in functional currency	20.0 4.0	20.0 4.5
(c) Other current assets		
Non-current asset held for sale	4.0	4.5
TOTAL ASSETS	208	
EQUITY AND LIABILITIES:		
Equity		
(a) Share capital (face value ₹100)	12.0	50.4
(b) Other equity	141.0	Not applicable
Non-current liabilities		
(a) Financial liabilities		
- Borrowings	20.0	20.0
Current liabilities		
(a) Financial liabilities		
- Trade payables	28.0	28.0
(b) Provision for warranties	3.0	3.0

(c) Current tax liabilities	4.0	4.0
TOTAL EQUITY AND LIABILITIES	208.0	

Other information:

Property, plant and equipment in the above Balance Sheet include leasehold motor vehicles having carrying value of ₹ 1 crore and fair value of ₹ 1.2 crore. The date of inception of the lease was 1st April, 20X0. On the inception of the lease, S Ltd. had correctly classified the lease as a finance lease. However, if facts and circumstances as on 1st April, 20X7 are considered, the lease would be classified as an operating lease.

Following is the statement of contingent liabilities of S Ltd. as on 1st January, 20X7:

Particulars	Fair value (₹ in crore)	Remarks
Law suit filed by a customer for a claim of ₹ 2 crore	0.5	It is not probable that an outflow of resources embodying economic benefits will be required to settle the claim. Any amount which would be paid in respect of law suit will be tax deductible.
Income tax demand of ₹ 7 crore raised by tax authorities; S Ltd. has challenged the demand in the court.	2.0	It is not probable that an outflow of resources embodying economic benefits will be required to settle the claim.

In relation to the above-mentioned contingent liabilities, S Ltd. has given an indemnification undertaking to H Ltd. up to a maximum of ₹ 1 crore.

₹ 1 crore represents the acquisition date fair value of the indemnification undertaking.

Any amount which would be received in respect of the above undertaking shall not be taxable.

The tax bases of the assets and liabilities of S Ltd. is equal to their respective carrying values being recognised in its Balance Sheet.

Carrying value of non-current asset held for sale of ₹ 4 crore represents its fair value less cost to sell in accordance with the relevant Ind AS.

In consideration of the additional stake purchased by H Ltd. on 1st January, 20X7, it has issued to the selling shareholders of S Ltd. 1 equity share of H Ltd. for every 2 shares held in S Ltd. Fair value of equity shares of H Ltd. as on 1st January, 20X7 is ₹ 10,000 per share.

On 1st January, 20X7, H Ltd. has paid ₹ 50 crore in cash to the selling shareholders of S Ltd. Additionally, on 31st March, 20X9, H Ltd. will pay ₹ 30 crore to the selling shareholders of S Ltd. if return on equity of S Ltd. for the year ended 31st March, 20X9 is more than 25% per annum. H Ltd. has estimated the fair value of this obligation as on 1st January, 20X7 and 31st March, 20X7 as ₹ 22 crore and ₹ 23 crore respectively. The change in fair value of the obligation is attributable to the change in facts and circumstances after the acquisition date.

Quoted price of equity shares of S Ltd. as on various dates is as follows:

As on November, 20X6	₹ 350 per share
As on 1st January, 20X7	₹ 395 per share
As on 31st March, 20X7	₹ 420 per share

On 31st May, 20X7, H Ltd. learned that certain customer relationships existing as on 1st January, 20X7, which met the recognition criteria of an intangible asset as on that date, were not considered during the accounting of business combination for the year ended 31st March, 20X7. The fair value of such customer relationships as on 1st January, 20X7 was ₹ 3.5 crore (assume that there are no temporary differences associated with customer relations; consequently, there is no impact of income taxes on customer relations).

On 31st May, 20X7 itself, H Ltd. further learned that due to additional customer relationships being developed during the period 1st January, 20X7 to 31st March, 20X7, the fair value of such customer relationships has increased to ₹ 4 crore as on 31st March, 20X7.

On 31st December, 20X7, H Ltd. has established that it has obtained all the information necessary for the accounting of the business combination and that more information is not obtainable.

H Ltd. and S Ltd. are not related parties and follow Ind AS for financial reporting. Income tax rate applicable is 30%.

You are required to provide your detailed responses to the following, along with reasoning and computation notes:

(a) What should be the goodwill or bargain purchase gain to be recognised by H Ltd. in its financial statements for the year ended 31st March, 20X7. For this purpose, measure non-controlling interest using proportionate share of the fair value of the identifiable net assets of S Ltd.

(b) Will the amount of non-controlling interest, goodwill, or bargain purchase gain so recognised in (a) above change subsequent to 31st March, 20X7? If yes, provide relevant journal entries.

(c) What should be the accounting treatment of the contingent consideration as on 31st March, 20X7?

SUGGESTED ANSWERS

1. As per para 30 (c) of Ind AS 34 'Interim Financial Reporting', income tax expense is **recognised in each interim period** based on the best estimate of the weighted average annual income tax rate expected for the full financial year.

Accordingly, the management's contention that since the net income for the year will be zero no income tax expense shall be charged quarterly in the interim financial report, is not correct.

The following table shows the correct income tax expense to be reported each quarter in accordance with Ind AS 34:

Period	Pre-tax earnings (in ₹)	Effective tax rate	Tax expense (in ₹)
First Quarter	1,50,000	30%	45,000
Second Quarter	(50,000)	30%	(15,000)
Third Quarter	(50,000)	30%	(15,000)
Fourth Quarter	(50,000)	30%	(15,000)
Annual	**0**		**0**

2. **Cheery Limited**

Extract from the Statement of profit and loss

		(Restated)
	20X4-X5	**20X3-X4**
	₹	**₹**
Sales	1,04,000	73,500
Cost of goods sold	(80,000)	(60,000)
Profit before income taxes	**24,000**	**13,500**
Income taxes	(7,200)	(4,050)
Profit	**16,800**	**9,450**
Basic and diluted EPS	3.36	1.89

Cheery Limited

Statement of Changes in Equity

	Share capital	Retained earnings	Total
Balance at 31st March, 20X3	50,000	20,000	70,000
Profit for the year ended 31st March, 20X4 as restated		9,450	9,450
Balance at 31st March, 20X4	**50,000**	**29,450**	**79,450**
Profit for the year ended 31st March, 20X5		16,800	16,800
Balance at 31st March, 20X5	**50,000**	**46,250**	**96,250**

Extract from the Notes

Some products that had been sold in 20X3-X4 were incorrectly included in inventory at 31st March, 20X4 at ₹ 6,500. The financial statements of 20X3-X4 have been restated to correct this error. The effect of the restatement on those financial statements is summarized below:

	Effect on 20X3-X4
(Increase) in cost of goods sold	(6,500)
Decrease in income tax expenses	1,950
(Decrease) in profit	(4,550)
(Decrease) in basic and diluted EPS	(0.91)
(Decrease) in inventory	(6,500)
Decrease in income tax payable	1,950
(Decrease) in equity	(4,550)

There is no effect on the balance sheet at the beginning of the preceding period i.e. 1st April, 20X3.

3. Paragraph 27 of Ind AS 102 requires the entity to recognise the effects of repricing that increase the total fair value of the share-based payment arrangement or are otherwise beneficial to the employee.

If the repricing increases the fair value of the equity instruments granted paragraph B43(a) of Appendix B requires the entity to include the incremental fair value granted (ie the difference between the fair value of the repriced equity instrument and that of the original equity instrument, both estimated as at the date of the modification) in the measurement of the amount recognised for services received as consideration for the equity instruments granted.

If the repricing occurs during the vesting period, the incremental fair value granted is included in the measurement of the amount recognised for services received over the period from the repricing date until the date when the repriced equity instruments vest, in addition to the amount based on the grant date fair value of the original equity instruments, which is recognised over the remainder of the original vesting period.

Accordingly, the amounts recognised in years 1 and 2 are as follows:

Year	Calculation	Compensation expense for period	Cumulative compensation expense
		₹	₹
1	[1,850 employees× 1,000 options × ₹ 1.20] × 1/3	7,40,000	7,40,000
2	(1,840 employees× 1,000 options × [(₹1.20× 2/3)+ {(₹1.05 - 0.90) ×0.5/1.5}] – 7,40,000	8,24,000	15,64,000

Note: Year 3 calculations have not been provided as it was not required in the question.

4. On Initial recognition

		Debit (₹)	Credit (₹)
Financial asset-FVOCI	Dr.	1,000	
To Cash			1,000

On Impairment of debt instrument

		Debit (₹)	Credit (₹)
Impairment expense (P&L)	Dr.	30	
Other comprehensive income	Dr.	20	
To Financial asset-FVOCI			50

The cumulative loss in other comprehensive income at the reporting date was ₹ 20. That amount consists of the total fair value change of ₹ 50 (that is, ₹ 1,000-₹ 950) offset by the change in the accumulated impairment amount representing 12-month ECL, that was recognized (₹ 30).

On Sale of debt instrument

	Debit (₹)	Credit (₹)
Cash	950	
To Financial asset –FVOCI		950
Loss on sale (P&L)	20	
To Other comprehensive income		20

5. As per Ind AS 23, when an entity borrows funds specifically for the purpose of obtaining a qualifying asset, the entity should determine the amount of borrowing costs eligible for capitalisation as the actual borrowing costs incurred on that borrowing during the period less any investment income on the temporary investment of those borrowings.

The amount of borrowing costs eligible for capitalization, in cases where the funds are borrowed generally, should be determined based on the expenditure incurred in obtaining a qualifying asset. The costs incurred should first be allocated to the specific borrowings.

Analysis of expenditure:

Date	Expenditure (₹'000)	Amount allocated in general borrowings (₹'000)	Weighted for period outstanding (₹'000)
1st April 20X1	200	0	0
30th June 20X1	600	100*	100 × 9/12 = 75
31st Dec 20X1	1,200	1,200	1,200 × 3/12 = 300
31st March 20X2	200	200	200 × 0/12 = 0
Total	2,200		375

*Specific borrowings of ₹ 7,00,000 fully utilized on 1st April & on 30th June to the extent of ₹ 5,00,000 hence remaining expenditure of ₹ 1,00,000 allocated to general borrowings.

The expenditure rate relating to general borrowings should be the weighted average of the borrowing costs applicable to the entity's borrowings that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset.

$$\text{Capitalisation rate} = \frac{(10,00,000 \times 12.5\%) + (15,00,000 \times 10\%)}{10,00,000 + 15,00,000} = 11\%$$

Borrowing cost to be capitalized:	Amount
	(₹)
On specific loan	65,000
On General borrowing (3,75,000 × 11%)	41,250
Total	1,06,250
Less interest income on specific borrowings	(20,000)
Amount eligible for capitalization	86,250
Therefore, the borrowing costs to be capitalized are ₹ 86,250.	

6. As per paragraph 9 of Ind AS 115, "An entity shall account for a contract with a customer that is within the scope of this Standard only when all of the following criteria are met:

(a) the parties to the contract have approved the contract (in writing, orally or in accordance with other customary business practices) and are committed to perform their respective obligations;

(b) the entity can identify each party's rights regarding the goods or services to be transferred;

(c) the entity can identify the payment terms for the goods or services to be transferred;

(d) the contract has commercial substance (ie the risk, timing or amount of the entity's future cash flows is expected to change as a result of the contract); and

(e) it is probable that the entity will collect the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer. In evaluating whether collectability of an amount of consideration is probable, an entity shall consider only the customer's ability and intention to pay that amount of consideration when it is due. The amount of consideration to which the entity will be entitled may be less than the price stated in the contract if the consideration is variable because the entity may offer the customer a price concession".

Paragraph 9(e) above, requires that for revenue to be recognised, it should be probable that the entity will collect the consideration to which it will be entitled in exchange for the goods or services that will be transferred to the customer. In the given case, it is not probable that G Ltd. will collect the consideration to which it is entitled in exchange for the transfer of the machinery. P Ltd.'s ability to pay may be uncertain due to the following reasons:

(a) P Ltd. intends to pay the remaining consideration (which has a significant balance) primarily from income derived from its food processing unit (which is a business involving significant risk because of high competition in the said industry and P Ltd.'s little experience);

(b) P Ltd. lacks sources of other income or assets that could be used to repay the balance consideration; and

(c) P Ltd.'s liability is limited because the financing arrangement is provided on a non-recourse basis.

In accordance with the above, the criteria in paragraph 9 of Ind AS 115 are not met.

Further, para 15 states that when a contract with a customer does not meet the criteria in paragraph 9 and an entity receives consideration from the customer, the entity shall recognise the consideration received as revenue only when either of the following events has occurred:

(a) the entity has no remaining obligations to transfer goods or services to the customer and all, or substantially all, of the consideration promised by the customer has been received by the entity and is non-refundable; or

(b) the contract has been terminated and the consideration received from the customer is non-refundable.

Para 16 states that an entity shall recognise the consideration received from a customer as a liability until one of the events in paragraph 15 occurs or until the criteria in paragraph 9 are subsequently met. Depending on the facts and circumstances relating to the contract, the liability recognised represents the entity's obligation to either transfer goods or services in the future or refund the consideration received. In either case, the liability shall be measured at the amount of consideration received from the customer.

In accordance with the above, in the given case G Ltd. should account for the non-refundable deposit of ₹1,00,000 payment as a deposit liability as none of the events described in paragraph 15 have occurred—that is, neither the entity has received substantially all of the consideration nor it has terminated the contract. Consequently, in accordance with paragraph 16, G Ltd. Will continue to account for the initial deposit as well as any future payments of principal and interest as a deposit liability until the criteria in paragraph 9 are met (i.e. the entity is able to conclude that it is probable that the entity will collect the consideration) or one of the events in paragraph 15 has occurred. Further, G Ltd. will continue to assess the contract in accordance with paragraph 14 to determine whether the criteria in paragraph 9 are subsequently met or whether the events in paragraph 15 of Ind AS 115 have occurred.

7. Para 69 of Ind AS 1 defines current liabilities as follows:

An entity shall classify a liability as current when:

(i) it expects to settle the liability in its normal operating cycle;

(ii) it holds the liability primarily for the purpose of trading;

(iii) the liability is due to be settled within twelve months after the reporting period; or

(iv) it does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting period. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

An entity shall classify all other liabilities as non-current.

Accordingly, following will be the classification of loan in the given scenarios:

a) The loan is not due for payment at the end of the reporting period. The entity and the bank have agreed for the said roll over prior to the end of the reporting period for a period of 5 years. Since the entity has an unconditional right to defer the settlement of the liability for at least twelve months after the reporting period, the loan should be classified as non-current.

b) Yes, the answer will be different if the arrangement for roll over is agreed upon after the end of the reporting period because as per paragraph 72 of Ind AS 1, "an entity classifies its financial liabilities as current when they are due to be settled within twelve months after the reporting period, even if: (a) the original term was for a period longer than twelve months, and (b) an agreement to refinance, or to reschedule payments, on a long-term basis is completed after the reporting period and before the financial statements are approved for issue." As at the end of the reporting period, the entity does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting period. Hence the loan is to be classified as current.

c) Yes, loan facility arranged with new bank cannot be treated as refinancing, as the loan with the earlier bank would have to be settled which may coincide with loan facility arranged with a new bank. In this case, loan has to be repaid within a period of 9 months from the end of the reporting period, therefore, it will be classified as current liability.

d) Yes, the answer will be different and the loan should be classified as current. This is because, as per paragraph 73 of Ind AS 1, when refinancing or rolling over the obligation is not at the discretion of the entity (for example, there is no arrangement for refinancing), the entity does not consider the potential to refinance the obligation and classifies the obligation as current.

8. Ind AS 10 defines 'Events after the Reporting Period' as follows:

Events after the reporting period are those events, favourable and unfavourable, that occur between the end of the reporting period and the date when the financial statements are approved by the Board of Directors in case of a company, and, by the corresponding approving authority in case of any other entity for issue. Two types of events can be identified:

(a) those that provide evidence of conditions that existed at the end of the reporting period (adjusting events after the reporting period); and

(b) those that are indicative of conditions that arose after the reporting period (non-adjusting events after the reporting period)

In the instant case, the demand notice has been received on 15th June, 2017, which is between the end of the reporting period and the date of approval of financial statements. Therefore, it is an event after the reporting period. This demand for additional amount has been raised because of higher rate of excise duty levied by the Excise Department in respect of goods already manufactured during the reporting period. Accordingly, condition exists on 31st March, 2017, as the goods have been manufactured during the reporting period on which additional excise duty has been levied and this event has been confirmed by the receipt of demand notice. Therefore, it is an adjusting event.

In accordance with the principles of Ind AS 37, the company should make a provision in the financial statements for the year 2016-17, at best estimate of the expenditure to be incurred, i.e., ₹ 15,00,000.

9. (All numbers in ₹'000 unless otherwise stated)

On 31st March 20X2, ABL Ltd. will report a net pension liability in the statement of financial position. The amount of the liability will be ₹ 12,000 (68,000 – 56,000).

For the year ended 31st March 20X2, ABL Ltd. will report the current service cost as an operating cost in the statement of profit or loss. The amount reported will be ₹ 6,200. The same treatment applies to the past service cost of ₹ 1,500.

For the year ended 31st March 20X2, ABL Ltd. will report a finance cost in profit or loss based on the net pension liability at the start of the year of ₹ 8,000 (60,000 – 52,000). The amount of the finance cost will be ₹ 400 (8,000 x 5%).

The redundancy programme represents the partial settlement of the curtailment of a defined benefit obligation. The gain on settlement of ₹ 500 (8,000 – 7,500) will be reported in the statement of profit or loss.

Other movements in the net pension liability will be reported as remeasurement gains or losses in other comprehensive income.

For the year ended 31st March 20X2, the remeasurement loss will be ₹ 3,400 (refer W.N.).

Working Note:

Calculation of remeasurement gain or loss: **₹ '000**

Liability at the start of the year (60,000 – 52,000)	8,000
Current service cost	6,200
Past service cost	1,500
Net finance cost	400

Gain on settlement	(500)
Contributions to plan	(7,000)
Remeasurement loss **(balancing figure)**	3,400
Liability at the end of the year (68,000 – 56,000)	12,000

10. **Scenario 1:** Since H Limited is holding 12,000 shares it has received ₹ 1,20,000 as dividend from S Limited. In the consolidated financial statements of H Ltd., dividend income earned by H Ltd. and dividend recorded by S Ltd. in its equity will both get eliminated as a result of consolidation adjustments. Dividend paid by S Ltd. to the 40% non-controlling interest (NCI) shareholders will be recorded in the Statement of Changes in Equity as reduction of NCI balance (as shares are classified as equity as per Ind AS 32).

DDT of ₹ 40,000 paid to tax authorities has two components- One ₹ 24,000 (related to H Limited's shareholding and other ₹ 16,000 (40,000 x 40%) belong to non controlling interest (NCI) shareholders of S Limited). DDT of ₹ 16,000 (pertaining to non-controlling interest (NCI) shareholders) will be recorded in the Statement of Changes in Equity along with dividend. DDT of ₹ 24,000 paid outside the consolidated Group shall be charged as tax expense in the consolidated statement of profit and loss of H Ltd.

In accordance with the above, in the given case, CFS of H limited will be as under:

Transactions	H Ltd.	S Ltd.	Consol Adjustments	CFS H Ltd
Dividend Income (P&L)	120,000	-	(120,000)	-
Dividend (in Statement of Changes in Equity by way of reduction of NCI)	-	(200,000)	120,000	(80,000)
DDT (in Statement of Changes in Equity by way of reduction of NCI)	-	(40,000)	24,000	(16,000)
DDT (in Statement of P&L)	-	-	(24,000)	(24,000)

Scenario 2 (A): If DDT paid by the subsidiary S Ltd. is allowed as a set off against the DDT liability of its parent H Ltd. (as per the tax laws), then the amount of such DDT should be recognised in the consolidated statement of changes in equity of parent H Ltd.

In the given case, share of H Limited in DDT paid by S Limited is ₹ 24,000 and entire ₹ 24,000 was utilised by H Limited while paying dividend to its own shareholders.

Accordingly, DDT of ₹ 76,000 (₹ 40,000 of DDT paid by S Ltd. (of which ₹16,000 is attributable to NCI) and ₹ 36,000 of DDT paid by H Ltd.) should be recognised in the consolidated statement of changes in equity of parent H Ltd. No amount will be charged

to consolidated statement of profit and loss. The basis for such accounting would be that due to Parent H Ltd's transaction of distributing dividend to its shareholders (a transaction recorded in Parent H Ltd's equity) and the related DDT set-off, this DDT paid by the subsidiary is effectively a tax on distribution of dividend to the shareholders of the parent company.

In accordance with the above, in the given case, CFS of H limited will be as under:

Transactions	H Ltd	S Ltd	Consol Adjustments	CFS H Ltd
Dividend Income (P&L)	120,000	-	(120,000)	-
Dividend (in Statement of Changes in Equity)	(300,000)	(200,000)	120,000	(380,000)*
DDT (in Statement Changes in Equity)	(36,000)	(40,000)	-	(76,000)*

*Dividend of ₹ 80,000 and DDT of ₹ 16,000 will be reflected as reduction from non-controlling interest.

Scenario 2(B): In the given case, share of H Limited in DDT paid by S Limited is ₹ 24,000 out of which only ₹ 20,000 was utilised by H Limited while paying dividend by its own. Therefore, balance ₹ 4,000 should be charged in the consolidated statement of profit and loss.

In accordance with the above, in the given case, CFS of H limited will be as under:

Transactions	H Ltd	S Ltd	Consol Adjustments	CFS H Ltd
Dividend Income (P&L)	120,000	-	(120,000)	-
Dividend (in Statement of Changes in Equity)	(100,000)	(200,000)	120,000	(180,000)*
DDT (in Statement of Changes in Equity)	-	(40,000)	4,000	(36,000)*
DDT (in Statement of P&L)	-	-	(4000)	(4000)

*Dividend of ₹ 80,000 and DDT of ₹ 16,000 will be reflected as reduction from non-controlling interest.

Scenario (3): Considering that as per tax laws, DDT paid by associate is not allowed set off against the DDT liability of the investor, the investor's share of DDT would be accounted by the investor company by crediting its investment account in the associate

and recording a corresponding debit adjustment towards its share of profit or loss of the associate.

11. (i) Para 47 of Ind AS 21 requires that goodwill arose on business combination shall be expressed in the functional currency of the foreign operation and shall be translated at the closing rate in accordance with paragraphs 39 and 42. In this case the amount of goodwill will be as follows:

Net identifiable asset	Dr.	23 million	
Goodwill(bal. fig.)	Dr.	1.4 million	
To Bank			17.5 million
To NCI (23 x 30%)			6.9 million

Thus, goodwill on reporting date would be 1.4 million EURO x ₹ 84

= ₹ 117.6 million

(ii)

Particulars	EURO in million
Sale price of Inventory	4.20
Unrealised Profit [a]	1.80

Exchange rate as on date of purchase of Inventory [b] ₹ 83 / Euro

Unrealized profit to be eliminated [a x b] ₹ 149.40 million

As per para 39 of Ind AS 21 "income and expenses for each statement of profit and loss presented (ie including comparatives) shall be translated at exchange rates at the dates of the transactions".

In the given case, purchase of inventory is an expense item shown in the statement profit and loss account. Hence, the exchange rate on the date of purchase of inventory is taken for calculation of unrealized profit which is to be eliminated on the event of consolidation.

12. Paragraph 5 of Ind AS 115 scopes out revenue arising from lease agreements. Principles enunciated under Ind AS 17, Leases would be applicable for revenue arising from leasing agreements.

Recognition of income in respect of lease would depend on its classification as per Ind AS 17, Leases.

If the lease of land is an operating lease, then it will be accounted for as given below:

- Lessors shall present assets subject to operating leases in their balance sheet according to the nature of the asset.
- Lease income from operating leases shall be recognised in income on a straight-line basis over the lease term, unless either:

  (a) another systematic basis is more representative of the time pattern in which use benefit derived from the leased asset is diminished, even if the payments to the lessors are not on that basis; or

  (b) the payments to the lessor are structured to increase in line with expected general inflation to compensate for the lessor's expected inflationary cost increases. If payments to the lessor vary according to factors other than inflation, then this condition is not met.

The long lease term may be an indication that the lease is classified as a finance lease. **If it is a finance lease** then lessor Jeevan India Ltd. shall recognise assets held under a finance lease in their balance sheets and present them as a receivable at an amount equal to the net investment in the lease. The recognition of finance income shall be based on a pattern reflecting a constant periodic rate of return on the lessor's net investment in the finance lease.

Nominal lease rent collected every year will also be accounted every year on accrual basis.

13. (i) As per Ind AS 113, a fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use.

The highest and best use of a non-financial asset takes into account the use of the asset that is physically possible, legally permissible and financially feasible, as follows:

(a) A use that is physically possible takes into account the physical characteristics of the asset that market participants would take into account when pricing the asset (eg the location or size of a property).

(b) A use that is legally permissible takes into account any legal restrictions on the use of the asset that market participants would take into account when pricing the asset (eg the zoning regulations applicable to a property).

(c) A use that is financially feasible takes into account whether a use of the asset that is physically possible and legally permissible generates adequate income or cash flows (taking into account the costs of converting the asset to that use) to produce an investment return that market participants would require from an investment in that asset put to that use.

Highest and best use is determined from the perspective of market participants, even if the entity intends a different use. However, an entity's current use of a non-financial asset is presumed to be its highest and best use unless market or other factors suggest that a different use by market participants would maximise the value of the asset.

To protect its competitive position, or for other reasons, an entity may intend not to use an acquired non-financial asset actively or it may intend not to use the asset according to its highest and best use. Nevertheless, the entity shall measure the fair value of a non-financial asset assuming its highest and best use by market participants.

In the given case, the highest best possible use of the land is to develop a commercial complex. Although developing a business complex is against the business objective of the entity, it does not affect the basis of fair valuation as Ind AS 113 does not consider an entity specific restriction for measuring the fair value.

Also, its current use as a parking lot is not the highest best use as the land has the potential of being used for building a commercial complex.

Therefore, the fair value of the land is the price that would be received when sold to a market participant who is interested in developing a commercial complex.

(ii) As per Ind AS 113, unobservable inputs shall be used to measure fair value to the extent that relevant observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. The unobservable inputs shall reflect the assumptions that market participants would use when pricing the asset or liability, including assumptions about risk.

In the given case, DS Limited adopted discounted cash flow method, commonly used technique to value shares, to fair value the shares of the private company as there were no similar shares traded in the market. Hence, it falls under Level 3 of fair value hierarchy.

Level 2 inputs include the following:

(a) quoted prices for similar assets or liabilities in active markets.

(b) quoted prices for identical or similar assets or liabilities in markets that are not active.

(c) inputs other than quoted prices that are observable for the asset or liability.

If an entity can access quoted price in active markets for identical assets or liabilities of similar companies which can be used for fair valuation of the shares without any adjustment, at the measurement date, then it will be considered as observable input and would be considered as Level 2 inputs.

14. Computation of balance total equity as on 1st April, 20X1 after transition to Ind AS

			₹ in crore
Share capital- Equity share Capital			80
Other Equity			
General Reserve		40	
Capital Reserve		5	
Retained Earnings (95-5-40)	50		
Add: Increase in value of land (10-4.5)	5.5		
Add: De recognition of proposed dividend (0.6 + 0.18)	0.78		
Add: Increase in value of Investment	0.75	57.03	102.03
Balance total equity as on 1st April, 20X1 after transition to Ind AS			182.03

Reconciliation between Total Equity as per AS and Ind AS to be presented in the opening balance sheet as on 1st April, 20X1

		₹ in crore
Equity share capital		80
Redeemable Preference share capital		25
		105
Reserves and Surplus		95
Total Equity as per AS		200
Adjustment due to reclassification		
Preference share capital classified as financial liability		(25)
Adjustment due to derecognition		
Proposed Dividend not considered as liability as on 1st April 20X1		0.78
Adjustment due to remeasurement		
Increase in the value of Land due to remeasurement at fair value	5.5	
Increase in the value of investment due to remeasurement at fair value	0.75	6.25
Equity as on 1st April, 20X1 after transition to Ind AS		182.03

15. (a) As per para 18 of Ind AS 24, 'Related Party Disclosures', if an entity had related

party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements.

However, as per para 25 of the standard a reporting entity is exempt from the disclosure requirements in relation to related party transactions and outstanding balances, including commitments, with:

(i) a government that has control or joint control of, or significant influence over, the reporting entity; and

(ii) another entity that is a related party because the same government has control or joint control of, or significant influence over, both the reporting entity and the other entity

According to the above paras, for Entity P's financial statements, the exemption in paragraph 25 applies to:

(i) transactions with Government Uttar Pradesh State Government; and

(ii) transactions with Entities PQR and ABC and Entities Q, A and B.

Similar exemptions are available to Entities PQR, ABC, Q, A and B, with the transactions with UP State Government and other entities controlled directly or indirectly by UP State Government. However, that exemption does not apply to transactions with Mr. KM. Hence, the transactions with Mr. KM needs to be disclosed under related party transactions.

(b) It shall disclose the following about the transactions and related outstanding balances referred to in paragraph 25:

(a) the name of the government and the nature of its relationship with the reporting entity (ie control, joint control or significant influence);

(b) the following information in sufficient detail to enable users of the entity's financial statements to understand the effect of related party transactions on its financial statements:

(i) the nature and amount of each individually significant transaction; and

(ii) for other transactions that are collectively, but not individually, significant, a qualitative or quantitative indication of their extent.

16. Statement of Cash Flows

		₹ in lacs
Cash flows from Operating Activities		
Net Profit after Tax	4,450	

Add: Tax Paid	105	
	4,555	
Add: Depreciation & Amortisation (500 + 20)	520	
Less: Gain on Sale of Machine (70-60)	(10)	
Less: Increase in Deferred Tax Asset (855-750)	(105)	
	4,960	
Change in operating assets and liabilities		
Add: Decrease in financial asset (170 - 145)	25	
Less: Increase in other non-current asset (800 - 770)	(30)	
Less: Increase in other current asset (195 - 85)	(110)	
Less: Decrease in other non-current liabilities (3,615 – 2,740)	(875)	
Add: Increase in other current liabilities (300 - 200)	100	
Add: Increase in trade payables (150-90)	60	
	4,130	
Less: Income Tax	(105)	
Cash generated from Operating Activities		**4,025**
Cash flows from Investing Activities		
Sale of Machinery	70	
Purchase of Machinery [13,000-(12,500 – 500-60)]	(1,060)	
Purchase of Intangible Asset [50-(30-20)]	(40)	
Sale of Financial asset - Investment (2,500 – 2,300)	200	
Cash outflow from Investing Activities		**(830)**
Cash flows from Financing Activities		
Dividend Paid	(450)	
Long term borrowings paid (5,000 – 2,000)	(3,000)	
Cash outflow from Financing Activities		**(3,450)**
Net Cash outflow from all the activities		**(255)**
Opening cash and cash equivalents (460 – 60)		**400**
Closing cash and cash equivalents (220 – 75)		**145**

17. Calculation of the value in use of the machine owned by East Ltd. (East) includes the projected cash inflow (i.e. sales income) from the continued use of the machine and projected cash outflows that are necessarily incurred to generate those cash inflows (i.e cost of goods sold). Additionally, projected cash inflows include ₹ 80,000 from the disposal of the asset in March, 20X8. Cash outflows include routing capital expenditures of ₹ 50,000 in 20X5-X6

As per Ind AS 36, estimates of future cash flows shall not include:

- Cash inflows from receivables
- Cash outflows from payables
- Cash inflows or outflows expected to arise from future restructuring to which an entity is not yet committed
- Cash inflows or outflows expected to arise from improving or enhancing the asset's performance
- Cash inflows or outflows from financing activities
- Income tax receipts or payments.

Hence in this case, cash flows do not include financing interest (i.e. 10%), tax (i.e. 30%) and capital expenditures to which East has not yet committed (i.e. ₹ 100 000). They also do not include any savings in cash outflows from these capital expenditure, as required by Ind AS 36.

The cash flows (inflows and outflows) are presented below in nominal terms. They include an increase of 3% per annum to the forecast price per unit (B), in line with forecast inflation. The cash flows are discounted by applying a discount rate (8%) that is also adjusted for inflation.

Note: Figures are calculated on full scale and then rounded off to the nearest absolute value.

Year ended	20X3-X4	20X4-X5	20X5-20X6	20X6-X7	20X7-X8	Value in use
Quantity (A)	10,000	10,500	11,025	11,576	12,155	
Price per unit(B)	₹ 200	₹ 206	₹ 212	₹ 219	₹ 225	
Estimated cash inflows (C=A x B)	₹ 20,00,000	₹ 21,63,000	₹ 23,37,300	₹ 25,35,144	₹ 27,34,875	
Misc. cash inflow disposal proceeds (D)					₹ 80 000	
Total estimated cash inflows (E=C+D)	₹ 20,00,000	₹ 21,63,000	₹ 23,37,300	₹ 25,35,144	₹ 28,14,875	
Cost per unit (F)	₹ 160	₹ 162	₹ 165	₹ 168	₹ 171	

Estimated cash outflows (G = A x F)	(₹ 16,00,000)	(₹ 17,01,000)	(₹ 18,19,125)	(₹ 19,44,768)	(₹ 20,78,505)	
Misc. cash outflow: maintenance costs (H)			(₹ 50,000)			
Total estimated cash outflows (I=G+H)	(₹ 16,00,000)	(₹ 17,01,000)	(₹ 18,69,125)	(₹ 19,44,768)	(₹ 20,78,505)	
Net cash flows (J=E-I)	₹ 4,00,000	₹ 4,62,000	₹ 4,68,175	₹ 5,90,376	₹ 7,36,370	
Discount factor 8% (K)	0.9259	0.8573	0.7938	0.7350	0.6806	
Discounted future cash flows (L=J x K)	₹ 3,70,360	₹ 3,96,073	₹ 3,71,637	₹ 4,33,926	₹ 5,01,173	₹ 20,73,169

18. (a) For a provision to be recognized, Para 14 of Ind AS 37 requires that:

a) an entity has a present obligation (legal or constructive) as a result of a past event;

b) it is probable that an outflow of resources embodying economic benefits will required to settle the obligation, and

c) a reliable estimate can be made of the amount of the obligation.

Here, the manufacturer has a present legal obligation. The obligation event is the sale of the product with a warranty.

Ind AS 37 outlines that the future sacrifice of economic benefits is probable when it is more likely than less likely that the future sacrifice of economic benefits will required. The probability that settlement will be required will be determined by considering the class of obligation (warranties) as a whole. In accordance with para 24 of Ind AS 37, it is more likely than less likely that a future sacrifice of economic benefits will be required to settle the class of obligations as a whole.

If a reliable estimate can be made the provision can be measured reliably. Past data can provide reliable measures, even if the data is not firm specific but rather industry based. Ind AS 37 notes that only in extremely rare cases, a reliable measure of a provision cannot be obtained. Difficulty in estimating the amount of a

provision under conditions of significant uncertainty does not justify non-recognition of the provision.

Here, the manufacturer should recognize a provision based on the best estimate of the consideration required to settle the present obligation as at the reporting date.

(b) The expected value of cost of repairs in accordance with Ind AS 37 is:

(80% x nil) + (15% x ₹ 20,00,000) + (5% x ₹ 50,00,000) = 3,00,000 + 2,50,000

= 5,50,000

19. Calculation of Deductible temporary differences:

Deferred tax asset	=	₹ 80,000
Existing tax rate	=	40%
Deductible temporary differences	=	80,000/40%
		= ₹ 2,00,000

Calculation of Taxable temporary differences:

Deferred tax liability	=	₹ 60,000
Existing tax rate	=	40%
Deductible temporary differences	=	60,000 / 40%
		= ₹ 1,50,000

Of the total deferred tax asset balance of ₹ 80,000, ₹ 28,000 is recognized in OCI

Hence, Deferred tax asset balance of Profit & Loss is ₹ 80,000 - ₹ 28,000 = ₹ 52,000

Deductible temporary difference recognized in Profit & Loss is ₹ 1,30,000 (52,000 / 40%)

Deductible temporary difference recognized in OCI is ₹ 70,000 (28,000 / 40%)

The adjusted balances of the deferred tax accounts under the new tax rate are:

Deferred tax asset		₹
Previously credited to OCI-equity	₹ 70,000 x 0.45	31,500
Previously recognised as Income	₹ 1,30,000 x 0.45	58,500
		90,000
Deferred tax liability		
Previously recognized as expense	₹ 1,50,000 x 0.45	67,500

The net adjustment to deferred tax expense is a reduction of ₹ 2,500. Of this amount, ₹ 3,500 is recognised in OCI and ₹ 1,000 is charged to P&L.

The amounts are calculated as follows:

	Carrying amount at 45%	Carrying amount at 40%	Increase (decrease) in deferred tax expense
Deferred tax assets			
Previously credited to OCI-equity	31,500	28,000	(3,500)
Previously recognised as Income	58,500	52,000	(6,500)
	90,000	80,000	(10,000)
Deferred tax liability			
Previously recognized as expense	67,500	60,000	7,500
Net adjustment			(2,500)

An alternative method of calculation is:		₹
DTA shown in OCI	₹ 70,000 x (0.45 - 0.40)	3,500
DTA shown in Profit or Loss	₹ 1,30,000 x (0.45-0.40)	6,500
DTL shown in Profit or Loss	₹ 1,50,000 x (0.45 -0.40)	7,500

Journal Entries

	₹	₹
Deferred tax asset	3,500	
OCI –revaluation surplus		3,500
Deferred tax asset	6,500	
Deferred tax expense		6,500
Deferred tax expense	7,500	
Deferred tax liability		7,500

Alternatively, a combined journal entry may be passed as follows:

		₹	₹
Deferred tax asset	Dr.	10,000	
Deferred tax expense	Dr.	1,000	
To OCI –revaluation surplus			3,500
To Deferred tax liability			7,500

20. (i) As an only exception to the principle of classification or designation of assets as they exist at the acquisition date is that for lease contract and insurance contracts classification which will be based on the basis of the conditions existing at inception and not on acquisition date.

Therefore, H Ltd. would be required to retain the original lease classification of the lease arrangements and thereby recognise the lease arrangements as finance lease.

(ii) The requirements in Ind AS 37 'Provisions, Contingent Liabilities and Contingent Assets', do not apply in determining which contingent liabilities to recognise as of the acquisition date as per Ind AS 103 'Business Combination'. Instead, the acquirer shall recognise as of the acquisition date a contingent liability assumed in a business combination if it is a present obligation that arises from past events and its fair value can be measured reliably. Therefore, contrary to Ind AS 37, the acquirer recognises a contingent liability assumed in a business combination at the acquisition date even if it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation. Hence H Ltd. will recognize contingent liability of ₹ 2.5 cr.

Since S Ltd. has indemnified for ₹ 1 cr., H Ltd. shall recognise an indemnification asset at the same time for ₹ 1 cr.

As per the information given in the question, this indemnified asset is not taxable. Hence, its tax base will be equal to its carrying amount. No deferred tax will arise on it.

(iii) As per Ind AS 103, non-current assets held for sale should be measured at fair value less cost to sell in accordance with Ind AS 105 'Non-current Assets Held for Sale and Discontinued Operations'. Therefore, its carrying value as per balance sheet has been considered in the calculation of net assets.

(iv) Any equity interest in S Ltd. held by H Ltd. immediately before obtaining control over S Ltd. is adjusted to acquisition-date fair value. Any resulting gain or loss is recognised in the profit or loss of H Ltd.

Calculation of purchase consideration as per Ind AS 103 ₹ in lakh

Investment in S Ltd.			
On 1st Nov. 20X6	15%	[(12/100) x 395 x 15%]	7.11
On 1st Jan. 20X7	45%		
Own equity given		10,000 x 12% x 45% x 1/2	270
Cash			50
Contingent consideration			22
			349.11

(v) Calculation of deferred tax on assets and liabilities acquired as part of the business combination, including current tax and goodwill.

Item	₹ in crore				
	Book value	Fair value	Tax base	Taxable (deductible) temporary difference	Deferred tax assets (liability) @ 30%
Property, plant and equipment	40	90	40	50	(15)

Intangible assets	20	30	20	10	(3)
Investments	100	350	100	250	(75)
Inventories	20	20	20	-	-
Trade receivables	20	20	20	-	-
Cash held in functional currency	4	4	4	-	-
Non-current asset held for sale	4	4	4	-	-
Indemnified asset	-	1	1	-	-
Borrowings	20	20	20	-	-
Trade payables	28	28	28	-	-
Provision for warranties	3	3	3	-	-
Current tax liabilities	4	4	4	-	-
Contingent liability		0.5	-	(0.5)	0.15
Deferred tax Liability					(92.85)

(vi) Calculation of identifiable net assets acquired

	₹ in crore	₹ in crore
Property, plant and equipment	90	
Intangible assets	30	
Investments	350	
Inventories	20	
Trade receivables	20	
Cash held in functional currency	4	
Non-current asset held for sale	4	
Indemnified asset	1	
Total asset		519
Less: Borrowings	20	
Trade payables	28	
Provision for warranties	3	
Current tax liabilities	4	
Contingent liability (2 + 0.5)	2.50	
Deferred tax liability (W.N.2)	92.85	(150.35)
Net identifiable assets		368.65

(a) Calculation of NCI by proportionate share of net assets

Net identifiable assets of S Ltd. on 1.1.20X7 (Refer W.N.3) = 372.85 crore

NCI on 1.1.20X7 = 368.65 crore x 40% = 147.46 crore

Calculation of Goodwill as per Ind AS 103

Goodwill on 1.1.20X7 = Purchase consideration + NCI – Net assets

= 349.11 + 147.46 – 368.65

= 127.92 crore

(b) As per para 45 of Ind AS 103 'Business Combination', if the initial accounting for a business combination is incomplete by the end of the reporting period in which the combination occurs, the acquirer shall report in its financial statements provisional amounts for the items for which the accounting is incomplete.

During the measurement period, the acquirer shall retrospectively adjust the provisional amounts recognised at the acquisition date to reflect new information obtained about facts and circumstances that existed as of the acquisition date and, if known, would have affected the measurement of the amounts recognised as of that date.

During the measurement period, the acquirer shall also recognise additional assets or liabilities if new information is obtained about facts and circumstances that existed as of the acquisition date and, if known, would have resulted in the recognition of those assets and liabilities as of that date.

The measurement period ends as soon as the acquirer receives the information it was seeking about facts and circumstances that existed as of the acquisition date or learns that more information is not obtainable. However, the measurement period shall not exceed one year from the acquisition date.

Further, as per para 46 of Ind AS 103, the measurement period is the period after the acquisition date during which the acquirer may adjust the provisional amounts recognised for a business combination. The measurement period provides the acquirer with a reasonable time to obtain the information necessary to identify and measure the following as of the acquisition date in accordance with the requirements of this Ind AS:

(a) the identifiable assets acquired, liabilities assumed and any non-controlling interest in the acquiree;

(b) …..

(c) ……; and

(d) the resulting goodwill or gain on a bargain purchase.

Para 48 states that the acquirer recognises an increase (decrease) in the provisional amount recognised for an identifiable asset (liability) by means of a decrease (increase) in goodwill.

Para 49 states that during the measurement period, the acquirer shall recognise adjustments to the provisional amounts as if the accounting for the business combination had been completed at the acquisition date.

Para 50 states that after the measurement period ends, the acquirer shall revise the accounting for a business combination only to correct an error in accordance with Ind AS 8 'Accounting Policies, Changes in Accounting Estimates and Errors'.

On 31st December, 20X7, H Ltd. has established that it has obtained all the information necessary for the accounting of the business combination and the more information is not obtainable. Therefore, the measurement period for acquisition of S Ltd. ends on 31st December, 20X7.

On 31st May, 20X7 (ie within the measurement period), H Ltd. learned that certain customer relationships existing as on 1st January, 20X7 which met the recognition criteria of an intangible asset as on that date were not considered during the accounting of business combination for the year ended 31st March, 20X7. Therefore, H Ltd. shall account for the acquisition date fair value of customer relations existing on 1st January, 20X7 as an identifiable intangible asset. The corresponding adjustment shall be made in the amount of goodwill.

Accordingly, the amount of goodwill will be changed due to identification of new asset from retrospective date for changes in fair value of assets and liabilities earlier recognised on provisional amount (subject to meeting the condition above for measurement period). NCI changes would impact the consolidated retained earnings (parent's share). Also NCI will be increased or decreased based on the profit during the post-acquisition period.

Journal entry

Customer relationship	Dr.	3.5 crore	
To NCI			1.4 crore
To Goodwill			2.1 crore

However, the increase in the value of customer relations after the acquisition date shall not be accounted by H Ltd., as the customer relations developed after 1st January, 20X7 represents internally generated intangible assets which are not eligible for recognition on the balance sheet.

(c) Since the contingent considerations payable by H Ltd is not classified as equity and is within the scope of Ind AS 109 'Financial Instruments', the changes in the fair value shall be recognised in profit or loss. Change in Fair value of contingent consideration (23-22) ₹ 1 crore will be recognized in the Statement of Profit and Loss.

PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

QUESTIONS

Security Valuation

1. A hypothetical company ABC Ltd. issued a 10% Debenture (Face Value of ₹ 1000) of the duration of 10 years is currently trading at ₹ 850 per debenture. The bond is convertible into 50 equity shares being currently quoted at ₹ 17 per share.

   If yield on equivalent comparable bond is 11.80%, then calculate the spread of yield of the above bond from this comparable bond.

   The relevant present value table is as follows.

Present Values	t_1	t_2	t_3	t_4	t_5	t_6	t_7	t_8	t_9	t_{10}
$PVIF_{0.11, t}$	0.901	0.812	0.731	0.659	0.593	0.535	0.482	0.434	0.391	0.352
$PVIF_{0.13\ t}$	0.885	0.783	0.693	0.613	0.543	0.480	0.425	0.376	0.333	0.295

2. Mr. A is thinking of buying shares at ₹ 500 each having face value of ₹ 100. He is expecting a bonus at the ratio of 1:5 during the fourth year. Annual expected dividend is 20% and the same rate is expected to be maintained on the expanded capital base. He intends to sell the shares at the end of seventh year at an expected price of ₹ 900 each. Incidental expenses for purchase and sale of shares are estimated to be 5% of the market price. He expects a minimum return of 12% per annum.

   Should Mr. A buy the share? If so, what maximum price should he pay for each share? Assume no tax on dividend income and capital gain.

Portfolio Management

3. Consider the following information on two stocks, A and B:

Year	Return on A (%)	Return on B (%)
2016	10	12
2017	16	18

   You are required to determine:

   (i) The expected return on a portfolio containing A and B in the proportion of 40% and 60% respectively.

   (ii) The Standard Deviation of return from each of the two stocks.

   (iii) The covariance of returns from the two stocks.

   (iv) Correlation coefficient between the returns of the two stocks.

(v) The risk of a portfolio containing A and B in the proportion of 40% and 60%.

4. A company has a choice of investments between several different equity oriented mutual funds. The company has an amount of ₹1 crore to invest. The details of the mutual funds are as follows:

Mutual Fund	Beta
A	1.6
B	1.0
C	0.9
D	2.0
E	0.6

Required:

(i) If the company invests 20% of its investment in each of the first two mutual funds and an equal amount in the mutual funds C, D and E, what is the beta of the portfolio?

(ii) If the company invests 15% of its investment in C, 15% in A, 10% in E and the balance in equal amount in the other two mutual funds, what is the beta of the portfolio?

(iii) If the expected return of market portfolio is 12% at a beta factor of 1.0, what will be the portfolios expected return in both the situations given above?

Mutual Fund

5. On 1st April 2009 Fair Return Mutual Fund has the following assets and prices at 4.00 p.m.

Shares	No. of Shares	Market Price Per Share (₹)
A Ltd.	10000	19.70
B Ltd.	50000	482.60
C Ltd.	10000	264.40
D Ltd.	100000	674.90
E Ltd.	30000	25.90
No. of units of funds		8, 00,000

Please calculate:

(a) NAV of the Fund on 1st April 2009.

(b) Assuming that on 1st April 2009, Mr. X, a HNI, send a cheque of ₹ 50,00,000 to the Fund and Fund Manager immediately purchases 18000 shares of C Ltd. and balance is held in bank. Then what will be position of fund.

(c) Now suppose on 2 April 2009 at 4.00 p.m. the market price of shares is as follows:

Shares	₹
A Ltd.	20.30
B Ltd.	513.70
C Ltd.	290.80
D Ltd.	671.90
E Ltd.	44.20

Then what will be new NAV.

Derivatives

6. Sensex futures are traded at a multiple of 50. Consider the following quotations of Sensex futures in the 10 trading days during February, 2009:

Day	High	Low	Closing
4-2-09	3306.4	3290.00	3296.50
5-2-09	3298.00	3262.50	3294.40
6-2-09	3256.20	3227.00	3230.40
7-2-09	3233.00	3201.50	3212.30
10-2-09	3281.50	3256.00	3267.50
11-2-09	3283.50	3260.00	3263.80
12-2-09	3315.00	3286.30	3292.00
14-2-09	3315.00	3257.10	3309.30
17-2-09	3278.00	3249.50	3257.80
18-2-09	3118.00	3091.40	3102.60

Abhishek bought one sensex futures contract on February, 04. The average daily absolute change in the value of contract is ₹ 10,000 and standard deviation of these changes is ₹ 2,000. The maintenance margin is 75% of initial margin.

You are required to determine the daily balances in the margin account and payment on margin calls, if any.

7. Consider a two-year call option with a strike price of ₹ 50 on a stock the current price of which is also ₹ 50. Assume that there are two-time periods of one year and in each year the stock price can move up or down by equal percentage of 20%. The risk-free interest rate is 6%. Using binominal option model, calculate the probability of price moving up and down. Also draw a two-step binomial tree showing prices and payoffs at each node.

Foreign Exchange Exposure and Risk Management

8. Excel Exporters are holding an Export bill in United States Dollar (USD) 1,00,000 due 60 days hence. They are worried about the falling USD value which is currently at ₹ 45.60 per USD. The concerned Export Consignment has been priced on an Exchange rate of ₹ 45.50 per USD. The Firm's Bankers have quoted a 60-day forward rate of ₹ 45.20.

   Calculate:

   (i) Rate of discount quoted by the Bank

   (ii) The probable loss of operating profit if the forward sale is agreed to.

9. An Indian importer has to settle an import bill for $ 1, 30,000. The exporter has given the Indian exporter two options:

   (i) Pay immediately without any interest charges.

   (ii) Pay after three months with interest at 5 percent per annum.

   The importer's bank charges 15 percent per annum on overdrafts. The exchange rates in the market are as follows:

   Spot rate (₹ /$): 48.35 /48.36

   3-Months forward rate (₹/$): 48.81 /48.83

   The importer seeks your advice. Give your advice.

International Financial Management

10. ABC Ltd. is considering a project in US, which will involve an initial investment of US $ 1,10,00,000. The project will have 5 years of life. Current spot exchange rate is ₹ 48 per US $. The risk free rate in US is 8% and the same in India is 12%. Cash inflow from the project is as follows:

Year	Cash inflow
1	US $ 20,00,000
2	US $ 25,00,000
3	US $ 30,00,000
4	US $ 40,00,000
5	US $ 50,00,000

Calculate the NPV of the project using foreign currency approach. Required rate of return on this project is 14%.

Interest Rate Risk Management

11. Two companies ABC Ltd. and XYZ Ltd. approach the DEF Bank for FRA (Forward Rate Agreement). They want to borrow a sum of ₹ 100crores after 2 years for a period of 1 year. Bank has calculated Yield Curve of both companies as follows:

Year	XYZ Ltd.	ABC Ltd.*
1	3.86	4.12
2	4.20	5.48
3	4.48	5.78

*The difference in yield curve is due to the lower credit rating of ABC Ltd. compared to XYZ Ltd.

(i) You are required to calculate the rate of interest DEF Bank would quote under 2V3 FRA, using the company's yield information as quoted above.

(ii) Suppose bank offers Interest Rate Guarantee for a premium of 0.1% of the amount of loan, you are required to calculate the interest payable by XYZ Ltd. if interest rate in 2 years turns out to be

(a) 4.50%

(b) 5.50%

Corporate Valuation

12. A valuation done of an established company by a well-known analyst has estimated a value of ₹ 500 lakhs, based on the expected free cash flow for next year of ₹ 20 lakhs and an expected growth rate of 5%.

While going through the valuation procedure, you found that the analyst has made the mistake of using the book values of debt and equity in his calculation. While you do not know the book value weights he used, you have been provided with the following information:

(i) Company has a cost of equity of 12%,

(ii) After tax cost of debt is 6%,

(iii) The market value of equity is three times the book value of equity, while the market value of debt is equal to the book value of debt.

You are required to estimate the correct value of the company.

Mergers, Acquisitions and Corporate Restructuring

13. Following information is provided relating to the acquiring company Mani Ltd. and the target company Ratnam Ltd:

	Mani Ltd.	Ratnam Ltd.
Earnings after tax (₹ lakhs)	2,000	4,000
No. of shares outstanding (lakhs)	200	1,000
P/E ratio (No. of times)	10	5

Required:

(i) What is the swap ratio based on current market prices?

(ii) What is the EPS of Mani Ltd. after the acquisition?

(iii) What is the expected market price per share of Mani Ltd. after the acquisition, assuming its P/E ratio is adversely affected by 10%?

(iv) Determine the market value of the merged Co.

(v) Calculate gain/loss for the shareholders of the two independent entities, due to the merger.

Theoretical Questions

14. (a) Briefly explain the concept of Exchange Traded Fund.

(b) Briefly discuss the concept of Purchasing Power Parity.

(c) Explain the reasons of Reverse Stock Split.

15. (a) Explain the benefits of Securitization from the point of view of originator.

(b) Explain briefly the parameters to identify the currency risk.

(c) Compare and contrast start-ups and entrepreneurship. Describe the priorities and challenges which start-ups in India are facing.

SUGGESTED ANSWERS/HINTS

1. Conversion Price = ₹ 50 x 17 = ₹ 850

Intrinsic Value = ₹ 850

Accordingly the yield (r) on the bond shall be:

₹ 850 = ₹ 100 PVAF (r, 10) + ₹ 1000 PVF (r, 10)

Let us discount the cash flows by 11%

850 = 100 PVAF (11%, 10) + 1000 PVF (11%, 10)

850 = 100 x 5.890 + 1000 x 0.352

= 91

Now let us discount the cash flows by 13%

850 = 100 PVAF (13%, 10) + 1000 PVF (13%, 10)

850 = 100 x 5.426 + 1000 x 0.295

= -12.40

Accordingly, IRR

$$11\% + \frac{90.90}{90.90 - (-12.40)} \times (13\% - 11\%)$$

$$11\% + \frac{90.90}{103.30} \times (13\% - 11\%)$$

= 12.76%

The spread from comparable bond = 12.76% - 11.80% = 0.96%

2. P.V. of dividend stream and sales proceeds

Year	Dividend/Sale	PVF (12%)	PV (₹)
1	₹ 20/-	0.893	17.86
2	₹ 20/-	0.797	15.94
3	₹ 20/-	0.712	14.24
4	₹ 24/-	0.636	15.26
5	₹ 24/	0.567	13.61
6	₹ 24/	0.507	12.17
7	₹ 24/	0.452	10.85
7	₹ 1026/- (₹ 900 x 1.2 x 0.95)	0.452	463.75
			₹ 563.68
	Less: Cost of Share (₹ 500 x 1.05)		₹ 525.00
	Net gain		₹ 38.68

Since Mr. A is gaining ₹ 38.68 per share, he should buy the share.

Maximum price Mr. A should be ready to pay is ₹ 563.68 which will include incidental expenses. So the maximum price should be ₹ 563.68 x 100/105 = ₹ 536.84

3. (i) Expected return of the portfolio A and B

E (A) = (10 + 16) / 2 = 13%

E (B) = (12 + 18) / 2 = 15%

$$Rp = \sum_{i-I}^{N} X_i R_i = 0.4(13) + 0.6(15) = 14.2\%$$

(ii) Stock A:

Variance = 0.5 (10 – 13)² + 0.5 (16 – 13) ² = 9

Standard deviation = = 3%

Stock B:

Variance = 0.5 (12 – 15) ² + 0.5 (18 – 15) ² = 9

Standard deviation = 3%

(iii) Covariance of stocks A and B

CovAB = 0.5 (10 – 13) (12 – 15) + 0.5 (16 – 13) (18 – 15) = 9

(iv) Correlation of coefficient

$$rAB = \frac{Cov_{AB}}{\sigma_A \sigma_B} = \frac{9}{3 \times 3} = 1$$

(v) Portfolio Risk

$$\sigma_P = \sqrt{X^2{}_A \sigma^2{}_A + X^2{}_B \sigma^2{}_B + 2X_A X_B (\sigma_A \sigma_B \sigma_{AB})}$$

$$= \sqrt{(0.4)^2(3)^2 + (0.6)^2(3)^2 + 2(0.4)(0.6)(3)(3)(1)}$$

$$= \sqrt{1.44 + 3.24 + 4.32}$$

= 3%

4. With 20% investment in each MF Portfolio Beta is the weighted average of the Betas of various securities calculated as below:

(i)

Investment	Beta (β)	Investment (₹ Lacs)	Weighted Investment
A	1.6	20	32
B	1.0	20	20
C	0.9	20	18
D	2.0	20	40
E	0.6	20	12
		100	122
	Weighted Beta (β) = 1.22		

(ii) With varied percentages of investments portfolio beta is calculated as follows:

Investment	Beta (β)	Investment (₹ Lacs)	Weighted Investment
A	1.6	15	24
B	1.0	30	30
C	0.9	15	13.5
D	2.0	30	60
E	0.6	10	6
		100	133.5
	Weighted Beta (β) = 1.335		

(iii) Expected return of the portfolio with pattern of investment as in case (i)

= 12% × 1.22 i.e. 14.64%

Expected Return with pattern of investment as in case (ii) = 12% × 1.335 i.e., 16.02%.

5. (a) NAV of the Fund.

$$\frac{₹\,1,97,000 + ₹\,2,41,30,000 + ₹\,26,44,000 + ₹\,6,74,90,000 + ₹\,7,77,000}{800000}$$

$$\frac{₹\,9,52,38,000}{800000} = ₹\,119.0475 \text{ rounded to } ₹\,119.05$$

(b) The revised position of fund shall be as follows:

Shares	No. of shares	Price	Amount (₹)
A Ltd.	10000	19.70	1,97,000
B Ltd.	50000	482.60	2,41,30,000
C Ltd.	28000	264.40	74,03,200
D Ltd.	100000	674.90	674,90,000
E Ltd.	30000	25.90	7,77,000
Cash			2,40,800
			10,02,38,000

$$\text{No. of units of fund} = 800000 + \frac{5000000}{119.0475} = 8,42,000$$

(c) On 2nd April 2009, the NAV of fund will be as follows:

Shares	No. of shares	Price	Amount (₹)
A Ltd.	10000	20.30	2,03,000

B Ltd.	50000	513.70	2,56,85,000
C Ltd.	28000	290.80	81,42,400
D Ltd.	100000	671.90	6,71,90,000
E Ltd.	30000	44.20	13,26,000
Cash			2,40,800
			10,27,87,200

NAV as on 2nd April 2009 = $\frac{₹\,10,27,87,200}{842000}$ = ₹ 122.075 per unit

6. Initial Margin = $\mu + 3\sigma$

Where μ = Daily Absolute Change

σ = Standard Deviation

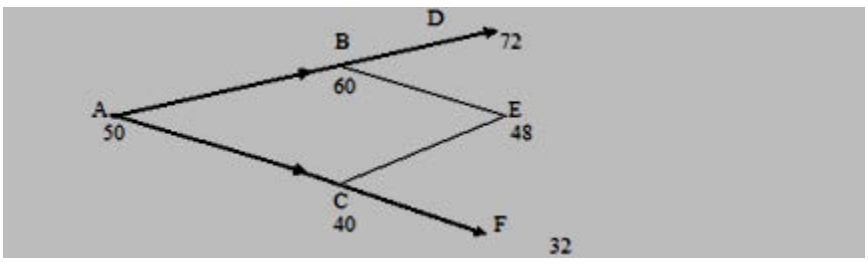
Accordingly;

Initial Margin = ₹ 10,000 + ₹ 6,000 = ₹ 16,000

Maintenance margin = ₹ 16,000 x 0.75 = ₹ 12,000

Day	Changes in future Values (₹)	Margin A/c (₹)	Call Money (₹)
4/2/09	-	16000	-
5/2/09	50 x (3294.40 - 3296.50) = -105	15895	-
6/2/09	50 x (3230.40 - 3294.40) = -3200	12695	-
7/2/09	50 x (3212.30 - 3230.40) = -905	16000	4210
10/2/09	50 x (3267.50 - 3212.30) = 2760	18760	-
11/2/09	50 x (3263.80 - 3267.50) = -185	18575	-
12/2/09	50 x (3292 - 3263.80) =1410	19985	-
14/2/09	50 x (3309.30 - 3292) =865	20850	-
17/2/09	50 x (3257.80 - 3309.30) = -2575	18275	-
18/2/09	50 x (3102.60 - 3257.80) = -7760	16000	5485

7. Stock prices in the two step Binominal tree

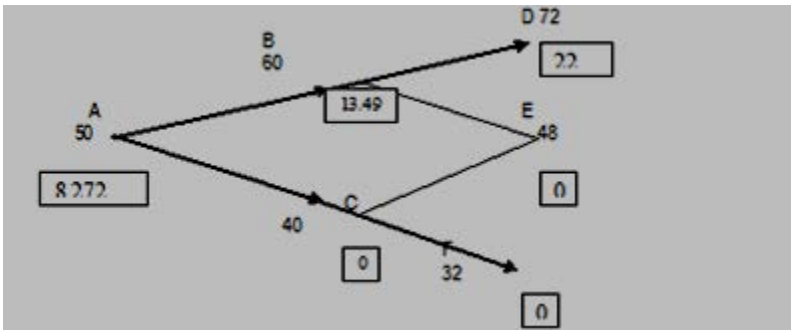


Using the single period model, the probability of price increase is

$$P = \frac{R-d}{u-d} = \frac{1.06-0.80}{1.20-0.80} = \frac{0.26}{0.40} = 0.65$$

Therefore the p of price decrease = 1-0.65 = 0.35

The two step Binominal tree showing price and pay off



The value of an American call option at nodes D, E and F will be equal to the value of European option at these nodes and accordingly the call values at nodes D, E and F will be 22, 0 and 0 using the single period binomial model the value of call option at node B is

$$C = \frac{Cup+Cd(1-p)}{R} = \frac{22\times 0.65+0\times 0.35}{1.06} = 13.49$$

The value of option at node 'A' is

$$\frac{13.49\times 0.65+0\times 0.35}{1.06} = 8.272$$

8. **(i)** Rate of discount quoted by the bank

$$= \frac{(45.20-45.60)\times 365\times 100}{45.60\times 60} = 5.33\%$$

(ii) Probable loss of operating profit:

$(45.20 - 45.50) \times 1,00,000 = ₹\ 30,000$

9. If importer pays now, he will have to buy US$ in Spot Market by availing overdraft facility. Accordingly, the outflow under this option will be

	₹
Amount required to purchase $1,30,000 [$1,30,000X₹48.36]	62,86,800
Add: Overdraft Interest for 3 months @15% p.a.	2,35,755
	65,22,555

If importer makes payment after 3 months then, he will have to pay interest for 3 months @ 5% p.a. for 3 month along with the sum of import bill. Accordingly, he will have to buy $ in forward market. The outflow under this option will be as follows:

	$
Amount of Bill	1,30,000
Add: Interest for 3 months @5% p.a.	1,625
	1,31,625

Amount to be paid in Indian Rupee after 3 month under the forward purchase contract

₹ 64,27,249 (US$ 1,31,625 X ₹ 48.83)

Since outflow of cash is least in (ii) option, it should be opted for.

10. (1 + 0.12) (1 + Risk Premium) = (1 + 0.14)

Or, 1 + Risk Premium = 1.14/1.12 = 1.0179

Therefore, Risk adjusted dollar rate is = 1.0179 x 1.08 = 1.099 – 1 = 0.099

Calculation of NPV

Year	Cash flow (Million) US$	PV Factor at 9.9%	P.V.
1	2.00	0.910	1.820
2	2.50	0.828	2.070
3	3.00	0.753	2.259
4	4.00	0.686	2.744
5	5.00	0.624	3.120
			12.013
		Less: Investment	11.000
		NPV	1.013

Therefore, Rupee NPV of the project is = ₹ (48 x 1.013) Million

= ₹48.624 Million

11. (i) DEF Bank will fix interest rate for 2V3 FRA after 2 years as follows:

XYZ Ltd.

$(1+r)\ (1+0.0420)^2 = (1+0.0448)^3$

$(1+r)\ (1.0420)^2 = (1.0448)^3$

$r = 5.04\%$

Bank will quote 5.04% for a 2V3 FRA.

ABC Ltd.

$(1+r)\ (1+0.0548)^2 = (1+0.0578)^3$

$(1+r)\ (1.0548)^2 = (1.0578)^3$

$r = 6.38\%$

Bank will quote 6.38% for a 2V3 FRA.

(ii)

		4.50% - Allow to Lapse	5.50%-Exercise
Interest	₹ 100 crores X 4.50%	₹ 4.50 crores	-
	₹ 100 crores X 5.04%	-	₹ 5.04 crores
Premium (Cost of Option)	₹ 100 crores X 0.1%	₹ 0.10 crores	₹ 0.10 crores
		4.60 crores	5.14 crores

12. Cost of capital by applying Free Cash Flow to Firm (FCFF) Model is as follows:-

Value of Firm = $V_0 = \frac{FCFF_1}{K_c - g_n}$

Where –

$FCFF_1$ = Expected FCFF in the year 1

K_c= Cost of capital

g_n = Growth rate forever

Thus, ₹ 500 lakhs = ₹ 20 lakhs /(K_c-g)

Since g = 5%, then K_c = 9%

Now, let X be the weight of debt and given cost of equity = 12% and cost of debt = 6%, then 12% (1 – X) + 6% X = 9%

Hence, X = 0.50, so book value weight for debt was 50%

∴ Correct weight should be 150% of equity and 50% of debt.

∴ Cost of capital = K_c = 12% (0.75) + 6% (0.25) = 10.50%

and correct firm's value = ₹ 20 lakhs/(0.105 – 0.05) = ₹ 363.64 lakhs.

13. (i) SWAP ratio based on current market prices:

EPS before acquisition:

Mani Ltd. : ₹2,000 lakhs / 200 lakhs:	₹10
Ratnam Ltd.: ₹4,000 lakhs / 1,000 lakhs:	₹ 4

Market price before acquisition:

Mani Ltd.: ₹10 × 10	₹100
Ratnam Ltd.: ₹4 × 5	₹ 20
SWAP ratio: 20/100 or 1/5 i.e.	0.20

(ii) EPS after acquisition:

$$\frac{₹(2,000+4,000)\ \text{Lakhs}}{(200+200)\ \text{Lakhs}} = ₹15.00$$

(iii) Market Price after acquisition:

EPS after acquisition :	₹15.00
P/E ratio after acquisition 10 × 0.9	9
Market price of share (₹ 15 X 9)	₹135.00

(iv) Market value of the merged Co.:

₹135 × 400 lakhs shares ₹ 540.00 Crores

or ₹ 54,000 Lakhs

(v) Gain/loss per share:

	Mani Ltd. (₹ Crore)	Ratnam Ltd. (₹ Crore)
Total value before Acquisition	200	200
Value after acquisition	270	270
Gain (Total)	70	70
No. of shares (pre-merger) (lakhs)	200	1,000
Gain per share (₹)	35	7

14. (a) Exchange Traded Funds (ETFs) were introduced in US in 1993 and came to India around 2002. ETF is a hybrid product that combines the features of an index mutual fund and stock and hence, is also called index shares. These funds are listed on the stock exchanges and their prices are linked to the underlying index. The authorized participants act as market makers for ETFs.

ETF can be bought and sold like any other stock on stock exchange. In other words, they can be bought or sold any time during the market hours at prices that are expected to be closer to the NAV at the end of the day. NAV of an ETF is the value

of the underlying component of the benchmark index held by the ETF plus all accrued dividends less accrued management fees.

There is no paper work involved for investing in an ETF. These can be bought like any other stock by just placing an order with a broker.

Some other important features of ETF are as follows:

1. It gives an investor the benefit of investing in a commodity without physically purchasing the commodity like gold, silver, sugar etc.
2. It is launched by an asset management company or other entity.
3. The investor does not need to physically store the commodity or bear the costs of upkeep which is part of the administrative costs of the fund.
4. An ETF combines the valuation feature of a mutual fund or unit investment trust, which can be bought or sold at the end of each trading day for its net asset value, with the tradability feature of a closed-end fund, which trades throughout the trading day at prices that may be more or less than its net asset value.

(b) Purchasing Power Parity (PPP): Purchasing Power Parity theory focuses on the 'inflation – exchange rate' relationship. There are two forms of PPP theory:-

The ABSOLUTE FORM, also called the 'Law of One Price' suggests that "prices of similar products of two different countries should be equal when measured in a common currency". If a discrepancy in prices as measured by a common currency exists, the demand should shift so that these prices should converge.

The RELATIVE FORM is an alternative version that accounts for the possibility of market imperfections such as transportation costs, tariffs, and quotas. It suggests that 'because of these market imperfections, prices of similar products of different countries will not necessarily be the same when measured in a common currency.' However, it states that the rate of change in the prices of products should be somewhat similar when measured in a common currency, as long as the transportation costs and trade barriers are unchanged.

The formula for computing the forward rate using the inflation rates in domestic and foreign countries is as follows:

$$F = S \frac{(1+i_D)}{(1+i_F)}$$

Where F= Forward Rate of Foreign Currency and S= Spot Rate

i_D = Domestic Inflation Rate and i_F= Inflation Rate in foreign country

Thus PPP theory states that the exchange rate between two countries reflects the relative purchasing power of the two countries i.e. the price at which a basket of goods can be bought in the two countries.

(c) **'Reverse Stock Split'** is a process whereby a company decreases the number of shares outstanding by combining current shares into fewer or lesser number of shares. For example, in a 5:1 reverse split, a company would take back 5 shares and will replace them with one share.

Although, reverse stock split does not result in change in Market value or Market Capitalization of the company but it results in increase in price per share.

Considering above mentioned ratio, if company has 100 million shares outstanding before split up, the number of shares would be equal to 20 million after the reverse split up.

Reasons for Reverse Split Up

Generally, company carries out reverse split up due to following reasons:

(i) Avoiding delisting from stock exchange: Sometimes as per the stock exchange regulation if the price of shares of a company goes below a limit it can be delisted. To avoid such delisting company may resort to reverse stock split up.

(ii) Avoiding removal from constituents of Index: If company's share its one of the constituents of market index then to avoid their removal of scrip from this list, the company may take reverse split up route.

(iii) To avoid the tag of "Penny Stock": If the price of shares of a company goes below a limit it may be called "Penny Stock". In order to improve the image of the company and avoiding this stage, the company may go for Reverse Stock Split.

(iv) To attract Institutional Investors and Mutual Funds: It might be possible that institutional investors may be shying away from acquiring low value shares to attract these investors the company may adopt the route of "Reverse Stock Split" to increase the price per share.

15. (a) Originator (entity which sells assets collectively to Special Purpose Vehicle) achieves the following benefits from securitization:

(i) **Off – Balance Sheet Financing**: When loan/receivables are securitized it release a portion of capital tied up in these assets resulting in off Balance Sheet financing leading to improved liquidity position which helps expanding the business of the company.

(ii) **More specialization in main business:** By transferring the assets the entity could concentrate more on core business as servicing of loan is transferred to SPV. Further, in case of non-recourse arrangement even the burden of default is shifted.

(iii) **Helps to improve financial ratios:** Especially in case of Financial Institutions and Banks, it helps to manage Capital-To-Weighted Asset Ratio effectively.

(iv) **Reduced borrowing Cost:** Since securitized papers are rated due to credit enhancement even they can also be issued at reduced rate as of debts and

hence the originator earns a spread, resulting in reduced cost of borrowings.

(b) Some of the parameters to identity the currency risk are as follows:

(i) **Government Action:** The Government action of any country has visual impact in its currency. For example, the UK Govt. decision to divorce from European Union i.e. Brexit brought the pound to its lowest since 1980's.

(ii) **Nominal Interest Rate:** As per interest rate parity (IRP) the currency exchange rate depends on the nominal interest of that country.

(iii) **Inflation Rate**: Purchasing power parity theory impact the value of currency.

(iv) **Natural Calamities:** Any natural calamity can have negative impact.

(v) **War, Coup, Rebellion etc.:** All these actions can have far reaching impact on currency's exchange rates.

(vi) **Change of Government:** The change of government and its attitude towards foreign investment also helps to identify the currency risk.

(c) Differences between a start-up and entrepreneurship

Startups are different from entrepreneurship. The major differences between them have been discussed in the following paragraphs:

(i) Start up is a part of entrepreneurship. Entrepreneurship is a broader concept and it includes a startup firm.

(ii) The main aim of startup is to build a concern, conceptualize the idea which it has developed into a reality and build a product or service. On the other hand, the major objective of an already established entrepreneurship concern is to attain opportunities with regard to the resources they currently control.

(iii) A startup generally does not have a major financial motive whereas an established entrepreneurship concern mainly operates on financial motive.

Priorities and challenges which start-ups in India are facing

The priority is on bringing more and more smaller firms into existence. So, the focus is on need based, instead of opportunity based entrepreneurship. Moreover, the trend is to encourage self-employment rather than large, scalable concerns. The main challenge with the startup firms is getting the right talent. And, paucity of skilled workforce can hinder the chances of a startup organization's growth and development. Further, startups had to comply with numerous regulations which escalate its cost. It leads to further delaying the chances of a breakeven or even earning some amount of profit.

PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS

PART – I

ACADEMIC UPDATE

(Legislative Amendments / Notifications / Circulars / Rules / Guidelines issued by Regulating Authority)

Chapter 5 : The Company Audit

(i) Submission of Cost Audit Report to the Central Government- The company shall within 30 days from the date of receipt of a copy of the cost audit report prepared (in pursuance of a direction issued by Central Government) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein in Form CRA-4 in Extensible Business Reporting Language (XBRL) format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

Provided that the companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013.

{Note: As per MCA notification dated 3 December 2018 vide Companies (cost records and audit) Amendment Rules, 2018, a Proviso has been inserted above in Bold and italic Relevant page no 5.40 of the Company Audit Chapter under the heading no 12 sub heading namely Submission of Cost Audit Report}

(ii) Constitution of National Financial Reporting Authority: According to Section 132 of the Act, the Central Government may, by notification, constitute a National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards for adoption by companies or class of companies under the Act.

As per Section 132 (2) of the Companies Act 2013, notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

(a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;

(b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;

(c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and

(d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, the Central Government made the National Financial Reporting Authority Rules, 2018 (NFRA Rules) (MCA Notification dated 13 November 2018).

As per NFRA rules, NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate:

(a) companies whose securities are listed on any stock exchange in India or outside India;

(b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of section 1 (4) of the Companies Act, 2013;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net-worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net-worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.

Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

Every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate. Provided that a body corporate governed under

clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein (i.e. mentioned in points (a) to (e) above).

Every auditor referred to in Rule 3 shall file a return with the NFRA on or before 30th April every year in such form as may be specified by the Central Government.

Recommending accounting standards (AS) and auditing standards (SA) - For the purpose of recommending AS or SA for approval by the Central Government, the NFRA -

(a) shall receive recommendations from the ICAI on proposals for new AS or SA or for amendments to existing AS or SA;

(b) may seek additional information from the ICAI on the recommendations received under clause (a), if required.

The NFRA shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

Monitoring and Enforcing Compliance with Auditing Standards -

(1) For the purpose of monitoring and enforcing compliance with auditing standards under the Act by a company or a body corporate governed under rule 3, the NFRA may:

   (a) review working papers (including audit plan and other audit documents) and communications related to the audit;

   (b) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and

   (c) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

(2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.

(3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.

(4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.

(5) The NFRA shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

(6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

(7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.

(8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

Overseeing the quality of service and suggesting measures for improvement

(1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.

(2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.

(3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.

(4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.

(5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

Punishment in case of non-compliance - If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of NFRA Rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

Financial reporting advocacy and education - The NFRA shall take suitable measures for the promotion of awareness and significance of AS, SA, auditors' responsibilities, audit quality and such other matters through education, training, seminars, workshops, conferences and publicity.

(Insertion of role of NFRA, punishment for non-compliance and financial reporting advocacy and education as per **MCA Notification dated 13 November 2018** under heading no 14 Constitution of National Financial Reporting Authority)

Chapter 8: Audit Committee and Corporate Governance

8.6 The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per Ind AS in accordance with guidelines issued by SEBI on this matter". Consequently,

- all listed entities whose equity shares and convertible securities are listed on a recognised stock exchange,
- the statutory auditors of such entities,
- all entities whose accounts are to be consolidated with the listed entity and
- the statutory auditors of entities whose accounts are to be consolidated with the listed entity.

shall comply with the prescribed procedure.

(Insertion of sub heading on page no. 8.11 under heading no 8 i.e. Role of Auditor in Audit Committee and Certification of Compliance of Conditions of Corporate Governance)

13. Subsidiary of Listed Entity [Regulations 16(c), 24 and 46 and Part C of Schedule V]: At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, ***whether incorporated in India or not.*** [Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds ***ten percent*** of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year]

Chapter 12: Audit of Non-Banking Financial Companies

Merging three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called Investment and Credit Company (NBFC-ICC): As per circular RBI/2018-19/130 DNBR (PD) CC.No.097/03.10.001/2018-19 dated February 22, 2019, in order to provide NBFCs with greater operational flexibility, it has been decided that harmonisation of different categories of NBFCs into fewer ones shall be carried out based on the principle of regulation by activity rather than regulation by entity. Accordingly, it has been decided to merge the three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company (NBFC-ICC). Investment and Credit Company (NBFC-ICC) means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and

is not any other category of NBFC as defined by the RBI in any of its Master Directions. (Circular DBR.BP.BC.No.25/21.06.001/2018-19 dated 22 February 2019)

Differential regulations relating to bank's exposure to the three categories of NBFCs viz., AFCs, LCs and ICs stand harmonised vide Bank's circular DBR.BP.BC.No.25/21.06.001/2018-19 dated, February 22, 2019. Further, a deposit taking NBFC-ICC shall invest in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC, an amount not exceeding twenty per cent of its owned fund. All related Master Directions (Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, Standalone Primary Dealers (Reserve Bank) Directions, 2016 and Residuary Non-Banking Companies (Reserve Bank) Directions, 2016) have also been updated accordingly. These directions can be accessed at https://www.rbi.org.in/.

Some points that may be covered in the audit of NBFC - Investment and Credit Company (NBFC-ICC) are given below:

i. Physically verify all the shares and securities held by a NBFC. Where any security is lodged with an institution or a bank, a certificate from the bank/institution to that effect must be verified.

ii. Verify whether the NBFC has not advanced any loans against the security of its own shares.

iii. Verify that dividend income wherever declared by a company, has been duly received by an NBFC and interest wherever due [except in case of NPAs] has been duly accounted for. NBFC Prudential Norms directions require dividend income on shares of companies and units of mutual funds to be recognised on cash basis. However, the NBFC has an option to account for dividend income on accrual basis, if the same has been declared by the body corporate in its Annual General Meeting and its right to receive the payment has been established. Income from bonds/debentures of corporate bodies is to be accounted on accrual basis only if the interest rate on these instruments is predetermined and interest is serviced regularly and not in arrears.

iv. Test check bills/contract notes received from brokers with reference to the prices vis-à-vis the stock market quotations on the respective dates.

v. Verify the Board Minutes for purchase and sale of investments. Ascertain from the Board resolution or obtain a management certificate to the effect that the investments so acquired are current investments or Long Term Investments.

vi. Check whether the investments have been valued in accordance with the NBFC Prudential Norms Directions and adequate provision for fall in the market value of securities, wherever applicable, have been made there against, as required by the Directions.

vii. Obtain a list of subsidiary/group companies from the management and verify the investments made in subsidiary/group companies during the year. Ascertain the basis for arriving at the price paid for the acquisition of such shares.

viii. Check whether investments in unquoted debentures/bonds have not been treated as investments but as term loans or other credit facilities for the purposes of income recognition and asset classification.

ix. An auditor will have to ascertain whether the requirements of AS 13 "Accounting for Investments" or other accounting standard, as applicable, (to the extent they are not inconsistent with the Directions) have been duly complied with by the NBFC.

x. In respect of shares/securities held through a depository, obtain a confirmation from the depository regarding the shares/securities held by it on behalf of the NBFC.

xi. Verify that securities of the same type or class are received back by the lender/paid by the borrower at the end of the specified period together with all corporate benefits thereof (i.e. dividends, rights, bonus, interest or any other rights or benefit accruing thereon).

xii. Verify charges received or paid in respect of securities lend/borrowed.

xiii. Obtain a confirmation from the approved intermediary regarding securities deposited with/borrowed from it as at the year end.

xiv. An auditor should examine whether each loan or advance has been properly sanctioned. He should verify the conditions attached to the sanction of each loan or advance i.e. limit on borrowings, nature of security, interest, terms of repayment, etc.

xv. An auditor should verify the security obtained and the agreements entered into, if any, with the concerned parties in respect of the advances given. He must ascertain the nature and value of security and the net worth of the borrower/guarantor to determine the extent to which an advance could be considered realisable.

xvi. Obtain balance confirmations from the concerned parties.

xvii. As regards bill discounting, verify that proper records/documents have been maintained for every bill discounted/rediscounted by the NBFC. Test check some transactions with reference to the documents maintained and ascertain whether the discounting charges, wherever, due, have been duly accounted for by the NBFC.

xviii. Check whether the NBFC has not lent/invested in excess of the specified limits to any single borrower or group of borrowers as per NBFC Prudential Norms Directions.

xix. An auditor should verify whether the NBFC has an adequate system of proper appraisal and follow up of loans and advances. In addition, he may analyse the trend of its recovery performance to ascertain that the NBFC does not have an unduly high level of NPAs.

xx. Check the classification of loans and advances (including bills purchased and discounted) made by a NBFC into Standard Assets, Sub-Standard Assets, Doubtful Assets and Loss Assets and the adequacy of provision for bad and doubtful debts as required by NBFC Prudential Norms Directions.

(Note: The above checklist is not exhaustive. It is only illustrative. There could be various other audit procedures which may be performed for audit of an NBFC.)

Chapter 13: Audit under Fiscal Laws

Reporting under Clause 30C and 44 of Form 3CD has been deferred till 31 March 2020 (Circular No. 9/2019 of the Central Board of Direct Taxes dated 14 May 2019).

Note: Students are also advised to refer RTP of Paper 1 Financial Reporting (for AS, Ind AS and other updates) and Paper 4 Part A -Corporate Laws (for academic updates relating to Company Law).

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

PART A: MULTIPLE CHOICE QUESTIONS

1. RBJ Ltd. is a listed company engaged in the business of software and is one of the largest company operating in this sector in India. The company's annual turnover is ₹ 40,000 crores with profits of ₹ 5,000 crores. Due to the nature of the business and the size of the company, the operations of the company are spread out in India as well as outside India.

   Outside India, the company is focusing more on US and European markets and the company has been able to establish its good reputation in these markets as well.

   During the course of the audit, the audit team spends significant time on audit of revenue– be it planning, execution or conclusion. The audit team for this engagement is generally very big i.e. a team of approx. 70-80 members. The company's contracts with its various customers are quite complicated and different. The efforts towards audit of revenue also involve significant involvement of senior members of the audit team including the audit partner.

   After completion of audit for the year ended 31 March 2019, the audit partner was discussing significant matters with the management wherein he also communicated to the management that he plans to include revenue recognition as key audit matter in his audit report. The management was quite surprised to understand this from the auditor and did

not agree with revenue recognition to be shown as key audit matter in the audit report. As per the management, the auditors didn't have any modification and such a matter getting reported as key audit matter would not go down well with various stakeholders and would significantly impact the financial positions of the company in the market. The auditors were not able to convince the management in respect of this point and there was a difference of opinion.

You are requested to give your view in respect of this matter.

(a) The concern of the management is valid. For such a large sized company, such type of matter getting reported as key audit matter is not appropriate.

(b) The assessment of the auditor is valid. Such a matter qualifies to be a key audit matter and hence should be reported accordingly by the auditor in his audit report.

(c) Reporting revenue as key audit matter when the auditor does not have observation in that area leading to any modification in his report, would not be appropriate.

(d) This being the first year of reporting of key audit matters, the auditor should take a soft stand and should avoid reporting such controversial matters in his report.

2. BDJ Ltd. is engaged in the business of providing management consultancy services and have been in operation for the last 15 years. The company's financial reporting process is very good and its statutory auditors always issued clean report on the audit of the financial statements of the company. The auditors were required to be rotated due to mandatory audit rotation requirement of the Companies Act 2013.

RNJ & Associates, a firm of Chartered Accountants, was appointed as the new auditor of the company for a term of 5 years and have to start their first audit for the financial year ended 31 March 2019.

The auditors had a detailed and clear discussion with the management that they will perform their audit procedures in respect of opening balances along with the audit procedures for the financial year ended 31 March 2019.

Management agreed with that and the audit was completed as per the plan.

The auditors did not have any significant observations and hence they communicated to the management that their report will be clean. Management was quite happy with this and also requested the auditors to share draft report before issuing the final report.

In the draft audit report, all the particulars were fine except 'other matters paragraph' wherein the auditors gave a reference that the financial statements for the comparative year ended 31 March 2018 was audited by another auditor. Management asked the audit team to remove this paragraph as the auditors had performed all the audit procedures on opening balances also. But the auditors did not agree with the management.

Please advise the auditor or the management whoever is incorrect with the right guidance.

(a) The contention of the management is valid. After performing all the audit procedures, an auditor should not pass on the responsibility to another auditor by including such references in his audit report.

(b) Any auditor has two options, either to perform audit procedures on opening balances or given such reference of another auditor in his report. An auditor can not mix up the things like this auditor has done. It is completely unprofessional.

(c) In the given situation even if the auditor wants to give such reference, the management and the auditor should have taken approval from the previous auditor at the time of appointment of new auditor. In this case, it cannot be done.

(d) The report of the auditor is absolutely correct and is in line with the auditing standards. An auditor is required to include such reference in his report as per the requirements of the auditing standard.

3. KJ Private Ltd. is engaged in the business of e-commerce wherein most of the operations are automated. The company has SAP at its ERP package and is planning to upgrade the SAP version.

Currently, the version of SAP being used is fine but the higher version would lead to increased efficiencies and hence the company is considering this plan which will also involve a huge outlay.

KPP & Associates, were appointed as the statutory auditors of this company for the year ended 31 March 2019 and the statutory audit firm has been working in this industry for long but most of the work which the firm did was more of risk advisory or internal audit.

For the first time, this audit will be conducted and that's why the audit team started obtaining understanding of the operations of the company which included understanding of the SAP system of the company.

However, the management of the company was not comfortable with this approach of the audit team particularly because audit team was spending good time on understanding of the IT systems of the company.

The management suggested that the auditors should limit their understanding and should perform audit procedures rather than getting into business/ operations.

But the auditors have a different view on this matter and because of which work has got stuck.

In the given situation, please suggest what should be the course of action.

(a) The approach of audit team to obtain detailed understanding of the company before starting with the audit procedures is absolutely fine. If the auditors don't understand the systems properly the audit procedures may not be appropriate.

(b) The management's concern regarding the approach of the auditors seems reasonable. The auditors are spending time on understanding of the systems/ business and not performing their audit procedures.

(c) This being a private company and that too into the business of e-commerce, the auditors should have knowledge about the operations of the company through their understanding of the industry and hence should not get into this process of obtaining detailed understanding at the client place.

(d) The audit team could have planned their work differently. They should involve IT experts who would have knowledge of the systems of the company and hence lot of time can be saved. Further in case of such type of industry, involvement of IT experts is anyways required mandatorily as per the legal requirements.

4. Yuvraj Ltd. is a non-banking financial company other than Nidhi company and is covered under "Master Direction - Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016". The NBFC has been in existence for the last 11 years and its operations are considerable in size having a net worth of ₹ 299 crores.

The NBFC has new statutory auditors for the financial year ended 31 March 2019. The audit report (including CARO) of the NBFC was clean for the financial year ended 31 March 2018. The company had a planning discussion with the auditors of the company for the financial year ended 31 March 2019 who raised a point regarding the applicability of new set of accounting standards, Indian Accounting Standards (Ind AS), on the NBFC for the financial year ended 31 March 2019 and have asked the management to ensure that its financial statements should be according to that. This comes as a big surprise to the management who had assessed that Ind AS would not be applicable to this NBFC because of the fact that CARO is applicable on this NBFC. There is a big disconnect on this matter between the auditor and the management. Please help by resolving this matter.

(a) Both the management and statutory auditors are not correct because Ind AS is not applicable to any NBFC covered under "Master Direction - Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016".

(b) Management is correct because Ind AS is only applicable to NBFC which are also a Nidhi company. In this case, CARO being applicable Ind AS cannot apply to this NBFC.

(c) If the management does not agree with the view of statutory auditors then they should give adverse opinion in their report and also report this to RBI.

(d) Ind AS would not be applicable for financial year ended 31 March 2019 and hence the view of statutory auditors is not correct.

5. Kshitij and a group of persons subscribed to the shares of JNN Ltd. JNN Ltd. had issued a prospectus for issuance of shares against which these persons had subscribed the shares.

It was later on found that some information as included in the prospectus was misleading. These persons filed a case against the company covering all the parties who were responsible for the prospectus on the ground that the information contained in the prospectus was misleading and they suffered losses by relying on that information.

The company consulted this matter with its legal consultants in respect of the course of action to be taken and also consulted that if the outcome of the case goes against the company then which all parties may be held liable and what could be the other consequences.

The prospectus included auditor's report who had also given his clearance. Some of the experts were also involved in respect of the information on which the litigation was filed.

Subsequently, it was proved that the contention of Kshitij and those persons was correct. It was held that the directors, promoters of the company and the experts involved would be liable to pay compensation to all these persons who had sustained losses or any damage.

The auditors of the company were also asked to make good the losses but they refused with an argument that it is limited to directors, promoters and experts.

In this context, please suggest which of the following statement is correct.

(a) The argument of the auditors is valid. As per the final outcome of the litigation the auditors were not held liable. However, on moral grounds the auditors should contribute towards the losses suffered by any person.

(b) The argument of the auditors is valid. Since the final outcome of the litigation did not held them liable, they cannot be asked to contribute towards the losses suffered by any person.

(c) The argument of the auditors is not valid. The final outcome of the litigation covers the experts and hence the auditors also get covered to contribute towards the losses suffered by the persons.

(d) The outcome of the litigation seems to be completely wrong. The directors and experts were held liable but along with that the statutory auditors, internal auditors, tax auditors, Company Secretary, tax consultants and the legal advisors should also have been held liable. Further the promoters cannot be held liable in such matters.

6. The audit of Selby & Co is at the last stage, where your team member is looking at the presentation of items in the financial statements. You have instructed the team member to follow the general instructions given under Schedule III of the Companies Act, 2013 for the preparation and presentation of financial statements. The team member has shown you the following list where the company has not adhered to the general instructions given in Schedule III. Which of the following from the list is not as per Schedule III.

(a) The company had ₹ 32,500 in deferred tax liability and ₹ 12,500 in deferred tax asset. The financial statements include both the above figures at non-current liabilities and non-current assets respectively.

(b) The company had a loss in the current year, this debit balance of statement of profit and loss was shown as a negative figure under the head "Surplus" in the notes to the financial statements.

(c) In the current year the company had issued a performance guarantee and counter guarantees, but these were not disclosed as contingent liability in the notes in the financial statements.

(d) The company has clubbed all other expenses under the head 'Other expenses on the basis of one percent of the revenue from operations or ₹ 1,00,000 whichever is higher to be disclosed separately.

7. VKPL & Associates, a firm of Chartered Accountants, have been operating for the last 5 years having its office in Gurgaon. The firm has staff of around 25 persons with 3 Partners.

The firm has been offering statutory audit, risk advisory and tax services to its various clients. The major work of the firm is for taxation services. The audit partners also discussed that the firm needs to work significantly to improve the quality of the services they offer and that would also help the firm to grown its business. Considering this objective, the firm started training programmes for the staff which were made mandatory to be attended.

During one of the training programmes on quality, a topic was discussed regarding the information that should be obtained by the firm before accepting an engagement with a new client, when deciding whether to continue an existing engagement, and when considering acceptance of a new engagement with an existing client. It was explained that the following points may assist the engagement partner in determining whether the conclusions reached regarding the acceptance and continuance of client relationships and audit engagements are appropriate (as per SA 220):

(i) The integrity of the principal owners, key management and those charged with governance of the entity;

(ii) The qualification of all the employees of the entity;

(iii) Whether the engagement team is competent to perform the audit engagement and has the necessary capabilities, including time and resources;

(iv) The remuneration offered by the entity to its various consultants;

(v) Whether the firm and the engagement team can comply with relevant ethical requirements; and

(vi) Significant matters that have arisen during the current or previous audit engagement, and their implications for continuing the relationship.

We would like to understand from you which of the above mentioned points are relevant for the topic under discussion or not?

(a) i, ii, iv and v.

(b) ii, iv, v and vi.

(c) iii, iv, v and vi.

(d) i, iii, v and vi.

8. AOP Pvt. Ltd. is currently engaged in closing its books of accounts for the financial year ended 31 March 2019. The company has always been a compliance-savvy and has also engaged consultants for the same. The business of the company has been stable over the years and profitability has been good over the last 3 years.

The company got registered for GST on time. Since registration the company has been filing statement of returns in GSTR 3B. However, Annual Return in GSTR 9 has not been filed by the company.

Proper Officer issued a notice for failure to file Annual Return within 15 days. Even then, no Annual Return was filed by the company within the time permitted. Please advise.

(a) In such a case, the company becomes a 'non-filer'.

(b) In such a case, the company would remain fully compliant.

(c) The Proper Officer would be required to discuss this matter with the GST auditors of the company.

(d) GST auditor may resign in this situation.

9. NIC Pvt. Ltd. is a large private company engaged in the business of insurance for the last 9 years. The company has expanded its business considerably over the years and have set up various divisions across India.

The accounting and the operational systems of the company are centralized wherein the accounts of all the divisions, trial balances and their balance sheets are prepared by the Head Office. AJ & Co, a firm of Chartered Accountants, are the statutory auditors of this company and audit all the divisions and the head office. The auditors have completed the audit of the financial statements of the company for the year ended 31 March 2019 and the company's financial statements are approved.

Before the annual general meeting of the company, the company received a notice from the Insurance Regulatory and Development Authority of India (IRDAI) which has asked the company to respond within 7 days as to why this company breached the requirement of IRDAI guidelines by having a single auditor for all the divisions and head office.

The management of the company has been doing this over the years and were never aware of this requirement. To respond to this, the management has consulted many legal experts and also the auditors. They would also like to understand your views as to how to respond

to IRDAI in this critical situation. Please advise carefully.

(a) There has been no breach of IRDAI guidelines and accordingly the management should respond.

(b) The management should request IRDAI to consider relaxation in respect of this provision for the company for the current year as the audit is completed and it would be practically very difficult to complete the entire process within the required timelines.

(c) The management should respond to IRDAI that this provision is applicable to a company only after 15 years of its existence and hence there is no breach of IRDAI guidelines.

(d) The management should respond to IRDAI that this provision should have been ensured by the auditors and hence they should be held liable for this breach of provision of the IRDAI guidelines.

10. Shivam & Co LLP is a large firm of Chartered Accountants based out of Delhi-NCR. During the financial year ended 31 March 2019, the firm Shivam & Co LLP got an intimation for the peer review on 1 July 2018. The process of peer review got started and completed on 15 September 2018 which included the on-site review from 1 August 2018 to 16 August 2018.

Shivam & Co LLP objected to the time taken by the Peer Reviewer on-site, however, as per Peer Reviewer, the entire review process got completed within 90 days from the date of notifying the firm about its selection for review.

(a) The time for complete review should be completed within 120 days.

(b) The time for on-site review should not have extended beyond 10 working days.

(c) The time for complete review should be completed within 60 days.

(d) The time for on-site review should not have extended beyond 7 working days.

PART B : DESCRIPTIVE QUESTIONS

Standards on Auditing, Statements and Guidance Notes

11. (a) MNO Limited is one of the prominent players in the chemicals industry. The company is a public company domiciled in India and listed on BSE and NSE. The Company was facing extreme liquidity constraints and there were multiple indicators that casted doubt over the company's ability to continue as a going concern.

The Company was led into insolvency proceedings by consortium of banks led by PNB and the NCLT ordered the commencement of corporate insolvency process against the Company on 31 August 2018. The company invited prospective lenders, investors and others to submit their resolution plans to the Resolution Professional (RP) latest by 1 January 2019. The RP reviewed the resolution plans and ensured

conformity with Insolvency and Bankruptcy Code 2016. The compliant plans were presented to Committee on Creditors (CoC) on 2 February 2019 and the resolution plan submitted by PQR Ltd. was evaluated as highest evaluated Compliant Resolution Plan. CoC of MNO Ltd. approved the Resolution Plan submitted by PQR Ltd. on 2 March 2019. The approval of NCLT was finally obtained on 4 May 2019.

PQR Ltd. submitted detailed plans and commitments as part of the resolution plan including clearance of all outstanding debts which were leading to negative cash flows. Please suggest how would you deal with this situation as the auditors of MNO Ltd.

(b) Your firm has been appointed as the statutory auditors of GBM Private Limited for the financial year 2018-19. While verification of company's inventories as on 31st March 2019, you found that the significant amount of inventories belonging to the company are held by other parties. However, the company has kept all the records of the inventories maintained by other parties. What is your duty as an auditor in order to ensure that third parties are not such with whom the stock should not be held and the stock as disclosed in company's records actually belongs to them?

Audit Planning Strategy and Execution

12. Mr. Ram Kapoor, Chartered Accountant, has been appointed as the statutory auditor by XYZ Private Limited for the audit of their financial statements for the year 2018-19. The company has mentioned in the audit terms that they will not be able to provide internal audit reports to Mr. Ram during the course of audit. Further, company also imposed some limitation on scope of Mr. Ram.

What are the preconditions Mr. Ram should ensure before accepting/ refusing the proposal? Also advise, whether Mr. Ram should accept the proposed audit engagement?

Risk Assessment and Internal Control

13. BSF Limited is engaged in the business of trading leather goods. You are the internal auditor of the company for the year 2018-19. In order to review internal controls of the sales department of the company, you visited the department and noticed the work division as follows:

(1) An officer was handling the sales ledger and cash receipts.

(2) Another official was handling dispatch of goods and issuance of Delivery challans.

(3) One more officer was there to handle customer/ debtor accounts and issue of receipts.

(a) As an internal auditor you are required to briefly discuss the general condition pertaining to the internal check system.

(b) Do you think that there was proper division of work? If not, why?

Special Aspects of Auditing in an Automated Environment

14. "Generating and preparing meaningful information from raw system data using processes, tools, and techniques is known as Data Analytics and the data analytics methods used in an audit are known as Computer Assisted Auditing Techniques or CAATs." You are required to give a suggested approach to get the benefit from the use of CAATs.

The Company Audit

15. (a) "ABC & Co." is an Audit Firm having partners "Mr. A", "Mr. B" and "Mr. C", Chartered Accountants. "Mr. A", "Mr. B" and "Mr. C" are holding appointment as an Auditor in 4, 6 and 10 Companies respectively.

(i) Provide the maximum number of Audits remaining in the name of "ABC & Co."

(ii) Provide the maximum number of Audits remaining in the name of individual partner i.e. Mr. A, Mr. B and Mr. C.

(iii) Can ABC & Co. accept the appointment as an auditor in 60 private companies having paid-up share capital less than ₹ 100 crore which has not committed default in filing its financial statements under section 137 or annual return under section 92 of the Companies Act with the Registrar, 2 small companies and 1 dormant company?

(iv) Would your answer be different, if out of those 60 private companies, 45 companies are having paid-up share capital of ₹ 110 crore each?

(b) Bhishm Limited decided to appoint Mr. Rajvir, chartered accountant, as the branch auditor for the audit of its Lucknow branch accounts for the year 2018-19. The decision to appoint branch auditor was taken by way of Board Resolution in the meeting of Board of Directors of the company, held in April 2018, subject to shareholders' approval in AGM of the company scheduled to be held in June 2018. Meanwhile, the Principal Auditor of the company raised an objection that the branch auditor cannot be appointed without his consent. Advise, whether the objection raised by company auditor is valid.

Audit Report

16. (a) Under CARO, 2016, as a statutory auditor, how would you report?

(i) RPS Ltd. has entered into non-cash transactions with Mr. Rahul, son of director, which is an arrangement by which the RPS Ltd. is in process to acquire assets for consideration other than cash.

(ii) NSP Limited has its factory building, appearing as fixed assets in its financial statements in the name of one of its director who was overlooking the manufacturing activities.

(b) KPI Ltd. is a company on which International Standards on Auditing are applicable along with Standard on Auditing issued by the ICAI. The company appointed new auditors for

the audit of the financial statements year ended 31 March 2019 after doing all appointment formalities. Therefore, the auditor's report referred the International Standard on Auditing in addition to the Standard on Auditing issued by the ICAI.

As an expert, you are required to advise the auditor regarding auditor's report for audits conducted in accordance with both the Standards.

Liabilities of Auditor

17. Anvisha Ltd. is a company engaged in the business of software development. It is one of the largest companies in this sector with a turnover of ₹ 25,000 crores. The operations of the company are increasing constantly, however, the focus of the management is more on cost cutting in the coming years to improve its profitability. In respect of the financial statements of the company which are used by various stakeholders, some fraud was observed in respect of assets reported therein due to which those stakeholders suffered damages. As a result, those stakeholders applied to Tribunal for change of auditor on the basis that auditor is colluded in the fraud.

Elucidate the power of tribunal to change the auditor of a company if found acted in a fraudulent manner as provided under sub-section (5) of section 140 of the Companies Act, 2013.

Audit Committee and Corporate Governance

18. Comment on the following in the light of certificate of compliance of conditions of Corporate Governance to be issued for a listed company where the Board consists of 10 directors including a non-executive director as its chairman:

(i) There were 5 audit committee meetings held during the year as follows 01/04/2018, 01/06/2018, 01/09/2018, 03/01/2019, 25/03/2019.

(ii) There are 4 independent directors. One of them resigned on 25/05/2018. A new independent director was appointed on 01/09/2018.

(iii) The Chairman of Audit Committee did not attend the Annual General meeting held on 14/09/2018.

(iv) The internal audit reports were obtained by Audit Committee on quarterly basis. Quarter 1 internal audit report commented on certain serious irregularities as regards electronic online auction of scrap. The agenda of Audit Committee did not deliberate or take note of the issue.

(v) There is no woman director.

Audit of Bank

19. (a) In course of audit of True Princi Bank as at 31st March, 2019, you observed that in a particular account there was no recovery in the past 18 months. The bank has not applied the NPA norms as well as income recognition norms to this particular account. When queried the bank management replied that this account was guaranteed by the central government and hence these norms were not applicable. The bank has not

invoked the guarantee. Comment. Would your answer be different if the advance is guaranteed by a State Government?

(b) While auditing FAIR Bank, you observed that a lump sum amount has been disclosed as contingent liability collectively. You are, therefore, requested by the management to guide them about the disclosure requirement of Contingent Liabilities for Banks.

Audit of Non-Banking Financial Company

20. Shivam & Co LLP are the auditors of NBFC (Investment and Credit Company). Some of the team members of the audit team who audited this NBFC have left the firm and the new team members are in discussion with the previous team members who are still continuing with the firm regarding the verification procedures to be performed. In this context, please explain what verification procedures should be performed in relation to audit of NBFC - Investment and Credit Company (NBFC-ICC).

Audit under Fiscal Laws

21. You are doing Tax Audit of Private Limited Company for the financial year ending 31st March, 2019. During audit, you notice that the company is not regular in deposit of VAT/GST and there remains pendency every year. The details of VAT/GST payable are:

(i) GST payable as on 31/03/2018 of FY 2017-18 was ₹ 200 Lakh and out of which ₹ 100 Lakh was paid on 15/09/2018 and ₹ 50 Lakh on 30/03/2019 and balance of ₹ 50 Lakh paid on 16/09/2019.

(ii) GST payable of current financial year 2018-19 was ₹ 100 lakh and out of this, ₹ 40 Lakh was paid on 25/05/2018 and balance of ₹ 60 Lakh remained unpaid till the due date of return.

The date of Tax Audit report and due date of return was 30th September.

Now as a Tax Auditor, how/where the said transaction will be reflected in Tax Audit Report under Section 43B(a)?

Internal Audit, Management and Operational Audit

22. (a) Perfect Steel Ltd. has reported a higher turnover of ₹ 560 crores in the year 2018-19 as compared to earlier years but its sales return has also increased to 10% from only 4% upto the last year. The management is concerned about the high sales returns and feels a need to get the operational audit done for sales and production department of the company. The company is also having an internal audit system in the company. Elaborate the possible reason/s, why management is getting operational audit done when internal audit has already been done for both the departments by stating the shortcomings of conventional information sources.

(b) You are also required to discuss the difference in the approach of both of these audits.

Due Diligence, Investigation and Forensic Audit

23. (a) General objective of an audit is to find out whether the financial statements show true and fair view. On the other hand, investigation implies systematic, critical and special examination of the records of a business for a specific purpose.

In view of the above, you are required to brief out the difference between Audit and Investigation.

(b) Beta Ltd. is anticipating taking over a manufacturing concern and appoints you for due diligence review. While reviewing, it requests you to look specifically for any hidden liabilities and overvalued assets. State in brief the major areas you would examine for hidden liabilities and overvalued assets.

Professional Ethics

24. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

(a) Mr. 'A' is a practicing Chartered Accountant working as proprietor of M/s A & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Y' a Chartered Accountant, his employee, for taking care of routine matters of his office. During his absence, Mr. 'Y' has conducted the under mentioned jobs in the name of M/s A & Co.:

(i) He issued the audit queries to client which were raised during the course of audit.

(ii) He attended the Income Tax proceedings for a client as authorized representative before Income Tax Authorities.

Please comment on eligibility of Mr. 'Y' for conducting such jobs in name of M/s A & Co. and liability of Mr. 'A' under the Chartered Accountants Act, 1949.

(b) M/s Amudhan & Co., a firm of Chartered Accountants, received ₹ 2.8 lakhs in January, 2019 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2019, when he is due to return to India.

(c) CA Raman who is contesting Regional Council Elections of Institute, engages his Articled Assistant for his election campaigning promising him that he will come in contact with influential people which will help to enhance his career after completion of his training period.

(d) Mr. Anil, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.

25. Write a short note on the following:

(a) Auditor's objectives in an audit of consolidated financial statements.

(b) Areas of propriety audit under Section 143(1) of the Companies Act, 2013.

(c) Auditor's considerations while reviewing of Investment Department of Life Insurance Company.

(d) State whether a Tax audit report can be revised and if so state those circumstances.

(e) Scope of the Quality review.

SUGGESTED ANSWERS/HINTS

PART A : ANSWERS TO MULTIPLE QUESTIONS

1	**b**	The assessment of the auditor is valid. Such a matter qualifies to be a key audit matter and hence should be reported accordingly by the auditor in his audit report.
2	**d**	The report of the auditor is absolutely correct and is in line with the auditing standards. An auditor is required to include such reference in his report as per the requirements of the auditing standard.
3	**a**	The approach of audit team to obtain detailed understanding of the company before starting with the audit procedures is absolutely fine. If the auditors don't understand the systems properly the audit procedures may not be appropriate.
4	**d**	Ind AS would not be applicable for financial year ended 31 March 2019 and hence the view of statutory auditors is not correct.
5	**c**	The argument of the auditors is not valid. The final outcome of the litigation covers the experts and hence the auditors also get covered to contribute towards the losses suffered by the persons.
6	**a**	The company had ₹ 32,500 in deferred tax liability and ₹ 12,500 in deferred tax asset. The financial statements include both the above figures at non-current liabilities and non-current assets respectively.
7	**d**	i, iii, v and vi.
8	**a**	In such a case, the company becomes a 'non-filer'.
9	**a**	There has been no breach of IRDAI guidelines and accordingly the management should respond.
10	**d**	The time for on-site review should not have extended beyond 7 working days.

PART B

11. (a) **As per SA 570 Going Concern,** if events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern, the auditor shall obtain sufficient appropriate audit evidence to determine whether or not a material uncertainty exists related to events or conditions that may cast significant

doubt on the entity's ability to continue as a going concern (hereinafter referred to as "material uncertainty") through performing additional audit procedures, including consideration of mitigating factors. These procedures shall include:

(i) Where management has not yet performed an assessment of the entity's ability to continue as a going concern, requesting management to make its assessment.

(ii) Evaluating management's plans for future actions in relation to its going concern assessment, whether the outcome of these plans is likely to improve the situation and whether management's plans are feasible in the circumstances.

(iii) Where the entity has prepared a cash flow forecast, and analysis of the forecast is a significant factor in considering the future outcome of events or conditions in -

  (1) Evaluating the reliability of the underlying data generated to prepare the forecast; and

  (2) Determining whether there is adequate support for the assumptions underlying the forecast.

(iv) Considering whether any additional facts or information have become available since the date on which management made its assessment.

(v) Requesting written representations from management and, where appropriate, those charged with governance, regarding their plans for future actions and the feasibility of these plans.

The auditor shall evaluate whether sufficient appropriate audit evidence has been obtained regarding, and shall conclude on, the appropriateness of management's use of the going concern basis of accounting in the preparation of the financial statements.

If events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern but, based on the audit evidence obtained the auditor concludes that no material uncertainty exists, the auditor shall evaluate whether, in view of the requirements of the applicable financial reporting framework, the financial statements provide adequate disclosures about these events or conditions.

In the instant case, the approval of the resolution plan is a significant mitigating factor to counter the going concern issues of MNO Ltd. PQR Ltd. has submitted a detailed plan and commitments that has been given as part of the resolution plan which includes clearance of all outstanding debts which were leading to negative cash flows. Therefore, it can be said that the events and conditions are mitigated effectively and there is no material uncertainty in relation to the ability of the company to continue as a going concern.

(b) Inventory under the Custody and Control of a Third Party: As per SA 501, "Audit Evidence—Specific Considerations for Selected Items" when inventory under the custody and control of a third party is material to the financial statements, the auditor shall obtain sufficient appropriate audit evidence regarding the existence and condition of that inventory by performing one or both of the following:

(i) Request confirmation from the third party as to the quantities and condition of inventory held on behalf of the entity.

(ii) Perform inspection or other audit procedures appropriate in the circumstances, for example where information is obtained that raises doubt about the integrity and objectivity of the third party, the auditor may consider it appropriate to perform other audit procedures instead of, or in addition to, confirmation with the third party. Examples of other audit procedures include:

- Attending, or arranging for another auditor to attend, the third party's physical counting of inventory, if practicable.
- Obtaining another auditor's report, or a service auditor's report, on the adequacy of the third party's internal control for ensuring that inventory is properly counted and adequately safeguarded.
- Inspecting documentation regarding inventory held by third parties, for example, warehouse receipts.
- Requesting confirmation from other parties when inventory has been pledged as collateral.

12. As per **SA 210 "Agreeing the Terms of Audit Engagements"**, in order to establish whether the preconditions for an audit are present, the auditor shall:

(a) Determine whether the financial reporting framework to be applied in the preparation of the financial statements is acceptable; and

(b) Obtain the agreement of management that it acknowledges and understands its responsibility

(i) For the preparation of the financial statements in accordance with the applicable financial reporting framework, including where relevant their fair presentation;

(ii) For such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error; and

(iii) To provide the auditor with:

a. Access to all information of which management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;

b. Additional information that the auditor may request from management for

the purpose of the audit; and

c. Unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence.

Further, if management or those charged with governance impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

In addition if the preconditions for an audit are not present, the auditor shall discuss the matter with management. Unless required by law or regulation to do so, the auditor shall not accept the proposed audit engagement.

In the instant case, Mr. Ram should not accept the appointment as statutory auditor of XYZ Private Limited due to limitation imposed on his scope of work.

13. (a) Internal Check System: The general condition pertaining to the internal check system may be summarized as under:

(i) no single person should have complete control over any important aspect of the business operation. Every employee's action should come under the review of another person.

(ii) Staff duties should be rotated from time to time so that members do not perform the same function for a considerable length of time.

(iii) Every member of the staff should be encouraged to go on leave at least once a year.

(iv) Persons having physical custody of assets must not be permitted to have access to the books of accounts.

(v) There should exist an accounting control in respect of each class of assets, in addition, there should be periodical inspection so as to establish their physical condition.

(vi) Mechanical devices should be used, where ever practicable to prevent loss or misappropriation of cash.

(vii) Budgetary control should be exercised and wide deviations observed should be reconciled.

(viii) For inventory taking, at the close of the year, trading activities should, if possible be suspended, and it should be done by staff belonging to several sections of the organization.

(ix) The financial and administrative powers should be distributed very judiciously among different officers and the manner in which those are actually exercised should be reviewed periodically.

(x) Procedures should be laid down for periodical verification and testing of different sections of accounting records to ensure that they are accurate.

(b) Division of Work: Company has not done proper division of work as:

(i) the receipts of cash should not be handled by the official handling sales ledger.

(ii) delivery challans should be verified by an authorised official other than the officer handling despatch of goods.

14. There are several steps that should be followed to achieve success with CAATs and any of the supporting tools. A suggested approach to benefit from the use of CAATs is given below:

- Understand Business Environment including IT;
- Define the Objectives and Criteria;
- Identify Source and Format of Data;
- Extract Data;
- Verify the Completeness and Accuracy of Extracted Data;
- Apply Criteria on Data Obtained;
- Validate and Confirm Results.

15. (a) Fact of the Case: In the instant case, Mr. A is holding appointment in 4 companies, whereas Mr. B is having appointment in 6 Companies and Mr. C is having appointment in 10 Companies. In aggregate all three partners are having 20 audits.

Provisions and Explanations: As per section 141(3)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor if he is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than ₹ 100 crore (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar).

As per section 141(3)(g), this limit of 20 company audits is per person. In the case of an audit firm having 3 partners, the overall ceiling will be 3 × 20 = 60 company audits. Sometimes, a chartered accountant is a partner in a number of auditing firms. In such a case, all the firms in which he is partner or proprietor will be together entitled to 20 company audits on his account.

Conclusion:

(i) Therefore, ABC & Co. can hold appointment as an auditor of 40 more

companies:

Total Number of Audits available to the Firm	= 20*3	= 60
Number of Audits already taken by all the partners		
In their individual capacity	= 4+6+10	= 20
Remaining number of Audits available to the Firm		= 40

(ii) With reference to above provisions an auditor can hold more appointment as auditor = ceiling limit as per section 141(3)(g)- already holding appointments as an auditor. Hence (1) Mr. A can hold: 20 - 4 = 16 more audits. (2) Mr. B can hold 20-6 = 14 more audits and (3) Mr. C can hold 20-10 = 10 more audits.

(iii) In view of above discussed provisions, ABC & Co. can hold appointment as an auditor in all the 60 private companies having paid-up share capital less than ₹ 100 crore (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar), 2 small companies and 1 dormant company as these are excluded from the ceiling limit of company audits given under section 141(3)(g) of the Companies Act, 2013.

(iv) As per fact of the case, ABC & Co. is already having 20 company audits and they can also accept 40 more company audits. In addition they can also conduct the audit of one person companies, small companies, dormant companies and private companies having paid up share capital less than ₹ 100 crores (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar). In the given case, out of the 60 private companies ABC & Co. is offered, 45 companies having paid-up share capital of ₹ 110 crore each.

Therefore, ABC & Co. can also accept the appointment as an auditor for 2 small companies, 1 dormant company, 15 private companies having paid-up share capital less than ₹ 100 crore (private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.") and 40 private companies having paid-up share capital of ₹ 110 crore each in addition to above 20 company audits already holding.

(b) Appointment of Branch Auditor: Section 143 (8) of the Companies Act, 2013, prescribes the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor. Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139.

In case of subsequent appointment of auditor, section 139(1) of the Act provides that every company shall, at the first annual general meeting appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting.

In the instant case, Bhishm Limited decided to appoint Mr. Rajvir, chartered accountant, as the branch auditor for the audit of its Lucknow branch accounts and the decision to appoint branch auditor was taken by way of Board Resolution in the meeting of Board of Directors of the company subject to shareholders' approval in AGM of the company.

Thus, objection raised by company auditor is not valid as per section 143(8) of the companies Act, 2013 and the Board has authority to appoint branch auditor but should be approved by shareholders in General Meeting.

16. (a) (i) Non-cash Transactions with Relative of Director: As per Clause (xv) of paragraph 3 of CARO, 2016, the auditor is required to report "whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 of Companies Act, 2013 have been complied with".

Section 192 of the said Act deals with restriction on non-cash transactions involving directors or persons connected with them. The section prohibits the company from entering into such types of arrangements unless it is an arrangement by which the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

In the instant case, RPS Ltd. has entered into non-cash transactions with Mr. Rahul, son of director which is an arrangement by which RPS Ltd. is in process to acquire assets for consideration other than cash. In the above situation the provisions of section 192 of Companies Act, 2013 have been complied with.

However, the reporting requirements under this clause are given in two parts. The first part requires the auditor to report on whether the company has entered into any non-cash transactions with the directors or any persons connected with such director/s. The second part of the clause requires the auditor to report whether the provisions of section 192 of the Act have been complied with. Therefore, the second part of the clause becomes reportable only if the answer to the first part is in affirmative.

In the given situation, RPS Ltd. has entered into non-cash transactions with Mr. Rahul, son of director which is affirmative answer to the first part of the Clause (xv) of Paragraph 3 of CARO, 2016, thus, reporting is required for the same. Draft report is given below.

According to the information and explanations given to us, the Company has entered into non-cash transactions with Mr. Rahul, son of one of the directors

during the year, for the acquisition of assets, which in our opinion is covered under the provisions of Section 192 of the Companies Act, 2013.

(ii) Title deeds of Immovable Property in the name of Director: As per Clause (i)(c) of Paragraph 3 of the CARO, 2016, the auditor is required to report on whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof.

The auditor should verify the title deeds available and reconcile the same with the fixed assets register. The scrutiny of the title deeds of the immovable property may reveal a number of discrepancies between the details in the fixed assets register and the details available in the title deeds. This may be due to various reasons which needs to be examined.

In the given case, NSP Limited has its factory building, appearing as fixed assets in its financial statements in the name of director. Thus, the auditor shall report on the same under Clause (i)(c) of Paragraph 3 of the CARO, 2016.

The reporting under this clause, where the title deeds of the immovable property are not held in the name of the Company, may be made incorporating following details, in the form of a table or otherwise:

A In case of land:-

- total number of cases,
- whether leasehold / freehold,
- gross block and net block, (as at Balance Sheet date), and
- remarks, if any.

B In case of Buildings:-

- total number of cases,
- gross block & net block, (as at Balance Sheet date) and
- remarks, if any.

(b) Auditor's Report for Audits Conducted in Accordance with Both Standards on Auditing Issued by ICAI and International Standards on Auditing or Auditing Standards of Any Other Jurisdiction: As per SA 700, "Forming an Opinion and Reporting on Financial Statements", an auditor may be required to conduct an audit in accordance with, in addition to the Standards on Auditing issued by ICAI, the International Standards on Auditing or auditing standards of any other jurisdiction. If this is the case, the auditor's report may refer to Standards on Auditing in addition to the International Standards on Auditing or auditing standards of such other jurisdiction, but the auditor shall do so only if:

(a) There is no conflict between the requirements in the ISAs or such auditing standards of other jurisdiction and those in SAs that would lead the auditor:

(i) to form a different opinion, or

(ii) not to include an Emphasis of Matter paragraph or Other Matter paragraph that,

in the particular circumstances, is required by SAs; **and**

(b) The auditor's report includes, at a minimum, each of the elements set out in Auditor's Report Prescribed by Law or Regulation discussed above when the auditor uses the layout or wording specified by the Standards on Auditing. However, reference to "law or regulation" in above paragraph shall be read as reference to the Standards on Auditing. The auditor's report shall thereby identify such Standards on Auditing.

When the auditor's report refers to both the ISAs or the auditing standards of a specific jurisdiction and the Standards on Auditing issued by ICAI, the auditor's report shall clearly identify the same including the jurisdiction of origin of the other auditing standards.

17. **Direction by Tribunal in case auditor acted in a fraudulent manner:** As per sub-section (5) of the section 140 of the Companies Act, 2013, the Tribunal either *suo motu* or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

However, if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

It may be noted that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

18. **Compliance of conditions of Corporate Governance in case of Listed Company:** As per Listing Obligation and Disclosure Requirements Regulations 2015, depending upon the facts and circumstances, some situations may require an adverse or qualified statement or a disclosure without necessarily making it a subject matter of qualification in the Auditors' Certificate, in respect of compliance of requirements of corporate governance for example:

(i) The Audit Committee shall meet at least four times in a year and not more than one hundred and twenty days shall lapse between two meetings. The number of days between the meetings held on 1.9.2018 and 3.01.2019 is more than 120 days. Hence

it is a non-compliance and would require qualification in certificate of corporate governance

(ii) Since the Chairman is the non-executive director, there should be 1/3rd of directors (rounded to next integer) to be independent. In this case, 4 directors need to be independent. Any vacancy during shortfall of independent directorship should be filled within next 3 months or before the start of next meeting, whichever is later. In the instant case, since the independent director was appointed after lapse of 3 months (i.e. on 1.9.2018) and after next first meeting 1/6/2018, there is default which would require qualification in certificate on corporate governance.

(iii) Chairman shall be present at Annual General Meeting to answer shareholder queries. In the given scenario, Chairman of Audit Committee did not attend the Annual General Meeting held on 14/09/2018 which is not in order/compliance.

(iv) The Audit Committee shall mandatorily review the Internal audit reports relating to internal control weaknesses as per Part C (B) of Schedule II and the auditor should ascertain from the minutes book of the Audit Committee and other sources like agenda papers, etc. whether the Audit Committee has reviewed the above-mentioned information. In the given situation, the agenda of Audit Committee did not deliberate or take note of serious irregularity mention in Internal Audit Report which is again not in compliance of conditions of Corporate Governance and warrant audit qualification in certificate on corporate governance.

(v) The auditor should ascertain whether, throughout the reporting period, the Board of Directors comprises an optimum combination of executive and non-executive directors, with at least one-woman director. Therefore, there should be at least one-woman director. In the given situation, there is no woman director which is again not in compliance.

19. (a) Government Guaranteed Advance: If a government guaranteed advance becomes NPA, then for the purpose of income recognition, interest on such advance should not be taken to income unless interest is realized. However, for purpose of asset classification, credit facility backed by Central Government Guarantee, though overdue, can be treated as NPA only when the Central Government repudiates its guarantee, when invoked.

Since the bank has not revoked the guarantee, the question of repudiation does not arise. Hence the bank is correct to the extent of not applying the NPA norms for provisioning purpose. But this exemption is not available in respect of income recognition norms. Hence the income to the extent not recovered should be reversed.

The situation would be different if the advance is guaranteed by State Government because this exception is not applicable for State Government Guaranteed advances, where advance is to be considered NPA if it remains overdue for more than 90 days.

In case the bank has not invoked the Central Government Guarantee though the amount is overdue for long, the reasoning for the same should be taken and duly reported in LFAR.

(b) Contingent Liabilities for Banks: The Third Schedule to the Banking Regulation Act, 1949, requires the disclosure of the following as a footnote to the balance sheet-

(A) Contingent liabilities

(i) Claims against the bank not acknowledged as debts.

(ii) Liability for partly paid investments.

(iii) Liability on account of outstanding forward exchange contracts.

(iv) Guarantees given on behalf of constituents-

(1) In India.

(2) Outside India.

(v) Acceptances, endorsements and other obligations.

(vi) Other items for which the bank is contingently liable.

(B) Bills for collection.

20 Some points that may be covered in the audit of NBFC - Investment and Credit Company (NBFC-ICC):

i. Physically verify all the shares and securities held by a NBFC. Where any security is lodged with an institution or a bank, a certificate from the bank/institution to that effect must be verified.

ii. Verify whether the NBFC has not advanced any loans against the security of its own shares.

iii. Verify that dividend income wherever declared by a company, has been duly received by an NBFC and interest wherever due [except in case of NPAs] has been duly accounted for. NBFC Prudential Norms directions require dividend income on shares of companies and units of mutual funds to be recognised on cash basis. However, the NBFC has an option to account for dividend income on accrual basis, if the same has been declared by the body corporate in its Annual General Meeting and its right to receive the payment has been established. Income from bonds/debentures of corporate bodies is to be accounted on accrual basis only if the interest rate on these instruments is predetermined and interest is serviced regularly and not in arrears.

iv. Test check bills/contract notes received from brokers with reference to the prices vis-à-vis the stock market quotations on the respective dates.

v. Verify the Board Minutes for purchase and sale of investments. Ascertain from the Board resolution or obtain a management certificate to the effect that the investments so acquired are current investments or Long Term Investments.

vi. Check whether the investments have been valued in accordance with the NBFC Prudential Norms Directions and adequate provision for fall in the market value of securities, wherever applicable, have been made there against, as required by the Directions.

vii. Obtain a list of subsidiary/group companies from the management and verify the investments made in subsidiary/group companies during the year. Ascertain the basis for arriving at the price paid for the acquisition of such shares.

viii. Check whether investments in unquoted debentures/bonds have not been treated as investments but as term loans or other credit facilities for the purposes of income recognition and asset classification.

ix. An auditor will have to ascertain whether the requirements of AS 13 "Accounting for Investments" or other accounting standard, as applicable, (to the extent they are not inconsistent with the Directions) have been duly complied with by the NBFC.

x. In respect of shares/securities held through a depository, obtain a confirmation from the depository regarding the shares/securities held by it on behalf of the NBFC.

xi. Verify that securities of the same type or class are received back by the lender/paid by the borrower at the end of the specified period together with all corporate benefits thereof (i.e. dividends, rights, bonus, interest or any other rights or benefit accruing thereon).

xii. Verify charges received or paid in respect of securities lend/borrowed.

xiii. Obtain a confirmation from the approved intermediary regarding securities deposited with/borrowed from it as at the year end.

xiv. An auditor should examine whether each loan or advance has been properly sanctioned. He should verify the conditions attached to the sanction of each loan or advance i.e. limit on borrowings, nature of security, interest, terms of repayment, etc.

xv. An auditor should verify the security obtained and the agreements entered into, if any, with the concerned parties in respect of the advances given. He must ascertain the nature and value of security and the net worth of the borrower/guarantor to determine the extent to which an advance could be considered realisable.

xvi. Obtain balance confirmations from the concerned parties.

xvii. As regards bill discounting, verify that proper records/documents have been maintained for every bill discounted/rediscounted by the NBFC. Test check some transactions with reference to the documents maintained and ascertain whether the discounting charges, wherever, due, have been duly accounted for by the NBFC.

xviii. Check whether the NBFC has not lent/invested in excess of the specified limits to any single borrower or group of borrowers as per NBFC Prudential Norms Directions.

xix. An auditor should verify whether the NBFC has an adequate system of proper appraisal and follow up of loans and advances. In addition, he may analyse the trend of its recovery performance to ascertain that the NBFC does not have an unduly high level of NPAs.

xx. Check the classification of loans and advances (including bills purchased and discounted) made by a NBFC into Standard Assets, Sub-Standard Assets, Doubtful Assets and Loss Assets and the adequacy of provision for bad and doubtful debts as required by NBFC Prudential Norms Directions.

(**Note**: The above checklist is not exhaustive. It is only illustrative. There could be various other audit procedures which may be performed for audit of an NBFC.)

21. Reporting in Tax Audit Report: Any amount of GST/Tax payable on the last day of previous year (opening balance) as well as on the last day of current year has to be reported in Tax Audit Report under clause 26(A) and 26(B) in reference of section 43 B.

Clause 26 (A) dealt GST/VAT payable on the pre-existed of the first day of the previous year but was not allowed in the assessment of any preceding previous year and was either paid {clause 26(A) (a)}/ or/ and/ not paid during the previous year {clause 26(A)(b)}

The details will be as under in regard to opening balances:

Liability Pre-existed on the previous year.

Sr. No.	Section	Nature of Liability	Outstanding Opening balance not allowed in previous year	Amount paid/set-off during the year	Amount written back to P&L Account	Amount unpaid at the end of the year
01	43B(a)	VAT/GST	100 lakh	50 lakh	0	50 lakh

It has been assumed that 50 lakh was allowed in last year as it was paid before the due date of return.

Liability incurred during the previous year

Sr. No.	Section	Nature of Liability	Amount incurred in previous year but remaining outstanding on last day	Amount paid/set-off before the due date of filing return/date upto which reported in the tax audit	Amount unpaid on the due of filing of return/date upto which reported in the tax audit report,

			of previous year.	report, whichever is earlier	whichever is earlier
01	43B(a)	VAT/GST	100 lakh	40 lakh	60 lakh

22. (a) Why Operational Audit?: The need for operational auditing has arisen due to the inadequacy of traditional sources of information for an effective management of the company where the management is at a distance from actual operations due to layers of delegation of responsibility, separating it from actualities in the organisation.

Operational audit is considered as a specialised management information tool to fill the void that conventional information sources fail to fill. Conventional sources of management information are departmental managers, routine performance report, internal audit reports, and periodic special investigation and survey. These conventional sources fail to provide information for the best direction of the departments all of whose activities do not come under direct observation of managers. The shortcomings of these sources can be stated as under:

(i) Executives and managers are too preoccupied with implementation of plans and achieving of targets. They are left with very little time to collect information and locate problems. They may come across problems that have come to surface but they are hardly aware of problems that are brewing and potential.

(ii) Managers or their aides are generally relied upon for transmitting information than for booking for information or for analysing situations.

(iii) The information that is transmitted by managers is not necessarily objective - often it may be biased for various reasons.

(iv) Conventional internal audit reports are often routine and mechanical in character and have a definite leaning towards accounting and financial information. They are also historical in nature.

(v) Other performance reports contained in the annual audited accounts and the routine reports prepared by the operating departments have their own limitations. The annual audited accounts are good as far as an overall evaluation is concerned in monetary terms.

Sales may be shown at a higher monetary value compared to the previous year and this may apparently suggest that the functioning of the sales department is satisfactory. But this may have been caused by a number of factors inspite of a really bad performance on the sales front. This fact may not be readily known unless one cares to analyse the sales data by reference to notes and explanations to the accounts and other related accounting data. Even a study of this nature may not fully reveal the weakness. It is

quite possible that the established market for sales has been lost partly while some fortuitous sales have compensated the loss

The routine weekly production report may include production 'that is subsequently rejected by the quality control staff, or to avoid showing a bad production performance; even the partly produced goods may also be included. Remember, all this can happen inspite of specific management instructions about the basis on which the production report is to be made out.

Another important point may be noticed in the matter of routine departmental reports. The busy management people, who can afford time only to glance over the performance reports, cannot be expected to make an integrated reading of several reports or to undertake an analysis of such reports. What they need is reliable, unmanipulated and objective report which they would like to look into to understand the situation.

(vi) Operations of controls in a satisfactory manner cannot be relied upon to bring to light the environmental conditions. Controls are specific and their satisfactory operation is related to the specific situation under control. Also monitoring of the breakdown or non-operation of controls is a periodic phenomenon.

(vii) Surveys and special investigations, no doubt, are very useful but these are at the best occasional in character. Also, they are costly, time consuming and keep the departmental key personnel busy during the period they are on. These are basically an attempt to carry out a post-mortem rather than to enlighten the management about the ways on improvement or for better performance or to give a signal for dangers and disasters to come.

(b) The difference in the approach of both of these audits is illustrated below:

1. Perception - Traditionally, internal auditors have been engaged in a sort of protective function, deriving their authority from the management. They view and examine internal controls in the financial and accounting areas to ensure that possibilities of loss, wastage and fraud are not there; they check the accounting books and records to see, whether the internal checks are properly working and the resulting accounting data are reliable.

For example - when the auditor looks into the vouchers to see whether they corroborate the entries in the cash book or physically examines the cash in hand he is doing his traditional protective function. The moment be concerns himself to see whether customers' complaints are duly attended to or whether cash balance is excessive to the need, he comes to the operational field.

Also, he will review the operational control on cash to determine whether maximum possible protection has been given to cash. Similarly, in the audit of stocks, he would be interested in such matters as reorder policy, obsolescence

policy and the overall inventory management policy. In pure administrative areas on stock, he will see whether adequate security and insurance arrangements exist for protection of stocks.

2. **Issues -** The basic difference that exists in conceptualisation of the technique of operational auditing is in the auditor's role in recommending corrections or in installing systems and controls. According to Lindberg and Cohn, such a situation would be in conflict with the role of operational auditor. In this connection, the views of the Institute of Internal Auditors, in the context of internal audit are relevant. According to that Institute, "the internal auditor should be free to review and appraise policies, plans, procedures and records; but his review and appraisal does not in any way relieve other persons in the organisation of the responsibilities assigned to them.

   However, a further distinction should be observed between traditional internal auditing and operational auditing - this lies in the attitude and approach to the whole auditing proposition. Every aspect of operational auditing programme should be geared to management policies, management objectives and management goals.

3. **Objectives -** The main objective of operational auditing is to verify the fulfilment of plans and sound business requirements as also to focus on objectives and their achievement objectives; the operational auditor should not only have a proper business sense, he should also be equipped with a thorough knowledge of policies, procedures, systems and controls, he should be intimately familiar with the business, its nature and problems and prospects and its environment.

   Above all, his mind should be open and active so as to be able to perceive problems and prospects and grasp technical matters. In carrying out his work probably at every step he will have to exercise judgement to evaluate evidence in connection with the situations and issues. The norms and standards should be such as are generally acceptable or developed by the company itself.

   Performance yardsticks can be found in the management objectives, goals and plans, budgets, records of past performance, policies and procedures. Industry standards can be obtained from the statistics provided by industry, associations and government sources. It should be appreciated that the standards may be relative depending upon the situation and circumstances; the operational auditor may have to apply them with suitable adjustments.

   For example - The standards relating to objectives for a government company are quite different from those of a private sector company. Similarly, standards of performance of a well equipped company which also adequately looks after the well-being of employees may be significantly different from a company which offers scanty welfare facilities or is ill-equipped.

Today, however, the concept of modern internal auditing suggests that there is no difference in internal and operational auditing. In fact, the scope of internal auditing is broad enough to embrace the areas covered by operational auditing as well. The modern internal auditing performs both protective as well as constructive functions.

23. (a) Etymologically, **auditing and investigation** are largely overlapping concepts because auditing is nothing but an investigation used in a broad sense. Both auditing and investigation are fact finding techniques but their basic nature and objectives differ as regards scope, frequency, basis, thrust, depth and conclusiveness. Audit and investigation differ in objectives and in their nature. Auditing is general while investigation is specific.

Basis of Difference	Investigation	Audit
(i) Objective	An investigation aims at establishing a fact or a happening or at assessing a particular situation.	The main objective of an audit is to verify whether the financial statements display a true and fair view of the state of affairs and the working results of an entity.
(ii) Scope	The scope of investigation may be governed by statute or it may be non- statutory.	The scope of audit is wide and in case of statutory audit the scope of work is determined by the provisions of relevant law.
(iii) Periodicity	The work is not limited by rigid time frame. It may cover several years, as the outcome of the same is not certain.	The audit is carried on either quarterly, half-yearly or yearly.
(iv) Nature	Requires a detailed study and examination of facts and figures.	Involves tests checking or sample technique to draw evidences for forming a judgement and expression of opinion.
(v) Inherent Limitations	No inherent limitation owing to its nature of engagement.	Audit suffers from inherent limitation.
(vi) Evidence	It seeks conclusive evidence.	Audit is mainly concerned with prima-facie evidence.

(vii) Observance of Accounting Principles	It is analytical in nature and requires a thorough mind capable of observing, collecting and evaluating facts.	Is governed by compliance with generally accepted accounting principles, audit procedures and disclosure requirements.
(viii) Reporting	The outcome is reported to the person(s) on whose behalf investigation is carried out.	The outcome is reported to the owners of the business entity.

(b) Major areas to examine in course of Due Diligence Review: 'Due Diligence' is a term that is often heard in the corporate world these days in relation to corporate restructuring. The purpose of due diligence is to assist the purchaser or the investor in finding out all he can, reasonably about the business he is acquiring or investing in prior to completion of the transaction including its critical success factors as well as its strength and weaknesses.

Due diligence is an all pervasive exercise to review all important aspects like financial, legal, commercial, etc. before taking any final decision in the matter. As far as any hidden liabilities or overvalued assets are concerned, this shall form part of such a review of Financial Statements. Normally, cases of hidden liabilities and overvalued assets are not apparent from books of accounts and financial statements. Review of financial statements does not involve examination from the view point of extraordinary items, analysis of significant deviations, etc.

However, in order to investigate **hidden liabilities,** the auditor should pay his attention to the following areas:

- The company may not show any show cause notices which have not matured into demands, as contingent liabilities. These may be material and important.
- The company may have given "Letters of Comfort" to banks and Financial Institutions. Since these are not "guarantees", these may not be disclosed in the Balance sheet of the target company.
- The Company may have sold some subsidiaries/businesses and may have agreed to take over and indemnify all liabilities and contingent liabilities of the same prior to the date of transfer. These may not be reflected in the books of accounts of the company.
- Product and other liability claims; warranty liabilities; product returns/discounts; liquidated damages for late deliveries etc. and all litigation.
- Tax liabilities under direct and indirect taxes.
- Long pending sales tax assessments.

- Pending final assessments of customs duty where provisional assessment only has been completed.
- Agreement to buy back shares sold at a stated price.
- Future lease liabilities.
- Environmental problems/claims/third party claims.
- Unfunded gratuity/superannuation/leave salary liabilities; incorrect gratuity valuations.
- Huge labour claims under negotiation when the labour wage agreement has already expired.
- Contingent liabilities not shown in books.

Regularly Overvalued Assets:

The auditor shall have to specifically examine the following areas:

- Uncollected/uncollectable receivables.
- Obsolete, slow non-moving inventories or inventories valued above NRV; huge inventories of packing materials etc. with name of company.
- Underused or obsolete Plant and Machinery and their spares; asset values which have been impaired due to sudden fall in market value etc.
- Assets carried at much more than current market value due to capitalization of expenditure/foreign exchange fluctuation, or capitalization of expenditure mainly in the nature of revenue.
- Litigated assets and property.
- Investments carried at cost though realizable value is much lower.
- Investments carrying a very low rate of income / return.
- Infructuous project expenditure/deferred revenue expenditure etc.
- Group Company balances under reconciliation etc.
- Intangibles of no value.

24. (a) Delegation of Authority to the Employee: As per Clause (12) of Part I of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

In this case CA. 'A' proprietor of M/s A & Co., went to abroad and delegated the authority to another Chartered Accountant Mr. Y, his employee, for taking care of

routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated and such delegation will not attract provisions of this clause like issue of audit queries during the course of audit, asking for information or issue of questionnaire, attending to routing matters in tax practice, subject to provisions of Section 288 of Income Tax Act etc.

(i) In the given case, Mr. 'Y', a chartered accountant being employee of M/s A & Co. has issued audit queries which were raised during the course of audit. Here "Y" is right in issuing the query, since the same falls under routine work which can be delegated by the auditor. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.

(ii) In this instance, Mr. "Y", CA employee of the audit firm M/s A & Co. has attended the Income tax proceedings for a client as authorized representative before Income Tax Authorities. Since the council has allowed the delegation of such work, the chartered accountant employee can attend to routine matter in tax practice as decided by the council, subject to provisions of Section 288 of the Income Tax Act. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.

(b) Money of Clients to be Deposited in Separate Bank Account: Clause (10) of Part I of Second Schedule states that a Chartered Accountant shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients in separate banking account or to use such money for the purpose for which they are intended".

In the given case, M/s Amudhan & Co. received the money in January, 2019 which is to be paid only in July 2019, hence, it should be deposited in a separate bank account. Since in this case M/s Amudhan & Co. has failed to keep the sum of ₹ 2.8 lakhs received on behalf of their client in a separate Bank Account, it amounts to professional misconduct under Clause (10) of Part I of Second Schedule.

(c) Other Misconduct: CA Raman has engaged his Articled Assistant for his own election campaigning for the Regional Council elections of ICAI.

This aspect is covered under 'Other Misconduct' which has been defined in Part IV of the First Schedule and Part III of the Second Schedule. These provisions empower the Council even if it does not arise out of his professional work. This is considered necessary because a Chartered Accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action.

Thus, when a Chartered Accountant uses the services of his Articled Assistant for purposes other than professional practice, he is found guilty under 'Other Misconduct'.

Hence, CA Raman is guilty of 'Other Misconduct'.

(d) Not Exercising Due Diligence: According to Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

It is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral minor negligence.

Where a Chartered Accountant had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirement in this regard, he was guilty of professional misconduct under Clause (7).

Since, Mr. Anil has not completed his audit work in time and consequently could not submit audit report in due time and consequently, company could not comply with the statutory requirements, the auditor is guilty of professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

25. (a) The auditor's objectives in an audit of consolidated financial statements are:

(i) to satisfy himself that the consolidated financial statements have been prepared in accordance with the requirements of applicable financial reporting framework;

(ii) to enable himself to express an opinion on the true and fair view presented by the consolidated financial statements;

(iii) to enquire into the matters as specified in section 143(1) of the Companies Act, 2013; and.

(iv) to report on the matters given in the clauses (a) to (i) of section 143(3) of the Companies Act, 2013, for other matters under section 143(3)(j) read with rule 11 of the Companies (Audit and Auditors) Rules, 2014, to comment on the matters specified in sub-rule (a),(b) and (c)[1] to the extent applicable;

(v) The auditor should also validate the requirement of preparation of CFS for the company as per applicable financial reporting framework.

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[1] The auditor of the consolidated financial statements generally report on the matters pertaining to the component, on the basis of auditors' report of the respective component.

(b) Areas of propriety audit under Section 143(1): Section 143(1) of the Companies Act, 2013 requires the auditor to make an enquiry into certain specific areas. In some of the areas, the auditor has to examine the same from propriety angle as to -

(i) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

(ii) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company; Again, considering the propriety element, rationalizing the proper disclosure of loans and advance given by company is made;

(iii) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

(iv) whether loans and advances made by the company have been shown as deposits;

(v) whether personal expenses have been charged to revenue account;

(vi) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

A control has been set up to verify the receipt of cash in case of allotment of shares for cash. Further, if cash is not received, the books of accounts and statement of affairs shows the true picture.

(c) Role of Auditor: The Auditor during his review of Investment Department of Life Insurance Company should mainly consider the following:

- Review the Investment management structure to ensure adequate segregation of duties between Investment Front office, Mid Office and Back office.
- Review of insurer's Standard Operating Procedures which are prescribed by the IRDA Regulations and are required to cover the entire gamut of investment related processes and policies.
- Review of insurer's Investment policy.
- Review of functioning and scope and minutes of Investment Committee.
- Compliance of all Investment regulations, various other circulars specified by IRDA and other regulations specified in the Insurance Act, 1938.
- Review of insurer's Disaster Recovery, Backup and Contingency Plan.

- Review of access Controls, authorization process for Orders and Deal execution, etc.
- Review of insurer's Cash Management System to track funds available for Investment considering the settlement obligations and subscription and redemption of units, etc. The system should be validated not to accept any commitment beyond availability of funds and restrict Short Sales at the time of placing the order. Further insurer's system should be able to determine the amount of Investible surplus.
- Ensure that the system is be able to automatically monitor various Regulatory limits on Exposure and Rating of debt instruments.
- Review of fund wise reconciliation with Investment Accounts, Bank, and Custodian records.
- Ensure that there is split between Shareholders' and Policyholders' funds, and earmarking of securities between various funds namely Life (Participating & Non-Participating), Pension & Group (Participating & Non-Participating) and Unit Linked Fund.
- Review the arrangements and reconciliations of holdings with the insurer's custodian.
- Review and check insurer's Investment Accounting and valuation policy and the controls around this process.
- insurer's risk management policies and processes to manage investment risk such as Market risk, Liquidity risk, Settlement risks, etc.
- Determine the extent of activities outsourced and the controls over such activities.
- Controls over NAV computation and declaration.
- Controls over various system interfaces such as Seamless integration of data, between front office and back office, in the Investments accounting system.
- Flow of data from PMS to the Investment Accounting system.
- Controls around personal dealings, insider trading and front running.

(d) Revision of Tax Audit Report:

(1) Normally, the report of the tax auditor cannot be revised later.

(2) However, when the accounts are revised in the following circumstances, the tax Auditor may have to revise his Tax audit report also.

(i) Revision of accounts of a company after its adoption in the annual general meeting.

(ii) Change in law with retrospective effect.

(iii) Change in interpretation of law (e.g.) CBDT Circular, Notifications, Judgments, etc.

The Tax Auditor should state it is a revised Report, clearly specifying the reasons for such revision with a reference to the earlier report.

(e) The scope of the quality review includes:

(i) Examining whether the Engagement Partner has ensured compliance with the applicable technical standards in India and other applicable professional and ethical standards and requirements.

(ii) Examining whether the Engagement Partner has ensured compliance with the relevant laws and regulations.

(iii) Examining whether the Audit firm has implemented a system of quality control as envisaged in line with the Standard on Quality Control (SQC) 1, Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

PAPER 4: CORPORATE AND ECONOMIC LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2019 EXAMINATION

Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For November 2019 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1st May 2017 to 30th April, 2019 are relevant and applicable for said examinations.

This RTP of November 2019 examination will help the students to know of the significant changes, that are relevant and applicable for November 2019 examination. These amendments are to read with August 2017 edition of the Study material.

Relevant amendments: Here are the given relevant amendments arranged chapter wise.

PART I: CORPORATE LAWS

SECTION A: COMPANY LAW

CHAPTER 1: APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

According to the amendment, section 152(6) & (7) shall not apply to –

(a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;

(b) a subsidiary of a Government company, referred to in (a) above.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5th June 2015 vide Notification G.S.R. 582(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

"2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

Section 149(1)(b) & first proviso shall not apply on section 8 companies.

Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.

4. Enforcement of the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* Vide Notification G.S.R. 839(E) dated 5th July 2017

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-

"(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act."

5. Exemptions given to certain unlisted public companies under the *Companies (Appointment and Qualification of Directors) Rules, 2014* from appointment of Independent Directors Vide notification of circular 09/2017 dated 5th September 2017

Vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

The said amended Rule 4 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

Through the issue of this circular, it is hereby clarified that a "joint venture", would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

6. Enforcement of the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2018* Vide Notification G.S.R.51(E) dated 22nd January, 2018

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014,* in rule 9,

(A) for the marginal heading, the following marginal heading shall be substituted, namely:-

"Application for allotment of Director Identification Number before appointment in an existing company";

(B) for sub-rule (1), the following shall be substituted, namely:-

"(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the *Companies (Registration Offices and Fees) Rules, 2014.*

Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe)";

(C) in sub-rule (3),

(I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

"(iiia) board resolution proposing his appointment as director in an existing company";

(II) for clause (b), the following clause shall be substituted, namely:-

"(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company,"

7. *Companies (Removal of Difficulties) Order, 2018 S.O. 768(E)* dated 21st February, 2018

In the Companies Act, 2013, in section 169, in sub-section (1), −

(i) before the proviso, the following proviso shall be inserted, namely :-

"Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:";

(ii) in the existing proviso, for the words "Provided that", the words "Provided further that" shall be substituted.

8. Enforcement of the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* vide Notification G.S.R. 431(E) dated 7th May 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(a) rule 5 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

"(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year."

(b) In the principal rules, in rule 16, for the word "shall", the word "may" shall be substituted.

9. Enforcement of the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 vide Notification G.S.R. 558 (E)* dated 12th June 2018

The Central Government makes the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the annexure for form DIR-3, a new form shall be substituted.

10. Enforcement of the *Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 vide Notification G.S.R. 615(E)* w.e.f. 10th July, 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In *Companies (Appointment and Qualification of Directors) Rules, 2014,*

(i) The rule 11 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following shall be inserted, namely:-

"12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.";

(iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

11. Enforcement of the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* vide Notification G.S.R. 798 (E) dated 21st August 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(i) in the proviso to rule 12A, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

12. Enforcement of the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* vide Notification G.S.R. 904(E) dated 20th September 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the proviso to rule 12A, for the words and figures "before 15th September, 2018," the words and figures "before 5th October, 2018 " shall be substituted.

13. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 149	In section 149 of the principal Act,— (i) for sub-section (*3*), the following sub-section shall be substituted, namely:— "(*3*)Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated."; (ii) in sub-section (6),— (a) in clause (*c*), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted; (b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

	(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (*i*), (*ii*) or (*iii*);"; (*c*) in clause (*e*), in sub-clause (*i*), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.".
Amendment of section 152	In section 152 of the principal Act,— (a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted; (b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.
Amendment of section 153	In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."
Amendment of Section 157	In section 157 of the principal Act,— (i) in sub-section (*1*), the words and figures, "within the time specified under section 403" shall be omitted; (ii) in sub-section (*2*), the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.

Amendment of section 160.	In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— ''Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”
Amendment of section 161.	In section 161 of the principal Act,— (i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted; (ii) in sub-section (4),— (a) the words "In the case of a public company," shall be omitted; (b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.
Amendment of section 164	In section 164 of the principal Act,— (i) in sub-section (*2*), the following proviso shall be inserted, namely:— "Provided that where a person is appointed as a director of a company which is in default of clause (*a*) or clause (*b*), he shall not incur the disqualification for a period of six months from the date of his appointment."; (ii) in sub-section (*3*), for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of section 165.	In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:— "Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

Amendment of section 167.	In section 167 of the principal Act, in sub-section (1),— (i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (i) for thirty days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of Section 168	In section 168 of the principal Act, in sub-section (*1*), in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

14. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 157.	In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— "(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."

Substitution of new section for section 159.	For section 159 of the principal Act, the following Substitution of section shall be substituted, namely: **Penalty for default of certain provisions.** "159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues."
Amendment of section 164.	In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:— "(i) he has not complied with the provisions of sub-section (1) of section 165."
Amendment of section 165.	In section 165 of the principal Act, in sub-section (6), for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.

CHAPTER 2: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R. G.S.R 875(E) dated 12th September 2018

The Central Government makes the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* to amend the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.*

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

(i) in rule 6,

(a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.

(b) the words 'Central Government' shall be omitted.

(ii) in rule 7, sub-rule (2) shall be omitted

(iii) for form no.MR-2, a new form MR-2 shall be substituted.

2. Amendment in Schedule V to the *Companies Act, 2013*

The Central Government vide Notification No. S.O. 4822(E) dated 12th September 2018 has amended the Schedule V to the Companies Act, 2013.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment in Section 2(51)	in clause (*51*),— (a) in sub-clause (iv), the word "and" shall be omitted; (b) for sub-clause (v), the following sub-clauses shall be substituted, namely:— "(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"
Amendment of section 196	In section 196 of the principal Act,— (a) in sub-section (3), in clause (a), after the proviso, the following proviso shall be inserted, namely:— "Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made."; (b) in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.
Amendment of Section 197	In section 197 of the principal Act,— (a) in sub-section (1),— (i) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (ii) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted; (iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public

	financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (c) for sub-section (9), the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (d) in sub-section (10),— (i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (f) after sub-section (15), the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the

	remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."
Amendment of Section 198	In section 198 of the principal Act,— (i) in sub-section (3),— (a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted; (b) after clause (e), the following clause shall be inserted, namely:— "(f) any amount representing unrealised gains, notional gains or revaluation of assets."; (ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.
Amendment of section 200.	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section 201.	In section 201 of the principal Act,— (a) in sub-section (*1*), for the words "this Chapter", the word and figures "section 196" shall be substituted; (b) in sub-section (*2*), in clause (*a*), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 197.	In section 197 of the principal Act,— (a) sub-section (7) shall be omitted; (b) for sub-section (15), the following sub-section shall be substituted, namely:— "(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees."
Amendment of section 203.	In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— "(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees."

CHAPTER 3: MEETING OF BOARD AND ITS POWERS

1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

(i) With respect to Section 173(5), the following sub- section shall be substituted:

(5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.

(ii) With respect to section 174(3)-

It shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015 Vide Notification G.S.R. 583(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private companywhich has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.".

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

In section 186(7)- following proviso shall be inserted-

Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association.".

4. Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar."

5. Enforcement of the *Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017* vide Notification G.S.R. 880(E) Dated 13th July 2017

The Central Government hereby makes the following rules further to *amend the Companies (Meetings of Board and its Powers) Rules, 2014.*

Following are the amendments:

(1) In rule 3 for clause (e), the following shall be substituted, -

"(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year: Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."

(2) In the principal rules, for rule 6, the following rule shall be substituted, namely:-

"6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014* shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

6. Enforcement of the *Companies (Restriction on number of layers) Rules, 2017* in exercise of the powers conferred under proviso to clause (87) of section 2 Vide notification G.S.R. 1176(E), dated 20th September 2017

Restriction on number of layers for certain classes of holding companies -

(1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2) , shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) **The provisions of this rule shall not apply to the following classes of companies, namely:—**

(a) a banking company as defined in the Banking Regulation Act, 1949

(b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999

(d) a Government company referred to in clause (45) of section 2 of the Companies Act.

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –

(i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;

(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.

(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

7. Enforcement of the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* vide Notification G.S.R. 429 (E) dated 7th May, 2018

The Central Government makes the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* to amend the *Companies (Meetings of Board and its Powers) Rules, 2014*.

In *Companies (Meetings of Board and its Powers) Rules, 2014*,

(i) in rule 4, the following proviso shall be inserted, namely:-

"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

(ii) In the principal rules, in rule 6, for the words "every listed company", the words "every listed public company" shall be substituted.

(iii) In the principal rules, for rule 13, the following rule shall be substituted, namely:-

"13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186."

8. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 173	In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.".
Amendment of section 177.	In section 177 of the principal Act,— (i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."
Amendment of Section 178	In section 178 of the principal Act,— (i) in sub-section (*1*), for the words "every listed company", the words "every listed public company" shall be substituted;

	(ii) in sub-section (*2*), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted; (iii) in sub-section (*4*), in clause (*c*), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (iv) in sub-section (*8*), in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.
Amendment of Section 180	In section 180 of the principal Act, in sub-section (*1*), in clause (*c*), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.
Amendment of Section 184	In section 184 of the principal Act,— (i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted; (ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:— "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."
Substitution of new section for section 185. Loan to Directors	For section 185 of the principal Act, the following section shall be substituted, namely:— '185. (*1*) No company shall, directly or indirectly, advance any loan, including any loan represented by a

	book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (*2*) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (*b*) the loans are utilised by the borrowing company for its principal business activities. *Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means— (*a*) any private company of which any such director is a director or member; (*b*) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (*c*) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (*3*) Nothing contained in sub-sections (*1*) and (*2*) shall apply to—

	(a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (*c*) and (*d*) are utilized by the subsidiary company for its principal business activities. (*4*) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or

	with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'
Amendment of section 186.	In section 186 of the principal Act,— (i) in sub-section (2), the following Explanation shall be inserted, namely:— *'Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'; (ii) for sub-section (3), the following sub-section shall be substituted, namely:— '(*3*) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (*2*), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (*4*).". (iii) for sub-section (11), the following sub-section shall be substituted, namely:—

	"(*11*) Nothing contained in this section, except sub-section (*1*), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (*b*) to any investment— (*i*) made by an investment company; (*ii*) made in shares allotted in pursuance of clause (*a*) of sub-section (*1*) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (*iii*) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities."; (iv) in the *Explanation*, in clause (*a*), after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."
Amendment of section 188.	In section 188 of the principal Act,— (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—

	"Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:" (ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.
Omission of section 194	Section 194 of the principal Act shall be omitted.
Omission of section 195	Section 195 of the principal Act shall be omitted.

9. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 191	In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— "(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees."

CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

1. Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24th of August, 2017

The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24th day of August, 2017.

2. Enforcement of the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017* Vide Notification G.S.R. 1062(E) dated 24th of August 2017

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*.

According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

The *Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*

a. **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation

Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

b. **Competent authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.

c. **In case of Government Company /foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.

d. **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

e. **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

f. **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.

g. **Entry in arrest register**: The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.

h. **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years a) from the date of judgment or final order of the Trial Court, in cases where the said

judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.

i. **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 223.	In section 223 of the principal Act, in sub-section (*3*), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

CHAPTER 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

The word "Tribunal "wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 236.	In section 236 of the principal Act, in sub-sections (4), (5) and (*6*), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

3. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 238	In section 238 of the principal Act, in sub-section (3), for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.

CHAPTER 6: PREVENTION OF OPPRESSION AND MISMANAGEMENT

Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 248	In section 248 of the principal Act, in sub-section Amendment of (1),— (a) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted; (b) after clause (c) and before the long line, the following clauses shall be inserted, namely:— "(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or (e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".

CHAPTER 9: COMPANIES INCORPORATED OUTSIDE INDIA

Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 379.	Section 379 of the principal Act shall be renumbered as sub-section (*2*) thereof and before sub-section (*2*) as so renumbered, the following sub-section shall be inserted, namely:— "(*1*) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament."
Amendment of section 384.	In section 384 of the principal Act, in sub-section (*2*), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.

Amendment of section 391.	In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— "(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed."

CHAPTER 10: MISCELLANEOUS PROVISIONS

1. Notification of *Section 247 vide Notification S.O. 3393(E)* dated 18th October 2017

The Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

Section 247: Valuation by Registered Valuers

(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) The valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

However if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

2. Notification of the *Companies (Registered Valuers and Valuation) Rules, 2017* vide Notification G.S.R 1316(E) dated 18th October, 2017

In exercise of the powers conferred by section 247, the Central Government hereby enforced the *Companies (Registered Valuers and Valuation) Rules, 2017.*

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

2. Definitions

(1) In these rules, unless the context otherwise requires -

"authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;

"asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

"certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

"certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

"registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;

"valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

3. Eligibility for registered valuers

(1) A person shall be eligible to be a registered valuer if he-

(a) Is a valuer member of a registered valuers organisation;

Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) Has passed the valuation examination under rule 5 within three years

preceding the date of making an application for registration under rule 6;

(d) Possesses the qualifications and experience as specified in rule 4;

(e) Is not a minor;

(f) Has not been declared to be of unsound mind;

(g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) Is a person resident in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (*v*) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

(i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(k) Is a fit and proper person:

Explanation.- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

(i) Integrity, reputation and character,

(ii) Absence of convictions and restraint orders, and

(iii) Competence and financial solvency.

(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;

(b) It is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);

(d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(*e*) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or

(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

(c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

6. Application for certificate of registration

(1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.

(2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.

(3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.

(4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.

(5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.

(6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.

(7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

(8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.

(9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -

(a) accept the application and grant the certificate of registration; or

(b) reject the application by an order, giving reasons thereof.

(10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

(a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;

(b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

(c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;

(d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;

(e) take adequate steps for redressal of grievances;

(f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;

(g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;

(h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;

(i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;

(j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;

(k) in case a company is the registered valuer, be liable alongwith director who signs and acts in respect of a valuation assignment on behalf of the company;

(l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and

(m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation

(1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

(a) internationally accepted valuation standards;

(b) valuation standards adopted by any registered valuers organisation.

(2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which

case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

(3) The valuer shall, in his report, state the following:-

(a) background information of the asset being valued;

(b) purpose of valuation and appointing authority;

(c) identity of the valuer and any other experts involved in the valuation;

(d) disclosure of valuer interest or conflict, if any;

(e) date of appointment, valuation date and date of report;

(f) inspections and/or investigations undertaken;

(g) nature and sources of the information used or relied upon;

(h) procedures adopted in carrying out the valuation and valuation standards followed;

(i) restrictions on use of the report, if any;

(j) major factors that were taken into account during the valuation;

(k) conclusion; and

(l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender

(1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.

(2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

(3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

12. Eligibility for registered valuers organisations

(1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -

(i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;

(ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

(a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;

(b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

(2) The organisation referred to in sub-rule (1) shall be recognised if it –

(a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;

(b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;

(c) conducts training for the individual members before a certificate of practice is issued to them;

(d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;

(e) provides for continuing education of individuals who are its members;

(f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and

(g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.

(3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure- III,** within one year from the date of commencement of these rules.

14. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

(a) at all times continue to satisfy the eligibility requirements specified under rule 12;

(b) maintain a register of members who are registered valuers, which shall be publicly available;

(c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;

(d) make such reports to the authority as may be required by it;

(e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (*a*) of sub-rule (2) of rule 12, issued by the authority;

(f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;

(g) shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;

(h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and

(i) comply with such other conditions as may be specified by authority.

15. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

18. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

20. Punishment for contravention

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. Enforcement of the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* vide Notification No. G.S.R. 155 (E) dated 9th February, 2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013, the Central Government makes the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*, namely:-

In the *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

4. Enforcement of the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017.*

In *Companies (Registered Valuers and Valuation) Rules, 2017,* in rule 19, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.".

5. Enforcement of the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* vide Notification G.S.R. G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017.*

In the *Companies (Registered Valuers and Valuation) Rules, 2017,*

(i) in rule 11, for the figures, letters and word "30th September, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.

(ii) In the said rules, in rule 14, in clause (f), for the words "one year", the words "two years" shall be substituted.

6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of Section 247	In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.
Amendment of section 447.	In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does

	not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.".

7. Enforcement of the *Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018* vide Notification G.S.R.1108(E) dated 13th November 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017.*

In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules")

(i) in rule 1, -

for the marginal heading, the following marginal heading shall be substituted, namely:-

"Short title, commencement and application";

(ii) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

Explanation.- It is hereby clarified that conduct of valuation under any ther law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.".

(iii) In the said rules**, in rule 3, in sub-rule (2), -**

(a) in clause (a), the word "not" shall be omitted;

(b) in clause (c), after the brackets and letter "(e)", the brackets and letter "(f)," shall be inserted.

(iv) In the said rules, **in rule 4,-**

(a) in clause (c), the words, brackets and letters "and having qualification mentioned at clause (a) or (b)" shall be omitted;

(b) in Explanation II, the words "and examination or training" shall be omitted;

(c) after Explanation II, the following Explanation shall be inserted, namely :-

"Explanation III.— For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.".

(v) In the said rules, in rule 10, the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority" shall be omitted.

(vi) In the said rules, in rule 11, the Explanation shall be omitted.

(vi) In the said rules, in rule 12, in sub-rule (1), in clause (ii), for the words "a professional institute", the words "it is a professional institute" shall be substituted.

8. Enforcement of section 465 of the Companies Act, 2013

The Central Government vide Notification No. **S.O. 560(E)** appoints the 30th January, 2019 as the date on which the provisions of section 465 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961] shall come into force.

9. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 447.	In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.

CHAPTER 11: COMPOUNDING OF OFFENCES, ADJUDICATION, SPECIAL COURTS

1. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 435. Establishment of Special Courts	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (*1*) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (*2*) A Special Court shall consist of— (*a*) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (*b*) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."

Amendment of section 438.	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section 439.	In section 439 of the principal Act, in sub-section (*2*), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section 440.	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.
Insertion of new section 446A. Factors for determining level of punishment.	After section 446 of the principal Act, the following sections shall be inserted, namely:— "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default.
Lesser penalties for One Person Companies or small companies.	446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (*5*) of section 92, sub-section (*2*) of section 117 or sub-section (*3*) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.".

2. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 446B.	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections",

	the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.
Amendment of section 454	In section 454 of the principal Act, — (i) for sub-section (3), the following sub-section shall be substituted, namely: — "(3) The adjudicating officer may, by an order (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit."; (ii) in sub-section (4), for the words "such company and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted; (iii) in sub-section (8),— (a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted; (b) in clause (ii)— (i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted; (ii) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.
Insertion of new section 454A.	After section 454 of the principal Act, the following section shall be inserted, namely: **Penalty for repeated default.** "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act."

3. Enforcement of the *Companies (Adjudication of Penalties) Amendment Rules, 2019* vide Notification G.S.R. 131(E) dated 19th February, 2019

The Central Government makes the *Companies (Adjudication of Penalties) Amendment Rules, 2019* to amend the *Companies (Adjudication of Penalties) Rules, 2014*.

In the *Companies (Adjudication of Penalties) Rules, 2014*, for Rule 3, the following rule shall be substituted:

"3. Adjudication of Penalties. - (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than 15 days and more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, the company, and each of the officers in default, or the other person. as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice.

However, the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding 15 days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

If any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment:

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

(a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);

(b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs portal only.

(15) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

CHAPTER 12: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29th June, 2017

In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-

(a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";

(b) after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959."

SECTION B: SECURITIES LAWS

CHAPTER 1: The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulation) Rules, 1957

Vide Finance Act, 2018, w.e.f 8.3.2019 following Changes are made in the SCRA-

(i) In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Part referred to as the principal Act), **section 12A** shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

"(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing,

levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.".

(ii) In **section 23** of the principal Act, in sub-section (1), in the long line, after the words "Adjudicating officer", the words "or the Securities and Exchange Board of India" shall be inserted.

(iii) In **section 23A** of the principal Act, in sub-clause (a), after the words "bye-laws of the recognised stock exchange", the words "or who furnishes false, incorrect or incomplete information, document, books, return or report" shall be inserted.

(iv) In **section 23E** of the principal Act, after the words "mutual fund", the words "or real estate investment trust or infrastructure investment trust or alternative investment fund", shall be inserted.

(v) In **section 23G** of the principal Act, after the words "periodical returns", the words "or furnishes false, incorrect or incomplete periodical returns" shall be inserted.

(vi) After **section 23G** of the principal Act, the following section shall be inserted, namely:- "**23GA**. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.".

(vii) In **section 23-I** of the principal Act, in sub-section (1), for the word "shall", the word "may' shall be substituted.

(viii) In **section 23J** of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted, namely:- "Factors to be taken into account while adjudging quantum of penalty.";

(b) for the word, figures and letter "section 23-I" the words, figures and letters "section 12A or section 23-I" shall be substituted.

(c) for the words "the adjudicating officer", the words "the Securities and Exchange Board of India or the adjudicating officer" shall be substituted.

(ix) In **section 23JA** of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.".

(x) In **section 23JB** of the principal Act, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

(xi) After **section 23JB** of the principal Act, the following section shall be inserted, namely:-

'23JC. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly; (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.-For the purposes of this section "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'.

(xii) In **section 23M** of the principal Act,-

(1) after the words "adjudicating officer" at both the places where they occur, the words "or the Securities and Exchange Board of India" shall be inserted;

(2) in sub-section (2), for the words, "any of his direction or orders" the words "the direction or order" shall be substituted.

(xiii) **In section 24** of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted:- "Contravention by companies;";

(b) in sub-section (1), for the words "an offence", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(c) in sub-section (2), for the words "an offence under this Act", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(d) or the word "offence", wherever it occurs, the word "contravention" shall be substituted.

CHAPTER 2: The Securities Exchange Board of India Act, 1992 & SEBI (LODR) REGULATIONS, 2015

1. Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated **21st February, 2019** has substituted Clause (e) of sub-section (4) of Section 11 of the SEBI Act, 1992 which is as follows:

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

2. Enforcement of the SEBI (LODR) (Third Amendment) Regulations, 2018

In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956, the SEBI hereby makes the SEBI (LODR) (Third Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/21 w.e.f. 1st June, 2018.

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

(i) in **regulation 24**, in sub-regulation (5), after the word, "court/Tribunal" and before the symbol ".", the following words shall be added, namely,-

", or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

(ii) in **regulation 24,** in sub-regulation (6), after the word, "court/Tribunal" and before the symbol ".", the following words shall be added, namely,-

", or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

3. **Enforcement of the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018**

In exercise of the powers conferred by section 11, sub-section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956, the Board makes the SEBI (LODR) (Fifth Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/30 w.e.f. 6th September 2018.

In the SEBI (LODR) Regulations, 2015, in **regulation 2,** in sub-regulation (1), in clause (h), after the words and symbols "Securitized debt instruments," and before the word "units", the following words and symbols shall be inserted, namely.-

"security receipts,"

4. Enforcement of the SEBI (LODR) (Amendment) Regulations, 2018

In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the SEBI hereby makes the SEBI (LODR) (Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/10 w.e.f. 1st April, 2019.

In the SEBI (LODR) Regulations, 2015:

(i) in regulation 19,

(a) after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely,-

"(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance."

(b) after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-

"(3A) The nomination and remuneration committee shall meet at least once in a year."

(ii) in regulation 20, -

(a) in sub-regulation (1), for the words "the mechanism of redressal of grievances" the words "various aspects of interest" shall be substituted.

(b) after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -

"(2A) At least three directors, with at least one being an independent director, shall be members of the Committee."

(c) sub-regulation (3) shall be substituted with the following, -

"(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders."

(d) after sub-regulation 3, the following new sub-regulation shall be inserted, namely-

"(3A) The stakeholders relationship committee shall meet at least once in a year."

(iii) in regulation 21,

(a) after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-

"(3A) The risk management committee shall meet at least once in a year."

(b) in sub-regulation (4), after the words "as it may deem fit" and before the symbol ".", the words "such function shall specifically cover cyber security" shall be inserted.

(c) in sub-regulation (5), the figure "100" shall be substituted with the figure "500".

(iv) in regulation 24, -

the existing sub-regulation (1) shall be substituted with the following, namely-

"(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.

Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year."

(v) in regulation 34, -

the existing sub-regulation (1) shall be substituted with the following new subregulation, namely, -

"(1) The listed entity shall submit to the stock exchange and publish on its website -

(A) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;

(B) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting."

(vi) In Regulation 36-

In sub-regulation (1), in clause (a), the words "for the purpose" shall be omitted and the words "either with the listed entity or with any depository" shall be inserted.

PART II: ECONOMIC LAWS

CHAPTER 1: The Foreign Exchange and Management Act, 1999

Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019 w.e.f 26-2-2019. Following are the relevant amendments -

(i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:

"(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables."

(ii) In schedule I (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:

"(k) Undertake derivative contracts"

(iii) In the schedule II ((classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:

"(h) Undertake derivative contracts"

CHAPTER 3: PREVENTION OF MONEY LAUNDERING ACT, 2002

Amendments to the prevention of Money-Laundering Act, 2002 through the Finance Act, 2018 w.e.f. 19.04.2018

In the Prevention of Money-laundering Act, 2002,—

(a) in section 2, in sub-section (1), in clause (u), after the words "within the country", the words "or abroad" shall be inserted;

(b) in section 5,—

(i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— "Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.'';

(ii) in sub-section (3), for the word, brackets and figure ''sub-section (2)", the word, brackets and figure "sub-section (3)" shall be substituted;

(c) in section 8,—

(i) in sub-section (3), in clause (a), after the words "continue during", the words "investigation for a period not exceeding ninety days or" shall be inserted;

(ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:— "Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.";

(d) in section 19, in sub-section (3),— (i) after the words "be taken to a", the words "Special Court or" shall be inserted; (ii) in the proviso, after the words "from the place of arrest to the", the words "Special Court or" shall be inserted;

(e) in section 45, in sub-section (1), —

(i) for the words "punishable for a term of imprisonment of more than three years under Part A of the Schedule", the words "under this Act" shall be substituted;

(ii) in the proviso, after the words "sick and infirm,", the words "or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees" shall be inserted;

(f) in section 50, in sub-section (5), in the proviso, in clause (b), for the word "Director", the words "Joint Director" shall be substituted;

(g) section 66 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the

time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.";

In **"Paragraph 29 -Offence Under the Companies Act, 2013**

Section 447 i.e., punishment for fraud has been inserted.

CHAPTER 4: FOREIGN CONTRIBUTION REGULATION ACT, 2010

1. **Enforcement of the Foreign Contribution (Regulation) Amendment Rules, 2019 vide NOTIFICATION NO. G.S.R. 199(E) dated 7th March, 2019**

In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010, the Central Government makes the Foreign Contribution (Regulation) Amendment Rules, 2019 to amend the Foreign Contribution (Regulation) Rules, 2011.

In the Foreign Contribution (Regulation) Rules, 2011,—

(i) **in rule 7**, in sub-rule (1), after the word "apply", the following words shall be inserted, namely:—

"electronically online";

(ii) **in rule 12,—**

in sub-rule (2), for the words, letters and figures "to the Central Government in Form FC-3", the words, letters and figures "to the Central Government electronically online in Form FC-3C" shall be substituted;

in sub-rule (4), for the letters, figures, brackets and words "₹ 500/- (Five Hundred only)", the letters, figures, brackets and words "₹ 1500/- (One Thousand Five Hundred rupees only)" shall be substituted;

in sub-rule (8),-

after the words "requisite fee", the letters, figures, brackets and words "and with late fee of ₹ 5000/- (Five Thousand rupees only)" shall be inserted;

for the words "four months" the words "one year" shall be substituted.

CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) Enforcement of clause (a) to clause (d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

(2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

(3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code Vide Notification S.O.1911(E) dated 14th June 2017

In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016 , the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-

(a) a small company as defined under clause (85) of section 2 of Companies Act, 2013,or

(b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or

(c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

(4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25th October 2017

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ companyis required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.

Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

(5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.

Significant relevant changes are as follows:

(i) Amendment in section 2 of the Principal Act

a. in clause (d), the word "and" shall be omitted;

b. for clause (e), the following clauses shall be substituted, namely:—

"(e) personal guarantors to corporate debtors;

c. partnership firms and proprietorship firms; and

d. individuals, other than persons referred to in clause (e),".

(ii) Amendment in section 5 of the Principal Act

in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

(iii) In section 30 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section."

(6) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018.**

Following are the relevant amendments:

(1) In **section 3(12),** in the Insolvency and Bankruptcy Code, 2016(Principal Act), for the word "repaid", the word "paid" shall be substituted.

(2) In **section 5** of the principal Act,

(i) after clause (5) i.e., after the definition of Corporate applicant, the following clause shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'

(ii) in **clause (8)** prescribing the term "Financial Debt" in the Code, in sub-clause (f), the **following Explanation shall be inserted,** namely:—

'Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iii) in **clause (12)** i.e., as to the "Insolvency commencement date", the following proviso shall be inserted, namely:—

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";

(iv) **after clause (24),** the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii)father's brother and sister,

(xvix)mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'

(3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

(4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—

(i) in clause (a), for the words "if any, and", the words "if any, or" shall be substituted;

(ii) in clause (*b*), for the word "repayment", the word "payment" shall be substituted;

In the Explanation, for the word "repayment", the word "payment" shall be substituted.

(5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—

(i) in clause (*c*), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;

(ii) for clause (*d*), the following clauses shall be substituted, namely:—

"(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —

(a) in clause (*i*), in sub-clause (*b*), for the word "repayment", the word "payment" shall be substituted;

(b) in clause (*ii*), in sub-clause (*b*), for the word "repayment", the word "payment" shall be substituted.

(7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-

"(*3*) The corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";

(8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant**,** following amendments have been made—

(i) in **clause (a),** after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

(ii) in **clause (b),** after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

(9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.

(10) **After section 12** of the principal Act, the section 12A shall be inserted-

"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

(11) S**ection 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—

"(3) The provisions of sub-section (*1*) shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.".

(12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.

(13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.

(14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;

(15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP**,** the following **section 17(2)(e),** shall be inserted,

"(*e*) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

(16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —

(i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (*6*) or sub-section (*6A*) or sub-section (*5*) of section 24, if it is a related party of the corporate debtor," shall be substituted;

(ii) after this proviso under sub-section (*2*), the following **proviso is inserted**-

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

(iii) **Insertion of new sub-section 6(A) & 6(B) after sub-section (*6*)-**

"(*6A*) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (*a*) or sub-section (*6*), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (*a*) or clause (*b*) or clause (*c*) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative**—**

(i) under clauses (*a*) and (*c*) of sub-section (*6A*), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (*b*) of sub-section (*6A*) shall be as specified which shall form part of the insolvency resolution process costs.";

(iii) for sub-sections (*7*) and (*8*), the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (*6*) and (*6A*).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."

(17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;

(18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

(19) In **section 24(3)** of the principal Act, in clause (*a*), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (*6*) and (*6A*) of section 21 and sub-section (*5*)" shall be substituted;

(20) Insertion of new section 25A which deals with the Rights and duties of authorised representative of financial creditors.

'25A. (1) **Right to participate and Vote on behalf of FC:** The authorised representative(AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor(FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) **Duty of AR to circulate agenda & minutes to FC:** It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) **AR to act on instruction of FC:** The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(4) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

(21) Amendment in section 27(2) of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors(CoC): This sub-section is substituted with the following provision-

"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

(22) Amendment in section 28(3) of the principal Act which deals with the approval of committee of creditors for certain actions , for the word, "seventy-five", the word "sixty-six" shall be substituted.

(23) Amendment in Section 29 A, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.

(i) in clause (c),—

(a) for the words "has an account,", the words "at the time of submission of the resolution plan has an account," shall be substituted;

(b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression **"related party"** here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution

of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;';

(ii) for clause (d), the following clause shall be substituted, namely:—

"(*d*) has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (*iii*) of *Explanation* I;";

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

(v) in clause (h),—

(a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

(b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation* I, and in *Explanation* I as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (*iii*) of *Explanation* I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;';

(viii) after Explanation I as so numbered, the **following Explanation shall be inserted**, namely:—

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.'.

(24) Amendment in section 30: The said section deals with the submission of resolution plan. Following are the amendments-

(i) in **sub-section (1),** after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(ii) in **sub-section (2),—**

(a) in clauses (*a*) and (*b*), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (*f*), the following *Explanation* shall be inserted, namely:—

"Explanation.—For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

(iii) in **sub-section (4),—**

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted,

namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

(25) Amendment in section 31 of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(*4*) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (*1*), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (*1*) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

(26) Amendment made in section 33(2) of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

(27) In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;

b. in **sub-section (4)**,—

i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;

ii. after clause (b), the following clause shall be inserted, namely:—

"(c) the resolution professional fails to submit written consent under sub-section (1).";

c. in **sub-section (5),** for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;

d. in **sub-section (6),** after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.

(28) In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

(29) In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

Important Note: With respect to amendments as covered above under Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, only those amendments may be taken into consideration which are pertaining to the provisions covered in the study material. Also, the newly inserted sections i.e. 24A, 12A, 21 (6)(A), 21(6)(B) and 25A of the said amendment are also applicable.

7. Amendment in Regulation – 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Eligibility for resolution professional.

3.(1) An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) is not an employee or proprietor or a partner:

(i) of a firm of auditors or *secretarial auditors in practice or cost auditors of the corporate debtor; or

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to **five per cent or more of the gross turnover of such firm, in the last three financial years.

(1A) Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule.

(2) A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

(3) A resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as a resolution professional in a corporate insolvency resolution process if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same corporate insolvency resolution process.

8. Usage of the word **"any other person on behalf of the financial creditor, as may be notified by the Central Government"** under section 7(1) of the IBC has been clarified by notification issued by Ministry of Corporate Affairs. **Vide Notification S.O. 1091(E), dated 27th February, 2019**, the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

(i) a guardian;

(ii) an executor or administrator of an estate of a financial creditor;

(iii) a trustee (including a debenture trustee); and

(v) a person duly authorised by the Board of Directors of a Company.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Multiple Choice Questions

1. Mr. Ram gave two of his friends' cash amount of ₹ two lakh each for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months' time for which he issued bills to adjust the amount in his account books.

   Does this payment system through credit card and online transfer mode are covered under Money Laundering Act?

   (a) No, because payment are made through credit cards & being an online transfers, it's a genuine transaction.

   (b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Laundering Act

   (c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.

   (d) No, because the transactions are not done with shell companies.

2. Mr. A. Mr. B and Mr. C are partners in XYZ partnership firm. The firm made an agreement in writing to refer a dispute between them in business to an arbitrator. Inspite of this agreement Mr. B files a suit against Mr. A and Mr. C relating to the dispute in a court. Examine on the admission of the suit filed by Mr. B in the court in the light of the Arbitration and Conciliation Act, 1996.

   (a) Yes it can be admitted by the court, as the said court has jurisdiction over the matter and it overpowers arbitration agreement

   (b) Yes it can be admitted by the court, only in the case of challenge to the arbitral award in appeal

   (c) Yes, it can be admitted by the court, if Mr. A and Mr. C mutually agrees.

   (d) No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement

3. Mr. Satya, file a petition for default of non –payment of the debt against Mr. X. The amount in default claimed by petitioner was ₹ 30 lakh. Mr. X (Respondent) pleaded before the adjudicating authority that the amount of claim was not belonging to the applicant/petitioner. Mr. Satya, asserted that he himself with his son owns ₹ 26 Lakh to the respondent. Though nowhere in the petition and the supportive documents, he admitted that he himself with his Son owns ₹ 26 Lakh to the respondent. Considering the above

facts in the light of the Insolvency and Bankruptcy Code, state the action that will be taken by the Adjudicating Authority-

(a) NCLT will admit the application of Mr. Satya, as he jointly with his son owned the debt to the Mr. X, so he is a valid petitioner.

(b) NCLT will admit the application filed by Mr. Satya on behalf of his son.

(c) NCLT will reject the application considering that no default has occurred against Mr. Satya, and his stand as a financial creditor is not proved in the petition.

(d) NCLT will dismiss the application on the ground of non- existence of dispute against Mr. Satya.

4. How many times Corporate Insolvency Resolution Process period can be extended?

(a) shall not be granted more than once

(b) shall be granted more than once

(c) shall be granted more than twice on the reasonable cause

(c) cannot be granted at all

5. Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.

(1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019

(2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019

(3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019-2020

(a) Both the statement (1) & (3) are correct

(b) Both the statement (2) & (3) are correct

(c) Only statement (1) is correct

(d) Only statement (2) is correct

6. Beauti Fashion Garments Limited has three independent directors besides eight others of its own. Due to the urgency of transacting certain important business, a Board Meeting was called by giving a shorter notice than the legally required. However, none of the independent directors was present at the Meeting to deliberate upon the motion related to that business. Despite absence of all the independent directors, a board resolution was passed for operationalizing the business by the directors personally present at that Meeting

who were much more than the required quorum. Advise, whether the resolution passed at the Board Meeting called at a shorter notice was valid.

(a) The resolution so passed is valid, for it was passed at the Board Meeting where the required quorum was present.

(b) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by all the three independent directors.

(c) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least two independent directors.

(d) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least one independent director.

7. Sunila Interior Decorators and Furnishers Limited which has not accessed the primary market so far, is required to appoint whole-time Key Managerial Personnel (KMPs) in view of the fact that it has surpassed the threshold limit which necessitates such appointment. Out of the three whole-time KMPs which it is obligated to keep on roll, it has already appointed a Managing Director (MD) and a Company Secretary. From the given options, choose the third KMP which needs to be appointed by the company under the given circumstances.

(a) Chief Executive Officer (CEO)

(b) Chief Financial Officer (CFO)

(c) Whole-time Director (WTD)

(d) Chief Manager (CM)

8. X Ltd. amalgamated with Y Ltd. The transferee company decided to dispose of the books and papers of the X Ltd. in order to come up with maintenance of revised book and papers under the name of the transferee company to bring all the financial details of the amalgamated company also in the records. State the correct statement as to decision of the transferee company on the disposal of the Books and papers of the X Ltd.

(a) Decision of Transferee Company is invalid, as books and papers of the amalgamated company shall be maintained for atleast three years.

(b) Decision of Transferee Company is invalid, as books and papers of amalgamated company shall be maintained for at least eight years.

(c) Decision of Transferee Company will be valid only on the sanction of the prior permission of the Central Government.

(d) Decision of Transferee Company will be valid only after seeking prior permission of the requisite number of the creditors/shareholders of the amalgamated company.

Descriptive Questions

9. Draft a Specimen Board Resolution passed in the meeting of the Board of Directors of a recently incorporated BLM Limited for obtaining Goods and Service Tax (GST) Registration in the GST System Portal.

10. Dragon Copper Limited was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non-replacement of old plant and machinery. On the verge of liquidation, the Management proposes one last arrangement between creditors and the company, whereby the creditors have to forego 50% of their dues to the company. This has evoked strong protest from some of the creditors who may block the arrangement. Examine the arrangement in the light of the Companies Act, 2013 and advise the course of action/procedure to be adopted by the company to implement the same.

11. Clarks Limited, has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company as per the above ground under Section 272 of the Companies Act, 2013.

    Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013 ?

12. Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

    Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

13. Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:

    (i) Payment to be made for securing health insurance from a company abroad.

    (ii) Payment of commission on exports under Rupee State Credit Route.

    Advise whether he can get foreign exchange and if so, under what condition?

14. Creative India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. R – to the extent of ₹ 1,40,000 and Mr. M - to the extent of ₹ 1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for

initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

15. A foreign company, Max Ltd. was established by few Indians in Singapore. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. Enumerate in the given situation in the light of the Foreign Contribution and Regulation Act, 2010 whether the donation so made by Max Ltd. is a foreign contribution? Is the acceptance of such donation by the Religious trust is valid?

16. Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position by him, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.

17. On 1st day of April, 2018, Almond Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of the Arbitration and Conciliation Act, 1996, discuss:

    (i) The type of arbitration agreement made between them.

    (ii) Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2019.

18. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities.

19. Neeraj was given an offer by a company vendor to disclose him the lowest bid quoted by other vendors. Neeraj accessed the computer of his Executive Director and passed on the lowest quotation to the vendor and thus helped him in quoting the lowest among all the bids. Examine and analyse the situation and conclude how Neeraj will be held liable under Prevention of Money Laundering Act?

20. Broadway Infrastructure Limited entered into a contract with Royal forgings, in which wife of Mr. Patrick, a director of the company is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Broadway Infrastructure Limited before entering into contract with Royal forgings.

    What would be your answer in case Royal forgings is a private Limited company in which wife of Mr. Patrick is holding shares?

SUGGESTED ANSWERS/HINTS

Multiple Choice Answer

1. **(b)**
2. **(d)**
3. **(c)**
4. **(a)**
5. **(b)**
6. **(d)**
7. **(b)**
8. **(c)**

Descriptive Answers

9. Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ---------- on ----------, 2019 at ---------- A.M.

RESOLVED THAT the Board do hereby appoint Mr. ---------- Director of the company as Authorized Signatory for enrolment of the Company on the Goods and Service Tax (GST) System Portal and to sign (physically or digitally as and when required) and submit various documents electronically and/or physically and to make applications, communications, representations, modifications or alterations and to give explanations on behalf of the Company before the Central GST and/or the concerned State GST authorities as and when required.

FURTHER RESOLVED THAT Mr. _____, Director of the company be and is hereby authorized to represent the Company and to take necessary actions on all issues related to goods and service tax including but not limited to presenting documents/records etc. on behalf of the Company representing for registration of the Company and also to make any alterations, additions, corrections, to the documents, papers, forms, etc., filed with tax authorities and to provide explanations as and when required.

FURTHER RESOLVED THAT Mr. ----------, Director of the company be and is hereby authorized on behalf of the company to sign the returns, documents, letters, correspondences etc. physically/digitally and to represent on behalf of the company, for assessments, appeals or otherwise before the goods and service tax authorities as and when required.

10. Scheme of Compromise or arrangement (Section 230 of the Companies Act, 2013): The scheme provides for sacrifice on the part of creditors as they have to forego 50% of their dues to the company. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of Section 230(a) of the Companies

Act, 2013. The proposed scheme involves as a compromise or arrangement with creditors and it attracts section 230.

While the company or any creditor or member can make application to the Tribunal under section 230 (6)(1), it is usual for the company to make an application. On such application, the Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the Tribunal.

Company must arrange to send notice of meeting to every creditor containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [Section 230(1)(a). Advertisement issued by the company must comply with the requirements of section 230(2). At the meetings convened, as per directions of the Tribunal, majority in number representing at least ninety percent in value of creditors present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.

Thereafter the company must present a petition to the Tribunal for confirmation of the compromise or arrangement. The notice of application made by the company will be served on the Central Government and the Tribunal will take into consideration representation, If, any made by the Central Government. The Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditors report on accounts of the company, pendency of investigation of company, etc.

Copy of Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect. Copy of Tribunal order must be annexed to every Memorandum of Association issued thereafter.

If the Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting. (Case Law: *S. K. Gupta Vs. K. P. Jain, AIR 1979 SC 374*)

11. **Validity of RoC's action:** According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

    In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019.

    Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

12. **Sub-section (4) of section 13 of SARFAESI Act, 2002,** provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

(i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

13. Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.

(ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

14. Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ₹ 1,00,000 or more. Assignee of financial debt is also financial creditor as per section 5 (7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

15. As per the definition of Foreign Contribution given in section 2(1)(h) of FCRA 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,-

(i) of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf:

(ii) of any currency, whether Indian or foreign; security and includes any foreign security under the Foreign Exchange Management Act,1999

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security so referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But where if the Religious trust is registered under the FCRA [section 11 of FCRA 2010], it may accept the foreign contribution within the limit without seeking prior permission.

16. Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;

(ii) is of unsound mind and stands so declared by a competent court;

(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.

17. There are the basic types of arbitration agreement:

(i) **Arbitration clause -** a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(ii) **Submission agreement -** an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2019. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Almond Food Processors Limited shall be submitted to arbitration". The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

18. According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:-

(1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground/s as may be prescribed under this Act.

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard,

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting

the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply as far as may be, to such appeals.

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

19. In the given instance, Neeraj is liable for the commission of scheduled offence specified under Part A Para 22 of the PMLA, 2002. He is liable for an offence committed under section 72 of the Information Technology Act, 2000. It provides for the offence for breach of confidentiality and privacy without consent of the person concerned.

Here as per the stated facts, Neeraj acted without consent of the concerned person i.e. his executive director and accessed the electronic records and passed on the official information to the vendor, thus leading to the breach of confidentiality & privacy of the company. This sharing of confidential information can produce large profits & ill gotten gains to Mr. Neeraj. Thus his involvement is connected with the obtaining of profits from proceeds of crime. Therefore, he is liable under sections 3 and 4 of the PMLA, 2002 which provides rigorous imprisonment for a term which shall not be less than 3 years, but which may extend to 7 years and shall be liable to fine.

20. The contract for supply of components entered into between Broadway Infrastructure Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184,188 and 189 of the Companies Act, 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorized by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act, consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it. As the directors wife (i.e Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of Broadway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.