

## PAPER –1: FINANCIAL REPORTING

### PART I

#### RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

##### A. Applicable for November, 2019 Examination

###### 1. The Companies (Indian Accounting Standards) Second Amendments Rules, 2019 notified on 30<sup>th</sup> March, 2019

Headings	Details
Appendix C, Uncertainty over Income Tax Treatments, to Ind AS 12	<p>MCA has inserted a new Appendix C to Ind AS 12, <i>Uncertainty over Income Tax Treatments</i>. 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:</p> <ul style="list-style-type: none"><li>➤ 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;</li><li>➤ 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;</li><li>➤ 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;</li><li>➤ 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</li><li>➤ that the judgements and estimates made must be reassessed whenever circumstances have changed or there is new information that affects the judgements.</li></ul>
Amendments to Ind AS 12 – Income tax consequences of payments on financial instruments	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 recognised in profit or loss, or in equity, and the scope of the existing guidance was ambiguous

classified as equity	
Amendments to Ind AS 19 – Plan amendment, curtailment or settlement	<p>The amendments to Ind AS 19 clarify the accounting for defined benefit plan amendments, curtailments and settlements. They confirm that entities must:</p> <ul style="list-style-type: none"> <li>➤ 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;</li> <li>➤ 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</li> <li>➤ separately recognise any changes in the asset ceiling through other comprehensive income.</li> </ul>
Amendments to Ind AS 23 – Borrowing costs eligible for capitalisation	<p>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.</p>
Amendment to Ind AS 28 - Long-term Interests in Associates and Joint Ventures	<p>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.</p> <p>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.</p> <p>Para 38 of Ind AS 38 further states that the losses that exceed the entity's investment in ordinary shares are applied to other components of the</p>

	<p>entity's interest in the associate or joint venture in the reverse order of their superiority.</p> <p>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:</p> <p><b>Step 1: Apply Ind AS 109 independently</b></p> <p>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.)</p> <p><b>Step 2: True-up past allocations</b></p> <p>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.</p> <p><b>Step 3: Book current year equity share</b></p> <p>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.</p>
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	<p>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.</p> <p>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, <b>the negative compensation must be 'reasonable compensation'</b> for early termination</p>

	<p>of the contract' and the asset must be held within a 'held to collect' business model.</p> <p>To be eligible for the exception, the fair value of the prepayment feature would have to be <b>insignificant on initial recognition</b> 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.</p>
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. Amendment in Schedule III notified by MCA on 12.10.2018

Following amendments have been made in Schedule III to the Companies Act, 2013

### (a) In Division I which covers formats and instructions for financial statements drawn as per Accounting Standards ie Indian GAAP

*Following amendments have been made*

- (i) Clause (ii) of paragraph 4 under 'General instructions for preparation of Balance Sheet and statement of Profit and Loss of a company', states uniform use of unit of measurement in the financial statements. In the given sentence the word 'shall' has been replaced with the word 'should' through this notification. Hence, now the clause (ii) of paragraph 4 shall be read as follows:

*"Once a unit of measurement is used, it **should** be used uniformly in the Financial Statements."*

- (ii) Underneath Part I in the format of Balance Sheet, under the heading "All Assets" sub-heading "Non-current assets", **the words "Fixed assets" should be replaced as "Property, Plant and Equipment"**. This amendment has been done since the title of revised AS 10 is now 'Property, Plant and Equipment' instead of 'Fixed Assets'.

Similar substitution has been done in Point W of the "Notes" under the heading "General Instructions for preparation of Balance Sheet".

- (iii) Point 6B of the "Notes", under the heading "General Instructions for preparation of Balance Sheet" deals with the classification of Reserves and Surplus. One of

the category was 'Securities Premium Reserve'. As per the amendment the word 'Reserve' after Securities Premium has been omitted. Now it should be read as 'Securities Premium' only.

**(b) In Division II which covers formats and instructions for financial statements drawn as per Indian Accounting Standards ie Ind AS**

*Following amendments have been made*

- (i) In Part I which specifies the format of Balance Sheet, under the heading 'Equity and Liabilities', Trade Payables (both under 'non-current liabilities' and 'current liabilities') shall further be classified as
  - "(A) total outstanding dues of micro enterprises and small enterprises; and
  - (B) total outstanding dues of creditors other than micro enterprises and small enterprises.;"
- (ii) In the table (format) for 'Other Equity' under the 'Statement of Changes in Equity', "Securities Premium Reserve" is substituted as "Securities Premium". Also below the table on 'Other Equity' a note has been given which shall be renumbered as '(i)' and further a note has been added as follows:
 

*"(ii) A description of the purposes of each reserve within equity shall be disclosed in the Notes."*
- (iii) Paragraph 6A and 6B of "General Instructions for Preparation of Balance Sheet" is on 'Non-current assets' and 'current assets' respectively.
  - (A) Under point 'VII. Trade Receivables' of 6A and 'III. Trade Receivables' of 6B, sub point (i) has been substituted as follows:
 

*"(i) Trade Receivables shall be sub-classified as:*

    - (a) *Trade Receivables considered good - Secured;*
    - (b) *Trade Receivables considered good - Unsecured;*
    - (c) *Trade Receivables which have significant increase in Credit Risk; and*
    - (d) *Trade Receivables - credit impaired."*
  - (B) Under point 'VIII. Loans' of 6A and 'V. Loans' of 6B, sub point (ii) is substituted as follows:
 

*"(ii) Loans Receivables shall be sub-classified as:*

    - (a) *Loans Receivables considered good - Secured;*
    - (b) *Loans Receivables considered good - Unsecured;*
    - (c) *Loans Receivables which have significant increase in Credit Risk; and*

(d) *Loans Receivables - credit impaired,"*

(iv) After paragraph F of "General Instructions for Preparation of Balance Sheet" paragraph FA shall be inserted as follows:

**"FA. Trade Payables**

*The following details relating to micro, small and medium enterprises shall be disclosed in the notes:*

- (a) *the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;*
- (b) *the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;*
- (c) *the amount of interest due and payable for the period of delay in making payment (which has been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;*
- (d) *the amount of interest accrued and remaining unpaid at the end of each accounting year; and*
- (e) *the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.*

**Explanation-** The terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning as assigned to them under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006."

(v) In paragraph 9, after the words "For instance,", the words "plain vanilla" has been inserted. This amendment has been done to bring clarity to the treatment of redeemable preference shares ie which redeemable preference shares should fall in the category of 'borrowings'. Accordingly, the last sentence of para 9 will be read as follows:

*"For instance, **plain vanilla** redeemable preference shares shall be classified and presented under 'non-current liabilities' as 'borrowings' and the disclosure requirements in this regard applicable to such borrowings shall be applicable mutatis mutandis to redeemable preference shares."*

**(c) Division III (newly notified division applicable for NBFCs)**

Through this notification, MCA added/notified Division III in the Schedule III which is applicable to Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015. **However, this Division III has not been made applicable for CA Final Students.**

**3. Amendment in Ind AS 20 notified by MCA in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 20<sup>th</sup> September 2018**

Amendment has been made in Ind AS 20 'Accounting for Government Grants and Disclosure of Government Assistance'. The amendment provides entities the option for recording non-monetary government grants at a nominal amount and presenting government grants related to assets by deducting the grant from the carrying amount of the asset.

**4. Notification of Ind AS 115 and withdrawal of Ind AS 11 and Ind AS 18 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 28<sup>th</sup> March, 2018** (Summary of Ind AS 115 has been given as 'Annexure' at the end of this Part-1.)

The Rules have brought in the following significant amendments to Ind AS:

- New revenue standard Ind AS 115 has been notified which supersedes Ind AS 11, Construction Contracts and Ind AS 18, Revenue.
- Appendix B, Foreign Currency Transactions and Advance Consideration to Ind AS 21, The Effects of Changes in Foreign Exchange Rates has been notified. The appendix applies where an entity either pays or receives consideration in advance for foreign currency-denominated contracts. The date of the transaction determines the exchange rate to be used for initial recognition of the related asset, expense or income. Ind AS 21 requires an entity to use the exchange rate at the 'date of the transaction', which is defined as the date when the transaction first qualifies for initial recognition.

Here, the question arises that whether the date of the transaction is the date when the asset, expense or income is initially recognised, or an earlier date on which the advance consideration is paid or received, resulting in recognition of a prepayment or deferred income.

The appendix provides guidance for when a single payment/receipt is made, as well as for situations where multiple payments/receipts are made.

- **Single payment/receipt** The appendix states that the date of the transaction, for the purpose of determining the exchange rate to use on initial recognition of the related asset, expense or income, should be the date on which an entity

initially recognises the non-monetary asset or liability arising from an advance consideration paid/received.

- **Multiple receipts/payments** The appendix states that, if there are multiple payments or receipts in advance of recognising the related asset, income or expense, the entity should determine the date of the transaction for each payment or receipt.
- Amendment to Ind AS 40, Investment Property stating that when assets are transferred to, or from, investment properties. The amendment states that to transfer to, or from, investment properties there must be a change in use supported by evidence. A change in intention, in isolation is not enough to support a transfer.  
The amendment has re-described the list of evidence of change in use as a non-exhaustive list of examples and scope of these examples have been expanded to include assets under construction and development and not only transfers of completed properties.  
Examples of evidence of a change in use include:
  - a) commencement of owner-occupation, or of development with a view to owner-occupation, for a transfer from investment property to owner-occupied property;
  - b) commencement of development with a view to sale, for a transfer from investment property to inventories;
  - c) end of owner-occupation, for a transfer from owner-occupied property to investment property;
  - d) inception of an operating lease to another party, for a transfer from inventories to investment property.
- Amendments to Ind AS 12, Income Taxes elucidate the existing guidance in Ind AS 12. They do not change the underlying principles of recognition of deferred tax asset. As per the amendment:
  - Existence of a deductible temporary difference depends solely on a comparison of the carrying amount of an asset and its tax base at the end of the reporting period, and is not affected by possible future changes in the carrying amount. Consequently, decreases below cost in the carrying amount of a fixed-rate debt instrument measured at fair value in the books of the holder for which the tax base remains at cost gives rise to a deductible temporary difference. This is regardless of whether the holder expects to collect all the contractual cash flows of the debt instrument.
  - Determining the existence and amount of temporary differences and estimating future taxable profit against which deferred tax assets can be utilised are two separate steps. Recovering assets for more than their carrying amounts is inherent in an expectation of taxable profits and should therefore be included in

estimated taxable profit if there is sufficient evidence to conclude that it is probable that the entity will recover the asset for more than its carrying amount. For example, an entity should assume that a debt investment measured at fair value will be recovered for more than its carrying value when that outcome is probable even if carrying value is below its tax base (original investment cost).

- Recoverability of deferred tax assets are assessed in combination with other deferred tax assets where the tax law does not restrict the source of taxable profits against which particular types of deferred tax assets can be recovered. Where restrictions apply (for example where capital losses can be set off against capital gains), deferred tax assets are assessed in combination only with other deferred tax assets of the same type.
- When comparing deductible temporary differences against future taxable profits, the determination of future taxable profits shall exclude tax deductions resulting from reversal of these deductible temporary differences.
- Amendment to Ind AS 28, Investments in Associates and Joint Ventures and Ind AS 112, Disclosure of Interests in Other Entities stating that:
  - Disclosures requirement of Ind AS 112 are applicable to interest in entities classified as held for sale except for summarised financial information (para B17 of Ind AS 112).
  - In Ind AS 28, the option available with venture capital organisations, mutual funds, unit trusts and similar entities to measure their investments in associates or joint ventures at fair value through profit or loss (FVTPL) is available for each investment in an associate or joint venture.
- Consequential amendments to other Ind AS due to notification of Ind AS 115 and other amendments discussed above
  - (i) **Ind AS 101, First-time Adoption of Indian Accounting Standards:** The Rules introduce two additional exemptions in Ind AS 101 related to Ind AS 115 and Appendix B to Ind AS 21. These are:
    - Ind AS 115: A first-time adopter can apply the transition provisions in paragraphs C5 and C6 of Ind AS 115 (related to practical expedients when applying Ind AS 115 retrospectively) at the date of transition to Ind AS. Further, a first-time adopter is not required to restate contracts that were completed before the earliest period presented.
    - Appendix B to Ind AS 21: A first-time adopter need not apply Appendix B to Ind AS 21 to assets, expenses and income in the scope of the appendix initially recognised before the date of transition to Ind AS.
  - (ii) **Ind AS 2, Inventories:** Costs of services by a service provider that does not give rise to inventories will need to be accounted for as costs incurred to fulfil a

contract with customer in accordance with Ind AS 115. Such costs can be capitalised under Ind AS 115 if they

- (1) relate directly to the contract,
- (2) enhance the resources of the entity to perform under the contract and relate to satisfying a future performance obligation, and
- (3) are expected to be recovered.

Earlier paragraph 8 of Ind AS 2 which stated that in case of a service provider, inventories include costs of the service, for which the entity has not yet recognised the related revenue, has been deleted.

**(iii) Ind AS 16, Property, Plant and Equipment, Ind AS 38, Intangible Assets and Ind AS 40, Investment Property:** These standards have been amended to require use of principles of Ind AS 115 for recognition of a gain or loss on the transfer of non-financial assets i.e. property, plant and equipment, intangible asset and investment property, that are not an output of an entity's ordinary activities. Although a gain or loss on this type of sale generally does not meet the definition of revenue, an entity should apply the guidance in Ind AS 115 related to the transfer of control and measurement of the transaction price including the constraint on variable consideration, to evaluate the timing and amount of the gain or loss recognised.

Further, since Ind AS 115 deals with accounting for contract assets, Ind AS 38 has been amended to add a scope exclusion for such contract assets.

**(iv) Ind AS 37, Provisions, Contingent Assets and Contingent Liabilities:** Ind AS 115 does not have any specific requirement to address the accounting of contracts with customers that are, or have become, onerous. Previously, depending upon type of contract, such onerous contracts were accounted under Ind AS 11 or Ind AS 37. With the omission of Ind AS 11, a consequential amendment has been made to Ind AS 37 to bring all onerous revenue contracts within the scope of the Ind AS 37. Ind AS 37 defines onerous contract as a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.

**(v) Ind AS 109, Financial Instruments:** Amendments to Ind AS 109 are discussed below:

- (i) The current Ind AS 109 states that an entity shall measure trade receivables at their transaction price. Due to notification of Ind AS 115, an entity is required to measure trade receivables at their transaction price if the trade receivables do not contain a significant financing component in accordance with Ind AS 115.

- (ii) An entity shall have an accounting policy choice to measure loss allowance on trade receivables or contracts assets within the scope of Ind AS 115 containing a significant financing component at an amount equal to life time expected credit losses (simplified approach) or using the general model (3 stage).
- (iii) Entities shall now consider the principles of Ind AS 115 for subsequent measurement of financial guarantee and loan commitments.

**5. Applicability of Amendments to Ind AS 7 and Ind AS 102 issued by the MCA dated 17th March 2017**

To align Ind AS with IFRS, the recent amendments made in IAS 7 and IFRS 2 by the IASB have been incorporated in Ind AS 7 'Statement of Cash Flows' and Ind AS 102 'Share-based Payment' by way of a notification issued by the Ministry of Corporate Affairs on 17th March, 2017.

**I. Amendments in Ind AS 7 'Statement of Cash Flows'- Disclosure requirements**

The amendments made to Ind AS 7 require certain additional disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes.

In addition to the above, the disclosure is required for changes in financial assets (for example, assets that hedge liabilities arising from financing activities) if cash flows from those financial assets were, or future cash flows will be, included in cash flows from financing activities.

As per the amendment, one of the way for disclosure is providing a reconciliation between the opening and closing balances in the balance sheet for liabilities arising from financing activities, including the changes identified, by linking items included in the reconciliation to the balance sheet and the statement of cash flows for the sake of information to the users.

If an entity provides disclosures of changes in other assets and liabilities besides changes in liabilities arising from financing activities, it shall disclose the later changes separately from changes in those other assets and liabilities.

**II. Amendments in Ind AS 102 'Share-based Payment'**

The amendments cover following accounting areas:

**Measurement of cash-settled share-based payments**

Under Ind AS 102, the measurement basis for an equity-settled share-based payment should not be 'fair value' in accordance with Ind AS 113, 'Fair value measurement'. However, 'fair value' was not defined in connection with a cash-settled share-based payment. The amendment clarifies that the fair value of a cash-settled award is determined on a basis consistent with that used for equity-settled awards. Market-

based performance conditions and non-vesting conditions are reflected in the 'fair value', but non-market performance conditions and service conditions are reflected in the estimate of the number of awards expected to vest.

The amendment to Ind AS 102 with respect to measurement of cash-settled awards has most impact where an award vests (or does not vest) based on a non-market condition. Absent this clarification, it may be argued that the fair value of a cash-settled award is to be determined using the guidance in Ind AS 113 and reflecting the probability that non-market and service vesting conditions would be met. The amendment clarifies that non-market and service vesting conditions are ignored in the measurement of fair value.

#### **Classification of share-based payments settled net of tax withholdings**

Tax laws or regulations may require the employer to withhold some of the shares to which an employee is entitled under a share-based payment, and to remit the tax payable on it to the tax authority.

Ind AS 102 would require such share based payment to be split into a cash settled component for the tax payment and an equity settled component for the net shares issued to the employee. The amendment now adds an exception that requires the share based payment to be treated as equity-settled in its entirety. The cash payment to the tax authority is treated as if it was part of an equity settlement. The exception would not apply to any equity instruments that the entity withholds in excess of the employee's tax obligation associated with the share-based payment.

#### **Accounting for a modification of a share-based payment from cash-settled to equity-settled**

As per the amendment, if the terms and conditions of a cash-settled share-based payment transactions are modified with the result that it becomes an equity-settled share-based payment transaction, the transaction is accounted for as such from the date of the modification. Specifically:

- o The equity-settled share-based payment transaction is measured by reference to the fair value of the equity instruments granted at the modification date. The equity-settled share-based payment transaction is recognised in equity on the modification date to the extent to which goods or services have been received.
- o The liability for the cash-settled share-based payment transaction as at the modification date is derecognised on that date.
- o Any difference between the carrying amount of the liability derecognised and the amount of equity recognised on the modification date is recognised immediately in profit or loss.
- o The amendment requires any change in value to be dealt with before the change in classification. Accordingly, the cash-settled award is remeasured, with any

difference recognised in the statement of profit and loss before the remeasured liability is reclassified into equity.

#### 6. Relevant Sections of the Companies Act, 2013

The relevant Sections of the Companies Act, 2013 notified up to 30<sup>th</sup> 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.

Instead of it Ind AS 17 will be applicable (as given in Chapter 2 of January, 2017 edition of the Study material)

#### Annexure

### Overview of Ind AS 115, Revenue from Contracts with Customers

The objective of Ind AS 115 is to establish the principles that an entity shall apply to report useful information to users of financial statements about the nature, amount, timing and uncertainty of revenue and cash flows arising from a contract with a customer.

The standard applies to all contracts with customers, except the lease contracts within the scope of Ind AS 17, Leases; insurance contracts within the scope of Ind AS 104, Insurance Contracts; financial instruments and other contractual rights or obligations; and non-monetary exchanges between entities in the same line of business to facilitate sales to customers or potential customers.

The core principle of Ind AS 115 is that an entity recognises revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Revenue shall be recognised by an entity in accordance with this core principle by applying the following five steps:

1. **Identify contract with a customer:** This Standard defines a 'contract' and a 'customer' and specifies five mandatory criteria to be met for identification of a contract.
2. **Identify performance obligations in contract:** At contract inception, assess the goods or services promised and identify as a performance obligation each promise to transfer to the customer either:

(a) a good or service (or a bundle of goods or services) that is distinct; or

(b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer.

3. **Determine transaction price:** This Standard uses transaction price approach instead of fair value approach in Ind AS 18 while determining amount of consideration. The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties (for example, some sales taxes). The consideration promised may include fixed amounts, variable amounts, or both. If the consideration promised in a contract includes a variable amount, an entity shall estimate the amount of consideration to which the entity will be entitled in exchange for transferring the promised goods or services to a customer. Estimate amount of variable consideration by using either the expected value method or the most likely amount method. The transaction price is also adjusted for the effects of the time value of money if the contract includes a significant financing component for any consideration payable to the customer.

4. **Allocate the transaction price to the performance obligations in the contract:** An entity typically allocates the transaction price to each performance obligation on the basis of the relative stand-alone selling prices of each distinct good or service promised in the contract. If a stand-alone selling price is not observable, an entity estimates it. Sometimes, the transaction price includes a discount or a variable amount of consideration that relates entirely to a part of the contract. The requirements specify when an entity allocates the discount or variable consideration to one or more, but not all, performance obligations in the contract. Any subsequent changes in the transaction price shall be allocated to the performance obligations on the same basis as at contract inception. Amounts allocated to a satisfied performance obligation shall be recognised as revenue, or as a reduction of revenue, in the period in which the transaction price changes.

5. **Recognise revenue when the entity satisfies a performance obligation:** An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer (which is when the customer obtains control of that good or service). The amount of revenue recognised is the amount allocated to the satisfied performance obligation. A performance obligation may be satisfied at a point in time or over time. If an entity does not satisfy a performance obligation over time, the performance obligation is satisfied at a point in time. For performance obligations satisfied over time, an entity recognises revenue over time by selecting an appropriate method (output methods and input methods) for measuring the entity's progress towards complete satisfaction of that performance obligation.

### Treatment of Contract Costs

Ind AS 115 specifies the following requirements for contract costs:

1. *Incremental costs of obtaining a contract:*

Those costs that an entity incurs to obtain a contract with a customer that it would not have incurred if the contract had not been obtained. An entity shall recognise these costs as an asset if the entity expects to recover those costs. Costs to obtain a contract that would have been incurred regardless of whether the contract was obtained shall be recognised as an expense when incurred, unless those costs are explicitly chargeable to the customer regardless of whether the contract is obtained.

2. *Costs to fulfil a contract:*

If costs incurred in fulfilling a contract are not within scope of another Standard, entity shall recognise an asset from the costs incurred to fulfil a contract only if some specified criteria are met. If costs incurred in fulfilling a contract are within scope of another Standard, entity shall account for those costs in accordance with those other Standards.

Contract costs recognised as an asset shall be amortised on a systematic basis that is consistent with the transfer to the customer of the goods or services to which the asset relates.

An impairment loss shall be recognised in profit or loss to the extent that the carrying amount of contract costs recognised as an asset exceeds the remaining amount of consideration that the entity expects to receive in exchange for the goods or services to which the asset relates after deducting the costs that relate directly to providing those goods or services and that have not been recognised as expenses.

### Presentation

When either party to a contract has performed, an entity shall present the contract in the balance sheet as a contract asset or a contract liability, depending on the relationship between the entity's performance and the customer's payment.

- If a customer pays consideration, or an entity has a right to an amount of consideration that is unconditional (i.e. a receivable), before the entity transfers a good or service to the customer, the entity shall present the contract as a contract liability when the payment is made or the payment is due (whichever is earlier).
- If an entity performs by transferring goods or services to a customer before the customer pays consideration or before payment is due, the entity shall present the contract as a contract asset, excluding any amounts presented as a receivable.
- An entity shall present any unconditional rights to consideration separately as a receivable.

### **Sale with a right of return**

To account for the transfer of products with a right of return (and for some services that are provided subject to a refund), an entity shall recognise all of the following:

- revenue for the transferred products in the amount of consideration to which the entity expects to be entitled (therefore, revenue would not be recognised for the products expected to be returned);
- a refund liability; and
- an asset (and corresponding adjustment to cost of sales) for its right to recover products from customers on settling the refund liability.

### **Warranties**

If customer has the option to purchase warranty separately, the warranty is a distinct service because the entity promises to provide the service to the customer in addition to the product that has the functionality described in the contract. In that case, entity shall account for the promised warranty as a performance obligation and allocate a portion of the transaction price to that performance obligation.

### **Principal versus agent considerations**

When another party is involved in providing goods or services to a customer, the entity shall determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (i.e. the entity is a principal) or to arrange for those goods or services to be provided by the other party (i.e. the entity is an agent). An entity determines whether it is a principal or an agent for each specified good or service promised to the customer. A specified good or service is a distinct good or service (or a distinct bundle of goods or services) to be provided to the customer. If a contract with a customer includes more than one specified good or service, an entity could be a principal for some specified goods or services and an agent for others.

### **Repurchase agreements**

Repurchase agreements generally come in three forms viz. (i) an entity's obligation to repurchase the asset (a forward); (ii) an entity's right to repurchase the asset (a call option); and an entity's obligation to repurchase the asset at the customer's request (a put option).

### **Bill-and-hold arrangements**

A bill-and-hold arrangement is a contract under which an entity bills a customer for a product but retains physical possession of the product until it is transferred to the customer at a point in time in the future. Ind AS 115 specifies four criteria that must be fulfilled for a customer to have obtained control of a product in a bill-and-hold arrangement.

### Disclosure

The objective of the disclosure requirements is for an entity to disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. To achieve that objective, an entity shall disclose qualitative and quantitative information about all of the following:

- its contracts with customers
- the significant judgements, and changes in the judgements, made in applying this Standard to those contracts and
- any assets recognised from the costs to obtain or fulfil a contract with a customer

Appendix D of Ind AS 115 gives guidance on the accounting by operators for public-to-private service concession arrangements. This Appendix applies to both (a) infrastructure that the operator constructs or acquires from a third party for the purpose of the service arrangement; and (b) existing infrastructure to which the grantor gives the operator access for the purpose of the service arrangement. Infrastructure within the scope of this Appendix shall not be recognised as property, plant and equipment of the operator because the contractual service arrangement does not convey the right to control the use of the public service infrastructure to the operator.

### Carve out in Ind AS 115 from IFRS 15

#### As per IFRS

IFRS 15 provides that all types of penalties which may be levied in the performance of a contract should be considered in the nature of variable consideration for recognising revenue.

#### Carve out

Ind AS 115 has been amended to provide that penalties shall be accounted for as per the substance of the contract. Where the penalty is inherent in determination of transaction price, it shall form part of variable consideration, otherwise the same should not be considered for determining the consideration and the transaction price shall be considered as fixed.

### Significant differences in Ind AS 115 from AS 7 and AS 9

S. No.	Particular	Ind AS 115	AS 7 and AS 9
1.	Framework of Revenue Recognition	Ind AS 115 gives a framework of revenue recognition within a standard. It specifies the core principle for revenue recognition which requires the 'revenue to	AS 7 and AS 9 do not provide any such overarching principle to fall upon in case of doubt.

		depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services'.	
2.	Comprehensive Guidance on Recognition and Measurement of Multiple Elements within a Contract with Customer:	Ind AS 115 gives comprehensive guidance on how to recognise and measure multiple elements within a contract with customer.	AS 7 and AS 9 do not provide comprehensive guidance on this aspect.
3.	Coverage	Ind AS 115 comprehensively deals with all types of performance obligation contract with customer. However, it does not deal with revenue from 'interest' and 'dividend' which are covered in financial instruments standard.	AS 7 covers only revenue from construction contracts which is measured at consideration received / receivable. AS 9 deals only with recognition of revenue from sale of goods, rendering of services, interest, royalties and dividends.
4.	Measurement of Revenue	As per Ind AS 115, revenue is measured at transaction price, i.e., the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties.	As per AS 9, Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. As per AS 7,

			revenue from construction contracts is measured at consideration received / receivable and to be recognised as revenue as construction progresses, if certain conditions are met.
5.	Recognition of Revenue	As per Ind AS 115, revenue is recognised when the control is transferred to the customer.	As per AS 9, revenue is recognised when significant risks and rewards of ownership is transferred to the buyer. As per AS 7, revenue is recognised when the outcome of a construction contract can be estimated reliably, contract revenue should be recognised by reference to the stage of completion of the contract activity at the reporting date.
6.	Capitalisation of Costs	Ind AS 115 provides guidance on recognition of costs to obtain and fulfill a contract, as asset	AS 7 and AS 9 do not deal with such capitalisation of costs.
7.	Guidance on Service Concession Arrangements	Ind AS 115 gives guidance on service concession arrangements and disclosures thereof	AS does not provide such guidance.
8.	Disclosure Requirements	Ind AS 115 contains detailed disclosure requirements.	Less disclosure requirements are prescribed in AS

**PART – II : QUESTIONS AND ANSWERS**  
**QUESTIONS**

**Accounting Standards**

1. (i) "Accounting Standards standardize diverse accounting policies with a view to eliminate the non-comparability of financial statements and improve the reliability of financial statements. "Discuss and explain the benefits of Accounting Standards.
- (ii) "One of the characteristic of the financial statement is neutrality." Do you agree with this statement? Explain in brief.

**AS 2**

2. (a) Town Furniture Ltd. has normal wastage of 5% in the production process. During the year 20X1-X2, the company used 16,000 MT of Raw Material costing ₹ 190 per MT. At the end of the year, total stock wastage was of 950 MT. The accountant wants to know how this wastage is to be treated in the books. You are required to:
  - (i) Calculate the amount of abnormal loss
  - (ii) Explain the treatment of normal loss and abnormal loss as per AS 2.

**AS 3**

- (b) The following information was provided by ABC Ltd. for the year ended 31<sup>st</sup> March, 20X2:
  - (1) Gross Profit ratio was 25% for the year, it amounts to ₹ 3,75,000
  - (2) Company sold goods for cash only
  - (3) Opening inventory was lesser than closing inventory by ₹ 25,000
  - (4) Wages paid during the year ₹ 5,55,000
  - (5) Office expenses paid during the year ₹ 35,000
  - (6) Selling expenses paid during the year ₹ 15,000
  - (7) Dividend paid during the year ₹ 40,000 (including dividend distribution tax)
  - (8) Bank loan repaid during the year ₹ 2,05,000 (including interest ₹ 5,000)
  - (9) Trade payables on 31<sup>st</sup> March, 20X1 were ₹ 50,000 and on 31<sup>st</sup> March, 20X2 were ₹ 35,000
  - (10) Amount paid to trade payables during the year ₹ 6,10,000
  - (11) Income tax paid during the year amounts to ₹ 55,000
  - (12) Investment of ₹ 8,20,000 sold during the year at a profit of ₹ 20,000
  - (13) Depreciation on furniture amounts to ₹ 40,000

- (14) Depreciation on other tangible assets amounts to ₹ 20,000
- (15) Plant and machinery purchased on 15<sup>th</sup> November, 20X1 for ₹ 3,50,000
- (16) On 31<sup>st</sup> March, 20X2, ₹2,00,000, 7% Debentures were issued at face value in an exchange for a plant
- (17) Cash and cash equivalents on 31<sup>st</sup> March, 20X1 was ₹ 2,25,000 and on 31<sup>st</sup> March, 20X2 was ₹ 7,00,000
- (A) Prepare cash flow statement for the year ended 31<sup>st</sup> March, 20X2, using direct method.
- (B) Calculate cash flow from operating activities, using indirect method.

#### AS 4

3. (a) The financial statements of Alpha Ltd. for the year 20X1-02 was approved by the Board of Directors on 15<sup>th</sup> July, 20X2. The following information was provided:

- (i) A suit against the company's advertisement was filed by a party on 20<sup>th</sup> April, 20X2 claiming damages of ₹ 25 lakhs.
- (ii) The terms and conditions for acquisition of business of another company have been decided by March, 20X2. But the financial resources were arranged in April, 20X2 and amount invested was ₹ 50 lakhs.
- (iii) Theft of cash of ₹ 5 lakhs by the cashier on 31<sup>st</sup> March, 20X2, was detected on 16<sup>th</sup> July, 20X2.
- (iv) Company sends a proposal to sell an immovable property for ₹ 40 lakhs in March, 20X2. The book value of the property is ₹ 30 lakh on 31<sup>st</sup> March, 20X2. However, the deed was registered on 15<sup>th</sup> April, 20X2.
- (v) A major fire has damaged the assets in a factory on 5<sup>th</sup> April, 20X2. However, the assets are fully insured.

With reference to AS 4, state whether the above mentioned events will be treated as contingencies, adjusting events or non-adjusting events occurring after the balance sheet date.

#### AS 7

(b) (i) ABC Ltd., a construction contractor, undertakes the construction of commercial complex for XYZ Ltd. ABC Ltd. submitted separate proposals for each of 3 units of commercial complex. A single agreement is entered into between the two parties. The agreement lays down the value of each of the 3 units ie ₹ 50 lakh, ₹ 60 lakh and ₹ 75 lakh respectively. Agreement also lays down the completion time for each unit.

Comment, with reference to AS 7, whether ABC Ltd., should treat it as a single contract or three separate contracts.

(ii) On 1<sup>st</sup> December, 20X1, MGR Realty Ltd. undertook a contract to construct a building for ₹ 45 lakh. On 31<sup>st</sup> March, 20X2, the company found that it had already spent ₹ 32.50 lakh on the construction. Additional cost of completion is estimated at ₹ 15.10 lakh. What amount should be charged to revenue in the final accounts for the year ended 31<sup>st</sup> March, 20X2 as per provisions of AS 7?

**AS 9**

4. (a) Given below are the following information's of SUP Ltd.

- (i) Goods of ₹ 50,000 was sold on 18<sup>th</sup> March, 20X1 but at the request of the buyer these were delivered on 15<sup>th</sup> April, 20X1.
- (ii) On 13<sup>th</sup> January, 20X1, goods of ₹ 1,25,000 were sent on consignment basis, of which 20% of the goods unsold are lying with the consignee as on 31<sup>st</sup> March, 20X1.
- (iii) ₹ 1,00,000 worth of goods were sold on approval basis on 1<sup>st</sup> December, 20X0. The period of approval was 3 months after which they were considered sold. Buyer sent approval for 75% goods upto 31<sup>st</sup> January, 20X1 and no approval or disapproval received for the remaining goods till 31<sup>st</sup> March, 20X1.

You are required to advise the accountant of SUP Ltd. with valid reasons, the amount to be recognised as revenue for the year ended 31<sup>st</sup> March, 20X1 in above cases in the context of AS 9.

**AS 10**

(b) All in one Enterprise operates a major chain of restaurants located in different cities. The company has acquired a new restaurant located at Chandigarh. The new-restaurant requires significant renovation expenditure. Management expects that the renovations will last for 3 months during which the restaurant will be closed.

Management has prepared the following budget for this period –

Salaries of the staff engaged in preparation of restaurant before its opening ₹ 7,50,000

Construction and remodeling cost of restaurant ₹ 30,00,000

Explain the treatment of these expenditures as per the provisions of AS 10 "Property, Plant and Equipment".

**AS 11**

5. (a) (i) CAT Ltd. a Indian Company obtained long term loan from Perfect private Ltd., a U.S. company amounting to ₹ 30,00,000. It was recorded at US \$1 = ₹ 60.00, taking exchange rate prevailing at the date of transaction. The exchange rate on balance sheet date ie on 31.03.20X1 was US \$1 = ₹ 62.00.

(ii) Trade receivable includes amount receivable from JBB Ltd., ₹ 10,00,000

recorded at the prevailing exchange rate on the date of sales, transaction recorded at US \$1 = ₹ 59.00. The exchange rate on balance sheet date (31.03.20X1) was US \$1 = ₹ 62.00.

You are required to calculate the amount of exchange difference and also explain the accounting treatment needed in the above two cases as per AS 11 in the books of CAT Ltd.

#### AS 13

(b) A Ltd. on 1-1-20X1 had made an investment of ₹ 600 lakhs in the equity shares of B Ltd. of which 50% is made in the long term category and the rest as temporary investment. The realizable value of all such investment on 31-3-20X1 became ₹ 200 lakhs as B Ltd. lost a case of copyright. How will you recognize the reduction in the value of the investment in the financial statements for the year ended on 31-3-20X1?

#### AS 14

6. (a) Wow Ltd. agreed to takeover Wonder Ltd. on 1<sup>st</sup> April, 20X1. The terms and conditions of takeover were as follows:

- (i) Wow Ltd. issued 56,000 equity shares of ₹ 100 each at a premium of ₹ 15 per share to the equity shareholders of Wonder Ltd.
- (ii) Cash payment of ₹ 39,000 was made to equity shareholders of Wonder Ltd.
- (iii) 24,000 fully paid preference shares of ₹ 50 each issued at par to discharge the preference shareholders of Wonder Ltd.
- (iv) The 8% Debentures of Wonder Ltd. (₹ 78,000) converted into equivalent value of 9% debentures in Wow Ltd.
- (v) The actual cost of liquidation of Wonder Ltd. was ₹ 23,000. Liquidation cost is to be reimbursed by Wow Ltd. to the extent of ₹ 15,000.

You are required to:

- (1) Calculate the amount of purchase consideration as per the provisions of AS 14 and
- (2) Pass Journal Entry relating to discharge of purchase consideration in books of Wow Ltd.

#### AS 15

(b) Synergy Ltd., is in engineering industry. The company received an actuarial valuation for the first time for its pension scheme which revealed a surplus of ₹ 6 lakhs. It wants to spread the same over the next 2 years by reducing the annual contribution to ₹ 2 lakhs instead of ₹ 5 lakhs. The average remaining life of the employee is estimated to be 6 years.

You are required to advise the company.

**AS 16**

7. (a) Saluba Ltd. began construction of a new building at an estimated cost of ₹ 7 lakh on 1<sup>st</sup> April, 20X1. To finance construction of the building it obtained a specific loan of ₹ 2 lakh from a financial institution at an interest rate of 9% per annum.

The company's other outstanding loans were:

Amount	Rate of Interest per annum
₹ 7,00,000	12%
₹ 9,00,000	11%

The expenditure incurred on the construction was:

1 <sup>st</sup> April, 20X1	₹ 1,50,000
1 <sup>st</sup> August, 20X1	₹ 2,00,000
1 <sup>st</sup> October, 20X1	₹ 3,50,000
1 <sup>st</sup> January, 20X2	₹ 1,00,000

The construction of building was completed by 31<sup>st</sup> January, 20X2. Interest is paid at the year end. Following the provisions of AS 16 'Borrowing Costs', calculate the amount of interest to be capitalized when the asset was ready for use and pass necessary journal entry for capitalizing the cost and borrowing cost in respect of the building as on 31<sup>st</sup> January, 20X2.

**AS 18**

(b) Identify the related parties in the following cases as per AS 18:

(i) Maya Ltd. holds 61% shares of Sheetal Ltd.  
 Sheetal Ltd. holds 51% shares of Fair Ltd.  
 Care Ltd. holds 49% shares of Fair Ltd.  
 Give your answer Reporting Entity wise for Maya Ltd., Sheetal Ltd. Care Ltd. and Fair Ltd.

(ii) Mr. Subhash Kumar is managing director of A Ltd. and also holds 72% capital of B Ltd.

**AS 19**

8. (a) ANI Ltd. sold machinery having WDV of ₹ 40 lakhs to BDH Ltd. for ₹ 50 lakhs and the same machinery was leased back by BDH Ltd. to ANI Ltd. The lease back is operating lease. Comment if –

(a) Sale price of ₹ 50 lakhs is equal to fair value.  
 (b) Fair value is ₹ 60 lakhs.

- (c) Fair value is ₹ 45 lakhs and sale price is ₹ 38 lakhs.
- (d) Fair value is ₹ 40 lakhs and sale price is ₹ 50 lakhs.
- (e) Fair value is ₹ 46 lakhs and sale price is ₹ 50 lakhs
- (f) Fair value is ₹ 35 lakhs and sale price is ₹ 39 lakhs.

#### AS 20

(b) As at 1<sup>st</sup> April, 20X1 a company had 6,00,000 equity shares of ₹ 10 each (₹ 5 paid up by all shareholders). On 1<sup>st</sup> September, 20X1 the remaining ₹ 5 was called up and paid by all shareholders except one shareholder having 60,000 equity shares. The net profit for the year ended 31<sup>st</sup> March, 20X2 was ₹ 21,96,000 after considering dividend on preference shares and dividend distribution tax on such dividend totalling to ₹ 3,40,000.

Compute Basic EPS for the year ended 31<sup>st</sup> March, 20X2 as per Accounting Standard 20 "Earnings Per Share".

#### AS 22

9. (a) NCRI Ltd. is the owner of a CGU (Cash Generating Unit) block of assets whose current carrying cost is ₹ 999 lakhs. The company, after a detailed study by its technical team, has assessed the present recoverable amount of this CGU block of assets at ₹ 555 lakhs. The value of the block of assets as per the Income tax Records is ₹ 777 lakhs. The Approving Authority of the company have issued a signed statement confirming that the impairment in the value of the CGU is only a temporary phenomenon which is reversible in subsequent periods and also assuring virtual certainty of taxable incomes in the foreseeable future. You are required to show Deferred Tax workings as per Accounting Standards in force, given the tax rate of 30% plus 10% surcharge thereon. The depreciation rate for tax purposes is 15% and that per books is 13.91%. The current carrying cost of the CGU block of asset as per Accounting and Tax Records are after charging depreciation of the current year.

#### AS 25

(b) Adam Ltd. provides you the following information and asks you to calculate the tax expense for each quarter with reference to AS 25, assuming that there is no difference between the estimated taxable income and the estimated accounting income:

Estimated Gross Annual Income	33,00,000
(inclusive of Estimated Capital Gains of ₹ 8,00,000)	

Estimated Income of Quarter I is ₹ 7,00,000, Quarter II is ₹ 8,00,000, Quarter III (including Estimated Capital Gains of ₹ 8,00,000) is ₹ 12,00,000 and Quarter IV is ₹ 6,00,000.

Tax Rates:	On Capital Gains	12%
	On Other Income: First ₹ 5,00,000	30%
	Balance Income:	40%

**AS 29**

10. (a) Zaira Company has at its financial year ended on 31<sup>st</sup> March, 20X1, fifteen law suits outstanding none of which has been settled by the time the accounts are approved by the directors. The directors have estimated the possible outcomes as below:

Result	Probability	Amount of loss
For first ten cases:		
Win	0.6	
Loss-low damages	0.3	90,000
Loss-high damages	0.1	1,60,000
For remaining five cases:		
Win	0.5	
Loss-low damages	0.3	60,000
Loss-high damages	0.2	95,000

The directors believe that the outcome of each case is independent of the outcome of all the others.

Estimate the amount of contingent loss and state the accounting treatment of such contingent loss.

**Guidance Note on Division I of Schedule III to the Companies Act, 2013**

(b) Earth Ltd. has issued convertible bonds for ₹ 65 crores which are due to mature on 30th September, 20X1.

While preparing financial statements for the year ending 31<sup>st</sup> March, 20X1, company expects that bond holders will not exercise their option of converting bonds to equity shares. How should the company classify the convertible bonds as per the requirements of Schedule-III to the Companies Act, 2013 as on 31<sup>st</sup> March, 20X1?

Also state, whether classification of convertible bonds as per Schedule-III to the Companies Act will change if the company expects that convertible bond holders will convert their holdings into equity shares of Earth Ltd.

**Indian Accounting Standard**

11. Explain the treatment of Short-term Employee Benefits as per Ind AS 19.

**Accounting for Corporate Restructuring**

12. The following was the abridged Balance Sheet of TMC Ltd, as at 31<sup>st</sup> March, 20X1:

Liabilities	₹	Assets	₹
Capital:		Plant and machinery at depreciated value	8,60,000
Authorized:			
10,000 Equity shares of ₹ 100 each	10,00,000	Land	7,00,000

<u>Issued and paid up:</u>		Current assets	
8,000 Equity shares of ₹ 100 each, fully paid up	8,00,000	Trade receivables	8,00,000
<u>Reserves and surplus:</u>		Patents, trademarks and copyrights	6,00,000
General reserve 5,00,000			
Securities premium 4,00,000			
Profit and loss <u>3,60,000</u>	12,60,000		
11% Debentures secured against the assets of the Company 5,00,000			
Trade payables <u>4,00,000</u>			
	29,60,000		29,60,000

The Company ran two distinct departments utilizing the trademarks and copyrights owned and generated by it. The assets and liabilities of one of the departments as on the date of Balance Sheet were:

	₹
Plant and machinery	4,00,000
Land (used for business)	2,00,000
Current assets	2,00,000
Trademarks and copyrights	<u>3,50,000</u>
	11,50,000
Trade payables	<u>(2,50,000)</u>
	9,00,000

Due to managerial constraints, TMC is unable to develop this department. An overseas buyer is interested to acquire this department and after due diligence, offers a consideration of ₹ 20,00,000 to the company for transfer of business. The buyer offered to discharge the purchase consideration immediately after 31<sup>st</sup> March, 20X1, in the following manner:

- (i) Issue of equity shares of the buyer's company for ₹ 10,00,000 nominal value at a premium of 20% over the face value; and
- (ii) Payment of the balance consideration in £ Sterling. The exchange rate agreed upon is ₹ 80 per £ Sterling. This amount will be retained in London, till the actual takeover of the business is done by the buyer.
  - (a) expenses to put through the transaction come to ₹ 8,00,000 initially to be incurred by TMC but to be shared equally by the parties.

- (b) the balance value of trademarks, copyrights and patents left with TMC does not enjoy any market value and has to be written off.
- (c) the value of the balance of land in TMC's possession will be taken at its market value in the books of account. Such a value, determined by an approved valuer, is 200 percent of the book value.
- (d) the parties agree that the date of legal ownership of the transferred business shall be 31<sup>st</sup> March, 20X1, though certain formalities may have to be gone through and agree that the actual transfer to the buyer will be effected before 30<sup>th</sup> April, 20X1.

TMC Ltd to carry on the business in the normal course and account for the profits of the transferred department to the foreign buyer. TMC made a net cash profit of ₹ 2,40,000 from the whole business for April, 20X1; 40 percent of the net profit related to the business of the transferred department.

- (e) the shares of the overseas buyer's company were quoted on the London Stock Exchange and on 30<sup>th</sup> April, 20X1 were quoted at 95 percent of their face value.
- (f) the cash received by TMC at London was remitted by it to its Indian banking account on 30<sup>th</sup> April 20X1 when the rupee sterling rate was ₹ 75 per UK sterling pound.

Draw the Balance Sheet of TMC Ltd. as at 30<sup>th</sup> April, 20X1, after the transfer of the business to the overseas buyer. TMC Ltd intends to hold investment in shares of overseas buyer as temporary investment. The amount of current assets and current liabilities of TMC Ltd. on 30<sup>th</sup> April, 20X1 has been same as on 31<sup>st</sup> March, 20X1.

#### Consolidated Financial Statements

13. Awasthi Ltd. acquired 100% (50,00,000) equity shares of ₹ 10 each in Jawala Ltd. on 1<sup>st</sup> April, 20X1. Jawala Ltd. was incorporated on 1<sup>st</sup> April, 20X1.

Awasthi Ltd. acquired 80% (24,00,000) equity shares in Shaurya Ltd. for ₹ 600 lakh on 1<sup>st</sup> April, 20X1 when Shaurya Ltd. had share capital of ₹ 300 lakh and Reserves and Surplus of ₹ 300 lakh.

The company amortizes goodwill on consolidation on a SLM basis over a period of 5 years. A full year's amortization is considered if the goodwill exists for more than 6 months.

On 1<sup>st</sup> April, 20X4, Awasthi Ltd. sold 12,00,000 equity shares of Shaurya Ltd. for cash consideration of ₹ 360 lakh with recognition of profit arising out of this sale.

The net assets of Shaurya Ltd. on 31<sup>st</sup> March, 20X4 were ₹ 700 lakh. The amount of Reserves and Surplus was ₹ 880 lakh, ₹ 720 lakh and ₹ 400 lakh respectively of Awasthi Ltd., Jawala Ltd. and Shaurya Ltd. on 31<sup>st</sup> March, 20X4.

The Balance Sheet extracts of the companies as on 31<sup>st</sup> March, 20X5 were as follows:

(₹ in lakh)

	<i><b>Awasthi Ltd.</b></i>	<i><b>Jawala Ltd.</b></i>	<i><b>Shaurya Ltd.</b></i>
Share Capital (₹ 10 each)	1000	500	300
Reserves and Surplus	1240	910	640
Current Liabilities	460	490	560
	<u>2700</u>	<u>1900</u>	<u>1500</u>
Fixed Assets	640	420	380
50,00,000 equity shares in Jawala Ltd.	500		
12,00,000 equity shares in Shaurya Ltd.	300		
Current Assets	1260	1480	1120
	<u>2700</u>	<u>1900</u>	<u>1500</u>

You are required to prepare for Awasthi Ltd. Group Balance Sheet as on 31<sup>st</sup> March, 20X5 following AS 21 and AS 23. Notes to Accounts and working notes should form part of your answer.

#### **Accounting for Financial Instruments**

14. Sagar Ltd. has contracted as a point of staff welfare measures to lend to its employees a sum of ₹ 12,00,000 on 1<sup>st</sup> April, 20X1 at a rate of interest of 6% per annum. The amounts lent are to be repaid, along with the interest, in four equal annual instalments. The market rate of interest is 10% per annum.

Following the principles of recognition and measurement as laid down in Ind AS 109, you are required to record the journal entries for the year ended 31<sup>st</sup> March, 20X2 for the transaction and also calculate the value of the loan initially to be recognised and the amortised cost for all the subsequent years.

For the purpose of calculation, the following discount factors at interest rate of 10% may be considered:

<i>At end of year</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
Discount factor	0.909	0.827	0.751	0.683

#### **Accounting for Share Based Payment**

15. NCR Ltd. has its share capital divided into Equity Shares of ₹ 10 each. On 1<sup>st</sup> April, 20X1, the company offered 250 shares to each of its 520 employees at ₹ 60 per share, when the market price was ₹ 150 per share. The options were to be exercised between 1<sup>st</sup> March, 20X2 to 31<sup>st</sup> March, 20X2. 410 employees accepted the offer and paid ₹ 60 per share purchased and the remaining options lapsed.

The company closes its books on 31<sup>st</sup> March, every year.

You are required to show Journal Entries (with narrations) as would appear in the books of NCR Ltd. for the year ended 31<sup>st</sup> March, 20X2 with regard to employees stock options.

#### Accounting for Mutual Funds

16. Mutual fund has launched a new scheme "All Purpose Scheme". The Mutual Fund Asset Management Company wishes to invest 25% of the NAV of the scheme in an unrated debt instrument of a company Zama Ltd., which has been paying above average returns for the past many years. The promoters of the company seek advice in light of the regulations of SEBI. Will the position change in case the debt instruments of the company Zama Ltd. are rated.

#### Valuation of Goodwill

17. The summarised balance sheet of TMI Ltd. for the year ended on 31<sup>st</sup> March, 20X1, 20X2 and 20X3 are as follows:

	₹ in thousand		
	20X1	20X2	20X3
1,60,000 equity shares of ₹ 10 each fully paid	1,600	1,600	1,600
General reserve	1,200	1,400	1,600
Profit and Loss account	140	160	240
Trade Payable	600	800	1,000
	<u>3,540</u>	<u>3,960</u>	<u>4,440</u>
Assets:			
Goodwill	1,000	800	600
Building and machinery less depreciation	1,400	1,600	1,600
Inventory	1000	1,200	1,400
Trade Receivable	20	160	440
Bank balance	120	200	400
	<u>3,540</u>	<u>3,960</u>	<u>4,440</u>

Additional information:

(i) Actual valuations were as under:

	20X1	20X2	20X3
Building and machinery less depreciation	1,800	2,000	2,200
Inventory	1,200	1,400	1,600
Net profit (including opening balance after writing off depreciation, goodwill, tax provision and transfer to general reserve)	420	620	820

- (ii) Capital employed in the business at market value at the beginning of 20X0-20X1 was ₹ 3,60,000 which included the cost of goodwill. The normal annual return on average capital employed in the line of business engaged by T Ltd. is 12.5%.
- (iii) The balance in the general reserve on 1<sup>st</sup> April, 20X0 was ₹ 10 lakhs.
- (iv) The goodwill shown on 31<sup>st</sup> March, 20X1 was purchased on 1<sup>st</sup> April, 20X0 for ₹ 10 lakhs on which date the balance in the Profit and Loss account was ₹ 1,20,000.

You are required to find out the average capital employed in each year. Also compute goodwill to be valued at 5 year's purchase of Super Profit (Simple average method).

#### Value Added Statement

18. Divine Corporation has been preparing Value Added Statements for the past five years. The Human Resource Manager of the company has suggested introducing a value added incentive scheme to motivate the employees for their better performance. To introduce the scheme, it is proposed that the best index performance (favourable to employer) i.e. Employee Costs to Added Value for the last five years, will be used as the target index for future calculations of the bonus to be paid.

After the target index is determined, any actual improvement in the index will be rewarded. The employer and the employee will be sharing any such improvement in the ratio of 1:2. The bonus is given at the end of the year, after the profit for the year is determined.

The following information is available for the last 5 years.

**Value Added Statement for 5 years**

Particulars	₹ in thousands				
	20X1	20X2	20X3	20X4	20X5
Sales	5,600	7,600	9,200	10,400	12,000
Less: Bought in goods & services	(2,560)	(4,000)	(5,000)	(5,600)	(6,400)
Value Added	3,040	3,600	4,200	4,800	5,600
Employee Costs	1,300	1,520	1,680	1,968	2,240
Dividend	200	300	400	480	600
Taxes	640	760	840	1000	1,120
Depreciation	520	620	720	880	1,120
Debenture Interest	80	80	80	80	80
Retaining Earnings	300	320	480	392	440
Value Added	3,040	3,600	4,200	4,800	5,600

**Summarised Profit and Loss Account for the year ended on 31<sup>st</sup> March, 20X6**

Particulars		(₹ in thousand)
		Amount
<b>Income</b>		
Sales less returns	13,600	
Dividends and Interest	500	
Miscellaneous Income	<u>500</u>	14,600
<b>Expenditure</b>		
Production and Operational Expenses:		
Cost of Materials	5,000	
Wages & Salaries	1,800	
Other Manufacturing Expenses	<u>1,400</u>	8,200
Administrative Expenses:		
Administrative Salaries	600	
Administration Expenses	<u>600</u>	1,200
Selling and Distribution Expenses:		
Selling and Distribution Salaries	120	
Selling Expenses	<u>400</u>	520
Financial Expenses:		
Debenture Interest		80
Depreciation		<u>1,520</u>
Total Expenditure		<u>11,520</u>
Profit before taxation		3,080
Provision for taxation		<u>770</u>
Profit after taxation		2,310

From the above information, prepare Value Added Statement for the year 20X5-20X6 and determine the amount of bonus payable to employees, if any.

**Economic Value Added**

19. The following information is available of a concern; calculate E.V.A.:

Debt capital 12%	₹ 2,000 crores
Equity capital	₹ 500 crores
Reserve and surplus	₹ 7,500 crores

Capital employed	₹ 10,000 crores
Risk-free rate	9%
Beta factor	1.05
Market rate of return	19%
Equity (market) risk premium	10%
Net Operating profit after tax	₹ 2,100 crores
Tax rate	30%

### Human Resource Accounting

20. From the following details, compute according to Lev and Schwartz (1971) model, the total value of human resources of the employee groups skilled and unskilled.

		Skilled	Unskilled
(i)	Annual average earning of an employee till the retirement age	₹ 50,000	₹ 30,000
(ii)	Age of retirement	65 years	62 years
(iii)	Discount rate	15%	15%
(iv)	No. of employees in the group	20	25
(v)	Average age	62 years	60 years

### SUGGESTED ANSWERS/HINTS

1. (i) Accounting Standards standardize diverse accounting policies with a view to eliminate the non-comparability of financial statements and improve the reliability of financial statements. Accounting Standards provide a set of standard accounting policies, valuation norms and disclosure requirements. Accounting standards aim at improving the quality of financial reporting by promoting comparability, consistency and transparency, in the interests of users of financial statements.

The following are the benefits of Accounting Standards:

- (1) **Standardization of alternative accounting treatments:** Accounting Standards reduce to a reasonable extent confusing variations in the accounting treatment followed for the purpose of preparation of financial statements.
- (2) **Requirements for additional disclosures:** There are certain areas where importance is not only of statutorily requirements to be disclosed. Standards may call for disclosure beyond what is required by law.

(3) **Comparability of financial statements:** The application of accounting standards would facilitate comparison of financial statements of different companies situated in India and facilitate comparison, to a limited extent, of financial statements of companies situated in different parts of the world. However, it should be noted in this respect that differences in the institutions, traditions and legal systems from one country to another give rise to differences in Accounting Standards adopted in different countries.

(ii) Yes, one of the characteristics of financial statements is neutrality. To be reliable, the information contained in financial statement must be neutral, that is free from bias. Financial Statements are not neutral if by the selection or presentation of information, the focus of analysis could shift from one area of business to another thereby arriving at a totally different conclusion based on the business results. Information contained in the financial statements must be free from bias. It should reflect a balanced view of the financial position of the company without attempting to present them in biased manner. Financial statements cannot be prepared with the purpose to influence certain division, i.e. they must be neutral.

2. (a) As per AS 2 (Revised) 'Valuation of Inventories', abnormal amounts of wasted materials, labour and other production costs are excluded from cost of inventories and such costs are recognised as expenses in the period in which they are incurred. The normal loss will be included in determining the cost of inventories (finished goods) at the year end.

**Calculation of Abnormal Loss in quantity and in amount**

Material used	16,000 MT @ ₹ 190 = ₹ 30,40,000
Normal Loss (5% of 16,000 MT)	800 MT (included in calculation of cost of inventories)
Net quantity of material after normal loss	15,200 MT
Abnormal Loss in quantity (950 - 800)	150 MT
Abnormal Loss in amount	₹ 30,000 [150 units @ ₹ 200 (₹ 30,40,000 / 15,200)]

**Treatment of Abnormal Loss**

Abnormal loss of ₹ 30,000 will be charged to the Profit and Loss account.

(b) (i) **ABC Ltd.**

**Cash Flow Statement for the year ended 31st March, 20X2  
(Using direct method)**

Particulars	₹	₹
<b>Cash flows from Operating Activities</b>		
Cash sales (₹ 3,75,000 / 25%)		15,00,000

Less: Cash payment to trade payables	(6,10,000)		
Wages Paid	(5,55,000)		
Office and selling expenses (35,000+15,000)	(50,000)	(12,15,000)	
Cash generated from operations before taxes		2,85,000	
Income tax paid		(55,000)	
Net cash generated from operating activities (A)		2,30,000	
<b>Cash flows from investing activities</b>			
Sale of investments (8,20,000 + 20,000)	8,40,000		
Payments for purchase of Plant & machinery	(3,50,000)		
Net cash used in investing activities (B)		4,90,000	
<b>Cash flows from financing activities</b>			
Bank loan repayment (including interest)	(2,05,000)		
Dividend paid (including dividend distribution tax)	(40,000)		
Net cash used in financing activities (C)		(2,45,000)	
Net increase in cash (A+B+C)		4,75,000	
<b>Cash and cash equivalents at beginning of the period</b>		2,25,000	
<b>Cash and cash equivalents at end of the period</b>		7,00,000	

(ii) 'Cash Flow from Operating Activities' by indirect method

	₹
Net profit for the year before tax and extraordinary items	2,80,000
Add: Non-cash and non-operating expenses:	
Depreciation (40,000 + 20,000)	60,000
Interest paid	5,000
Less: Non-cash and non-operating incomes:	
Profit on sale of investments	(20,000)
Net Profit after adjustment for non-cash items	3,25,000
Less: Decrease in trade payables	15,000
Increase in inventory	25,000
Cash generated from operations before taxes	2,85,000
Less: Income tax paid	(55,000)
Cash generated from operations after taxes	2,30,000

**Working note:****Calculation of net profit earned during the year**

Gross profit		3,75,000
Less: Office expenses, selling expenses	50,000	
Depreciation (40,000 + 20,000)	60,000	
Interest paid	<u>5,000</u>	(1,15,000)
		2,60,000
Add: Profit on sale of investments		<u>20,000</u>
Net profit before tax		2,80,000

3. (a) (i) **Non-adjusting event:** Suit filed against the company is a contingent liability but it was not existing as on date of balance sheet date as the suit was filed on 20<sup>th</sup> April after the balance sheet date. As per AS 4, 'Contingencies' is restricted to conditions or situations at the balance sheet date, the financial effect of which is to be determined by future events which may or may not occur. Hence, it will have no effect on financial statement and will be a non-adjusting event.

(ii) **Adjusting event:** In the given case, terms and conditions for acquisition of business were finalised before the balance sheet date and carried out before the closure of the books of accounts but transaction for payment of financial resources was effected in April, 20X2. Hence, necessary adjustment to assets and liabilities for acquisition of business is necessary in the financial statements for the year ended 31<sup>st</sup> March 20X2.

(iii) **Non-adjusting event:** Only those events which occur between the balance sheet date and the date on which the financial statements are approved, may indicate the need for adjustments to assets and liabilities as at the balance sheet date or may require disclosure. In the given case, as the theft of cash was detected on 16<sup>th</sup> July, 20X2 ie after approval of financial statements, no adjustment is required.

(iv) **Non-adjusting event:** Adjustments to assets and liabilities are not appropriate for events occurring after the balance sheet date, if such events do not relate to conditions existing at the balance sheet date. In the given case, sale of immovable property was under proposal stage (negotiations also not started) on the balance sheet date, and was not finalized. Therefore, adjustment to assets for sale of immovable property is not necessary in the financial statements for the year ended 31<sup>st</sup> March, 20X2.

(v) **Non-adjusting event:** Adjustments to assets and liabilities are not appropriate for events occurring after the balance sheet date, if such events do not relate to conditions existing at the balance sheet date. The condition of fire occurrence

was not existing on the balance sheet date. Only the disclosure regarding fire and loss completely insured may be given in the report of approving authority.

(b) (i) As per AS 7 'Construction Contracts', when a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when:

- separate proposals have been submitted for each asset;
- each asset has been subject to separate negotiation and the contractor and customer have been able to accept or reject that part of the contract relating to each asset; and
- the costs and revenues of each asset can be identified.

ABC Ltd. has submitted separate proposals for each of the 3 units of commercial complex. Also the revenue and completion time has been laid down for each unit separately which implies separate negotiation for them.

Therefore, ABC Ltd. is required to treat construction of each unit as a separate construction contract as the above-mentioned conditions of AS 7 are fulfilled in the given case.

(ii) **Computation of percentage of completion of contract**

	₹ in lakhs
Cost of construction incurred till date	32.50
Add: Estimated future cost	<u>15.10</u>
Total estimated cost of construction	47.60

Percentage of completion till date to total estimated cost of construction

$$= (32.50/47.60) \times 100 = 68.28\%$$

Proportion of total contract value recognised as revenue for the year ended 31<sup>st</sup> March, 20X2 per AS 7 (Revised)

$$\begin{aligned}
 &= \text{Contract price} \times \text{percentage of completion} \\
 &= ₹ 45 \text{ lakh} \times 68.28\% = ₹ 30.73 \text{ lakhs.}
 \end{aligned}$$

Amount of foreseeable loss	(₹ in lakhs)
Total cost of construction	47.60
Less: Total contract price	<u>(45.00)</u>
Total foreseeable loss to be recognized as expense	2.60

According to AS 7, when it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognized as an expense immediately. Hence ₹ 2.60 lakhs will be charged to Profit and Loss as loss provision.

4. (a) As per AS 9 "Revenue Recognition", in a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions are fulfilled:

- (1) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and
- (2) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.

**Case (i)**

The sale is complete but delivery has been postponed at buyer's request. SUP Ltd. should recognize the entire sale of ₹ 50,000 for the year ended 31<sup>st</sup> March, 20X1.

**Case (ii)**

20% goods lying unsold with consignee should be treated as closing inventory and sales should be recognized for ₹ 1,00,000 (80% of ₹ 1,25,000). In case of consignment sale, revenue should not be recognized until the goods are sold to a third party. This is because the ownership of goods vest with the consignor only though the goods are lying at consignee's place.

**Case (iii)**

In case of goods sold on approval basis, revenue should not be recognized until the goods have been formally accepted by the buyer or the buyer has done an act adopting the transaction or the time period for rejection has elapsed or where no time has been fixed, a reasonable time has elapsed. Therefore, revenue should be recognized for the total sales amounting ₹ 1,00,000 as the time period for rejecting the goods had expired.

Thus total revenue amounting ₹ 2,50,000 (50,000 + 1,00,000+ 1,00,000) will be recognized for the year ended 31<sup>st</sup> March, 20X1 in the books of SUP Ltd.

(b) As per provisions of AS 10, any cost directly attributable to bring the assets to the location and conditions necessary for it to be capable of operating in the manner indicated by the management are called directly attributable costs and would be included in the costs of an item of PPE.

Management of All-in-one Enterprise should capitalize the costs of construction and remodeling the restaurant, because they are necessary to bring the restaurant to the condition necessary for it to be capable of operating in the manner intended by the management. The restaurant cannot be opened without incurring the construction and remodeling expenditure amounting ₹ 30,00,000 and thus the expenditure should be considered as part of the asset.

However, the cost of salaries of staff engaged in preparation of restaurant ₹ 7,50,000 before its opening are in the nature of operating expenditure that would be incurred even after the inauguration of the restaurant. Further, these costs are not necessary to bring the restaurant to the conditions necessary for it to be capable of operating in the manner intended by management. Hence, ₹ 7,50,000 should be expensed ie charged to Profit and Loss.

**5. (a) Amount of Exchange difference and its Accounting Treatment**

		Foreign Currency Rate	₹
(i)	<b>Long term Loan</b>		
	Initial recognition US \$ 50,000 ₹ (30,00,000/60)	1 US \$ = ₹ 60	30,00,000
	Rate on Balance sheet date	1 US \$ = ₹ 62	
	Exchange Difference Loss US \$ 50,000 x ₹ (62 – 60)		1,00,000
	Treatment: Credit Loan A/c and Debit FCMITD A/c or Profit and Loss A/c by ₹ 1,00,000		
(ii)	<b>Trade receivables</b>		
	Initial recognition US \$ 16,949.152* (₹10,00,000/59)	1 US \$ = ₹ 59	10,00,000
	Rate on Balance sheet date	1 US \$ = ₹ 62	
	Exchange Difference Gain US \$ 16,949.152* x ₹ (62-59)		50,847.456*
	Treatment: Credit Profit and Loss A/c by ₹ 50,847.456* and Debit Trade Receivables		

Thus, Exchange Difference on Long term loan amounting ₹ 1,00,000 may either be charged to Profit and Loss A/c or to Foreign Currency Monetary Item Translation Difference Account at the option of the entity but exchange difference on trade receivables amounting ₹ 50,847.456 is required to be transferred to Profit and Loss.

**(b)** A limited invested ₹ 600 lakhs in the equity shares of B Ltd. Out of the same, the company intends to hold 50% shares for long term period i.e. ₹ 300 lakhs and remaining as temporary (current) investment i.e. ₹ 300 lakhs. Irrespective of the fact that investment has been held by A Limited only for 3 months (from 1.1. 20X1 to 31.3.20X1), AS 13 lays emphasis on intention of the investor to classify the

investment as current or long term even though the long term investment may be readily marketable.

In the given situation, the realizable value of all such investments on 31.3. 20X1 became ₹ 200 lakhs i.e. ₹ 100 lakhs in respect of current investment and ₹ 100 lakhs in respect of long term investment.

As per AS 13, 'Accounting for Investment', the carrying amount for current investments is the lower of cost and fair value. In respect of current investments for which an active market exists, market value generally provides the best evidence of fair value.

Accordingly, the carrying value of investment held as temporary investment should be shown at realizable value i.e. at ₹ 100 lakhs. The reduction of ₹ 200 lakhs in the carrying value of current investment will be charged in the profit and loss account.

Standard further states that long-term investments are usually carried at cost. However, when there is a decline, other than temporary, in the value of long term investment, the carrying amount is reduced to recognise the decline.

Here, B Limited has lost a case of copyright which drastically reduced the realisable value of its shares to one third which is quite a substantial figure. Losing the case of copyright may affect the business and the performance of the company in long run. Accordingly, it will be appropriate to reduce the carrying amount of long term investment by ₹ 200 lakhs and show the investments at ₹ 100 lakhs, considering the downfall in the value of shares as decline other than temporary. The reduction of ₹ 200 lakhs in the carrying value of long term investment will be charged to the profit and loss account.

Alternatively, for treatment of long term investment, if one assumes that the decline in the value of long term investment is temporary and B Limited will overcome this downfall in a short period by filing a case against this decision of government, with strong arguments. In such a case, long term investment will be shown at cost of ₹ 300 lakhs.

6. (a) As per AS 14, 'Accounting for Amalgamations' consideration for the amalgamation means the aggregate of shares and other securities issued and payment made in form of cash or other assets by the transferee company to the shareholders of the transferor company.

(i) **Computation of Purchase Consideration**

	₹
(a) Preference Shares: ₹ 50 per share 24,000 Preference shares	12,00,000
(b) Cash	39,000
(c) Equity shares: 56,000 equity shares in Wow Ltd. @ ₹ 115	<u>64,40,000</u>
	<u>76,79,000</u>

(ii)	Journal entry	₹	₹
	Liquidator of Wonder Ltd. Dr.	76,79,000	
	To Cash	39,000	
	To Preference Share Capital A/c	12,00,000	
	To Equity Share Capital A/c	56,00,000	
	To Securities Premium A/c	8,40,000	
	[56,000 x ₹ 15 (115-100)]		

(Payment of cash and issue of shares in satisfaction of purchase consideration)

(b) According to para 92 of AS 15 (Revised) "Employee Benefits", actuarial gains and losses should be recognized immediately in the statement of profit and loss as income or expense. Therefore, surplus of ₹ 6 lakhs in the pension scheme on its actuarial valuation is required to be credited to the profit and loss statement of the current year. Hence, Synergy Ltd. cannot spread the actuarial gain of ₹ 6 lakhs over the next 2 years by reducing the annual contributions to ₹ 2 lakhs instead of ₹ 5 lakhs. It has to contribute ₹ 5 lakhs annually for its pension schemes.

7. (a) (i) **Calculation of capitalization rate on borrowings other than specific borrowings**

Amount of loan (₹)	Rate of interest	Amount of interest (₹)
7,00,000	12%	= 84,000
<u>9,00,000</u>	11%	<u>99,000</u>
<u>16,00,000</u>		<u>1,83,000</u>
Weighted average rate of interest (1,83,000/16,00,000) x 100		= 11.4375%

(ii) **Computation of borrowing cost to be capitalized for specific borrowings and general borrowings based on weighted average accumulated expenses**

Date of incurrence of expenditure	Amount spent	Financed through	calculation	₹
1 <sup>st</sup> April, 20X1	1,50,000	Specific borrowing	1,50,000 x 9% x 10/12	11,250
1 <sup>st</sup> August, 20X1	2,00,000	Specific borrowing	50,000 x 9% x 10/12	3,750

			General borrowing	$1,50,000 \times 11.4375\% \times 6/12$	8,578.125
1 <sup>st</sup> 20X1	October,	3,50,000	General borrowing	$3,50,000 \times 11.4375\% \times 4/12$	13,343.75
1 <sup>st</sup> 20X2	January,	1,00,000	General borrowing	$1,00,000 \times 11.4375\% \times 1/12$	<u>953.125</u>
					<u>37,875</u>

**(iii) Total expenses to be capitalized for building**

	₹
Cost of building ₹ (1,50,000 + 2,00,000 + 3,50,000 + 1,00,000)	8,00,000
Add: Amount of interest to be capitalized	<u>37,875</u>
	<u>8,37,875</u>

**(iv)**

**Journal Entry**

Date	Particulars		₹	₹
31.1.20X2	Building account To Bank account To Interest payable (Being expenditure incurred on construction of building and borrowing cost thereon capitalized)	Dr.	8,37,875	8,00,0000 37,875

**(b) (i) (a) Reporting entity- Maya Ltd.**

- Sheetal B Ltd. (subsidiary) is a related party
- Fair Ltd.(subsidiary) is a related party

**(b) Reporting entity- Sheetal Ltd.**

- Maya Ltd. (holding company) is a related party
- Fair Ltd. (subsidiary) is a related party

**(c) Reporting entity- Fair Ltd.**

- Maya Ltd. (holding company) is a related party
- Sheetal Ltd. (holding company) is a related party

- Care Ltd. (investor/ investing party) is a related party

**(d) Reporting entity- Care Ltd.**

- Fair Ltd. (associate) is a related party

**(ii)** Mr. Subhash Kumar is key management personnel as he has the authority for planning, directing and controlling the activities of A Ltd. He also holds substantial interest in B Ltd. as he holds 72% capital of B Ltd. Thus, Mr. Subhash is related party for both A Ltd. and B Ltd.

**8. (a)** Following will be the treatment in the given cases:

- When sales price of ₹ 50 lakhs is equal to fair value; ANI Ltd. should immediately recognize the profit of ₹10 lakhs (i.e. 50 – 40) in its books.
- When fair value is ₹ 60 lakhs then also profit of ₹10 lakhs should be immediately recognized by ANI Ltd.
- When fair value of leased machinery is ₹ 45 lakhs & sales price is ₹ 38 lakhs, then loss of ₹ 2 lakhs (40 – 38) to be immediately recognized by ANI Ltd. in its books provided loss is not compensated by future lease payment.
- When fair value is ₹ 40 lakhs & sales price is ₹ 50 lakhs then, profit of ₹ 10 lakhs is to be deferred and amortized over the lease period.
- When fair value is ₹ 46 lakhs & sales price is ₹ 50 lakhs, profit of ₹ 6 lakhs (46 - 40) to be immediately recognized in its books and balance profit of ₹4 lakhs (50-46) is to be amortised/deferred over lease period.
- When fair value is ₹ 35 lakhs & sales price is ₹ 39 lakhs, then the loss of ₹ 5 lakhs (40-35) to be immediately recognized by ANI Ltd. in its books and profit of ₹ 4 lakhs (39-35) should be amortised/deferred over lease period

**(b) Basic Earnings per share (EPS) =**

$$\frac{\text{Net profit attributable to equity shareholders}}{\text{Weighted average number of equity shares outstanding during the year}}$$

$$= \frac{21,96,000}{4,57,500 \text{ Shares (as per working note)}} = ₹ 4.80 \text{ per share}$$

**Working Note:**

**Calculation of weighted average number of equity shares**

As per AS 20 'Earnings Per Share', partly paid equity shares are treated as a fraction of equity share to the extent that they were entitled to participate in dividend relative to a fully paid equity share during the reporting period. Assuming that the partly paid shares are entitled to participate in the dividend to the extent of amount paid, weighted average number of shares will be calculated as follows:

Date	No. of equity shares	Amount paid per share	Weighted average no. of equity shares
	₹	₹	₹
1.4.20X1	6,00,000	5	6,00,000 x 5/10 x 5/12 = 1,25,000
1.9.20X1	5,40,000	10	5,40,000 x 7/12 = 3,15,000
1.9.20X1	60,000	5	60,000 x 5/10 x 7/12 = <u>17,500</u>
Total weighted average equity shares			<u>4,57,500</u>

**9. (a) Statement showing Deferred Tax workings for the current year**

	₹ in lakhs
Depreciation as per Accounting books for the current year $\frac{999}{(1-.1391)} \times .1391$	161.41
Depreciation as per Income Tax Records for the current year $\frac{777}{(1-.15)} \times .15$	<u>137.12</u>
Timing difference	<u>24.29</u>
Tax effect of the above timing difference at 33% * (deferred tax asset) (A)	<u>8.02</u>
Impairment Loss recognised in the profit and loss account (999- 555)	444
Impairment Loss allowed for tax purposes	Nil
Timing difference	<u>444</u>
Tax effect of the above timing difference at 33% (deferred tax asset) (B)	<u>146.52</u>
Total deferred tax asset (A+B)	<u>154.54</u>

**Note:**

1. Deferred tax asset should be recognised and carried forward only to the extent that there is a reasonable certainty that sufficient future taxable income will be available against which such deferred tax asset can be realised. The Approving Authority of NCRI Ltd. have issued signed statement confirming virtual certainty

\* Tax rate = 30% x 110% = 33%.

of taxable incomes in the foreseeable future. Therefore, the company can recognize deferred tax asset during the current year.

2. The deferred tax asset calculated on account of difference of depreciation as per accounting and tax records is actually a reversal of deferred tax liability created in the previous years.
- (b) As per para 29 of AS 25 '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.

If different income tax rates apply to different categories of income (such as capital gains or income earned in particular industries) to the extent practicable, a separate rate is applied to each individual category of interim period pre-tax income.

	₹
Estimated annual income exclusive of estimated capital gain (33,00,000 – 8,00,000)	(A) <u>25,00,000</u>
Tax expense on other income:	
30% on                           ₹ 5,00,000	1,50,000
40% on remaining   ₹ 20,00,000	<u>8,00,000</u>
	(B) <u>9,50,000</u>
Weighted average annual income tax rate = $\frac{B}{A} =$	
(9,50,000/25,00,000) x 100 = 38%	

#### Tax expense to be recognised in each of the quarterly reports

	₹
Quarter I - ₹ 7,00,000 x 38%	2,66,000
Quarter II - ₹ 8,00,000 x 38%	3,04,000
Quarter III - ₹ (12,00,000 - 8,00,000) x 38%	1,52,000
₹ 8,00,000 x 12%	<u>96,000</u>
Quarter IV - ₹ 6,00,000 x 38%	<u>2,28,000</u>
	10,46,000

10. (a) In the given case, the probability of winning first 10 cases is 60% and for remaining five cases is 50%. In other words, probability of losing 10 cases and 5 cases is 40% and 50% respectively. According to AS 29 "Provisions, Contingent Liabilities and Contingent Assets", where it is not probable that a present obligation exists, an enterprise discloses a contingent liability. Since in the given case, chances of winning the case is more and losing the case is less, no provision will be recognized. In fact,

it is a contingent loss / liability.

The amount of contingent loss may be calculated as under:

$$\text{Expected contingent loss in first ten cases} = [(\text{₹ } 90,000 \times 0.3) + (\text{₹ } 1,60,000 \times 0.1)] \times 10 \text{ cases}$$

$$= [\text{₹ } 27,000 + \text{₹ } 16,000] \times 10 \text{ cases}$$

$$= \text{₹ } 43,000 \times 10 \text{ cases} = \text{₹ } 4,30,000$$

$$\text{Expected contingent loss in remaining five cases} = [\text{₹ } 60,000 \times 0.3 + \text{₹ } 95,000 \times 0.2] \times 5 \text{ cases}$$

$$= [\text{₹ } 18,000 + \text{₹ } 19,000] \times 5 \text{ cases}$$

$$= \text{₹ } 37,000 \times 5 \text{ cases} = \text{₹ } 1,85,000$$

$$\text{Total contingent liability} = \text{₹ } 4,30,000 + \text{₹ } 1,85,000$$

$$= \text{₹ } 6,15,000.$$

An enterprise should recognise a contingent liability. For each class of contingent loss / liability at the balance sheet date, an enterprise should disclose, by way of a note, a brief description of the nature of the contingent liability.

**(b) Schedule III to the Companies Act, 2013 provides that:**

“A liability should be classified as current when it satisfies any of the following criteria:

- (a) it is expected to be settled in the company's normal operating cycle;
- (b) it is held primarily for the purpose of being traded;
- (c) it is due to be settled within twelve months after the reporting date; or
- (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments and do not affect its classification.”

In the present situation, Earth Ltd. does not have an unconditional right to defer settlement of the liability for at least 12 months after the reporting date, hence Earth Ltd. should classify the FCCBs as current liabilities as on 31<sup>st</sup> March 20X1.

The position will be same even when the bond holders are expected to convert their holdings into equity shares of Earth Ltd. Expectations cannot be called as unconditional rights. Thus, in this situation also, Earth Ltd. should classify the FCCBs as current liabilities as on 31<sup>st</sup> March 20X1.

11. When an employee has rendered service to an entity during an accounting period, the entity shall recognise the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:

- (a) **as a liability** (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, an entity shall recognise that excess as an **asset** (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund.
- (b) **as an expense**, unless another Ind AS requires or permits the inclusion of the benefits in the cost of an asset (For example, Ind AS 2, 'Inventories', and Ind AS 16, 'Property, Plant and Equipment').

**Short-term paid absences:** An entity shall recognise the expected cost of short-term employee benefits in the form of paid absences as follows:

- Short Term Paid Absences
- Accumulating
- When the employees render service that increases their entitlement to future paid absences
- Non-accumulating
- When the absences occur

**Profit-sharing and bonus plans:** An entity shall recognise the expected cost of profit-sharing and bonus payments, only when:

- (i) the entity has a present legal or constructive obligation to make such payments as a result of past events; and
- (ii) a reliable estimate of the obligation can be made.

A present obligation exists when, and only when, the entity has no realistic alternative but to make the payments.

## 12. Balance Sheet of TMC Co. Ltd. as at 30<sup>th</sup> April, 20X1 (after demerger)

Particulars	Note No.	(₹)
<b>I. Equity and Liabilities</b>		
(1) <b>Shareholder's Funds</b>		
(a) Share Capital	1	8,00,000
(b) Reserves and Surplus	2	20,54,000
(2) <b>Non-Current Liabilities</b>		
Long-term borrowings	3	5,00,000
(3) <b>Current Liabilities</b>		
Trade payables		<u>1,50,000</u>
	Total	<u>35,04,000</u>

<b>II. Assets</b>			
<b>(1) Non-current assets</b>			
Property, Plant and Equipment			
Tangible assets	4	14,60,000	
<b>(2) Current assets</b>			
(a) Trade receivables (8,00,000-2,00,000)		6,00,000	
(b) Current investment		9,50,000	
(c) Cash and cash equivalents (W.N.2)		<u>4,94,000</u>	
	<b>Total</b>	<b><u>35,04,000</u></b>	

**Notes to Accounts**

		₹	₹
1.	Share Capital		
	Authorised share capital:		
	10,000 Equity shares of ₹ 100 each		<u>10,00,000</u>
	Issued share capital:		
	8,000 Equity shares of ₹ 100 each		8,00,000
2.	Reserves and surplus		
	Revaluation reserve (W.N.6)	5,00,000	
	General reserve	5,00,000	
	Capital reserve (W.N.3)	11,00,000	
	Securities Premium	4,00,000	
	Profit and Loss Account (W.N.1)	<u>(4,46,000)</u>	20,54,000
3.	Long-term Borrowings		
	Secured borrowings		
	11% Debentures secured against the assets of the Company		5,00,000
4.	Tangible Assets		
	Plant & Machinery at depreciated value (8,60,000 - 4,00,000)	4,60,000	
	Land (W.N.6)	<u>10,00,000</u>	14,60,000

**Working Notes:****1. Computation of Profit and Loss Account as on 30<sup>th</sup> April, 20X1**

		₹
Balance as on 31 <sup>st</sup> March, 20X1		3,60,000
<i>Add: Profit earned during the month of April, 20X1 (W.N.4)</i>		<u>1,44,000</u>
		5,04,000
Less: Expenses on sale of department (share of TMC Ltd.) (₹ 8,00,000 x 50%)	4,00,000	
Patents, trademarks and copyrights written off (W.N.5)	2,50,000	
Diminution in the value of investment (W.N.7)	2,50,000	
Loss due to foreign exchange translation difference (W.N.8)	<u>50,000</u>	(9,50,000)
		(4,46,000)

**2. Cash and bank**

		₹
Cash received from Overseas buyer on 30 <sup>th</sup> April, 20X1 (£ 10,000 x ₹ 75)		7,50,000
<i>Add: Cash reimbursed by Overseas buyer (₹ 8,00,000 x 50%)</i>		4,00,000
Cash profit earned during the month of April, 20X1 by TMC Co. Ltd. (See Note)		<u>2,40,000</u>
		13,90,000
Less: Expenses on sale of department to overseas buyer	8,00,000	
Share of profit (for April, 20X1) paid to Overseas buyer (W.N.4)	<u>96,000</u>	(8,96,000)
		4,94,000

**3. Calculation of gain on sale of department and discharge of purchase consideration**

	₹
Purchase consideration	20,00,000

Less: Net assets sold	<u>(9,00,000)</u>
Gain on sale of department transferred to capital reserve	<u>11,00,000</u>
Purchase consideration	20,00,000
Less: Discharged by issue of Overseas Buyer's Equity shares of ₹ 10,00,000 at 20% premium	<u>(12,00,000)</u>
Balance discharged in cash i.e. (8,00,000/80) = ₹ 10,000	<u>8,00,000</u>

**4. Profit earned during the month of April, 20X1**

	₹
Total profit earned by TMC Co. Ltd. during the month of April, 20X1	2,40,000
Less: 40% Profit of the sold department	<u>(96,000)</u>
Profit of TMC Co. Ltd. on the retained department	<u>1,44,000</u>

**5. Patents, trademarks and copyrights written off**

	₹
Patents, trademarks and copyrights as per balance sheet of TMC Ltd.	6,00,000
Less: Patents, trademarks and copyrights taken over by Overseas buyer	<u>(3,50,000)</u>
Patents, trademarks and copyrights written off (charged to Profit and Loss Account)	<u>2,50,000</u>

**6. Land**

	₹
Land as per balance sheet of TMC Ltd.	7,00,000
Less: Land taken over by Overseas buyer	<u>(2,00,000)</u>
Book value of land retained by TMC Ltd.	<u>5,00,000</u>
Revalued value (200% of book value)	<u>10,00,000</u>
Revaluation reserve (10,00,000-5,00,000)	<u>5,00,000</u>

**7. Diminution in the market value of equity shares of Overseas Buyer**

	₹
Nominal value of shares	<u>10,00,000</u>
Issued at 20% Premium	<u>12,00,000</u>

Market value of shares on 30 <sup>th</sup> April, 20X1 is 95% of nominal value (10,00,000 x 95%)	<u>(9,50,000)</u>
Diminution charged to Profit and Loss Account	<u>2,50,000</u>

**8. Loss due to foreign exchange translation difference**

	₹
Cash payment by overseas buyer £ 10,000 due on 31 <sup>st</sup> March, 20X1 @ ₹ 80 per £	8,00,000
Exchange rate on 30 <sup>th</sup> April, 20X1 is ₹ 75 per £	
Less: Amount remitted in Indian Currency (£ 10,000 x ₹ 75)	<u>(7,50,000)</u>
Loss on foreign exchange translation transferred to Profit and Loss Account	<u>50,000</u>

13.

**Consolidated Balance Sheet as on 31.3.20X5**

Particulars	Note No.	(₹ in lakh)
I. Equity and Liabilities		
(1) Shareholder's Funds		
(a) Share Capital	1	1,000
(b) Reserves and Surplus	2	2,238
(2) Current Liabilities	3	950
	Total	4,188
II. Assets		
(1) Non-current assets		
Property, Plant and Equipment	4	1,060
Non-current investment (Investment in Associate Shaurya Ltd.)	5	388
(2) Current assets	6	2,740
	Total	4,188

**Notes to Accounts**

		₹ in lakh
1. <b>Share Capital</b>		
100 lakh Equity shares of ₹ 10 each fully paid up		1,000
2. <b>Consolidated Reserves and Surplus as on 31.3.20X5</b>		
Balance of Reserves and surplus of Awasthi Ltd. as on 31.3.20X5	1,240	

	Add: Post-acquisition reserves and surplus of Jawala Ltd. (subsidiary)	910		
	Profit accumulated over the years on investment of Awasthi Ltd. (304-300)	4		
	Post-acquisition reserves and surplus of Shaurya Ltd. (640-400) x 40%	96		
	Less: Goodwill amortised for the period (24/2)	(12)	2,238	
<b>3.</b>	<b>Current Liabilities</b>			
	Awasthi Ltd.	460		
	Jawala Ltd.	490	950	
<b>4.</b>	<b>Property, Plant and Equipment</b>			
	Awasthi Ltd.	640		
	Jawala Ltd.	420	1,060	
<b>5.</b>	<b>Non-current investment (Investment in Associate Shaurya Ltd.)</b>			
	Carrying amount of Investment in Associate. [W.N.2]	304		
	(Identified goodwill included in the above ₹ 24 lakh) [W.N.3]			
	Add: Increase in reserves and surplus during the year (640-400) x 40%	96		
	Less: Goodwill written off in the fourth year (₹ 24 lakh x ½)	(12)	388	
<b>6.</b>	<b>Current assets</b>			
	Awasthi Ltd.	1,260		
	Jawala Ltd.	1,480	2,740	

**Working Notes:**

**1. Cost of Control on acquisition of shares in Shaurya Ltd. and amortization of goodwill**

	₹ in lakh
Investment by Awasthi Ltd.	600
Less: Share capital (300 x 80%)	(240)
Capital profit (pre-acquisition) (300 x 80%)	(240)
Goodwill	120
Less: Amortization for 3 years [(120/5) x3]	(72)
Carrying value of goodwill after 3 years	48

**2. Ascertainment of carrying value of investment in Shaurya Ltd. disposed off and retained**

	₹ in lakh
Net Assets of Shaurya Ltd. on the date of disposal	700
Less: Minority's interest in Shaurya Ltd. on the date of disposal (700 x 20%)	<u>(140)</u>
Share of Awasthi Ltd. in Net Assets	560
Add: Carrying value of Goodwill (Refer W.N.1)	<u>48</u>
Total value of investment in Shaurya Ltd. as on 1.4.20X4	608
Less: Carrying Value of investment disposed off [₹ 608 lakh x (12 lakh / 24 lakh)]	<u>(304)</u>
Carrying Value of investment retained by Awasthi Ltd.	<u>304</u>

**3. Goodwill arising on the Carrying Value of Unsold Portion of the Investment**

	₹ in lakh
Carrying value of retained 40% holdings in Shaurya Ltd. as on 1 <sup>st</sup> April, 20X4	304
Less: Share in value of equity of Shaurya Ltd., as at date of investment when its subsidiary relationship is transformed to an associate (700 x 40%)	<u>(280)</u>
Goodwill arising on such investment under Equity method as per AS 23	<u>(24)</u>

**14. Equal instalments for each year will be:**

Present Value Annuity factor @ 6% for 4 years = 3.465 (to be calculated by the candidates)

Equated annual instalment will be 12,00,000 / 3.465 = ₹ 3,46,320

**(i) Calculation of initial recognition amount of loan to employees**

Year end 31 <sup>st</sup> March (a)	Total ₹ (b)	P.V. factor@10% (c)	Present value ₹ (b) x (c) = (d)
20X2	3,46,320	0.909	3,14,805
20X3	3,46,320	0.827	2,86,407
20X4	3,46,320	0.751	2,60,086
20X5	3,46,320	0.683	2,36,537
			<u>10,97,835</u>

## (ii) Calculation of amortised cost of loan to employees

Year ended 31 <sup>st</sup> March	Amortised cost (Opening balance) [1] ₹	Interest to be recognized @10% [2] ₹	Repayment (including interest) [3] ₹	Amortised Cost (Closing balance) [4]=[1]+ [2]-[3] ₹
20X2	10,97,835	1,09,784	3,46,320	8,61,299
20X3	8,61,299	86,130	3,46,320	6,01,109
20X4	6,01,109	60,111	3,46,320	3,14,900
20X5	3,14,900	31,420*	3,46,320	Nil

\*₹ 3,14,900 x 10% = ₹ 31,490. The difference of ₹ 70 (₹ 31,490 – ₹ 31,420) is due to approximation in computation and discounting factor.

## (iii) Journal Entries in the books of Sagar Ltd.

For the year ended 31<sup>st</sup> March, 20X2 (regarding loan to employees)

	Dr. (₹)	Cr. (₹)
Staff loan A/c To Bank A/c (Being the disbursement of loans to staff)	Dr. 12,00,000	12,00,000
Staff cost A/c* ₹ (12,00,000 – 10,97,835) [Refer part (i)] To Staff loan A/c (Being the difference debited as staff cost to write off the excess of loan balance over present value in order to reflect the loan at its present value of ₹ 10,97,835)	Dr. 1,02,165	1,02,165
Staff loan A/c To Interest on staff loan A/c (Being the charge of interest @ market rate of 10% on the loan)	Dr. 1,09,784	1,09,784
Bank A/c To Staff loan A/c (Being the repayment of first instalment with interest for the year)	Dr. 3,46,320	3,46,320

Interest on staff loan A/c To Profit and Loss A/c (Being transfer of balance of staff loan Interest account to profit and loss account)	Dr. 1,09,784	1,09,784
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\* Where the difference between the amount given by the Company to its employees and its fair value represents another asset, then such asset shall be recognised. Accordingly, such difference is recognised as prepaid employee cost and amortised over the period of loan.

**15. Journal Entries in the books of NCR Ltd.**

		₹	₹
1.3.X2 to 31.3.X2	Bank A/c (1,02,500 x ₹ 60) Employee compensation expense A/c (1,02,500 x ₹90) To Equity share capital A/c (1,02,500 x ₹10) To Securities premium A/c (1,02,500 x ₹140) (Being shares issued to the employees against the options vested to them in pursuance of Employee Stock Option Plan)	Dr. 61,50,000 Dr. 92,25,000 10,25,000 1,43,50,000	
31.3.X2	Profit and Loss A/c To Employee compensation expense A/c (Being transfer of employee compensation expenses to Profit and Loss Account)	Dr. 92,25,000 92,25,000	92,25,000

**16.** The Seventh Schedule of SEBI (Mutual funds) Regulations, 1996 states that a mutual fund scheme shall not invest more than 10% of its NAV in unrated debt instruments issued by a single issuer and the total investment in such instruments shall not exceed 25% of the NAV of the scheme. All such investments shall be made with the prior approval of the Board of Trustees and the Board of Asset Management Company. It also states that a mutual fund scheme shall not invest more than 10% of its NAV in debt instruments issued by a single issuer which are rated not below investment grade by an authorized credit rating agency. Such investment limit may be extended to 12% of the NAV of the scheme with the prior approval of the Board of Trustees and the Board of Asset Management Company.

Accordingly, if the debts instruments of Zama Ltd. are unrated then Mutual Fund Asset Management Company (AMC) cannot invest more than 10% of its NAV in those instruments. If the debts instruments of Zama Ltd. are rated, even then, Mutual Fund Asset Management Company cannot invest more than 12% of its NAV in those instruments. Therefore, investment of 25% of its NAV of the scheme in debts instrument of Zama Ltd. by Mutual Fund Asset Management Company is not permissible as per the SEBI (Mutual Fund) Regulations, 1996.

**17. Capital Employed at the end of each year**

	₹ in thousand		
	31.3.20X1 ₹	31.3.20X2 ₹	31.3.20X3 ₹
Goodwill*	1,000	800	600
Building and Machinery (Revaluation)	1,800	2,000	2,200
Inventory (Revalued)	1,200	1,400	1,600
Trade Receivables	20	160	440
Bank Balance	120	200	400
Total Assets	4,140	4,560	5,240
Less: Trade Payables	(600)	(800)	(1,000)
Closing Capital	3,540	3,760	4,240
Add: Opening Capital	3,660	3,540	3,760
Total	7,200	7,300	8,000
Average Capital	3,600	3,650	4,000

\*Since the goodwill has been purchased, it is taken as a part of Capital employed.

**Valuation of Goodwill**

(i) Future Maintainable Profit	31.3.20X1	31.3.20X2	31.3.20X3
Net Profit as given	420	620	820
Less: Opening Balance	(120)	(140)	(160)
Adjustment for Valuation of Opening Inventory	-	(200)	(200)
Add: Adjustment for Valuation of closing inventory	200	200	200

Goodwill written off	-	200	200
Transferred to General Reserve	200	200	200
Future Maintainable Profit	700	880	1060
Less: 12.50% Normal Return	(450)	(456.25)	(500)
(ii) Super Profit	250	423.75	560

(iii) **Average Super Profit** = ₹ (250 + 423.75 + 560) ÷ 3 = ₹ 411.25 (thousand).

(iv) **Value of Goodwill** at five years' purchase = Rs 411.25 × 5 = ₹ 2056.25 (thousand).

#### 18. 1. Calculation of Target index

Year	(₹ in thousands)				
	20X1	20X2	20X3	20X4	20X5
Employees cost	1,300	1,520	1,680	1,968	2,240
Value added	3,040	3,600	4,200	4,800	5,600
Percentage of 'Employee cost' to 'Value added'	42.76%	42.22%	40%	41%	40%

Target index percentage is taken as least of the above from the employer's viewpoint i.e. 40%.

#### 2. Value Added Statement for the year 20X5-20X6

	(₹ in thousands)	(₹ in thousands)
Sales		13,600
Less: Cost of bought in goods & services		
Materials consumed	5,000	
Other manufacturing expenses	1,400	
Administrative expenses	600	
Selling expenses	400	(7,400)
		6,200
Add: Miscellaneous income		500
Dividends and interest		500
Value Added		7,200

#### 3. Employee cost for 20X5-20X6

	(₹ in thousands)
Wages and salaries	1,800
Administrative salaries	600

Selling and distribution salaries	120
	<u>2,520</u>

4. **Calculation of target employee cost** = Target Index Percentage x Value added  
 $= 40\% \times ₹ 7,200 \text{ thousands} = ₹ 2,880 \text{ thousands}$

5. **Calculation of savings**

$$\begin{aligned} \text{Target employee cost} &= ₹ 2,880 \text{ thousands} \\ \text{Less: Actual Cost} &= (₹ 2,520 \text{ thousands}) \\ \text{Saving} &= ₹ 360 \text{ thousands} \end{aligned}$$

6. **Calculation of Bonus payable for the year 20X5-20X6:**

$$2/3 \text{ of savings is Bonus Payable} = ₹ 360 \text{ thousands} \times 2/3 = ₹ 240 \text{ thousands.}$$

19. E.V.A. = NOPAT – COCE

$$\begin{aligned} \text{NOPAT} &= \text{Net Operating Profit after Tax} \\ \text{COCE} &= \text{Cost of Capital Employed} \\ \text{COCE} &= \text{Weighted Average Cost of Capital} \times \text{Average Capital Employed} \\ &= \text{WACC} \times \text{Capital Employed} \end{aligned}$$

Debt Capital	₹ 2,000 crores
Equity capital (500 + 7,500)	= ₹ 8,000 crores
Capital employed	= ₹ 2,000 + ₹ 8,000 = ₹ 10,000 crores
Debt to capital employed	= $\frac{2,000}{10,000} = 0.20$
Equity to Capital employed	= $\frac{8,000}{10,000} = 0.80$
Debt cost before Tax	12%
Less: Tax (30% of 12%)	(3.6%)
Debt cost after Tax	<u>8.4%</u>

According to Capital Asset Pricing Model (CAPM)

$$\text{Cost of Equity Capital} = \text{Risk Free Rate} + \text{Beta} \times \text{Equity Risk Premium}$$

Or

$$\begin{aligned} &= \text{Risk Free Rate} + \text{Beta} (\text{Market Rate} - \text{Risk Free Rate}) \\ &= 9 + 1.05 \times (19-9) \\ &= 9 + 1.05 \times 10 = 19.5\% \end{aligned}$$

$$\begin{aligned}
 \text{WACC} &= \text{Equity to CE} \times \text{Cost of Equity capital} + \text{Debt to CE} \times \text{Cost of debt} \\
 &= 0.8 \times 19.5\% + 0.20 \times 8.40\% \\
 &= 15.60\% + 1.68\% = 17.28\% \\
 \text{COCE} &= \text{WACC} \times \text{Capital employed} \\
 &= 17.28\% \times ₹ 10,000 \text{ crores} = ₹ 1728 \text{ crores} \\
 \text{E.V.A.} &= \text{NOPAT} - \text{COCE} \\
 &= ₹ 2,100 - ₹ 1,728 = ₹ 372 \text{ crores}
 \end{aligned}$$

20. According to Lev and Schwartz, the value of human capital embodied in a person of age is the present value of his remaining future earnings from employment. Their valuation model for a discrete income stream is given by the following formula:

$$V = \sum_{t=\tau}^t \frac{I(t)}{(1+r)^{t-\tau}}$$

Where,

$V$  = the human capital value of a person for ..... years old

$I(t)$  = the person's annual earnings up to retirement.

$r$  = a discount rate specific to the person.

$t$  = retirement age.

#### Value of skilled employees:

$$\begin{aligned}
 &= \frac{50,000}{(1+0.15)^{(65-62)}} + \frac{50,000}{(1+0.15)^{(65-63)}} + \frac{50,000}{(1+0.15)^{(65-64)}} \\
 &= ₹ 32,875.81 + ₹ 37,807.18 + ₹ 43,478.26 = ₹ 1,14,161.25
 \end{aligned}$$

Total value of skilled employees is ₹ 1,14,161.25  $\times$  20 = ₹ 22,83,225

#### Value of unskilled employees

$$\begin{aligned}
 &= \frac{30,000}{(1+0.15)^{(62-60)}} + \frac{30,000}{(1+0.15)^{(62-61)}} = \frac{30,000}{(1+0.15)^2} + \frac{30,000}{(1+0.15)} \\
 &= ₹ 22,684.31 + ₹ 26,086.96 = ₹ 48,771.27
 \end{aligned}$$

Total value of the unskilled employees = ₹ 48,771.27  $\times$  25 = ₹ 12,19,282

Total value of human resources (skilled and unskilled) = ₹ 22,83,225 + ₹ 12,19,282  
= ₹ 35,02,507.

## PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

### QUESTIONS

#### Project Planning and Capital Budgeting

1. Shivam Ltd. is considering two mutually exclusive projects A and B. Project A costs ₹ 36,000 and project B ₹30,000. You have been given below the net present value probability distribution for each project.

Project A		Project B	
NPV estimates (₹)	Probability	NPV estimates (₹)	Probability
15,000	0.2	15,000	0.1
12,000	0.3	12,000	0.4
6,000	0.3	6,000	0.4
3,000	0.2	3,000	0.1

- (i) Compute the expected net present values of projects A and B.
- (ii) Compute the risk attached to each project i.e. standard deviation of each probability distribution.
- (iii) Compute the profitability index of each project.
- (iv) Which project do you recommend? State with reasons.

#### Leasing Decisions

2. The Finance manager of ABC Corporation is analyzing firm's policy regarding computers which are now being taken on lease on yearly basis on rental of ₹ 1,00,000 per year. The computers can be bought for ₹ 5,00,000. The purchase would be financed by 16% and the loan is repayable in 4 equal annual installments.

On account of rapid technological progress in the computer industry, it is suggested that a 4-year economic life should be used instead of a 10-year physical life. It is estimated that the computers would be sold for ₹ 2,00,000 at the end of 4 years.

The company uses the straight line method of depreciation. Corporate tax rate is 35%.

- (i) Whether the equipment be bought or be taken on lease?
- (ii) Analyze the financial viability from the point of view of the lessor, assuming his cost of capital is 14%.
- (iii) Determine the minimum lease rent at which lessor would break even.

#### Dividend Decisions

3. RST Ltd. has a capital of ₹10,00,000 in equity shares of ₹100 each. The shares are currently quoted at par. The company proposes to declare a dividend of ₹ 10 per share at the end of the current financial year. The capitalization rate for the risk class of which the

company belongs is 12%. What will be the market price of the share at the end of the year, if

- (i) a dividend is not declared?
- (ii) a dividend is declared?
- (iii) assuming that the company pays the dividend and has net profits of ₹5,00,000 and makes new investments of ₹10,00,000 during the period, how many new shares must be issued? Use the MM model.

### Indian Capital Market

4. Calculate the price of 3 months PQR futures, if PQR (FV ₹ 10) quotes ₹ 220 on NSE and the three months future price quotes at ₹ 230 and the one month borrowing rate is given as 15 percent and the expected annual dividend is 25 percent per annum payable before expiry. Also examine arbitrage opportunities.
5. The equity share of VCC Ltd. is quoted at ₹ 210. A 3-month call option is available at a premium of ₹ 6 per share and a 3-month put option is available at a premium of ₹ 5 per share. Ascertain the net payoffs to the option holder of a call option and a put option.
  - (i) the strike price in both cases is ₹ 220; and
  - (ii) the share price on the exercise day is ₹ 200,210,220,230,240.
 Also indicate the price range at which the call and the put options may be gainfully exercised.
6. Electraspace is consumer electronics wholesaler. The business of the firm is highly seasonal in nature. In 6 months of a year, firm has a huge cash deposits and especially near Christmas time and other 6 months firm cash crunch, leading to borrowing of money to cover up its exposures for running the business.
 

It is expected that firm shall borrow a sum of €50 million for the entire period of slack season in about 3 months.

A Bank has given the following quotations:

Spot	5.50% - 5.75%
$3 \times 6$ FRA	5.59% - 5.82%
$3 \times 9$ FRA	5.64% - 5.94%

3 month €50,000 future contract maturing in a period of 3 months is quoted at 94.15 (5.85%).

You are required to determine:

- (a) How a FRA, shall be useful if the actual interest rate after 3 months turnout to be:
  - (i) 4.5%
  - (ii) 6.5%

(b) How 3 months Future contract shall be useful for company if interest rate turns out as mentioned in part (a) above.

### Security Analysis and Valuation

7. 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

8. Calculate the value of share from the following information:

Profit after tax of the company	₹ 290 crores
Equity capital of company	₹ 1,300 crores
Par value of share	₹ 40 each
Debt ratio of company (Debt/ Debt + Equity)	27%
Long run growth rate of the company	8%
Beta 0.1; risk free interest rate	8.7%
Market returns	10.3%
Capital expenditure per share	₹ 47
Depreciation per share	₹ 39
Change in Working capital	₹ 3.45 per share

### Portfolio Theory

9. Mr. Tempest has the following portfolio of four shares:

Name	Beta	Investment ₹ Lac.
Oxy Rin Ltd.	0.45	0.80
Boxed Ltd.	0.35	1.50
Square Ltd.	1.15	2.25
Ellipse Ltd.	1.85	4.50

The risk-free rate of return is 7% and the market rate of return is 14%.

Required.

- (i) Determine the portfolio return.
- (ii) Calculate the portfolio Beta.

10. Mr. Nirmal Kumar has categorized all the available stock in the market into the following types:

- (i) Small cap growth stocks
- (ii) Small cap value stocks
- (iii) Large cap growth stocks
- (iv) Large cap value stocks

Mr. Nirmal Kumar also estimated the weights of the above categories of stocks in the market index. Further, the sensitivity of returns on these categories of stocks to the three important factor are estimated to be:

Category of Stocks	Weight in the Market Index	Factor I (Beta)	Factor II (Book Price)	Factor III (Inflation)
Small cap growth	25%	0.80	1.39	1.35
Small cap value	10%	0.90	0.75	1.25
Large cap growth	50%	1.165	2.75	8.65
Large cap value	15%	0.85	2.05	6.75
Risk Premium		6.85%	-3.5%	0.65%

The rate of return on treasury bonds is 4.5%

Required:

- (a) Using Arbitrage Pricing Theory, determine the expected return on the market index.
- (b) Using Capital Asset Pricing Model (CAPM), determine the expected return on the market index.
- (c) Mr. Nirmal Kumar wants to construct a portfolio constituting only the 'small cap value' and 'large cap growth' stocks. If the target beta for the desired portfolio is 1, determine the composition of his portfolio.

### Financial Services

11. AC Co. Ltd. has a turnover of ₹ 1600 Lakhs and is expecting growth of 17.90% for the next year. Average credit period is 100 days. The Bad Debt losses are about 1.50% on sales. The administrative cost for collecting receivables is ₹ 8,00,000. The AC Co. Ltd. decides to make use of Factoring Services by FS Ltd. on terms as under:

- (i) that the factor will charge commission of 1.75%.
- (ii) 15% Risk with recourse and
- (iii) Pay an advance on receivables to AC Co. Ltd. at 14% p.a. interest after withholding 10% as reserve.

You are required to calculate the effective cost of factoring to AC Co. Ltd. for the year.

Show amount in Lakhs of ₹ with two decimal points. Assume 360 days in a year.

### **Mutual Funds**

12. On 1<sup>st</sup> April, an open ended scheme of mutual fund had 300 lakh units outstanding with Net Assets Value (NAV) of ₹ 18.75. At the end of April, it issued 6 lakh units at opening NAV plus 2% load, adjusted for dividend equalization. At the end of May, 3 Lakh units were repurchased at opening NAV less 2% exit load adjusted for dividend equalization. At the end of June, 70% of its available income was distributed.

In respect of April-June quarter, the following additional information are available:

	₹ in lakh
Portfolio value appreciation	425.47
Income of April	22.950
Income for May	34.425
Income for June	45.450

You are required to calculate

- (i) Income available for distribution;
- (ii) Issue price at the end of April;
- (iii) Repurchase price at the end of May; and
- (iv) Net asset value (NAV) as on 30<sup>th</sup> June.

13. ANP Plan, a hedge fund currently has assets of ₹ 20 crore. CA. X, the manager of fund charges fee of 0.10% of portfolio asset. In addition to it he charges incentive fee of 2%. The incentive will be linked to gross return each year in excess of the portfolio maximum value since the inception of fund. The maximum value the fund achieved so far since inception of fund about one and half year ago was ₹ 21 crores.

You are required to compute the fee payable to CA. X, if return on the fund this year turns out to be (a) 29%, (b) 4.5%, (c) -1.8%

### **International Financial Management**

14. A multinational company is planning to set up a subsidiary company in India (where hitherto it was exporting) in view of growing demand for its product and competition from other MNCs. The initial project cost (consisting of Plant and Machinery including installation) is

estimated to be US\$ 500 million. The net working capital requirements are estimated at US\$ 50 million. The company follows straight line method of depreciation. Presently, the company is exporting two million units every year at a unit price of US\$ 80, its variable cost per unit being US\$ 40.

The Chief Financial Officer has estimated the following operating cost and other data in respect of proposed project:

- (i) Variable operating cost will be US \$ 20 per unit of production;
- (ii) Additional cash fixed cost will be US \$ 30 million p.a. and project's share of allocated fixed cost will be US \$ 3 million p.a. based on principle of ability to share;
- (iii) Production capacity of the proposed project in India will be 5 million units;
- (iv) Expected useful life of the proposed plant is five years with no salvage value;
- (v) Existing working capital investment for production & sale of two million units through exports was US \$ 15 million;
- (vi) Export of the product in the coming year will decrease to 1.5 million units in case the company does not open subsidiary company in India, in view of the presence of competing MNCs that are in the process of setting up their subsidiaries in India;
- (vii) Applicable Corporate Income Tax rate is 35%, and
- (viii) Required rate of return for such project is 12%.

Assuming that there will be no variation in the exchange rate of two currencies and all profits will be repatriated, as there will be no withholding tax, estimate Net Present Value (NPV) of the proposed project in India.

Present Value Interest Factors (PVIF) @ 12% for five years are as below:

Year	1	2	3	4	5
PVIF	0.8929	0.7972	0.7118	0.6355	0.5674

#### Foreign Exchange exposure and Risk Management

15. Following are the details of cash inflows and outflows in foreign currency denominations of MNP Co. an Indian export firm, which have no foreign subsidiaries:

Currency	Inflow	Outflow	Spot rate	Forward rate
US \$	4,00,00,000	2,00,00,000	48.01	48.82
French Franc (FFr)	2,00,00,000	80,00,000	7.45	8.12
U.K. £	3,00,00,000	2,00,00,000	75.57	75.98
Japanese Yen	1,50,00,000	2,50,00,000	3.20	2.40

- (i) Determine the net exposure of each foreign currency in terms of Rupees.

(ii) Are any of the exposure positions offsetting to some extent?

16. On January 28, 2013 an importer customer requested a Bank to remit Singapore Dollar (SGD) 2,500,000 under an irrevocable Letter of Credit (LC). However, due to unavoidable factors, the Bank could effect the remittances only on February 4, 2013. The inter-bank market rates were as follows:

	January 28, 2013	February 4, 2013
US\$ 1=	₹ 45.85/45.90	₹ 45.91/45.97
GBP £ 1 =	US\$ 1.7840/1.7850	US\$ 1.7765/1.7775
GBP £ 1 =	SGD 3.1575/3.1590	SGD 3.1380/3.1390

The Bank wishes to retain an exchange margin of 0.125%

Required:

How much does the customer stand to gain or lose due to the delay?

**(Note: Calculate the rate in multiples of 0.0001)**

17. Sun Ltd. is planning to import equipment from Japan at a cost of 3,400 lakh yen. The company may avail loans at 18 percent per annum with quarterly rests with which it can import the equipment. The company has also an offer from Osaka branch of an India based bank extending credit of 180 days at 2 percent per annum against opening of an irrecoverable letter of credit.

Additional information:

Present exchange rate ₹ 100 = 340 yen

180 day's forward rate ₹ 100 = 345 yen

Commission charges for letter of credit at 2 per cent per 12 months.

Advice the company whether the offer from the foreign branch should be accepted.

### Mergers, Acquisitions and Reconstructing

18. XYZ Ltd. wants to purchase ABC Ltd. by exchanging 0.7 of its share for each share of ABC Ltd. Relevant financial data are as follows:

Equity shares outstanding	10,00,000	4,00,000
EPS (₹)	40	28
Market price per share (₹)	250	160

(i) Illustrate the impact of merger on EPS of both the companies.

(ii) The management of ABC Ltd. has quoted a share exchange ratio of 1:1 for the merger. Assuming that P/E ratio of XYZ Ltd. will remain unchanged after the merger, what will be the gain from merger for ABC Ltd.?

(iii) What will be the gain/loss to shareholders of XYZ Ltd.?

(iv) Determine the maximum exchange ratio acceptable to shareholders of XYZ Ltd.

19. The following is the Balance-sheet of Grape Fruit Company Ltd as at March 31<sup>st</sup>, 2011.

Liabilities	(₹ in lakhs)	Assets	(₹ in lakhs)
Equity shares of ₹ 100 each	600	Land and Building	200
14% preference shares of ₹ 100/- each	200	Plant and Machinery	300
13% Debentures	200	Furniture and Fixtures	50
Debenture interest accrued and payable	26	Inventory	150
Loan from bank	74	Sundry debtors	70
Trade creditors	340	Cash at bank	130
		Preliminary expenses	10
		Cost of issue of debentures	5
		Profit and Loss account	525
	1440		1440

The Company did not perform well and has suffered sizable losses during the last few years. However, it is felt that the company could be nursed back to health by proper financial restructuring. Consequently the following scheme of reconstruction has been drawn up:

- (i) Equity shares are to be reduced to ₹ 25/- per share, fully paid up;
- (ii) Preference shares are to be reduced (with coupon rate of 10%) to equal number of shares of ₹ 50 each, fully paid up.
- (iii) Debenture holders have agreed to forgo the accrued interest due to them. In the future, the rate of interest on debentures is to be reduced to 9 percent.
- (iv) Trade creditors will forego 25 percent of the amount due to them.
- (v) The company issues 6 lakh of equity shares at ₹ 25 each and the entire sum was to be paid on application. The entire amount was fully subscribed by promoters.
- (vi) Land and Building was to be revalued at ₹ 450 lakhs, Plant and Machinery was to be written down by ₹ 120 lakhs and a provision of ₹ 15 lakhs had to be made for bad and doubtful debts.

Required:

- (i) Show the impact of financial restructuring on the company's activities.

(ii) Prepare the fresh balance sheet after the reconstructions is completed on the basis of the above proposals.

20. Write short notes on:

- Reverse Stock Split
- Money Market Mutual Fund
- Processes of Strategic Decision Making
- Asset Securitization
- External Commercial Borrowings

#### SUGGESTED ANSWERS/HINTS

1. (i) Statement showing computation of expected net present value of Projects A and B:

Project A			Project B		
NPV Estimate (₹)	Probability	Expected Value	NPV Estimate	Probability	Expected Value
15,000	0.2	3,000	15,000	0.1	1,500
12,000	0.3	3,600	12,000	0.4	4,800
6,000	0.3	1,800	6,000	0.4	2,400
3,000	0.2	600	3,000	0.1	300
	1.0	EV = 9,000		1.0	EV = 9,000

(ii) Computation of Standard deviation of each project

Project A

P	X	(X – EV)	P (X-EV) <sup>2</sup>
0.2	15,000	6,000	72,00,000
0.3	12,000	3,000	27,00,000
0.3	6,000	- 3,000	27,00,000
0.2	3,000	- 6,000	<u>72,00,000</u>
Variance = 1,98,00,000			

$$\text{Standard Deviation of Project A} = \sqrt{1,98,00,000} = ₹4,450$$

**Project B**

P	X	(X – EV)	P (X-EV) <sup>2</sup>
0.1	15,000	6,000	36,00,000
0.4	12,000	3,000	36,00,000
0.4	6,000	- 3,000	36,00,000
0.1	3,000	- 6,000	36,00,000
			Variance = 1,44,00,000

Standard Deviation of Project A =  $\sqrt{1,44,00,000} = ₹ 3,795$

**(iii) Computation of profitability of each project**

Profitability index = Discount cash inflow / Initial outlay

$$\text{In case of Project A : PI} = \frac{9,000 + 36,000}{36,000} = \frac{45,000}{36,000} = 1.25$$

$$\text{In case of Project B: PI} = \frac{9,000 + 30,000}{30,000} = \frac{39,000}{30,000} = 1.30$$

**(iv)** Measurement of risk is made by the possible variation of outcomes around the expected value and the decision will be taken in view of the variation in the expected value where two projects have the same expected value, the decision will be the project which has smaller variation in expected value. In the selection of one of the two projects A and B, Project B is preferable because the possible profit which may occur is subject to less variation (or dispersion). Much higher risk is lying with project A.

2. (i) The loan amount is repayable together with the interest at the rate of 16% on loan amount and is repayable in equal installments at the end of each year. The PVAF at the rate of 16% for 4 years is 2.798, the amount payable will be

$$\text{Annual Payment} = \frac{₹ 5,00,000}{2.798} = ₹ 1,78,699 \text{ (rounded)}$$

**Schedule of Debt Repayment**

End of Year	Total Principal ₹	Interest ₹	Principal ₹	Principal Amount Outstanding ₹
1	5,00,000	80,000	98,699	4,01,301
2	4,01,301	64,208	1,14,491	2,86,810
3	2,86,810	45,890	1,32,809	1,54,001
4	1,54,001	24,698*	1,54,001	-----

\* Balancing Figure

**Tax Benefit on Interest and Depreciation**

Year	Interest	Depreciation	Total	Tax Benefit
1	80,000	75,000	1,55,000	54,250
2	64,208	75,000	1,39,208	48,723
3	45,890	75,000	1,20,890	42,312
4	24,698	75,000	99,698	34,894

**Present Value of Cash Flows under Borrow and Buying proposal**

Year	Installment ₹	Salvage Value ₹)	Tax Benefit ₹)	Net Flow ₹)	PVF @ 10.4%	PV ₹)
1	1,78,699		54,250	1,24,449	0.906	1,12,751
2	1,78,699		48,723	1,29,976	0.820	1,06,580
3	1,78,699		42,312	1,36,387	0.743	1,01,336
4	1,78,699	(2,00,000)	34,894	-56,195	0.673	-37,819
					3.142	2,82,848

**Present Value of Cash Flows under Leasing Option**

$$₹ 1,00,000 (1 - 0.35) \times 3.142 = ₹ 2,04,230$$

Hence leasing should be preferred as cash flow is least in this option.

**(ii) Analyzing financial viability from Lessor's point of view****(a) Determination of Cash Flow after Tax**

	₹
Annual Rent	1,00,000
Less: Depreciation	75,000
EBT	25,000
Less: Tax @ 35%	8,750
Profit after Tax	16,250
Add: Depreciation	75,000
	91,250

**(b) Computation of Net Present Value**

	₹
Present Value of Cash inflow (₹ 91,250 x 2.914)	2,65,903
Add: PV of Salvage Value (₹ 2,00,000 x 0.592)	1,18,400

Purchase Price	3,84,303
NPV	(5,00,000)
	(1,15,697)

Thus proposal is not financially viable from lessor's point of view.

**(iii) Break Even Lease Rent**

	₹
Cost of Computer	5,00,000
Less: PV of Salvage Value (₹ 2,00,000 x 0.592)	1,18,400
	3,81,600
PVIAF (14%,4)	2.914
CFAT Desired (3,81,600/ 2.914)	1,30,954
Less: Depreciation	75,000
EAT	55,954
Add: Taxes	30,129
EBT	86,083
Add: Depreciation	75,000
Lease Rental (Desired)	1,61,083

3. As per MM model, the current market price of equity share is:

$$P_0 = \frac{1}{1 + k_e} \times (D_1 + P_1)$$

**(i) If the dividend is not declared:**

$$100 = \frac{1}{1 + 0.12} (0 + P_1)$$

$$100 = \frac{P_1}{1.12}$$

$$P_1 = ₹ 112$$

The Market price of the equity share at the end of the year would be ₹ 112.

**(ii) If the dividend is declared:**

$$100 = \frac{1}{1 + 0.12} \times (10 + P_1)$$

$$100 = \frac{10 + P_1}{1.12}$$

$$112 = 10 + P_1$$

$$P_1 = 112 - 10 = ₹ 102$$

The market price of the equity share at the end of the year would be ₹ 102.

(iii) In case the firm pays dividend of ₹ 10 per share out of total profits of ₹ 5,00,000 and plans to make new investment of ₹ 10,00,000, the number of shares to be issued may be found as follows:

Total Earnings	₹ 5,00,000
- Dividends paid	<u>1,00,000</u>
Retained earnings	4,00,000
Total funds required	<u>10,00,000</u>
Fresh funds to be raised	<u>6,00,000</u>
Market price of the share	102
Number of shares to be issued (₹6,00,000 / 102)	5,882.35
or, the firm would issue 5,883 shares at the rate of ₹102	

4. Future's Price = Spot + cost of carry – Dividend

$$F = 220 + 220 \times 0.15 \times 0.25 - 0.25^{**} \times 10 = 225.75$$

\*\* Entire 25% dividend is payable before expiry, which is ₹2.50.

Thus we see that futures price by calculation is ₹ 225.75 which is quoted at ₹ 230 in the exchange.

#### Analysis:

Fair value of Futures less than Actual futures Price:

Futures Overvalued Hence it is advised to sell. Also do Arbitraging by buying stock in the cash market.

#### Step I

He will buy PQR Stock at ₹220 by borrowing at 15% for 3 months. Therefore, his outflows are:

Cost of Stock	220.00
Add: Interest @ 15 % for 3 months i.e. 0.25 years (220 × 0.15 × 0.25)	<u>8.25</u>
Total Outflows (A)	<u>228.25</u>

**Step II**

He will sell March 2000 futures at ₹230. Meanwhile he would receive dividend for his stock.

Hence his inflows are 230.00

Sale proceeds of March 2000 futures 2.50

Total inflows (B) 232.50

Inflow – Outflow = Profit earned by Arbitrageur  
= 232.50 – 228.25 = 4.25

**5. Net payoff for the holder of the call option**

	(₹)				
Share price on exercise day	200	210	220	230	240
Option exercise	No	No	No	Yes	Yes
Outflow (Strike price)	Nil	Nil	Nil	220	220
Out flow (premium)	6	6	6	6	6
Total Outflow	6	6	6	226	226
Less inflow (Sales proceeds)	-	-	-	230	240
Net payoff	-6	-6	-6	4	14

**Net payoff for the holder of the put option**

	(₹)				
Share price on exercise day	200	210	220	230	240
Option exercise	Yes	Yes	No	No	No
Inflow (strike price)	220	220	Nil	Nil	Nil
Less outflow (purchase price)	200	210	-	-	-
Less outflow (premium)	5	5	5	5	5
Net Payoff	15	5	-5	-5	-5

The call option can be exercised gainfully for any price above ₹ 226 (₹ 220 + ₹ 6) and put option for any price below ₹ 215 (₹ 220 - ₹ 5).

6. (a) By entering into an FRA, firm shall effectively lock in interest rate for a specified future in the given it is 6 months. Since, the period of 6 months is starting in 3 months, the firm shall opt for  $3 \times 9$  FRA locking borrowing rate at 5.94%. In the given scenarios, the net outcome shall be as follows:

	If the rate turns out to be 4.50%	If the rate turns out to be 6.50%
FRA Rate	5.94%	5.94%
Actual Interest Rate	4.50%	6.50%
Loss/ (Gain)	1.44%	(0.56%)
FRA Payment / (Receipts)	$\text{€}50 \text{ m} \times 1.44\% \times \frac{1}{2} = \text{€}360,000$	$\text{€}50 \text{ m} \times 0.56\% \times \frac{1}{2} = \text{€}140,000$
Interest after 6 months on €50 Million at actual rates	$\text{€}50 \text{ m} \times 4.5\% \times \frac{1}{2} = \text{€}1,125,000$	$\text{€}50 \text{ m} \times 6.5\% \times \frac{1}{2} = \text{€}1,625,000$
Net Out Flow	€ 1,485,000	€ 1,485,000

Thus, by entering into FRA, the firm has committed itself to a rate of 5.94% as follows:

$$\frac{\text{€}1,485,000}{\text{€}50,000,000} \times 100 \times \frac{12}{6} = 5.94\%$$

(b) Since firm is a borrower it will like to off-set interest cost by profit on Future Contract. Accordingly, if interest rate rises it will gain hence it should sell interest rate futures.

$$\begin{aligned} \text{No. of Contracts} &= \frac{\text{Amount of Borrowing}}{\text{Contract Size}} \times \frac{\text{Duration of Loan}}{3 \text{ months}} \\ &= \frac{\text{€}50,000,000}{\text{€}50,000} \times \frac{6}{3} = 2000 \text{ Contracts} \end{aligned}$$

The final outcome in the given two scenarios shall be as follows:

	If the interest rate turns out to be 4.5%	If the interest rate turns out to be 6.5%
Future Course Action :		
Sell to open	94.15	94.15
Buy to close	95.50 (100 - 4.5)	93.50 (100 - 6.5)
Loss/ (Gain)	1.35%	(0.65%)
Cash Payment (Receipt) for Future Settlement	$\text{€}50,000 \times 2000 \times 1.35\% \times \frac{3}{12} = \text{€}337,500$	$\text{€}50,000 \times 2000 \times 0.65\% \times \frac{3}{12} = (\text{€}162,500)$
Interest for 6 months on €50 million at actual rates	$\text{€}50 \text{ million} \times 4.5\% \times \frac{1}{2} = \text{€}11,25,000$	$\text{€}50 \text{ million} \times 6.5\% \times \frac{1}{2} = \text{€}16,25,000$
	€1,462,500	€1,462,500

Thus, the firm locked itself in interest rate  $\frac{\text{€}1,462,500}{\text{€}50,000,000} \times 100 \times \frac{12}{6} = 5.85\%$

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

Intrinsic Value = ₹ 850

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

$$\text{₹} 850 = \text{₹} 100 \text{ PVAF (r, 10)} + \text{₹} 1000 \text{ PVF (r, 10)}$$

Let us discount the cash flows by 11%

$$850 = 100 \text{ PVAF (11%, 10)} + 1000 \text{ PVF (11%, 10)}$$

$$850 = 100 \times 5.890 + 1000 \times 0.352 = 91$$

Now let us discount the cash flows by 13%

$$850 = 100 \text{ PVAF (13%, 10)} + 1000 \text{ PVF (13%, 10)}$$

$$850 = 100 \times 5.426 + 1000 \times 0.295 = -12.40$$

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%

8. No. of Shares =  $\frac{\text{₹} 1,300 \text{ crores}}{\text{₹} 40} = 32.5 \text{ Crores}$

$$\text{EPS} = \frac{\text{PAT}}{\text{No. of shares}}$$

$$\text{EPS} = \frac{\text{₹} 290 \text{ crores}}{32.5 \text{ crores}} = \text{₹} 8.923$$

$$\text{FCFE} = \text{Net income} - [(1-b) (\text{capex} - \text{dep}) + (1-b) (\Delta \text{WC})]$$

$$\text{FCFE} = 8.923 - [(1-0.27) (47-39) + (1-0.27) (3.45)]$$

$$= 8.923 - [5.84 + 2.5185] = 0.5645$$

$$\text{Cost of Equity} = R_f + \beta (R_m - R_f)$$

$$= 8.7 + 0.1 (10.3 - 8.7) = 8.86\%$$

$$P_0 = \frac{FCFE(1+g)}{K_e - g} = \frac{0.5645(1.08)}{0.0886 - 0.08} = \frac{0.60966}{0.0086} = ₹ 70.89$$

9. Market Risk Premium (A) = 14% - 7% = 7%

Share	Beta	Risk Premium (Beta x A) %	Risk Free Return %	Return %	Return ₹
Oxy Rin Ltd.	0.45	3.15	7	10.15	8,120
Boxed Ltd.	0.35	2.45	7	9.45	14,175
Square Ltd.	1.15	8.05	7	15.05	33,863
Ellipse Ltd.	1.85	12.95	7	19.95	89,775
Total Return					1,45,933

Total Investment ₹ 9,05,000

$$(i) \text{ Portfolio Return} = \frac{₹ 1,45,933}{₹ 9,05,000} \times 100 = 16.13\%$$

(ii) Portfolio Beta

$$\text{Portfolio Return} = \text{Risk Free Rate} + \text{Risk Premium} \times \beta = 16.13\%$$

$$7\% + 7\beta = 16.13\%$$

$$\beta = 1.30$$

#### Alternative Approach

First we shall compute Portfolio Beta using the weighted average method as follows:

$$\begin{aligned} \text{Beta}_P &= 0.45 \times \frac{0.80}{9.05} + 0.35 \times \frac{1.50}{9.05} + 1.15 \times \frac{2.25}{9.05} + 1.85 \times \frac{4.50}{9.05} \\ &= 0.45 \times 0.0884 + 0.35 \times 0.1657 + 1.15 \times 0.2486 + 1.85 \times 0.4972 = 0.0398 + 0.058 + 0.2859 + 0.9198 = 1.3035 \end{aligned}$$

Accordingly,

(i) Portfolio Return using CAPM formula will be as follows:

$$\begin{aligned} R_P &= R_F + \text{Beta}_P(R_M - R_F) \\ &= 7\% + 1.3035(14\% - 7\%) = 7\% + 1.3035(7\%) \\ &= 7\% + 9.1245\% = 16.1245\% \end{aligned}$$

(ii) Portfolio Beta

As calculated above 1.3035

**10. (a) Method I**

Stock's return

$$\text{Small cap growth} = 4.5 + 0.80 \times 6.85 + 1.39 \times (-3.5) + 1.35 \times 0.65 = 5.9925\%$$

$$\text{Small cap value} = 4.5 + 0.90 \times 6.85 + 0.75 \times (-3.5) + 1.25 \times 0.65 = 8.8525\%$$

$$\text{Large cap growth} = 4.5 + 1.165 \times 6.85 + 2.75 \times (-3.5) + 8.65 \times 0.65 = 8.478\%$$

$$\text{Large cap value} = 4.5 + 0.85 \times 6.85 + 2.05 \times (-3.5) + 6.75 \times 0.65 = 7.535\%$$

Expected return on market index

$$0.25 \times 5.9925 + 0.10 \times 8.8525 + 0.50 \times 8.478 + 0.15 \times 7.535 = 7.7526\%$$

**Method II**

Expected return on the market index

$$\begin{aligned} &= 4.5\% + [0.1 \times 0.9 + 0.25 \times 0.8 + 0.15 \times 0.85 + 0.50 \times 1.165] \times 6.85 + [(0.75 \times 0.10 + 1.39 \times 0.25 + 2.05 \times 0.15 + 2.75 \times 0.5)] \times (-3.5) + [(1.25 \times 0.10 + 1.35 \times 0.25 + 6.75 \times 0.15 + 8.65 \times 0.50)] \times 0.65 \\ &= 4.5 + 6.85 + (-7.3675) + 3.77 = 7.7525\%. \end{aligned}$$

**(b) Using CAPM,**

$$\text{Small cap growth} = 4.5 + 6.85 \times 0.80 = 9.98\%$$

$$\text{Small cap value} = 4.5 + 6.85 \times 0.90 = 10.665\%$$

$$\text{Large cap growth} = 4.5 + 6.85 \times 1.165 = 12.48\%$$

$$\text{Large cap value} = 4.5 + 6.85 \times 0.85 = 10.3225\%$$

Expected return on market index

$$= 0.25 \times 9.98 + 0.10 \times 10.665 + 0.50 \times 12.45 + 0.15 \times 10.3225 = 11.33\%$$

**(c) Let us assume that Mr. Nirmal will invest X1% in small cap value stock and X2% in large cap growth stock**

$$X_1 + X_2 = 1$$

$$0.90 X_1 + 1.165 X_2 = 1$$

$$0.90 X_1 + 1.165(1 - X_1) = 1$$

$$0.90 X_1 + 1.165 - 1.165 X_1 = 1$$

$$0.165 = 0.265 X_1$$

$$\frac{0.165}{0.265} = X_1$$

$$0.623 = X_1, X_2 = 0.377$$

62.3% in small cap value

37.7% in large cap growth.

11. Expected Turnover = ₹ 1600 lakhs + ₹ 286.40 = ₹ 1886.40 lakhs

	₹ in Lacs	₹ in Lacs
Advance to be given:		
Debtors ₹1886.40 lakhs x 100/360	524.00	
Less: 10% withholding	<u>52.40</u>	
		471.60
Less: Commission 1.75%		<u>9.17</u>
Net payment		462.43
Less: Interest @14% for 100 days on ₹ 462.43 lacs		<u>17.98</u>
		444.45

Calculation of Average Cost:		
Total Commission ₹1886.40 lakhs x 1.75%		33.01
Total Interest ₹ 17.98 lacs x 360/100		<u>64.73</u>
		97.74
Less: Admin. Cost	8.00	
Saving in Bad Debts (₹1886.40 lacs x 1.50% x 85%)	<u>24.05</u>	<u>32.05</u>
		<u>65.69</u>
Effective Cost of Factoring = 65.69/444.45 x 100		14.78%

12. Calculation of Income available for Distribution

	Units (Lakh)	Per Unit (₹)	Total (₹ In lakh)
Income from April	300	0.0765	22.9500
Add: Dividend equalization collected on issue	6	0.0765	0.4590
	306	0.0765	23.4090
Add: Income from May		0.1125	34.4250
	306	0.1890	57.8340
Less: Dividend equalization paid on repurchase	3	0.1890	(0.5670)
	303	0.1890	57.2670
Add: Income from June		0.1500	45.4500

	303	0.3390	102.7170
Less: Dividend Paid		0.2373	(71.9019)
	303	0.1017	30.8151

**Calculation of Issue Price at the end of April**

	₹
Opening NAV	18.750
Add: Entry Load 2% of ₹ 18.750	(0.375)
	19.125
Add: Dividend Equalization paid on Issue Price	0.0765
	19.2015

**Calculation of Repurchase Price at the end of May**

	₹
Opening NAV	18.750
Less: Exit Load 2% of ₹ 18.750	(0.375)
	18.375
Add: Dividend Equalization paid on Issue Price	0.1890
	18.564

**Closing NAV**

	₹ (Lakh)
Opening Net Asset Value (₹ 18.75 × 300)	5625.0000
Portfolio Value Appreciation	425.4700
Issue of Fresh Units (6 × 19.2015)	115.2090
Income Received (22.950 + 34.425 + 45.450)	102.8250
	6268.504
Less: Units repurchased (3 × 18.564)	-55.692
Income Distributed	-71.9019
Closing Net Asset Value	(-127.5939)
Closing Units (300 + 6 – 3) lakh	6140.9101
∴ Closing NAV as on 30 <sup>th</sup> June	303 lakh ₹ 20.2670

13. (a) If return is 29%

	₹
Fixed fee (A) 0.10% of ₹ 20 crore	2,00,000
New Fund Value (1.29 x ₹ 20 crore)	25.80 crore
Excess Value of best achieved (25.8 crore – 21.0 crore)	4.80 crore
Incentive Fee (2% of 4.80 crores) (B)	9,60,000
Total Fee (A)+(B)	11,60,000

(b) If return is 4.5%

	₹
Fixed (A) 0.10% of ₹ 20 crore	2,00,000
New Fund Value (1.045 x ₹ 20 crore)	20.90 crore
Excess Value of best achieved (20.90 crore – 21.00 crore)	(₹ 0.10 crore)
Incentive Fee (as does not exceed best achieved) (B)	Nil
Total Fee (A)+(B)	2,00,000

(c) If return is (-1.8%)

No incentive only fixed fee of ₹ 2,00,000 will be paid

14. Financial Analysis whether to set up the manufacturing units in India or not may be carried using NPV technique as follows:

I. Incremental Cash Outflows

	\$ Million
Cost of Plant and Machinery	500.00
Working Capital	50.00
Release of existing Working Capital	(15.00)
	535.00

II. Incremental Cash Inflow after Tax (CFAT)

(a) Generated by investment in India for 5 years

	\$ Million
Sales Revenue (5 Million x \$80)	400.00
Less: Costs	
Variable Cost (5 Million x \$20)	100.00

Fixed Cost	30.00
Depreciation (\$500 Million/5)	100.00
EBIT	170.00
Taxes@35%	59.50
EAT	110.50
Add: Depreciation	100.00
CFAT (1-5 years)	210.50
Cash flow at the end of the 5 years (Release of Working Capital)	35.00

(b) Cash generation by exports (Opportunity Cost)

	\$ Million
Sales Revenue (1.5 Million x \$80)	120.00
Less: Variable Cost (1.5 Million x \$40)	60.00
Contribution before tax	60.00
Tax@35%	21.00
CFAT (1-5 years)	39.00

(c) Additional CFAT attributable to Foreign Investment

	\$ Million
Through setting up subsidiary in India	210.50
Through Exports in India	39.00
CFAT (1-5 years)	171.50

### III. Determination of NPV

Year	CFAT (\$ Million)	PVF@12%	PV(\$ Million)
1-5	171.50	3.6048	618.2232
5	35	0.5674	19.8590
			638.0822
Less: Initial Outflow			535.0000
			103.0822

Since NPV is positive the proposal should be accepted.

15. (i) Net exposure of each foreign currency in Rupees

	Inflow	Outflow	Net Inflow	Spread	Net Exposure
	(Millions)	(Millions)	(Millions)		(Millions)
US\$	40	20	20	0.81	16.20
FFr	20	8	12	0.67	8.04
UK£	30	20	10	0.41	4.10
Japan Yen	15	25	-10	-0.80	8.00

(ii) The exposure of Japanese yen position is being offset by a better forward rate

16. On January 28, 2013 the importer customer requested to remit SGD 25 lakhs.

To consider sell rate for the bank:

US \$	=	₹ 45.90
Pound 1	=	US\$ 1.7850
Pound 1	=	SGD 3.1575
Therefore, SGD 1	=	$\frac{\text{₹ } 45.90 * 1.7850}{\text{SGD } 3.1575}$
SGD 1	=	₹ 25.9482
Add: Exchange margin (0.125%)		₹ 0.0324
		<u>₹ 25.9806</u>

On February 4, 2013 the rates are

US \$	=	₹ 45.97
Pound 1	=	US\$ 1.7775
Pound 1	=	SGD 3.1380
Therefore, SGD 1	=	$\frac{\text{₹ } 45.97 * 1.7775}{\text{SGD } 3.1380}$
SGD 1	=	₹ 26.0394
Add: Exchange margin (0.125%)		₹ 0.0325
		<u>₹ 26.0719</u>

Hence, loss to the importer

$$= \text{SGD } 25,00,000 (\text{₹ } 26.0719 - \text{₹ } 25.9806) = \text{₹ } 2,28,250$$

## 17. Option I (To finance the purchases by availing loan at 18% per annum):

Cost of equipment	₹ in lakhs
3400 lakh yen at ₹100 = 340 yen	1,000.00
Add: Interest at 4.5% I Quarter	45.00
Add: Interest at 4.5% II Quarter (on ₹1045 lakhs)	47.03
Total outflow in Rupees	1,092.03
Alternatively, interest may also be calculated on compounded basis, i.e., ₹1000 × [1.045] <sup>2</sup>	₹1092.03

## Option II (To accept the offer from foreign branch):

Cost of letter of credit	
At 1% on 3400 lakhs yen at ₹100 = 340 yen	₹ 10.00 lakhs
Add: Interest for 2 Quarters	₹ 0.90 lakhs
(A)	₹ 10.90 lakhs
Payment at the end of 180 days:	
Cost	3400.00 lakhs yen
Interest at 2% p.a. [3400 × 2/100 × 180/365]	33.53 lakhs yen
	3433.53 lakhs yen
Conversion at ₹100 = 345 yen [3433.53 / 345 × 100] (B)	₹ 995.23 lakhs
Total Cost: (A) + (B)	₹ 1006.13 lakhs

**Advise:** Option 2 is cheaper by (1092.03 – 1006.13) lakh or ₹ 85.90 lakh. Hence, the offer may be accepted.

## 18. Working Notes

(a)

	XYZ Ltd.	ABC Ltd.
Equity shares outstanding (Nos.)	10,00,000	4,00,000
EPS	₹ 40	₹ 28
Profit	₹ 400,00,000	₹ 112,00,000
PE Ratio	6.25	5.71
Market price per share	₹ 250	₹ 160

## (b) EPS after merger

No. of shares to be issued ( $4,00,000 \times 0.70$ )	2,80,000
Exiting Equity shares outstanding	10,00,000
Equity shares outstanding after merger	12,80,000
Total Profit ( $₹ 400,00,000 + ₹ 112,00,000$ )	₹ 512,00,000
EPS	₹ 40

## (i) Impact of merger on EPS of both the companies

	XYZ Ltd.	ABC Ltd.
EPS after Merger	₹ 40	₹ 28
EPS before Merger	₹ 40	₹ 28*
	Nil	Nil

\* ₹ 40  $\times 0.70$

## (ii) Gain from the Merger if exchange ratio is 1:1

No. of shares to be issued	4,00,000
Exiting Equity shares outstanding	10,00,000
Equity shares outstanding after merger	14,00,000
Total Profit ( $₹ 400,00,000 + ₹ 112,00,000$ )	₹ 512,00,000
EPS	₹ 36.57
Market Price of Share ( $₹ 36.57 \times 6.25$ )	₹ 228.56
Market Price of Share before Merger	₹ 160.00
Impact (Increase/ Gain)	₹ 68.56

## (iii) Gain/ loss from the Merger to the shareholders of XYZ Ltd.

Market Price of Share	₹ 228.56
Market Price of Share before Merger	₹ 250.00
Loss from the merger (per share)	₹ 21.44

## (iv) Maximum Exchange Ratio acceptable to XYZ Ltd. shareholders

	₹ Lakhs
Market Value of Merged Entity ( $₹ 228.57 \times 1400000$ )	3199.98
Less: Value acceptable to shareholders of XYZ Ltd.	2500.00
Value of merged entity available to shareholders of ABC Ltd.	699.98

Market Price Per Share	250
No. of shares to be issued to the shareholders of ABC Ltd. (lakhs)	2.80

Thus maximum ratio of issue shall be 2.80 : 4.00 or 0.70 share of XYZ Ltd. for one share of ABC Ltd.

Alternatively, it can also be computed as follows:

Earning after Merger (40 x 1000000 + 28 x 400000)	₹ 512 lakhs
PE Ratio of XYZ Ltd.	6.25
Market Value of Firm after Merger (512 x 6.25)	₹ 3200 lakhs
Existing Value of Shareholders of XYZ Ltd.	₹ 2500 lakhs
Value of Merged entity available to Shareholders of ABC Ltd.	₹ 700 lakhs
Market Price per Share	₹ 250
Total No. of shares to be issued	2.8 lakh

Thus, maximum acceptable ratio shall be 2.80:4.00 i.e. 0.70 share of XYZ Ltd. for one share of ABC Ltd.

## 19. Impact of Financial Restructuring

### (i) Benefits to Grape Fruit Ltd.

#### (a) Reduction of liabilities payable

	₹ in lakhs
Reduction in equity share capital (6 lakh shares x ₹75 per share)	450
Reduction in preference share capital (2 lakh shares x ₹50 per share)	100
Waiver of outstanding debenture Interest	26
Waiver from trade creditors (₹340 lakhs x 0.25)	85
	<u>661</u>
(b) Revaluation of Assets	
Appreciation of Land and Building (₹450 lakhs - ₹200 lakhs)	250
Total (A)	<u>911</u>

#### (ii) Amount of ₹911 lakhs utilized to write off losses, fictitious assets and over-valued assets.

Writing off profit and loss account	525
Cost of issue of debentures	5
Preliminary expenses	10

Provision for bad and doubtful debts	15
Revaluation of Plant and Machinery (₹300 lakhs – ₹180 lakhs)	120
Total (B)	<u>675</u>
Capital Reserve (A) – (B)	236

(ii) Balance sheet of Grape Fruit Ltd as at 31<sup>st</sup> March 2011 (after re-construction)

	(₹ in lakhs)		
	Amount	Assets	Amount
12 lakhs equity shares of ₹ 25/- each	300	Land & Building	450
10% Preference shares of ₹ 50/- each	100	Plant & Machinery	180
Capital Reserve	236	Furnitures & Fixtures	50
9% debentures	200	Inventory	150
Loan from Bank	74	Sundry debtors	70
Trade Creditors	255	Prov. for Doubtful Debts	<u>-15</u>
		Cash-at-Bank (Balancing figure)*	280
	1165		1165

\*Opening Balance of ₹130/- lakhs + Sale proceeds from issue of new equity shares ₹150/- lakhs.

20. (a) A '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 is 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.
- (b) An important part of financial market is Money market. It is a market for short-term money. It plays a crucial role in maintaining the equilibrium between the short-term demand and supply of money. Such schemes invest in safe highly liquid instruments included in commercial papers certificates of deposits and government securities. Accordingly, the Money Market Mutual Fund (MMMF) schemes generally provide high returns and highest safety to the ordinary investors. MMMF schemes are active players of the money market. They channelize the idle short funds, particularly of corporate world, to those who require such funds. This process helps those who have idle funds to earn some income without taking any risk and with surety that whenever they will need their funds, they will get (generally in maximum three hours of time) the same. Short-term/emergency requirements of various firms are met by such Mutual Funds. Participation of such Mutual Funds provide a boost to money market and help in controlling the volatility.
- (c) Capital investment is the springboard for wealth creation. In a world of economic uncertainty, the investors want to maximize their wealth by selecting optimum investment and financial opportunities that will give them maximum expected returns at minimum risk. Since management is ultimately responsible to the investors, the objective of corporate financial management should implement investment and financing decisions which should satisfy the shareholders by placing them all in an equal, optimum financial position. The satisfaction of the interests of the shareholders should be perceived as a means to an end, namely maximization of shareholders' wealth. Since capital is the limiting factor, the problem that the management will face is the strategic allocation of limited funds between alternative uses in such a manner, that the companies have the ability to sustain or increase investor returns through a continual search for investment opportunities that generate funds for their business and are more favorable for the investors. Therefore, all businesses need to have the following three fundamental essential elements:
  - A clear and realistic strategy,

- The financial resources, controls and systems to see it through and

The right management team and processes to make it happen.

(d) **Asset Securitization:** Securitization is a process of transformation of illiquid asset into security which may be traded later in the open market. It is the process of transformation of the assets of a lending institution into negotiable instruments. The term 'securitization' refers to both switching away from bank intermediation to direct financing via capital market and/or money market, and the transformation of a previously illiquid asset like automobile loans, mortgage loans, trade receivables, etc. into marketable instruments.

This is a method of recycling of funds. It is beneficial to financial intermediaries, as it helps in enhancing lending funds. Future receivables, EMIs and annuities are pooled together and transferred to a special purpose vehicle (SPV). These receivables of the future are shifted to mutual funds and bigger financial institutions. This process is similar to that of commercial banks seeking refinance with NABARD, IDBI, etc.

(e) ECB includes bank loans, supplier credit, securitized instruments, credit from export credit agencies and borrowings from multilateral financial institutions. These securitized instruments may be FRNs, FRBs etc. Indian corporate sector is permitted to raise finance through ECBs within the framework of the policies and procedures prescribed by the Central Government. Multilateral financial institutions like IFC, ADB, AFIC, CDC are providing such facilities while the ECB policy provides flexibility in borrowing consistent with maintenance of prudential limits for total external borrowings, its guiding principles are to keep borrowing maturities long, costs low and encourage infrastructure/core and export sector financing which are crucial for overall growth of the economy. The government of India, from time to time changes the guidelines and limits for which the ECB alternative as a source of finance is pursued by the corporate sector. During past decade the government has streamlined the ECB policy and procedure to enable the Indian companies to have their better access to the international financial markets.

The government permits the ECB route for variety of purposes namely expansion of existing capacity as well as for fresh investment. But ECB can be raised through internationally recognized sources. There are caps and ceilings on ECBs so that macro economy goals are better achieved. Units in SEZ are permitted to use ECBs under a special window.

## PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS

### PART – I : ACADEMIC UPDATE

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

##### **Chapter 1 : Auditing Standards, Statements and Guidance Notes-An Overview**

**1 SA 299: Joint Audit of Financial Statements** - This SA deals with the special considerations in carrying out audit by joint auditors. Accordingly, in addition to the requirements enunciated in this Standard, the joint auditors also need to comply with all the relevant requirements of other applicable Standards on Auditing. This Standard deals with the special considerations in carrying out audit by joint auditors. The objectives of this Standard are to lay down broad principles for the joint auditors in conducting the joint audit, to provide a uniform approach to the process of joint audit, to identify the distinct areas of work and coverage thereof by each joint auditor and to identify individual responsibility and joint responsibility of the joint auditors in relation to audit.

The SA became effective for all audits relating to accounting periods commencing on or after April 1, 2018.

**2 SA 720: The Auditor's Responsibility in Relation to Other Information** - This Standard on Auditing (SA) deals with the auditor's responsibilities relating to other information, whether financial or non-financial information (other than financial statements and the auditor's report thereon), included in an entity's annual report. An entity's annual report may be a single document or a combination of documents that serve the same purpose. This SA requires the auditor to read and consider the other information because other information that is materially inconsistent with the financial statements or the auditor's knowledge obtained in the audit may indicate that there is a material misstatement of the financial statements or that a material misstatement of the other information exists, either of which may undermine the credibility of the financial statements and the auditor's report thereon. Such material misstatements may also inappropriately influence the economic decisions of the users for whom the auditor's report is prepared.

This SA is effective for audits of financial statements for periods beginning on or after April 1, 2018.

**(Note: Text of revised SA 299 and revised SA 720 is reproduced in Auditing Pronouncements.)**

##### **Chapter 6 : The Company Audit**

- (i) Additional requirement for claiming exemption under section 141(3)(g) for counting ceiling limit is available only if such private company has not committed default in filing its financial statements under section 137 and annual returns under section 92 of the Act to the registrar as per notification dated 13 June 2017.

- (ii) Notification No. G.S.R. 583(E) stated that requirements of reporting under section 143(3)(i) read with Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) (vide circular no. 08/2017) clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.
- (iii) As per provisions of Section 143(3)(i) of Companies Act, the Auditor's Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls. MCA vide its notification dated 13th June 2017 (G.S.R. 583(E)) amended the notification of the Government of India, in the ministry of corporate of affair, vide no G.S.R. 464(E) dated 05th June 2015 providing exemption from reporting on Internal Financial Controls to following private companies which is one person Company (OPC) or a Small Company; or which has turnover less than ₹ 50 Crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than ₹ 25 Crore. In addition, in section 143 of the principal Act, (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted; (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted; (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
- (iv) Ratification for appointment of auditors is not required at every AGM when auditors have been appointed for five years - Proviso to section 139(1) omitted as per Companies (Amendment) Act, 2017.
- (v) 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 as per MCA notification dated 3 December 2018 vide Companies (cost records and audit) Amendment Rules, 2018.***
- (vi) **Duty to report on any other matter specified by Central Government:** The Central Government may, in consultation with the National Financial Reporting Authority (NFRA),

by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

(vii) **Constitution of National Financial Reporting Authority:** 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.

- (viii) As per section 140(2), the auditor who has resigned from the company shall file within a period of 30 days from the date of resignation, a statement in the prescribed Form ADT –3 (as per Rule 8 of CAAR) with the company and the Registrar, and in case of the companies referred to in section 139(5) i.e. Government company, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of failure, the auditor shall be liable to a penalty which shall not be less than fifty thousand rupees or *the remuneration of the auditor, whichever is less*, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees as per section 140(3) [Companies (Amendment) Second Ordinance, 2019 dated 21 February, 2019].
- (ix) Under sub-section (3) of section 141 along with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company shall not be eligible for appointment as an auditor of a company.

- (x) By virtue of notification dated February 23, 2018, the Central Government has exempted the companies engaged in defence production from section 129 of the Companies Act, 2013 to the extent of application of relevant Accounting Standard on segment reporting.
- (xi) As per MCA notification dated February 5, 2018, the provision of deferred tax asset/liability as per Ind AS 12 or Accounting Standard 22 shall not apply, for 7 years with effect from 1<sup>st</sup> April, 2017, to Government Company which is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013; is a Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and is engaged in the business of infrastructure finance leasing with not less than seventy five per cent. of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government.
- (xii) The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind AS has been prescribed.
- (xiii) The Order for reopening of accounts not to be made beyond eight financial years immediately preceding the current financial year unless and until Government has, under Section 128(5), issued a direction for keeping books of account longer than **8 years**, reopening of accounts can be made for such longer period.
- (xiv) Enabling provisions regarding serving notice along with getting opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company. As of now, there is no provision in the section for serving notice to the auditor/ chartered accountant in case of reopening of accounts. As per the recent amendment in the section, it has been brought enabling the Court/ Tribunal to give notice to any other party/ person concerned and consider the representations, if any.
- (xv) In exercise of the powers conferred by section 139 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government amended Rule 5 of the Companies (Audit and Auditors) Rules, 2014 i.e. in rule 5, in clause (b), for the word “twenty”, the word **“fifty”** shall be substituted, thereby enhancing the limit for applicability of rotational provisions on private limited company.
- (xvi) Section 147 of the Companies Act, 2013 prescribes following punishments for contravention:
  - (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(2) If an auditor of a company contravenes any of the provisions of section 139 section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees ***or four times the remuneration of the auditor, whichever is less.***

It may be noted that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall ***not be less than fifty thousand rupees*** but which may extend to twenty-five lakh rupees ***or eight times the remuneration of the auditor, whichever is less.***

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to:-

- (i) refund the remuneration received by him to the company;
- (ii) and pay for damages to the company statutory bodies or authorities or to ***members or the creditors of the Company*** for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(4) The Central Government shall, by notification, specify any statutory body or authority of an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages the such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

(5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in an fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil criminal as provided in this Act or in any other law for the time being in force, for such act shall be the partner or partners concerned of the audit firm and of the firm jointly and severally. However, in case of criminal liability of an audit firm, in respect of liability other ***than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.***

#### Chapter 7 : Liabilities of Auditors

1. **A civil action against the auditor may either take in the form of claim for damages on account of negligence or that of misfeasance proceeding for breach of trust or duty:**

(I) **Damages for negligence:** Civil liability for mis-statement in prospectus under section 35 of the Companies Act, 2013, are:

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is

misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus;
(b) has authorized himself to be named and is named in the prospectus as a director of the company or has agreed to become such director either immediately or after an interval of time;
(c) is a promoter of the company;
(d) has authorised the issue of the prospectus; and
(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

- (2) No person shall be liable under sub-section (1), if he proves—
  - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
  - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
  - (c) *that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.*
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

It may be noted that the term "expert" as defined in Section 2(38) of the Companies Act, 2013 includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. Also that under Section 26 of the Act a statement may be considered to be untrue, not only because it is so but also if it is misleading in the form and context in which it is included.

The liability would arise if the written consent of the auditor to the issue of the prospectus, including the report purporting to have been made by him as an "expert" has been obtained.

**2. Punishment for Fraud- As per Section 447 of the Companies Act, 2013, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.**

It may be noted that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

**It may also be noted 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 fifty lakh rupees or with both.**

**3. Liabilities under Income Tax Act 1961:** In connection with proceedings under the Income Tax Act 1961, a Chartered Accountant often acts as the authorised representative of his clients and attends before an Income Tax Authority or the appellate tribunal. His liabilities under the Income Tax Act of 1961 are as below:

**(i) Under Section 288:** A person who has been convicted of any offence connected with any Income Tax proceeding or on whom a penalty has been imposed under the said Act (except under clause (ii) of sub section (1) of Section 271) is disqualified from representing an assessee. The Chief Commissioner/Commissioner of Income Tax has been given powers to determine the period of such disqualification of a person.

<u>Section 288 (4) &amp; (5) of the Income Tax Act, 1961</u>
<b>Sub section 4 of Section 288 of the Income Tax Act:</b>
No person-
(a) who has been dismissed or removed from Government service after the 1 <sup>st</sup> day of April, 1938; or

- (b) Who has been convicted of an offence connected with any income tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under [clause(ii) of sub section (1) of section 271 [or clause(d) of sub-section (1) of section 272A]; or
- (c) who has become an insolvent; or
- (d) who has been convicted by a court for an offence involving fraud, shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in clause(a), for such time as the Principal Chief Commissioner or Chief Commission or Principal Commissioner or Commissioner may, by order determine in the case of a person referred to in clause (b), for the period during which the insolvency continues in the case of a person referred to in clause (c), and for a period of ten years from the date of conviction in the case of a person referred to in clause (d).

**Sub section 5 of Section 288 of the Income Tax Act:**

If any person-

- (a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practice as a legal practitioner or account, as the case may be;
- (b) Who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority (Chief Commissioner or Commissioner having requisite jurisdiction) may direct that he shall thenceforth be disqualified to represent an assessee under sub section (1).

A Chartered Accountant found guilty of professional misconduct in his professional capacity by the Council of the Institute of Chartered Accountants of India, can not act as an authorised representative (for any matter within the definition of a member in practice) for such time that the order of the Council disqualifies him from practising.

(ii) **Under Section 278:** "If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income [or any fringe benefits] chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,-

**Section 278 of the Income Tax Act, 1961:**

- (i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds [twenty five] hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six

months but which may extend to seven years and with fine;
(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to [two] years and with fine
(iii) <b>Under Rule 12A of the Income Tax Rules:</b> Under this rule a Chartered Accountant who as an authorised representative has prepared the return filed by the assessee, has to furnish to the Assessing Officer, the particulars of accounts, statements and other documents supplied to him by the assessee for the preparation of the return.  Where the Chartered Accountant has conducted an examination of such records, he has also to submit a report on the scope and results of such examination. The report to be submitted will be a statement within the meaning of Section 277 of the Income Tax Act. Thus, if this report contains any information which is false and which the Chartered Accountant either knows or believes to be false or untrue, he would be liable to rigorous imprisonment which may extend to seven years and to a fine.
(iv) <b>Under Section 271J of the Income Tax Act:</b> As per new section inserted by the Finance Act, 2017 if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty. [ section 271J]

#### Chapter 9: Audit Committee and Corporate Governance

Certain amendments to the LODR Regulations have been made vide SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018. The LODR Regulations and the amendments made thereto are collectively referred to as LODR Regulations.

**(1) Applicability of LODR Regulations [Regulation 3]:** Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

<b>Applicability</b>	<ul style="list-style-type: none"> <li>(a) specified securities listed on main board or SME Exchange or institutional trading platform;</li> <li>(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;</li> <li>(c) Indian depository receipts;</li> <li>(d) securitised debt instruments;</li> <li>(e) security receipts (added w.e.f. September 06, 2018);</li> <li>(f) units issued by mutual funds;</li> <li>(g) any other securities as may be specified by the Board.</li> </ul>
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**(2) Role of Audit Committee [Part C (A) of Schedule II]**

Inserted point no (21) The role of the Audit Committee shall also include reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans/advances / investments as on April 01, 2019.

**Audit Committee under Section 177 of the Companies Act, 2013:** As per section 177 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, **every listed public company** and the following classes of companies shall constitute an Audit Committee –

- (a) all public companies with a paid up capital of ten crore rupees or more;
- (b) all public companies having turnover of one hundred crore rupees or more;
- (c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

**(3) Functions of The Audit Committee:** The Audit Committee performs various important functions like investigating the matters referred by board, discuss about internal control system etc. These sub-sections of Section 177 are reproduced hereunder which specify the terms of reference as well as functions of the Audit Committee:

**Sub Section 4:** “Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,—

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor’s independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors’ report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

**(However, the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.**

**In case of transactions other than transactions referred to in section 188 of the Companies Act 2013, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.**

**Also, in case any transaction involving an amount not exceeding Rupees 1 crore 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 authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.

These provisions 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.

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters."

**Sub Section 7:** The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

**Sub Section 8:** The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

#### (4) Verification regarding Composition of Board [Regulation 17]

- (i) 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 and not less than 50% of the Board of Directors comprising non-executive directors. *It may be noted that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;*

*The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.*

*The auditor should also ensure that no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

*The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -*

- (1) *A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:*

*It may be noted that a person shall not serve as an independent director in more than seven listed entities.*

**(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.**

*For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”*

The minutes of the Board of Directors' meetings should be verified to ascertain whether a director is an executive director or a non-executive director.

(ii) ***The auditor should ensure that the board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.***

*Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.*

*With effect from 1<sup>st</sup> April 2019, 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 AS / IndAS 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.*

**(5) Approval of Remuneration of Directors [Regulation 17 (6)]:** All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate. *However, w.e.f. April 01, 2019, approval of shareholders by special resolution shall be obtained every year, in case the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors.*

The requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government. Provided further that independent director shall not be entitled to any stock option.

***The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-***

- (i) ***the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or***
- (ii) ***where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:***

***It may be noted that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director. For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.***

**(6) Obligations With respect to employees including Senior management, key managerial persons, directors and promoters [Regulations 17(2) to 17(4), 25(5) to 25(6), 26(1) to 26 (2), 26(4) to 26(6)]:**

- (i) The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. ***The quorum for every meeting of the board of directors of the top 1,000 listed entities with effect from April 1, 2019 and of the top 2,000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director. The participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. The top 1,000 and 2,000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.***

***The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time:***

- (a) ***A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:***

***It may be noted that a person shall not serve as an independent director in more than seven listed entities.***

- (b) ***Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.***

*For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.*

**(7) Subsidiary of Listed Entity [Regulations 16(c), 24 and 46 and Part C of Schedule V]:**

(i) 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]

(vi) A listed entity shall not dispose off shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal, **or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.**

(vii) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal, **or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.**

*Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.*

**(8) Statement of Deviation(s) or Variation(s) [Regulation 32 and Part C of Schedule II]:**

**(3) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.**

## (9) Disclosures - Management Discussion and Analysis [Schedule V]

<p>(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:</p> <ul style="list-style-type: none"> <li>(i) Debtors Turnover</li> <li>(ii) Inventory Turnover</li> <li>(iii) Interest Coverage Ratio</li> <li>(iv) Current Ratio</li> <li>(v) Debt Equity Ratio</li> <li>(vi) Operating Profit Margin (%)</li> <li>(vii) Net Profit Margin (%)</li> </ul> <p>or sector-specific equivalent ratios, as applicable</p>	<p>(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.</p>
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## (10) Stakeholders Relationship Committee [Regulation 20 and Part D of Schedule II]

<p>(i) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the - <b>various aspects of interest of shareholders</b>, debenture holders and other security holders.</p>
<p>(ii) <i>The chairperson of this Committee shall be a non-executive director.</i></p>
<p>(iii) <i>At least three directors, with at least one being an independent director, shall be members of the Committee.</i></p>
<p>(iv) <i>The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.</i></p>
<p>(v) <i>The stakeholders relationship committee shall meet at least once in a year.</i></p>
<p>(iv) <i>The role of the committee shall inter-alia include the following:</i></p> <ol style="list-style-type: none"> <li>1) <i>Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.</i></li> <li>2) <i>Review of measures taken for effective exercise of voting rights by shareholders.</i></li> <li>3) <i>Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar &amp; Share Transfer Agent.</i></li> </ol>

4) ***Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.***

**(11) Related Party Disclosure [Regulations 27, 46 and Schedule V]:** The listed entity shall disclose the transactions with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.

***The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.***

**(12) Disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (Schedule V) : Amongst other matters, following should be disclosed in the section on Corporate Governance of the Annual Report:**

<i>a. number of complaints filed during the financial year</i>
<i>b. number of complaints disposed of during the financial year</i>
<i>c. number of complaints pending as on end of the financial year"</i>

**(13) Risk Management Committee [Regulation 21]:**

- (a) ***The risk management committee shall meet at least once in a year.***
- (b) The Board of Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit and ***such function shall specifically cover cyber security.***
- (c) The provisions of this regulation shall be applicable to ***top 500 listed entities***, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

**(14) Nomination and Remuneration Committee [Regulation 19 and Part D of Schedule II]:** The Board of Directors of ***every listed public company*** shall constitute the Nomination and Remuneration Committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairperson of the committee shall be an independent director. It may be noted that the Chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such committee.

The role of such committee shall, inter-alia, include

- (i) Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board of Directors a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
- (ii) Formulation of criteria for evaluation of performance of independent directors and the Board of Directors;
- (iii) Devising a policy on Board diversity;
- (iv) Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal;
- (v) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
- (vi) ***recommend to the board, all remuneration, in whatever form, payable to senior management.***

***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.***

***The nomination and remuneration committee shall meet at least once in a year.***

#### Chapter 14 : Audit of Non-Banking Financial Companies

1. **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.)

3. **Compliance with NBFC Auditors Report - RBI Directions:** Report to Board of Directors under RBI Directions as per Master Direction No. DNBS. PPD.03/66.15.001/2016-17 dated September 29, 2016
4. **Auditors to submit additional Report to the Board of Directors:** In addition to the Report made by the auditor under Section 143 of the Companies Act, 2013 or section 227 of the Companies Act, 1956 (Act 1 of 1956) on the accounts of a non-banking financial company examined for every financial year ending on any day on or after the commencement of these Directions, the auditor shall also make a separate report to the Board of Directors of the Company on the matters specified in paragraphs 3 and 4 below.
5. **Material to be included in the Auditor's report to the Board of Directors:** The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely -

**(A) In the case of all non-banking financial companies:**

<ul style="list-style-type: none"> <li>I. Conducting Non-Banking Financial Activity without a valid Certificate of Registration (CoR) granted by the Bank is an offence under chapter V of the RBI Act, 1934. Therefore, if the company is engaged in the business of non-banking financial institution as defined in section 45-I (a) of the RBI Act and meeting the Principal Business Criteria (Financial asset/income pattern) as laid down vide the Bank's press release dated April 08, 1999, and directions issued by DNBR, auditor shall examine whether the company has obtained a Certificate of Registration (CoR) from the Bank.</li> <li>II. In case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its Principal Business Criteria (Financial asset/income pattern) as on March 31 of the applicable year.</li> <li>III. Whether the non-banking financial company is meeting the required net owned fund requirement as laid down in Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.</li> </ul>
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**Note:** Every non-banking financial company shall submit a Certificate from its Statutory Auditor that it is engaged in the business of non-banking financial

institution requiring it to hold a Certificate of Registration under Section 45-IA of the RBI Act and is eligible to hold it. A certificate from the Statutory Auditor in this regard with reference to the position of the company as at end of the financial year ended March 31 may be submitted to the Regional Office of the Department of Non-Banking Supervision under whose jurisdiction the non-banking financial company is registered, within one month from the date of finalization of the balance sheet and in any case not later than December 30th of that year. The format of Statutory Auditor's Certificate (SAC) to be submitted by NBFCs has been issued vide DNBS. PPD.02/66.15.001/2016-17 Master Direction- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.

**(B) In the case of a non-banking financial companies accepting/holding public deposits:**

Apart from the matters enumerated in (A) above, the auditor shall include a statement on the following matters, namely-

- (i) Whether the public deposits accepted by the company together with other borrowings indicated below viz
  - (a) from public by issue of unsecured non-convertible debentures/bonds;
  - (b) from its shareholders (if it is a public limited company); and
  - (c) which are not excluded from the definition of 'public deposit' in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, are within the limits admissible to the company as per the provisions of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (ii) Whether the public deposits held by the company in excess of the quantum of such deposits permissible to it under the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 are regularised in the manner provided in the said Directions;
- (iii) Whether the non banking financial company is accepting "public deposit" without minimum investment grade credit rating from an approved credit rating agency as per the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (iv) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in terms of the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 has been correctly determined and whether such ratio is in compliance with the minimum CRAR prescribed therein;
- (v) In respect of non-banking financial companies referred to in clause (iii) above,
  - (a) whether the credit rating, for each of the fixed deposits schemes that has

been assigned by one of the Credit Rating Agencies listed in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 is in force; and

- (b) whether the aggregate amount of deposits outstanding as at any point during the year has exceeded the limit specified by the such Credit Rating Agency;
- (vi) Whether the company has violated any restriction on acceptance of public deposit as provided in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (vii) Whether the company has defaulted in paying to its depositors the interest and/or principal amount of the deposits after such interest and/or principal became due;
- (viii) Whether the company has complied with the prudential norms on income recognition, accounting standards, asset classification, provisioning for bad and doubtful debts, and concentration of credit/investments as specified in the Directions issued by the Bank in terms of the Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (ix) Whether the company has complied with the liquid assets requirement as prescribed by the Bank in exercise of powers under section 45-IB of the RBI Act and whether the details of the designated bank in which the approved securities are held is communicated to the office concerned of the Bank in terms of NBS 3; Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (x) Whether the company has furnished to the Bank within the stipulated period the return on deposits as specified in the NBS 1 to – Non- Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xi) Whether the company has furnished to the Bank within the stipulated period the quarterly return on prudential norms as specified in the Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xii) Whether, in the case of opening of new branches or offices to collect deposits or in the case of closure of existing branches/offices or in the case of appointment of agent, the company has complied with the requirements contained in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

**(C) In the case of a non-banking financial company not accepting public deposits:**

Apart from the aspects enumerated in (A) above, the auditor shall include a statement on the following matters, namely: -

- (i) Whether the Board of Directors has passed a resolution for non- acceptance of any public deposits;
- (ii) Whether the company has accepted any public deposits during the relevant period/year;
- (iii) Whether the company has complied with the prudential norms relating to income recognition, accounting standards, asset classification and provisioning for bad and doubtful debts as applicable to it in terms of Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (iv) In respect of Systemically Important Non-deposit taking NBFCs as defined in Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016:
  - (a) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in form NBS- 7, has been correctly arrived at and whether such ratio is in compliance with the minimum CRAR prescribed by the Bank;
  - (b) Whether the company has furnished to the Bank the annual statement of capital funds, risk assets/exposures and risk asset ratio (NBS-7) within the stipulated period.
- (v) whether the non banking financial company has been correctly classified as NBFC Micro Finance Institutions (MFI) as defined in the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

(D) **In the case of a company engaged in the business of non-banking financial institution not required to hold CoR subject to certain conditions:** Apart from the matters enumerated in (A)(I) above where a company has obtained a specific advice from the Bank that it is not required to hold CoR from the Bank, the auditor shall include a statement that the company is complying with the conditions stipulated as advised by the Bank.

#### 6. Reasons to be stated for unfavourable or qualified statements

Where, in the auditor's report, the statement regarding any of the items referred to in paragraph 3 above is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified statement, as the case may be. Where the auditor is unable to express any opinion on any of the items referred to in paragraph 3 above, his report shall indicate such fact together with reasons therefor.

**7. Obligation of auditor to submit an exception report to the Bank**

(I) Where, in the case of a non-banking financial company, the statement regarding any of the items referred to in paragraph 3 above, is unfavorable or qualified, or in the opinion of the auditor the company has not complied with:

- (a) the provisions of Chapter III B of RBI Act (Act 2 of 1934); or
- (b) Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016; or
- (c) Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

It shall be the obligation of the auditor to make a report containing the details of such unfavourable or qualified statements and/or about the non-compliance, as the case may be, in respect of the company to the concerned Regional Office of the Department of Non-Banking Supervision of the Bank under whose jurisdiction the registered office of the company is located as per first Schedule to the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

(II) The duty of the Auditor under sub-paragraph (I) shall be to report only the contraventions of the provisions of RBI Act, 1934, and Directions, Guidelines, instructions referred to in sub-paragraph (1) and such report shall not contain any statement with respect to compliance of any of those provisions.

**8. Applicability of Indian Accounting Standards (Ind- AS) on NBFCs** – As per Rule 4 (1)(iv) of the Companies (Indian Accounting Standards) Rules, 2015 and as amended by Companies (Indian Accounting Standards) (Amendment) Rules, 2016, NBFCs are required to comply with Indian Accounting Standards (Ind- AS) as under-

- (i) **Accounting periods beginning 1 April 2018:** Listed and unlisted NBFCs having a net worth of ₹ 500 crore or more and holding, subsidiary, joint venture or associate companies of such NBFCs;
- (ii) **Accounting periods beginning 1 April 2019:** All other listed NBFCs, unlisted NBFCs having a net worth of ₹ 250 crore or more but less than ₹ 500 crore and holding, subsidiary, joint venture or associate companies of such NBFCs.

The net worth shall be calculated in accordance with the standalone financial statements of the NBFCs as on 31st March 2016 or the first audited financial statements for accounting period which ends after that date.

**9. Format for preparation of financial statements by NBFCs under Ind-AS** – The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III

under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind- AS has been prescribed.

Every NBFC required to comply with Ind - AS shall prepare its financial statements as per below format:

Illustrative format of Balance Sheet under Division III of Schedule III-

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>ASSETS</b>			
<b>(1) Financial Assets</b>			
(a) Cash and cash equivalents			
(b) Bank balance other than (a) above			
(c) Derivative financial instruments			
(d) Receivables			
(1) Trade Receivables			
(2) Other Receivables			
(e) Loans			
(f) Investments			
(g) Other Financial assets			
<b>(2) Non-Financial Assets</b>			
(a) Inventories			
(b) Current tax assets (net)			
(c) Deferred tax assets (net)			
(d) Investment property			
(e) Biological assets other than bearer plants			
(f) Property, Plant and Equipment			
(g) Capital work-in-progress			
(h) Intangible assets under development			
(i) Goodwill			
(j) Other intangible assets			
(k) Other non-financial assets (to be specified)			
<b>Total Assets</b>			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>LIABILITIES AND EQUITY</b>			
<b>LIABILITIES</b>			
<b>(1) Financial Liabilities</b>			
(a) Derivative financial instruments			
(b) Payables			
(I) Trade Payables			
(i) total outstanding dues of micro enterprises and small enterprises			
(ii) total outstanding dues of creditors other than micro enterprises and small enterprises			
(II) Other Payables			
(i) total outstanding dues of micro enterprises and small enterprises			
(ii) total outstanding dues of creditors other than micro enterprises and small enterprises			
(c) Debt Securities			
(d) Borrowings (other than debt securities)			
(e) Deposits			
(f) Subordinated liabilities			
(g) Other financial liabilities (to be specified)			
<b>(2) Non-financial Liabilities</b>			
(a) Current tax liabilities (net)			
(b) Provisions			
(c) Deferred Tax Liabilities (net)			
(d) Other non-financial liabilities (to be specified)			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>(3) Non-financial Liabilities</b>			
(a) Equity share capital			
(b) Other equity			
<b>Total Liabilities and Equity</b>			

Illustrative format of Statement of Profit and Loss prescribed under Division III of Schedule III-

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>Revenue from operations</b>			
(a) Interest Income			
(b) Dividend income			
(c) Rental income			
(d) Fee and commission income			
(e) Net gain on fair value changes			
(f) Net gain on derecognition of financial instruments under amortised category			
(g) Sale of products (including Excise duty)			
(h) Sale of services			
(i) Others (to be specified)			
<b>Total revenue from operations (I)</b>			
Other income (to be specified) (II)			
<b>Total Income (III= I + II)</b>			
<b>Expenses</b>			
(a) Finance costs			
(b) Fees and commission expense			
(c) Net loss on fair value changes			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
(d) Net loss on derecognition of financial instruments under amortised category			
(e) Impairment on financial instruments			
(f) Cost of material consumed			
(g) Purchases of stock-in-trade			
(h) Changes in Inventories of finished goods, stock-in-trade and work-in- progress			
(i) Employee Benefits Expenses			
(j) Depreciation, amortization and impairment			
(k) Other expenses (to be specified)			
<b>Total Expenses (IV)</b>			
<b>Profit / (loss) before exceptional items and tax (V= III - IV)</b>			
Exceptional items (VI)			
<b>Profit / (loss) before tax (VII= V - VI)</b>			
Tax Expense (VIII):			
(1) Current tax			
(2) Deferred tax			
<b>Profit / (loss) for the period from continuing operations (IX= VII - VIII)</b>			
<b>Profit / (loss) for the period from discontinued operations (X)</b>			
Tax Expense of discontinued operations (XI)			
<b>Profit / (loss) for the period from discontinued operations after tax (XII= X - XI)</b>			
<b>Profit / (loss) for the period (XIII = IX + XII)</b>			
<b>Other Comprehensive Income (XIV)</b>			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
(A) (i) Items that will not be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will not be reclassified to profit or loss SUB-TOTAL (A)			
(B) (i) Items that will be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will be reclassified to profit or loss SUB-TOTAL (B)			
<b>Other Comprehensive Income (A+B)</b>			
<b>Total Comprehensive Income for the period (XV = XIII + XIV) (Comprising Profit (Loss) and other Comprehensive Income for the period)</b>			
<b>Earnings per equity share (for continuing operations) (XVI)</b> Basic (₹) Diluted (₹)			
<b>Earnings per equity share (for discontinued operations) (XVII)</b> Basic (₹) Diluted (₹)			
<b>Earnings per equity share (for continuing and discontinued operations) (XVIII)</b> Basic (₹) Diluted (₹)			

**Note :** Student may refer to illustrative format of Statement of Changes in equity prescribed under Division III of Schedule III for more understanding.

**10. Differences between Division II (Ind-AS- Other than NBFCs) and Division III (Ind-AS- NBFCs) of Schedule III** –The presentation requirements under Division III for NBFCs are similar to Division II (Non NBFC) to a large extent except for the following:

- NBFCs have been allowed to present the items of the balance sheet in order of their liquidity which is not allowed to companies required to follow Division II. Additionally, NBFCs are required to classify items of the balance sheet into financial and non-financial whereas other companies are required to classify the items into current and non-current
- An NBFC is required to separately disclose by way of a note any item of 'other income' or 'other expenditure' which exceeds 1 per cent of the total income. Division II, on the other hand, requires disclosure for any item of income or expenditure which exceeds 1 per cent of the revenue from operations or ₹10 lakhs, whichever is higher.
- NBFCs are required to separately disclose under 'receivables', the debts due from any Limited Liability Partnership (LLP) in which its director is a partner or member.

NBFCs are also required to disclose items comprising 'revenue from operations' and 'other comprehensive income' on the face of the Statement of profit and loss instead of as part of the notes.

#### Chapter 15 : Audit under Fiscal Laws

##### A. AUDIT PROVISIONS UNDER DIRECT TAX LAWS

**(A) Sec. 40 A(3):** Where any expenditure in respect of which payment is made in excess of ₹ 10,000 at a time otherwise than by Account-payee cheque or draft, 100% of such payment shall be disallowed.

**(B) Section 44AB of the Income Tax Act, 1961 :** Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:



Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:

**“Audit of accounts of certain persons carrying on business or profession”.**

**Every person -**

- carrying on business shall, if his total sales, turnover or gross receipts, as the case

	may be, in business exceed or exceeds <b>one crore</b> rupees in any previous year.
(b)	carrying on profession shall, if his gross receipts, in profession exceed <b>fifty lakhs</b> rupees in any previous year,
(c)	carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,
(d)	carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or
(e)	carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

**[Note:** Sub section (4) of section 44AD of the Income Tax Act, 1961 states that where an eligible assessee declares profit for any Previous Year in accordance with the provisions of this section 44AD and he declares profit for any of the 5 Assessment Years relevant to the Previous Year succeeding such Previous Year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 Assessment Years subsequent to the Assessment Year relevant to the Previous Year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.]

It may be noted that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

It may also be noted that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.



### Applicability of Tax Audit Provisions

DB Pvt. Ltd. has total turnover of ₹ 125 lacs for the FY 2018-19.

- ✓ Section 44AD is not applicable to company assessee, hence Limit of ₹ 2 crore is not applicable to DB Pvt. Ltd and it has to conduct the Audit of Books of Accounts under section 44AB of the Act for the FY 2018-19 as turnover exceeds ₹ 1 crore.

ABC & Co. (a partnership firm) engaged in trading of electronic goods having a turnover of ₹ 165 lacs for the FY 2018-19.

- ✓ Section 44AD is applicable to Partnership Firm. Thus, ABC & Co. can declare the minimum profit @ 8% of the turnover as its turnover during the PY 2018-19 does not exceed ₹ 2 crores. If the firm do not opt for presumptive income scheme under section 44AD, it has to get books of accounts audited u/s 44AB of the Act.

Mr. Anand Khater, a Commission Agent has commission receipts of ₹ 137 lacs during the FY 2018-19.

- ✓ Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Anand earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2018-19 in respect of commission income exceeds ₹ 1 crore, he has to get his books of accounts audited u/s 44AB of the Act.

Mr. Vishal Raka, owning an Agency of Samsung Mobile for the city of Pune and makes the turnover of ₹ 87 lacs during the FY 2018-19.

- ✓ Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Vishal earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2018-19 in respect of commission income does not exceeds ₹ 1 crore, therefore, he need not to get his books of accounts audited u/s 44AB of the Act.

**Explanation :** For the purposes of this section,

- (i) “accountant” shall have the same meaning as in the explanation below sub-section (2) of Section 288;
- (ii) “specified date”, in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

The above section stipulates that every person carrying on business is required to get his accounts audited before the "specified date" by a chartered accountant, if the total sales turnover or gross receipts in the business in any previous year exceed ₹ 1 crore. A person carrying on a profession will also have to get his accounts audited before the "specified date" by a chartered accountant if his gross receipts in profession in any previous year exceed ₹ 50 lakhs w.e.f. A.Y. 2018-19.

**Clause (c) of Section 44AB**, provides that in the case of an assessee carrying on a business of the nature specified in sections 44AE, 44BB or 44BBB, tax audit will be required if he claims his income to be lower than the presumptive income deemed under those sections. Therefore, such assessees will be required to have a tax audit even if their sales, turnover or gross receipts do not exceed ₹ 100 lakhs (one crore rupees).

If a person is carrying on business(es), coming within the scope of sections 44AE, 44BB or 44BBB but he exercises his option given under these sections to get his accounts audited under Section 44AB, tax audit requirements would apply, in respect of such business(es) even if the turnover of such business(es) does not exceed ₹ 100 lakhs (one crore rupees).

In the case of a person carrying on businesses covered by sections 44AE, 44BB or 44BBB and opting for presumptive taxation, tax audit requirement would not apply in respect of such businesses, if such person is carrying on other business(es) not covered by presumptive taxation, tax audit requirements would apply in respect thereof if the turnover of such business(es), other than the business covered by presumptive taxation thereof, exceed ₹ 100 lakhs (one crore rupees).

The first proviso to section 44AB stipulates that the provisions of that section will not be applicable to a person who derives income of the nature referred to in sections 44B, or 44BBA. Where the assessee is carrying on any one or more of the businesses specified in section 44B or 44BBA referred to in the first proviso to section 44AB, the sales/turnover/gross receipts from such businesses shall not be included in the total sales/turnover/gross receipts for determining the applicability of section 44AB.

The report of such audit, duly signed and verified by the chartered accountant is required to be given in such form and setting forth such particulars as prescribed by the Board. Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB as may be applicable and the statement of particulars should be given in Form No.3CD.

A question may arise in the case of an assessee who is eligible to claim deductions under sections 80-IA, 80-IB, 80-IC etc., as to whether, it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under Section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the consolidated accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether

situated at one place or at different places. If turnover of all the units put together exceeds prescribed limits, the assessee would be required to get a separate audit report/certificate under above said sections he wants to avail deduction under the respective sections. Therefore, it will be necessary for an assessee to get separate audit reports/certificates under above said sections in addition to an audit report, if any, required under section 44AB.

#### AMENDMENTS IN FORM 3CD

- **Clause (4), Details as to Indirect Tax Registration:** Part A of Form No. 3CD generally requires the auditor to ensure whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and service tax, custom duty, etc. If yes, please furnish the registration number or GST number or any other identification number allotted for the same. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.
- **Clause 19: Amounts admissible under sections:**

Section:	Amount debited to profit and loss account:	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions. If any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf:
32AC, <b>32AD</b> , 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E.		

- **Clause 29 A : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub section (2) of section 56**

**(b) If yes, Please Furnish Following Details**

Sr. No.	Nature of Income	Amount thereof

**Clause 29 B : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub section (2) of section 56**

**(b) If yes, Please Furnish Following Details**

Sr. No.	Nature of Income	Amount

**Audit checklist for practical understanding :**

- (a) This provision is applicable where a company has issued shares during the year. This can be checked from the Financial Statements/Share Register/ MCA records etc.
- (b) Clasue 29(A) The tax auditor should obtain a certificate from taxpayer regarding all such advances received towards transfer of capital asset which have been forfeited during the year. The advances might have been received during the previou year or earlier years. The auditor should examine whether any such advances have been written back during the year and examine basis for written back of such advances and determine whether such written back was on account of forfeiture.
- (c) Clause 29(B) With effect from assessment year 2019-20, in case of an immovable property, where the stamp duty value exceeds the consideration by less than the higher of (i) ₹ 50,000 or (ii) 5% of the consideration, the difference is not chargeable to tax. Therefore, for any immovable property, where the stamp duty value is up to 105% of the sale consideration, no addition can be made under section 56(2)(x). Till assessment 2018-19, the permissible difference was only ₹ 50,000 per property, and was not linked to the percentage of the consideration.
- (d) The tax auditor should obtain a certificate from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein.
- (e) In case of other assets, the provisions of rule 11UA(1) read with rule 11U are to be followed for determination of the fair market value, to compute the income under this section.

(f) Wherever there is a dispute or doubt as to the valuation of an asset, it would be advisable for the tax auditor to request the assessee to obtain a valuation report from a registered valuer. The report of the tax auditor may then be based on such valuation report.

- Clause 30A. (a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes/No)
  - (b) If yes, please furnish the following details:-
    - (i) Under which clause of sub-section (1) of section 92CE primary adjustment is made?
    - (ii) Amount (in ₹) of primary adjustment:
    - (iii) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)
    - (iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)
    - (v) If no, the amount (in ₹) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

A new clause 30A has been introduced, requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under section 92CE. Section 92CE, providing for secondary transfer pricing adjustments, has been introduced by the Finance Act 2017, with effect from assessment year 2018-19.

The section requires making of a secondary adjustment in certain cases where primary transfer pricing adjustments have been made. These cases are where transfer pricing adjustment has been:

- i. made by the taxpayer of his own accord in his return of income;
- ii. made by the assessing officer and accepted by the taxpayer;
- iii. determined under an Advance Pricing Agreement entered into by the assessee under section 92CC;
- iv. made as per Safe Harbour Rules framed under section 92CB; or
- v. arising as a result of a resolution of an assessment under Mutual Agreement Procedure under a double taxation avoidance agreement (DTAA) entered into under section 90 or 90A.

No secondary adjustment is required if the amount of primary adjustment made in any previous year does not exceed ₹ 1 crore.

Due to the primary adjustment, if there is an increase in the total income or a reduction in the loss of the assessee, the adjustment (difference between the arm's length price and the actual transaction price) is regarded as excess money available with the associated enterprise, and is to be repatriated to India within the prescribed time. Rule 10CB provides for a time limit of 90 days for repatriation of the excess money. Where the excess money is not repatriated to India within the prescribed time, it is deemed as an advance to the associated enterprise and interest is to be computed on such advance in the prescribed manner, as a secondary adjustment.

Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions, and not in respect of domestic transfer pricing adjustments.

Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus the tax auditor is required to verify whether any primary adjustment is 'made' in terms of S. 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration.

Primary adjustments which do not warrant secondary adjustments should also be reported.

**Audit checklist for practical understanding :**

- For this purpose, the tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return/(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence.
- With respect to reporting of interest income computed, there is an ambiguity whether interest income computed till the end of the previous year is to be reported or whether interest income computed up to the date of furnishing Form 3CD.
- In case interest upto to the date of filing is given, it is advisable for the tax auditor to provide breakup of the amount of interest imputed till end of relevant previous year and for the period post the end of the relevant previous year ending with the date of filing Form 3CD.
- It is advisable all the secondary adjustments made during the year irrespective of the previous year the primary adjustment is made is to be reported to avoid difference between the amounts reported in Form 3CD and the income tax return.

- **Clause 30B – Limitation on Interest Deduction**

**30B. (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)**

**(b) If yes, please furnish the following details:-**

- (i) Amount (in ₹) of expenditure by way of interest or of similar nature incurred;
- (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in ₹);
- (iii) Amount (in ₹) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above;
- (iv) Details of interest expenditure brought forward as per subsection (4) of section 94B: A.Y. Amount (in ₹)
- (v) Details of interest expenditure carried forward as per subsection (4) of section 94B:

Assessment Year	Amount

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The excess interest is to be computed as the lower of:
(i) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA") of the borrower in the previous year; or
(ii) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, is allowed to be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this section.

- **Clause 30C\*. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)**

(b) If yes, please specify:—

- (i) Nature of impermissible avoidance arrangement;
- (ii) Amount (in ₹) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement;

**\*Note : Applicability of Clause 30C is deferred to March 31, 2020.**

- Clause 31 (a)\*: Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-
  - (i) name, address and permanent account number (if available with the assessee) of the lender or depositor;
  - (ii) amount of loan or deposit taken or accepted;
  - (iii) whether the loan or deposit was squared up during the previous year;
  - (iv) maximum amount outstanding in the account at any time during the previous year;
  - (v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
  - (vi) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

**\*(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)**

Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As per this section, no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,-

- (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
- (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
- (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more.

For the purposes of section 269SS "loan or deposit" means loan or deposit of money.

If the total of all loans/deposits from a person exceed ₹ 20,000 but each individual item is less than ₹ 20,000, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches ₹ 20,000 or more and until the balance goes down below ₹ 20,000. As such the tax auditor should verify all loans/deposits taken or accepted where balance has reached ₹ 20,000 or more during the year for the purpose of reporting under this clause.

- Clause 31 (b): Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-
  - (i) name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;
  - (ii) amount of specified sum taken or accepted;
  - (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
  - (iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

- Clause 31 (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-
  - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
  - (ii) Nature of transaction;
  - (iii) Amount of receipt (in ₹);
  - (iv) Date of receipt;
- Clause 31 (bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—

- (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
- (ii) Amount of receipt (in ₹);
- Clause 31 (bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-  
  - (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
  - (ii) Nature of transaction;
  - (iii) Amount of payment (in ₹);
  - (iv) Date of payment;
- Clause 31 (bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—  
  - (i) Name, address and Permanent Account Number (if available with the assessee) of the payee;
  - (ii) Amount of payment (in ₹);

(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017”

Section 269ST was introduced by the Finance Act, 2017 with effect from 1 April 2017. It provides that no person shall receive sum of ₹ 2 lakh or more

- a) in aggregate from a person in a day; or
- b) in respect of a single transaction; or
- c) in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or an account payee demand draft or by use of electronic clearing system through a bank account.

Contravention of section 269ST attracts penalty under section 271DA. The new sub-

clauses 31(ba), (bb), (bc) and (bd) deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 2 section 269ST. Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or ₹ specified sum' referred to in section 269SS. 'Specified sum' means any sum of money receivable, whether as an advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. (Refer clause (iv) of the Explanation below section 269SS.)

New sub-clauses have been introduced under Clause 31 which deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in Section 269ST.

The particulars required under these sub-clauses need not be given in case of a receipt by or a payment to a government company, a banking company, a post office savings bank, cooperative bank or in the case of transactions referred to in Section 269SS or in the case of persons referred to in the Notification. Effectively, particulars are not required to be furnished of transactions to which provisions of Section 269ST do not apply. It may be noted that neither Section 269ST nor the notifications issued under this section exclude a government company from the application of the provisions of Section 269ST. However, in view of the note under the sub-clauses, particulars required under these sub-clauses need not be given in case of a government company. On the other hand, provisions of Section 269ST do not apply to any receipt by the government. However, the note under sub clauses does not specifically refer to receipt by or payment to the government. Considering the provisions of Section 269ST, particulars of the payments made to the government need not be included and a suitable note may be given to the effect that details of payments made to government have not been included in the particulars.

Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, new sub-clauses do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified, the particulars of such transactions will have to be reported under these clauses.

While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in Section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on the facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether

the receipts/payments are pertaining to a single transaction.

Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.

If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt of payment. The tax auditor will have to classify the receipt or the payment, as the case may be, as under:

- Otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account
- By cheque or bank draft not being an

account payee cheque or an account payee bank draft.

Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under, although the same is not required to be reported. Where payment is made by cheque or demand draft, there will be practical difficulties in verifying whether the relevant receipt or payment is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the ICAI in similar cases to the tax auditors is to be followed. The tax auditor, in his report, may make suggested comment while reporting.

The tax auditor should maintain the specified information in his working papers for the purpose of reporting of receipts.

- **Clause 31(c): Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:-**
  - (i) name, address and Permanent Account Number (if available with the assessee) of the payee;
  - (ii) amount of the repayment;
  - (iii) maximum amount outstanding in the account at any time during the previous year;
  - (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
  - (v) in case the repayment was made by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limits specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loans or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. The tax auditor should verify such repayments and report accordingly.

- **Clause 31 (d): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year:-**
  - (i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;
  - (ii) amount of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.
- **Clause 31 (e):Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:**
  - (i) name, address and Permanent Account Number (if available with the assessee) of the lender, or depositor or person from whom specified advance is received;
  - (ii) amount of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act).

- **Clause 36A:**
  - (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of Section 2.
  - (b) If yes, please furnish the following details :-

In order to enable reporting under the new Clause 36A, the tax auditor should obtain from the taxpayer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10 per cent of the voting power and list of concerns in which he has a substantial interest.

The tax auditor should also obtain a certificate from the taxpayer giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is a beneficial owner of shares carrying not less than 10 per cent voting power.

These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the taxpayer. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the taxpayer. These remarks may be included in Form No. 3CA/3CB.

The tax auditor should also verify Form 26AS in the case of the taxpayer to know if the closely held company has deducted tax at source from any payment made by it to the taxpayer or the concern under Section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.

So far as any payment by the closely held company made on behalf of or for the individual benefit of the taxpayer is concerned, there may not be any record available for the auditor to verify the same. In such a case auditor may make appropriate remarks in Form No. 3CA/3CB. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the taxpayer in his capacity, say, as the managing director of the closely held company and if such payment has been considered as part of the taxpayer's remuneration, the same payment is not again chargeable to tax under Section 2(22)(e) and is not required to be reported under this clause.

Whether an amount is chargeable to tax as dividend under Section 2(22)(e) has always been a subject matter of litigation before various judicial forums. The tax auditor needs to consider various issues while reporting under this clause, e.g. wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make an appropriate remark about the basis of reporting in Form No. 3CA/3CB.

Further, the tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. The tax auditor will not have access to the records of such closely held company, the payment would often be during the course of a financial year and accounts will not have been made up as of the date of payment. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case the auditor should include appropriate remarks in Form No. 3CA/3CB about the methodology adopted by him.

Business advance or trade advances from closely held companies to the taxpayer or concerns in which the taxpayer has a substantial interest are out of the purview of Section 2(22)(e) and need not be reported dividend under this clause of Form No. 3CD.

The taxpayer or the concern may maintain two accounts of the closely held company in its books of account. Amounts received from the closely held company and the amount receivable from the closely held company may be accounted in two separate accounts. In such a case the tax auditor will have to consider whether, for reporting under this clause only net amount should be considered.

The taxpayer or the concern may have a current account of the closely held company in its books of account. In such a case there could be various transactions accounted for in such a current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the taxpayer or the concern.

Considering various judicial decisions, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in Form No. 3CA/3CB.

It may be noted that any payment made after 1 April 2018 which satisfies the conditions of Section 2(22)(e), would be subject to Dividend Distribution Tax (DDT) under Section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

- **Clause 42 (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**

**(b) If yes, please furnish:**

S. No.	Income Tax Department Reporting entity Identification No.	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the form contains information about all details/transactions which are required to be reported	If not please furnish list of the details/transactions which are not reported

New Clause 42 has been introduced where the tax auditor has to report that whether the taxpayer is required to furnish a statement of the specified financial transaction (in Form No.61 or Form No. 61A or Form No. 61B).

With respect to Form 61, the tax auditor should verify whether the taxpayer has entered into any transaction where the other party was required to quote PAN. He should verify whether the taxpayer has obtained declaration in Form No. 60 where the other party has not furnished his PAN. Wherever the taxpayer has received declarations in Form No. 60,

the auditor should verify if the taxpayer has filed Form No. 61 including therein all the necessary particulars.

With respect to Form 61A, the tax auditor should ascertain whether the taxpayer is required to report any transactions under Section 285BA read with Rule 114E. It may be noted that specified transactions under Section 285BA include the issue of bonds, issue of shares, buy-back of shares by a listed company, etc. These transactions may not happen every year and hence special attention should be given in the year when a company taxpayer issues any security or a listed company undertakes buyback of shares.

While verifying the same, the tax auditor should ensure that the provisions of Rule 114E(3) have been properly considered and applied.

Failure to do so may result in a certain transaction not being reported. It may be noted that the payment may be received for various transactions and on different dates, and hence these may not be covered under Section 269ST but will have to be reported under Section 285BA.

With respect to Form 61B14, the tax auditor should review the due diligence procedures carried out by the taxpayer in accordance with provisions of Rule 114H and the results of such procedures. The tax auditor should review the list of Reportable Accounts identified by the due diligence process and the information to be maintained and reported by the taxpayer.

In case any reportable account has been omitted, or there is any error or omission in Form 61B, the same may be reported under the Form No. 3CD. The auditor should verify if the taxpayer has filed Form No. 61B for correcting errors or omissions in the form filed originally. In such a case the auditor should give details of both the forms filed. The errors in the original Form 61B which are corrected in the revised Form 61B need not be reported under Form No. 3CD.

The tax auditor should verify that Form 61B is duly signed by the designated director and filed.

- **Clause 43 (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in subsection (2) of section 286 (Yes/No)**
  - (b) **if yes, please furnish the following details:**
    - (i) **Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity**
    - (ii) **Name of parent entity**
    - (iii) **Name of alternate reporting entity (if applicable)**
    - (iv) **Date of furnishing of report**

Clause 43 has been newly introduced in Form No. 3CD. The Finance Act, 2016 by introducing Section 286 in the Act, has introduced provisions relating to the Country by

Country Report (CbCR) and Master File pursuant to the adoption of OECD's Base Erosion and Profit Shifting (BEPS), Action Plan 13 in India.

Under Section 286, an international group has to furnish CbCR containing information about the whole group comprising of various constituent entities.

Such a report is to be filed in India if the parent entity is resident of India or the international group has appointed a constituent entity which is resident in India to file CbCR on behalf of the whole group.

The report under Section 286(2) is filed by the parent entity which is resident in India or the alternate reporting entity which is resident in India.

For tax audit for the assessment year 2018-19, the tax auditor should comment upon report Section 286(2) that was required to be filed on or before 31 March 2018.

The tax auditor should verify if the taxpayer is required to file the Form 3CEAC based on the satisfaction of the conditions prescribed

The tax auditor should also verify if the taxpayer whose parent is a non-resident has filed Form No. 3CEAC.

The tax auditor may obtain a necessary certificate from the taxpayer in respect of constitution of the international.

- **Clause 44\*. Break-up of total expenditure of entities registered or not registered under the GST:**

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure in respect of entities registered under GST Expenditure
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

**\*Note: Applicability of Clause 44 is deferred till March 31, 2020.**

## **B. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS**



The GST roll out on 1<sup>st</sup> July 2017 has paved the way for realization of the goal of “one nation-one tax-one market”. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

**Objective of GST Audit:** The objective of the GST audit can be ascertained from the definition of Audit given in Section 2(13) of Central Goods and Services Tax Act, 2017(CGST Act). The said definition reads as follows:

*“audit means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made there under.”*

From the above, it can be deduced that:

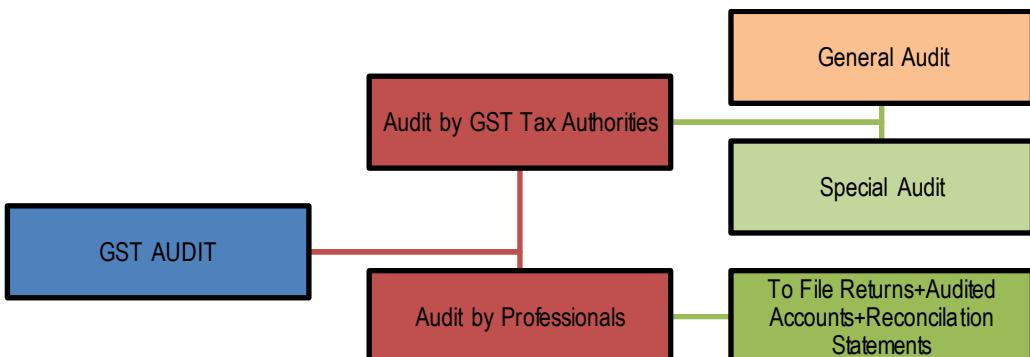
- (a) Audit is examination of records, returns and other documents;
- (b) Those records, returns and documents might have been maintained or furnished under GST Law or any other law;
- (c) The examination is to verify the correctness of
  - (i) Turnover declared;
  - (ii) Taxes paid;
  - (iii) Refund claimed; and
  - (iv) Input tax credit availed;
- (d) The examination is also to assess auditee's compliance with the provisions of GST Act and Rules.

All this makes it clear that the objective of GST is to ensure the correctness of Turnover declared, Taxes paid, Refund claimed, and Input Tax Credit availed in addition to compliance of the GST Act and Rules. The intent is that the compliance of the GST law has to be confirmed by the GST audit.

## 1 Types of Audit under GST

GST envisages three types of Audit.

- (1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]
- (2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]
- (3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]



### 1.1 Threshold for Audit:

Section 35(5) begins with the expression “every registered person whose **turnover** during a financial year exceeds the prescribed limit” whereas the relevant Rule 80(3) uses the expression “every registered person whose **aggregate turnover** during a financial year exceeds **two crore rupees**”. It must be noted that the word **turnover** has not been defined whereas the expression **aggregate turnover** has been defined. One may note that the expression **turnover in State or turnover in the Union territory** is defined. In this backdrop the following understanding is relevant:

- (a) Aggregate turnover is PAN based while turnover in a State/UT, though similarly worded, is limited to turnover in a State / UT, which is limited to a State;
- (b) It is therefore, reasonable to interpret that the word turnover used in Section 35(5) ought to be understood as aggregate turnover.

(c) For the financial year 2017-18, the GST period consists of 9 months whereas the relevant Section 35(5) uses the expression financial year; Therefore, in the absence of clarification from the government, and to avoid any cases of default, it is reasonable to understand that to reckon the turnover limits prescribed for audit i.e., ₹ 2 crores one has to reckon the turnovers for the whole of the financial year which would also include the first quarter of the financial year 2017-18.

### 1.2. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

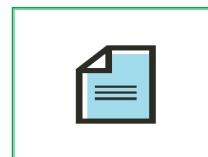
As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

<p>(i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores.</p>	<p>Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Audited annual accounts</li> <li><input type="checkbox"/> A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.</li> </ul>
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**Reconciliation Statement** will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.



## reconciliation



Value of supplies declared in  
Annual return

Value of supplies declared in audited  
Annual Financial Statement

### 1.3. Audit under section 65:

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

### 1.4. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act

is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- ✍ Value has not been correctly declared; or
- ✍ Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

**Circumstances for Notice for Special Audit:** An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of Rule 102 (1) FORM GST ADT -03

The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

**Time Limit to Submit the Audit Report:** The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) FORM GST ADT-04.

**Extension in Submission of Audit Report:** In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

Considering the special nature of this audit, i.e. audit having been conducted under other proceedings or under other laws; this does not preclude the proper officer from exercising this option.

While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

### 1.5 Preparation for the GST Audit:

To start with, the following (among others) are the various steps an auditor can take in connection with the forthcoming GST audit:

- (a) Inform the concerned assessee about the applicability of the GST audit;
- (b) Confirm the eligibility to be the GST auditor under the related legislation;
- (c) Understand the nature of business, the products or services, requirements of records to be maintained, and advise the auditee to maintain accounts and records so required, beforehand;
- (d) Prepare a questionnaire to understand the operations / activities of the auditee, and specifically develop questions on those issues on which the GST law would have a bearing
- (e) Preparation of the detailed audit program and list of records to be verified;
- (f) Host of relevant reconciliations.

**Expenses for Examination and Remuneration for Audit:** The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

During the course of audit, the registered person to afford the auditor with the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the CGST Rules on Assessment and Audit Rules, the auditor shall verify the documents on the basis of which the accounts are maintained and the periodical returns/statements are furnished. While conducting the audit, the auditor is authorized to:

- Verify books & records
- Returns & statements
- Correctness of turnover, exemptions & deductions
- Rate of tax applicable in respect of supply of goods and/or services
- The input tax credit claimed/availed/unutilized and refund claimed.

Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused.

This could be done by verifying:

- (a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.
- (b) The Information System Audit report and the internal audit report.
- (c) Internal Control questionnaire designed for GST compliance.
  - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.
  - (ii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.
  - (iii) The review of the gross trial balance for detecting any incomes being set off with expenses.
  - (iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
  - (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
  - (vi) Ratio analysis could provide vital clues on areas of non-compliance.

#### **Consequences of failure to submit the annual return and not getting the accounts audited:**

Section 47(2) provides that in case of failure to submit the annual return within the specified time, a late fee shall be leviable. The said late fee would be ₹ 100 per day during which such failure continues subject to a maximum of a quarter percent of the turnover in the State/UT. There would be an equal amount of late fee under the respective State/UT GST law.

However, there is no specific penalty prescribed in the GST Law for not getting the accounts audited by a Chartered Accountant or a Cost Accountant. Therefore, in terms of Section 125 of CGST Act he shall be subjected to a penalty of up to 25,000/- . This section deals with the general penalty that gets attracted where any person, who contravenes any of the provisions this Act, or any rules made thereunder for which no penalty is separately provided. Similar provision also exists under the State/UT GST law as well. It is possible that since the return is to be accompanied with the report, if not done it may amount to non-filing of return and late fee also may be levied.

#### **1.6. Audit Approach**

There are no prescribed or specified approaches for conducting audit under the GST laws. Similarities can be drawn between a GST Audit and / or Tax Audit under Section 44AB of the Income-tax Act and audit under the Companies Act. The GST Auditor is not required to express his opinion on truth and fairness of the financials when it is audited by others. In any case, he

is required to certify the correctness and completeness of certain reconciled data. The verification would necessarily have to be substantially more than the opinion on truth and fairness.

In this background certain time-tested methods of conducting an audit have evolved into guidelines, which among others are as follows:

- (a) Obtaining prior knowledge of the business and comparing them with similar businesses;
- (b) Preparing a master file of the clients (permanent master file);
- (c) Discussing on with the audit team on the methodology to proceed with the audit;
- (d) Studying and evaluating systems (including business systems) and internal control of the business entity;
- (e) Assessing the audit risks and deploying of suitable personnel;
- (f) Assessing the risk appetite of the business entity;
- (g) Preparing of an audit plan / audit program and conducting the audit accordingly;
- (h) Reviewing meetings with the audit team;
- (i) Drawing conclusions on the basis of audit evidence obtained in the course of conducting the audit and a discussion with the client on the observations and findings;
- (j) Discussing with the registered person and obtaining various management certificates;
- (k) Reporting the observations in the prescribed statutory format, if any, or evolving a suitable format of reporting;
- (l) Maintaining Audit working papers file (Filing of documents either in permanent file or working papers file);
- (m) Concluding the audit and intimating the management.

### **1.7. Accounting Standard Vs. GST**

The auditor should also take into account the accounting standards followed at the time of preparation of financial statements. There could be differences in the manner of accounting treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. Some of the differences are:

- Supplies on behalf of the principal are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover.
- Under the Accounting Standard 19 in the case of finance lease, in the books of the lessor, the cost of the asset is recorded as a receivable whereas in the books of the lessee, it would be recorded as an asset purchased. However, under the GST, the cost of the asset would be recorded as a purchase and the fair value of the asset would not be recorded in the books of the lessee as a purchase. In the case of the lessor, only the financial charges

would be treated as revenue as per the AS, whereas under the GST, the entire amount would be treated as revenue. Similarly, as per the Accounting Standard, in the case of lessee, the amount of lease rentals would be bifurcated into interest charges and liability, whereas under the GST, the entire amount would be treated as expense.

The above is only illustrative and there could be many more cases of differences in the turnovers between the financial statements and the GST Law.

### **1.8. GST Audit in Computerised Environment**

Compliances under the GST law are dependent upon technology because transactions are numerous. It is not only the Government which has adopted technology; businesses too have adopted technology at different levels to meet the compliance requirement.

In the GST regime, Information Systems have become an integral part of enterprise day-to-day operation, such as return filing, payment of taxes, rectification of returns filed, reconciliation of multiple returns GSTR 1, GSTR 2A, GSTR 3B, e-Way Bill, GSTR 9 etc. The increased usage of technology has pitfalls when sufficient controls are not built within. The primary responsibility of the GST Auditor is to assess the entire Computerized Information System (CIS) environment and get macro perspective of data availability and systems reliability.

Unlike the traditional audit methodology which involved manual process of checking and verification, the GST audit processes for larger assesses is carried out by using Computer Systems and Technology. For example, verification for the matching of Input Tax Credit availed with the Outward Supply declared by the supplier being large in numbers, cannot be done manually. Hence different computerized tools and methods have to be used for the purpose.

Though it is clear that computerized tools and methods have to be used for conducting the audit, at the same time it is important that the Auditor is aware of such computerized environment which can be called Computerized Information System (CIS) Environment, and the audit risks involved therein.

GST Auditor should also try to know whether the computer of any type or size used by the entity for processing financial information is important for the purposes of audit, and if it is operated by the entity or by a third party.

Controls can be classified based on whether they are, preventive, detective or corrective or based on some other parameters like physical, logical or environmental. More classifications are also possible, based on the assets they protect.

### **1.9 Audit Planning**

The auditors should obtain an understanding of the organization Internal Process of

- (a) accounting of Transactions
- (b) reporting to the GSTN Portal
- (c) reconciliation of filed data and
- (d) internal control systems implemented

To plan the audit and develop an effective audit approach to meet audit requirements.

In planning the portions of the audit which may be affected by the client's CIS environment, the auditors should obtain an understanding of the significance and complexity of the CIS activities and the availability of data for use in the audit.

### **Preliminary Review**

Before starting his work, the GST Auditor shall conduct a preliminary review to assess the CIS controls and the risks that could impact his work by considering the following points:

- Knowledge of the Business
- Understanding the technology deployed
- Understanding Internal Control System
- Risk assessment and Materiality

### **1.10. Various Returns Under GST**

Following are the various forms to be filed under GST Act

- **GSTR 9:** GSTR 9 should be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3
- **GSTR 9A:** GSTR 9A should be filed by the persons registered under composition scheme under GST.
- **GSTR 9B:** To be filed by e-commerce operators
- **GSTR 9C:** Should be filed by the taxpayers whose annual turnover exceeds ₹ 2 Crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts alongwith GSTR 9C.

#### **GSTR 9 - Annual Return Filing, Format, Eligibility & Rules**

GSTR 9 form is an annual return to be filed once in a year by the registered taxpayers under GST including those registered under composition levy scheme. It consists of details regarding the supplies made and received during the year under different tax heads i.e. CGST, SGST and IGST. It consolidates the information furnished in the monthly/quarterly returns during the year.

All the registered taxable persons under GST must file GSTR 9 form. However, the following persons are **not** required to file GSTR 9

- Casual Taxable Person
- Input service distributors
- Non-resident taxable persons
- Persons paying TDS under section 51 of GST Act

### Details required in the GSTR 9

Sr. No.	Parts of GSTR – 9	Information Required
1.	<b>Part – I</b>	Basic details of the taxpayer. This detail will be auto-populated.
2.	<b>Part – II</b>	Details of Outward and Inward supplies declared during the financial year(FY). This detail must be picked up by consolidating summary from all GST returns filed in previous FY.
3.	<b>Part – III</b>	Details of ITC declared in returns filed during the FY. This will be summarised values picked up from all the GST returns filed in previous FY.
4.	<b>Part – IV</b>	Details of tax paid as declared in returns filed during the FY.
5.	<b>Part – V</b>	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual returns of previous FY whichever is earlier. Usually, the summary of amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here.
6	<b>Part – VI</b>	Other information comprising details of : GST demands and refunds, HSN wise summary of the quantity of goods supplied and received with its corresponding Tax details against each HSN code, Late Fees payable and paid details, segregation of inwards supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.

### Analysis of GSTR 9C

Form GSTR 9C is the relevant form prescribed in terms of Rule 80(3) of the CGST Rules. This has two parts to it: Part A titled the “Reconciliation Statement” and Part B is the Certification portion. Part I captures the basic details of the Registered Person under Part A (Reconciliation Statement) which has 4 Sl. Nos. Each of the Sl. Nos is significant in terms of the disclosure requirement.

### Comparative view of Form GSTR-9 and GSTR 9C

Sr. No.	Return in GSTR 9	Return in GSTR 9C
1.	It is the report of a formal or official character giving information	Means the formal statement to be made under the provisions of the Act the veracity of which needs an enquiry as to its correctness
2.	Prescribed under a Statute	Prescribed under a Statute

3.	To be filed by all registered persons	To be filed only if the aggregate turnover in a financial year exceeds ₹ 2 Crores.
4.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Unique Identification Number Holders, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Unique Identification Number Holders, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.
5.	No need to annex financials	Financials to be annexed
6.	A plain reading of the relevant provisions indicate that the said Annual Return in GSTR 9 and the Reconciliation Statement in GSTR 9C must be filed together. However, if one were to peruse GSTR 9C there are certain tables which state that "turnover as declared in annual return" indicating thereby that GSTR 9C is dependent on GSTR 9. This anomaly can be addressed only on the basis of the finalized annual return initialled and presented to the GST auditor by the registered person.	

#### Analysis of Form GSTR 9C

##### PART-I - Sl. No. 1 : Financial Year

This Sl. No. requires disclosure of the "financial year" to which the Reconciliation Statement in Part A relates to. The expression financial year has not been defined under the GST laws. However, in terms of the General Clauses Act "financial year" shall mean the year commencing on the 1st day of April and closing on the 31st day of March.

##### Part I - Sl. No. 2 : GSTIN

GSTIN means the "Goods and Services tax Identification Number" of the tax payer or the Registered Person. Each tax payer, on his successful registration, would be assigned a State-wise PAN based 15-digit GSTIN. The first 2 digits of the said GSTIN would represent the State code, as per the Indian Census 2011 viz., Karnataka 29, Delhi 07 etc. The next 10 digits would be the PAN of the tax payer. It implies that if one is not allotted a PAN, he cannot be registered under the GST Laws. The 13th digit would be based on the number of registrations within a State, while the 14th digit would be assigned based on the nature of the business of the Registered person. The 15th digit is a check code which can be a "numeral" or an "alphabet".

In the case of a Non-resident taxable person ("NRTP"), Rule 13 of the CGST Rules permits registration even without PAN. In such case, registration shall be granted based on the tax identification number or unique number on the basis of which the entity is identified by the Government where the said entity is based.

GSTIN based on PAN ought to be validated. As and when such errors are noticed during the GST audit, the GST Auditor should disclose such information appropriately. He must also consider other implications due to such errors.

#### **Part I - Sl. No. 3A and 3B: Legal Name and Trade Name**

The word “trade” used in Sl.No. 3B of Part A may not be limited to occupation or business. It could be a connotation. The word “trade” ought to be understood in its ordinary sense, without any reference to “business”. For instance, “Indigo” could be a trade name while the legal name is “InterGlobe Aviation Limited”.

Therefore, understood, trade name is used by trade and industry to identify their businesses symbolizing their reputation. Caution must be exercised in listing the trade name and legal name in Sl. Nos. 3A and 3B.

It is possible that some Registered Persons may not have a trade name. In such situations, Sl.No. 3B of Part A would not be applicable. Therefore, NOT APPLICABLE is to be stated in Part A which could be verified from the <>auto populated>> data.

The legal name and trade name ought to be verified with the certificate of registration issued by the tax department in Form GST REG – 06. Similarly, if the Registered Person is a company registered under the Companies Act, 2013, the legal name / trade name can be verified with the Certificate of Incorporation and in case of partnership firm by the certificate issued by the Registrar of Firms.

Therefore, the distinction between a trade name and a legal name must be clearly understood and borne out in Sl.No. 3A and 3B of Part A, and should not be used interchangeably.

#### **Part I - Sl. No. 4 : Are you liable to audit under any Act?**

The Sl. No. “Are you liable to audit under any Act?” mentioned in GSTR 9C needs elaboration. It is possible that an entity could be subjected to audit under several statutes. For instance a Proprietary Concern could be subject to audit under the Income tax Act, 1961 and a Private Limited Company could be subject to the

statutory audit under the Companies Act, 2013 as well as under the Income tax Act. Similarly, a society registered under the Societies Registration Act may be subject to audit under that Act as well as under the Income tax Act. This fact must be specified in Sl. No. 4. It is currently not clear if the response to this question would be YES / NO or would be to select from a drop-down menu the statute under which the tax payer has been subjected to audit.

#### **Part II - Sl. No. 5A: turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)**

Sl. No. 5A is intended to report the turnover as per the audited Annual Financial Statement for a GSTIN. There may be cases where multiple GSTINs (State-wise) registrations exist for the same PAN. This is common for persons / entities with presence over multiple States or in respect of multiple registration in a single State/UT. The Government vide its instructions has indicated

that such persons / entities would have to internally derive their GSTIN wise turnover and provide to the Auditor to verify and declare in this Sl. No.

The Auditor must bear in mind that in a real business environment several entities may not be in a position to provide such derived turnovers. In such a situation, the Auditor has to engage suitably himself and carryout this exercise.

**Checks and balances to validate correctness and completeness:**

To ensure completeness and correctness of the details of turnover to be declared under this Sl.No., the following checks could be used:

1. turnover in State/UT (in case of single registration) must reconcile to the turnover disclosed in the audited financial statements;
2. turnover in State/UT (in case of multiple registration) must reconcile to the turnover as recorded in the books of accounts of each registration;
3. Master reconciliation to ensure that the details of turnover declared for different registrations (in case of multiple registrations either due to presence in multiple States/UTs' or due to unit(s) in SEZ) with the total turnover of the entity

**List of documents**

The following list of documents could be obtained by the Auditor for the purpose of declaring the details of turnover under this Sl. No.:

- a. Annual Financial Statements
- b. Registrant wise Trial Balance to facilitate furnishing the Form GSTR 9C for each registrant;
- c. Communication with the other Auditor to obtain details of the turnover declared by them to ensure completeness and holistic reconciliation of turnover of the Registered Person;
- d. Form GSTR 9C, if already filed by a different Auditor, in case of multiple registrations of the Registered Person;
- e. GST (Mz. Form GSTR 3B and Form GSTR 1) returns filed by the Registered Person to ensure that the turnover declared in the returns match the turnover captured in the audited financial statements
- f. Income tax Returns (ITR) to ensure that the turnover details are reconciled with the turnover per GST.

**Sl. No. 5B. Unbilled revenue at the beginning of Financial Year**

To comprehend the scope of these Sl. Nos, there is need to understand the concept of 'Unbilled revenue'. In simple terms, unbilled revenue is the revenue recognized in the books of accounts before the issue of an invoice at the end of a particular period. Accounting Standard- 9 / IND AS 115 provides for recognition of revenue on full completion / partial completion of the services though the due date for issuing invoice as per the contract would be on a later date. It is advisable to refer to AS-9 / IND AS 115 for a better understanding of the concept.

Clause 5B requires the addition of unbilled revenue at the beginning of a Financial Year. Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting in the earlier financial year for which the invoice is issued under the GST law is required to be declared here. In other words, when GST is payable during the financial year on such revenue (which was recognized as income in the earlier year), the value of such revenue is to be declared here.

Unbilled revenue would appear in the profit and loss account of the previous year. For information of unbilled revenue at the beginning of a Financial Year, reference may be made to previous year's audited financial statements. However, as the GST was introduced from 1<sup>st</sup> July 2017 one needs to be careful to exclude invoices raised during the period April 2017 to June 2017 from the computation.

#### **SI. No. 5C Add: Unadjusted advances at the end of the Financial Year**

The scope of Part II SI No. 5C and 5I is to make adjustment of Unadjusted Advances to Audited Financials for arriving towards the GSTR 9 turnover.

It is a business practice to collect advances from customers before effecting supplies. When an advance is received, since the goods and / or services would not have been delivered / rendered, the revenue is not yet earned, whereby this advance would be recorded as a liability (either as current liability or long-term liability) in the balance sheet as at the end of the financial year.

#### **For Supply of Goods**

Sec 12(2): The time of supply of goods shall be the earlier of the following dates, namely: —

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-Section (1) of Section 31, to issue the invoice with respect to the supply; or
- (b) ***the date on which the supplier receives payment with respect to the supply:***

The Government issued NN 40/2017-CT dated 13th October 2017 in terms of Section 148 of CGST Act to relax Registered Persons having aggregate turnover less than ₹ 1.5 crores from paying tax on such advances. This facility was extended to all Registered Persons without threshold limit vide NN 66/2017-Central tax, dated 15th Nov 2017 but only in the case of supply of goods.

In terms of the above notifications, an Auditor has to examine whether the Registered Person has paid tax on advances till 15th Nov 2017.

#### **For Supply of Services**

CGST Section 13 (2)

The time of supply of services shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier; or

- (b) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31 or the **date of receipt of payment**, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Explanation—For the purposes of clauses (a) and (b)—

- the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Therefore, any advances received from customers before the date of supply, on receipt of advance GST, have to be discharged.

#### **Sl. No. 5D. Deemed Supply under Schedule I**

Clause 5D seeks to cover aggregate value of four classes of deemed supplies transactions specified under Schedule I of the CGST Act. Any deemed supply which is already reported as part of the turnover in the audited Annual Financial Statements is not required to be included in this Sl. No.

As the requirement of this Sl. No. is to report the transactions which were not reported in the financial statements, though the same are reported in the returns filed since they are treated as deemed supplies under the GST law, there is no direct source will indicate the value of deemed supplies under any part of the returns or statement filed. Details regarding this have to be extracted from the books/records.

E-Way bills raised would be a good guiding factor to identify such instances in respect of goods while an Auditor may have to delve deeper to understand the transactions relating to services. For instance, transactions relating to stock transfer of goods may be extracted from delivery challans or on an analysis of e-way bills, whereas transactions of service transfers will be based on an understanding of the nature business. It is better to take proper management representation for the completeness of these transactions.

The Auditor should look beyond the books of accounts and look for alternative evidence and information for reporting in Sl.No. 5D. Such as

1. Permanent Transfer or disposal of business assets where input tax credit has been availed on such assets
2. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.
3. Supply of goods-
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

#### **Disclosure by Auditor**

1. The Auditor has to assess the systems and processes adopted by the entity with a view to identifying such transactions. Suitable disclosure may need to be provided by the Auditor for the basis of such identification and its treatment under the GST Laws.
2. If there is any system / methodology for such an identification, then the Audit has to assess the completeness and correctness of the said system so as to cover all the aspects;
3. To examine records and to confirm if the system is followed consistently.
4. If there is no proper system, to consider the possibility of any transactions that may have escaped attention.
5. In cases of deemed supply transactions, it would be relevant to include suitable disclosures even in the management representation letter.

#### **SI. No.5E. Credit notes issued after the end of the financial year but reflected in the annual return.**

This SI. No. mandates reporting of the aggregate value of credit notes which were issued after Mar 31, 2018 in respect of any supply accounted in the current financial year (2018-19) but for credit notes were reflected in the annual return (GSTR –9 for the financial year 2017-18). But, it is uncommon, although not impossible, for credit notes dated beyond Apr 1, 2018 to be given effect in the financial accounts. This SI. No. applies only in such rare cases. For the most part, this SI. No. may well be 'nil'.

5E of GSTR 9C contains information pertaining to credit notes which were issued after 31st of March for any supply accounted in the current financial year but such credit notes were reflected in the annual return (GSTR-9).

#### **SI. No. 5F. Trade discounts accounted for in the audited Annual Financial Statement but are not permissible under GST**

Clause 5F requires disclosure of trade discounts which have been given effect to, in the audited financial statements but which are not permissible as part of deductions from the value of supply under the GST Laws.

This data / information can generally be obtained from the credit side of the Profit and Loss account. It is also a business practice that trade discounts would be netted off against the turnover of outward supplies. In the case of entities with multiple registration, a separate statement is to be obtained for each GSTIN reconciling the total with the amount disclosed in the financials.

Non-allowance of the same has to be identified on the basis of the documents maintained by looking into the conditions of allowance as deduction against the supply made as per Section 15(3) of the CGST Act.

Since it may be difficult to verify all the cases of trade discounts by the Auditor to consider the eligibility for deduction, it may have to adopt some other audit techniques to ascertain the same. Also, it would be important to obtain the appropriate management representation letter from the entity.

The following are the control checks that a person should perform for validation of the amounts reported under this head:

- (a) The valuation of trade discounts for the purposes of disclosures under this head, has to be clearly documented.
- (b) The input tax credit reflected in GSTR-2A attributable to such trade discounts has to be maintained.
- (c) The trade discount has to be demarcated between the supplies made in the erstwhile law and the GST regime.
- (d) The customer agreements have to be scrutinised to determine the quantum of nonallowable discounts.

#### **SI. No. 5G: turnover from April 2017 to June 2017**

In terms of this SI. No. the turnovers included in the audited financial statement for the period April 2017 to June 2017 shall be declared and deducted from the annual turnover to arrive at the turnover as per the GST Laws.

There could be cases where the books of accounts are closed quarterly, or financial statements are drawn up quarterly. In such cases, the quarterly turnovers can be adopted, and adjustments can be made relating to the point of taxation under the excise law, State level vat law and service tax law to arrive at taxable values as per the erstwhile laws. The said value must be entered under this head.

Turnovers forming part of the tax periods 1.4.17 to 30.06.17, which were *liable* to tax under the erstwhile laws as per the provisions relating to the point of taxation rules should be deducted from the turnover.

It may be noted that tax is liable to be paid on removal in case of excise/ on sale under VAT law/ on provision of service or issue of invoice as the case may be under service tax law provisions and not on accrual basis or cash basis (which is the basis of accounting and hence basis of annual turnover as per financial statements). Thus, the criteria for reducing turnover for the period April 2017 to June 2017 is not when the revenue was recognised as per relevant accounting standards, but whether or not the said amounts were liable to tax under the erstwhile laws as per the point of taxation under the said laws.

Amounts forming part of turnover relating to works contracts, where consideration was received during the period April 2017 to June 2017, but supplies were effected or services were rendered after June 2017, needs to be deducted under this SI. No. because the said consideration was liable to tax on receipt basis as per the service tax law and State level VAT laws. However, the self-same value needs to be added back in SI. No. 5(O), since the aforesaid supplies would be

liable to tax under the GST law also as per Section 142(11)(c). At this juncture, it is important to note that the relevant service tax and value added tax paid on such advances for which supplies are effected during the GST regime would be available as CGST / SGST credit as per section 142(11)(c) of the CGST Act.

It is opportune to mention at this stage that there is a saving clause in section 142(11)(a) and (b) of CGST/SGST Act, which states that transactions liable to VAT/ service tax would not be eligible to GST in case the provision of time of supply under the GST also stands attracted to the very same transaction. There is no such saving clause mentioned for excise duty (i.e. for goods manufactured and *cleared* from April 2017 to June 2017) but sold after June 2017 (e.g.: clearances made on sale or approval basis prior to July 2017, sold after July 2017). However, N.No.12/17 CE dt.30.6.17 grants exemption in the case of goods manufactured prior to 30.6.2017 but cleared/ supplied after 1.7.2017, provided GST is leviable on such goods.

### Illustration

Please specify which of the following supplies would form part of reporting under turnover for the period April 2017 to June 2017

(a) Services were provided during the period June 2017. The service was completed on 20.6.2017, but invoice for the service was raised only on 1.8.2017.

**Reply:** Since the invoice was raised after a period of thirty days, service tax is liable to be paid for the period ending June 2017 as per the proviso to Rule 3(a) of the Clause of Taxation Rules. Since the said transaction is liable to service tax, it is not liable to GST as per Section 142(11)(b) of the CGST Act, though the invoice is raised during the GST regime. Therefore, the said value of invoice must be deducted for the period April 17 to June 2017.

(b) Service has been provided in the month of May 17 amounting to ₹ 1,00,000/. Invoice has been raised within 30 days. There was a deficiency in the provision of service. The customer has paid only ₹ 20,000/. The company has issued credit note amounting to ₹ 80,000/- on 31.3.2018 and closed the customer's account. Should any amount be reduced for the period April 2017 to June 2017. Are any adjustments required to be made for the period July 2017 to March 2018?

**Reply:** As per S.142(2)(b) of the GST Act, where in pursuance of contract entered into prior to the appointed date, where the price of service is revised downwards after 1.7.2017 and the provider issues a credit note within 30 days of such price revision, such credit note shall be deemed to have been issued in respect of outward supply, provided the recipient has reduced his input tax credit. Assuming the input tax credit is reduced by the recipient, the credit note shall be reduced from outward supply for the tax period March 2018. Thus ₹ 80,000/- would be reduced from the GST turnover for the period of March 2018. The said amount of ₹ 80,000/- would be reduced from the turnover in the month of March 2018 because credit note is issued in the month of March 2018. Thus, only ₹ 20,000/- is required to be reduced for the period April 2017 to June 2017, though invoice for ₹ 1,00,000/- is

issued in the month of May 2017 and service tax is paid on ₹ 1,00,000/- in the month of May 2017.

**SI. No. 5H. Unbilled revenue at the end of Financial Year**

Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting during the current financial year, but GST was not payable on such revenue in the same financial year shall be declared here.

**SI. No. 5I Less: Unadjusted Advances at the beginning of the Financial Year**

Value of all advances for which GST has not been paid but the same has been recognized as revenue in the audited Annual Financial Statement shall be declared here.

**SI. No. - 5J. Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST**

This SI. No. has to be filled up with the information available in the audited Financial Statements whereas such amounts have not been adjusted against the supplies in the GST returns. All the adjustments made to the turnover where there is an effect of reduction due to a Credit Note issued have to be quantified for the purpose of reconciliation between the books of accounts and the GST returns to be filed. There could be an adjustment made to the receivable and payable in the books of accounts. Care should be exercised to extract the information of credit note that only calls for reduction of the turnover.

Auditor has to disclose the practice adopted for collating relevant information from the books of accounts and the basis for determining the adjustments eligible for reconciliation purposes.

**SI. No. 5K. Adjustments on account of supply of goods by SEZ units to DTA Units**

Such outward supplies are not required to be reported by SEZ units in their GST Returns and hence the data cannot be retrieved from the returns filed by such SEZ units.

SEZ units are required to maintain records of the assets / goods admitted into the SEZ unit and also the details of disposal of such goods. Such records can assist an Auditor in identifying the outward supply made by the SEZ unit. Additionally, disposal of capital goods would be disclosed as deletion in the Fixed Asset Registers.

**SI. No. 5L. Turnover for the period under composition scheme**

There may be cases where Registered Persons might have opted out of the composition scheme during the year. Their turnover as per the audited Annual Financial Statement would include turnover both as composition taxpayer as well as normal taxpayer. Therefore, the turnover for which GST was paid under the composition scheme shall be declared under this SI. No. 5L.

A person registered under the composition scheme who has opted out of the scheme should file both GSTR 9 and GSTR 9A. An Auditor may note that even a person violating the conditions stipulated in Section 10 of the CGST Act or Rule 5 of the CGST Rules or

Notification CT 8/2017 dated 27/06/2017 would stand to exit the scheme. In such cases, the composition person should file Form COMP-4 and opt out of the scheme.

#### **SI. No. 5M. Adjustments in turnover under section 15 and rules thereunder**

There may be cases where the taxable value and the invoice value differ due to valuation principles under section 15 of the CGST Act, 2017 and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to difference in valuation of supplies shall be declared here.

In terms of Section 9 of the CGST Act, GST is applicable on supplies of goods or services on the value of supply as determined under Section 15. Section 15 of the CGST, 2017 provides that the transaction value (value at which the supply has been transacted) would be the basis for the computation of tax when two conditions are satisfied

1. The price actually paid or payable should be the sole consideration for the supply; and
2. The supplier and the recipient are not related.

Even if the price for a supply is agreed to be the transaction value, few adjustments (provided for under Section 15 itself) are required to be carried out to such price for the purpose of the computation of value on which GST is required to be paid.

Valuation Rules also provide instances where the value of a transaction as per the financial records can be significantly different from the value to be considered for discharge of taxes under the GST.

There may be cases where the taxable value and the invoice value differ due to valuation principles under Section 15 of the CGST Act and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to differences in the valuation of supplies shall be declared here.

#### **SI. No. 5N. Adjustments in turnover due to foreign exchange fluctuations (+/-)**

Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to foreign exchange fluctuations shall be declared here.

#### **Illustration**

1. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

*CBEC Notified ₹ 65*

*RBI Reference Rate ₹ 68*

*At the time of receiving money, the bank exchanged the foreign currency at ₹ 70.*

### Solution

For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, difference in the amount booked in the accounts and actual amount received being ₹ 70 – ₹ 68 = ₹ 2 x \$100,000 = ₹ 200,000 would be credited to the Profit and Loss Account as Forex Gain which again needs to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

2. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

*CBEC Notified ₹ 65*

*RBI Reference Rate ₹ 68*

At the time of receiving money, the bank exchanged the foreign currency at ₹ 66.

**Solution:** For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, the difference in the amount booked in the accounts and actual amount received being ₹ 66 – ₹ 68 = (-) ₹ 2 x \$100,000 = (-) ₹ 200,000 would be debited to the Profit and Loss Account as Forex Loss which again needs to be **added** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

### SI. No. 50. Adjustments in turnover due to reasons not listed above (+/-)

Clause 50 is a residuary SI.No. which requires disclosure of reconciliation details relating to adjustments for which specific column is not provided under any other SI.No.s under Item No. 5. This SI.No. may contain an option to insert multiple line items to add / reduce the amount from the gross turnover declared in the audited Annual Financial Statements so as to reconcile the same with the turnover declared in Form GSTR 9.

### SI. No. 5P: Annual turnover after adjustments as above

The reconciliation statement in SI.No.5P is auto-populated and based on the values declared against SI. Nos. 5B to 5O.

### SI. No.5Q: turnover as declared in Annual Return (GSTR 9)

Clause 5Q requires a taxable person to disclose his turnover as per the Annual Return i.e., GSTR 9 filed for the relevant financial year. Therefore, the turnover arrived at SI.No. 5N as per

the Annual Return in GSTR – 9 should be declared under Sl.No. 5Q. Accordingly, the Annual Return in GSTR – 9 should be filed along with or before filing the reconciliation statement in Form GSTR – 9C.

The turnover arrived at Sl.No. 5P of Form GSTR 9C as stated earlier, should match with the turnover as declared in the Annual Return if the turnover is reckoned appropriately as per the GST law and declared in the returns filed in GSTR – 3B and the annual return in GSTR – 9. The turnover as arrived at Sl.No. 5N of the Annual Return in Form GSTR 9 shall be the turnover to be declared against Sl.No. 5Q.

The turnover as declared in the monthly return in GSTR – 1 by virtue of which the same is declared in the annual return in GSTR – 9 may not include all the taxable outward supplies on account of omissions or errors. Such differences in the turnover should not be adjusted under Sl.No. 5O for the purpose of matching the turnover between the annual return and the audited annual financial statements. The turnover as arrived at Sl.No. 5N of the Annual Return in Form GSTR 9 shall be declared against Sl.No. 5Q of GSTR 9C. The differences in turnover as per the audited annual financial statement and the turnover as per the annual return in GSTR – 9 should be reconciled and the reasons thereof should be mentioned at Part II Sl. No. 6.

#### **Sl. No. 5R: non-reconciled turnover (Q-P)**

The un-reconciled turnover at Sl. No. 5R is the difference between the 'Annual turnover after adjustments as above' at Sl.No. 5P and 'turnover as declared in the Annual Returns (GSTR 9)' as declared at Sl.No. 5Q. The difference would be auto generated.

The value of supplies either taxable, exempted or non-GST outward supplies not declared in the monthly returns and annual returns would form part of the auto-generated value at Sl.No. 5R. The reasons for such un-reconciled turnover should be given under Part II Sl. No. 6 of the reconciliation statement in GSTR – 9C. This could lead to any one of the following two situations:

- (i) The 'Annual turnover after adjustments as above' at Sl.No. 5P is higher than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:**

This situation arises if a taxable person has not declared some taxable outward supplies, exempted supplies and non-GST outward supplies. The value of taxable supplies forming part of the differences should be declared under Part III Sl. No. 11 and the applicable taxes thereon shall be paid appropriately by cash. The differences in exempt supplies and non-GST outward supplies shall be declared against Part II Sl. No. 7B or 7C as the case may be and reduction from the total turnover may be sought.

- (ii) The 'Annual turnover after adjustments as above' at Sl.No. 5P is lower than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:**

This situation may arise if a taxable person has erroneously declared a higher turnover in the monthly return in GSTR – 3B and the annual return in GSTR – 9. The

reconciliation statement in GSTR – 9C does not specifically provide to claim the benefit of tax paid erroneously. The statement which would be made available on the GST portal should be checked to verify whether the taxable value at Sl. No. 11 may be declared in the negative so that refund of tax remitted on such turnover can be claimed. Clarification on this issue is awaited.

#### **Sl. No. 6- Reasons for Un - Reconciled difference in Annual Gross turnover**

This portion of GSTR 9C identifies the turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to be flown from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person a on special approval basis, which are not reconciled at turnover level should be disclosed in this Sl.No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts

Examine the turnover available as per the Audited Financial Statements with that of the Annual turnover determined as per GSTR 9. Information available in Notes to Accounts as per the Audited Financial statements gives the additional information for the Exceptions if any to the regular practice of maintenance of the Books of Accounts.

Information has to be compared on equitable basis for clarity on what is to be compared as turnover considered in the Financial Statements with that of the turnover compared in the GST Returns. For instance, turnover on the sale of Fixed Assets should be considered for the whole consideration value in the GST Returns. However, only Profit/ Loss on such sale shall be considered in the Books of Accounts. For having an equitable basis for both the turnovers, we need to gross up the Profit/Loss in the Books of Accounts for a matching comparison with the GST Returns.

The Auditor shall make a reference to the basis for reconciliation of the turnover related adjustments called for on the basis of the information available in the Notes to Accounts and any special adjustments caused by reference to other statutory requirements.

The Auditor needs to report whether the Books and Returns can be compared and quantify the reasons duly justifiable for the discrepancies reported, if any.

The Auditor should make a disclosure regarding the reasons that come in the way of the reconciliation process or concluded for sake of clarity on taxable nature.

#### **Sl. No. 7B. Value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover**

7	RECONCILIATION OF TAXABLE TURNOVER	
7A	Annual Turnover after Adjustments (From 5P Above)	<Auto>

7B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply Turnover	
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Clause 7B requires reduction of value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover from the Annual turnover after adjustments to arrive at taxable turnover.

All the supplies on which tax has not been charged except for exports and reverse charge supplies should be reported under Clause 7B. The information can generally be obtained from the credit side of the Profit and Loss account. In case of a barter transaction, the sale of fixed assets at loss etc. would not appear in the profit and loss account. Therefore, that information shall be obtained from the Fixed assets schedule or the stock register. The value of No-supply can be taken as reported in the Books.

Clause 7B essentially comprises the following 4 classes / types of supplies:

- Supplies taxable at a 'NIL' rate of tax; currently there are no goods / services under 'NIL' rate category
- Supplies that are wholly or partially exempted from CGST, SGST or IGST, by way of a notification; E.g.: Milk, water, education service, health care services, etc.,
- Non-taxable supplies as defined under Section 2(78) of the CGST Act – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).
- No supplies include the activities covered under Schedule III which are neither a supply of goods nor a supply of services. Examples- Sale of land or completed building, actionable claims, other than lottery, betting, and gambling.

#### Illustration

The following supplies would form part of the reporting under value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover in the case of a hospital:

- Consultation fees received by the hospital ₹ 2,50,00,000/- (Exempted supply)
- Diagnostic services provided by the hospital ₹ 40,00,000/- (Exempted supply)
- Excess petrol available in the hospital sold to a related party ₹ 10,000/- (Non-GST supply)
- Land sold by the hospital ₹ 5,00,00,000/- (No-supply)

#### Sl. No. 7C. Zero rated supplies without payment of tax

7C	Zero rated supplies without payment of tax	
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Clause 7C of GSTR 9C requires disclosure of value of zero-rated supplies without the payment of tax which forms part of the 'Annual turnover after adjustments (from 5P above)' at Sl.No. 5P. This should also consist of the value of zero-rated supplies which have not been declared in the monthly return / annual return erroneously for the reason that the adjusted turnover at Sl.No. 5P contains even such zero-rated supplies. Therefore, such value of zero-rated supplies should be deducted from the adjusted annual turnover arrived at Sl.No. 5P so as to claim exemption. In short, the zero-rated supplies as recorded in the

audited annual financial statements should be declared against Sl.No. 7C provided such zero-rated supplies have also not been declared in monthly returns filed for the period April to September following the relevant financial year.

Zero rated supply under the provisions of GST law means:

- (a) Exports of goods or services or both.
- (b) Supply of goods or services or both to Special Economic Zone developer /Special Economic Zone unit.

The source of information for zero-rated supplies shall be obtained from the outward supply statement in GSTR – 1 and revenue register forming part of books of accounts. The outward supply statement filed in GSTR -1 shall be correlated with the zero-rated supplies declared in the monthly returns in GSTR – 3B.

**Sl No. 7D - Supplies on which tax is to be paid by recipient on reverse charge**

7D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
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Section 2(98) defines reverse charge to mean a case where liability to pay tax is on recipient of supply of goods or service instead of supplier u/s 9(3) and 9(4) of CGST/ SGST Act or S.5(3) or 5(4) of IGST Act.

The Auditor has to verify if the supplier has more than one vertical. One of them vertical must be on forward charge and one on reverse charge. The vertical on reverse charge should be taken under '*supplies on which tax is to be paid by recipient on reverse charge basis*'.

Data entered Table 4B of GSTR 1 (Supplies attracting tax on reverse charge) should be taken as the source for this information. The data would have been entered in Table 4B providing invoice level details.

The aforesaid information should be also entered in Table 3.1(c) (Other outward supplies – Nil rated, exempted) of GSTR 3B.

Table 7 provides for 'Reconciliation of taxable turnover'. Table 7A starts from the Annual turnover after adjustments. The data in Table 7A is auto populated from entries in Table 5P, which refers to 'Annual turnover after adjustments'. From the said turnover, the following turnovers are reduced:

- (a) value of the exempted turnover
- (b) nil rated turnover
- (c) Non-GST turnovers
- (d) No Supply turnovers
- (e) Zero rated turnover made without payment of tax

In light of the above, it can be inferred and concluded that the data to be entered under Sl.No. 7D is supplies made by the supplier, on which tax is to be paid by the recipient.

It is reiterated at the sake of repetition that expenses on which tax is paid by Registered person as recipient of service should not be inserted in this column and reduced from Annual Adjusted turnover since table 7 is seeking to reduce items from Annual turnover after adjustments to arrive at turnover of Registered person which is liable to tax.

***In case the invoice does not contain the declaration required under Rule 46 or credit has not been reversed under Rule 39, 42 or 43 or tax has been wrongly collected by the supplier on services liable for reverse charge (and retained by the supplier), then such infractions should be reported in the Audit Report because the Audit Report has to have disclosures regarding non-maintenance of records and documents/ observations and inconsistencies relating to reversals of credit.***

#### **Illustration**

Please state which of the following are liable to reverse charge

- GTA issued a consignment note on 1.1.18. The consignment note charges GST @ 12%. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- GTA issued a consignment note on 1.1.18. The consignment note does not charge GST. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- Advocate Mr. X has provided legal service and charged GST of ₹ 18 on his invoice of ₹ 100. The advocate's client has paid 118 to the advocate. The advocate has remitted ₹ 18 to government and is of the opinion that the aforesaid transaction should not be reduced in Table 7D. Is the stand taken by the advocate correct?

#### **Solution**

- The Consignment note contains GST @ 12%, so reverse charge does not attract as per N.No.13/17 CT (R) w.e.f 22.8.10. Hence tax has to be paid by GTA under forward charge, and this transaction should not be entered in Table 7D.
- Since consignment note has not charged GST @ 12%, reverse charge provisions would apply. Tax is to be paid by the person liable to pay freight, that is, the recipient and not the GTA under forward charge. Because of this, the impugned transaction has to be entered in Table 7D.
- Supplies by a Registered Person, whose suppliers are liable for reverse charge, are to be inserted in Table 7D. Legal service provided by the advocate to his client is liable for reverse charge (assuming all other conditions in reverse charge notification stand satisfied). Hence the impugned transaction should be inserted in Table 7D. GST wrongly collected and paid by the advocate under forward charge will not change the fact that the aforesaid service is liable to reverse charge and hence merits insertion in Table 7D.

It must be ensured that if the supplier has turnover which is liable to both forward charge and reverse charge then the turnover liable to reverse charge should be accounted in FORM 7D. It maybe ensured for purposes of control that the aggregate of turnover under forward charge and reverse charge is the total turnover.

**SI. No. 7F - taxable turnover as per liability declared in Annual Return**

7F	Taxable turnover as per liability declared in Annual Return (GSTR9)	
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Clause 7F of GSTR 9C requires that the taxable turnover as per the liability should be declared in the Annual Return (GSTR 9).

Instruction as per GSTR 9C - taxable turnover as declared in Table 4N of the Annual Return (GSTR 9) shall be declared here. The information must flow from GSTR 9 which contains supplies and advances on which tax is paid. The turnover arrived at Part II SI. No. 8F of Form GSTR 9C should match the turnover as declared in the Annual Return.

**SI. No.8 Reasons for Un - Reconciled difference in Taxable Turnover**

8	Reasons for Un - Reconciled difference in Taxable Turnover	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

This part of GSTR 9C identifies the taxable turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to flow from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on special approval basis, which are not reconciled at turnover level should be disclosed in this SI. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts.

The data which has to be filled up in this table is drawn out of SI. No.s 5, 6, 7. Further, review of the transactions effected through the E-Way Bill gives details about the exceptional transactions, if any, to be reported through the above reconciliation

**Illustration**

The following illustrations can be considered for reporting the reconciliation differences:

- Zero-rated supply made by the Registered person during the previous year. If the conditions relevant for the supply have not been complied by the Registered person, then the supplies can be construed to be regular supplies.

- (b) Transaction reported in a delivery challan during the financial year for supply on sale or approval basis beyond a period of six months shall be deemed to be supply under the GST. However, that may not be a sale for revenue recognition in the books of accounts for such a transaction. Assuming the GST returns carry the supply details and no revenue recognition has been done in the books of accounts, this shall call for reconciliation.
- (c) Exemption conditions not fulfilled by the Registered person while exercising the option to supply either a Nil rated or Exemption, shall be reported as Regular Supply.

### Part III: Reconciliation of tax Paid

After reconciling the turnover declared and reported in the Audited Financial Statement with turnover declared in Annual Return along with reasons for reconciliation if any, the relevant Part III of Form 9C requires an Auditor to reconcile the rate-wise liability of tax, total amount payable thereon with tax actually paid as declared in the Annual Return and recommendation of additional tax payable due to non-reconciliation of the taxable value.

Pt. III		Reconciliation of tax paid				
9		Reconciliation of rate wise liability and amount payable thereon				
		Tax payable				
		Description	Taxable Value	Central tax	State tax/ UT tax	Integrated Tax
		1	2	3	4	5
						6
A	5%					
B	5% (RC)					
C	12%					
D	12% (RC)					
E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
II	3%					
J	0.25%					
K	0.10%					
L	Interest					
M	Late Fee					
N	Penalty					

O	Others				
P	Total amount to be paid as per tables above	<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)				
R	Un-reconciled payment of amount			PT 1	

The relevant Table 9 requires the Auditor to provide details of taxable value along with the Gross tax Liability booked by the Registered Person whose Form 9C is being filed by him. The said tax liability needs to be reported rate wise in Table 9. Further, the taxable value and liability of tax on which the given Registered Person is required to pay tax under Reverse Charge Mechanism are also required to be reported rate-wise separately. After reporting of the same, the details of Total tax payable for the Financial Year 2017-18 as declared in GSTR 9 i.e. under the Annual Return is also required to be disclosed. The given table also requires the disclosure of Interest, Late Fees and Penalty Payable.

From the scheme of Table 9 it is clear that the Auditor is required to report the GST payable rate wise dissected total taxable turnover calculated in Table 7E under Part II of GSTR 9C. Once the taxable value is reported under various rates as specified in sub-parts A, C, E, G, I, J, and K, the relevant amount of tax shall be calculated by the system.

The values that are to be reported in Table 9 should be taxable value as reported under Table 7E of GSTR 9C, i.e. Adjusted Total turnover for the FY 2017-18 under the GST and the amount of tax (rate wise) should be derived mathematically.

7E	Taxable turnover as per adjustments above (A-B-C-D)	<Auto>
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The details of adjusted Total turnover needs to be broken down in accordance with the GST rates based on the reports generated from the books of accounts and necessary adjustments made in Part II of GSTR 9C which have not impacted the books of accounts of the Registered Person should also be considered rate-wise for the purpose of finding the taxable value.

Once all the details are entered, and the difference in tax payable as per the books with actual tax payable is identified, the amounts of non-reconciliation shall be raised as per CGST, SGSTM, IGST and Cess wise. On these amounts the Auditor shall be required to disclose the reasons in Table 10.

#### SI. No.10: Reasons for un-reconciled payment of amount

10	Reasons for un-reconciled payment of amount	
A	Reason 1	<>Text<>
B	Reason 2	<>Text<>

C	Reason 3	<<Text>>
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The given table mandates the Auditor to identify and disclose the reasons for un-reconciled payment of amount of tax, Interest, Penalty, Cess and Others. Reasons, amounts along with description of reason needs to be disclosed.

The Auditor needs to identify the reasons due to which some amount is reflected in Table 9R.

The various reasons can be as under

**(A) GSTR 3B shows less/more tax paid**

- GSTR 1 matches with the audited financials with regard to the tax payable
- GSTR 3B shows the tax paid differently from the books of accounts.

In this situation, even though Table 6 and 8 may not show any differences as given in point (i) above, Table 10 would show a difference of the amount of tax to be paid and tax actually paid. So, any tax payable occurring due to this would automatically form part of Table 11 and the Auditor's recommendations in Part V.

In case any excess tax has been paid, there will be no reporting in Table 11. There is also no provision of negative reporting in Table 11.

**(B) GSTR 1 and GSTR 3B inter se matching but not with the Audited Financials**

- GSTR 3B and GSTR 1 match with each other
- Matched GSTR 1 and GSTR 3B are different with regard to the audited financial statements.

Such differences would be depicted in Table 6, 8 and 10. If the turnover is lesser than what it is in the audited financials, they could indicate a short payment of tax, if differences thereof are not explained. The cause of the differences needs to be clearly identified. Taking the values after considering the audited financial statements Table 10 will be compared with the actual tax paid as per GSTR 3B. As there is a difference between the audited financial statements and GSTR 3B, an unreconciled difference would be shown in Table 10.

**(C) Taxable turnover as per the books matching in GSTR 1 and GSTR 3B but tax is not matching.**

- The value of taxable supply in Form GSTR 3B matches with that in GSTR 1
- Tax payable as self-assessed in GSTR 3B is different from what is shown in GSTR 1.

The possible reason for the same can be because of the difference in the classification of supply in GSTR 1 and GSTR 3B. The reporting shall be required in Table 10 only in such cases where an error has occurred in Form GSTR 3B due to reasons of classification like the following

- HSN Disputes

- GST rate disputes
- Inter State vs Intra State Supply
- Place of Supply
- Type of Supply Dispute-taxable, Exempt, Nil rated

As the amount of tax in Table 9P shall be calculated on the basis of turnover reported and shall be treated as correct. Any deviation from the same shall be disclosed in Table 10.

It has to be ensured that for the whole amount of non-reconciliation reported in Table 9, the reason wise quantification of the same is done in Table 10.

**Sl. No. 11: Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)**

11		Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above)					
		To be paid through Cash					
		Description	Taxable Value	Central tax	State tax/ UT tax	Integrated tax	
		1	2	3	4	5	
		5%					
		12%					
		18%					
		28%					
		3%					
		0.25%					
		0.10%					
Interest							
Late Fee							
Penalty							
Others (please specify)							

In the Table 11 under Part III of the GSTR 9C, the amount of tax, interest, penalty, late fees and their dues which are payable in accordance with the non-reconciliation reported under Table 6,

8 and 10 but not actually paid as declared in Annual Return in GSTR 9 are to be reported with rate-wise bifurcation.

#### A) For Additional tax Payable

After due verification and analysis of the amounts along with reasons reported in Table 6, 8 and 10 in the GSTR 9C pertaining to non-reconciliation of Annual Gross turnover, taxable turnover and tax payable, the details of taxable value needs to be identified GST rate-wise which should be reported in Table 11 on which appropriate tax has not been paid as declared in the Annual Return i.e. Form GSTR 9.

There may be several reasons due to which amounts may be reported in Table 6 and 8.

However, in the case of amounts reported in Table 6, reasons for non-reconciliation may be due to difference in timing or due to a permanent difference in turnover as per the books of accounts and the GST Returns. However, every non-reconciliation might not lead to a situation where there is a requirement to pay GST on the said difference.

Some examples where non-reconciliation is reported in Table 6 in Form GSTR 9C but shall not require any additional tax payment are illustrated as under:

- Difference in turnover where the time of Supply is postponed but revenue is recognized in books of accounts (Supply between Developer and Landlord in light of Notification No 04/2018-CT rate)
- Difference in the value of Export turnover reported in the books of accounts on the basis of Invoice value shown in the Shipping Bill whereas turnover reported in GSTR 1 on the basis of Invoice prepared in INR on the basis of Exchange rate applicable on the date of preparation of Invoice.
- Difference in turnover of Services due to tax paid on advances and shown in GSTR 1 but not required to be disclosed as turnover in the Audited Financial Statements.
- Difference in turnover due to disclosure of Profit / Loss on Sale of Fixed Assets in the Audited Financial Statements and disclosure of whole sale proceeds in GST Returns.

In the given cases, no reporting is required to be done in Table 11.

Further, in other types of non-reconciliations reported in Table 6, there can be an impact on the tax Liability to be paid. The instances for the same shall principally cover such cases where there is difference in taxable turnover in GST Returns and the Adjusted Total turnover. These set of differences which shall have impact on tax Liability shall actually be a part of Table 8 again.

However, out of such non-reconciliation filtered out and reported in Table 8, a further filter of non-reconciliation shall be reported in Table 10 regarding tax Liability which should have been paid on un-reconciled turnover reported in Table 8, but the same was not paid as declared in GSTR 9, i.e. the Annual Return.

Since Table 11 requires the disclosure of Additional tax Liability payable and not paid on non-reconciliations, it is evident that such details shall be reported in Table 10 also.

**B) For Interest, Penalty and Late Fees Payable**

The method suggested for calculating Interest, Late Fees and Penalty shall be employed to find the Gross amounts and difference of amounts not reported in GSTR 9 shall be required to be disclosed in the given Table.

**PART IV**

**SI. No. 12 – Reconciliation of Net ITC**

**12A. ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)**

Pt. IV	Reconciliation of Input Tax Credit (ITC)
12	Reconciliation of Net Input Tax Credit (ITC)
12A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)

Clause 12A of GSTR 9C is the detail of ITC availed in the audited financial statements. The row aims to collect information on the ITC availed in the books of accounts by the Registered person. This shall be the total ITC including the one availed in the books of accounts on Inputs, Input Services and Capital Goods.

Right in the beginning, information of all the tax account codes / ledger names should be obtained from the Registered person in which he enters the ITC availed. ITC availed (after reversals) as per the audited Annual Financial Statement shall be declared here. There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. This is common for persons / entities with presence in multiple States. Such persons / entities would have to internally derive their ITC for each individual GSTIN and declare the same here. It may be noted that reference to the audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence in multiple States. Further, it is important to understand from the Registered person whether he has maintained separate ledgers for availing ITC for different States or a common one.

**12B. ITC booked in earlier Financial Years claimed in current Financial Year**

12B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
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Any ITC which was booked in the audited Annual Financial Statement of the earlier financial year(s) but availed in the ITC ledger in the financial year for which the reconciliation statement is being filed shall be declared here. Since this is the first year of the GST, this column should ideally be zero. However, as per the instruction related to the form, transitional credit which was

booked in earlier years but availed during Financial Year 2017-18, the same would not be required to be reported here. This would leave the Registered person with ITC which are carry forward balances of the earlier taxes.

However, from next year onwards, this column would have the same amount as is reported in column 12C of Form 9C of the previous financial year. Hopefully, the same should be auto populated by the system. There can be a scenario also where an Input tax credit which related to FY 2017-18 was not booked in the books in FY 2017-18 inadvertently and was also not claimed in GSTR 3B of FY 2017-18. However, during reconciliation of returns during FY 2018-19 the claim was taken in both the books of accounts as well as GSTR 3B filed during FY 2018-19, such cases would not be reported in this column.

#### **12C. ITC booked in current Financial Year to be claimed in subsequent Financial Years**

12C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
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Clause 12C of GSTR 9C is the Input tax Credit which is booked in the current financial year but claimed in the returns of GSTR 3B filed during FY 2018-19. This includes all credits which were for any reason (inadvertent or conditions not being fulfilled) were not taken in returns as filed from July 2017- March 2018.

All amounts which are debited in the books of accounts but not claimed as Credit should be reported here. The Auditor must run a check to arrive at Input tax Credits which appear in the GST receivable ledgers but do not find place in the Input tax register providing amounts as reported in GSTR 3B of FY 2017-18. The difference of such unclaimed balance shall be reported here.

Value in this Sl.No. should be equal to the amount reported in Clause 13 of GSTR 9. However, amount of Credits relating to FY 2017-18 which are booked in FY 2018-19 only in the books of accounts shall be subtracted from such reported amount in Clause 13 of GSTR 9.

#### **Illustration**

The Input tax credit as booked in the GST receivable ledger for the month of August 2017 includes the following:

- (a) Input tax credit on purchase of inputs claimed in GSTR 3B of August 2017: ₹ 3,00,000
- (b) Input tax credit on purchase of inputs claimed in GSTR 3B of December 2017: ₹ 150,000
- (c) Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

**Ans.** The reporting of the following transactions shall be made in this column:

Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

#### **12E. ITC Claimed in Annual Return (GSTR 9)**

Clause 12E of GSTR 9C Net ITC available for utilization as declared in Table 7J of Annual Return (GSTR 9) shall be declared here.

**12F. And 13 Unreconciled ITC**

12F	Un-reconciled ITC	
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Clause 12F of GSTR 9C provides for the difference between the ITC as computed from the books of account in Clause 12D and ITC as claimed for the financial year in Clause 7J of Annual return. Reasons for such difference shall be explained in point 13 of GSTR 9C.

13	Reasons for un-reconciled difference in ITC	
A B	Reason 1	<<Text>>
C	Reason 2	<<Text>>
	Reason 3	<<Text>>

While 12F is the differential value and has no source. Clause 13 seeks reasons from the books of accounts and claims in GSTR 9 for the difference. In case the difference is positive, possible reasons of difference should primarily include:

- the amount of ITC for the financial year claimed in point 13 of the Annual return form which is the amount of ITC claimed in returns of the subsequent year for the financial year.
- the amount of ITC available but not availed which can be divided in two further categories:
  - Ineligible ITC not availed in the return
  - ITC which has lapsed as not availed

In case the difference is negative, the matter is of concern as it is a clear indication of more than available ITC claimed. This could be on account of the following reasons:

- ITC of another GSTIN claimed in returns of GSTIN under audit
- IGST on imported goods used as FOC replacement warranty (customs duty + IGST paid by Exporter of original equipment).
- Duplicate ITC availed
- ITC of subsequent year where goods / services were received later but their invoice was received prior was availed.

**14. Reconciliation of ITC declared in Annual Return (GSTR 9) with ITC availed on expenses as per audited Annual Financial Statement or books of account**

14	Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4

A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
D	Imported goods (Including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed		<<Auto>>	
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC			ITC 2

This table is for reconciliation of ITC declared in the Annual Return (GSTR 9) against the expenses booked in the audited Annual Financial Statement or books of account. This point calls for examination of ITC detailed by the Auditor to determine the available ITC as booked in ledgers of various expenses and in the books of accounts viz a viz the ITC availed by the Registered person. In case the Auditor finds any ineligible or unavailable ITC as per the books of accounts, suitable disclosures are to be made in this regard.

**Illustration: The Input tax credit as booked in purchase account is as follows:**

- ITC on purchase of raw material: ₹ 1,50,000 (Purchase value: 20,00,000)
- ITC on purchase of consumable: ₹ 60,000 (Purchase value: 4,00,000)
- ITC on purchase of food items for staff: ₹ 12,000 (Purchase value: 120,000)
- ITC availed by the registered person from the Purchase account: ₹ 222,000

**Ans.** The reporting of the following transactions shall be made in this column:

➤ value of Purchases: 25,20,000

➤ Amount of Total ITC: 222,000

Amount of eligible ITC availed: ₹ 210,000

#### 15. Reasons for un-reconciled difference in ITC

15	Reasons for un - reconciled difference in ITC
A B C	Reason 1 Reason 2 Reason 3
	<<Text>>
	<<Text>>

Reasons for non-reconciliation between ITC availed on the various expenses declared in Table 14R and ITC declared in Table 14S shall be specified here.

This column is auto populated as it is a calculation of difference between Table 14R and 14S. This is the differential amount between the eligible availed ITC and the availed ITC. Difference can arise on any of the following counts:

- Ineligible ITC availed by the Registered person
- ITC booked in the books of accounts but not availed including ineligible ITC not availed (lapsed)

In case of a negative amount, such difference can arise on account of ITC booked in the books of accounts but availed in return GSTR 3B of the subsequent year. This can be correlated with point 13 of GSTR 9.

#### 16. Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)

Any amount which is payable due to reasons specified in Table 13 and 15 above shall be declared here.

#### Part V to GSTR 9C

##### Auditor's Recommendation on additional liability due to non-reconciliation

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
			To be paid through Cash			
Description	Value	Central tax	State tax/ UT tax	Integrated tax	Cess, if applicable	
1	2	3	4	5	6	
5%						
12%						
18%						
28%						
3%						

0.25%					
0.10%					
Input Tax Credit					
Interest					
Late Fee					
Penalty					
Any other amount paid for supplies not included in Annual Return					

Part V consists of the auditor's recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. The auditor shall also recommend if there is any other amount to be paid for supplies not included in the Annual Return. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demands which is recommended to be settled by the auditor shall be declared in this Table.

#### Some issues

(a) **Is the additional liability determined by the Auditor binding on the Registered person?**

- ✓ At the outset, it can be inferred from the heading to Part V of GSTR 9C that the Auditor has only a recommendatory power, for recommendations given by the Auditor may or may not be acceptable to the Registered Person. If it is acceptable, there are no further questions. But if it is not acceptable, then the question that arises is how can the Auditor resolves the issue.
- ✓ At this juncture, the Auditor needs to exercise his professional diligence, skill, legal knowledge and care in determining any additional tax liability which is payable by the Registered Person. The Registered Person has the option to accept, reject or partially accept the recommended additional tax liability. In line with such recommendations, though not explicitly stated anywhere in the relevant Form or GST laws –
  - (i) the Registered Person can choose to make the payment of the additional tax liability in full or in part;
  - (ii) the Registered Person can even choose to reject the complete recommendations of the Auditor and not make the payment at all.
- ✓ Before an Auditor ventures into recommending any additional tax liability due care, caution and diligence must be exercised. For instance, in respect of

commodity classification based on HSN if an Auditor believes that there are two possibilities then he may choose to place reliance on an expert opinion. In such a situation, a proper disclosure may suffice.

- ✓ However, when looked at from the perspective of the government, the recommendation shall form the foundation for an effective show cause notice and enquiry into the affairs of the Registered Person.

**(b) Scope of the Auditor's review for recommendation**

- ✓ On a perusal of the heading to Part V of GSTR 9C, it appears that the responsibility of the Auditor is restricted to report only the additional liability which may arise on account of non-reconciliation matters only. An Auditor may take the view that he is not required to step into the shoes of an investigator to mine any undisclosed supplies which are neither reported in the annual return nor in the financial statements. But at this point in time the instruction provided to fill in the relevant GSTR 9C plays an important role.
- ✓ Para 7 of the instructions provided to the relevant GSTR 9C makes it clear that apart from recommending any additional tax liability that may arise on account of reconciliations matters, an Auditor is also required recommend:
  - cases relating to supplies that are not reported in the annual return;
  - refunds erroneously taken;
  - any outstanding demands that may be settled by the Registered Person.
- ✓ Performing this reconciliation accurately and analysing reasons for the differences falls within the domain of the Auditor's responsibility. Making disclosures in respect of the differences which are accurate, exhaustive and understandable form an intrinsic part of his duty.

**(c) Reasons for additional tax liability**

- ✓ Non-reconciliation between the books of accounts and the annual return can either occur (among other reasons) in respect of the turnover, tax paid or availment of the input tax credit. Any additional tax liability that may arise due to non-reconciliation between the turnovers or the tax payable on such turnovers would be reported in Table 11 of GSTR 9C. Further, any additional tax liability arising due to non-reconciliation of the input tax credit are to be disclosed in Table 16 of GSTR 9C. The amount reported in these two tables would be summarized and reported in Part V of the GSTR 9C.

- ✓ Additional tax liability may arise on account of any other amount paid for supplies not included in the annual return, erroneous refund to be paid back, outstanding demands to be settled, etc., (if any).

**Verification**

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

\*\*Signature and stamp/seal of Auditor

Place:	Name of Signatory
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Date:	Membership No.
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Full address
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**Understanding “Verification” under GSTR 9C**

- I. In terms of Rule 80(3) of the CGST rules, 2017 the relevant “verification” portion to the reconciliation statement in Form GSTR 9C reads as under :
- II. The verification part of the said GSTR 9C is quite crucial in so far as the GST Auditor is concerned. Several important words and phrases are used in this part, such as **“solemnly affirm, declare, true and correct, knowledge and belief, conceal etc.,”**. An understanding of the true import of these words is crucial for understanding the manner in which the Auditor is expected to meet his professional obligation.
- III. According to The Random House Dictionary the word **solemn** means **“serious or earnest”** and the word **affirm** means **“confirm, establish or ratify”**. A solemn affirmation is ratification under a statute.
- IV. In the case of Dilip N. Shroff V. Joint Commissioner of Income tax, 2007 (219) ELT 15 (SC) their lordships extracted the meaning of the word **“conceal”** from the Law Lexicon which reads:  
 “to hide or keep secret. The word “conceal” is con + celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities.”  
 In the very same judgement in para 67 and 68 the Honourable Supreme Court goes on to analyse certain phrases, which are relevant and reproduced below:

'Concealment of income' and 'furnishing of inaccurate particulars' are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the Registered person. A mere omission or negligence would not constitute a deliberate act of *suppressio veri* or *suggestio falsi*. Although it may not be very accurate or apt but *suppressio veri* would amount to concealment, *suggestio falsi* would amount to furnishing of inaccurate particulars.

The authorities did not arrive at a finding that the consideration amount fixed for the sale of property was wholly inadequate. The authorities also do not show the inaccurate particulars furnished by the Appellant. They also do not state what should have been the accepted principles of valuation. We, therefore, do not accept the submissions of the learned Additional Solicitor General that concealment or furnishing of inaccurate particulars would overlap each other, the same would not mean that they do not represent different concepts. Had they not been so, the Parliament would not have used the different terminologies.

To conclude, *malafide* or *dolus molus* becomes a pre-requisite to prove an act of concealment. While every action is not *malafide* – negligence, carelessness, recklessness coupled with intention to withhold information tantamount to *malafide*. It is reiterated that mere failure to provide information or providing inaccurate information also would not amount to concealment.

#### V. Certificate and Report:

A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. It is certification of factual accuracy of what is stated therein.

A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting an opinion thereon. It is giving an opinion based on factual data and that is arrived at by the application of due care and skill.

#### Part B - GSTR 9C – An analysis

##### **Module I – Certification in cases where the reconciliation statement (FORM GSTR 9C) is drawn up by the person who had conducted the audit and GST audit certification**

###### Hierarchy of Clauses for Certification

Step 1: 'Examine' the 'financials'

Step 2: Based on such 'audit', report that books of account, etc. under the GST Acts have or have not been maintained

Step 3: Report the following observations / comments / discrepancies / inconsistencies, if any.

Step 3(b): Report further whether:

Step 3(b) (A): Information and explanations has / has not been obtained which were necessary

Step 3(b)(B): Proper books of accounts have / have not been kept Step 3(b)(C): Financials are/are not in agreement with the books

Step 4: State whether GSTR 9C and other relevant documents are annexed

Step 5: Particulars in GSTR 9C are 'true and correct' subject to observations / qualifications:

Step 5(a): .....

Step 5(b): ..... refer list of matter's for Auditor's attention listed below.....

Step 5(c): .....

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address

**Module II – Certification in cases where the reconciliation statement in (GSTR 9C) is drawn up by a person other than the person who had conducted the audit of the accounts**

Hierarchy of Clauses for Certificate

Step 1: Audit conducted by another Auditor and a copy of the Audit Report and Financials to be annexed

Step 2: Even without conducting audit, report whether books of account, etc. under the Act have / have not been maintained; It means the Auditor has to analyse, understand and check the nature of books and records that are to be maintained or have / have not been maintained;

Step 3: Report the following observations / comments / discrepancies / inconsistencies  
Step 4: State whether GSTR 9C is annexed

Step 5(a): Now 'examine' books of accounts and other relevant documents Step

5(b): Then, particulars in GSTR 9C are true and correct subject to:

Step 5(c): .....

Step 5(d): .....refer list of matter's for the Auditor's attention listed below.....

Step 5(e): .....

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address

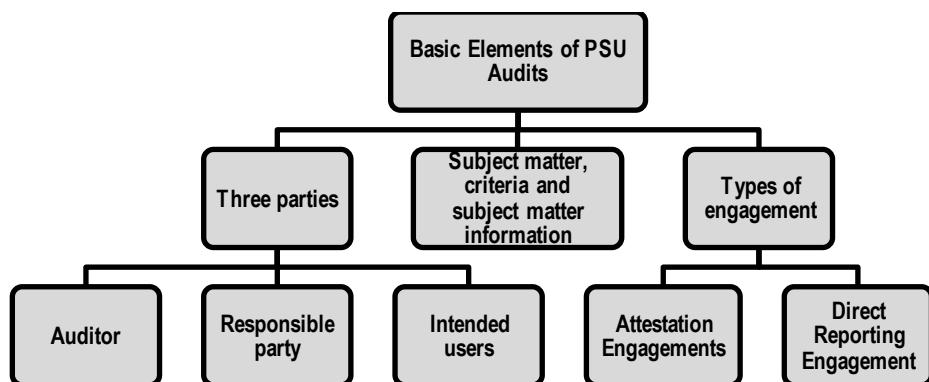
#### 1.11 Format of Audit report under the GST law: Form GST ADT - 04

Form GST ADT-04				
[See Rule 102(2)]				
Reference No. :				
Date :				
To, -----				
GSTIN .....				
Name .....				
Address .....				
Information of Findings upon Special Audit				
Your books of account and records for the F.Y..... has been examined by ..... (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of information available/documents furnished by you and the findings/discrepancies are as under :				
Short payment of	Integrated tax	Central tax	State/UT tax	Cess
Tax				
Interest				
Any other amount				
<i>[Upload pdf file containing audit observation]</i>				
You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.				
Signature .....				
Name .....				
Designation .....				

#### Chapter 18 - Audit of Public Sector Undertakings

**Elements of PSU Audits:** Public sector auditing augments the confidence of the intended users by providing relevant information and independent and objective assessments concerning deviations from accepted standards or principles of good governance.

Audit of all public-sector undertakings has the following basic elements:



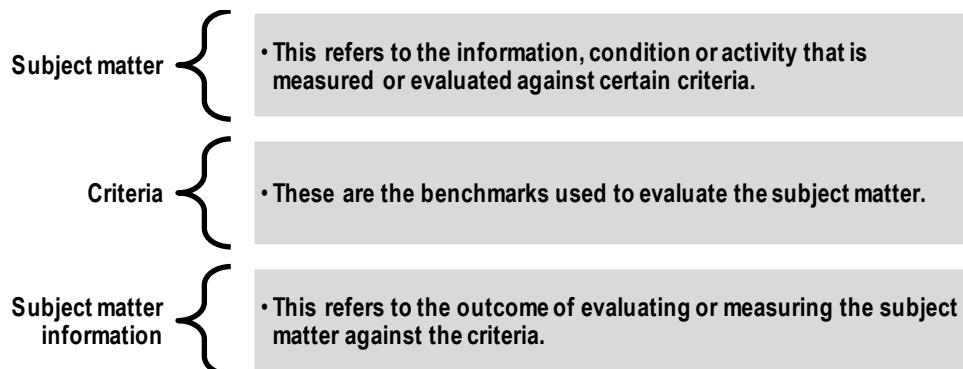
**(a) The Three parties - Auditor, Responsible party and Intended users.**

**Auditor:** The role of auditor is fulfilled by Supreme Audit Institution (SAI), India and by its personnel delegated with the duty of conducting audits.

**Responsible party:** The relevant responsibilities are determined by constitutional or legislative arrangement. Generally, auditable entities and those charged with governance of the auditable entities would be the responsible parties. The responsible parties may be responsible for the subject matter information, for managing the subject matter or for addressing recommendations.

**Intended users:** Intended users are the individuals, organizations or classes thereof for whom the auditor prepares the audit report.

**(b) Subject matter, criteria and subject matter information.**



**(c) Types of engagement - Attestation Engagements and Direct Reporting Engagement.**

**Attestation Engagements:** In attestation engagements, the responsible party measures the subject matter against the criteria and presents the subject matter information, on which the auditor then gathers sufficient and appropriate audit evidence to provide a reasonable basis for expressing a conclusion.

**Direct Reporting Engagement:** In direct reporting engagements, it is the auditor who measures or evaluates the subject matter against the criteria.

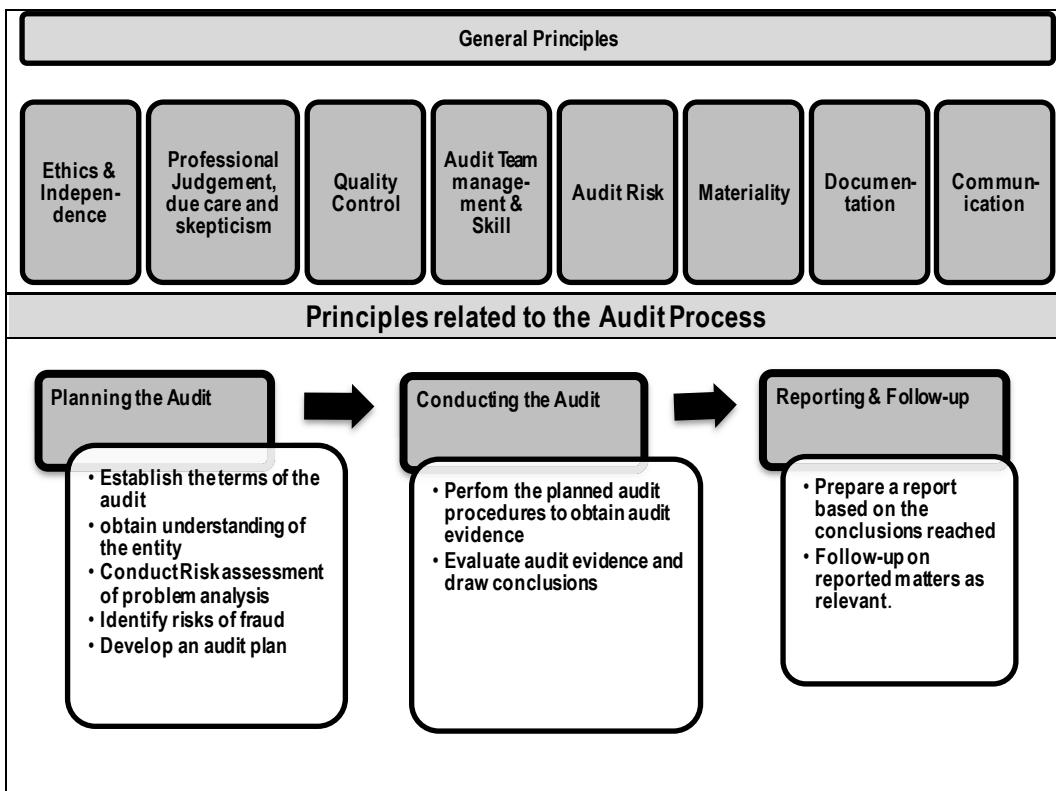
**Financial audits** are always **attestation engagements**, as they are based on financial information presented by the responsible party.

**Performance audits and compliance audits** are generally **direct reporting engagements**.

**Principles of PSU Audits:** The principles of PSU Audits constitute the general standards that apply to SAI India's personnel as auditors and are fundamental to the conduct of all types of PSU Audits.

The principles are categorized into two distinct groups as below:

- I. General Principles
- II. Principles related to the Audit Process



**Financial Audit:** Financial audit is primarily conducted to:

- ✓ express an audit opinion on the financial statements
- ✓ enhance the degree of confidence of intended users in the financial statements.

The C&AG shall express an opinion as to whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

In the case of financial statements prepared in accordance with a fair presentation financial reporting framework, whether the financial statements are presented fairly, in all material respects, or give a true and fair view, in accordance with that framework.

**Compliance Audit:** Compliance audit is the independent assessment of whether a given subject matter is in compliance with the applicable authorities identified as criteria.

This audit is carried out by assessing whether activities, financial transactions and information comply in all material respects, with the regulatory and other authorities which govern the audited entity.

**Compliance audit is concerned with:**

- (a) **Regularity**- adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity.
- (b) **Propriety**- observance of the general principles governing sound financial management and the ethical conduct of public officials.

While regularity is emphasized in compliance auditing, propriety is equally pertinent in the public-sector context, in which there are certain expectations concerning financial management and the conduct of officials.

**Perspective of Compliance Audit:** Compliance Audit is part of a combined audit that may also include other aspects.

Compliance auditing is generally conducted either-

- (i) in relation with the audit of financial statements, or
- (ii) separately as individual compliance audits, or
- (iii) in combination with performance auditing.

**Compliance Auditing is generally conducted either:**

- (i) in relation with the audit of financial statements, or
- (ii) separately as individual compliance audits, or
- (iii) in combination with performance auditing

#### Chapter 22 - Code of Ethics

**KYC Norms for CA in Practice:** The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in

mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI thought it necessary to issue such norms to be observed by the members of the profession who are in practice.

In light of this background, the Council of ICAI approved the following KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attest functions.

The KYC Norms approved by the Council of ICAI are given below:

**1. Where Client is an Individual/Proprietor**

- A. General Information
  - ☛ Name of the Individual
  - ☛ PAN No. or Aadhar Card No. of the Individual
  - ☛ Business Description
  - ☛ Copy of last Audited Financial Statement
- B. Engagement Information
  - ☛ Type of Engagement

**2. Where Client is a Corporate Entity**

- A. General Information
  - ☛ Name and Address of the Entity
  - ☛ Business Description
  - ☛ Name of the Parent Company in case of Subsidiary
  - ☛ Copy of last Audited Financial Statement
- B. Engagement Information
  - ☛ Type of Engagement
- C. Regulatory Information
  - ☛ Company PAN No.
  - ☛ Company Identification No.
  - ☛ Directors' Names & Addresses
  - ☛ Directors' Identification No.

**3. Where Client is a Non-Corporate Entity**

- A. General Information
  - ☛ Name and Address of the Entity
  - ☛ Copy of PAN No.
  - ☛ Business Description
  - ☛ Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)
  - ☛ Copy of last Audited Financial Statement
- B. Engagement Information
  - ☛ Type of Engagement

**Recent Decisions of Ethical Standards Board**

1. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
2. A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.
3. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
4. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed rupees 10000 beyond the prescribed credit period limit on credit card given to him.
5. A Chartered Accountant in practice can act as mediator in Court, since acting as a "mediator" would be deemed to be covered within the meaning of "arbitrator"; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
6. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.
7. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.

8. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics.

Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.

9. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.

10. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.
11. It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violation of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.
12. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.
13. It is permissible for a member in practice to be a settlor of a trust.
14. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.
15. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
16. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
17. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
18. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
19. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplicitor (which is generally permitted as per ICAI norms), if he is non – executive director, required in the Board Meetings only, and not paid any remuneration except for attending such Board Meetings.
21. Internal Auditor not to undertake GST Audit simultaneously.

**Note:** Students are also advised to refer RTP of Paper 1 Financial Reporting (for AS, Ind AS and NBFCs updates) and Paper 4 Corporate and Allied 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 give 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 hold 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 grow 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-sawy 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 31<sup>st</sup> 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 Strategy Planning and Programming**

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?

#### **Audit under CIS Environment**

14. AAA Ltd. used to spend huge resources and time to maintain large data of accounts management. Not only the maintenance of data, but the transfer of files from one department to another took months. Most of the time, accounts department of the company could not co-ordinate between data transferred from one department to another.

Due to this complexity of data maintenance in the form of files, the management opted switching to customised accounting software package. Now, in the said package, all transactions are recorded, processed and the final accounts generated from the system. The management tells you that in view of the voluminous nature of day books and the motto of 'save nature', there is no need to take printouts and that audit can be conducted on the computer itself. The management further assures you that any 'query based reports' as required can be generated and printed.

As a statutory auditor of the company, enumerate the procedures you would adopt to conduct the audit in such environment.

#### **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. Anisha 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 31<sup>st</sup> 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 31<sup>st</sup> 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 30<sup>th</sup> 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.

### **Investigation and Due Diligence**

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) Steps to be taken by an auditor for the audit of re-insurance ceded.
- (d) State whether a Tax audit report can be revised and if so, state those circumstances.
- (e) Powers and duties of an auditor of a Multi-state Cooperative Society.

## SUGGESTED ANSWERS/HINTS

## PART A : ANSWERS TO MULTIPLE QUESTIONS

1	<b>b</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	<b>d</b>	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	<b>a</b>	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	<b>d</b>	Ind AS would not be applicable for financial year ended 31 March 2019 and hence the view of statutory auditors is not correct.
5	<b>c</b>	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	<b>a</b>	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	<b>d</b>	i, iii, v and vi.
8	<b>a</b>	In such a case, the company becomes a 'non-filer'.
9	<b>a</b>	There has been no breach of IRDAI guidelines and accordingly the management should respond.
10	<b>d</b>	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. Audit under CIS Environment:** A key feature of the accounting software package used by the company definitely involves the absence of a clear audit trail. In other words, transactions cannot be easily traced or co-related from the individual supporting documents of those transactions. Moreover, the management does not wish to print the daybooks in view of the voluminous nature since it may involve extensive costs. This has naturally led to extensive dependence by management upon the "exception reporting" principle.

From the auditor's point of view, it must also be conceded, the exception reports in the form of 'query-based reports' which isolate the above data provide him with the very material that he requires for most of his verification work. The only problem which it raises, and it is a serious one, is that he cannot simply assume that the programmes which produce the exception reports are reliable in respect of the following factors:

- (i) operating accurately;
- (ii) printing out all the exceptions which exist; and
- (iii) bound by programmed control parameters which meet the company's genuine internal control requirements.

In view of the above, whether management relies upon exception reports, it effectively eliminated the audit trail between input and output and the auditor is forced to test the invisible processes which purport to embody the controls, and produce the output such as it is. These tests, which invariably involve the use by the auditor of the computer itself, are known as tests through the machine. In the 'through the machine' approach, the auditor starts by proving the accuracy of the input data, and then thoroughly examines (by applying tests) the processing procedures with a view to establishing the following that:

- (i) all input is actually entered into the computer.
- (ii) neither the computer nor the operators can cause undetected irregularities in the final reports.
- (iii) the programmes appear, on the evidence of rejection and exception routines, to be functioning correctly.
- (iv) all operator intervention during processing is logged and scrutinised by the DP manager.

The auditor in such circumstances will have to first evaluate the existing controls. For the same, he has to do the following:

- (i) Evaluate the internal control system especially the controls and checks existing for recording the transactions, i.e., he has to verify at what level transactions can be entered into the system and what checks are available to prevent any unauthorised data entry and for rectifying errors/omissions in the transactions entered.

- (ii) Evaluate at what level there is authority given for modification of transactions already entered. Is there any authority given only to a senior employee to carry out modifications? Or is it that once transactions are entered and validated no further modifications are possible thereto.
- (iii) Whether there is a provision in the software for carrying out an online audit of transactions, i.e. whether there is a separate module in the package, where a separate password given to the auditor and once he has seen and approved a particular transaction/set of transactions, the same would be locked and no modifications would be possible by anyone (including the senior most employee) in the company.
- (iv) Whether there are proper procedures for backup of data on a regular basis and whether the said procedures are being strictly followed.
- (v) In case of any loss of data whether there is a clear defined recovery procedure to minimize the loss of data due to power failures or any human errors.
- (vi) The auditor may introduce some dummy data into the system and see the results obtained.

After the auditor has evaluated the above procedures, he has to prepare an audit plan depending on the results obtained from his earlier evaluation. Since the daybooks are not being printed, the plan can contain procedures wherein data is verified directly on the computer from the vouchers/invoices, etc. The audit plan will also require a lot of analytical procedures to be performed. Depending on the importance of various expense heads and other important account heads, the auditor will also obtain various reports from the system depending on various queries that he would have to identify. Some illustrative reports can be:

- (i) To check whether proper classification is done for revenue/capital - a report can be obtained of all purchases (not being raw materials or other routine purchases) exceeding ₹ one lakh.
- (ii) To check whether all freight outward bills are accounted for a report containing a month-wise co-relation between goods dispatched and freight amount paid. The same can be further co-related with the freight rates obtained from the bills.

Once the auditor has performed the above procedures, he would be able to form an opinion whether reliance can be placed on the accounting systems and the data recorded. If the auditor finds that reliance cannot be placed on the systems he can inform the management about the fact and also that the daybooks, etc., will need to be printed to allow him to conduct the audit. The finalisation procedures to be followed even under this system would remain more or less similar to other accounting systems. The auditor can obtain reports of depreciation on fixed assets, inventory valuation and using the normal procedures find out whether reliance can be placed on them, e.g., if while valuing inventories the system is using the LIFO method, the same would not be acceptable and will need to be modified. Similarly, depreciation calculations will have to be verified on a random basis to find out its reliability.

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  $3 \times 20 = 60$  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 1/3<sup>rd</sup> 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 of previous year.	Amount paid/set-off before the due date of filing return/date upto which reported in the tax audit report, whichever is earlier	Amount unpaid on the due date of filing of return/date upto which reported in the tax audit report, 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 he 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 <i>prima facie</i> 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)<sup>1</sup> 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.

**(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;

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<sup>1</sup> 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

(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) Steps in Audit of Re-insurance ceded**

- (i) Evaluate internal control system in the area of reinsurance ceded to ensure determination of correct amount for reinsurance ceded, proper valuation of assets and liabilities arising out of reinsurance transaction and adherence to legal provisions and regulations.
- (ii) Ascertain whether adequate guidelines and procedures are established with respect to obtaining reinsurance.
- (iii) Reconcile reinsurance underwriting returns received from various units with the figures of premium, claims paid and outstanding claims for the company as a whole.
- (iv) Examine whether commission on reinsurance ceded is as per the terms of the agreement with the re-insurers.
- (v) Examine the computation of profit commission for automatic treaty arrangements in the light of the periodic accounts rendered and in relation to outstanding loss pertaining to the treaty.
- (vi) Examine whether loss recoveries have been claimed and accounted on a regular basis.
- (vii) Examine whether outstanding losses recoverable have been confirmed by re-insurers.
- (viii) Examine whether remittances to foreign re-insurers are as per foreign exchange regulations.
- (ix) Examine whether confirmations have been obtained regarding balances with re-insurers.
- (x) Review individual accounts of re-insurers to evaluate whether any provision/write off or write back is required.

**(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) Powers and duties of an auditor of a Multi-state Cooperative Society:** Under Section 73 of the Multi-State Cooperative Societies Act, 2002 every auditor of a multi – State Co-operative Society shall have a right of access at all times to the books, accounts and vouchers of the Multi-State Co-operative Society whether kept at the head office of the Multi-State Co-operative Society or elsewhere and shall be entitled to require from the officers or other employees of the Multi-State Co-operative Society such information and explanation as the auditor may think necessary for the performance of the duties as an auditor.

As per section 73 (2) the auditor shall make the following inquiries:

- (i) Whether loans and advances made by the Multi-State Co-operative Society on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the Multi-State Co-operative or its members;
- (ii) Whether transactions of the Multi-State Co-operative Society which are represented merely by book entries are not prejudicial to the interest of the Multi-State Co-operative Society;
- (iii) Whether personal expenses have been charged to revenue account; and
- (iv) Where it is stated in the books and papers of the Multi-State Co-operative Society 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.

## PAPER – 4 : CORPORATE AND ALLIED LAWS

### PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2019 EXAMINATION

#### (A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For November 2019 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 30<sup>th</sup> April, 2019 are relevant.

**Relevant publications:** Students are advised to refer the following publications -

1	Study Material (Revised edition June 2018) containing Legislative amendments made upto 30 <sup>th</sup> April, 2018.
2	RTP of November 2019 examination containing a gist of all the significant legislative amendments of one year i.e. from 1 <sup>st</sup> May 2018 to 30 <sup>th</sup> April, 2019 along with the suggested sample questions and answers for understanding and practice.

**Relevant amendments:** Given here are the relevant amendments which shall be read in line with the principal Act. These amendments are arranged chapter wise as per the study material for the convenience of the students.

#### SECTION A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

##### CHAPTER 2: ACCOUNTS AND AUDIT

###### 1. Enforcement of the *Companies (Audit and Auditors) second Amendment Rules, 2018* vide Notification G.S.R. 432 (E) dated 7<sup>th</sup> May 2018

The Central Government makes the *Companies (Audit and Auditors) second Amendment Rules, 2018* to amend the *Companies (Audit and Auditors) Rules, 2014*.

In the *Companies (Audit and Auditors) Rules, 2014*,

- (i) In rule 3 which deals with the **Manner and Procedure of selection and appointment of auditors**, following are the amendments:
  - (a) Explanation shall be omitted.
  - (b) proviso to sub-rule (7) shall be omitted.
- (ii) In the principal rules, rule 9 which deals with the **Liability to devolve on concerned partners** only, shall be omitted.
- (iii) In the principal rules, in rule 10A i.e., related to **Internal Financial controls system**, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.
- (iv) In the principal rules, in rule 14 which deals with the **remuneration of the cost auditor**, following are the changes:
  - (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

(b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

2. **Enforcement of the Companies (Accounts) Amendment Rules, 2018 vide Notification G.S.R. 725(E) dated 31<sup>st</sup> July, 2018**

The Central Government makes the *Companies (Accounts) Amendment Rules, 2018* to amend the *Companies (Accounts) Rules, 2014*.

*In the Companies (Accounts) Rules, 2014,*

- (i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-
  - "(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
  - (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,"
- (ii) after sub-rule (5), the following **Sub Rule (6)**, rule shall be inserted, namely:-
  - "(6) This rule shall not apply to One Person Company or Small Company".
- (iii) after rule 8, the following **rule 8A** shall be inserted, namely:-
  - "8A. Matters to be included in Board's Report for One Person Company and Small Company-
    - (1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-
      - (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
      - (b) number of meetings of the Board;
      - (c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
      - (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
      - (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
      - (f) the state of the company's affairs;

- (g) the financial summary or highlights;
- (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- (i) the details of directors who were appointed or have resigned during the year;
- (j) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.”.

3. **Enforcement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018 vide Notification G.S.R. 865 (E) dated 19<sup>th</sup> September, 2018**

The Central Government makes *the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* to amend the *Companies (Corporate Social Responsibility Policy) Rules, 2014*.

In *Companies (Corporate Social Responsibility Policy) Rules, 2014*,

- (i) in **rule 2** which deals with the **definitions**,-
  - (a) in sub-rule (1), in sub-clause (i) of clause (c) which defines “Corporate Social Responsibility (CSR)”, after the words “relating to activities”, the words “, areas or subjects” shall be inserted;
  - (b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words “cover subjects enumerated”, the words “include activities, areas or subjects specified” shall be substituted;
  - (c) in sub-rule (1), in clause (e) which defines “CSR Policy”, for the words “company as”, the words “company in areas or subjects” shall be substituted.
- (ii) in **rule 5** which deals with the **“CSR Committees”**, in clause (i) of sub rule (1), for the words “an unlisted public company or a private company”, the words “a company” shall be substituted.
- (iii) In **rule 6** which states of **CSR Policy**, following are the changes-
  - (a) in sub-rule (1), in clause (a), for the words “falling within the purview of” the words “areas or subjects specified in” shall be substituted;
  - (b) in sub-rule (1), in second proviso to clause (b), for the words, “activities included in Schedule VII” the words “areas or subjects specified in Schedule VII” shall be substituted.

(iv) in rule 7 i.e., “CSR Expenditure”, for the words, “purview of”, the words “areas or subjects, specified in” shall be substituted.

#### 4. Constitution of NFRA

The Central Government vide Notification No. S.O. 5099(E) appoints the 1<sup>st</sup> October, 2018 as the date of constitution of National Financial Reporting Authority.

#### 5. Enforcement of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 i.e., related “Constitution of National Financial Reporting Authority” of the Companies Act, 2013

The Central Government vide Notification S.O. 5385(E) appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013 shall come into force.

#### 6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	<p>In section 129 of the principal Act, for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p> <p>“(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):</p> <p>Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:</p> <p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.”</p>
Amendment of section 134 (Financial statement, Board's report, etc)	<p>In section 134 of the principal Act,—</p> <p>(a) for <b>sub-section (1)</b>, the following sub-section shall be substituted, namely:—</p> <p>“(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on</p>

	<p>behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.;"</p> <p>(b) in <b>sub-section (3)</b>,—</p> <p>(i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"</p> <p>(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;</p> <p>(iii) after clause (q), the following provisos shall be inserted, namely:— "Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.";</p> <p>(c) after sub-section (3), the following <b>sub-section 3A</b> shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company".</p>
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Amendment of section 135 (Corporate Social Responsibility)	<p>In section 135 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>,—</p> <p>(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;</p> <p>(b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.";</p> <p>(ii) in <b>sub-section (3)</b>, in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;</p> <p>(iii) in <b>sub-section (5)</b>, for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'</p>
Amendment of section 137 (Copy of financial statement to be filed with Registrar).	<p>In section 137 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>,—</p> <p>(a) the words and figures "within the time specified under section 403" shall be omitted;</p> <p>(b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted;</p> <p>(c) after the fourth proviso, the following proviso shall be inserted, namely:— 'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'</p>

	(ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted; (iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in <b>sub-section (1)</b> , the first proviso shall be omitted.

**7. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 137.</b>	In section 137 of the principal Act, in sub-section (3),— (a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted; (b) for the portion beginning with "punishable with imprisonment", and ending with "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh 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 five lakh rupees" shall be substituted.
<b>Amendment of section 140.</b>	In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— “(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

**CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS**

**1. 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** which deals with the Qualifications of Independent director, 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** which deals with the **copy of resignation of director to be forwarded by him**, for the word "shall", the word "may" shall be substituted.

2. **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 which deals with the Application for allotment of Director Identification Number, a new form shall be substituted.

3. **Enforcement of the Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018** vide Notification G.S.R. 615(E) w.e.f. 10<sup>th</sup> 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** (related to cancellation or surrender or deactivation of DIN) 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 **rule 12A** shall be inserted, namely:-

**“12A Directors KYC:-** Every individual who has been allotted a Director Identification Number (DIN) as on 31<sup>st</sup> March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30<sup>th</sup> April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31<sup>st</sup> March, 2018, shall submit e-form DIR-3 KYC on or before 31<sup>st</sup> August, 2018.”;

(iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

**4. 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** i.e., Directors KYC, 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.

**5. 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.

**6. Amendments through the *Companies (Amendment) Act, 2017***

Relevant sections	Amendment
Amendment of section 149 (Company to	<p>In section 149 of the principal Act,—</p> <p>(i) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p>

have board of directors)	<p>"(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.";</p> <p>(ii) in <b>sub-section (6)</b>,—</p> <p>(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;</p> <p>(b) for clause (d), the following clause shall be substituted, namely:—</p> <p>"(d) none of whose relatives—</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(iv) has any other pecuniary transaction or relationship</p>
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	<p>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);";</p> <p>(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—</p> <p>"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.". </p>
Amendment of Section 157 (Company to inform DIN to registrar)	<p>In section 157 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(ii) in <b>sub-section (2)</b>, the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.</p>
Amendment of section 164 (Disqualifications for appointment of director)	<p>In section 164 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following proviso shall be inserted, namely:—</p> <p>"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";</p> <p>(ii) in <b>sub-section (3)</b>, for the proviso, the following proviso shall be substituted, namely:—</p> <p>"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."</p>
Amendment of section 167 (Vacations of office of director).	<p>In section 167 of the principal Act, in <b>sub-section (1)</b>,—</p> <p>(i) in clause (a), the following proviso shall be inserted, namely:—</p> <p>"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";</p> <p>(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—</p>

	<p>"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—</p> <ul style="list-style-type: none"> <li>(i) for thirty days from the date of conviction or order of disqualification;</li> <li>(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</li> <li>(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."</li> </ul>
Amendment of Section 168 (Resignation of Director)	In section 168 of the principal Act, in <b>sub-section (1)</b> , in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

7. **Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 157.</b>	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.”
<b>Substitution of new section for section 159.</b>	For section 159 of the principal Act, the following Substitution of section shall be substituted, namely: <b>Penalty for default of certain provisions.</b> “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.”
<b>Amendment of section 164.</b>	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.”
<b>Amendment of section 165.</b>	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 4: 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 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*. This amendment has omitted the requirement of approval of the Central Government for making payment of remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

- (i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:
  - (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** i.e., related to Fees, 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 of section 196	In section 196 of the principal Act,—

(Appointment of MD, WTD, Manager)	<p>(a) in <b>sub-section (3)</b>, 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.";</p> <p>(b) in <b>sub-section (4)</b>, for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.</p>
Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	<p>In section 197 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>,—</p> <ul style="list-style-type: none"> <li>(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</li> <li>(ii) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted;</li> <li>(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.";</li> </ul> <p>(b) in <b>sub-section (3)</b>, the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;</p> <p>(c) for <b>sub-section (9)</b>, 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</p>

	<p>may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";</p> <p>(d) in <b>sub-section (10)</b>,—</p> <p>(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;</p> <p>(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.";</p> <p>(e) in <b>sub-section (11)</b>, the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;</p> <p>(f) after <b>sub-section (15)</b>, the following sub-sections shall be inserted, namely:—</p> <p>"(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.</p> <p>(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."</p>
Amendment Section (Calculations Profits)	of 198 of

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

	<p>company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause (f) shall be inserted, namely—</p> <p style="padding-left: 40px;">“(f) any amount representing unrealised gains, notional gains or revaluation of assets.”;</p> <p>(ii) in <b>sub-section (4)</b>, in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.</p>
Amendment of section 200 (Central Government or company to fix limit with regard to remuneration).	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 (Forms of, and procedure in relation to, certain applications).	<p>In section 201 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>, for the words "this Chapter", the word and figures "section 196" shall be substituted;</p> <p>(b) in <b>sub-section (2)</b>, in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.</p>

**4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 197.</b>	<p>In section 197 of the principal Act,—</p> <p>(a) sub-section (7) shall be omitted;</p> <p>(b) for sub-section (15), the following sub-section shall be substituted, namely—</p> <p style="padding-left: 40px;">“(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.”.</p>
<b>Amendment of section 203.</b>	<p>In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely—</p> <p style="padding-left: 40px;">“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a</p>

	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.”.
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## CHAPTER 5: MEETING OF BOARD AND ITS POWERS

### 1. 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 i.e., related the matters not to be dealt with in a meeting through video conferencing or other audio visual means, 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 related to the **Committees to the Board**, for the words “every listed company”, the words “every listed public company” shall be substituted.

(iii) In the principal rules, for rule 13 i.e. related to the **Special Resolution**, 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.”

### 2. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 173 (Meetings of Board)	<p>In section 173 of the principal Act, in <b>sub-section (2)</b>, after the first proviso, the following proviso shall be inserted, namely:—</p> <p>“Provided further that where there is quorum in a meeting through physical presence of directors, any other director</p>

	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 (Audit Committee).	<p>In section 177 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in <b>sub-section (4)</b>, 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:</p> <p>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:</p> <p>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."</p>
Amendment of Section 178 (Nomination and Remuneration Committee and stake holders Relationship committee)	<p>In section 178 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in <b>sub-section (2)</b>, 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</p>

	<p>Committee or by an independent external agency and review its implementation and compliance" shall be substituted;</p> <p>(iii) in <b>sub-section (4)</b>, 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.;"</p> <p>(iv) in <b>sub-section (8)</b>, 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.</p>
<p>Substitution of new section for section 185. (Loan to Directors)</p>	<p>For <b>section 185</b> of the principal Act, the following section shall be substituted, namely—</p> <p>'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,—</p> <p>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</p> <p>(b) any firm in which any such director or relative is a partner.</p> <p>(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—</p> <p>(a) a special resolution is passed by the company in general meeting:</p> <p>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</p>

	<p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p><i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <ul style="list-style-type: none"> <li>(a) any private company of which any such director is a director or member;</li> <li>(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</li> <li>(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.</li> </ul> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <ul style="list-style-type: none"> <li>(a) the giving of any loan to a managing or whole-time director— <ul style="list-style-type: none"> <li>(i) as a part of the conditions of service extended by the company to all its employees; or</li> <li>(ii) pursuant to any scheme approved by the members by a special resolution; or</li> </ul> </li> <li>(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</li> <li>(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</li> <li>(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.</li> </ul>
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	<p>Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.</p> <p>(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,—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(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.'</li> </ul>
Amendment of section 186 (Loan and investment by company).	<p>In section 186 of the principal Act,—</p> <ul style="list-style-type: none"> <li>(i) in <b>sub-section (2)</b>, the following Explanation shall be inserted, namely:— <i>'Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'</i>;</li> <li>(ii) for <b>sub-section (3)</b>, 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:</li> </ul>

	<p>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:</p> <p>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).".</p> <p>(iii) for <b>sub-section (11)</b>, the following sub-section shall be substituted, namely—</p> <p>"(11) Nothing contained in this section, except sub-section (1), shall apply—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) to any investment— <ul style="list-style-type: none"> <li>(i) made by an investment company;</li> <li>(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;</li> <li>(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.";</li> </ul> </li> </ul>
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	<p>(iv) in the <i>Explanation</i>, in clause (a), after the words "other securities" the following shall be inserted, namely:—</p> <p>"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."</p>
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3. **Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
Amendment of section 191	<p>In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—</p> <p>"(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."</p>

**CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS**

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
Amendment of section 238	<p>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.</p>

**CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT**

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
Amendment of section 248	<p>In section 248 of the principal Act, in sub-section Amendment of (1),—</p>

	<p>(a) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted;</p> <p>(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—</p> <p>"(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</p> <p>(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.".</p>
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## CHAPTER 16: SPECIAL COURTS

### Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 435. (Establishment of Special Courts)	<p>For section 435 of the principal Act, the following shall be substituted, namely:—</p> <p>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.</p> <p>(2) A Special Court shall consist of—</p> <p>(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</p> <p>(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."</p>
Amendment of section 438 (Application of Code to proceedings before Special court)	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 (Offences to be non cognizable).	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 (Transitional provisions).	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.

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> 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.

#### CHAPTER 17: MISCELLANEOUS PROVISIONS

**1. 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** which relates to Committee to advise on valuation matters, 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".

**2. 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** i.e., related to **Transitional Arrangement**, for the figures, letters and word "30<sup>th</sup> 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 i.e., related to **Conditions of Recognition**, in clause (f), for the words "one year", the words "two years" shall be substituted.

**3. Enforcement of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 vide Notification G.S.R.1108(E) dated 13<sup>th</sup> 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, -**

(a) for the marginal heading, the following marginal heading shall be substituted, namely:-  
"Short title, commencement and application";

(b) 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 other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.”.

(ii) 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.

(iii) 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.”.

- (iv) 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.
- (v) 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.

**4. Enforcement of the *Companies (Adjudication of Penalties) Amendment Rules, 2019* vide Notification G.S.R. 131(E) dated 19<sup>th</sup> 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.

**4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 447.</b>	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.
<b>Amendment of section 454</b>	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

	<p>(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</p> <p>(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.”;</p> <p>(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;</p> <p>(iii) in sub-section (8),—</p> <p>(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;</p> <p>(b) in clause (ii)—</p> <p>(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;</p> <p>(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.</p>
<b>Insertion of new section 454A.</b>	<p>After section 454 of the principal Act, the following section shall be inserted, namely:</p> <p><b>Penalty for repeated default.</b></p> <p>“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.”.</p>

## CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

### (1) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17<sup>th</sup> 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 **6<sup>th</sup> 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 5A** 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,
- (xix) 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) **Section 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.;"

- (iv) 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.

**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.

**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.

**(2) 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.

2. 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.

## SECTION B: ALLIED LAWS

### CHAPTER 20: SEBI ACT, 1992

#### Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated **21<sup>st</sup> 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.

### CHAPTER 21: The Securities Contract (Regulation) Act, 1956

**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) for the word "offence", wherever it occurs, the word "contravention" shall be substituted.

#### **CHAPTER 22: FEMA, 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"

#### **(B) Non-Applicability of the following chapter of the Study material**

Chapter 9 of the study material (June 18 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies, is omitted by the Ministry of Corporate Affairs.

**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 payments are made through credit cards & being an online transfer, 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. Amazon Limited was incorporated on 23<sup>rd</sup> March, 2019. You are one of the promoter and Director of the Company. You are explaining the other promoters that we need to appoint First Auditor within 30 days from the date of Incorporation of the Company. How will you guide them and appoint first auditor for the Company?
  - (a) You will ask other shareholders to have a meeting and appoint first auditor until the conclusion of first annual general meeting;
  - (b) You will ask other shareholders to have a meeting and appoint first auditor for the period of 5 years;
  - (c) You will ask Board of Directors to have a meeting and appoint first auditor for the period of 5 years;
  - (d) You will ask Board of Directors to have a meeting and appoint first auditor until the conclusion of first annual general meeting.
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 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 to 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 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-clarity as to existence of dispute in favour of 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

(d) cannot be granted at all

5. Mr. Z was appointed as representative of ABC Company for a corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a kidney transplant done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.

(a) USD 1,25,000

(b) USD 2,25,000

(c) USD 2,50,000

(d) As estimated by a medical institute offering treatment

6. Beuti 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 31<sup>st</sup> 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. Poly Ltd., (hereinafter referred to as "Seller"), manufacturer of footwears entered into an agreement with City Traders (hereinafter referred to as "purchaser"), for sale of its products. The agreement includes, among others, the following clauses:

- (i) That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.
- (ii) That the Purchaser shall not sell the goods manufactured by the Seller outside the municipal limits of the city of Secunderabad.

(iii) That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sell the footwear at prices lower than those embossed on the price label.

You are required to examine with relevant provisions of the Competition Act 2002, the validity of the above clauses.

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, 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. The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:
  - (i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?
  - (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?
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, 2002?
20. Broadway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Broadway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1<sup>st</sup> 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?

21. A group of shareholders consisting of 30 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of Aravalli Manufacturing Limited having a paid up Share capital of ₹ 1 crore. The company has a total of 500 members and the group of 30 members holds one-tenth of the total paid up share capital accounting for one-fifteenth of the issued share capital. The grievance of the group is that due to the mismanagement by the Board of Directors, the company is incurring losses and has not declared any dividend for the past five years. In light of the provisions of the Companies Act, 2013, please advise the group of shareholders regarding the admission of the petition and the relief thereof.
22. Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

#### SUGGESTED ANSWERS/HINTS

1. (b)
2. (d)
3. (c)
4. (a)
5. (d)
6. (d)
7. (b)
8. (c)
9. Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ----- on -----, 2019 at ----- AM.

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.

**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. **Provisions of section 3(1) of the Competition Act, 2002 prohibit any agreement for goods and/or services that may have an appreciable adverse effect on competition in India.**

Provisions of section 3(2) of the said Act state that any agreement entered into in contravention of provision of section 3(1) of the said Act shall be void.

Sections 3(3) and 3(4) of the said Act enumerate the types of the agreements which are to be treated as contravening the provisions of the said section 3(1). According to section 3(4) of the said Act, any agreement among enterprises or persons at different stages of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services including the following shall be treated as agreements in contravention of the said section 3(1):

- (a) tie-in-arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal
- (e) re-sale price maintenance

The clauses of the agreement given in the question are covered by above mentioned provisions Clause at Sr. No.(i) comes under exclusive supply agreement; Clause at Sr. No.(ii) comes under exclusive distribution agreement and Clause at Sr. No.(iii) is covered by re-sale price maintenance.

Explanations to said section 3(4) explains the above terms.

According to Explanation (b), exclusive supply agreement includes any agreement restricting in any manner, the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

According to Explanation (c), exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

According to Explanation (e), "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

In view of the above provisions of the Competition Act, 2002, validity of the clauses of the agreement as given in the question can be determined as follows:

Clause (i) restricts the purchaser to deal in the goods of manufacturers other than the seller. Hence this is in contravention of the provisions of section 3(1) of the said Act.

Clause (ii) restricts the purchaser to sell the goods within a specified area. Hence this is in contravention of the provisions of section 3(1) of the said Act.

Clause (iii) stipulates the resale price, but it allows the purchaser to sell the goods at lower prices than the stipulated prices. Hence this is a valid clause.

But, the law states that any such agreement containing any of the prohibited clause shall be void. Therefore, even if the agreement contains some valid clauses, it shall still be termed as void if it contains even one prohibited clause.

#### **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. According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, is liable for the punishment under the said section.

In the present case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days.

- (i) 1. Since, declared dividend has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.

**Consequences:** The following are the consequences for the violation of above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

(ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Proviso to section 127 of the Companies Act, 2013.

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. Neeraj has contravened the Prevention of Money Laundering Act under Part A Para 22 of Schedule. Section 72 of Information of Technology Act 2000, provides the punishment for the person who breached the confidentiality and privacy without the consent of the person concerned.

Neeraj in the give case, acted without the consent of his Executive Director accessed the electronic records and passed on the official information to the vendor without permission. This information can produce large profits and legitimize the ill-gotten gains through money laundering. Hence, Mr. Neeraj is punishable under section 3 and section 4 of the Prevention of Money Laundering Act, 2002 which provides rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also 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 Broadway Infrastructure Limited 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 or 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.

21. Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

- (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
- (ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

As per the facts, a group of 30 members decided to file a petition. Total number of members are 500 and one tenth of 500 will be 50 and lower of above is 50. Thus, the group of shareholders who decides to file the petition are less than 50. However, the group of 30 members holds one-fifteenth of the issued share capital which is less than the required one tenth of the issued share capital. In view of this, the group is not having requisite number of shares and shareholding for being eligible to approach the Tribunal for relief.

Also, the shareholders may not succeed in getting any relief from the tribunal as continuous losses cannot, by itself, be regarded as oppression. Similarly, the failure to declare dividend or payment of low dividends also does not amount to oppression.

**22. The rules regarding interpretation of deeds and documents are as follows:**

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intensions, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.