

## PAPER –1: FINANCIAL REPORTING

### PART I

#### RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

##### A. Not Applicable for May, 2021 Examination

Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities has been withdrawn on 6<sup>th</sup> July, 2020 by the Institute. Hence, the same has been removed from the list of Guidance Notes applicable for May, 2021. Students are advised not to study the same for May, 2021 examination.

##### B. Applicable for May, 2021 Examination

###### 1. Significant amendments in certain Ind AS notified by the MCA on 24<sup>th</sup> July, 2020

Headings	Details
Definition of 'Material' in Ind AS 1	<p>Earlier definition of Material has been improvised as follows:</p> <p>“Information is material if omitting, misstating <b>or obscuring it could reasonably be expected to</b> influence decisions that the <b>primary users</b> of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity.”</p> <p>Materiality depends on the nature or magnitude of information, or both. An entity assesses whether information, either individually or in combination with other information, is material in the context of its financial statements taken as a whole.</p> <p>Information is obscured if it is communicated in a way that would have a similar effect for primary users of financial statements to omitting or misstating that information. The following are examples of circumstances that may result in material information being obscured:</p> <ul style="list-style-type: none"><li>(a) information regarding a material item, transaction or other event is disclosed in the financial statements but the language used is vague or unclear;</li><li>(b) information regarding a material item, transaction or other event is scattered throughout the financial statements;</li><li>(c) dissimilar items, transactions or other events are inappropriately aggregated;</li></ul>

	<p>(d) similar items, transactions or other events are inappropriately disaggregated; and</p> <p>(e) the understandability of the financial statements is reduced as a result of material information being hidden by immaterial information to the extent that a primary user is unable to determine what information is material.</p> <p>Assessing whether information could reasonably be expected to influence decisions made by the primary users of a specific reporting entity's general purpose financial statements requires an entity to consider the characteristics of those users while also considering the entity's own circumstances.</p> <p>Many existing and potential investors, lenders and other creditors cannot require reporting entities to provide information directly to them and must rely on general purpose financial statements for much of the financial information they need. Consequently, they are the primary users to whom general purpose financial statements are directed. Financial statements are prepared for users who have a reasonable knowledge of business and economic activities and who review and analyse the information diligently. At times, even well-informed and diligent users may need to seek the aid of an adviser to understand information about complex economic phenomena.</p>
<p>Definition of 'Business' in Ind AS 103</p>	<p>Currently, Ind AS 103 defines business as 'an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs or other economic benefits directly to investors or other owners, members or participants'.</p> <p><b>As per the revised definition,</b></p> <p>Business is 'an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities'.</p> <p>Related amendment has been made to the definition of 'output' as an element of business.</p> <ul style="list-style-type: none"> <li>- <b>Elements of a business:</b> The three elements of a business as defined under Ind AS 103 include, inputs, processes applied to those inputs and outputs. Although businesses usually have outputs,</li> </ul>

	<p>outputs are not essential for an integrated set of activities and assets to qualify as a business.</p> <p>In order to be considered as a business, the amendments have clarified that an integrated set of activities and assets must include, at a minimum, an input and a <i>substantive process</i> that together significantly contribute to the ability to create output. Further, if an acquired set of activities and assets has outputs, continuation of revenue does not on its own indicate that both an input and a substantive process have been acquired.</p> <ul style="list-style-type: none"> <li>- <b>Optional concentration test:</b> The amendments include an election to use a 'concentration test'. This is a simplified assessment that would result in an acquisition to qualify as an asset acquisition. The concentration test is met if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets.</li> </ul> <p>An entity may elect to apply, or not to apply, the concentration test. Such an election can be made separately for each transaction or other event.</p> <p>If the concentration test is not met or if the entity elects not to apply the test, then it assesses whether the set of assets and activities meet the definition of a business, such that it consists of an input and a substantive process that together significantly contribute to the ability to create outputs.</p> <ul style="list-style-type: none"> <li>- <b>Assessment of a substantive acquired process:</b> The amendments prescribe how to assess whether an acquired process is substantive in the following situations: <ul style="list-style-type: none"> <li>- <i>A set of activities and assets do not have outputs at the acquisition date:</i> An example of an acquired set of activities and assets that do not have outputs at the acquisition date is an early-stage entity that has not started generating revenues. Accordingly, in such cases, an acquired process or a group of processes would be considered substantive only if both the given criteria are met: <ol style="list-style-type: none"> <li>a. It is critical to the ability to develop or convert an acquired input(s) into outputs and</li> </ol> </li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>b. The inputs acquired include both an organised workforce that has the necessary skills, knowledge, or experience to perform that process (or group of processes) and other inputs that the organised workforce could develop or convert into outputs. Those other inputs could include: <ul style="list-style-type: none"> <li>i. Intellectual property that could be used to develop a good or service</li> <li>ii. Other economic resources that could be developed to create outputs or</li> <li>iii. Rights to obtain access to necessary materials or rights that enable the creation of future outputs.</li> </ul> </li> <li>– <i>A set of activities and assets have outputs at the acquisition date:</i> An acquired set of activities and assets would be considered to have outputs at the acquisition date, if it was generating revenue at that date, irrespective of the fact that subsequently it will no longer generate revenue from external customers as it will be integrated by the acquirer. Accordingly, in such cases, an acquired process or a group of processes would be considered <i>substantive only if, when applied to an acquired input or inputs, it:</i> <ul style="list-style-type: none"> <li>a. Is critical to the ability to continue producing outputs, and the inputs acquired include an organised workforce with the necessary skills, knowledge, or experience to perform that process (or group of processes) or</li> <li>b. Significantly contributes to the ability to continue producing outputs and: <ul style="list-style-type: none"> <li>i. Is considered unique or scarce or</li> <li>ii. Cannot be replaced without significant cost, effort or delay in the ability to continue producing outputs.</li> </ul> </li> </ul> </li> </ul>
<p>Practical expedient permitting lessees not to account for COVID -19 related rent</p>	<p><u>Position before amendment:</u></p> <p>Ind AS 116 defines a lease modification as a change in the scope of a lease, or the consideration for a lease, that was not part of the original terms and conditions of the lease. If a change in lease payments results from a lease modification, then unless the change meets particular criteria to be accounted for as a separate lease, a lessee is required to remeasure</p>

concessions as a lease modification	<p>the lease liability by discounting the revised lease payments using a revised discount rate. <b>The amendment does not affect lessors.</b> Lessors are required to continue to assess if the rent concessions are lease modifications and account for them accordingly.</p> <p><u>Amendment:</u></p> <p>Under Ind AS 116, rent concessions often meet the definition of a lease modification. The accounting for lease modifications can be complex. For instance, the lessee may be required to calculate lease liabilities using a revised discount rate and adjust right-of-use assets. To address the challenge, in line with IASB, MCA has issued amendment to Ind AS 116 and introduces a practical expedient for lessees which allows a lessee not to account rent concessions as a direct consequence of COVID-19 as lease modifications.</p> <p>Following amendments have been made with respect to accounting of COVID-19 related rent concessions such as rent holidays and temporary rent reductions:</p> <p><i>As a practical expedient, a lessee <b>may elect not to assess</b> a rent concession as a lease modification <b>only if <u>all</u></b> of the following conditions are met:</i></p> <ol style="list-style-type: none"> <li>a) <i>the change in lease payments results in revised consideration for the lease that is <b>substantially the same as, or less than,</b> the consideration for the <b>lease immediately preceding the change</b>;</i></li> <li>b) <i>any reduction in <b>lease payments affects only payments originally due on or before the 30<sup>th</sup> June, 2021</b> (for example, a rent concession would meet this condition if it results in <b>reduced lease payments on or before the 30<sup>th</sup> June, 2021 and increased</b> lease payments that <b>extend beyond the 30<sup>th</sup> June, 2021</b>); and</i></li> <li>c) <i>there is <b>no substantive change</b> to other terms and conditions of the lease.</i></li> </ol> <p><i>A lessee that makes this election shall account for any change in lease payments resulting from the rent concession as if the change were not a lease modification.</i></p> <p><b>Note:</b> <i>The above practical expedient <b>applies only to rent concessions occurring as a direct consequence of the covid-19 pandemic and needs to be disclosed in the financial statements.</b></i></p>
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**2. 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 classified as equity	<p>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</p>
Amendments to Ind AS 19 – Plan amendment,	<p>The amendments to Ind AS 19 clarify the accounting for defined benefit plan amendments, curtailments and settlements. They confirm that entities must:</p>

curtailment or settlement	<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 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> 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> 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> 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 of the contract' and the asset must be held within a 'held to collect' business model.</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.
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.

### 3. 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 "II 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.**

**4. 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.

**5. 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**

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. (Refer Annexure IV for overview of Ind AS 115)
- 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.

**6. 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-marketing 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.
7. **Notification of Ind AS 116 and withdrawal of Ind AS 17 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 30<sup>th</sup> March, 2019.**

***(Refer Annexure V for overview of Ind AS 116)***

## Annexure IV

### 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 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'.	AS 7 and AS 9 do not provide any such overarching principle to fall upon in case of doubt.
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	AS 7 covers only revenue from construction

		performance obligation contract with customer. However, it does not deal with revenue from 'interest' and 'dividend' which are covered in financial instruments standard.	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

## Annexure V

### Overview of Ind AS 116 “Leases”

#### Objective

Ind AS 116 sets out the principles for the recognition, measurement, presentation and disclosure of leases and faithful representation of the transactions by lessees and lessors. This information gives a basis for users of financial statements to assess the effect that leases have on the financial position, financial performance and cash flows of an entity.

#### Scope

The standard applies to all leases, including leases of right-of-use assets in a sublease, except for:

- (a) Leases to explore for or use minerals, oil, natural gas and similar non-regenerative resources;
- (b) Leases of biological assets within the scope of Ind AS 41, Agriculture held by a lessee;
- (c) Service concession arrangements within the scope of Appendix D, Service Concession Arrangements of Ind AS 115, Revenue from Contracts with Customer;
- (d) Licences of intellectual property granted by a lessor within the scope of Ind AS 115, Revenue from Contracts with Customers; and
- (e) Rights held by a lessee under licensing agreements within the scope of Ind AS 38, Intangible Assets for such items as motion picture films, video recordings, plays, manuscripts, patents and copyrights.



A lessee may, but is not required to, apply Ind AS 116 to leases of intangible assets other than those described in point (e) above.

This Standard specifies the accounting for an individual lease. However, as a practical expedient, an entity may apply this Standard to a portfolio of leases with similar characteristics if the entity reasonably expects that the effects on the financial statements would not differ materially.

### **Recognition exemption**

In addition to the above scope exclusions, a lessee can elect not to apply the recognition, measurement and presentation requirements of Ind AS 116 to short-term leases; and low value leases.

If a lessee elects for the exemption, then it shall recognise the lease payments associated with those leases as an expense on either a straight line basis over the lease term or another systematic basis if that basis is more representative of the pattern of the lessee's benefit.

The election for short-term leases shall be made by class of underlying asset to which the right of use relates. The low value lease exemption can be applied on a lease-by-lease basis.

The assessment of whether an underlying asset is of low value is performed on an absolute basis. Leases of low-value assets qualify for exemption regardless of whether those leases are material to the lessee. The assessment is not affected by the size, nature or circumstances of the lessee. Accordingly, different lessees are expected to reach the same conclusions about whether a particular underlying asset is of low value.

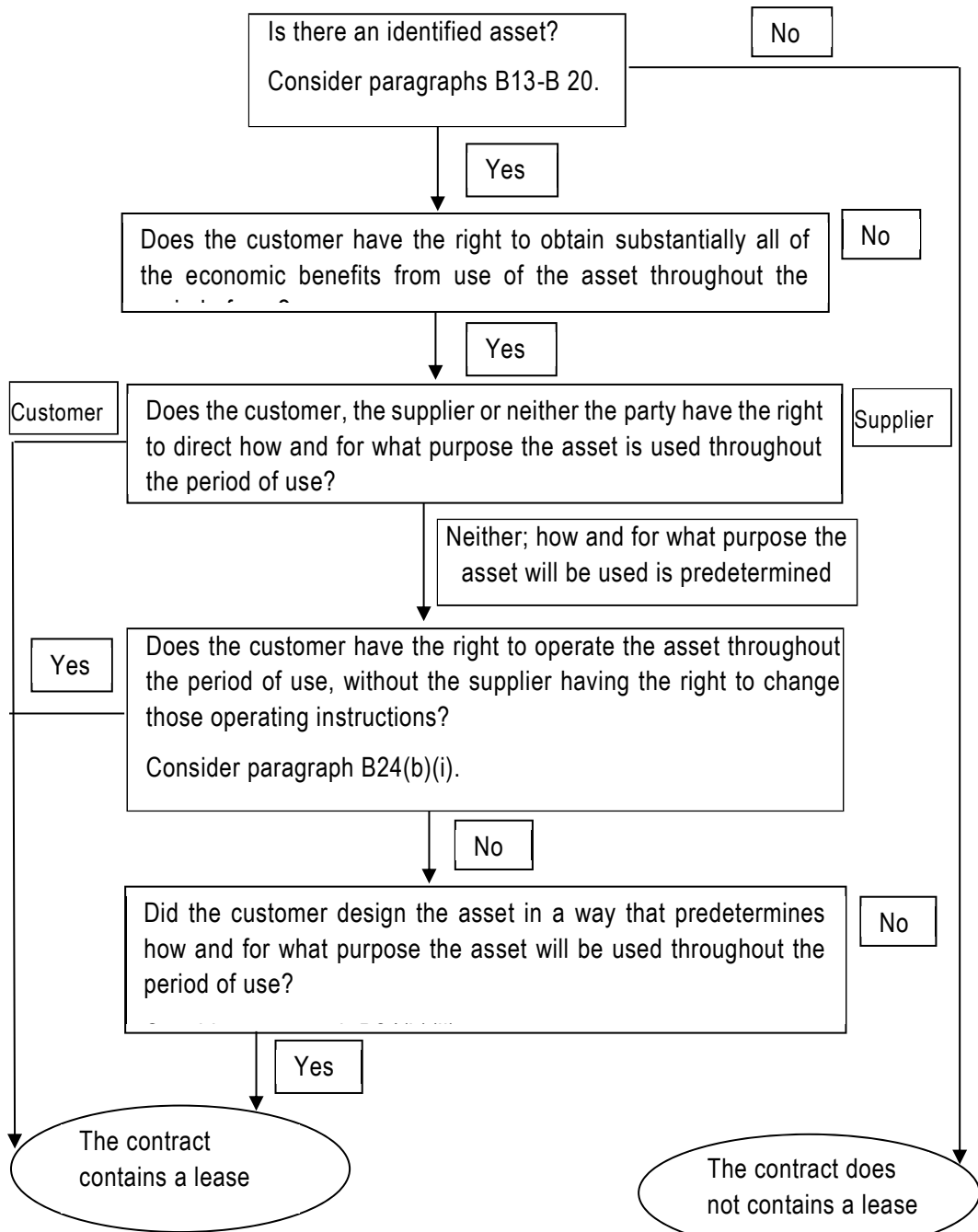
If a lessee subleases an asset, or expects to sublease an asset, the head lease does not qualify as a lease of a low-value asset. Examples of low-value underlying assets can include tablet and personal computers, small items of office furniture and telephones.

If an entity applies either exemption, it must disclose that fact and certain information to make the effect of the exemption known to users of its financial statements. (Refer – Disclosure)

### **Identifying a lease**

At inception of a contract, an entity shall assess whether the contract is, or contains, a lease. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

An entity shall reassess whether a contract is, or contains, a lease only if the terms and conditions of the contract are changed.



**Separating component of contract**

For a contract that contains a lease component, an entity accounts for each lease component within the contract separately from non-lease components. A lessee shall allocate the total contract consideration to each lease component on the basis of relative stand-alone price of the lease component and the aggregate stand-alone price of the non-lease components. A lessee shall account for non-lease components applying other applicable Standards.

As a practical expedient, a lessee may elect not to separate non-lease components from the lease components. Instead it may account for the entire contract including non-lease components as a single lease component.

The practical expedient shall not be applied to embedded derivatives that meet the criteria given Ind AS 109, Financial Instruments.

**Lease term**

If a contract is, or contains, a lease, the lease term needs to be determined.

The lease term begins on the commencement date (i.e. the date on which the lessor makes the underlying asset(s) available for use by the lessee) and includes any rent-free or reduced rent periods. It comprises:

- (a) The non-cancellable period of the lease;
- (b) Periods covered by an option to extend the lease if the lessee is reasonably certain to exercise that option; and
- (c) Periods covered by an option to terminate the lease if the lessee is reasonably certain not to exercise that option

A lease is no longer enforceable when the lessee and the lessor each have the right to terminate the lease without permission from the other party with no more than an insignificant penalty.

An entity shall revise the lease term if there is a change in the non-cancellable period of a lease.

**Recognition and Measurement of lease in the books of Lessee**

On the commencement of the lease, lessee needs to recognise the right-of use asset and measure it at cost. Lessee should also recognise a lease liability and measure it at the present value of the lease payments that are not paid at that date. The lease payments should be

discounted using the interest rate implicit in the lease, if readily determinable or else using the lessee's incremental borrowing rate.

$A\ Cost = Lease\ Liability + Lease\ payments\ made - lease\ incentives\ received + initial\ direct\ costs + estimated\ dismantling\ and\ restoration\ costs.$

$Lease\ Payments = Fixed\ payments\ (including\ in-substance\ fixed\ lease\ payments) - lease\ incentives + variable\ payments + expected\ guaranteed\ residual\ value + exercise\ price\ of\ purchase\ option\ (if\ reasonably\ certain\ to\ be\ exercised) + penalties\ for\ termination\ (if\ reasonably\ certain\ to\ be\ terminated).$

In-substance fixed lease payments are payments that may, in form, contain variability but that, in substance, are unavoidable.

### **Subsequent measurement**

Subsequently, the right-of-use asset shall be measured by applying a cost model or revaluation model if the underlying asset belongs to the class of assets to which the entity applies revaluation model as per Ind AS 16, Property, Plant and Equipment.

### **Cost model**

Lessee shall measure the right-of-use asset at cost less accumulated depreciation and any accumulated impairment losses.

Lessees adjust the carrying amount of the right-of-use asset for remeasurement of the lease liability, unless the carrying amount has already been reduced to zero or the change in the lease liability relates to a variable lease payment that does not depend on an index or rate.

### **Subsequent measurement of lease liability**

After initial recognition, the lease liability is measured at amortised cost using the effective interest method and remeasuring the carrying amount to reflect any reassessment or lease modifications or to reflect revised in-substance fixed lease payments.

### **Reassessment of lease liability**

After the commencement date, a lessee shall remeasure the lease liability in accordance with the standard to reflect changes to the lease payments. A lessee shall recognise the amount of the remeasurement of the lease liability as an adjustment to the right-of-use asset. However, if the carrying amount of the right-of-use asset is reduced to zero and there is a further reduction in the measurement of the lease liability, a lessee shall recognise any remaining amount of the remeasurement in profit or loss.

### **Presentation**

The right-of-use assets should be either presented separately from other assets in the balance sheet or disclosed in the notes. If not presented separately, they should be presented in the

appropriate line item of the balance sheet as if they were owned and disclose in the notes the line items which include such assets.

The lease liabilities should be presented either separately from other liabilities in the balance sheet or disclose in the notes the line items which include the lease liabilities.

Right-of-use assets that meet the definition of investment property are presented within investment property.

In the statement of profit and loss, a lessee shall present interest expense on the lease liability separately from the depreciation charge for the right-of-use asset. Interest expense on the lease liability is a component of finance costs requires to be presented separately in the statement of profit and loss.

In the statement of cash flows, a lessee shall classify:

- a) cash payments for the principal portion of the lease liability within financing activities;
- b) cash payments for the interest portion of the lease liability within financing activities applying the requirements in Ind AS 7, Statement of Cash Flows, for interest paid; and
- c) short-term lease payments, payments for leases of low-value assets and variable lease payments not included in the measurement of the lease liability within operating activities.

## **Accounting in the books of Lessor**

### **Classification of leases**

A lessor shall classify each of its leases as either an operating lease or a finance lease. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. The standard also provides examples of situations that individually or in combination would/could normally lead to a lease being classified as a finance lease.

Lease classification is made at the inception date and is reassessed only if there is a lease modification. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the underlying asset), or changes in circumstances (for example, default by the lessee), do not give rise to a new classification of a lease for accounting purposes.

**Finance lease and Operating lease****Recognition and measurement**

<b>Particulars</b>	<b>Finance lease</b>	<b>Operating lease</b>
Balance Sheet impact	Derecognised the underlying asset	Continue to present the underlying asset
	Present lease receivable at an amount equal to the net investment in lease	Add any initial direct costs incurred in connection with obtaining the lease to the carrying amount of the underlying asset
Statement of profit and loss	lessor shall recognise finance income over the lease term, based on a pattern reflecting a constant periodic rate of return on the lessor's net investment in the lease	Lessor shall recognise lease payments from operating leases as income on either a straight-line basis or another systematic basis. The lessor shall apply another systematic basis if that basis is more representative of the pattern in which benefit from the use of the underlying asset is diminished
Statement of profit and loss: In case manufacturer or dealer is lessor	revenue being the fair value of the underlying asset, or, if lower, the present value of the lease payments accruing to the lessor, discounted using a market rate of interest	Recognise depreciation expense over the useful life of asset
	the cost of sale being the cost, or carrying amount if different, of the underlying asset less the present value of the unguaranteed residual value	
	selling profit or loss in accordance with its policy for outright sales to which Ind AS 115 applies	

A lessor initially measures a finance lease receivable at the present value of the future lease payments plus any unguaranteed residual value accruing to the lessor. The lessor discounts these amounts using the rate implicit in the lease.

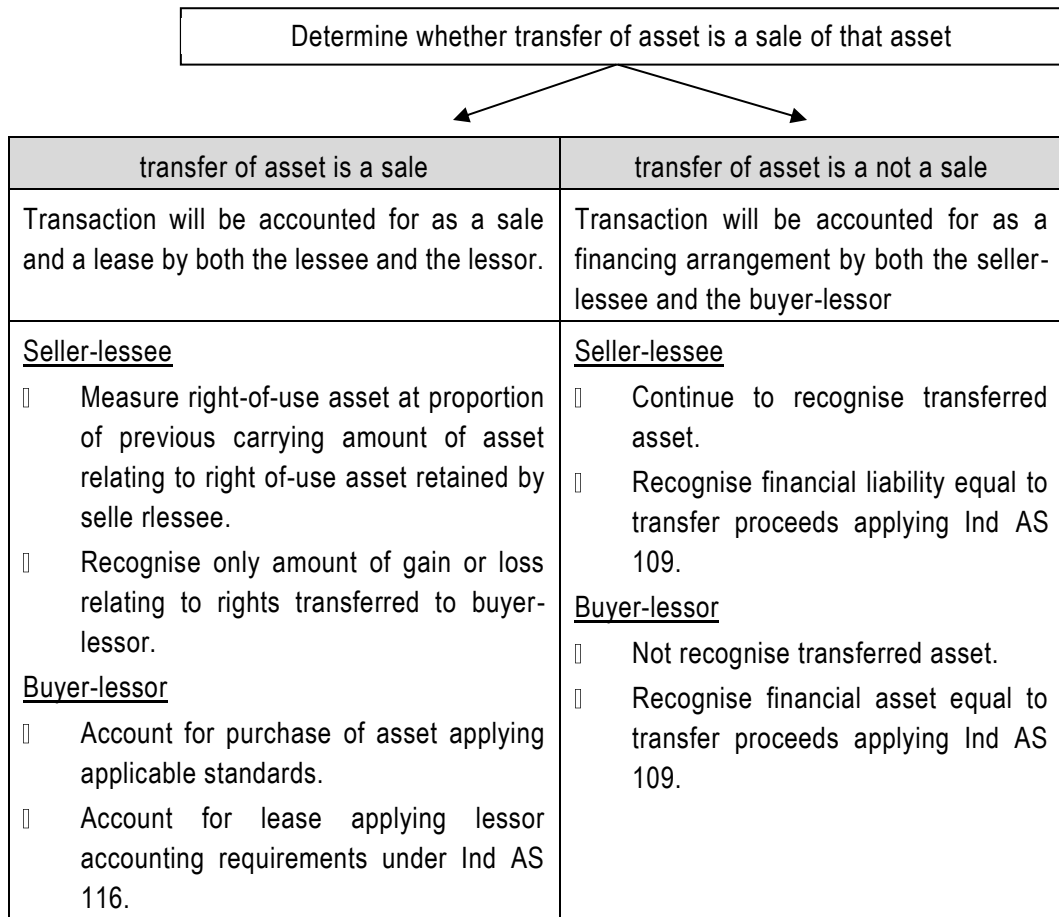
A lessor includes the following lease payments in the measurement of the finance lease receivable:

- fixed payments (including in-substance fixed payments), less lease incentives payable;
- variable payments that depend on an index or rate;
- residual value guarantees provided to the lessor at the guaranteed amount;
- the exercise price of purchase options if the lessee is reasonably certain to exercise; and
- termination penalties payable in accordance with the expected lease term.

**Presentation**

Lessor shall present underlying assets subject to operating leases in its balance sheet according to the nature of the underlying asset.

**Sale and lease back – recognition and measurement**



### Transition date accounting

#### Definition of lease

On the date of initial application of Ind AS 116, companies have an option not to reassess its previously identified leases contracts (as per Ind AS 17, Leases) and apply the transition provisions of this standard to those leases.

Also, they have an option not to apply this Standard to contracts that were not previously identified as containing a lease applying Ind AS 17.

If an entity chooses the above options then it shall disclose that fact and apply the practical expedient to all of its contracts.

#### Transition accounting: In the books of Lessee

A lessee is permitted to:

- adopt the standard retrospectively; or
- follow a modified retrospective approach.

A lessee applies the election consistently to all of its leases.

#### Modified retrospective approach

Lessee shall not restate comparative information and recognise the cumulative effect of initially applying Ind AS 116 as an adjustment to the opening balance of retained earnings (or other component of equity, as appropriate) at the date of initial application.

For leases previously classified as operating leases and finance Leases, the following may be noted:

Operating lease	Lease liability	Measure at the present value of the remaining lease payments, discounted using lessee's incremental borrowing rate at the date of initial application
	Right-of-use asset	Retrospective calculation, using a discount rate based on lessee's incremental borrowing rate at the date of initial application. or Amount of lease liability (adjusted by the amount of any previously recognised prepaid or accrued lease payments relating to that lease).



		Lessee can choose one of the alternatives on a lease-by-lease basis.
Finance lease	Lease liability	Carrying amount of the lease liability immediately before the date of initial application.
	Right-of-use asset	Carrying amount of the lease asset immediately before the date of initial application.
	Application of Ind AS 116	Apply the provisions of this standard to Right of Use asset and lease liability from the date of initial application.

The standard also prescribes certain practical expedients under Modified retrospective approach to leases previously classified as operating leases applying Ind AS 17.

#### **Transition accounting: In the books of Lessor**

Except for sub-leases and sale-and-leaseback transactions, a lessor does not make any adjustments on transition:

#### **Sales and leaseback transaction**

Sale and leaseback transactions entered into before the date of initial application shall not be reassessed to determine whether the transfer of the underlying asset satisfies the requirements in Ind AS 115 to be accounted for as a sale.

For a sale-and-leaseback transaction accounted for as a sale and finance lease in accordance with Ind AS 17, the seller-lessee:

- ▮ accounts for the leaseback in the same way as for any finance lease that exists at the date of initial application; and
- ▮ continues to amortise any gain on the sale over the lease term

For a sale-and-leaseback transaction accounted for as a sale and operating lease in accordance with Ind AS 17, the seller-lessee:

- ▮ accounts for the leaseback in the same way as for any other operating lease that exists at the date of initial application; and
- ▮ adjusts the leaseback right-of-use asset for any deferred gains or losses that relate to off-market terms recognised in the statement of financial position immediately before the date of initial application.

**Major change in Ind AS 116 vis-à-vis IFRS 16 not resulting in carve out**

1. With regard to subsequent measurement, paragraph 34 of IFRS 16 provides that if lessee applies fair value model in IAS 40 to its investment property, it shall apply that fair value model to the right-of use assets that meet the definition of investment property. Since Ind AS 40, Investment Property, does not allow the use of fair value model, paragraph 34 has been deleted in Ind AS 116.
2. Paragraph 50(b) of IFRS 16 requires to classify cash payments for interest portion of lease liability applying requirements of IAS 7, Statement of Cash Flows. IAS 7 provides option of treating interest paid as operating or financing activity. However, Ind AS 7 requires interest paid to be treated as financing activity only. Accordingly, paragraph 50(b) has been modified in Ind AS 116 to specify that cash payments for interest portion of lease liability will be classified as financing activities applying Ind AS 7.

**Major Changes in Ind AS 116 vis-à-vis AS 19**

S. No.	Particular	Ind AS 116	AS 19
1.	<b>Lease definition</b>	Under Ind AS 116, the definition of lease is similar to that in AS 19. But, in Ind AS 116, there is substantial change in the guidance of how to apply this definition. The changes primarily relate to the concept of 'control' used in identifying whether a contract contains a lease or not.	No such guidance given therein
2.	<b>Modifications</b>	Ind AS 116 brings in comprehensive prescription on accounting of modifications in lease contracts.	No such guidance given therein
3.	<b>Scope:</b>	Ind AS 116 has no such scope exclusion.	AS 19 excludes leases of land from its scope.
4.	<b>Inception of lease and commencement of lease</b>	Ind AS 116 makes a distinction between 'inception of lease' and 'commencement of lease'	No such distinction is there
5	<b>Classification</b>	Ind AS 116 eliminates the requirement of classification of leases as either operating leases or finance leases for a lessee and instead, introduces a single	AS 19 requires a lessee to classify leases as either finance leases or operating leases.

		lessee accounting model which requires lessee to recognise assets and liabilities for all leases unless it applies the recognition exemption applies.	
6	<b>Sale &amp; Leaseback transactions</b>	In Ind AS 116, the approach for computation of gain/loss for a completed sale is different. The amount of gain/loss should reflect the amount that relates to the right transferred to the buyer-lessee.	As per AS 19, if a sale and leaseback transaction results in a finance lease, excess, if any, of the sale proceeds over the carrying amount shall be deferred and amortised by the seller-lessee over the lease term in proportion to depreciation of the leased asset.
		Ind AS 116 requires a seller-lessee and a buyer-lessee to use the definition of a sale as per Ind AS 115, Revenue from Contracts with Customers to determine whether a sale has occurred in a sale and leaseback transaction. If the transfer of the underlying asset satisfies the requirements of Ind AS 115 to be accounted for as a sale, the transaction will be accounted for as a sale and a lease by both the lessee and the lessor. If not, then the seller-lessee shall recognise a finance liability and the buyer-lessee will recognise a financial asset to be accounted for as per the requirements of Ind AS 109, Financial Instruments.	AS 19 does not contain such specific requirement.

7.	For lessor, the treatment of initial direct costs -Finance lease lessor accounting		
	Non-manufacturer/Non-dealer	Interest rate implicit in the lease is defined in such a way that the initial direct costs included automatically in the finance lease receivable.	Either recognised as expense immediately or allocated against the finance income over the lease term.
	Manufacturer/dealer	Same as per AS 19.	Recognised as expense immediately.
	Operating lease-Lessor accounting	Added to the carrying amount of the leased asset and recognised as expense over the lease term on the same basis as lease income.	Either deferred and allocated to income over the lease term in proportion to the recognition of rent income or recognized as expense in the period in which incurred.
8.	<b>Interest rate implicit in the lease'</b>	Definition of the term 'interest rate implicit in the lease' has been modified	Different definition given
9.	<b>Presentation</b>	As a consequence of introduction of single lease model for lessees, there are many changes in the presentation in the three components of financial statements viz. Balance sheet, Statement of P&L, Statement of Cash flows.	Difference in presentation requirement
10.	<b>Disclosure</b>	There are a number of changes in the disclosure relating to qualitative aspects of leasing transactions. For eg. Entities are required to disclose the nature and risks arising from leasing transactions. Also, in case of lessor, there are changes in the disclosure of maturity analysis of leases payments receivable.	Difference in disclosure requirement

## PART – II : QUESTIONS AND ANSWERS

## QUESTIONS

## AS 1 and AS 10

1. (a) A private limited company engaged in IT support and management services is operating in India. Its management has decided that all assets having purchase cost below ₹ 40,000 should be fully depreciated on the same day and ₹ 1 would be carrying cost just for identification purposes. The management believes that all assets below ₹ 40,000 are immaterial for the entity. The actual useful life of such assets could be more than 2 years.

State with appropriate reason:

- (i) Whether the management is right in fully depreciating all assets below ₹ 40,000?
- (ii) If yes, then whether a simple disclosure of such accounting policy in financial statements will suffice?
- (iii) If no, then can management decide useful life of assets which is different from the one mentioned in Schedule II to the Companies Act, 2013.
- (iv) If yes, then whether it is permissible to decide useful life of all assets below a threshold amount or it should be done only with respect to a particular class of assets such as computer/laptops, vehicles, furniture etc.?

## AS 2, AS 5 and AS 26

- (b) A company 'X' Ltd was incorporated under the Companies Act, 1956 in 2010 for carrying out the business of real estate development in the state of Himachal Pradesh.

It entered in agreements for purchase of lands for developing real estate projects in the state and paid advances worth ₹ 3.50 crore. The company was not able to execute conveyance deeds for those lands in the name of the company and was also refused permissions for initiating development activities in the state. Since then there is no other activity undertaken by the company neither on the said land nor anywhere else.

The company has not prepared Statement of Profit and Loss for any of the Financial Year since 2010-2011 to 2019-2020 considering that the business activities never commenced and therefor capitalized the preliminary expenses of ₹ 35,000, general expense of ₹ 2.50 lac (such as Book-Keeping, Auditing, Legal Expense) and Interest Costs of approx. 2.50 crore as preoperative expenses incurred during these ten years under the head inventories – work-in-progress. The extract of the balance sheet is reproduced below for your reference:

**INVENTORIES as at 31.03.2020**

Work-in-Progress

Preliminary Expenses 35,000

Pre-operative Expense 2,52,50,000Total Inventory 2,52,85,000

Now for financial year 2020-2021, the new auditors are of the opinion, that the company shall prepare the Statement of Profit and Loss.

State

- (i) Whether the company is right in not preparing its Profit and Loss Statement for these so many years? Whether the company should prepare its Profit and Loss Statement for financial year 2020-2021?
- (ii) What should be the Accounting for preliminary expenses capitalized earlier?
- (iii) What should be the Accounting for preoperative expenses capitalized earlier?
- (iv) How the above items and inventory to be appeared in the Statement of Profit and Loss for the financial year 2020-2021?

**AS 3**

2. (a) Arrange and redraft the following Cash Flow Statement in proper order keeping in mind the requirements of AS 3:

	(₹ in lacs)	(₹ in lacs)
Net Profit		60,000
Add: Sale of Investments	70,000	
Depreciation on Property, plant and equipment	11,000	
Issue of Preference Shares	9,000	
Loan raised	4,500	
Decrease in Inventory	<u>12,000</u>	<u>1,06,500</u>
		1,66,500
Less: Purchase of Property, plant and equipment	65,000	
Decrease in Trade payables	6,000	
Increase in Trade receivables	8,000	
Exchange gain	8,000	
Profit on sale of investments	12,000	
Redemption of Debenture	5,700	
Dividend paid	1,400	

Interest paid	945	(1,07,045)
		59,455
Add: Opening cash and cash equivalent		12,341
Closing cash and cash equivalent		71,796

**AS 4**

- (b) A private Limited is following IGAAP as a financial reporting framework. It is following POCM method for calculation of gratuity liability. It has funded gratuity plan and as per actuarial valuation as on 31 March, 2020. Net liability comes to ₹ 70,00,000, of which actuary has bifurcated ₹ 30,00,000 as current liability and remaining as non-current liability. The company has remitted entire liability of ₹ 70,00,000 to the gratuity fund as on 30 June, 2020.

Whether non-current gratuity liability of ₹ 40,00,000, which was paid within 12 months from the reporting date shall be disclosed as non-current or to be disclosed as current in the financial statements as on 31 March, 2020. It is assumed that operating cycle of the company is not more than 12 months and date of approval of financial statement is subsequent to 30 June, 2020

**AS 7**

3. (a) Contractors Ltd. have recognized contract revenue on a contract awarded in the financial year 2020-2021. The target date of completion is 5 years. The contract provides for incentives for early completion at the rate of ₹ 1,000 per day subject to a maximum of ₹ 3,00,000. The company has included this amount in contract revenue (in the first year of contract) on the ground that based on the previous experience in similar contracts, it is confident of completing the contract in 4 years. The company's past track record shows that company was able to complete such contracts well in time and earn incentives. Comment on the company's accounting policies.

**AS 9**

- (b) The Board of Directors of Gautam Ltd. seeks your advice in the finalization of financial statements for the year ended 31 March, 2021. On a review of financial statements, it is noticed that:

Sale of goods costing ₹ 54,000 with a profit margin of 10% on selling price is included in the inventory as delivery of goods was postponed at buyer's request.

Advise the company on changes to be effected in the draft financial statements. Give reasons in support of your advice. There is no necessity to discuss disclosure requirements in this regard.

**AS 10**

4. (a) An entity has the following items of property, plant and equipment:
- Property A — a vacant plot of land on which it intends to construct its new administration headquarters;
  - Property B — a plot of land that it operates as a landfill site;
  - Property C — a plot of land on which its existing administration headquarters are built;
  - Property D — a plot of land on which its direct sales office is built;
  - Properties E1–E10 — ten separate retail outlets and the land on which they are built;
  - Equipment A — computer systems at its headquarters and direct sales office that are integrated with the point of sale computer systems in the retail outlets;
  - Equipment B — point of sale computer systems in each of its retail outlets;
  - Furniture and fittings in its administrative headquarters and its sales office;
  - Shop fixtures and fittings in its retail outlets.

How many classes of property, plant and equipment must the entity disclose?

**AS 12**

- (b) S Ltd. received a grant of ₹ 2,500 lakhs during the last accounting year (2019-2020) from government for welfare activities to be carried on by the company for its employees. The grant prescribed conditions for its utilization. However, during the year 2020-2021, it was found that the conditions of grants were not complied with and the grant had to be refunded to the government in full. Elucidate the current accounting treatment, with reference to the provisions of AS 12.

**AS 15**

5. (a) The fair value of plan assets at the beginning and end of the year were ₹ 4,000 and ₹ 5,000 respectively. The employer's contribution to the plan during the year was ₹ 500. Benefit payments to retiree were ₹ 400. Calculate the actual return on plan assets.

**AS 16**

- (b) P Ltd. had the following borrowings during a year in respect of capital expansion:

Plant	Cost of Asset (₹)	Remarks
Plant P	100 lakhs	No specific borrowings
Plant Q	125 lakhs	Bank loan of ₹ 65 lakhs at 10%
Plant R	175 lakhs	9% Debentures of ₹ 125 lakhs were issued.



In addition to the specific borrowings stated above, the Company had obtained term loans from two banks

- (1) ₹ 100 lakhs at 10% from Corporation Bank and
- (2) ₹ 110 lakhs at 11.50% from State Bank of India, to meet its capital expansion requirements.

Determine the amount of borrowing costs to be capitalized in each of the above Plants, as per AS-16.

**AS 17**

6. (a) M Ltd. Group has three divisions A, B and C. Details of their turnover, results and net assets are given below:

	(₹ '000)
Division A	
Sales to B	3,050
Other Sales (Home)	60
Export Sales	<u>4,090</u>
	<u>7,200</u>
Division B	
Sales to C	30
Export Sales to Europe	<u>200</u>
	<u>230</u>
Division C	
Export Sales to America	<u>180</u>

## Divisions

	Head Office (₹ '000)	A (₹ '000)	B (₹ '000)	C (₹ '000)
Operating Profit or Loss before tax		160	20	(8)
Re-allocated cost from Head Office		48	24	24
Interest cost		4	5	1
Non-current assets	50	200	40	120
Net current assets	48	120	40	90
Long-term liabilities	38	20	10	120

Prepare a Segmental Report for publication in M Ltd. Group.

**AS 18**

- (b) Mr. Avinash Sharma, a relative of key management personnel received remuneration of ₹ 2,50,000 for his services in the company for the period from 1.4.2020 to 30.6.2020. On 1.7.2020 he left the service.

Should Mr. Avinash Sharma be identified as a related party in the financial statements as at 31.3.2021 as per AS 18?

**AS 20**

7. Pooja Ltd. had 12,00,000 equity shares of ₹ 10 each fully paid up outstanding prior to rights issue. The details of rights issue are as follows:
- One new share for every two shares outstanding
  - Rights issue price – ₹ 18
  - Last date to exercise rights is 31 December, 2020
  - Fair value of each equity share prior to exercise of rights – ₹ 24

The details of net profits earned by the company are as follows:

Year ended 31.3.2020 ₹ 40,00,000

Year ended 31.3.2021 ₹ 54,00,000

Calculate EPS to be reported under AS 20.

**AS 24**

8. (a) A Cosmetic articles producing company provides the following information:

	Cold Cream	Vanishing Cream
April, 2019 – December, 2019 per month	2,00,000	2,00,000
January, 2020 – March, 2020 per month	1,00,000	3,00,000
April, 2020 - June, 2020 per month	0	4,00,000

The company has enforced a gradual change in product-line on the basis of an overall plan. The approving authority of the company has passed a resolution in June, 2020 to this effect. Should this be treated as a discontinuing operation? Give reasons in support of your answer.

**AS 25**

- (b) On 30.6.2020, A Ltd. incurred ₹ 2,00,000, net loss from disposal of a business segment. Also, on 30.7.2020, the company paid ₹ 60,000 for property taxes assessed for the calendar year 2020. How the above transactions should be included in determination of net income of A Ltd. for the six months interim period ended on 30.9.2020.

**AS 26**

9. (a) An Enterprise has incurred expense for purchase of Technical know-how for manufacturing a car. The Enterprise has paid ₹ 5 crores for the use of know-how for a period of 4 years. The Enterprise estimates the production of cars as follows:

Year	No. of Cars
1	25,000
2	50,000
3	75,000
4	1,00,000

How will the Enterprise amortize the Technical know-how fee as per AS 26? Whether this amortization cost should form part of production cost of the cars?

**AS 27**

- (b) A Ltd., a venturer, purchased an asset of ₹ 20 lakhs from a jointly controlled entity, written down value of asset in joint venture books was ₹ 24 lakhs. Under proportionate consolidation method, what adjustments should A Ltd. do while preparing financial statements? A Ltd. has 50% interest in venture.

**AS 28**

10. (a) A publisher owns 150 magazine titles of which 70 were purchased and 80 were self-created. The price paid for a purchased magazine title is recognised as an intangible asset. The costs of creating magazine titles and maintaining the existing titles are recognised as an expense when incurred. Cash inflows from direct sales and advertising are identifiable for each magazine title. Titles are managed by customer segments. The level of advertising income for a magazine title depends on the range of titles in the customer segment to which the magazine title relates. Management has a policy to abandon old titles before the end of their economic lives and replace them immediately with new titles for the same customer segment.

What is the cash-generating unit for an individual magazine title?

**AS 29**

- (b) X Ltd. has its financial year ended 31.3.2021, fifteen Law suits outstanding, none of which has been settled by the time the accounts are approved by the directors. The directors have estimated that the probable outcomes as below:

Result	Probability	Amount of Loss ₹
For first ten cases: Win	0.6	----

Loss-low damages	0.3	50,000
Loss-high damages	0.1	1,00,000
For remaining five cases:		
Win	0.5	----
Loss-low damages	0.3	60,000
Loss-high damages	0.2	1,00,000

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.

#### Ind AS vs IFRS

11. What is the treatment of 'Contract Cost' under Ind AS 115 'Revenue from Contracts with Customers'?

#### Accounting for Corporate Restructuring

12. The following are the summarized Balance Sheets of A Ltd. and B Ltd., as at 31.3.2021:

A Ltd.		(in ₹000s)
<i>Equity and Liabilities</i>		
Share capital		
3,00,000 Equity shares of ₹ 10 each		3,000
10,000 Preference shares of ₹ 100 each		1,000
Reserves and Surplus		
General reserve	400	
Profit and Loss account	<u>(16,600)</u>	(16,200)
Non-current liabilities		
Secured loans (secured against pledge of stocks)		16,000
Unsecured loans		8,600
Current liabilities		<u>13,000</u>
		<u>25,400</u>
<i>Assets</i>		
Non-current assets		
Property, plant and equipment		3,400
Current assets		

Stock (pledged with secured loan creditors)	18,400
Other Current assets	<u>3,600</u>
	<u>25,400</u>

B Ltd.		(in ₹000s)
<i>Equity and Liabilities</i>		
Share capital		
1,00,000 Equity shares of ₹ 10 each		1,000
Reserves and Surplus		
General reserve		2,800
Non-current liabilities		
Secured loans		8,000
Current liabilities		<u>4,600</u>
		<u>16,400</u>
<i>Assets</i>		
Non-current assets		
Property, plant and equipment		6,800
Current assets		<u>9,600</u>
		<u>16,400</u>

Both the companies go into liquidation and C Ltd., is formed to take over their businesses. The following information is given:

- (a) All current assets of two companies, except pledged stock are taken over by C Ltd. The realisable value of all current assets are 80% of book values in case of A Ltd. and 70% for B Ltd. Non-current assets are taken over at book value.
- (b) The break up of current liabilities is as follows:

	<i>Andrew Ltd.</i>	<i>Barry Ltd.</i>
	₹	₹
Statutory liabilities (including ₹ 22 lakh in case of A Ltd. in case of a claim being admitted)	72,00,000	10,00,000
Liability to employees	30,00,000	18,00,000

The balance of current liability is miscellaneous creditors.

- (c) Secured loans include ₹ 16,00,000 accrued interest in case of B Ltd.
- (d) 2,00,000 equity shares of ₹ 10 each are allotted by C Ltd. at par against cash payment of entire face value to the shareholders of A Ltd. and B Ltd. in the ratio of shares held by them in A Ltd. and B Ltd.
- (e) Preference shareholders are issued equity shares worth ₹ 2,00,000 in lieu of present holdings.
- (f) Secured loan creditors agree to continue the balance amount of their loans to C Ltd. after adjusting value of pledged security in case of A Ltd. and after waiving 50% of interest due in the case of B Ltd.
- (g) Unsecured loans are taken over by C Ltd. at 25% of loan amounts.
- (h) Employees are issued fully paid equity shares in C Ltd. in full settlement of their dues.
- (i) Statutory liabilities are taken over by C Ltd. at full values and miscellaneous creditors are taken over at 80% of the book value.

Show the Opening Balance Sheet of C Ltd.

### Consolidated Financial Statements of Group Companies

13. From the following Balance Sheets of a group of companies and the other information provided, draw up the consolidated Balance Sheet as on 31.3.2021.

#### Balance Sheets as on 31.3.2021

(₹ in Lakh)

2	X	Y	Z		X	Y	Z
Share capital (in shares of ₹ 10 each)	300	200	100	Property, plant and equipment	130	150	100
Reserves	50	40	30	Cost of investment in Y Ltd.	180	—	—
Profit and loss balance	60	50	40	Cost of investment in Z Ltd.	40	—	—
Bills payables	10	—	5	Cost of investment in Z Ltd.	—	80	—
Creditors	30	10	10	Stock	50	20	20
Y Ltd. balance	—	—	15	Debtors	70	10	20
Z Ltd. balance	50	—	—	Bills receivables	—	10	20
				Z Ltd. balance	—	10	—
				X Ltd. balance	—	—	30
				Cash and bank balance	<u>30</u>	<u>20</u>	<u>10</u>
	<u>500</u>	<u>300</u>	<u>200</u>		<u>500</u>	<u>300</u>	<u>200</u>

- X Ltd. holds 1,60,000 shares and 30,000 shares respectively in Y Ltd. and Z Ltd.; Y Ltd. holds 60,000 shares in Z Ltd. These investments were made on 1.7.2020 on which date the provision was as follows:

	Y Ltd.	Z Ltd.
Reserves	20	10
Profit and loss account	30	16

- In December, 2020, Y Ltd. invoiced goods to X Ltd. for ₹ 40 lakhs at cost plus 25%. The closing stock of X Ltd. includes such goods valued at ₹ 5 lakhs.
- X Ltd. declared dividend at 10% on the reporting date.
- Z Ltd. sold to Y Ltd. an equipment costing ₹ 24 lakhs at a profit of 25% on selling price on 1.1.2021. Depreciation at 10% per annum was provided by Y Ltd. on this equipment.
- Bills payables of Z Ltd. represent acceptances given to Y Ltd. out of which Y Ltd. had discounted bills worth ₹ 3 lakhs.

#### Financial Instruments

14. S Limited issued redeemable preference shares to its Holding Company -H Limited. The terms of the instrument have been summarized below. Analyse the given situation, applying the guidance in Ind AS 109 'Financial Instruments', and account for this in the books of H Limited.

<i>Nature</i>	<i>Non-cumulative redeemable preference shares</i>
Repayment	Redeemable after 3 years
Date of Allotment	1 April 2018
Date of Repayment	31 March 2021
Total Period	3 Years
Value of Preference Shares issued	5,00,00,000
Dividend Rate	0.0001% per annum
Market rate of interest	12% per annum
Present value factor	0.7118

#### Share Based Payment

15. On 1.4.2018, X Ltd grants 200 stock options to each of its 300 employees, which will vest at the end of 3<sup>rd</sup> year, provided the employees are in service at the end of 3<sup>rd</sup> year. The exercise price per option is ₹ 60 if average annual output per employee is in the range of 100 units to 120 units, ₹ 50 if the same is in the range of 121 units to 130 units, ₹ 40 if the same is above 130 units.

Fair value as on grant date is estimated at ₹ 50 per option if the exercise price is ₹ 60, ₹ 40 per option if the exercise price is ₹ 50, ₹ 30 per option if the exercise price is ₹ 40.

On 31.3.2019, 20 employees have left. Actual average annual output per employee is 115 till date. X Ltd. expects that it is most likely that the average output will be 122 over the 3 years and that further 30 employees will leave during next 2 years.

On 31.3.2020, further 25 employees have left. Actual average annual output per employee is 132 till date. X Ltd. expects that it is most likely that the average output will be above 130 units over the 3 years. It also estimates that a further 10 employees will leave during the 3<sup>rd</sup> year.

On 31.3.2021, further 15 employees have left. Actual average annual output per employees is only 112 till date.

Compute the amounts to be recognized for each year.

### Mutual Funds

16. Investors Mutual Fund is registered with SEBI and having its registered office at Pune. The fund is in the process of finalizing the annual statement of accounts of one of its Open ended Mutual Fund Schemes. From the information furnished below you are required to prepare a statement showing the movement of unit holders' funds for the financial year ended 31 March, 2021. (₹ in '000)

Opening Balance of net assets	12,00,000
Net Income for the year (Audited)	85,000
8,50,200 units issued during 2020-2021	96,500
7,52,300 units redeemed during 2020-2021	71,320
The par value per unit is ₹ 100	

### Valuation of Business

17. Shree Ltd. gives the following information:

Current profit	₹ 210 lakhs
Compound growth rate of profit	7.5% p.a.
Current cash flows from operations	₹ 270 lakhs
Compound growth rate of cash flows	6.5% p.a.
Current price earning ratio	12
Discount factor	20%

Find out the value of Shree Ltd. taking 10 years projected profit or cash flows based on (i) Discounted earnings method, (ii) Discounted cash flows method.



**Value Added Statement**

18. The following is the Profit and Loss Account of Vinayak Ltd. for the year ended 31.3.2021. Prepare a Gross Value Added Statement of Vinayak Ltd. and show also the reconciliation between Gross Value Added and Profit before taxation.

**Draft Profit and Loss Account for the year ended 31.3.2021**

	Notes	Amount	
		(₹ in lakhs)	
Income:			
Sales		–	890
Other Income		–	<u>55</u>
			945
Expenditure:			
Production and operational expenses	(a)	641	–
Administration expenses (Factory)	(b)	33	–
Interest	(c)	29	–
Depreciation		<u>17</u>	<u>720</u>
Profit before taxes		–	225
Provision for taxes	(d)	–	<u>30</u>
Profit after tax		–	195
Balance as per last Balance Sheet		–	<u>10</u>
			<u>205</u>
Transferred to General Reserve			45
Dividend paid			<u>95</u>
			140
Surplus carried to Balance Sheet			<u>65</u>
			<u>205</u>

**Notes:**

(a) Production and Operational expenses	₹ in lakhs
Consumption of raw materials	293
Consumption of stores	59
Salaries, Wages, Gratuities etc. (Admn.)	82
Taxes	98

Other manufacturing expenses	<u>109</u>
	<u>641</u>
(b) Administration expenses include salaries, commission to Directors ₹9.00 lakhs Provision for doubtful debts ₹ 6.30 lakhs.	
(c) Interest on loan from ICICI Bank for working capital	9
Interest on loan from ICICI Bank for fixed loan	10
Interest on loan from IFCI for fixed loan	8
Interest on Debentures	<u>2</u>
	<u>29</u>
(d) The charges for taxation include a transfer of ₹ 3.00 lakhs to the credit of Deferred Tax Account.	
(e) Taxes include GST of ₹ 55 lakh on cost of bought-in material.	

#### Economic Value Added

19. Calculate economic value added (EVA) with the help of the following information of Sapphire Ltd.

Financial leverage: 1.4 times;

Equity Capital ₹ 170 lakh;

Reserve and surplus ₹ 130 lakh;

10% Debentures ₹ 400 lakh;

Cost of Equity: 17.5%

Income Tax Rate: 30%.

#### Human Resource Accounting

20. Why human resource is not recognized in the balance sheet?

#### SUGGESTED ANSWERS

1. (a) (i) From the facts given in the question, it is apparent that the assets costing ₹ 40,000 or below is not material for the entity. Hence, management is right in fully depreciating all immaterial assets below ₹ 40,000.

Therefore, if assets costing below ₹ 40,000 are considered to be not material, then the company may recognise those assets as expenses or in any other manner as it wishes which may include recognising the asset as property, plant and equipment and depreciating it fully.

- (ii) Paragraph 17(c) of AS 1 'Disclosure of Accounting Policies' defines that financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements.

Disclosure of materiality level is not required. A disclosure of immaterial items obscures the material information.

However, if the management feels that making the disclosure would make the financial statements understandable, say that the assets costing ₹ 40,000 or below is material on an aggregate basis. In such a case, the management cannot depreciate those assets fully on the same day.

- (iii) Useful life mentioned in Schedule II to the Companies Act 2013 is only indicative. The Pvt Ltd. company is required to estimate the useful life of each item of property, plant and equipment in accordance with AS 10. Pvt Ltd. company can determine the useful life of assets based upon its assessment of the useful life considering history, expected usage, and benefit from the use of such assets, etc. Hence, the determination of useful life is dependent on the assessment and judgement of the entity using the asset.

- (iv) Determining useful life purely based upon a particular category of assets having less than the prescribed threshold is not appropriate and not permissible.

Paragraph 83 of AS 10 requires an entity to disclose the policy and method of depreciation in the financial statements. As per the para, selection of the depreciation method and estimation of the useful life of assets are matters of judgement. Therefore, disclosure of the methods adopted and the estimated useful lives or depreciation rates provides users of financial statements with information that allows them to review the policies selected by management and enables comparisons to be made with other enterprises.

Also, useful life is required to be determined for each asset separately and not based upon the overall class of assets. The estimation of the useful life of the asset is a matter of judgement based on the experience of the enterprise with similar assets.

It must be noted that useful life is specific to the "assets" and not to the "class of assets". Therefore, a company can have a different useful life for assets in the same class.

- (b) (i) The company is not right in not preparing statement of Profit and loss since its incorporation. The company must prepare statement of Profit and loss for the financial year 31 March 2021.
- (ii) Paragraph 56 of AS 26 'Intangible Assets', states that in some cases, expenditure is incurred to provide future economic benefits to an enterprise, but no intangible asset or other asset is acquired or created that can be recognised. In these cases, the expenditure is recognised as an expense when it is incurred.

For example, expenditure of research is always recognised as an expense when it is incurred (see paragraph 41). Examples of other expenditure that is recognised as an expense when it is incurred include:

- (a) expenditure on start-up activities (start-up costs), unless this expenditure is included in the cost of an item of property, plant and equipment under AS 10. Start-up costs may consist of preliminary expenses incurred in establishing a legal entity such as legal and secretarial costs, expenditure to open a new facility or business (pre-operating costs) or expenditures for commencing new operations or launching new products or processes (pre-operating costs);
- (b) expenditure on training activities;
- (c) expenditure on advertising and promotional activities; and
- (d) expenditure on relocating or re-organising part or all of an enterprise.”

Therefore, the company should have recognised the preliminary expenses incurred as an expense in the year of its incurrence in the Statement of Profit and loss.

- (iii) The company has capitalised certain expenses as inventory under the nomenclature of pre-operative expenses. Paragraph 5 of AS 2, valuation of inventories, states that inventories should be valued at the lower of cost and net realisable value.

Paragraph 6 of AS 2 states that the cost of inventories should comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

Paragraph 13 of AS 2 states that in determining the cost of inventories in accordance with paragraph 6, it is appropriate to exclude certain costs and recognise them as expenses in the period in which they are incurred. Examples of such costs are:

- (a) abnormal amounts of wasted materials, labour, or other production costs;
- (b) storage costs, unless those costs are necessary in the production process prior to a further production stage;
- (c) administrative overheads that do not contribute to bringing the inventories to their present location and condition; and
- (d) selling and distribution costs.

The company has recognised general expenses, book-keeping, auditing, legal expense as cost of inventories which is not in accordance with paragraph 13 of AS 2. Therefore, such expenses should have been recognised as expense in the statement of Profit and loss in the year of incurrence.

Paragraph 4.3 of AS 5, 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies' defines prior period items as prior period items are income or expenses which arise in the current period as a result of errors or omissions in the preparation of financial statements of one or more prior periods.

The company must have recognised the preliminary expenses in Statement of Profit and Loss in its first financial statements prepared after incorporation. Further, the expenses recognised under inventory as stated in paragraph 6 above must have been recognised as expenses in the statement of Profit and loss in the year of its incurrence. Therefore, such expenses are prior period items.

Paragraph 15 of AS 5 states that the nature and amount of prior period items should be separately disclosed in the Statement of Profit and Loss in a manner that their impact on the current profit or loss can be perceived.

Therefore, the company shall recognise those expenses in the Statement of Profit and Loss for the year ended 31 March 2021 and present them separately while disclosing the same as prior period items.

The company shall compare the expenses which are rightly recognised as cost of inventories in accordance with paragraph 6 of AS 2 with net realisable value. As the conveyance deeds for land has no probability of getting executed, the net realisable value is NIL and therefore, the company shall write-down the cost of inventory to NIL and recognise an expense in the Statement of Profit and Loss.

2. (a)

**Cash Flow Statement**

(₹ in lacs)

<u>Cash flows from operating activities</u>		
Net profit		60,000
Less: Exchange gain		(8,000)
Less: Profit on sale of investments		<u>(12,000)</u>
		40,000
Add: Depreciation on assets		<u>11,000</u>
Change in current assets and current liabilities		51,000
(-) Increase in debtors	(8,000)	
(+) Decrease in stock	12,000	
(-) Decrease in creditors	<u>(6,000)</u>	<u>(2,000)</u>
Net cash from operating activities		49,000
<u>Cash flows from investing activities</u>		
Sale of investments	70,000	
Purchase of fixed assets	<u>(65,000)</u>	

Net cash from Investing activities		5,000
<u>Cash flows from financing activities</u>		
Issue of preference shares	9,000	
Loan raised	4,500	
Redemption of Debentures	(5,700)	
Interest paid	(945)	
Dividend paid	<u>(1,400)</u>	
Net cash from financing activities		<u>5,455</u>
Net increase in cash & cash equivalents		59,455
Add: Opening cash and cash equivalents		<u>12,341</u>
Closing cash and cash equivalents		<u>71,796</u>

- (b) According to para 8.5 of AS 4 'Contingencies and Events Occurring After the Balance Sheet Date' requires disclosure of special items shall be disclosed in financial statements. It states that there are events which, although they take place after the balance sheet date, are sometimes reflected in the financial statements because of statutory requirements or because of their special nature. For example, if dividends are declared after the balance sheet date but before the financial statements are approved for issue, the dividends are not recognised as a liability at the balance sheet date because no obligation exists at that time unless a statute requires otherwise. Such dividends are disclosed in the notes.

Those events which are indicative of conditions that arose subsequent to the balance sheet date shall not be adjusted for assets and liability recorded in the financial statements. Instead, it shall be classified if it is of special nature.

For considering classification as current and non-current, Pvt limited company is required to assess the conditions existing as on the balance sheet date.

On balance sheet date, the gratuity liability of ₹ 40,00,000 was expected to be paid subsequent to 12 months. Therefore, it shall be classified as non-current.

₹ 40,00,000 shall be classified as non-current liability.

3. (a) The Company's accounting policy is not in accordance with AS 7 "Construction Contracts". Past track record is not the criteria for recognition of incentive payments receivable for early completion of contract. According to AS 7, incentives payments can be included in contract revenue only when
- the contract is sufficiently advanced that it is probable that the specified performance standards will be met or exceeded; and
  - the amount of the incentive payment can be measured reliably.

The contract is not sufficiently advanced as it is in the first year and its normal time is 4-5 years. Hence, the recognition criteria are not met and it is inappropriate to include incentive payments receivable in the current year as part of contract revenue.

- (b) According to AS 9 "Revenue Recognition", when delivery is postponed at buyer's request, revenue should be recognized notwithstanding that physical delivery has not been completed so long as there is every expectation that delivery will be made. However, the item must be on hand, identified and ready for delivery to the buyer at the time the sale is recognized rather than there being simply an intention to acquire or manufacture the goods in time for delivery. Thus, ₹ 54,000 should be excluded from inventory, and the amount of ₹ 60,000 (54,000 / 90%) should be included in sales with corresponding increase in debtors balance if the above conditions are fulfilled.

4. (a) To answer this question one must make a materiality judgement.

A class of assets is defined as a grouping of assets of a similar nature and use in an entity's operations.

The nature of land without a building is different to the nature of land with a building.

Consequently, land without a building is a separate class of asset from land and buildings. Furthermore, the nature and use of land operated as a landfill site is different from vacant land. Hence, the entity should disclose Property A separately. The entity must apply judgement to determine whether the entity's retail outlets are sufficiently different in nature and use from its office buildings, and thus constitute a separate class of land and buildings.

The computer equipment is integrated across the organisation and would probably be classified as a single separate class of asset.

Furniture and fittings used for administrative purposes could be sufficiently different to shop fixtures and fittings in retail outlets to be classified in two separate classes of assets.

- (b) As per AS 12 'Accounting for Government Grants', Government grants sometimes become refundable because certain conditions are not fulfilled. A government grant that becomes refundable is treated as an extraordinary item as per AS 5 "Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies". The amount refundable in respect of a government grant related to revenue is applied first against any unamortized deferred credit remaining in respect of the grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount is charged immediately to Statement of Profit and Loss. In the present case, the amount of refund of government grant should be shown in the profit and loss account of the company as an extraordinary item during the year 2020-2021.

5. (a) The actual return is computed as follows:

	Amount (₹)
Fair value of plan assets (at the beginning of the year)	4,000
Add: Employer Contribution	500
Add: Actual Return (balancing figure)	900
Less: Benefit Payments	<u>(400)</u>
Fair value of plan assets (at the end of the year)	<u>5,000</u>

- (b) (1) **Computation of actual borrowing costs incurred during the year**

Sources	Loan amount (₹ in lakhs)	Interest rate	Interest amount (₹ in lakhs)
Bank Loan	65.00	10%	6.50
9% Debentures	125.00	9%	11.25
Term Loan from Corporation Bank	100.00	10%	10.00
Term Loan from State Bank of India	<u>110.00</u>	11.5%	<u>12.65</u>
Total	<u>400.00</u>		<u>40.40</u>
Specific Borrowings included in above	190.00		17.75

- (2) **Weighted Average Capitalization Rate for General Borrowings**

$$= \frac{\text{Total Interest} - \text{Interest on Specific borrowings}}{\text{Total Borrowings} - \text{Specific borrowings}}$$

$$= \frac{(40.40 - 17.75)}{(400 - 190)} = 22.65/210 = 10.79\% \text{ (approx.)}$$

- (3) Capitalization of Borrowing Costs under AS 16 will be as under: (₹ in lakh)

Plant	Borrowing	Loan Amount	Interest Rate	Interest Amount	Cost of Asset	
P	General	100	10.79%	10.79		110.79
Q	Specific	65	10.00%	6.50	71.50	
	General	60	10.79%	6.47	<u>66.47</u>	137.97
R	Specific	125	9.00%	11.25	136.25	
	General	<u>50</u>	10.79	<u>5.39</u>	<u>55.39</u>	<u>191.64</u>
	Total	400		40.40		440.40

**Note:** The amount of borrowing costs capitalized should not exceed the actual interest cost.



6. (a)

**M Ltd.**  
**Segmental Report**

	Divisions			Inter segment eliminations	₹ ('000)
	A	B	C		Consolidated Total
<u>Segment Revenue</u>					
Sales:					
Domestic	60	–	–	–	60
Export	<u>4,090</u>	<u>200</u>	<u>180</u>	–	<u>4,470</u>
External Sales	4,150	200	180	–	4,530
Inter-segment Sales	<u>3,050</u>	<u>30</u>	–	<u>3,080</u>	–
Total Revenue	<u>7,200</u>	<u>230</u>	<u>180</u>	<u>3,080</u>	<u>4,530</u>
Segment result (given)	160	20	(8)		172
Head office expenses					<u>(96)</u>
Operating profit					76
Interest expense					<u>(10)</u>
Profit before tax					66
<i>Other information</i>					
Non-current assets	200	40	120		360
Net current assets	<u>120</u>	<u>40</u>	<u>90</u>		<u>250</u>
Segment assets	<u>320</u>	<u>80</u>	<u>210</u>		<u>610</u>
Unallocated corporate assets (50 + 48)					98
Segment liabilities	20	10	120		150
Unallocated corporate liabilities					38

**Sales Revenue by Geographical Market**

(₹ '000)

	Home Sales in India	Export Sales (by division A)	Export to Europe	Export to America	Consolidated Total
External Sales	60	4,090	200	180	4,530

- (b) According to para 10 of AS 18 'Related Party Disclosures', parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions. Hence, Mr. Avinash Sharma a relative of key management personnel should be identified as related party in the financial statements as at 31.3.2021.

**7. Calculation of theoretical ex-rights fair value per share**

$$= \frac{(12,00,000 \text{ shares} \times ₹ 24) + (6,00,000 \text{ shares} \times ₹ 18)}{12,00,000 \text{ shares} + 6,00,000 \text{ shares}}$$

$$= \frac{₹ 2,88,00,000 + ₹ 1,08,00,000}{18,00,000 \text{ shares}} = 22$$

**Calculation of adjustment factor**

$$= \frac{\text{Fair value per share prior to exercise of rights}}{\text{Theoretical ex - rights value per share}} = \frac{₹ 24}{₹ 22} = 1.091$$

**Calculation of EPS for the year ended 31.3.2020**

$$\text{EPS originally reported} = \frac{₹ 40,00,000}{12,00,000 \text{ shares}} = ₹ 3.33$$

$$\text{EPS restated for rights issue} = \frac{₹ 40,00,000}{12,00,000 \text{ shares} \times 1.091} = \frac{40,00,000}{13,09,200} = ₹ 3.05$$

**Calculation of EPS for the year ended 31.3.2021**

$$= \frac{₹ 54,00,000}{(12,00,000 \times 1.091 \times 9/12) + (18,00,000 \times 3/12)} = \frac{54,00,000}{9,81,900 + 4,50,000} = 3.77$$

8. (a) In response to the market forces, business enterprises often abandon products or even product lines and reduce the size of their work-force. These actions are not in themselves discontinuing operations unless they satisfy the definition criteria.

In the instant case the company has been gradually reducing operation in the product line of cold creams, simultaneously increasing operation in the product line of vanishing creams. The company was not disposing of any of its components. Phasing out a product line as undertaken by the company does not meet definition criteria in paragraph 3 of AS 24, namely, disposing of substantially in its entirety a component of the enterprise. Therefore, this change over is not a discontinuing operation.

(b) According to para 10 of AS 25 “Interim Financial Reporting”, if an enterprise prepares and presents a complete set of financial statements in its interim financial report, the form and content of those statements should confirm to the requirements as applicable to annual complete set of financial statements. As on 30.9.2020, A Ltd., would report the entire ₹ 2,00,000 loss on the disposal of its business segment since the loss was incurred during interim period. A cost charged as an expense in an annual period should be allocated to interim periods on accrual basis. Since ₹ 60,000 Property Tax payment relates to entire calendar year 2020, ₹ 30,000 would be reported as an expense for six months ended on 30.9.2020 while remaining ₹ 30,000 would be reported as prepaid expenses.

9. (a) As per AS 26 ‘Intangible Assets’ is an identifiable non-monetary asset without physical substance held for use in the production or supply of goods or services for rental to other or for administrative purposes.

Amortisation is the systematic allocation of the depreciable amount of an intangible asset over its useful life.

The amortised amount of an intangible asset should be allocated on a systematic basis over the best estimate of its useful life.

Year	No. of cars	Amortisation charge (p.a.)	
1	25,000	50,00,000	$\left[ \frac{500,00,000}{2,50,000} \right] \times 25,000$
2	50,000	100,00,000	$\left[ \frac{500,00,000}{2,50,000} \right] \times 50,000$
3	75,000	150,00,000	$\left[ \frac{500,00,000}{2,50,000} \right] \times 75,000$
4	1,00,000	200,00,000	$\left[ \frac{500,00,000}{2,50,000} \right] \times 1,00,000$

Yes, the amortization cost will form part of production cost of the cars.

(b) A Ltd. (Venturer) should not recognize its share of loss arising to joint venture from the purchase of asset from the jointly controlled entity until the asset is sold to third party provided recoverable amount of asset is not less than 24 lakhs.

10. (a) It is likely that the recoverable amount of an individual magazine title can be assessed. Even though the level of advertising income for a title is influenced, to a certain extent, by the other titles in the customer segment, cash inflows from direct

sales and advertising are identifiable for each title. In addition, although titles are managed by customer segments, decisions to abandon titles are made on an individual title basis. Therefore, it is likely that individual magazine titles generate cash inflows that are largely independent one from another and that each magazine title is a separate cash-generating unit.

- (b) In this case, the probability of winning first 10 cases is 60% and for remaining five cases is 50%. In other words, probability of losing the cases is 40% and 50% respectively. According to AS 29 'Provisions, Contingent Liabilities and Contingent Assets', we make a provision if the loss is probable. As the loss does not appear to be probable and the probability or possibility of an outflow of resources embodying economic benefits is not remote rather there is a reasonable possibility of loss, therefore disclosure by way of note of contingent liability will be made. Amount may be calculated as under:

$$\begin{aligned}\text{Expected loss in first ten cases} &= [\text{₹ } 50,000 \times 0.3 + \text{₹ } 1,00,000 \times 0.1] \times 10 \\ &= [\text{₹ } 15,000 + 10,000] \times 10 \\ &= \text{₹ } 25,000 \times 10 = \text{₹ } 2,50,000\end{aligned}$$

$$\begin{aligned}\text{Expected loss in remaining five cases} &= [\text{₹ } 60,000 \times 0.3 + \text{₹ } 1,00,000 \times 0.2] \times 5 \\ &= [\text{₹ } 18,000 + \text{₹ } 20,000] \times 5 \\ &= \text{₹ } 38,000 \times 5 = \text{₹ } 1,90,000\end{aligned}$$

$$\begin{aligned}\text{Total contingent liability} &= \text{₹ } 2,50,000 + \text{₹ } 1,90,000 \\ &= \text{₹ } 4,40,000.\end{aligned}$$

## 11. 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.

12. **Balance sheet of C Ltd. as at 31 March, 2021**

<i>Particulars</i>	<i>Note No.</i>	<i>(₹ '000)</i>
<b>I. Equity and Liabilities</b>		
(1) <b>Shareholder's Funds</b>		
Share Capital	1	7,000
(2) <b>Non-Current Liabilities</b>		
Long-term borrowings	2	10,630
(3) <b>Current Liabilities</b>		
(a) Trade Payables	3	5,440
(b) Other current liabilities	7	8,200
Total		31,270
<b>II. Assets</b>		
(1) <b>Non-current assets</b>		
(a) Property, plant and equipment	4	10,200
(b) Intangible assets	5	9,470
(2) <b>Current assets</b>		
(a) Cash and cash equivalents		2,000
(b) Other current assets	6	9,600
Total		31,270

**Notes to Accounts**

	<i>(₹ '000)</i>
1. Share Capital	
Issued, subscribed & Paid up:	
7,00,000 equity shares of ₹ 10 each, fully paid up (W.N.5)	7,000

	(of the above 5,00,000 shares have been issued for consideration other than cash)		
2.	Long Term Borrowings		
	Secured loans (₹ 1,280 + ₹ 7,200) – W.N. 2	8,480	
	Unsecured Loans (25% of ₹ 8,600)	<u>2,150</u>	10,630
3.	Trade Payables (W.N.1)		
	A Ltd.	4,000	
	B Ltd.	<u>1,440</u>	5,440
4.	Non-current assets		
	Property, plant and equipment (₹ 3,400 + ₹ 6,800)		10,200
5.	Intangible assets		
	Goodwill (W.N.4)		9,470
6.	Other Current Assets		
	A Ltd.	2,880	
	B Ltd.	<u>6,720</u>	9,600
7.	Other current liabilities		
	A Ltd.	7,200	
	B Ltd.	<u>1,000</u>	8,200

**Working Notes:****1. Value of trade payables taken over by C Ltd.**

(₹ '000)

	A Ltd.	B Ltd.
Given in balance sheet	13,000	4,600
Less: Statutory liabilities [72 lakhs – 22 lakhs]	(5,000)	(1,000)
Liability to employees	<u>(3,000)</u>	<u>(1,800)</u>
Trade payables	<u>5,000</u>	<u>1,800</u>
80% thereof	<u>4,000</u>	<u>1,440</u>

**2. Value of total liabilities taken over by C Ltd.**

(₹ '000)

	A Ltd.		B Ltd.	
<i>Current liabilities</i>				
Statutory liabilities	7,200		1,000	
Liability to employees	3,000		1,800	
Trade payables (W.N.1)	<u>4,000</u>	14,200	<u>1,440</u>	4,240

<i>Secured loans</i>				
Given in Balance Sheet	16,000		8,000	
Interest waived	-		<u>800</u>	7,200
Value of Inventory (80% of ₹ 184 lakhs)	<u>14,720</u>	1,280		
<i>Unsecured Loans</i> (25% of ₹ 86 lakhs)		<u>2,150</u>		-
		<u>17,630</u>		<u>11,440</u>

3. **Assets taken over by C Ltd.** (₹ '000)

	A Ltd. ₹	B Ltd. ₹
Property, plant and equipment	3,400	6,800
Current Assets 80% and 70% respectively of book value	<u>2,880</u>	<u>6,720</u>
	<u>6,280</u>	<u>13,520</u>

4. **Goodwill / Capital Reserve on amalgamation** (₹ '000)

Liabilities taken over (W.N. 2)	17,630	11,440
Equity shares to be issued to Preference Shareholders	<u>200</u>	-
A	17,830	11,440
Less: Total assets taken over (W.N. 3)	<u>(6,280)</u>	<u>(13,520)</u>
A-B	11,550	(2,080)
	Goodwill	Capital Reserve
Net Goodwill	9,470	

5. **Equity shares issued by C Ltd.**

		Number
(i)	For Cash	2,00,000
	For consideration other than cash	
(ii)	In Discharge of Liabilities to Employees	4,80,000
(iii)	To Preference shareholders	<u>20,000</u>
		<u>7,00,000</u>
	Value of shares (₹ 10 x 7,00,000)	₹ 70 lakhs

13. Consolidated Balance Sheet of X Ltd. and its subsidiaries Y Ltd. and Z Ltd.  
as at 31 March, 2021

Particulars	Note No.	(₹ in Lacs)
<b>I. Equity and Liabilities</b>		
(1) <b>Shareholder's Funds</b>		
(a) Share Capital		300.00
(b) Reserves and Surplus	1	151.90
(2) <b>Minority Interest (W.N 4)</b>		79.30
(3) <b>Current Liabilities</b>		
(a) Trade payables	2	58.00
(b) Other current liabilities	3	55.00
Total		644.20
<b>II. Assets</b>		
(1) <b>Non-current assets</b>		
Property, plant and equipment	4	372.20
(2) <b>Current assets</b>		
(a) Inventories	5	89.00
(b) Trade receivables	6	123.00
(c) Cash and cash equivalents	7	60.00
Total		644.20

**Notes to Accounts**

		(₹ in lacs)	(₹ in lacs)
1.	Reserves and Surplus		
	Capital Reserve [W.N. 3]	13.40	
	Other Reserves [W.N. 7]	81.60	
	Profit and Loss Account [W.N. 6]	<u>56.90</u>	151.90
2.	Trade payables		
	X Ltd.	₹ 40.00	
	Y Ltd.	₹ 10.00	
	Z Ltd.	₹ <u>15.00</u>	65.00



	Less: Mutual indebtedness	₹ (5.00)		
	Less: Mutual indebtedness [5-3]	₹ <u>(2.00)</u>	<u>(7.00)</u>	58.00
3.	Other current liabilities			
	(a) Current Account Balances			
	X Ltd.	₹ 50.00		
	Z Ltd.	₹ <u>15.00</u>		
		₹ 65.00		
	Less: Mutual indebtedness (₹ 10+ 30)	<u>(₹ 40.00)</u>	25.00	
	(b) Dividend payable		<u>30.00</u>	55.00
4.	Property, plant and equipment			
	X Ltd.		130.00	
	Y Ltd.		150.00	
	Z Ltd.		<u>100.00</u>	
			380.00	
	Less: Unrealised profit [W.N. 5]		<u>(7.80)</u>	372.20
5.	Inventories			
	X Ltd.		50.00	
	Y Ltd.		20.00	
	Z Ltd.		<u>20.00</u>	
			90.00	
	Less: Unrealised profit [5 x 25 / 125]		<u>(1.00)</u>	89.00
6.	Trade receivables			
	X Ltd.	₹ 70.00		
	Y Ltd.	₹ 20.00		
	Z Ltd.	₹ <u>40.00</u>	130.00	
	Less: Mutual indebtedness	₹ (5.00)		
	Less: Mutual indebtedness	₹ <u>(2.00)</u>	<u>(7.00)</u>	123.00
7.	Cash and Cash Equivalents			
	X Ltd.	₹ 30.00		

Y Ltd.	₹ 20.00	
Z Ltd.	₹ <u>10.00</u>	60.00

**Working Notes:****Shareholding Pattern**

	Y Ltd.	Z Ltd.
Total Shares	2 lakh shares	1 lakh shares
X Ltd.'s holding	1.6 lakh shares [80%]	0.3 lakhs [30%]
Y Ltd.'s holding	NA	0.6 lakhs [60%]
Minority Holding	0.4 lakh shares (20%)	0.1 lakh shares (10%)

		(₹ in lakhs)		
		Capital Profit	Revenue Reserve	Revenue profit
(1)	Analysis of Profits of Z Ltd.			
	Reserves on 1.7.2020	10.00		
	Profit and Loss A/c on 1.7.2020	16.00		
	Increase in Reserves		20.00	
	Increase in Profit			<u>24.00</u>
		26.00	20.00	24.00
	Less: Minority Interest (10%)	<u>(2.60)</u>	<u>(2.00)</u>	<u>(2.40)</u>
		<u>23.40</u>	<u>18.00</u>	<u>21.60</u>
	Share of X Ltd. [30%]	7.80	6.00	7.20
	Share of Y Ltd. [60%]	<u>15.60</u>	<u>12.00</u>	<u>14.40</u>
(2)	Analysis of Profits of Y Ltd.			
	Reserves on 1.7.2020	20.00		
	Profit and Loss A/c on 1.7.2020	30.00		
	Increase in Reserves		20.00	
	Increase in Profit			<u>20.00</u>
		50.00	20.00	20.00
	Share in Z Ltd. [WN 1]		<u>12.00</u>	<u>14.40</u>
		50.00	32.00	34.40

	Less: Minority Interest (20%)	<u>(10.00)</u>	<u>(6.40)</u>	<u>(6.88)</u>
	Share of X Ltd. [80%]	40.00	25.60	27.52
(3)	Cost of Control			
	Investments in Y Ltd.			180.00
	Investments in Z Ltd.			<u>120.00</u>
				300.00
	Less: Paid up value of investments			
	in Y Ltd.	(160.00)		
	in Z Ltd.	<u>(90.00)</u>	(250.00)	
	Capital Profit			
	in Y Ltd. [WN 1]	(40.00)		
	in Z Ltd. [WN 2]	<u>(23.40)</u>	<u>(63.40)</u>	<u>(313.40)</u>
	Capital Reserve			<u>13.40</u>
(4)	Minority Interest	Y Ltd.	Z Ltd.	
	Share Capital	40.00	10.00	
	Capital Profit	10.00	2.60	
	Revenue Reserves	6.40	2.00	
	Revenue Profits	<u>6.88</u>	<u>2.40</u>	
		63.28	17.00	
	Less: Unrealised profit on inventory (20% of 1)	(.20)		
	Unrealised profit on equipment (10% of ₹ 7.8)		<u>(0.78)</u>	
		<u>63.08</u>	<u>16.22</u>	
(5)	Unrealised profit on equipment sale			
	Cost	24.00		
	Profit [25% on selling price]	<u>8.00</u>		
	Selling Price	<u>32.00</u>		
	Unrealised profit = $\left[ 8 - \left( 8 \times \frac{10}{100} \times \frac{3}{12} \right) \right]$			
	= 8.00 – 0.20 = 7.80			

(6)	Profit and Loss Account – X Ltd.			
	Balance	60.00		
	Less: Dividend	<u>(30.00)</u>		
		30.00		
	Share in Y Ltd.	27.52		
	Share in Z Ltd.	<u>7.20</u>		
		64.72		
	Less: Unrealised profit on equipment (90% of 7.8)	<u>(7.02)</u>		
		57.70		
	Less: Unrealised profit on inventory $\left(5 \times \frac{25}{125} \times 80\%\right)$	<u>(0.80)</u>		
		<u>56.90</u>		
(7)	Reserves – X Ltd.			
	X Ltd.	50.00		
	Share in Y Ltd. [WN 2]	25.60		
	Share in Z Ltd. [WN 1]	<u>6.00</u>		
		<u>81.60</u>		

14. 1. Analysis of the financial instrument issued by S Ltd. to its holding company H Ltd. Applying the guidance in Ind AS 109, a 'financial asset' shall be recorded at its fair value upon initial recognition. Fair value is normally the transaction price. However, sometimes certain type of instruments may be exchanged at off market terms (i.e., different from market terms for a similar instrument if exchanged between market participants).

For example, a long-term loan or receivable that carries no interest while similar instruments if exchanged between market participants carry interest, then fair value for such loan receivable will be lower from its transaction price owing to the loss of interest that the holder bears. In such cases where part of the consideration given or received is for something other than the financial instrument, an entity shall measure the fair value of the financial instrument.

In the above case, since S Ltd has issued preference shares to its Holding Company – H Ltd, the relationship between the parties indicates that the difference in transaction price and fair value is akin to investment made by H Ltd. in its subsidiary. This can further be substantiated by the nominal rate of dividend i.e. 0.0001% mentioned in the terms of the instrument issued.

**Computations on initial recognition:**

₹

Transaction value of the Redeemable preference shares	5,00,00,000
Less: Present value of loan component @ 12% (5,00,00,000 x .7118)	<u>(3,55,90,000)</u>
Investment in subsidiary	<u>1,44,10,000</u>

Subsequently, such preference shares shall be carried at amortised cost at each reporting date as follows:

Year	Date	Opening Balance	Interest @ 12%	Closing balance
	1 April, 2018	3,55,90,000	-	3,55,90,000
1	31 March, 2019	3,55,90,000	42,70,800	3,98,60,800
2	31 March, 2020	3,98,60,800	47,83,296	4,46,44,096
3	31 March, 2020	4,46,44,096	53,55,904*	5,00,00,000

\* ₹ 4,46,44,096 x 12% = ₹ 53,57,292. The difference of ₹ 1,388 (₹ 53,57,292 – ₹ 53,55,904) is due to approximation in present value factor.

2.

**In the books of H Ltd.****Journal Entries to be done at every reporting date**

Date	Particulars	Amount	Amount
1 April, 2018	Investment (Equity portion) Dr. Redeemable Preference Shares Dr. To Bank (Being initial recognition of transaction recorded)	1,44,10,000 3,55,90,000	5,00,00,000
31 March, 2019	Redeemable Preference Shares Dr. To Interest income (Interest income on loan component recognized)	42,70,800	42,70,800
31 March, 2020	Redeemable Preference Shares Dr. To Interest income (Interest income on loan component recognized)	47,83,296	47,83,296

31 March, 2020	Redeemable Preference Shares	Dr.	53,55,904	
	To Interest income (Interest income on loan component recognized)			53,55,904
31 March, 2020	Bank	Dr.	5,00,00,000	
	To Redeemable Preference Shares			5,00,00,000
	(Being settlement of transaction done at the end of the third year)			

15. It should be noted that remaining in service for 3 years and achieving a particular level of average output are vesting conditions which are not market conditions. Their distribution of possible outcomes is not taken into account in arriving at a single fair value. However, since the achieving a particular level of average output affects the exercise price and thus the fair value per option, the enterprise estimates/re-estimates the most likely outcome and takes the corresponding fair value as on the grant date.

Their outcomes are taken into account in estimating/re-estimating the number of employees and the number of options expected to vest.

Particulars	31.3.2019	31.3.2020	31.3.2021
A Number of employees expected to satisfy vesting conditions	250 [300-20-30]	245 [300-20-25-10]	240 [300-20-25-15] [Actuals]
B Expected/Most likely average annual output per employee	122	Above 130	112
C Fair value per option as on grant date, based on most likely outcome	40	30	50
D Fair value of options expected to vest (A x C x 200 options per employee)	20,00,000	14,70,000	24,00,000
E Cumulative fair value to be recognized till date	6,66,667 [20,00,000x1/3]	9,80,000 [14,70,000x2/3]	24,00,000 [24,00,000x3/3]

F	Cumulative fair value already recognized	0	6,66,667	9,80,000
G	Expense to be recognized for the period (E-F)	6,66,667	3,13,333	14,20,000

16.

	(₹000)
Net assets at commencement of accounting period	12,00,000
Add: Par value of units issued (8,50,200 × 100)	85,020
Less: Par value of units redeemed (7,52,300 × 100)	(75,230)
Add: Balance in Reserve/Equalization Fund transferred	7,570
Net income for the year	<u>85,000</u>
Net assets at close of the accounting period	<u>13,02,360</u>

**Working Note:**

Particulars	Issued	Redeemed
Units	<u>8,50,200</u>	<u>7,52,300</u>
Par Value thereof (₹ '000)	85,020	75,230
Sale Proceeds / Redemption Value (₹ '000)	<u>96,500</u>	<u>71,320</u>
Profit/(Loss) transferred to Reserve / Equalization A/c (₹ '000)	<u>11,480</u>	<u>(3,910)</u>
Net Balance in Reserve/Equalization Fund (₹ '000)	7,570	

17. (i) **Discounted earnings method**

Year	Earnings	Discount Factor @ 20%	Present value
1	225.75	0.8333	188.117
2	242.68	0.6944	168.517
3	260.88	0.5787	150.971
4	280.45	0.4823	135.261
5	301.48	0.4019	121.165
6	324.09	0.3349	108.538
7	348.40	0.2791	97.238
8	374.53	0.2326	87.116
9	402.62	0.1938	78.028
10	432.82	0.1615	<u>69.900</u>
			<u>1204.851</u>

Value of the business ₹1204.851 Lakhs

## (ii) Discounted cash flows method

			(₹ In lakhs)
Year	Earnings	Discount Factor @ 20%	Present value
1	287.55	0.8333	239.615
2	306.24	0.6944	212.653
3	326.15	0.5787	188.743
4	347.35	0.4823	167.527
5	369.92	0.4019	148.671
6	393.97	0.3349	131.941
7	419.58	0.2791	117.105
8	446.85	0.2326	103.937
9	475.89	0.1938	92.227
10	506.83	0.1615	<u>81.853</u>
			<u>1484.272</u>

Value of the business ₹1484.272 Lakhs.

18.

**Vinayak Ltd.****Gross Value Added Statement for the year ended 31 March, 2021**

	₹ in lakhs	₹ in lakhs
Sales		890
Less: Cost of bought in materials and services:		
Production and operational expenses (293 + 59 + 109)	461	
Administration expenses (33 – 9)	24	
Interest on working capital loan	9	
GST	<u>55</u>	<u>549</u>
Value added by manufacturing and trading activities		341
Add: Other income		<u>55</u>
Total value added		<u>396</u>



Application of Value Added	%		
To Employees Salaries, wages, gratuities etc.		82	20.71%
To Directors Salaries and commission		9	2.27%
To Government Other taxes (98 – 55)	43		
Income tax	<u>27</u>	70	17.68%
To Providers of capital Interest on debentures	2		
Interest on fixed loan	18		
Dividends	<u>95</u>	115	29.04%
To Provide for maintenance and expansion of the company Depreciation	17		
General reserve	45		
Deferred tax	3		
Retained profits (65 – 10)	<u>55</u>	<u>120</u>	<u>30.30%</u>
		<u>396</u>	<u>100%</u>

**Statement showing reconciliation of Gross Value Added with Profits before taxation**

		₹ in lakhs
Profits before taxes		225
<i>Add:</i>		
Depreciation	17	
Directors' remuneration	9	
Salaries, wages & gratuities etc.	82	
Other taxes	43	
Interest on debentures	2	
Interest on fixed loan	<u>18</u>	<u>171</u>
Total value added		<u>396</u>

$$19. \text{ Financial Leverage} = \frac{\text{EBIT}}{\text{EBIT} - \text{Interest}} = \frac{\text{EBIT}}{\text{EBIT} - 10\% \text{ of } 400} = 1.40$$

$$\text{EBIT} = \{(10\% \text{ of } 400) \times 1.40\} / 0.40 = 140$$

$$\text{EBIT} (1 - t) = 140 (1 - 0.30) = 98$$

$$\text{Equity capital} = 170 + 130 = 300$$

$$\text{Debt Capital} = 400$$

$$\text{Post-tax cost of debt} = 10\% (1 - 0.30) = 7\%$$

$$\text{Overall cost of capital [Post-tax]} = 17.5\% \text{ of } 300 + 7\% \text{ of } 400 = 80.5$$

$$\begin{aligned} \text{Economic Value Added (EVA)} &= \text{EBIT} (1 - t) - \text{Overall cost of capital (Post-tax)} \\ &= 98 - 80.5 = 17.5 \text{ (₹ Lakh)} \end{aligned}$$

20. Although human beings are considered as the prime mover for achieving productivity, and are placed above technology, equipment and money, the conventional accounting practice does not assign significance to the human resources. Human resources are not recognized in balance sheet as there are no measurement criteria for recognition of human resources. Human resource accounting is at developing stage and no accounting principles have been established for valuation of human assets. Costs incurred on human resources are recognized as expenses in profit and loss account.

## PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

### QUESTIONS

#### Project Planning and Capital Budgeting

1. Wingmend Ltd. is an aeronautical maintenance company has planned to start its own flying training classes. Since company has already complete infrastructure for starting training classes it just needs to acquire a light commercial aircraft at a cost of ₹ 10,00,00,000. The expected cash flow after tax for the next three years is as follows:

(₹)

Year 1		Year 2		Year 3	
CFAT	Probability	CFAT	Probability	CFAT	Probability
2,80,00,000	0.1	3,00,00,000	0.1	3,60,00,000	0.2
3,60,00,000	0.2	4,00,00,000	0.3	5,00,00,000	0.5
5,00,00,000	0.4	6,40,00,000	0.4	7,00,00,000	0.2
8,00,00,000	0.3	9,00,00,000	0.2	9,60,00,000	0.1

Though the starting the flying classes is dream project for the management and is interested in taking same project yet the Company wishes to take into consideration all possible risk factors relating to airline training operations. Hence, the company wants to know:

- (a) The expected NPV of this venture with 6% risk free rate of interest as cost of capital.  
(b) The possible deviation in the expected values.

Note: (i) Assume independent probability distribution for the expected cash flows after tax.

(ii) Calculations to be made in ₹ Crore upto 4 decimal points.

(iii) Use PVF upto 3 decimal points.

2. LX Ltd. is manufacturing cosmetic products. The company received a proposal from a cosmetic making machine supplier based in France for supplying an improved/ more efficient version of machine currently it is using. Hence, LX Ltd. is considering the replacement of its existing machine with a new machine. The Purchase price of the New machine is € 6 Million, and its expected Life is 8 years. The company follows straight-line method of depreciation on the original investment (scrap value is not to be considered for the purpose of depreciation).

The other expenses to be incurred for the New Machine are as under:

- (i) One-time fees paid to the consultant for his advice to buy New Machine ₹ 12,00,000.

- (ii) Additional Working Capital required ₹ 34,00,000. (will be released after 8 years)  
 (iii) Installation Charges ₹ 18,00,000

The written down value of the existing machine is ₹ 1,52,00,000, and its Cash Salvage Value is ₹ 25,00,000. The dismantling of this machine would cost ₹ 9,00,000. The Annual Savings (before depreciation) from the New Machine would amount to ₹ 12,83,75,000. Income tax rate is 35%. The following additional information is also available:

Spot Exchange Rate	1€ = ₹ 90.00
Company's Required Rate of Return	13%
Tax Rate for STCG/ STCL	25%

You are required to advise on the viability of the proposal.

Also determine the sensitivity of Foreign Exchange Rate of € assuming fees paid to consultant as sunk cost.

### Leasing Decisions

3. Armada Ltd. is contemplating to have an access to a machine for a period of 5 years. The company can have use of the machine for the stipulated period through leasing arrangement or the requisite amount can be borrowed to buy the machine. In case of leasing, the company received a proposal to pay annual rent at year end of ₹ 4.8 lakhs for a period of 5 years.

In case of purchase (which costs ₹ 20,00,000/-) the company would have a 12%, 5 years loan to be paid in equated installments, each installment becoming due to the beginning of each years. It is estimated that the machine can be sold for ₹ 4,00,000/- at the end of 5<sup>th</sup> year. The company uses straight line method of depreciation. Corporate tax rate is 30%. Post tax cost of capital of Armada Ltd. is 10%.

You are required to advice whether the machine should be bought or taken on lease. Also, analyse the financial viability from the point of view of the lessor assuming 12% post tax cost of capital.

### Dividend Decisions

4. Z Ltd. has a capital of ₹ 20 crore 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 beta for the risk class of which the company belongs is 2.00. The risk-free rate of interest is 4% and market return is 8%.
- (i) Based on M-M Approach, calculate the market price of the share of the company, when the dividend is-
- declared and
  - not declared.

- (ii) assuming that the company pays the dividend and has net profits of ₹ 10 crore and makes new investments of ₹ 20 crore during the period, how many new shares must be issued?

5. The following information pertains to Golden Ltd:

Profit before tax	₹ 75 crore
Tax rate	30%
Equity capitalization rate	15%
Return on investment (ROI)	18%
Retention ratio	80%
Number of shares outstanding	75,00,000

The market price of the share of the company in the bull market was somewhere around ₹ 2100 per share. Advice, whether the share of the Golden Ltd. should be purchased or not. Further, also suggest the form of Market prevalent as per EMH Theory.

Note: Use Gordon's Growth Model.

#### Indian Capital Market

6. The following data relate to R Ltd.'s share price:

Current price per share	₹ 1,900
6 months future's price/share	₹ 2050

Assuming it is possible to borrow money in the market for transactions in securities at 10% per annum,

- (i) advise the justified theoretical price of a 6-months forward purchase; and  
(ii) evaluate any arbitrage opportunity, if available.
7. The Following data relate to A Ltd.'s Portfolio:

Shares	X Ltd.	Y Ltd.	Z Ltd.
No. of Shares (lakh)	6	8	4
Price per share (₹)	1000	1500	500
Beta	1.50	1.30	1.70

The CEO is of opinion that the portfolio is carrying a very high risk as compared to the market risk and hence interested to reduce the portfolio's systematic risk to 0.95. Treasury Manager has suggested two below mentioned alternative strategies:

- (i) Dispose off a part of his existing portfolio to acquire risk free securities, or

- (ii) Take appropriate position on Nifty Futures, currently trading at 8250 and each Nifty points multiplier is ₹ 210.

You are required to:

- (a) Interpret the opinion of CEO, whether it is correct or not.
- (b) Calculate the existing systematic risk of the portfolio,
- (c) Advise the value of risk-free securities to be acquired,
- (d) Advise the number of shares of each company to be disposed off,
- (e) Advise the position to be taken in Nifty Futures and determine the number of Nifty contracts to be bought/sold; and
- (f) Calculate the new systematic risk of portfolio if the company has taken position in Nifty Futures and there is 2% rise in Nifty.

Note: Make calculations in ₹ lakh and upto 2 decimal points.

8. Espaces plc 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 £25 million for the entire period of slack season in about 3 months.

The banker of the firm has given the following quotations for Forward Rate Agreement (FRA):

Spot	5.50% - 5.75%
3 × 6 FRA	5.59% - 5.82%
3 × 9 FRA	5.64% - 5.94%

3-month £50,000 future contract maturing in a period of 3 months is quoted at 94.15.

You are required to:

- (a) Advise the position to be taken in Future Market by the firm to hedge its interest rate risk and demonstrate how 3 months Future contract shall be useful for the firm, if later interest rate turns out to be (i) 4.5% and (ii) 6.5%
- (b) Evaluate whether the interest cost to Espace plc shall be less had it adopted the route of FRA instead of Future Contract.

Note: Ignore the time value of money in settlement amount for future contract.

**Security Analysis and Valuation**

9. ABC Limited, just declared a dividend of ₹ 28.00 per share. Mr. A is planning to purchase the share of ABC Limited, anticipating increase in growth rate from 8% to 9%, which will continue for three years. He also expects the market price of this share to be ₹ 720.00 after three years.

You are required to determine:

- (i) the maximum amount Mr. A should pay for shares, if he requires a rate of return of 13% per annum.
- (ii) the maximum price Mr. A will be willing to pay for share, if he is of the opinion that the 9% growth can be maintained indefinitely and require 13% rate of return per annum.
- (iii) the price of share at the end of three years, if 9% growth rate is achieved and assuming other conditions remaining same as in (ii) above.

Note: Calculate rupee amount up to two decimal points and use PVF upto 3 decimal points.

10. KLM Limited has issued 90,000 equity shares of ₹ 10 each. KLM Limited's shares are currently selling at ₹ 72. The company has a plan to make a rights issue of one new equity share at a price of ₹ 48 for every four shares held.

You are required to:

- (a) Calculate the theoretical post-rights price per share and analyse the change
- (b) Calculate the theoretical value of the right alone.
- (c) Suppose Mr. A who is holding 100 shares in KLM Ltd. is not interested in subscribing to the right issue, then advice what should he do.

**Portfolio Theory**

11. Equity of ABC Ltd. (ABCL) is ₹ 500 Crores, its debt, is worth ₹ 290 Crores. Printer Division segments value is attributable to 64%, which has an Asset Beta ( $\beta_p$ ) of 1.55, balance value is applied on Spares and Consumables Division, which has an Asset Beta ( $\beta_{sc}$ ) of 1.40 ABCL Debt beta ( $\beta_D$ ) is 0.28.

You are required to calculate:

- (i) Equity Beta ( $\beta_E$ ),
- (ii) Ascertain Equity Beta ( $\beta_E$ ), if ABC Ltd. decides to change its Debt Equity position by raising further debt and buying back of equity to have its Debt to Equity Ratio at 1.50. Assume that the present Debt Beta ( $\beta_{D1}$ ) is 0.45 and any further funds raised by way of Debt will have a Beta ( $\beta_{D2}$ ) of 0.50.
- (iii) Whether the new Equity Beta ( $\beta_E$ ) justifies increase in the value of equity on account of leverage?

12. K Ltd. has invested in a portfolio of short-term equity investments. You are required to calculate the risk of K Ltd.'s short-term investment portfolio relative to that of the market from the information given below:

Investment	A	B	C	D
No. of shares	1,20,000	1,60,000	2,00,000	2,50,000
Market price per share (₹)	8.58	5.84	4.34	6.28
Beta	2.32	4.56	1.80	3.00
Expected Dividend Yield	9.50%	14.00%	7.50%	16.00%

The current market return is 20% and the risk free return is 10%.

Advise whether K Ltd. should change the composition of its portfolio. If yes, then how.

Note: Make calculations upto 4 decimal points.

### Financial Services

13. ABC Ltd., who is dealing in computer software ABC Ltd. is considering a proposal to appoint a Factor. The following information is available:

Particulars	Recourse	Non - Recourse
Average reduction in collection of receivables (Days)	30	30
Reduction in Bad Debts by	0.30%	0.30%
Saving in Administration cost ₹	40,000	40,000
Advance	80%	80%
Interest on advance	2 % p.a. higher than current OD interest of 7 % p.a.	
Factor fee	0.60%	1.25%

ABC Ltd. is having credit sales of ₹ 2, 10, 00,000 with average receivables of ₹ 35, 00,000. Bad debts are 0.9% on sales. You are required to evaluate which proposal is best.

(Assume 1 year = 360 Days)

### Mutual Fund

14. The following particulars relating to S Fund Schemes:

Particulars	Value (in ₹ Crores)
1. Investment in Shares (at cost)	
a. Pharmaceuticals companies	158
b. Construction Industries	62
c. Service Sector Companies	112



d. IT Companies	68
e. Real Estate Companies	20
2. Investment in Bonds (Fixed Income)	
a. Listed Bonds (8000, 14% Bonds of ₹ 15,000 each)	24
b. Unlisted Bonds	14
3. No. of Units outstanding (crores)	8.4
4. Expenses Payable	7
5. Cash and Cash equivalents	3
6. Market expectations on listed bonds	8.842%

The fund has incurred the following expenses:

Consultancy and Management fees ₹ 520 Lakhs

Office Expenses ₹ 180 Lakhs

Advertisement Expenses ₹ 48 Lakhs

Particulars relating to each sector are as follows:

Sector	Index on Purchase date	Index on Valuation date
Pharmaceutical companies	300	500
Construction Industries	275	490
Service Sector Companies	285	500
IT Companies	270	515
Real Estate Companies	265	440

Required:

- (i) Calculate the Net Asset Value of the fund
- (ii) Calculate the Net Asset Value per unit
- (iii) Determine the Net return (Annualized), if the period of consideration is 4 years, and the fund has distributed ₹ 2 per unit per year as cash dividend during the same period.

Note: Calculate figure in ₹ Crore upto 3 decimal points.

### International Financial Management

15. Right Limited has proposed to expand its operations for which it requires funds of \$ 30 million, net of issue expenses which amount to 4% of the issue size. It proposed to raise the funds through a GDR issue. It considers the following factors in pricing the issue:
  - (i) The expected domestic market price of the share is ₹ 300 (Face Value of ₹ 10 each share)

- (ii) 4 shares underlying each GDR
- (iii) Underlying shares are priced at 20% discount to the market price
- (iv) Expected exchange rate is ₹ 70/\$

You are required to compute the number of GDR's to be issued and cost of GDR to Right Limited, if 20% dividend is expected to be paid with a growth rate of 20%.

### Foreign Exchange Exposure and Risk Management

16. Doom Ltd. is an export business house. The company prepares invoice in customers' currency. Its debtors of US\$ 48, 00,000 is due on April 1, 2020.

Market information as at January 1, 2020 is:

Exchange rates US\$/INR		Currency Futures US\$/INR	
Spot	0.014285	Contract size: ₹ 2,88,16,368	
1-month forward	0.014184	1-month	0.014178
3-months forward	0.013889	3-month	0.013881

	Initial Margin	Interest rates in India
1-Month	₹ 27,500	5.5%
3-Months	₹ 32,500	9%

On April 1, 2020 the spot rate US\$/INR is 0.013894 and currency future rate is 0.013893.

Recommend as to which of the following methods would be most advantageous to Doom Ltd.

- (i) Using forward contract
- (ii) Using currency futures
- (iii) Not hedging the currency risk

Note: Round off calculation upto zero decimal points.

17. Telereal Trillium, a UK Company is in the process of negotiating an order amounting €5.5 million with a large German retailer on 6 month's credit. If successful, this will be first time for Telereal Trillium has exported goods into the highly competitive German Market. The Telereal Trillium is considering following 3 alternatives for managing the transaction risk before the order is finalized.
- (i) Mr. Grand, the Marketing head has suggested that in order to remove transaction risk completely Telereal Trillium should invoice the German firm in Sterling using the current €/£ average spot rate to calculate the invoice amount.

- (ii) Mr. John, CE is doubtful about Mr. Grand’s proposal and suggested an alternative of invoicing the German firm in € and using a forward exchange contract to hedge the transaction risk.
- (iii) Ms. Royce, CFO is agreed with the proposal of Mr. John to invoice the German firm in €, but she is of opinion that Telereal Trillium should use sufficient 6 month sterling future contracts (to the nearest whole number) to hedge the transaction risk.

Following data is available

Spot Rate	€ 1.1980 - €1.1990/£
6 months forward points	0.60 – 0.55 Euro Cents.
6 month future contract is currently trading at	€ 1.1943/£
6 month future contract size is	£70,500
After 6 month Spot rate and future rate	€ 1.1873/£

You are required to

- (a) Advise the alternative you consider to be most appropriate.
- (b) Interpret the proposal of Mr. Grand from non-financial point of view.

Note: Calculate (to the nearest £) the £ receipt.

**Merger, Acquisition and Restructuring**

18. ABC Ltd. is intending to acquire XYZ Ltd. by way of merger and the following information is available in respect of these companies:

	ABC Ltd.	XYZ Ltd.
Total Earnings (E) (in lakh)	₹ 1200	₹400
Number of outstanding shares (S) (in lakh)	400	200
Price earnings ratio (P/E)	8	7

- (a) Determine the maximum exchange ratio acceptable to the shareholders of ABC Ltd., if the P/E ratio of the combined firm is expected to be 8?
- (b) Determine the minimum exchange ratio acceptable to the shareholders XYZ Ltd., if the P/E ratio of the combined firm is expected to be 10?

Note: Make calculation in lakh multiples and compute ratio upto 4 decimal points.

19. Sun Ltd. recently made a profit of ₹ 200 crore and paid out ₹ 80 crore (slightly higher than the average paid in the industry to which it pertains). The average PE ratio of this industry is 9. The estimated beta of Sun Ltd. is 1.2. As per Balance Sheet of Sun Ltd., the shareholder’s fund is ₹ 450 crore and number of shares is 10 crore. In case the company

is liquidated, building would fetch ₹ 200 crore more than book value and stock would realize ₹ 50 crore less.

The other data for the industry is as follows:

Projected Dividend Growth	4%
Risk Free Rate of Return	6%
Market Rate of Return	11%

Calculate the valuation of Sun Ltd. using

- P/E Ratio
- Dividend Growth Model
- Book Value
- Net Realizable Value

### Theoretical Questions

20. Write short notes on:

- Traits required to make an organization financially sustainable.
- Distinguish between Financial Lease and Operating Lease
- CAMEL Model in Credit Rating
- Debt/ Asset Securitisation
- Salient features of Foreign Currency Convertible Bonds

### SUGGESTED ANSWERS

1. (a) Expected NPV

(in ₹ Crore)

Year I			Year II			Year III		
CFAT	P	CF×P	CFAT	P	CF×P	CFAT	P	CF×P
2.80	0.1	0.28	3.00	0.1	0.30	3.60	0.2	0.72
3.60	0.2	0.72	4.00	0.3	1.20	5.00	0.5	2.50
5.00	0.4	2.00	6.40	0.4	2.56	7.00	0.2	1.40
8.00	0.3	<u>2.40</u>	9.00	0.2	<u>1.80</u>	9.60	0.1	<u>0.96</u>
	$\bar{x}$ or $\overline{CF}$	<u>5.40</u>		$\bar{x}$ or $\overline{CF}$	<u>5.86</u>		$\bar{x}$ or $\overline{CF}$	<u>5.58</u>

NPV	PV factor @ 6%	Total PV
5.40	0.943	5.0922
5.86	0.890	5.2154
5.58	0.840	<u>4.6872</u>
	PV of cash inflow	14.9948
	Less: Cash outflow	<u>10.0000</u>
	NPV	<u>4.9948</u>

(b) Possible deviation in the expected value

Year I				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	$P_1$	$(X - \bar{X})^2 P_1$
2.80 – 5.40	-2.60	6.76	0.1	0.676
3.60 – 5.40	-1.80	3.24	0.2	0.648
5.00 – 5.40	-0.40	0.16	0.4	0.064
8.00 – 5.40	2.60	6.76	0.3	<u>2.028</u>
				<u>3.416</u>

$$\sigma_2 = \sqrt{3.416} = 1.8482$$

Year II				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	$P_2$	$(X - \bar{X})^2 \times P_2$
3.00 – 5.86	-2.86	8.1796	0.1	0.8180
4.00 – 5.86	-1.86	3.4596	0.3	1.0379
6.40 – 5.86	0.54	0.2916	0.4	0.1166
9.00 – 5.86	3.14	9.8596	0.2	<u>1.9719</u>
				<u>3.9444</u>

$$\sigma_2 = \sqrt{3.9444} = 1.9861$$

Year III				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	$P_3$	$(X - \bar{X})^2 \times P_3$
3.60 – 5.58	-1.98	3.9204	0.2	0.7841

5.00 – 5.58	-0.58	0.3364	0.5	0.1682
7.00 – 5.58	1.42	2.0164	0.2	0.4033
9.60 – 5.58	4.02	16.1604	0.1	<u>1.6160</u>
				<u>2.9716</u>

$$\sigma_3 = \sqrt{2.9716} = 1.7238$$

Standard deviation about the expected value:

$$\sigma\sigma = \sqrt{\frac{3.4160}{(1.06)^2} + \frac{3.9444}{(1.06)^4} + \frac{2.9716}{(1.06)^6}} = 2.8739$$

2. (a) Working Notes:

1. Computation of Annual Depreciation-

Particulars	₹
Purchase Price (€ 6 Million x ₹ 90.00)	54,00,00,000
Add: 1. Installation Charges	18,00,000
2. Fees Paid to Consultant for Advice	12,00,000
Total Cost of New Machine	54,30,00,000
Useful Life	8 Years
Annual Depreciation (Total Cost/No. of Years)	6,78,75,000

2. Computation of Annual Cash Savings-

Particulars	₹
Annual Saving	12,83,75,000
Less - Depreciation	6,78,75,000
Annual Saving after Depreciation	6,05,00,000
Less - Tax @ 35%	2,11,75,000
Earning after Tax	3,93,25,000
Add- Depreciation on New Machine	6,78,75,000
Annual Cash Savings	10,72,00,000

3. Tax effect on sale of Old Machine-

Particulars	₹
Proceeds of Sale	25,00,000
Less: Cost of Removal	9,00,000

Net Proceeds	16,00,000
Less: WDV	1,52,00,000
Net Loss due to Sale	1,36,00,000
Tax savings due to Loss on Sale @ 25%	34,00,000
Total Cash Inflow due to Sale (₹ 16,00,000 + 34,00,000)	50,00,000

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

Particulars	Period	Cash Flow (₹)	PVF @13%	PV (₹)
(a) Annual Cash inflow after Tax	1-8	10,72,00,000	4.800	51,45,60,000
(b) Net Salvage Value of Existing Machine	0	50,00,000	1.000	50,00,000
(c) Working Capital Realized	8	34,00,000	0.376	12,78,400
Present Value of Cash Inflows				52,08,38,400
Less: 1. Initial Investment	0	54,30,00,000	1.000	54,30,00,000
2. Initial Working Capital	0	34,00,000	1.000	34,00,000
NPV of the Proposal				(2,55,61,600)

Decision: Since NPV of the project is negative it is not viable.

**(b) Sensitivity of Foreign Exchange Rate**

Let X be the exchange rate at which the NPV (at given Cost of Capital) shall be zero, therefore

Cost of Machine + Initial Working Capital + Installation Cost = Present Value of Cash Inflows

$$€ 6 \text{ Million} \times X + ₹ 18,00,000 + ₹ 34,00,000 = ₹ 52,08,38,400$$

$$X = ₹ 85.94 \text{ i.e. } ₹ 85.94 \text{ per } €$$

Sensitivity € Exchange Rate

$$\therefore \frac{90.00 - 85.94}{90.00} \times 100 = 4.51\%$$

## 3. Calculation of loan installment:

$$₹ 20,00,000 / (1 + PVIFA 12\%, 4)$$

$$₹ 20,00,000 / (1 + 3.038) = ₹ 4,95,295$$

Debt Alternative: Calculation of Present Value of Outflows

(Amount in ₹)

(1) End of year	(2) Debt Payment	(3) Interest	(4) Dep.	(5) Tax Shield [(3)+(4)]x0.3	(6) Cash outflows (2) – (5)	(7) PV factors @ 10%	(8) PV
0	4,95,295	0	0	0	4,95,295	1.000	4,95,295
1	4,95,295	1,80,565	3,20,000	1,50,170	3,45,125	0.909	3,13,719
2	4,95,295	1,42,797	3,20,000	1,38,839	3,56,456	0.826	2,94,433
3	4,95,295	1,00,498	3,20,000	1,26,149	3,69,146	0.751	2,77,229
4	4,95,295	52,616	3,20,000	1,11,785	3,83,510	0.683	2,61,937
5	0	0	3,20,000	96,000	(96,000)	0.621	(59,616)
							15,82,997
Less: Salvage Value ₹ 4,00,000 x 0.621							2,48,400
Total Present Value of Outflow							13,34,597

\*balancing figure

Leasing Decision: Calculation of Present Value of Outflows

$$\text{Yrs. 1-5} \quad ₹ 4,80,000 \times (1 - 0.30) \times 3.790 = ₹ 12,73,440$$

Decision: Leasing option is viable.

## From Lessor's Point of View

		(₹)
Cost of Machine		(-) 20,00,000
PV of Post tax lease Rental (₹4,80,000 x 0.7 x 3.605)	12,11,280	
PV of Depreciation tax shield (₹3,20,000 x 0.3 x 3.605)	3,46,080	
PV of salvage value (₹4,00,000 x 0.567)	<u>2,26,800</u>	<u>17,84,160</u>
NPV		(-) <u>2,15,840</u>

Decision – Leasing proposal is not viable.



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

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

Where  $K_e$  (Cost of Equity) by applying CAPM shall be

$$4\% + 2.00(8\% - 4\%) = 12\%$$

(i) (a) 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.

(b) 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.

(ii) In case the firm pays dividend of ₹10 per share out of total profits of ₹ 10 crore and plans to make new investment of ₹ 20 crore, the number of shares to be issued may be found as follows:

Total Earnings	₹ 10,00,00,000
- Dividends paid	<u>2,00,00,000</u>
Retained earnings	8,00,00,000
Total funds required	<u>20,00,00,000</u>
Fresh funds to be raised	<u>12,00,00,000</u>
Market price of the share	102
Number of shares to be issued (₹ 12,00,00,000 / 102)	11,76,470.588

or, the firm would issue 11,76,471 shares at the rate of ₹ 102

## 5. Gordon's Formula

$$P_0 = \frac{E(1-b)}{K-br}$$

$P_0$  = Market price per share

$E$  = Earnings per share (₹ 52.50 crore / 75,00,000) = ₹ 70

$K$  = Cost of Capital = 15%

$b$  = 80%

$D$  = ₹ 70 x 0.20 = ₹ 14

$r$  = IRR = 18%

$br$  = Growth Rate (0.80X18%) = 14.4%

$$P_0 = \frac{70(1-0.80)}{0.15-0.144} = \frac{14}{0.006}$$

= ₹ 2333.33

Advice: Despite the fact that market price of share of the company during bull was around ₹2200, it is worth to purchase the same as intrinsic value of share is higher than market price even in bull phase.

The form of market is weak form of market as it is not discounting all information..

6. (i) The justified theoretical price of a 6 months forward contract as per cost to carry model is as follows:

$$\text{Theoretical minimum price} = ₹ 1,900 + (₹ 1,900 \times 10/100 \times 6/12) = ₹ 1,995$$

- (ii) Arbitrage Opportunity- Since current future price is ₹2050, yes there is an opportunity for carrying arbitrage profit. The arbitrageur can borrow money @ 10 % for 6 months and buy the shares at ₹ 1,900. At the same time he can sell the shares in the futures market at ₹ 2,050. On the expiry date 6 months later, he could deliver the share and collect ₹ 2,050 pay off ₹ 1,995 and record a risk – less profit of ₹ 55 (₹ 2,050 – ₹ 1,995).
7. (a) Yes, the apprehension of CEO is correct as the current portfolio is more riskier than market as the beta (Systematic Risk) of market portfolio is as computed as follows:

Shares	No. of shares (lakhs) (1)	Market Price of Per Share (2) (₹)	(1) × (2) (₹ lakhs)	% to total (w)	β (x)	Wx
X Ltd.	6.00	1000.00	6000.00	0.30	1.50	0.45
Y Ltd.	8.00	1500.00	12000.00	0.60	1.30	0.78

Z Ltd.	4.00	500.00	<u>2000.00</u>	<u>0.10</u>	1.70	<u>0.17</u>
			<u>20000.00</u>	1.00		<u>1.40</u>

(b) Since the Beta of existing portfolio is 1.40, the systematic risk of the current portfolio is 1.40.

(c) Required Beta 0.95

Let the proportion of risk-free securities for target beta 0.95 = p

$$0.95 = 0 \times p + 1.40 (1 - p)$$

$$p = 0.32 \text{ i.e. } 32\%$$

Shares to be disposed off to reduce beta (20000 × 32%) ₹ 6,400 lakh and Risk Free securities to be acquired for the same amount.

(d) Number of shares of each company to be disposed off

Shares	% to total (w)	Proportionate Amount (₹ lakhs)	Market Price Per Share (₹)	No. of Shares (Lakh)
X Ltd.	0.30	1920.00	1000.00	1.92
Y Ltd.	0.60	3840.00	1500.00	2.56
Z Ltd.	0.10	640.00	500.00	1.28

(e) Since, the company is in long position in cash market it shall take short position in Future Market.

Number of Nifty Contract to be sold

$$\frac{(1.40-0.95) \times 20000 \text{ lakh}}{8,250 \times 210} = 519 \text{ contracts}$$

(f) If there is 2% rises in Nifty there will be 2.80%(2%×1.40) rise for portfolio of shares

	₹ Lakh
Current Value of Portfolio of Shares	20000
Value of Portfolio after rise	20560
Mark-to-Market Margin paid (8250 × 0.020 × ₹ 210 × 519)	179.83
Value of the portfolio after rise of Nifty	20380.17
% change in value of portfolio (20380.17 – 20000)/ 20000	1.90%
% rise in the value of Nifty	2%
New Systematic Risk (Beta)	0.95

8. (a) (i) 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.

$$\begin{aligned} \text{No. of Contracts} &= \frac{\text{Amount of Borrowing}}{\text{Contract Size}} \times \frac{\text{Duration of Loan}}{3 \text{ months}} \\ &= \frac{\text{£ } 25,000,000}{\text{£ } 50,000} \times \frac{6}{3} = 1000 \text{ Contracts} \end{aligned}$$

- (ii) 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%
<i>Future Course Action :</i>		
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	£50,000 × 1000 × 1.35% × 3/12 = £1,68,750	£50,000 × 1000 × 0.65% × 3/12 = (£81,250)
Interest for 6 months on £50 million at actual rates	£25 million × 4.5% × ½ = £5,62,500	£25 million × 6.5% × ½ = £ 8,12,500
	£ 7,31,250	£ 7,31,250

Thus, the firm locked itself in interest rate  $\frac{\text{£ } 7,31,250}{\text{£ } 25,000,000} \times 100 \times \frac{12}{6} = 5.85\%$

- (b) No, the interest cost shall not be less for Espace plc had it taken the route of FRA, as the 3 x 9 FRA contract are available at 5.64% – 5.94% i.e. borrowing rate of 5.94%. Hence, the interest cost under this option shall be nearby by 5.94% which is more than interest rate under Future contract rate of 5.85%.
9. (i) **Expected dividend for next 3 years.**

$$\text{Year 1 (D}_1\text{)} \quad \text{₹ } 28.00 (1.09) = \text{₹ } 30.52$$

$$\text{Year 2 (D}_2\text{)} \quad \text{₹ } 28.00 (1.09)^2 = \text{₹ } 33.27$$

Year 3 ( $D_3$ ) ₹ 28.00  $(1.09)^3 = ₹ 36.26$

Required rate of return = 13% ( $K_e$ )

Market price of share after 3 years = ( $P_3$ ) = ₹ 720

The present value of share

$$P_0 = \frac{D_1}{(1+ke)} + \frac{D_2}{(1+ke)^2} + \frac{D_3}{(1+ke)^3} + \frac{P_3}{(1+ke)^3}$$

$$P_0 = \frac{30.52}{(1+0.13)} + \frac{33.27}{(1+0.13)^2} + \frac{36.26}{(1+0.13)^3} + \frac{720}{(1+0.13)^3}$$

$$P_0 = 30.52(0.885) + 33.27(0.783) + 36.26(0.693) + 720(0.693)$$

$$P_0 = 27.01 + 26.05 + 25.13 + 498.96$$

$$P_0 = ₹ 577.15$$

- (ii) If growth rate 9% is achieved for indefinite period, then maximum price of share should Mr. A willing be to pay is

$$P_0 = \frac{D_1}{(ke - g)} = \frac{₹ 30.52}{0.13 - 0.09} = \frac{₹ 30.52}{0.04} = ₹ 763$$

- (iii) Assuming that conditions mentioned above remain same, the price expected after 3 years will be:

$$P_3 = \frac{D_4}{k_e - g} = \frac{D_3(1.09)}{0.13 - 0.09} = \frac{36.26 \times 1.09}{0.04} = \frac{39.52}{0.04} = ₹ 988$$

**10. (a) Calculation of theoretical Post-rights (ex-right) price per share**

$$\text{Ex-right value} = \left[ \frac{MN + SR}{N + R} \right]$$

Where,

M = Market price,

N = Number of old shares for a right share

S = Subscription price

R = Right share offer

$$= \left[ \frac{₹ 72 \times 4 + ₹ 48 \times 1}{4 + 1} \right] = ₹ 67.20$$

Thus, post right issue the price of share has reduced by ₹4.80 per share.

**(b) Calculation of theoretical value of the rights alone:**

= Ex-right price – Cost of rights share

= ₹ 67.20 – ₹ 48 = ₹ 19.20

Or

$$= \frac{\text{₹ } 67.20 - \text{₹ } 48}{4} = \text{₹ } 4.80$$

**(c)** If Mr. A is not interested in subscribing to the right issue, he can renounce his right eligibility @ ₹ 19.20 per right and can earn a gain of ₹ 480.

**11. (i) Equity Beta**

To calculate Equity Beta first we shall calculate Weighted Average of Asset Beta as follows:

$$= 1.55 \times 0.64 + 1.40 \times 0.36$$

$$= 0.992 + 0.504 = 1.496$$

Now we shall compute Equity Beta using the following formula:

$$\beta_{\text{Asset}} = \beta_{\text{Equity}} \left[ \frac{E}{E + D(1 - t)} \right] + \beta_{\text{Debt}} \left[ \frac{D(1 - t)}{E + D(1 - t)} \right]$$

Accordingly,

$$1.496 = \beta_{\text{Equity}} \left[ \frac{500}{500 + 290} \right] + \beta_{\text{Debt}} \left[ \frac{290}{500 + 290} \right]$$

$$1.496 = \beta_{\text{Equity}} \left[ \frac{500}{790} \right] + 0.28 \left[ \frac{290}{790} \right]$$

$$\beta_{\text{Equity}} = 2.20$$

**(ii) Equity Beta on change in Capital Structure**

Amount of Debt to be raised:

Particulars	Value (in ₹ Crore)
Total Value of Firm (Equity ₹ 500 crore + Debt ₹ 290 crore)	790
Desired Debt Equity Ratio	1.50 : 1.00
Desired Debt Level = $\frac{\text{Total Value} \times \text{Debt Ratio}}{\text{Debt Ratio} + \text{Equity Ratio}}$	474
Less: Value of Existing Debt	(290)
Value of Debt to be Raised	184

Equity after Repurchase = Total value of Firm – Desired Debt Value  
 = ₹ 790 Crore – ₹ 474 Crore  
 = ₹ 316 Crore

**Weighted Average Beta of ABCL:**

Source of Finance	Investment (in ₹ Crore)	Weight	Beta of the Division	Weighted Beta
Equity	316	0.4	$\beta_{(E = x)}$	0.4x
Debt – 1	290	0.367	0.45	0.165
Debt – 2	184	0.233	0.50	0.117
	<b>790</b>		<b>Weighted Average Beta</b>	<b>0.282 + (0.4x)</b>

$\beta_{ABCL} = 0.282 + 0.4x$

1.496 = 0.282 + 0.4x

0.4x = 1.496 – 0.282

X = 1.214/0.4 = 3.035

$\beta_{New\ Equity} = 3.035$

(iii) Yes, it justifies the increase as it leads to increase in the Value of Equity due to increase in Beta.

12. (i) To determine whether K Ltd. should change composition of its portfolio first we should determine the Beta of the Portfolio and compare it with implicit Beta as justified by the Return on Portfolio.

**Calculation of Beta of Portfolio**

Investment	No. of shares	Market Price (₹)	Market Value	Dividend Yield	Dividend	Composition	$\beta$	Weighted $\beta$
A	1,20,000	8.58	10,29,600	9.50%	97,812	0.2339	2.32	0.5426
B	1,60,000	5.84	9,34,400	14.00%	1,30,816	0.2123	4.56	0.9681
C	2,00,000	4.34	8,68,000	7.50%	65,100	0.1972	1.80	0.3550
D	2,50,000	6.28	15,70,000	16.00%	2,51,200	0.3566	3.00	1.0698
			44,02,000		5,44,928	1.0000		2.9355

Return of the Portfolio  $\frac{5,44,928}{44,02,000} = 0.1238$

Beta of Port Folio 2.9355

Market Risk implicit

$$0.1238 = 0.10 + \beta \times (0.20 - 0.10)$$

$$\text{Or, } 0.10 \beta + 0.10 = 0.1238$$

$$\beta = \frac{0.1238 - 0.10}{0.10} = 0.238$$

Market  $\beta$  implicit is 0.238 while the portfolio  $\beta$  is 2.93. Thus the portfolio is marginally risky compared to the market.

- (ii) To decide whether K Ltd. should change the composition of its portfolio the dividend yield (given) should be compared with the Expected Return as per CAPM as follows:

Expected return as per CAPM is  $R_f + (R_M - R_f) \beta$

Accordingly,

$$\begin{aligned} \text{Expected Return for investment A} &= 0.10 + (0.20 - 0.10) 2.32 \\ &= 33.20\% \end{aligned}$$

$$\begin{aligned} \text{Expected Return for investment B} &= 0.10 + (0.20 - 0.10) 4.56 \\ &= 55.60\% \end{aligned}$$

$$\begin{aligned} \text{Expected Return for investment C} &= 0.10 + (0.20 - 0.10) 1.80 \\ &= 28\% \end{aligned}$$

$$\begin{aligned} \text{For investment D, Rs} &= 0.10 + (0.20 - 0.10) 3 \\ &= 40\% \end{aligned}$$

Comparing dividend yields with the expected returns of investment as per CAPM it can be observed that all investments are over-priced and they should be sold by the K Ltd. and acquire new securities.

**13. (a) Working Notes- (₹ in Lakhs)**

Reduction in Trade Receivable under Factoring Agreement

Current Trade Receivable 35.00

Revised Receivable  $(210 \times 30/360)$  17.50

17.50

**(i) Calculation of Benefit with Recourse Factoring**

Finance cost saving =  $17.50 \times 0.07$  1.2250



Bad Debt Saving	0.6300
Administration Cost Saving	<u>0.4000</u>
Total Saving	2.2550
Less: Factoring Fee	1.2600
Additional Interest in Advance (17.50 x 0.80 x 2%)	<u>0.2800</u>
	<u>0.7150</u>

**(ii) Calculation of Benefit with Non-Recourse Factoring**

Finance cost saving = 17.50 x 0.07	1.2250
Bad Debt Saving	1.8900
Administration Cost Saving	<u>0.4000</u>
Total Saving	3.5150
Less: Factoring Fee	2.6250
Additional Interest in Advance (17.50 x 0.80 x 2%)	<u>0.2800</u>
	<u>0.6100</u>

**Decision:** Since the benefits are more in case of Recourse Factoring proposal same should be accepted.

**14. (i) Calculation of NAV of the Fund**

		(in ₹ Crore)	
1.	Value of Shares		
	a. Pharmaceutical Companies	$158 \times \frac{500}{300}$	263.333
	b. Construction Companies	$62 \times \frac{490}{275}$	110.473
	c. Service Sector Companies	$112 \times \frac{500}{285}$	196.491
	d. IT Companies	$68 \times \frac{515}{270}$	129.704

	e. Real Estate Companies	$20 \times \frac{440}{265}$	33.208
2.	Investment in Bonds		
	a. Listed Bonds	$\frac{14}{8.842} \times 24$	38.00
	b. Unlisted Bonds		14.000
3.	Cash and Cash Equivalents		3.00
			788.209
	Less: Expense Payable		7.000
	NAV of the Fund		781.209

## (ii) NAV of the Fund per Unit

NAV of the Fund	₹ 781.209 crore
Number of Units	8.40 crore
NAV Per Unit (₹ 781.209 crore/ 8.40 crore)	₹ 93.00

## (iii) Net Return

Initial Cost Per Unit		
Investment in Shares	₹ 420 crore	
Bonds	₹ 38 crore	₹ 458 crore
Number of Units		8.40 crore
Cost Per Unit		₹ 54.52
Return		
Capital Gain	(₹ 93.00 – ₹ 54.52)	₹ 38.48
Dividend	₹ 4 x 2	₹ 8.00
		₹ 46.48
Annualised Return	$\frac{46.48}{54.52} \times \frac{1}{4}$	21.31%

## 15. Net Issue Size = \$30 million

$$\text{Gross Issue} = \frac{\$30 \text{ million}}{0.96} = \$31.25 \text{ million}$$

$$\text{Issue Price per GDR in ₹ (300 x 4 x 80\%)} \quad \text{₹ 960}$$

Issue Price per GDR in \$ (₹ 960/ ₹ 70)	\$13.71
Dividend per GDR (D <sub>1</sub> ) (₹ 2 x 4)	₹ 8
Net Proceeds per GDR (₹ 960 x 0.96)	₹ 921.60

(a) Number of GDR to be issued

$$\frac{\$31.25 \text{ million}}{\$13.71} = 2.2794 \text{ million}$$

(b) Cost of GDR to Right Ltd.

$$K_e = \frac{8}{921.60} + 0.20 = 20.87\%$$

16. Receipts using a forward contract = \$ 48,00,000/0.013889 = ₹ 34,55,97,235

**Receipts using currency futures**

The number of contracts needed is (\$ 48,00, 000/0.013881)/ 28,816,368 = 12

Initial margin payable is 12 contracts x ₹ 32,500 = ₹ 3,90,000

On April 1, 2020 Close at 0.013893

Receipts = US\$ 48,00,000/0.013894 = ₹ 34,54,72,866

Variation Margin

[(0.013893 – 0.013881) x 12 x 28,816,368]/0.013894

OR (0.000012 x 12 x 28,816,368)/0.013894 = 4149.5570/ 0.013894 = ₹ 2,98,658

Less: Interest Cost – ₹ 3,90,000 x 0.09 x 3/12 ₹ 8,775

Net Receipts ₹ 34,57,62,749

**Receipts under different methods of hedging**

Forward contract ₹ 34,55,97,235

Future Contract ₹ 34,57,62,749

No Hedge (US\$ 48,00,000/ 0.013894) ₹ 34,54,72,866

The most advantageous option would have been to hedge with futures as it is slightly higher than Forward Option but comparing to no hedge option it is better proposition.

## 17. (a) (i) Receipt under three proposals

(a) Proposal of Mr. Grand

$$\text{Invoicing in } \text{£} \text{ will produce} = \frac{\text{€}5.5 \text{ million}}{1.1990} = \text{£} 45, 87, 156$$

(b) Proposal of Mr. John

$$\text{Forward Rate} = \text{€}1.1990 - 0.0055 = 1.1935$$

$$\text{Using Forward Market hedge Sterling receipt would be } \frac{\text{€}5.5 \text{ million}}{1.1935} = \text{£} 46,08,295$$

(c) Proposal of Ms. Royce

The equivalent sterling of the order placed based on future price (€1.1943)

$$= \frac{\text{€}5.5 \text{ million}}{1.1943} = \text{£} 46, 05, 208 \text{ (rounded off)}$$

$$\text{Number of Contracts} = \frac{\text{£}46,05,208}{70,500} = 65 \text{ Contracts (to the nearest whole number)}$$

Thus, € amount hedged by future contract will be =  $65 \times \text{£}70,500 = \text{£}45,82,500$ 

Buy Future at €1.1943

Sell Future at €1.1873€0.0070

$$\text{Total loss on Future Contracts} = 65 \times \text{£}70,500 \times \text{€}0.0070 = \text{€}32,078$$

After 6 months

Amount Received €55, 00,000

Less: Loss on Future Contracts € 32,078€ 54, 67,922

Sterling Receipts

$$\text{On sale of } \text{€} \text{ at spot} = \frac{\text{€}54, 67, 922}{1.1873} = \text{£}46, 05, 342$$

Proposal of option (ii) is preferable because the option (i) &amp; (iii) produces least receipts.

- (b) Further, in case of proposal (i) there must be a doubt as to whether this would be acceptable to German firm as it is described as a competitive market and Telereal Trillium is moving into it first time.

18. (a) **Maximum exchange ratio acceptable to the shareholders of ABC Ltd.**

Market Price of share of ABC Ltd. (₹ 3 x 8)	₹ 24
No. of Equity Shares	400 lakh
Market Capitalisation of ABC Ltd. (₹ 24 x 400 lakh)	₹ 9600 lakh
Combined Earnings (₹ 1200 + ₹ 400) lakh	₹ 1600 lakh
Combined Market Capitalisation (₹ 1600 lakh x 8)	₹ 12800 lakh
Market Capitalisation of ABC Ltd. (₹ 24x 400 lakh)	₹ 9600 lakh
Balance for XYZ Ltd.	₹ 3200 lakh

Let D be the no. of equity shares to be issued to XYZ Ltd. then,

$$\frac{₹ 3200 \text{ Lakh}}{\left( \frac{1600 \text{ Lakh}}{D + 400} \right) \times 8} = D$$

$$D = 133.333 \text{ lakh Shares}$$

$$\text{Exchange Ratio} = 133.333 / 200 = 0.6666:1$$

(b) **Minimum exchange ratio acceptable to the shareholders of XYZ Ltd.**

Market Price of share of XYZ Ltd.	₹ 14.00
No. of Equity Shares	200 lakh
Market Capitalisation of XYZ Ltd. (₹ 14.00 x 200 lakh)	₹ 2800 lakh
Combined Earnings (₹ 1200 + ₹ 400) lakh	₹ 1600 lakh
Combined Market Capitalisation (₹ 1600 lakh x 10)	₹ 16000 lakh
Balance for ABC Ltd.	₹ 13200 lakh

Let D be the no. of equity shares to be issued to XYZ Ltd. then,

$$\frac{₹ 2800 \text{ lakh}}{\left( \frac{1600 \text{ lakh}}{D + 400} \right) \times 10} = D$$

$$D = 84.8485 \text{ lakh Shares}$$

$$\text{Exchange Ratio} = 84.8485 / 200 = 0.4242:1$$

19. (a) ₹ 200 crore x 9 = ₹ 1800 crore
- (b)  $K_e = 6\% + 1.2 (11\% - 6\%) = 12\%$   
 $= \frac{80 \text{ crore} \times 1.04}{0.12 - 0.04} = ₹ 1040 \text{ crore}$
- (c) ₹ 450 crore
- (d) ₹ 450 crore + ₹ 200 crore – ₹ 50 crore = ₹ 600 crore
20. (a) To be financially sustainable, an organization must have following traits:
- ❖ have more than one source of income.
  - ❖ have more than one way of generating income.
  - ❖ do strategic, action and financial planning regularly.
  - ❖ have adequate financial systems.
  - ❖ have a good public image.
  - ❖ be clear about its values (value clarity); and
  - ❖ have financial autonomy.
- (b) The differences between Financial and Operating Lease are as follows:

Basis	Financial Lease	Operating Lease
Term	It is an intermediate term to long-term arrangement.	The lease term is significantly less than the economic life of the equipment.
Cancellation	During the primary lease period, the lease cannot be cancelled.	It can be cancelled by the lessee prior to its expiration date.
Amortization	The lease is more or less fully amortized during the primary lease period.	The lease rental is generally not sufficient to fully amortize the cost of the asset.
Cost of Maintenance, taxes etc.	The costs of maintenance, taxes, insurance etc., are to be incurred by the lessee unless the contract provides otherwise.	The cost of maintenance, taxes, insurance are the responsibility of the lessor.
Risk of obsolescence	The lessee is required to take the risk of obsolescence.	The lessee is protected against the risk of obsolescence.

Nature of Arrangement	The lessor is only the Financier and is not interested in the asset.	The lessor has the option to recover the cost of the asset from another party on cancellation of the lease by leasing out the asset.
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(c) **CAMEL Model in Credit Rating:** Camel stands for Capital, Assets, Management, Earnings and Liquidity. The CAMEL model adopted by the rating agencies deserves special attention; it focuses on the following aspects-



- (i) *Capital-* Composition of external funds raised and retained earnings, fixed dividends component for preference shares and fluctuating dividends component for equity shares and adequacy of long-term funds adjusted to gearing levels, ability of issuer to raise further borrowings.
- (ii) *Assets-* Revenue generating capacity of existing/proposed assets, fair values, technological/physical obsolescence, linkage of asset values to turnover, consistency, appropriation of methods of depreciation and adequacy of charge to revenues, size, ageing and recoverability of monetary assets like receivables and its linkage with turnover.
- (iii) *Management-* Extent of involvement of management personnel, team-work, authority, timeliness, effectiveness and appropriateness of decision making along with directing management to achieve corporate goals.

- (iv) *Earnings*- Absolute levels, trends, stability, adaptability to cyclical fluctuations, ability of the entity to service existing and additional debts proposed.
- (v) *Liquidity*- Effectiveness of working capital management, corporate policies for stock and creditors, management and the ability of the corporate to meet their commitment in the short run.

These five aspects form the five core bases for estimating credit worthiness of an issuer which leads to the rating of an instrument. Rating agencies determine the pre-dominance of positive/negative aspects under each of these five categories and these are factored in for making the overall rating decision.

- (d) Debt Securitisation is a method of recycling of funds. This method is mostly used by finance companies to raise funds against financial assets such as loan receivables, mortgage backed receivables, credit card balances, hire purchase debtors, lease receivables, trade debtors, etc. and thus beneficial to such financial intermediaries to support their lending volumes. Thus, assets generating steady cash flows are packaged together and against this assets pool market securities can be issued. Investors are usually cash-rich institutional investors like mutual funds and insurance companies.

The process can be classified in the following three functions:

1. **The origination function** – A borrower seeks a loan from finance company, bank, housing company or a financial institution. On the basis of credit worthiness repayment schedule is structured over the life of the loan.
2. **The pooling function** – Many similar loans or receivables are clubbed together to create an underlying pool of assets. This pool is transferred in favour of a SPV (Special Purpose Vehicle), which acts as a trustee for the investor. Once the assets are transferred they are held in the organizers portfolios.
3. **The securitisation function** – It is the SPV's job to structure and issue the securities on the basis of asset pool. The securities carry coupon and an expected maturity, which can be asset base or mortgage based. These are generally sold to investors through merchant bankers. The investors interested in this type of securities are generally institutional investors like mutual fund, insurance companies etc. The originator usually keeps the spread available (i.e. difference) between yield from secured asset and interest paid to investors.

Generally, the process of securitisation is without recourse i.e. the investor bears the credit risk of default and the issuer is under an obligation to pay to investors only if the cash flows are received by issuer from the collateral.



(e) The salient features of FCCBs are as follows:

1. FCCB is a bond denominated in a foreign currency issued by an Indian company which can be converted into shares of the Indian Company denominated in Indian Rupees.
2. Prior permission of the Department of Economic Affairs, Government of India, Ministry of Finance is required for their issue
3. There will be a domestic and a foreign custodian bank involved in the issue
4. FCCB shall be issued subject to all applicable Laws relating to issue of capital by a company.
5. Tax on FCCB shall be as per provisions of Indian Taxation Laws and Tax will be deducted at source.
6. Conversion of bond to FCCB will not give rise to any capital gains tax in India.

**PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS**

**PART – I: ACADEMIC UPDATE**

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

Students are required to refer updated Chapters applicable for May 2021 Examination on the below mentioned link:

<b>Chapter No.</b>	<b>Chapter Name</b>	<b>Link</b>
Chapter 6	The Company Audit	<a href="https://resource.cdn.icai.org/63109bos51057cp6.pdf">https://resource.cdn.icai.org/63109bos51057cp6.pdf</a>
Chapter 7	Liabilities of Auditors	<a href="https://resource.cdn.icai.org/63110bos51057cp7.pdf">https://resource.cdn.icai.org/63110bos51057cp7.pdf</a>
Chapter 8	Audit Report	<a href="https://resource.cdn.icai.org/63111bos51057cp8.pdf">https://resource.cdn.icai.org/63111bos51057cp8.pdf</a>
Chapter 9	Audit Committee and Corporate Governance	<a href="https://resource.cdn.icai.org/63112bos51057cp9.pdf">https://resource.cdn.icai.org/63112bos51057cp9.pdf</a>
Chapter 10	Audit of Consolidated Financial Statements	<a href="https://resource.cdn.icai.org/63113bos51057cp10.pdf">https://resource.cdn.icai.org/63113bos51057cp10.pdf</a>
Chapter 14	Audit of Non-Banking Financial Companies	<a href="https://resource.cdn.icai.org/63114bos51057cp14.pdf">https://resource.cdn.icai.org/63114bos51057cp14.pdf</a>
Chapter 15	Audit under Fiscal Laws	<a href="https://resource.cdn.icai.org/63115bos51057cp15.pdf">https://resource.cdn.icai.org/63115bos51057cp15.pdf</a>
Chapter 18	Audit of Public Sector Undertakings	<a href="https://resource.cdn.icai.org/63116bos51057cp18.pdf">https://resource.cdn.icai.org/63116bos51057cp18.pdf</a>
Chapter 19	Internal Audit, Management and Operational Audit	<a href="https://resource.cdn.icai.org/63351bos51216.pdf">https://resource.cdn.icai.org/63351bos51216.pdf</a>
Chapter 20	Investigation and Due Diligence	<a href="https://resource.cdn.icai.org/63117bos51057cp20.pdf">https://resource.cdn.icai.org/63117bos51057cp20.pdf</a>
Chapter 21	Peer Review	<a href="https://resource.cdn.icai.org/63118bos51057cp21.pdf">https://resource.cdn.icai.org/63118bos51057cp21.pdf</a>
Chapter 22	Professional Ethics	<a href="https://resource.cdn.icai.org/63119bos51057cp22.pdf">https://resource.cdn.icai.org/63119bos51057cp22.pdf</a>

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

## PART – II : QUESTIONS AND ANSWERS

## QUESTIONS

## PART A: MULTIPLE CHOICE QUESTIONS

## Integrated Case Scenario 1.

M/s. Suresh & Co., a partnership firm, has been appointed, for the 7<sup>th</sup> consecutive year, as the statutory auditor of Alkis Ltd., an unlisted public company, for financial year 2020-21.

Mr. Suresh is the engagement partner for the audit assignment of Alkis Ltd. The engagement team, before starting the assignment, was made to read the policies and procedures designed to achieve desired quality control, with respect to the type of assignment being undertaken.

Mr. Suresh, referred the engagement letter, signed with the management initially and was considering whether there was a requirement to send a new engagement letter, in light of following circumstances in the Company during F.Y. 2020-21:

- Two senior whole time directors of the Company have retired out of total five directors.
- 40% stake in the Company was held by promoters, which was reduced to 5%, by selling shares to general public.
- One more factory unit was set up in Gorakhpur, this year.
- Management has requested to cover 90% of the transactions with respect to each revenue line item, this time, instead of 80% of the transactions, as was set out in the audit plan, considering the materiality and other factors.

The following data is presented from the audited financial statements of Alkis Ltd., for the financial year 2019-2020:

- (I) Paid up share capital - ₹ 8 crore;
- (II) Turnover - ₹ 55 crore;
- (III) Outstanding Borrowings - ₹ 14 crore;
- (IV) Outstanding Public Deposits - ₹ 28 crore.

Mr. Suresh while preparing a report under section 143 of the Companies Act, 2013, made a statement with respect to the remuneration paid by the Alkis Ltd. to one of its directors, Mr. Mahesh, was in excess of the limit laid down under section 197 and also gave such other details as prescribed.

Mr. Suresh, for additional reporting purpose, while auditing with respect to compliance with CARO, 2016, observed the following, relevant to Para 3(vii) of CARO, 2016:

Statutory Dues	Undisputed Amount (₹ in lakh)	Date Payable	Date Paid
Income Tax Demand for A.Y. 2018-19	2	25 <sup>th</sup> September, 2020	28 <sup>th</sup> March, 2021
GST	1.5	3 <sup>rd</sup> October, 2020	4 <sup>th</sup> April, 2021
Customs Duty	0.80	20 <sup>th</sup> September, 2020	10 <sup>th</sup> April, 2021
Provident Fund	0.45	12 <sup>th</sup> October, 2020	Not Paid till date

Also, a representation was made to GST Department for waiving a penalty of ₹ 1 lakh for late payment of GST demand.

The board of Alkis Ltd. declared interim dividend of ₹ 20 lakh on 20<sup>th</sup> May, 2021, to its 180 shareholders, out of surplus in the profit and loss account and such dividend amount was deposited in a separate bank with a branch of SBI.

Dividend amounting to ₹ 1 lakh was not claimed by a shareholder, Mr. Rohit, till 19<sup>th</sup> June, 2021, and so the said amount of ₹ 1 lakh was transferred to Unpaid Dividend Account on 31<sup>st</sup> July, 2020.

On the basis of the abovementioned facts, you are required to answer the following MCQs:

**Question No.: (1-5)**

- Which of the following option is correct with respect to Alkis Ltd.?
  - Alkis Ltd. needs to form an Audit Committee. Further, provisions relating to internal audit as well as rotation of auditors are applicable to Alkis Ltd.
  - Alkis Ltd. need not to form an Audit Committee. Further, provisions relating to internal audit is not applicable to Alkis Ltd. However, the provisions with respect to rotation of auditors are applicable to it.
  - Alkis Ltd. need not to form an Audit Committee. Further, provisions relating to rotation of auditors is not applicable to Alkis Ltd. However, the provisions with respect to internal audit are applicable to it.
  - Alkis Ltd. needs to form an Audit Committee. Provisions relating to internal audit is applicable to Alkis Ltd. However, the provisions with respect to rotation of auditors are not applicable to it.
- Under which section of the auditor's report, Mr. Suresh needs to report with respect to the excess remuneration being paid to Mr. Mahesh?
  - Other Matters Paragraph.
  - Report on Other Legal and Regulatory Requirements.
  - Basis for Qualified Opinion.

- (d) Auditor's Responsibilities for the Audit of the Financial Statements.
3. What total amount of statutory dues needs to be reported by Mr. Suresh as per Para 3 of CARO?
- (a) ₹ 2.75 lakh.  
(b) ₹ 0.80 lakh.  
(c) ₹ 2.80 lakh.  
(d) ₹ 2.30 lakh.
4. How much amount of interest Alkis Ltd. would be liable to pay with respect to unpaid dividend amount?
- (a) ₹ 575.  
(b) ₹ 1,216.  
(c) ₹ 1,726.  
(d) ₹ 1,151.
5. By what date, the amount of interim dividend should have been deposited in the scheduled bank after being declared and also by what date, the unpaid or unclaimed dividend amount should have been transferred to Unpaid Dividend Account?
- (a) 25<sup>th</sup> May, 2021 and 24<sup>th</sup> June, 2021, respectively.  
(b) 25<sup>th</sup> May, 2021 and 26<sup>th</sup> June, 2021, respectively.  
(c) 30<sup>th</sup> May, 2021 and 19<sup>th</sup> July, 2021, respectively.  
(d) 27<sup>th</sup> May, 2021 and 26<sup>th</sup> June, 2021, respectively.

### Integrated Case Scenario 2.

Victor & Co; a reputed Chartered Accountants firm is appointed as a Statutory auditor of Copper Man Creations Limited. The Company is into manufacturing of robotic products. The Company has advanced in all its endeavours by supplying million Copper suits. The Company has started the production of version 10 under its flagship and tags it as "Why to worry about a vehicle, when you have steel man". The main idea of the Company evolved after the promoter watched the Marvel series Iron Man. The product has been promoted by Robert Downy Jr as its product Brand Ambassador. The Company expects itself to manufacture these prototypes and expects the old prototypes to be obsolete due to the demand for version 10. Each version of the product has a separate department and promotes their sales under the single flagship of 'Copper Man' and thus, the managerial decision making is left to each version manager. You have assigned the 'Fixed Assets area' to Mr. Mamma Mia and he came out to you with the following points.

You need to answer the questions raised by him and go through the notes prepared to reach a reasonable conclusion over Property, Plant and Equipment FSLI (Financial Statement caption):

- The Company is holding the property in its name in Andaman & Nicobar while the land is registered in another person's name. The property is in dispute for the past 20 years. This is the major plant for the Company and it is the critical success factor for the client. The Company's 80% of the revenue is derived from this factory. When enquired with management, it would have to incur huge costs to relocate and the present advantageous conditions of the plant are very critical for the product manufactured. The Company has not conducted the physical verification of fixed assets since last 10 years but it has conducted the verification at other locations every year. When enquired with management, the Company explained it is highly impossible as the plant is 24\*7 running and it couldn't be halted as the restart of operations will cost huge amounts and a month's time to get the Company back to current position.
- The audit team has come across a transaction where the Company is enjoying the property rent free. The audit team is of the opinion that the provisions of Benami transactions (Prohibition) Act, 1988 might apply in such scenario. This should be evaluated as part of CARO reporting. No other procedures in this regard need to be performed.
- The Company follows the depreciation policy as per the Schedule II across all the factories even when the factory at Andaman & Nicobar is the only factory that runs 24\*7. The useful life has been taken as it is mentioned in the Schedule II without modifications and the Company's future prospects are good, there are no impairment indications.

On the basis of the abovementioned facts, you are required to choose the most appropriate answer for the following MCQs:

**Question No.: (6-10)**

6. The audit team has asked you about the Benami Transaction:
  - (a) There is no requirement for the auditor to report the transaction as there are no proceedings initiated or pending against the Company under the Benami Transactions (Prohibition) Act, 1988.
  - (b) As the auditor is not sure about the transaction and did not gather proper evidence, he can ignore the transaction. The auditor needs to obtain the representation letter and note the same as a follow up point for the next year audit.
  - (c) The auditor needs to obtain the additional evidence about the transaction. He needs to assess the situation as to its impact over the financial statements along-with consideration of SA 250. Thus, he should consider the seriousness of matter and should assess the impact of the same over the report even though it is not required to be reported as part of CARO.
  - (d) The auditor needs to report such matter as a part of CARO as it might turn into a potential issue under the Benami Transactions (Prohibition) Act, 1988.
7. The audit team has asked you about the implications of dispute on the Property, Plant and Equipment and whether any additional considerations/reporting are needed for the same:

- (a) The dispute on account of Property, Plant and Equipment is a civil case and one or the other Company may face such consequences. Thus, no additional audit procedures are required. However, auditor may report this fact under CARO.
  - (b) The Property, Plant and Equipment is in dispute and the Company has to incur huge costs to identify the ideal plant with same conditions. Thus, this might amount to material uncertainty on the Company's side to continue as a going concern. Thus, he needs to report the same. However, he need not to report under CARO.
  - (c) The Property, Plant and Equipment is under dispute, the auditor needs to report it as a key audit matter and request the Company to disclose it in notes to accounts in a single line that the property is in dispute. However, he need not to report under CARO.
  - (d) The Company's major line of business is from the factory, which is under dispute, the audit team need to consider the status of the case and assess its implications over the going concern assumption of the Company if it loses its case. It should also report it as part of Sec 143(3) about the Company's financial transactions or matters which have an adverse impact on the functioning of the Company. It also needs to be reported as per CARO.
8. The audit team has asked you about the impairment of assets of the Company.
- (a) The Company has no impairment condition as the Company expects positive future cash flows from the assets and thus no need to assess the impairment.
  - (b) The Company need to assess the impairment condition for the assets and need to assess the fair value of the assets used to generate income from the older versions. The auditee needs to take a decision based on the cash inflows of a Company as a whole for assessing the existence of the impairment condition.
  - (c) There exists an impairment condition as the Company does not expect much business from the older versions due to anticipation of the huge demand of the new product. The Company need to assess the cash inflows at each version level.
  - (d) The Company need not assess impairment of assets as this is very common in dynamic industries where the older versions become obsolete when the new one is introduced by the Company.
9. The audit team is sceptical about the Depreciation policy followed by the Company for the Andaman and Nicobar plant:
- (a) As the Company is following the Schedule II, the depreciation policy and the useful life is in line with the Companies Act, 2013. Hence the Company's depreciation policy is good to go.
  - (b) As the Company is operating the plant 24\*7, it will be eligible for extra shift depreciation as per Schedule II. For the assets where the condition of extra shift depreciation does not exist, the Company will be eligible to claim 50% extra depreciation as per schedule II.

- (c) As the Schedule III is applicable for the whole Company, the policy including useful life for the assets need to be same. There cannot be different useful lives for different assets across different locations. Thus, the depreciation policy of the Company is good to go.
  - (d) As the Company is operating the plant 24\*7, it will be referred to as continuous process plant. For the assets where the condition of extra shift depreciation does not exist, the Company will not be eligible to claim 100% extra depreciation as per Schedule II.
10. The audit team has raised a question over hiring an international brand ambassador for an Indian product and raised concerns over the contract of the same:
- (a) The auditor has no role to play in such scenario as the selection of brand ambassador and the running the business lies with the management. The auditor needs to go through the agreements entered, payments made etc.
  - (b) The auditor needs to inform the Central Government as this might constitute a serious non-compliance of laws and regulations. The auditor should also assess the integrity of the management about the appointment of the foreign brand ambassador.
  - (c) As per the SA 250, "Consideration of laws and regulations in an audit of Financials Statements" the auditor needs to assess such matters as it is a legal violation to hire an international brand ambassador ignoring the local people. The audit team need to consider the same and report in its audit report about such implications.
  - (d) The auditor needs to qualify its audit report as the Company is against the "Vocal for Local" policy. The auditor needs to highlight the same in its audit report as this may lead to a serious brand deterioration of the Company.

**Independent MCQs**

11. Anant & Co. is the auditor of ST Insurance Company. The insurance company is also involved in re-insurance business and necessary provision for re-insurance premium has been made in the books of accounts. The insurance company is into a re-insurance whereby their contract relates to one particular risk and is expressed in the re-insurance policy. Each transaction is negotiated individually, and each party has a free choice i.e. for the insurance company to offer and the re-insurer to accept. What kind of a re-insurance business is the insurance company into?
- (a) Facultative Re-insurance.
  - (b) Stop loss treaty re-insurance.
  - (c) Auto-fac re-insurance.
  - (d) Proportional treaty re-insurance.



12. Below is an extract from the list of supplier statements as at 31st March 2020 held by the Company and corresponding payables ledger balances at the same date along with some commentary on the noted differences:

<i>Supplier</i>	<i>Statement balance</i> ₹'000	<i>Payables ledger balance</i> ₹'000
Cete Company	80	60
Lice Company	185	115

The difference in the balance of **Cete Company** is due to an invoice which is under dispute due to defective goods which were returned on 30<sup>th</sup> March 2020. **Which of the following audit procedures should be carried out to confirm the balance owing to Cete Company?**

- (I) Review post year-end credit notes for evidence of acceptance of return.
  - (II) Inspect pre year-end goods returned note in respect of the items sent back to the supplier.
  - (III) Inspect post year-end cash book for evidence that the amount has been settled.
- (a) 1, 2 and 3.
  - (b) 1 and 3 only.
  - (c) 1 and 2 only.
  - (d) 2 and 3 only.

#### **PART B : DESCRIPTIVE QUESTIONS**

##### **Standards on Auditing, Statements and Guidance Notes**

13. (a) Coccyx Ltd. supplies navy uniforms across the country. The Company has 3 warehouses at different locations throughout the India and 5 warehouses at the borders. The major stocks are generally supplied from the borders. Coccyx Ltd. appointed M/s OPAQE & Co. to conduct its audit for the financial year 2020-21. Mr. P, partner of M/s OPAQE & Co., attended all the physical inventory counting conducted throughout the India but could not attend the same at borders due to some unavoidable reason.

You are required to advise M/s OPAQE & Co.,

- (I) How sufficient appropriate audit evidence regarding the existence and condition of inventory may be obtained?
  - (II) How is an auditor supposed to deal when attendance at physical inventory counting is impracticable?
- (b) CA. Dev, a recently qualified practicing Chartered Accountant got his first internal audit assignment of a large manufacturing concern Growth Limited. As an internal

auditor for Growth Limited, CA. Dev is required to verify whether there are adequate records for identification and value of Plant and Machinery, tools and dies and whether any of these items have become obsolescent and not in use. Draft a suitable audit programme for the above.

- (c) (I) In an initial audit engagement, the auditor will have to satisfy about the sufficiency and appropriateness of 'Opening Balances' to ensure that they are free from misstatements, which may materially affect the current financial statements. Lay down the audit procedure, you will follow in cases (i) when the financial statements are audited for the preceding period by another auditor; and (ii) when financial statements are audited for the first time.
- (II) If, after performing the procedure, you are not satisfied about the correctness of 'Opening Balances'; what approach you will adopt in drafting your audit report in two situations mentioned in (I) above?

#### **The Company Audit & Audit Report**

14. Star Ltd. is a power generating company which uses coal as raw material for its power generating plant. The Company has been allotted coal blocks in the state of Jharkhand and Odisha. During the FY 2020-21, a scam regarding allotment of coal blocks was unveiled leading to a ban on the allotment of coal blocks to various companies including Star Ltd. This happened in the month of December 2020 and as such entire power generation process of Star Ltd, came to a halt in that month. As a result of such ban, and the resultant stoppage of the production process, many key managerial personnel of the company left the Company. There were delays in the of payment of wages and salaries and the banks from whom the Company had taken funds for project financing also decided not to extend further finance or to fund further working capital requirements of the Company.

Further, when discussed with the management, the statutory auditor understood that the Company had no action plan to mitigate such circumstances. Further, all such circumstances were not reflected the financial statements of Star Ltd. What course of action should the statutory auditor of the Company consider in such situation?

#### **Audit Committee and Corporate Governance**

15. Mr. Ibrahim was appointed as statutory auditor of New Limited and Old Limited. Both the Companies were having their base in Chennai they had recently listed their shares on the Stock Exchange. For the financial year 2020-21, Mr. Ibrahim had signed limited review reports for each quarter, till the quarter ended 31<sup>st</sup> December 2020 for both the companies. Owing to his personal commitments and increased workload, he tendered his resignation to M/s New Limited on 30<sup>th</sup> January 2021 and asked the Company to appoint another auditor to issue audit report for the remaining quarter and the FY 2020-21 as a whole. But the management of the Company did not accept the same.

Mr. Ibrahim continued to act as auditor for M/s Old limited. During the 1<sup>st</sup> week of March 2021, Mrs. W (wife of Mr. Ibrahim) had borrowed a sum of ₹ 6 lakh from the Company for her personal use. Having come to know about this, Mr. Ibrahim immediately informed the management that he had been disqualified to act as auditor and told them that he won't issue audit report for last quarter. But management of the Company argued that it's the legal responsibility of Mr. Ibrahim to do the same.

Whether contention of management of New Limited and Old Limited is justified in asking Mr. Ibrahim to issue audit report for the last quarter and the FY 2020-21 as a whole, despite his resignation? Discuss.

#### **Audit of Banks & Insurance Company**

16. (a) You are auditing a small bank branch with staff strength of the manager, cashier and three other staff Peter, Prem and Pran. Among allocation of work for other areas, Peter who is a peon also opens all the mail and forwards it to the concerned person. He does not have a signature book so as to check the signatures on important communications. Prem has possession of all bank forms (e.g. Cheque books, demand draft/pay order books, travelers' cheques, foreign currency cards etc.). He maintains a record meticulously which you have test checked also. However, no one among staff regularly checks that. You are informed that being a small branch with shortage of manpower, it is not possible to always check the work and records. Give your comments.
- (b) As at 31st March 2020 while auditing Universe Insurance Ltd, you observed that a policy has been issued on 27<sup>th</sup> March 2020 for fire risk favouring one of the leading corporate houses in the country without the actual receipt of premium and it was reflected as premium receivable. The Company maintained that it is a usual practice in respect of big customers and the money was collected on 7th April, 2020. You further noticed that there was a fire accident in the premises of the insured on 31st March 2020 and a claim was lodged for the same. The insurance company also made a provision for claim. Please respond.

#### **Audit under Fiscal Laws**

17. (a) Arihant Pvt Ltd is engaged in the business of providing corporate/professional training programs. It has an annual turnover of INR 74 crore. The Company is subject to tax audit for which the work has been started by the tax auditor. For the financial year ending 31 March 2021, the Company applied for GST registration for 5 new locations for which registration certificates have not yet been received by the Company. However, the registration number is available on the portal of relevant authority which can be verified by checking the details of the Company. In this case what should be the audit procedures to verify this registration number?
- (b) Mr. Rohan, made an outward supply of ₹ 4.00 lakh to M/s. Park Enterprises on 30<sup>th</sup> April, 2020 on a credit period of 15 days. However, M/s Park Enterprises made the

payment to Mr. Rohan after 45 days along with interest for 30 days delayed payment @ 12%. As such, Mr. Rohan received total payment of ₹ 4,04,000/- along with interest. However, while filing Form GSTR-3B/ Form GSTR-1, Mr. Rohan declared his outward supplies at ₹ 4.00 lakh. Even while filing Form GSTR-9, Mr. Rohan did not discharge his tax liability. As a GST auditor in Form GSTR-9C, what action is recommended by the auditors. Comment.

#### Internal Audit, Management Audit and Operational Audit

18. M/s Raka & Co., Chartered Accountants have been approached by Abhinandan Ltd., a company engaged in iron and steel manufacturing industry. The Company has been facing following operational issues:

- (a) Penal interest for delayed payments to the overseas vendors despite having enough cash flows; and
- (b) Despite having regular production and enough inventory, delays in shipping the final goods to the customers leading to its deteriorating vendor rating.

As a partner of M/s Raka & Co., through detailed discussion with the Senior Manager of Abhinandan Ltd., you have concluded that all these delays are because of long decision-making cycles in the Company. As a consultant to the Company, would you recommend Management Audit or Operational Audit?

#### Professional Ethics

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

- (a) C.A. Ajitnath is Special Executive Magistrate. He also took over as the Executive Chairman of Software Company on 1.4.2020. He is also a leading income tax practitioner and consultant for derivative products. He resides in Chennai near to the ION commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 40% of his time to settle the commodity transactions. He has not taken any permission for becoming Special Executive Magistrate. However, he has got special permission of Council of ICAI for becoming Executive Chairman. Is C.A. Ajitnath liable for professional misconduct?
- (b) CA. Sambhav, the auditor of Mahvir Pvt. Ltd. has delegated following works to his articles and staff:
  - ❖ Raising of bills and issuing acknowledgements for money receipts.
  - ❖ Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
  - ❖ Issuing acknowledgements for records produced.

❖ Signing financial statements of the company.

Is this correct as per the Professional Ethics and ICAI's guidelines and pronouncements?

20. Write a short note on the following:

- (a) Technical, Ethical and Professional Standards as per Statement on Peer Review.
- (b) Important issues to be kept in mind by the investigator while preparing his report.
- (c) Direction by Tribunal in case auditor acted in a fraudulent manner.
- (d) Differences between Division II (Ind- AS- Other than NBFCs) and Division III (Ind- AS- NBFCs) of Schedule III.
- (e) Circumstances under which an auditor is required to submit a special report to the registrar of co-operative societies.

### SUGGESTED ANSWERS

#### PART A : ANSWERS TO MULTIPLE QUESTIONS

1. (c)
2. (b)
3. (b)
4. (d)
5. (b)
6. (c)
7. (d)
8. (c)
9. (d)
10. (a)
11. (a)
12. (c)

#### PART B

13. (a) (I) **Special Consideration with Regard to Inventory:** As per SA 501 "Audit Evidence- Specific Considerations for Selected Items", when inventory is material to the financial statements, the auditor shall obtain sufficient appropriate audit evidence regarding the existence and condition of inventory

by:

- (1) Attendance at physical inventory counting, unless impracticable, to:
  - (i) Evaluate management's instructions and procedures for recording and controlling the results of the entity's physical inventory counting;
  - (ii) Observe the performance of management's count procedures;
  - (iii) Inspect the inventory; and
  - (iv) Perform test counts; and
- (2) Performing audit procedures over the entity's final inventory records to determine whether they accurately reflect actual inventory count results.

- (II) **Attendance at Physical Inventory Counting Not Practicable:** In some cases, attendance at physical inventory counting may be impracticable. This may be due to factors such as the nature and location of the inventory, for example, where inventory is held in a location that may pose threats to the safety of the auditor. The matter of general inconvenience to the auditor, however, is not sufficient to support a decision by the auditor that attendance is impracticable. Further, as explained in SA 200 "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing", the matter of difficulty, time, or cost involved is not in itself a valid basis for the auditor to omit an audit procedure for which there is no alternative or to be satisfied with audit evidence that is less than persuasive.

Further, where attendance is impracticable, alternative audit procedures, for example, inspection of documentation of the subsequent sale of specific inventory items acquired or purchased prior to the physical inventory counting, may provide sufficient appropriate audit evidence about the existence and condition of inventory.

In some cases, though, it may not be possible to obtain sufficient appropriate audit evidence regarding the existence and condition of inventory by performing alternative audit procedures. In such cases, SA 705 on Modifications to the Opinion in the Independent Auditor's Report, requires the auditor to modify the opinion in the auditor's report as a result of the scope limitation.

- (b) **The Internal Audit Programme in connection with Plant and Machinery and Tools and dies may be on the following lines:**
- (i) **Internal Control Aspects:** The following may be incorporated in the audit programme to check the internal control aspects-
    - (a) Maintaining separate register for hired assets, leased asset and jointly owned assets.
    - (b) Maintaining register of fixed asset and reconciling to physical inspection of

fixed asset and to nominal ledger.

- (c) All movements of assets are accurately recorded.
  - (d) Authorisation be obtained for –
    - (1) a declaring a fixed asset scrapped.
    - (2) selling a fixed asset.
  - (e) Check whether additions to fixed asset register are verified and checked by authorised person.
  - (f) Proper recording of all additions and disposal.
  - (g) Examining procedure for the purchase of new fixed assets, including written authority, work order, voucher and other relevant evidence.
  - (h) Regular review of adequate security arrangements.
  - (i) Periodic inspection of assets is done or not.
  - (j) Regular review of insurance cover requirements over fixed assets.
- (ii) **Assets Register:** To review the registers and records of plant, machinery, etc. showing clearly the date of purchase of assets, cost price, location, depreciation charged, etc.
  - (iii) **Cost Report and Journal Register:** To review the cost relating to each plant and machinery and to verify items which have been capitalised.
  - (iv) **Code Register:** To see that each item of plant and machinery has been given a distinct code number to facilitate identification and verify the maintenance of Code Register.
  - (v) **Physical Verification:** To see physical verification has been conducted at frequent intervals.
  - (vi) **Movement Register:** To verify (a) whether Movement Register for movable equipments and (b) log books in case of vehicles, etc. are being maintained properly.
  - (vii) **Assets Disposal Register:** To review whether assets have been disposed off after proper technical and financial advice and sales/disposal/retirement, etc. of these assets are governed by authorisation, sales memos or other appropriate documents.
  - (viii) **Spare Parts Register:** To examine the maintenance of a separate register of tools, spare parts for each plant and machinery.
  - (ix) **Review of Maintenance:** To scrutinise the programme for an actual periodical servicing and overhauling of machines and to examine the extent of utilisation of maintenance department services.

- (x) **Review of Obsolescence:** To scrutinise whether expert's opinion have been obtained from time to time to ensure purchase of technically most useful efficient and advanced machinery after a thorough study.
  - (xi) **Review of R&D:** To review R&D activity and ascertain the extent of its relevance to the operations of the organisation, maintenance of machinery efficiency and prevention of early obsolescence.
- (c) (I) (i) **Financial Statements Audited by another Auditor – Audit Procedure:**  
If the prior period's financial statements were audited by a predecessor auditor, the auditor may be able to obtain sufficient appropriate audit evidence regarding the opening balances by perusing the copies of the audited financial statements including the other relevant documents relating to the prior period financial statements such as supporting schedules to the audited financial statements. Ordinarily, the current auditor can place reliance on the closing balances contained in the financial statements for the preceding period, except when during the performance of audit procedures for the current period the possibility of misstatements in opening balances is indicated.
- (ii) **Audit of Financial Statements for the First Time – Audit Procedure:**  
When the audit of financial statements is being conducted for the first time, the auditor has to perform auditing procedures to obtain sufficient appropriate audit evidence. Since opening balances represent effect of transaction and events of the preceding period and accounting policies applied in the preceding period, the auditor need to obtain evidence having regard to nature of opening balances, materiality of the opening balances and accounting policies. Since it will not be possible for auditor to perform certain procedures, e.g., observing physical verification of inventories, etc. the auditor may obtain confirmation, etc. and perform suitable procedures in respect of fixed assets, investments, etc. The auditor can also obtain management representation with regards to the opening balances.
- (II) **Drafting Audit Report:** If the auditor is unable to obtain sufficient appropriate audit evidence regarding the opening balances, the auditor shall express a qualified opinion or a disclaimer of opinion, as appropriate. Further, If the auditor concludes that the opening balances contain a misstatement that materially affects the current period's financial statements, and the effect of the misstatement is not properly accounted for or not adequately presented or disclosed, the auditor shall express a qualified opinion or an adverse opinion.
14. SA 570- "Going Concern" deals with the auditor's responsibilities in the audit of financial statements relating to going concern and the implications for the auditor's report.

The auditor's responsibilities are to obtain sufficient appropriate audit evidence regarding, and conclude on, the appropriateness of management's use of the going concern basis of



accounting in the preparation of the financial statements, and to conclude, based on the audit evidence obtained, whether a material uncertainty exists about the entity's ability to continue as a going concern.

When the use of going concern basis of accounting is inappropriate i.e., if the financial statements have been prepared using the going concern basis of accounting but, in the auditor's judgment, management's use of the going concern basis of accounting in the preparation of the financial statements is inappropriate, the auditor shall express an adverse opinion.

Also, when adequate disclosure of a material uncertainty is not made in the financial statements the auditor shall express a qualified opinion or adverse opinion, as appropriate, in accordance with SA 705 (Revised); and in the Basis for Qualified (Adverse) Opinion section of the auditor's report, state that a material uncertainty exists that may cast significant doubt on the entity's ability to continue as a going concern and that the financial statements do not adequately disclose this matter.

In the present case, the following circumstances indicate the inability of Star Ltd. to continue as a going concern:

- Ban on the allotment of coal blocks
- Halt in power generation
- Key Managerial Personnel leaving the Company.
- Banks decided not to extend further finance and not to fund the working capital requirements of the Company.
- Non availability of sound action plan to mitigate such circumstances.

Therefore, considering the above factors it is clear that the going concern basis is inappropriate for the Company. Further, such circumstances are not reflected in the financial statements of the Company. As such, the statutory auditor of Star Ltd. should:

- (1) Express an adverse opinion in accordance with SA 705 (Revised) and
  - (2) In the Basis of Opinion paragraph of the auditor's report, the statutory auditor should state that a material uncertainty exists that may cast significant doubt on the entity's ability to continue as a going concern and that the financial statements do not adequately disclose this matter.
15. In the given scenario, Mr. Ibrahim was appointed as statutory auditor of two listed entities i.e., New Limited and Old Limited. For the financial year 2020-21, Mr. Ibrahim had signed limited review reports for first three quarter i.e., till the quarter ended 31<sup>st</sup> December 2020 for both the companies. Owing to his personal commitments and increased workload, he resigned from New Limited and asked the Company to appoint another auditor to issue audit report for the remaining quarter and audit report for the FY 2020-21.

Further, Mr. Ibrahim immediately informed the management of Old Limited that he had been disqualified to act as auditor and told them that he won't issue audit report for last quarter as Mrs. W (wife of Mr. Ibrahim) had borrowed a sum of ₹ 6 lakh from the Company for her personal use.

As per SEBI LODR Regulations, if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year. This provision will not apply if the auditor is disqualified due to Section 141 of the Companies Act, 2013.

Thus, in the given situation, in view of above conditions to be complied with upon resignation of the statutory auditor of a listed entity/material subsidiary with respect to limited review / audit report as per SEBI LODR Regulations, Mr. Ibrahim is required to issue the audit report for the last quarter and audit report for the year 2020-21 for New Limited as he has issued audit report for the first three quarters whereas Mr. Ibrahim is not required to issue the audit report for remaining quarter and audit report for the year 2020-21 as a whole for Old Limited as he is disqualified under section 141 of Companies Act.

Accordingly, contention of Management of New Limited is correct and tenable for issuing the audit report for remaining quarter and audit report for financial year 2020-21 however, contention of management of Old Limited is not correct regarding the legal responsibility of Mr. Ibrahim to issue audit report for remaining quarter and for the whole year.

16. (a) Banks are required to implement and maintain a system of internal controls for mitigating risks, maintain good governance and to meet the regulatory requirements. Given below are examples of internal controls that are violated in the given situation:

In the instant case, Peter who is a peon opens all the mail and forwards it to the concerned person. Further, he does not have a signature book so as to check the signatures on important communications is not in accordance with implementation and maintenance of general internal control. As the mail should be opened by a responsible officer. Signatures on all the letters and advices received from other branches of the bank or its correspondence should be checked by an officer with the signature book.

All bank forms (e.g. Cheque books, demand draft/pay order books, travelers' cheques, foreign currency cards etc.) should be kept in the possession of an officer, and another responsible officer should verify the issuance and stock of such stationery. In the given case, Prem has possession of all bank forms (e.g. cheque books, demand draft/pay order books, travelers' cheques, foreign currency cards etc.). He maintains a record meticulously which were also verified on test check basis.

Further, contention of bank that being a small branch with shortage of manpower they are not able to check the work and records on regular basis, is not tenable as such lapses in internal control pose risk of fraud.

The auditor should report the same in his report accordingly.

- (b) No risk can be assumed by the insurer unless the premium is received. According to section 64VB of the Insurance Act, 1938, no insurer should assume any risk in India in respect of any insurance business on which premium is ordinarily payable in India unless and until the premium payable is received or is guaranteed to be paid by such person in such manner and within such time, as may be prescribed, or unless and until deposit of such amount, as may be prescribed, is made in advance in the prescribed manner. The premium receipt of insurance companies carrying on general insurance business normally arise out of three sources, viz., premium received from direct business, premium received from reinsurance business and the share of co-insurance premium.

In view of the above, the insurance company is not liable to pay the claim and hence no provision for claim is required.

17. (a) Clause (4) (Details as to Indirect Tax Registration) of 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 required to be done in the manner or format specified by the e-filing utility in this context.

In the given situation, Arihant Pvt Ltd is engaged in the business of providing corporate/professional training programs. The Company is subject to tax audit. For the financial year ending 31 March 2021, the Company applied for GST registration for 5 new locations for which registration certificates have not yet been received by the Company. However, the registration number is available on the portal of relevant authority.

In the instant case, the tax auditor of Arihant Private Limited should verify the registration number for the locations for which registration certificates have not been received from online portal of the relevant authority.

The auditor should also ensure that the details furnished while checking the registration number pertains to the company only. If the company has filed any returns for these locations, the auditor should enquire for the same from the management and should check those returns to verify the correctness of the registration numbers. In addition, the auditor should also obtain specific representation in respect of this point from the management.

- (b) In terms of section 15(2)(d) while computing value of taxable supply the transaction value shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Since, Mr. Rohan did not pay tax on interest component,

he made violation of valuation provisions. Mr. John was having option to discharge such liability at the time of filing of Form GSTR-9, which he did not avail. Therefore, the GST auditor may recommend him to discharge such liability at the time of making reconciliation statement in Form GSTR-9C.

**18. A comparison between the Management Audit & the Operational Audit is as follows:**

Management audit is concerned with the “Quality of managing”, whereas operational audit focuses on the “Quality of operations”.

Management audit is the “Audit of management” while the operational audit is the “Audit for the management”. The focus of Management Audit is on “Quality of Decision Making” rather than the effectiveness or efficiency of operations.

The basic difference between the two audits, then, is not in method, but in the level of appraisal. In a management audit, the auditor is to make his tests to the level of top management, its formulation of objectives, plans and policies and its decision making. It is not that he just verifies the operations of control and procedures and fulfilment of plans in conformity with the prescribed policies.

Since, the delays in payments and consequent penal interest payments and the delays in shipping and the consequent deteriorating vendor ratings are happening because of the delays in decision-making process of the management of Abhinandan Ltd. Therefore, it appears that this is not just an internal control or operational issue but an issue of management process.

Therefore, Management Audit would be recommended in this case.

**19. (a) Engaging into a Business:** As per Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In this case, C.A. Ajitnath is Special Executive Magistrate, engaged in the occupation of trading in commodity derivatives and also took over as the Executive Chairman on 01.04.2020.

In this context, it may be noted that the Special Executive Magistrate which is generally permitted for Members of the Institute in practice, further specific permission is required for holding the position of Executive Chairman and getting engaged in the occupation of trading in commodity derivatives.

In the given situation, C.A. Ajitnath is acting as Special Executive Magistrate which is generally permitted for Members of the Institute in practice. Further, He is engaged

in the occupation of trading in commodity derivatives which is not covered under the general permission. He also took over as the Executive Chairman for which specific permission is required. CA. Ajitnath got the permission for the same from the Council of ICAI.

**Conclusion:** Hence, CA. Ajitnath is not guilty for acting as Special Executive Magistrate as it is covered under the general permission. He is also not guilty for holding the position of Executive Chairman after getting specific permission of the Institute.

However, he is guilty of professional misconduct under Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949 for getting engaged in the occupation of trading in commodity derivatives which is not covered under the general permission.

- (b) 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.

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 in the following instances and such delegation will not attract provisions of this clause:

- (i) Issue of audit queries during the course of audit.
- (ii) Asking for information or issue of questionnaire.
- (iii) Letter forwarding draft observations/financial statements.
- (iv) Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
- (v) Acknowledging and carrying on routine correspondence with clients.
- (vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
- (vii) Issuing acknowledgements for records produced. Raising of bills and issuing acknowledgements for money receipts.
- (ix) Attending to routine matters in tax practice, subject to provisions of Section 288 of Income Tax Act.
- (x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.

In the instant case, CA. Sambhav, the auditor of Mahvir Pvt. Ltd. has delegated certain task to his articles and staff such as raising of bills and issuing

acknowledgements for money receipts, initiating and stamping of vouchers and of schedules prepared for the purpose of audit and issuing acknowledgements for records produced and signing financial statements of the company.

Therefore, CA. Sambhav is correct in allowing first three tasks i.e., raising of bills and issuing acknowledgements for money receipts, initiating and stamping of vouchers and of schedules prepared for the purpose of audit.

However, if the person signing the financial statements on his behalf is not 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, CA. Sambhav is not right in delegating signing of financial statements to his staff.

**Conclusion:** In view of this, CA. Sambhav would be guilty of professional misconduct for allowing the person signing the financial statements on his behalf to his articles and staff under Clause 12 of Part 1 of First Schedule of the Chartered Accountants Act, 1949.

**20. (a) As per the Statement on Peer Review, Technical, Professional and Ethical Standards means:**

- (i) Accounting Standards issued by ICAI that are applicable for entities other than companies under the Companies Act, 2013;
- (ii) Accounting Standards prescribed under section 133 of the Companies Act; 2013 by the Central Government based on the recommendation of ICAI and in consultation with the National Financial Reporting Authority (NFRA) and notified as Accounting Standards Rules 2006, as amended from time to time;
- (iii) Indian Accounting Standards prescribed under section 133 of the Companies Act 2013 by the Central Government based on the recommendation of ICAI and in consultation with NFRA and notified as Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time;
- (iv) Standards :

Standards issued by the Institute of Chartered Accountants of India including-
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- |  |
|--|
| <ul style="list-style-type: none"> <li>(a) Engagement standards</li> <li>(b) Statements</li> <li>(c) Guidance notes</li> <li>(d) Standards on Internal Audit.</li> <li>(e) Guidelines/ Notifications / Directions / Announcements / Pronouncements / Professional Standards issued from time to time by the Council or any of its Committees.</li> </ul> |
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- (v) Framework for the preparation and presentation of financial statements, Preface

to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services and Framework for Assurance engagements;

- (vi) Provisions of the relevant statutes and / or rules or regulations which are applicable in the context of the specific engagements being reviewed including instructions, guidelines, notifications, directions issued by regulatory bodies as covered in the scope of assurance engagements.
- (b) The important issues to be kept in mind by the investigator while preparing his report are as follows:**
- (i) The report should not contain anything which is not relevant either to highlight the nature of the investigation or the final outcome thereof.
  - (ii) Every word or expression used should be properly considered so that the possibility of arriving at a different meaning or interpretation other than the one intended by the investigator can be minimized.
  - (iii) Relevant facts and conclusions should be properly linked with evidence.
  - (iv) Bases and assumptions made should be explicitly stated. Reasonableness of the bases and assumptions made should be well examined and care should be taken to see that none of the bases and assumptions can be considered to be in conflict with the objective of the investigation. For example, in an investigation into over-stocking of raw materials, inventories and spares etc. it should not be assumed that the ordering levels indicated on bin cards provide fair guidance about acquisition of further materials. Also, since investigation is a fact-finding assignment, assumptions should be made only when it is unavoidably necessary.
  - (v) The report should clearly spell out the nature and objective of the assignment accepted its scope and limitations, if any.
  - (vi) The report should be made in paragraph form with headings for the paragraphs. Any detailed data and figures supporting any finding may be given in Annexures.
  - (vii) The report should also state restrictions or limitations, if any, imposed on the instructions given by the client. Preferably the reasons for placing such restrictions and their impact on the final result should also be stated.
  - (viii) The opinion of the investigator should appear in the final paragraph of the report.
- (c) Direction by Tribunal in case auditor acted in a fraudulent manner:** As per sub-section (5) of the section 140, 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.

**(d) 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:

- (i) 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.
- (ii) 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 lakh, whichever is higher.
- (iii) 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.
- (iv) 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 showing those only as part of the notes.
- (v) Separate disclosure of trade receivable which have significant increase in credit risk & credit impaired.
- (vi) The conditions or restrictions for distribution attached to statutory reserves have to be separately disclose in the notes as stipulated by the relevant statute.



- (e) **Special Report by Auditor to Registrar of Co-operative Societies:** Under the following circumstances, an auditor has to issue special report to the Registrar of Co-operative Societies (This report should be in addition to the regular report)-
- (i) (a) Any member of the managing committee is involved in personal profit making by using the properties or assets of the society, resulting into the loss to the society.
  - (b) Frauds are detected from the society's transactions.
  - (ii) There is mismanagement in the society and the principles of co-operative are not maintained by the management.
  - (iii) In the respect of audit of Urban Co-operative Banks, disproportionate advances to vested interest groups. Such as relative of management, and deliberate negligence about the recovery thereof. Cases of reckless advancing, where the management is negligent about taking adequate security and proper safeguards for judging the credit worthiness of the party.

## PAPER – 4: CORPORATE AND ALLIED LAWS

### PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2021 EXAMINATION

#### (A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For May 2021 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 31<sup>st</sup> October, 2020 are relevant.

**Relevant publications:** Students are advised to refer the following publications -

1	Study Material (Edition June 2018) containing Legislative amendments made upto 30 <sup>th</sup> April, 2018.
2	RTP of May 2021 examination containing all the significant legislative amendments i.e. from 1 <sup>st</sup> May 2018 to 31 <sup>st</sup> October, 2020.
3	Revised chapter of FEMA due to inclusion of topics in the scope of syllabus [hosted on website at <a href="https://resource.cdn.icai.org/50863bos40319cp22.pdf">https://resource.cdn.icai.org/50863bos40319cp22.pdf</a> ]
4	Detailed announcement dated 9.7.2019 w.r.t. Inclusions/Exclusions in the scope of syllabus [hosted on the website at <a href="https://resource.cdn.icai.org/55779bos45147fold.pdf">https://resource.cdn.icai.org/55779bos45147fold.pdf</a> ]

**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

The Companies Act, 2013 have been regularly amended by the Government vide enforcement of various amendment Act, namely Companies (Amendment) Act, 2017, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019, the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 and through various legislative amendments made vide Circulars and Notifications.

Following are the relevant amendments pertaining to Companies Act, 2013:-

#### 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, 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.
- (iii) 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 or 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 **24<sup>th</sup> 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)	In section 129 of the principal Act, for <b>sub-section (3)</b> , the following sub-section shall be substituted, namely:— “(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): 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

	<p>or subsidiaries and associate company or companies in such form as may be prescribed:          Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."</p>
<p>Amendment of section 134 (Financial statement, Board's report, etc.)</p>	<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 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:—</p> <p>"(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:—</p> <p>"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</p>

	<p>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>
<p>Amendment of section 135 (Corporate Social Responsibility)</p>	<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>
<p>Amendment of section 137 (Copy of financial statement to be filed with Registrar).</p>	<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:—</p>

	<p>'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> <p>(ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted;</p> <p>(iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted.</p>
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) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of Section 132	<p>(a) <b>after sub-section (1)</b>, the following sub-section shall be inserted, namely:— “(1A) The National Financial Reporting Authority (NFRA) shall perform its functions through such divisions as may be prescribed.”</p> <p>(b) <b>after sub-section (3)</b>, the following sub-sections shall be inserted, namely:— “(3A) Each division of the NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson. (3B) There shall be an executive body of the NFRA consisting of the Chairperson and full-time</p>	15 <sup>th</sup> August, 2019



	<p>Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).”;</p> <p>(c) <b>in sub-section (4)</b>, in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—</p> <p>“(B) debaring the member or the firm from—</p> <ol style="list-style-type: none"> <li>I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or</li> <li>II. performing any valuation as provided under section 247,</li> </ol> <p>for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA.”</p>	
<p><b>Amendment of section 137.</b></p>	<p><b>in sub-section (3),—</b></p> <p>(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;</p> <p>(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.</p>	<p><b>2<sup>nd</sup> November, 2018</b></p>

<b>Amendment of section 140.</b>	<b>for sub-section (3),</b> 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.”.	<b>2<sup>nd</sup> November, 2018</b>
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8. **Amendment in schedule VII:** The MCA vide Notification No. G.S.R. 390(E) dated **30<sup>th</sup> May, 2019** has inserted the following item after item (xi) to Schedule VII:

(xii) disaster management, including relief, rehabilitation and reconstruction activities.

9. **Amendments in Schedule VII vide** Notification G.S.R. 776(E) dated **11<sup>th</sup> October, 2019**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely:

“(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).”

10. **Enforcement of the Companies (Accounts) Amendment Rules, 2019 vide Notification G.S.R. 803 (E) dated 22nd October, 2019 w.e.f. 1<sup>st</sup> December, 2019**

The Central Government has amended the Companies (Accounts) Rules, 2014, by the Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

“(iiiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.

Explanation.—For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

**(11) Amendments related to Schedule VII vide Notification G.S.R. 313(E) dated 26th May, 2020 w.e.f. 28th March, 2020**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

**(12) The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 w.e.f. 24th August 2020**

(1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (e), stating-

“CSR Policy” relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;

the following proviso shall be inserted-

“Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that-

- (i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.
- (ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board’s Report”.

(2) In the said rules, in rule 4, in sub-rule 1, the words “excluding activities undertaken in pursuance of its normal course of business” shall be omitted. Now it can be read as –

“The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing)”.

(3) In the said rules, in rule 6, in sub-rule (1), — first proviso shall be omitted; which was as follows “Provided that the CSR activities undertaken in pursuance of normal course of business of accompany.”

**(13) Notification dated 26<sup>th</sup> May 2020 issued by the Ministry of Corporate Affairs**

The Central Government hereby makes the following further amendment to Schedule VII of the said Act, w.e.f. 28th March, 2020 namely:—

In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

It can be read as: contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

**(14) Notification dated 23rd June 2020 issued by Ministry of Corporate Affairs**

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:— In the said Schedule, in item (vi), after the words “war widows and their dependents”, the words “Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;” shall be inserted.

It can be read as: Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

**(15) Notification dated 24th August 2020 issued by Ministry of Corporate Affairs**

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:-

In the said Schedule, for item (ix) and the entries thereto, **the following item and entries shall be substituted**, namely:-

“(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)”.

**CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS****1. 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.

**2. 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.";

**3. 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.

**4. 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.

**5. Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of <b>section 149</b> (Company to have board of directors)	<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:—            "(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 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 <b>Section 157</b> (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</p>

	of the period specified under section 403 with additional fee", shall be omitted.
Amendment of <b>section 164</b> (Disqualifications for appointment of director")	In section 164 of the principal Act,— (i) in <b>sub-section (2)</b> , the following proviso shall be inserted, namely:— "Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment." (ii) in <b>sub-section (3)</b> , for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of <b>section 167</b> (Vacations of office of director).	In section 167 of the principal Act, in <b>sub-section (1)</b> ,— (i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (a) for thirty days from the date of conviction or order of disqualification; (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of <b>Section 168</b> (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.



## 6. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of <b>section 157.</b>	<p>In section 157 of the principal Act, for <b>sub-section (2)</b>, the following sub-section shall be substituted, namely:—</p> <p>“(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.”</p>	<b>2<sup>nd</sup> November, 2018</b>
Substitution of new section for <b>section 159.</b>	<p>For section 159 of the principal Act, the following <b>Substitution of section</b> shall be substituted, namely: <b>Penalty for default of certain provisions.</b></p> <p>“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</p>	<b>2<sup>nd</sup> November, 2018</b>

	the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”	
Amendment of section 164.	In section 164 of the principal Act, in <b>sub-section (1)</b> , 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>2<sup>nd</sup> November, 2018</b>
Amendment of section 165.	In section 165 of the principal Act, in <b>sub-section (6)</b> , 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.	<b>2<sup>nd</sup> November, 2018</b>

**7. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 via G.S.R. 528(E) dated 25th July, 2019**

The Central Government makes the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 to amend Companies (Appointment and Qualification of Directors) Rules, 2014.

In Companies (Appointment and Qualification of Directors) Rules, 2014, in **rule 12A**,

- (i) for the words “who has been allotted”, the words “who holds” shall be substituted;
- (ii) for the words, letters and figures “submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year”, the words, letters and figures “submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year” shall be substituted;
- (iii) after the proviso, the following provisos shall be inserted, namely:-  
“Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only.

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.”.

#### 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

##### 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 (Appointment of MD, WTD, Manager)	In section 196 of the principal Act,— (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

	<p>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>
<p>Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)</p>	<p>In section 197 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>,—</p> <p>(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</p> <p>(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;</p> <p>(iii) after the second proviso, the following proviso shall be inserted, namely:—</p> <p>"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.”;</p> <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:—</p> <p>"(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.”;</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:—</p>

	<p>"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>
<p>Amendment of Section 198 (Calculations of Profits)</p>	<p>In section 198 of the principal Act,—</p> <p>(i) in <b>sub-section (3)</b>,—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause (f) shall be inserted, namely:—</p> <p>"(f) any amount representing unrealised gains, notional gains or revaluation of assets.";</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.
Amendment of section <b>200</b> (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 <b>201</b> (Forms of, and procedure in relation to, certain applications).	In section 201 of the principal Act,— (a) in <b>sub-section (1)</b> , for the words "this Chapter", the word and figures "section 196" shall be substituted; (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.

#### 4. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section <b>197</b> .	In section 197 of the principal Act (a) <b>sub-section (7)</b> shall be omitted; (b) for <b>sub-section (15)</b> , the following sub-section shall be substituted, namely:— “(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.	<b>2<sup>nd</sup> November, 2018</b>
Amendment of section <b>203</b> .	In section 203 of the principal Act, <b>for sub-section (5)</b> , the following sub-section shall be substituted, namely:— “(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and	<b>2<sup>nd</sup> November, 2018</b>

	<p>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.”.</p>	
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### **The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020**

Vide Notification G.S.R. 13(E) dated **3rd January, 2020**, the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 has been amended with the enforcement of this amended rules 2020. It shall be applicable in respect of financial years commencing on or after 1st April, 2020.

Sl. No.	Amended law
1.	<p>in <b>rule 9, in sub-rule (1)</b>,</p> <p>(i) after clause (b), at the end, the word “or” shall be inserted.</p> <p>(ii) after clause (b), the following clause (c) shall be inserted, namely: - “(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.”.</p> <p>(iii) following Explanation inserted, namely:- “Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.”</p>

### **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)	In section 173 of the principal Act, in <b>sub-section (2)</b> , after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177 (Audit Committee).	In section 177 of the principal Act,— (i) in <b>sub-section (1)</b> , for the words "every listed company", the words "every listed public company" shall be substituted; (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: 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



	<p>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>
<p>Amendment of Section <b>178</b> (Nomination and Remuneration Committee and stake holders Relationship committee)</p>	<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 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 <b>185</b>. (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:          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.  <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> <p>(a) any private company of which any such director is a director or member;</p> <p>(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</p> <p>(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.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the</p>
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	<p>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</p> <p>(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</p> <p>(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:</p> <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> <p>(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;</p> <p>(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</p> <p>(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.'</p>
<p>Amendment of section <b>186</b> (Loan and investment by company).</p>	<p>In section 186 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following Explanation shall be inserted, namely:—</p> <p><i>'Explanation.—</i>For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company';</p>

	<p>(ii) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p> <p>'(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4)."</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> <p>(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;</p> <p>(b) to any investment—</p> <p>(i) made by an investment company;</p> <p>(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;</p> <p>(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.";</p>
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	<p>(iv) <b>in the <i>Explanation</i></b>, in <b>clause (a)</b>, 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) Act, 2019

Relevant sections	Amendment	Date of enforcement
<b>Amendment of section 191</b>	In section 191 of the principal Act, for <b>sub-section (5)</b> , the following sub-section shall be substituted, namely:— “(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.	<b>2<sup>nd</sup> November, 2018</b>

### 4. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 dated 11th October, 2019

The Central Government makes the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 to amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in **rule 11**, in sub-rule (2), for the words "business of financing of companies", the words "business of financing industrial enterprises" shall be substituted.

### 5. The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019

Vide Notification G.S.R. 857(E) dated **18th November, 2019**, the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014 to be enforced from the date of their publication in the Official Gazette.

Sl. No.	Amended law
1.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clauses (i) and (ii), the words " <b>or rupees one hundred crore, whichever is lower</b> ", shall be <b>omitted</b>

2.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iii), for the words “amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower”, the words “ <b>amounting to ten per cent or more of the turnover of the company</b> ” shall be substituted;
3.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iv), the words “ <b>or rupees fifty crore, whichever is lower</b> ”, shall be <b>omitted</b>

#### 6. The Companies (Meetings of Board and its Powers) Amendment Rules, 2020

Vide notification G.S.R. 186(E) dated **19<sup>th</sup> March, 2020**, the Central Government hereby amended the Companies (Meetings of Board and its Powers) Rules, 2014 through the enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 from the date of their publication in the Official Gazette.

In the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

“(2) For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3.”

#### 7. Further exemptions to Government company: Vide Notification G.S.R. 151(E) dated **2nd March, 2020**, the Central Government, in the public interest, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Corporate Affairs, number G.S.R. 463(E), dated the 5th June, 2015 which dealt with the exemptions to Government Companies:

Sl. No.	Amended law
1.	Chapter XII, <b>first and second proviso to sub-section (1) of section 188</b> , Shall not apply to – (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.”.

## CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

## Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment in law	Date of Enforcement
Amendment of Section 212	<p>(a) in <b>sub-section (8)</b>, for the words “<b>If the Director, Additional Director or Assistant Director</b>” the words “<b>If any officer not below the rank of Assistant Director</b>” shall be substituted;</p> <p>(b) in <b>sub-section (9)</b>, for the portion beginning with the words “<b>The Director</b>” and ending with the word, brackets and figure “<b>sub-section (8)</b>”, the words, brackets and figure “<b>The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section</b>” shall be substituted;</p> <p>(c) in <b>sub-section (10)</b>,—</p> <p>(i) for the words “<b>Judicial Magistrate</b>”, the words “<b>Special Court or Judicial Magistrate</b>” shall be substituted;</p> <p>(ii) in the proviso, for the words “<b>Magistrate’s court</b>”, “<b>Special Court or Magistrate’s court</b>” shall be substituted;</p> <p>(d) <b>New sub-section 14A inserted</b> after sub-section 14, namely:—</p> <p>“(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”</p>	15 <sup>th</sup> August, 2019

## CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

### 1. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
section 238	In section 238 of the principal Act, in <b>sub-section (3)</b> , 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.	2 <sup>nd</sup> November, 2018

### 2. Clarification under Section 232(6) of the Companies Act, 2013

A clarification has been issued by the MCA on **21<sup>st</sup> August, 2019** regarding section 232(6). According to the clarification,

- (a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.
  - (b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).
  - (c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.
  - (d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.
- 3. Enforcement of section 230(11) and 230(12):** Government of India through Ministry of Corporate Affairs vide notification dated **3rd February, 2020**, appoints 3rd day of February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the said Act shall come into force.



**CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT****1. Enforcement of the National Company Law Tribunal (Second Amendment) Rules, 2019 vide Notification G.S.R. 351(E) dated 8th May, 2019**

The Central Government makes the National Company Law Tribunal (Second Amendment) Rules, 2019 to amend the National Company Law Tribunal Rules, 2016.

In National Company Law Tribunal Rules, 2016,

In **rule 84**, after **sub-rule (2)**, the following sub-rules shall be inserted, namely: –

“(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least five per cent. of the total number of members of the company; or
- (b) one hundred members of the company,

whichever is less; or

- (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

- (b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least five per cent. of the total number of depositors of the company; or
- (b) one hundred depositors of the company,

whichever is less; or

- (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.”

**2. Amendments through the Companies (Amendment) Act, 2019**

Relevant Section	Amendment	Date of Enforcement
Amendment of Section 241	(a) <b>in sub-section (2)</b> , the following proviso is inserted, namely:— “Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;	15 <sup>th</sup> August, 2019

	<p>(b) New insertion of sub-sections (3),(4) &amp; (5) after <b>sub-section (2)</b>, namely:—</p> <p>“(3) Where in the opinion of the Central Government there exist circumstances suggesting that—</p> <p>(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;</p> <p>(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;</p> <p>(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or</p> <p>(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,</p> <p>the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.</p> <p>(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.</p> <p>(5) Every application under sub-section (3)—</p> <p>(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and</p>	
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	(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”.	
Amendment of Section 242	New insertion <b>sub-section 4A</b> After sub-section (4), , namely:—  “(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.”.	15 <sup>th</sup> August, 2019
Amendment of Section 243	(a) new insertion of <b>sub-section 1A &amp; 1B</b> after sub-section (1), shall be inserted, :—  “(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:  Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.  (1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”;  (b) in <b>sub-section (2)</b> , after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or <b>sub-section (1A)</b> ” shall be inserted.	15 <sup>th</sup> August, 2019

## CHAPTER 10: WINDING UP

## Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of Section 272	In sub-section (3), for the words, brackets and letter "or clause (e) of that sub-section", the words "of that section" shall be substituted.	15 <sup>th</sup> August, 2019

## CHAPTER 16: SPECIAL COURTS

## 1. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 435. (Establishment of Special Courts)	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."
Amendment of section 438 (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	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.

be non-cognizable).	
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.

## 2. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
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.	2 <sup>nd</sup> November, 2018

## 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 “31<sup>st</sup> 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 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.

#### 5. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of section 248	In section 248 of the principal Act, in <b>sub-section (1)</b> ,— (i) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted; (ii) after clause (c) and before the long line, the following clauses shall be inserted, namely:—	2 <sup>nd</sup> November, 2018

	<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>	
Amendment of section <b>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>2<sup>nd</sup> November, 2018</b>
Amendment of section <b>454</b>	<p>In section 454 of the principal Act, —</p> <p>(i) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely: —</p> <p>“(3) The adjudicating officer may, by an order</p> <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 <b>sub-section (4)</b>, for the words “such company and the officer who is in default”, the words “such</p>	<b>2<sup>nd</sup> November, 2018</b>

	<p>company, the officer who is in default or any other person” shall be substituted;</p> <p>(iii) in <b>sub-section (8)</b>,—</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>	
<p>Insertion of new section <b>454A</b>.</p>	<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</p>	<p><b>2<sup>nd</sup> November, 2018</b></p>

	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.”.	
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6. **Amendment in Section 406:** Section 406 has been substituted by the Companies (Amendment) Act, 2017, with effect from **15<sup>th</sup> August, 2019**

**Section 406:** (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

- (2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—
- (a) shall not apply to any Nidhi or Mutual Benefit Society; or
  - (b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.
- (3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
- (4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.
- (5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

7. **Enforcement of the Nidhi (Amendment) Rules, 2019 via G.S.R. 467(E) dated 15<sup>th</sup> August, 2019**

The Central Government makes the Nidhi (Amendment) Rules, 2019 to amend Nidhi Rules, 2014. In the Nidhi rules, 2014 (hereinafter referred to as "said rules"):

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	In rule 2, after clause (c)	Insertion of clause (d), namely:- “(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act”.

2.	In rule 3, after clause (d)	<p>Following clause (da) is inserted:-</p> <p>‘(da) “<i>Nidhi</i>” means a company which has been incorporated as a <i>Nidhi</i> with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.’</p>
3.	<b>After rule 3</b>	<p>New rule 3A is inserted:-</p> <p>“3A. Declaration of Nidhis.— The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette:</p> <p>Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:-</p> <p>(a) one year from the date of its incorporation; or</p> <p>(b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:</p> <p>Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein:</p> <p>Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).”</p>
4.	<b>In rule 4</b>	<p>(i) in sub-rule (1), the words, “<b>to be incorporated under the Act</b>” shall be omitted;</p> <p>(ii) in sub-rule (5), the words “<b>Company incorporated as a</b>” shall be omitted.</p>

5.	<p><b>In rule 5</b></p> <p>(i) in sub-rule (1), for the words <b>“from the commencement of these rules”</b>,</p> <p>(ii) in sub-rule (3), <b>before the Explanation</b>,</p> <p>(iii) in sub-rule (4), after the words, brackets and figure <b>“contained in sub-rule (1)”</b>,</p>	<p>(i) the words <b>“from the date of its incorporation”</b> shall be substituted;</p> <p>(ii) the following <b>proviso</b> shall be inserted, namely:- “Provided that the Regional Director may extend the period upto one year from the date of receipt of application.”.</p> <p>(iii) the words, brackets and figures <b>“and gets itself declared under sub-section (1) of section 406”</b> shall be inserted.</p>
6.	<p><b>In rule 7</b>, in sub-rule (1), after the words <b>“shall issue”</b></p>	<p>the words <b>“fully paid up”</b> shall be inserted.</p>
7.	<p><b>In rule 12</b></p> <p>(i) in sub-rule (1) after clause (b)</p> <p>(ii) in sub-rule (2), in clause (a), for the words <b>“Registrar of Companies”</b>,</p>	<p>(i) the following <b>clause (ba) shall be inserted</b> namely:- “(ba) The date of declaration or notification as Nidhi”;</p> <p>(ii) the words <b>“Bench of the National Company Law Tribunal”</b> shall be substituted.</p>
8.	<p>In the said rules, in <b>rule 23</b>, in sub-rule (2),-</p> <p>(i) for the words <b>“concerned Regional Director”</b>,</p> <p>(ii) for the words <b>“such Regional Director”</b>,</p> <p>(iii) in the proviso, for the words <b>“Regional Director”</b>,</p>	<p>(i) the words, <b>“Central Government”</b> shall be substituted;</p> <p>(ii) the words, <b>“Central Government”</b> shall be substituted;</p> <p>(iii) the words, <b>“Central Government”</b> shall be substituted.</p>

9.	<b>After rule 23</b>	<p>following rules 23A &amp; 23B shall be inserted, namely:-</p> <p><b>23A. Compliance with rule 3A by certain Nidhis:-</b> Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:</p> <p>Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p> <p><b>23B. Companies declared as Nidhis under previous company law to file Form NDH-4:-</b> Every company referred in clause (a) of rule 2 shall file Form NDH-4 along with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:</p> <p>Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019:</p> <p>Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p>
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#### 8. The Nidhi (Second Amendment) Rules, 2020

Vide Notification G.S.R. 114(E) dated **14th February, 2020**, to further amend the Nidhi Rules, 2014, said Rule have come into force on the date of their publication in the Official Gazette.

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	in rule 23A, for the words “ <b>six months</b> ”	the words “ <b>nine months</b> ” shall be substituted

**9. Ministry of Corporate Affairs issued Corrigendum vide notification G.S.R. 150(E) dated 2nd March, 2020**

W.r.t. to the notification <sup>1</sup>G.S.R. 114(E) of the Government of India, dated the 14th February, 2020, for “**rule 23A**” read “**rule 23A and first proviso to rule 23B**”.

**CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016**

**(I) 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:—

<sup>1</sup> Given above in Point no. 8



"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.

**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.¹.

(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.
- (II) 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.

**(III) The Insolvency and Bankruptcy Code (Amendment) Act, 2019**

Ministry of Corporate Affairs vide Notification S.O. 2953(E) dated **16th August, 2019**, in exercise of the powers conferred by sub-section (2) of section 1 of **the Insolvency and Bankruptcy Code (Amendment) Act, 2019**, the Central Government hereby appoints the date of publication of this notification in the Official Gazette as the date on which the provisions of the said Act shall come into force.

Following are the relevant amendments:

- (i) In **section 5(26)** pertaining to the definition "resolution plan", following explanation is added.  
 "Explanation.—For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;"
- (ii) In **section 7(4)** of the Code, following proviso shall be inserted:  
 "Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same."

- (iii) In section 12 which deals with the Time-limit for completion of insolvency resolution process. – Following provisos have been added after the proviso to section 3:

“Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019”.

- (iv) **In section 25A** after sub-section 3, following sub-section shall be added:

“(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote:

**Provided** that for a vote to be cast in respect of an application under section 12 A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).”

- (v) **In section 30(2)(b)**, the following shall be substituted:

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or  
 (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

**Explanation 1.**—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

**Explanation 2.**—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
  - (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
  - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”
- (vi) In **section 31(1)** of the Code, after the words “members, creditors,” the following words shall be inserted:

“including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,”

- (vii) In **section 33(2)**, following explanation shall be added:

“Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

#### IV. The Insolvency and Bankruptcy Code (Amendment) Act, 2020

Ministry of law and justice notified on 13<sup>th</sup> March, 2020, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. **28<sup>th</sup> day of December, 2019**. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was hereby repealed.

Following are the relevant amendments:

1. In **section 5** of the Insolvency and Bankruptcy Code, 2016 (here after referred to as the principal Act),—

Sl. No.	Amended Law
1.	in <b>clause (12)</b> , the given proviso- <sup>2</sup> “Provided that where the interim resolution professional is not appointed

<sup>2</sup> Proviso was Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018)

	in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority” shall be omitted.
2.	in <b>clause (15)</b> , after the words "during the insolvency resolution process period "occurring at the end the words "and such other debt as may be notified" shall be inserted.
3.	<p>In <b>section 7</b> of the principal Act, in sub-section (1), before the <i>Explanation</i>, the following provisos inserted—</p> <p>"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:</p> <p>Provided further that for financial creditors who are allottees under real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:</p> <p>Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."</p>
4.	<p>In <b>section 11</b> of the principal Act, the <i>Explanation</i> shall be numbered as <i>Explanation I</i> and after <i>Explanation I</i> as so numbered, the following <i>Explanation</i> shall be inserted, namely:—</p> <p>"<i>Explanation II</i>—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debt or referred to in clauses (a) to(d) from initiating corporate insolvency resolution process against another corporate debtor."</p>
5.	<p>In <b>section 14</b> of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>, the following <i>Explanation</i> inserted, namely:—</p> <p>"<i>Explanation</i>.—For the purposes of this sub-section, it is here by clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or</p>

	<p>a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;";</p> <p>(b) after <b>sub-section (2)</b>, the following sub-section 2A shall be inserted, namely:—</p> <p>"(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";</p> <p>(c) in <b>sub-section (3)</b>, for clause (a), namely-</p> <p>"(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;"</p> <p>the following clause shall be substituted, namely:—</p> <p>"(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;"</p>
6.	In <b>section 16 in sub-section (1)</b> , for the words" within fourteen days from the insolvency commencement date" The words "on the insolvency commencement date" shall be substituted.
7.	In <b>section 21, in sub-section (2)</b> , in the second proviso, after the words "convertible into equity shares" the words "or completion of such transactions as may be prescribed," shall be inserted.
8.	<p>In <b>section 29A</b> of the principal Act-</p> <p>(i) in clause (c), in the second proviso, in Explanation I, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted;</p> <p>(ii) in clause (j), in Explanation I, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.</p>

9.	<p>After <b>section 32</b> of the principal Act, the following section 32A shall be inserted, namely:—</p> <p>"32A. <b>(1)</b> Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—</p> <p>(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or</p> <p>(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:</p> <p><b>Provided that</b> if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:</p> <p><b>Provided further</b> that every person who was a "designated partner" as defined in clause(j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debt or for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.</p> <p><b>(2)</b> No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—</p>
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	<p>(i) A promoter or in the management or control of the corporate debtor or a related party of such a person; or</p> <p>(ii) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.</p> <p><b>Explanation.</b>—For the purposes of this sub-section, it is hereby clarified that,—</p> <p>(i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;</p> <p>(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.</p> <p><b>(3)</b> Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."</p>
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- V. **Enhancement in the limit of amount of default:** Ministry of Corporate Affairs vide notification S.O. 1205(E) dated 24th March, 2020, in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.
- VI. Ministry of Corporate Affairs Vide Notification S.O. 4126(E) dated **15th November, 2019**, in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the **1st day of December, 2019** as the date on which clause (e) of section 2 of the Code in so far as they relate to personal guarantors to corporate debtors, shall come into force.
- VII. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

This an Act further to amend the Insolvency and Bankruptcy Code, 2016 w.e.f. the 5th day of June, 2020. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is hereby repealed through the enforcement of this second amendment Act, 2020.

**Insertion of Section 10A which deals Suspension of Initiation of Corporate Insolvency resolution process.**

"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months corporate insolvency or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

**VIII. Ministry of Corporate Affairs vide Notification dated 24th September, 2020** with notification No. S.O. 3265(E)., in exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 as inserted by section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, the Central Government hereby notifies further period of three months from the 25th September, 2020 for the purposes of the said section.

## PART II: ALLIED LAWS

### CHAPTER 20: SEBI ACT, 1992

#### 1. 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 there under:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the

provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

## 2. Amendments through Finance Act, 2018 w.e.f. 8.3.2019

1. In the Securities And Exchange Board of India Act, 1992 (hereafter in this Part referred to as the principal Act), in **section 11** which deals with the Functions of Board,—
  - (i) **after sub-section (4)**, the following sub-section shall be inserted, namely:—
 

“(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”;
  - (ii) **in sub-section (5)**, after the words and figures “the Depositories Act, 1996”, the words, figures, letters and brackets shall be inserted, namely:—
 

“or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996.”.
2. **In section 11B**, of the principal Act,—
  - (a) in the marginal heading, after the word “directions”, the words “and levy penalty” shall be inserted;
  - (b) **section 11B** shall be numbered as sub-section (1) thereof and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:—
 

“(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”.
3. In the principal Act, in **section 15A** which deals with the Penalty for failure to furnish information, return, etc.,—
  - (i) **in clause (a)**, after the words “fails to furnish the same”, the words “or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents” shall be inserted;
  - (ii) **in clause (b)**, after the words “furnish the same within the time specified therefor in the regulations”, the words “or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents” shall be inserted.

4. In the principal Act, **after section 15E**, the following sections shall be inserted, namely:—
- “**15EA.** Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.
- 15EB.** Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”.
5. In the principal Act, in **section 15F** which deals with the Penalty for default in case of stock brokers, in **clause (b)**, for the words “he sponsors or carries on any such collective investment scheme including mutual funds”, the words “such failure continues” shall be substituted.
6. In the principal Act, in **section 15-I** which deals with the Power to adjudicate, in sub-section (1),—
- (i) after the figures and letter “15E,”, the figures and letters “15EA, 15EB,” shall be inserted;
- (ii) for the word “shall” the word “may” shall be substituted.
7. In the principal Act, in **section 15J**,—
- (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) after the words, figures and letter “section 15-I, the adjudicating officer”, the figures, letters and words “15-I or section 11 or section 11B, the Board or the adjudicating officer” shall be substituted;
- (c) in the Explanation, the words “of an adjudicating officer” shall be omitted.
8. In the principal Act, in **section 15JB** which deals with the Settlement of administrative and civil proceedings, after sub-section (4), the following subsection 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.”.

9. In the principal Act, in **section 24** which states about the Offences,—
- (i) after the words “adjudicating officer” at both the places where they occur, the words “or the Board” shall be inserted;
  - (ii) in sub-section (2), the words “of his” shall be omitted.
10. In the principal Act, in **section 27** which deals with the Contravention by companies,—
- (i) for the marginal heading, the following marginal heading shall be substituted, namely:— “Contravention by companies.”;
  - (ii) in sub-section (1), 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;
  - (iii) for the word “offence”, wherever it occurs, the word “contravention” shall be substituted. 189. In the principal Act, in section 28A, in sub-section (1), for the words “by the adjudicating officer”, the words “under this Act” shall be substituted.
11. In the principal Act, **after section 28A** which deals with recovery of money, the following section shall be inserted, namely:—
- ‘28B.** (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. Amendment of section 15JB. Amendment of section 24. Amendment of section 27. Amendment of section 28A. Insertion of new section 28B. Continuance of proceedings.

- (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.’

**3. Inserted by Finance (No. 2) Act, 2019, w.e.f. 20-1-2020.**

- (i) In **section 15C** of the principal Act, which deals with the Penalty for failure to redress investors’ grievances after the words “after having been called upon by the Board in writing”, the words “including by any means of electronic communication” shall be inserted.
- (ii) In **section 15F** of the principal Act, which deals with the Penalty for default in case of stock brokers in sub-clause (a), after the words “one lakh rupees but which may extend to”, the words “one crore rupees” shall be inserted.
- (iii) After **section 15HA** of the principal Act, the following section shall be inserted, namely:—

‘**15HAA.** Penalty for alteration destruction, etc., of records and failure to protect the electronic database of Board

Any person, who—

- (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

*Explanation.*—For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any

investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

- (b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;
- (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;
- (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;
- (e) without authorisation disrupts the functioning of system database;
- (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or
- (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

Explanation.—In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000.

#### CHAPTER 21: The Securities Contracts (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: The Foreign Exchange and Management Act, 1999**

##### **(1) 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”**

**(2) Amendment in Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f 15.10.2019.**

- (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- (2) The Reserve Bank may, in consultation with the Central Government, specify—
- any class or classes of capital account transactions, involving debt instruments, which are permissible;
  - the limit up to which foreign exchange shall be admissible for such transactions;
  - any conditions which may be placed on such transactions:
- [Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.
- (2A) The Central Government may, in consultation with the Reserve Bank, prescribe—
- any class or classes of capital account transactions, not involving debt instruments, which are permissible;
  - the limit up to which foreign exchange shall be admissible for such transactions; and
  - any conditions which may be placed on such transactions.
- (3) [\*\*\*]
- (4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency,

security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

- (5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.
- (6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.
- (7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

### (3) Amendments in External Commercial Borrowings

Vide FED Master Direction No.5/2018-19, amendments have been made in the Transactions on account of External Commercial Borrowings (ECB) . **Here is the updated master direction –external commercial borrowings.**

Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

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**Introduction:** External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis.

**2.1. ECB Framework:** The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments);	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily

		Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, (a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; (b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and (c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).	
		Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	
V	Minimum Average	MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum	

Maturity Period (MAMP)	average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:		
	<b>Sr.No.</b>	<b>Category</b>	<b>MAMP</b>
	(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
	(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
	<sup>3</sup> (c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
	(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
	(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years
	for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.		

<sup>3</sup>Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

vi	All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.	
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the	
		contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	
Viii	End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: (a) Real estate activities. (b) Investment in capital market. (c) Equity investment. (d) <sup>4</sup> Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above. (e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above. (f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above. (g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

<sup>4</sup> Substituted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019. Prior to substitution it read as below:

- (a) Working capital purposes except from foreign equity holder.
- (b) General corporate purposes except from foreign equity holder.
- (c) Repayment of Rupee loans except from foreign equity holder.
- (d) On-lending to entities for the above activities.

x	Hedging provision	<p>The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.</p> <p>Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is</p>	<p>Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.</p>
		<p>less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured:</p> <p><b>a. Coverage:</b> The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).</p> <p><b>b. Tenor and rollover:</b> A minimum tenor of one year for the financial hedge would</p>	



		<p>be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.</p> <p><b>c. Natural Hedge:</b> Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting. Any other arrangements/structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.</p>	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

**Note:** The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. <sup>5</sup>Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

**2.2. Limit and leverage:** Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-

<sup>5</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 17 dated January 16, 2019](#).

equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions: Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.
4. **Parking of ECB proceeds:** ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:
  - 4.1 **Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.
  - 4.2 **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.
5. **Procedure of raising ECB:** All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.
6. **Reporting Requirements:** Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

- 6.1 Loan Registration Number (LRN):** Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.
- 6.2 Changes in terms and conditions of ECB:** Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.
- 6.3 Monthly Reporting of actual transactions:** The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

- 6.4 Late Submission Fee (LSF) for delay in reporting:**

- 6.4.1** Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

- 6.4.2** The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as

contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

**6.5 Standard Operating Procedure (SOP) for Untraceable Entities:** The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

i. **Definition:** Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/ auditor(s)/ director(s)/ promoter(s) of entity are not reachable/ responsive/ reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

- (a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;
- (b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;

ii. **Action:** The followings actions are to be undertaken in respect of 'untraceable entities':

- (a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- (b) No fresh ECB application by the entity should be examined/processed by the AD bank;
- (c) Directorate of Enforcement should be informed whenever any entity is designated
- (d) 'UNTRACEABLE ENTITY'; and
- (e) No inward remittance or debt servicing will be permitted under auto route.

**7. Powers delegated to AD Category I banks to deal with ECB cases:** The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

- 7.1 Change of the AD Category I bank:** AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.
- 7.2 Cancellation of LRN:** The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.
- 7.3 Refinancing of existing ECB:** Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporate (AAA) and for Maharatna/ Navratna public sector undertakings.
- 7.4 Conversion of ECB into equity:** Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:
- (i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
  - (ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;
  - (iii) Applicable pricing guidelines for shares are complied with; iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
    - (a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
    - (b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
    - (c) For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
  - (iv) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable

prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

- (v) Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.
- (vi) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

**7.5. Security for raising ECB:** AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

- i. the underlying ECB is in compliance with the extant ECB guidelines,
- ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

- iv **Creation of Charge on Immovable Assets:** The arrangement shall be subject to the following:
  - (a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.
  - (b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
  - (c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.
- v **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset

or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.

- vi **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:
  - (a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
  - (b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
  - (c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.
- vii **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:
  - (a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
  - (b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
  - (c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
  - (d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

**7.6. Additional Requirements:** While exercising the delegated powers, the AD Category I banks should ensure that:

- i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be

ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.

- ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.

#### **8. Special Dispensations under the ECB framework:**

**8.1 ECB facility for Oil Marketing Companies:** Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

**8.2 ECB facility for Startups:** AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

- i. **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- ii. **Maturity:** Minimum average maturity period will be 3 years.
- iii. **Recognised lender:** Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- iv. **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- v. **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the nonresident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
- vi. **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- vii. **All-in-cost:** Shall be mutually agreed between the borrower and the lender.



- viii **End uses:** For any expenditure in connection with the business of the borrower.
  - ix **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
  - x **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a nonresident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.
  - xi **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

**Note:** Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.
  - xii **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
  - xiii **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.
9. **Borrowing by Entities under Investigation:** All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications /

appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

**10. ECB by entities under restructuring/ ECB facility for refinancing stressed assets:**

**10.1** An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

**10.2** <sup>6</sup>Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

**10.3** Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.

**11. Dissemination of information:** For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

**12. Compliance with the guidelines:** The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

**CHAPTER 23: THE COMPETITION ACT, 2002**

**The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, 13th August, 2019**

**Vide notification no. F.No. CCI/CD/Amend/Comb. Regl./2019**, the Competition Commission of India hereby makes the following regulations further to amend the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, namely:—

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<sup>6</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019](#).

- (1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 w.e.f. **15<sup>th</sup> day of August, 2019**.
- (2) In **regulation 5** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the following regulation shall be inserted, namely:-

**“5A. Notice for approval of combinations under Green Channel.-**

- (1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.
- (2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect, the notice given and the approval granted under this regulation shall be void *ab initio* and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an opportunity of being heard before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.”;

- (3) in **regulation 13**, of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-
  - (a) for sub-regulation (1A), the following sub-regulation shall be substituted, namely: -

“(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.”;
  - (b) sub-regulation (1B) shall be omitted;

**CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002**

- (I) **Amendment in section 8 vide Finance Act, 2019, w.r.e.f. 20-3-2019.**

**Sub-section (3)** dealing with the computation of period of attachment/retention of property / record seized / frozen during investigation, is amended as follows:

(3) Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

- (a) continue during investigation for a period not **exceeding three hundred and sixty-five days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and
- (b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

**(II) Amendment in section 12 vide Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019**

Clause (c) & (d) of section 12(1) have been omitted by the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. **25-7-2019**.

Prior to their omission, clauses (c) and (d) read as under:

"(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;"

**(III) Insertion of Section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019**

**Verification of identity by reporting entity.**

11A. (1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by—

- (a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or
- (b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

- (c) use of passport issued under section 4 of the Passports Act, 1967; or
- (d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

- (2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.
- (3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.
- (4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.
- (5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.—The expressions “Aadhaar number” and “core biometric information” shall have the same meanings as are respectively assigned to them in clauses (a) and ( j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’.

**PART – II: QUESTIONS AND ANSWERS****DIVISION A: CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS****Case scenario 1**

Balfor Ltd., is an unlisted company, having total 70 members, with a paid up capital of ₹ 42 Lacs, having turnover of ₹ 200 crore, as per the audited financial statements for the year ended on 31st March, 2020.

5 members holding in total 4% stake in the company, met in person to discuss about the oppression and mismanagement going on in Balfor Ltd. and to do something about it. One of the members, Mr. Ravi, suggested that we five should file a joint class action application to the Tribunal to get a resolution in this matter, to which another member, Mr. Jay, told that he is in contact with 3 other members of the company, holding in total 3% stake, who are also finding the activities going on in the company to be unjust. So, five plus three other members i.e. 8 members in total, will be able to file an application to the Tribunal under Section 244 of the Companies Act, 2013.

The application of complaint for oppression and mismanagement was filed to the Tribunal on 4<sup>th</sup> June, 2020 with the consent of aforesaid 8 members of the company. The said application provided the details of an agreement made by Balfor Ltd. with Mr. Dev, a relative of director of Balfor Ltd., Mr. Raj, with respect to continuous supply of raw materials to Balfor Ltd., for which Mr. Raj, had received certain commission from Mr. Dev, in cash, for offering the contract to him. Also, another director, Mr. Jayesh, had improperly transferred a property of Balfor Ltd. on 6<sup>th</sup> March, 2020, to Mr. Prakash.

The Tribunal on receipt of such application, made an order, directing investigation into the affairs of Balfor Ltd. Also, the agreement made with Mr. Dev was ordered to be terminated after giving notice to Mr. Dev and obtaining his consent. However, no compensation was ordered to be paid to Mr. Dev for such cancellation of agreement. The contract with respect to property transferred by Mr. Jayesh was also ordered to be set aside, as it would have been deemed to be a fraudulent preference, in case such transaction was made by an individual in his insolvency.

Simultaneously, the Central Government ordered for the investigation into the affairs of Balfor Ltd., on receipt of the order from the Tribunal and the task of such investigation was assigned to the Serious Fraud Investigation Office. The Director of Serious Fraud Investigation Office, on getting such order from the Central Government, designated 3 inspectors for such investigation and soon, the investigation got started by the designated persons.

One of the Investigating officers, Mr. Vaibhav issued summons to 2 employees of Balfor Ltd., Mr. Karan and Mr. Arjun, respectively, as well as, to Mr. Daya, an employee of Kafor Ltd., an associate company of Balfor Ltd., after taking the requisite approvals.

The aforesaid persons attended at the place at which they were summoned by Mr. Vaibhav and were examined on oath, one after the other. During the said examination, Mr. Vaibhav, took

down notes in writing and he read over the notes taken by him, to all the persons examined, after the end of examination. After hearing the said notes, Mr. Karan and Mr. Arjun, signed the document on which such notes were written but Mr. Daya, refused to sign such document without any reasonable cause for the same, on the same day, but then he thought there would be no issue in signing and so he signed the same after 20 days.

Mr. Vaibhav, forwarded the notes taken by him to the Assistant Director of Serious Fraud Investigation Office, Mr. Ramanuj, and on the basis of such notes, he derived that Mr. Arjun has committed an offence under section 447 of the Companies Act, 2013 which Mr. Ramanuj reconfirmed with Mr. Vaibhav, via email.

Mr. Ramanuj, accordingly, passed an order for arrest of Mr. Arjun, after recording in writing the reasons for such arrest and he immediately forwarded the copy of order of such arrest to the concerned authority along with the document containing notes taken by Mr. Vaibhav at the time of examination of Mr. Arjun, which indicated that he has committed an offence under section 447 of the Companies Act, 2013.

Balfor Ltd., on coming to know of such arrest of Mr. Arjun, wanted to give termination to him and also wanted to demote Mr. Karan to position of junior assistant from his position of senior assistant in the company, during the pendency of investigation and for that purpose it made an application to the Tribunal for the same on 10<sup>th</sup> October, 2020.

In response to the said application from Balfor Ltd., the Tribunal passed an order on 26<sup>th</sup> October, 2020 allowing the termination to be given to Mr. Arjun but it objected to the decision of the company for reduction in rank of Mr. Karan from his current position, against which Balfor Ltd. filed an application with the Appellate Tribunal on 15<sup>th</sup> November, 2020.

#### **Multiple Choice Questions**

1. State in the light of the given facts, whether the five members holding in total 4% stake in Balfor Ltd., or the eight members, holding in total 7% stake in Balfor Ltd., were eligible for filing application for class action or/ and under section 244, respectively of the Companies Act, 2013?
  - (a) For filing application for class action, 5 members were eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible.
  - (b) For filing application for class action, 5 members were not eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible.
  - (c) For filing application for class action, 5 members were eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible.
  - (d) For filing application for class action, 5 members were not eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible.

2. Whether the decision of Tribunal can be considered as valid with respect to termination of agreement made by Balfor Ltd. with Mr. Dev as well as setting aside the contract of transfer of property, respectively?
  - (a) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 6 months before the date of making application to the tribunal.
  - (b) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. Also, the decision of setting aside the contract of transfer of property, cannot be considered as valid as such transfer was not made within 90 days before the date of making application to the tribunal.
  - (c) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.
  - (d) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. However, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.
3. Prior approval of which authority would have been sufficient for Mr. Vaibhav for examining Mr. Daya on oath, and how much maximum amount of fine could be levied on Mr. Daya for refusing to sign the document containing the notes taken down by Mr. Vaibhav?
  - (a) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,00,000.
  - (b) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 40,000.
  - (c) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,40,000.
  - (d) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and no fine that could be levied on Mr. Daya as he has signed the said document within 30 days of being examined on oath.



4. Whether Mr. Ramanuj was having the authority to exercise power to make an order of arrest of Mr. Arjun on the basis of notes of examination received from Mr. Vaibhav and to which authority, Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes?
  - (a) No, as such notes can't be considered as a material or evidence in his possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.
  - (b) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Central Government.
  - (c) No, as such notes can't be considered as a material or evidence in Mr. Ramanuj's possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to NCLT.
  - (d) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.
5. What was the last date available with Tribunal to give response to the application made by Balfor Ltd. with respect to its employees as well as with Balfor Ltd. to file appeal with the Appellate Tribunal?
  - (a) 10<sup>th</sup> November, 2020 and 26<sup>th</sup> November, 2020, respectively.
  - (b) 9<sup>th</sup> November, 2020 and 25<sup>th</sup> November, 2020, respectively.
  - (c) 10<sup>th</sup> November, 2020 and 25<sup>th</sup> December, 2020, respectively.
  - (d) 9<sup>th</sup> November, 2020 and 26<sup>th</sup> November, 2020, respectively.

#### Case scenario 2

Shri Hari Textiles Limited was incorporated in the year 2010. Its Registered Office is situated in Connaught Place, New Delhi. It has filed its audited annual financial statements for the financial year 2019-20 well within time with the jurisdictional Registrar of Companies. The Registrar inspected the statements and after reviewing them, felt the need to seek clarifications on certain matters. Accordingly, a written notice was sent by the Registrar to the company and its officials directing them to comply with the notice within thirty days of its receipt. However, the company and its officials failed to reply within the time specified in the notice.

The Registrar initiated the inquiry and proceeded further for inspecting all the documents of the company. While conducting the inquiry, the Registrar on prudent grounds believed that some of the documents and other vital information in relation to the company would be destroyed or altered by the official of the company. With a view to safeguard the documents, the Registrar obtained an order from the Special Court and thereafter, seized all such material.

While inspecting some of the documents, the Registrar came to know that the Board of Directors had passed a resolution in a Board Meeting held on 10-04-2019 and thereby, increased the remuneration payable to the directors including two whole-time directors and Managing Director to 12% of the net profits of the company which was a sharp increase of 5% from the preceding financial year.

Prior to the inquiry, two directors of the company, namely, Mr. X and Mr. D got retired. The Registrar found from the inspection of the documents that they were involved in certain dealings which included selling of the assets of the company. On the basis of such information gathered from the inspected documents, the Registrar sought some clarifications from both of them regarding the dubious transactions. However, both Mr. X and Mr. D refused to appear before him showing their non-availability in the town and also represented through a common representative that they were no more a part of the Board of Directors of Shri Hari Textiles Limited.

After the completion of inspection and inquiry, the Registrar submitted a written report to the Central Government in respect of his findings against the company. The reports mentioned that there were major discrepancies in the assets and liabilities as well as profit and loss statements filed by the company.

On receipt of report from the Registrar, the Central Government considered it necessary to investigate the affairs of the company by the Serious Fraud Investigation Office (SFIO). Accordingly, by an order, SFIO was directed to conduct the investigation of Shri Hari Textiles Limited and submit its report within the stipulated time. As instructed by the Central Government, SFIO authorised some of its inspectors to investigate the affairs of the company. The team deputed by the SFIO included experts in the field of cost accounting, financial accounting, taxation, law and forensic auditing.

While inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against Shri Hari Textiles Limited.

#### **Multiple Choice Questions**

6. Shri Hari Textiles Limited and its officials failed to submit any reply to the written notice issued by the Registrar within the time specified in the notice. How much fine can be imposed for such failure?
- (a) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 500 for every day after the first during which the failure continues.
  - (b) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,50,000 and in case of continuing failure, with an additional fine up to ₹ 1,000 for every day after the first during which the failure continues.
  - (c) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.

- (d) The Company and every defaulting officer shall be punishable with a fine up to ₹ 2,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.
7. From the case scenario, it is observed that the Registrar seized certain important documents in the course of inquiry. After inspection what procedure is to followed pertaining to such documents?
- (a) The Registrar is required to submit such documents in the Special Court which permitted seizure.
- (b) The Registrar is required to forward all such documents along with the inquiry report to the Central Government.
- (c) The Registrar is required to return such documents back to the company after making, if considered necessary, the copies of them.
- (d) The Registrar is required to retain such documents until further instruction is received from the Special Court.
8. What is the requisite requirement for increasing the remuneration of directors including whole-time directors and Managing Director to 12% so that it shall be in accordance with the relevant provisions of the Companies, Act, 2013?
- (a) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the ROC.
- (b) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Tribunal.
- (c) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.
- (d) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Central Government through Regional Director.
9. The case scenario states that the Registrar of Companies had called ex-directors of the company for examining them during the inquiry. Is the Registrar empowered to call the ex-directors:
- (a) The Registrar cannot call ex-directors of the company, without the order of the court.
- (b) The Registrar may, by issuing a written notice, call the ex-directors for seeking the requisite information.
- (c) In case the Registrar is appointed by the Central Government to conduct investigation, then only he can call ex-directors of the company.
- (d) Except the Tribunal, no other authority is empowered to call ex-directors of a company for any examination.

10. According to the case scenario, while inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against the company. From the given options, choose the correct one that indicates as to how amidst such a situation SFIO will be continuing with the investigation.
- (a) SFIO has to put its investigation on hold so long as the company is being investigated by Income-tax authorities.
  - (b) SFIO will proceed with its investigation on the basis of report submitted by Income-tax authorities.
  - (c) SFIO will proceed with its investigation while Income-tax authorities shall keep on hold its investigation.
  - (d) SFIO will simultaneously continue its investigation along with the Income-tax authorities.

**INDEPENDENT MCQS [Questions 11-22]**

11. ABC Ltd. incorporated in India want to register as an ARC to commence the business of asset reconstruction. The company made all the arrangement required for the realisation of the financial assets acquired for the purpose of reconstruction of the assets and shall be able to pay periodical returns on respective due dates on the investments made in the company. The directors are well qualified and had nearly 25 years of experience in finance, 10 years of experience in reconstruction and securitisation of assets. The company has also complied with all the requirement of regulations and guidelines issued by Reserve Bank of India. The details of the profits made during the past 3 years are 2016-17 ₹ 200 Cr. (Loss), 2017-2018 ₹ 500 Cr. (Profit), 2018-2019 ₹ 700Cr. (Profit).
- (a) The ARC can be registered and certificate be issued by RBI, but RBI may not prescribe any further conditions.
  - (b) The ARC can be registered and certificate be issued by RBI, but RBI may prescribe any further conditions.
  - (c) The ARC registration cannot be made.
  - (d) RBI has no power to register ARC, as ARC's are governed by SARFAESI Act, 2002.
12. Proceedings under Prevention of Money Laundering Act, 2002 were initiated against Mr. Suraj. Through an order, property of Mr. Suraj has been attached under section 8. Mr. Suraj preferred an appeal to the Appellate Tribunal. Mr. Suraj is adjudicated an insolvent during the pendency of the appeal. What will happen to the proceedings initiated under PMLA in the given case?
- (a) Proceedings will be dispensed with
  - (b) His legal representatives will continue proceedings before the Appellate Tribunal

- (c) The official assignee or the official receiver, as the case may be, continue the appeal before the Appellate Tribunal.
  - (d) Creditors will continue the proceedings before the Appellate Tribunal
13. Who shall determine the amount of claim due to a creditor?
- (a) Committee of creditors
  - (b) Resolution professional.
  - (c) Adjudicating Authority.
  - (d) Corporate debtor.
14. Can an Adjudicating Authority order the liquidation of a corporate debtor even after approving the resolution plan:
- (a) Yes, if the resolution plan is contravened.
  - (b) The Adjudicating Authority may order the liquidation of a corporate debtor even after approving the resolution plan on receiving an application from a third party who is unaffected by such liquidation
  - (c) Yes, the Adjudicating Authority may order for the liquidation of a corporate debtor if the committee of creditor does not approve the resolution plan after its approval by the Adjudicating Authority
  - (d) No, the Adjudicating Authority cannot order the liquidation of a corporate debtor after approving the resolution plan.
15. What is the periodicity of submission of report by company liquidator with respect to the progress of winding up of the company to the Tribunal:
- (a) Monthly
  - (b) Bi-monthly
  - (c) Quarterly
  - (d) Half yearly
16. Mr. X, a resident of India planned a tour of 15 days to visit Paris to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit:
- (a) INR 2000
  - (b) INR 5000

- (c) INR 10,000
- (d) INR 25,000
17. In the case of financing of a financial asset by more than one secured creditors, there secured creditor shall be entitled to exercise any of the rights conferred on him is agreed upon by the secured creditors representing -----in order to make such an action binding on all the secured creditors.
- (a) Less 70% in value of the amount outstanding as on a record date
- (b) Not less than 60% in value of the amount outstanding as on a record date
- (c) At least 75% in value of the amount outstanding as on a record date
- (d) Not less than 75% in value of the amount outstanding as on a record date

#### Descriptive Questions [Questions 18- 26]

18. Dharma Ltd. in the light of prospective developments in the infrastructure of company decided to have borrowing on long term basis from financial Institutions. In the Board Meeting held on 15<sup>th</sup> September, 2020, following proposal of borrowing ₹ 2,00,00,000 from Financial institutions on long-term basis was presented for consideration. As per the given information, in the light of relevant provisions of the Companies Act, 2013, examine the eligibility of the amount up to which the Board can borrow from Financial institution and state on the validity of the said proposal.

Following were the Balance Sheets of last three years of Dharma Ltd., containing following facts and figure of financial information:

Particulars	As at 31.03.2018 ₹	As at 31.03.2019 ₹	As at 31.03.2020 ₹
Paid up capital	60,00,000	60,00,000	85,00,000
General Reserve	50,00,000	52,50,000	60,00,000
Credit Balance in Profit & Loss Account	6,00,000	8,50,000	20,00,000
Securities Premium	3,00,000	3,00,000	3,00,000
Secured Loans	20,00,000	25,00,000	40,00,000

19. Mr. Shariff who was a Key Managerial Personal (Manager) of XYZ Ltd. retired on 12<sup>th</sup> May 2020. On examination of the final accounts of the company for the year ended on 31<sup>st</sup> March 2020, the Registrar of Companies found some serious irregularities in writing off of the huge amounts of bad debts and no satisfactory explanation was provided for the same from the company. In such a situation, the Registrar of Companies wants some explanation from the company and Mr. Shariff. In the light of the Companies Act, 2013,

examine the situation and advice on the act of Registrar seeking explanation from Mr. Shariff.

20. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2019 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.
21. Mr. Ingenious, who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under the SEBI Act. Advise Mr. Ingenious as to what remedies are available to him against the order of SEBI.
22. A foreign tourist comes to India and he purchases an antique from a shop. He would like to pay US\$ 30 to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?
23. Comment upon nature of offence committed under the Prevention of Money Laundering Act? In the case, a spouse sold their property in 1.75 crore to Mr. Y. In lieu of the sale, they obtained amount 1 crore through RTGS in his account and rest amount of 75 lakh in cash which he transferred to wife's offshore bank account. Examine the liability of the spouse in the given case in the light of the PMLA, 2002. Also state whether they will be liable to be released on bail.
24. XYZ Limited is an unlisted company having a paid-up share capital of twenty crore rupees as on 31st March, 2020 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2020. The total number of directors is thirteen.  
Referring to the provisions of the Companies Act, 2013 answer the following:
  - (i) State the minimum number of independent directors that the company should appoint.
  - (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company?
25. Examine with reference to the relevant provisions of the Competition Act, 2002 the following:
  - (i) Whether a Government Department supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not a water tax) can be considered as an 'Enterprise'.
  - (ii) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer.'

26. The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

### SUGGESTED ANSWER

#### DIVISION A: CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS

##### Answers Keys to MCQs

Question No.	Answer
1.	(a)
2.	(c)
3.	(c)
4.	(d)
5.	(b)
6.	(a)
7.	(c)
8.	(c)
9.	(b)
10.	(c)
11.	(c)
12.	(c)
13.	(b)
14.	(a)
15.	(c)
16.	(d)
17.	(b)



**DIV B: Descriptive Questions [Questions 18- 26]**

- 18. Borrowing from Financial Institutions:** As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting, can borrow money including moneys already borrowed up to an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is taken in a meeting held on 15<sup>th</sup> September, 2020, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2020. According to the above provisions, the eligibility of Board of Directors of Dharma Ltd. to borrow up to an amount is calculated as follows:

Particulars	₹
Paid up Capital	85,00,000
General Reserve (being free reserve)	60,00,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	20,00,000
Securities Premium	3,00,000
Aggregate of paid-up capital, free reserves and securities premium	1,68,00,000
Total borrowing power of the Board of Directors of the company, i.e., 100% of the aggregate of paid-up capital, free reserves and securities premium	1,68,00,000
Less: Amount already borrowed as secured loans	40,00,000
Amount up to which the Board of Directors can further borrow	1,28,00,000

Dharma Ltd. is entitled to borrow ₹1,28,00,000 through board of directors. As in the given case, proposal of borrowing was ₹ 2,00,00,000 which is more than eligibility to borrow, therefore, Dharma Ltd, have to seek approval of shareholders in general meeting. As the proposal of borrowing ₹ 2,00,00,000 from Financial institutions on long-term basis was presented for consideration in Board Meeting without approval of shareholders in general meeting, therefore said proposal is invalid.

- 19.** As per the provisions of Section 206(2) of the Companies Act, 2013, the Registrar can call for any information or explanation or any other further documents related to the company from the company or any officer if the company, which he thinks, is necessary for deciding any matter of the company. Proviso to Section 206(2) provides that, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on him, in writing, shall also furnish such information or explanation to the

best of their knowledge. So, in the given case Mr. Shariff, the ex-manager of the company can be called upon for such information/explanation which was related to their period of service.

20. As per Section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

21. **Remedies against SEBI order:** Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Ingenious has been penalised under the above mentioned provision. Two remedies are available to Mr. Ingenious in this matter:-

- (i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, states that any person aggrieved,—
- (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
  - (b) by an order made by an adjudicating officer under this Act; or
  - (c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

- (ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

22. As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person.

Here, in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper have taken a money changers license to accept foreign currency.

**23. Nature of offence committed under the Act:** Section 45 of the PMLA, 2002, provides that the offences under the Act shall be cognizable and non-bailable. Person accused of an offence under this Act shall not be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

**Exceptions:** In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs.

As per the said section the spouse is liable for commission of an offence of money laundering by transferring an unaccounted money obtained through sale of their property to an offshore bank account of his wife with an intent to evade tax. As the husband and his wife, i.e., the spouse jointly acted in the commission of the act of money-laundering of a sum less than one crore rupees, so the wife may be released on bail, if the Special Court so directs. Whereas the Husband shall be released on bail on his own bond only on compliance with stated provision.

**24. (i)** According to Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the following class or classes of companies shall have at least 2 directors as independent directors:

- (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
- (2) the Public Companies having turnover of 100 crore rupees or more; or
- (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted company having a paid-up capital of ₹ 20 crores as on 31<sup>st</sup> March, 2020 and a turnover of ₹ 150 crores during the year ended 31<sup>st</sup> March, 2020. Accordingly, as per Rule 4, it must have at least 2 directors as independent directors.

**(ii)** According to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. The Explanation to Section 149(4) specifies that any fraction contained in such one-third numbers shall be rounded off as one.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited must have atleast 5 directors ( $1/3$  of 13 is 4.33 rounded as 5) as independent directors.

25. **Enterprise:** The term 'enterprise' is defined in section 2(h) of Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relating to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

**Consumer:** The term 'consumer' is defined in section 2(f) of Competition Act, 2002. Accordingly, 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of Competition Act, 2002.

26. 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, 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 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 entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of 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 any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

**Consequences:** The following are the consequences for violation of the above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine of rupees one thousand 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.