

# Commerce Eduworld

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## CA – FINAL - Paper - 4 Amendments for May 2021 Exams

Compiled by: **CA Arpita S. Tulsyan**

Pls Note that, this time, ICAI has notified very few amendments for May 2021 Exams for this subject.

Students who are studying from 6<sup>th</sup> Edition Book are required to do the necessary changes (deletions) as mentioned in the amendment notes.

Besides every section in the below attached amendment notes, it's mentioned whether applicable or not.

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**For Further details, Feel Free to Contact us at:**

**Commerce Eduworld**

**Address: Building No. 51B, Flat No. 11, Vrindavan Society,**

**Thane (W), Maharashtra - 400601**

**9326962521 | 8976561008**

**[www.arpitatulsyan.com](http://www.arpitatulsyan.com)**

**[orders.commerceeduworld@gmail.com](mailto:orders.commerceeduworld@gmail.com)**

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# COMPANIES INCORPORATED OUTSIDE INDIA

(Sec. 379–393)

No Amendments have been Notified for May 2021 Exams from this chapter

## PUNISHMENT FOR CONTRAVENTION (SECTION 392)

(Important Answer) : (To be studied as follows:)

Without prejudice to Sec. 391,

If any person contravenes the provisions of this Chapter, FC shall be punishable with fine: Min: Rs. 1,00,000, Max. Rs. 3,00,000

₹ in case of continuing offence – an additional fine upto Rs. 50000/day ₹

Every officer of FC (defaulting) shall be punishable with fine: Min – Rs. 25000, Max. Rs 5,00,000 or Imprisonment upto 6months or with both.

(This Section 392 was Amended by The Companies Amendment Act 2020, where the Imprisonment was deleted. However the same has NOT been notified by ICAI for May 2021 exams)

SECTION 393A: (This Section was Inserted by The Companies Amendment Act 2020 – However the same has NOT been notified by ICAI for May 2021 exams)

NCLT & NCLAT

PREVENTION OF OPPRESSION & MISMANAGEMENT

INSPECTION, INQUIRY & INVESTIGATION

MISCELLANEOUS PROVISIONS

COMPROMISES, ARRANGEMENTS &  
AMALGAMATIONS

WINDING UP

APPOINTMENT & REMUNERATION OF MANAGERIAL  
PERSONNEL

No Amendments have been notified for May 2021 Exams

(Refer 6<sup>th</sup> Edition as it is)

# COMPOUNDING OF OFFENCES, ADJUDICATION & SPECIAL COURTS

(Sec. 435-446B, Sec. 454, Sec. 454A)

## LESSER PENALTIES FOR OPC OR SMALL COMPANIES

(SECTION 446 B): (Notified)

Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Explanation.—For the purposes of this section—

(a) "Producer Company" means a company as defined in clause (l) of section 378A;

(b) "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade

## APPOINTMENT & QUALIFICATIONS OF DIRECTORS (SECTION 149 – SECTION 172)

Rule 12 B : Directors of Company required to file e-form ACTIVE:

(Newly Inserted w.e.f. 16/5/2019.

However the same has NOT been notified by ICAI for May 2021 exams)

## MEETINGS OF BOARD & ITS POWERS (Section 173 – 195)

MATTERS NOT TO BE DEALT WITH IN A MEETING  
THROUGH VIDEO CONFERENCING OR OTHER AUDIO  
VISUAL MEANS:

(However the same has NOT been notified by ICAI for May 2021 exams)

For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated 19.03.2020 and ending on the 31st December 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 relevant rules.

# THE PREVENTION OF MONEY LAUNDERING ACT, 2002

## DEFINITIONS: (Important One's)

(a) MONEY – LAUNDERING [Section 2(1)(p)]:

Explanation (Inserted by Finance Act, 2019)

(However the same has NOT been notified by ICAI for May 2021 exams)

(b) PROCEEDS OF CRIME [Section 2(1)(u)]: (Refer Q2)

Explanation: (Inserted by Finance Act, 2019)

(However the same has NOT been notified by ICAI for May 2021 exams)

## ENHANCED DUE DILIGENCE (Section 12AA):

(Newly Inserted – Finance Act 2019) (Amendment Notified)

(1) Every reporting entity shall, prior to commencement of each specified transaction:

(a) verify the identity of clients undertaking such specified transaction by authentication under the **Aadhaar Act, 2016** in manner prescribed.

(Provided that if such person is not required to obtain Aadhaar Number, then authenticate by such other processes)

(b) take additional steps to examine the ownership and financial position, including sources of funds of the client, in prescribed manner.

(c) take additional steps as prescribed to record the purpose behind conducting the specified transaction and the intended nature of the relationship between the transaction parties.

(2) Where the client **fails to fulfil** the conditions laid in (1), the reporting entity shall not allow the specified transactions to be carried out.

(3) Where any specified transaction or series of specified transactions undertaken by a client is considered **suspicious or likely to involve proceeds of crime**, the reporting entity shall increase the future monitoring of business relationship with client, including greater scrutiny of transactions, as prescribed.

(4) The Information obtained while applying the enhanced due diligence measures under sub-section (1) shall **be maintained for a period of 5 years from the date of transaction between client and reporting entity**.

**Explanation:** Specified transaction means – withdrawal / deposit in cash, exceeding such amount; transaction in ForEx, exceeding such amount; transaction in any high value imports or remittances; such other transactions in the interest of revenue or where there is a high risk of money laundering or terrorist financing.

## THE SARFAESI ACT, 2002

### OTHER GENERAL POINTS TO BE REMEMBERED:

(However the below amendments have NOT been notified by ICAI for May 2021 exams)

- SARFAESI is applicable to only those notified NBFC which has an **asset base of Rs.500 crore or above** (Now **Rs. 100 crore or above**)

- Further NBFC's can invoke SARFAESI for only those cases which are **above Rs.1 crore (individual case)** (Now **above Rs. 50 Lakhs**)



## THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 (As amended by The Foreign Contribution (Regulation) Amendment Act, 2020)

(Only Amendment of Section 13 is not yet notified, rest all notified)

### PROHIBITION TO ACCEPT FC (Section 3): (Amendment Notified)

#### (1) Following persons are prohibited:

- Candidate for election;
- Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- **Public Servant (As per Indian Penal Code)**, Judge, government servant / employee of any Govt Corporation or any other body controlled or owned by Government;
- Member of legislature;
- Political party or office bearer thereof;
- Organisation of a political nature;
- Company engaged in production / broadcast of audio news or audio visual news or current affairs program through any electronic mode.
- Correspondent or columnist, cartoonist, editor, owner of a company, mentioned above (news).

### PROHIBITION TO TRANSFER FC TO OTHER PERSON

#### (Section 7): (Amendment Notified)

No person who—

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution, shall transfer such foreign contribution to any other person.



Earlier, foreign contribution accepted with the permission of the Central Government could be transferred to any other person who is registered under FCRA, 2010 or has obtained prior permission. It can be seen that the legislature has placed a blanket prohibition on transfer of foreign contribution received by any person to any other person. The intention is to prevent recipients of foreign contribution acting as mere conduits or facilitating agents for obtaining foreign contributions.

The relevance of Rule 24 in the light of the blanket prohibition is debatable. Central Government may refuse to grant permission citing section 7 as amended. Nevertheless an amendment to the rules or a clarificatory circular would enable better compliance on this matter.

### RESTRICTION TO UTILISE FC FOR ADMINISTRATIVE PURPOSE (Section 8): (Amendment Notified)

Every authorised person shall:

- Utilise FC for the purpose for which it was received (provided that such FC / income out of such FC shall not be used for speculative business)

- Not defray, to the extent possible such sum, not exceeding 20% of such FC, received in a FY, to meet administrative expenses.

(If > 20%, then obtain prior approval of CG)

## REGISTRATION OF CERTAIN PERSONS WITH CG

### (Section 11): (Amendment Notified)

Provided that the Central Government, on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government:

Provided further that if the person referred to in sub-section (1) or in this sub-section has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government.

## GRANT OF CERTIFICATE OF REGISTRATION (Section 12):

### (Amendment Notified)

(1) Following shall be the conditions for grant of registration and prior permission:  
(same as before)

(1A) Every person who makes an application under sub-section (1) shall be required to open "FCRA Account" in the manner specified in section 17 and mention details of such account in his application.

## POWER OF CENTRAL GOVERNMENT TO REQUIRE AADHAAR NUMBER, ETC., AS IDENTIFICATION DOCUMENT (SECTION 12A)

(Amendment Notified)

Notwithstanding anything contained in this Act, the Central Government may require that any person who seeks prior permission or prior approval under section 11, or makes an application for grant of certificate under section 12, or, as the case may be, for renewal of certificate under section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner.

## SUSPENSION OF CERTIFICATE (Section 13): (Not yet Notified)

(1) If CG is satisfied that pending consideration of the question of cancelling the certificate on any grounds mentioned in Section 14(1), it may, by an order in writing, **suspend the certificate** for a period of 180 days, or such further period, not exceeding 180 days, as may be specified in the order.

## SURRENDER OF CERTIFICATE (SECTION 14A): (Amendment Notified)

On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in Section 15(1).

## MANAGEMENT OF FC OF PERSON WHOSE CERTIFICATE HAS BEEN CANCELLED OR SURRENDERED (Section 15):

(Change in Heading) (Amendment Notified)

### RENEWAL OF CERTIFICATE (Section 16): (Amendment Notified)

(1) Every person who has been granted a certificate shall get it renewed within **6 months before the expiry (i.e. in advance)**

Provided that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in Section 12(4).

### FC THROUGH SCHEDULED BANK (Section 17): (Amendment Notified)

(1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the SBI at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another "FCRA Account" in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his "FCRA Account" in the specified branch of State Bank of India at New Delhi

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—

(a) the prescribed amount of foreign remittance;

(b) the source and manner in which the foreign remittance was received; and

(c) other particulars, in such form and manner as may be prescribed.



## THE INSOLVENCY & BANKRUPTCY CODE, 2016

### SUSPENSION OF INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS (Section 10A):

(Inserted by The Insolvency & Bankruptcy Code (Second Amendment) Act, 2020

– Amendment Notified)

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 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.

## THE SCR ACT, 1956 & THE SCR RULES, 1957

## THE SEBI ACT, 1992

### POWERS OF BOARD NOT TO APPLY TO INTERNATIONAL FINANCIAL SERVICES CENTRE (Section 29B of SCRA)

(Inserted wef 01.10.2020 – Not yet Notified)

### POWERS OF BOARD NOT TO APPLY TO INTERNATIONAL FINANCIAL SERVICES CENTRE (Section 28C of SEBI Act)

(Inserted wed 01.10.2020 – Not yet Notified)

DECLARATION & PAYMENT OF DIVIDEND (Only for Old Course)

ACCOUNTS & AUDIT (Only for Old Course)

Only those amendments which have been notified by ICAI on its website for OLD Course in Sheet called as "Significant Amendments applicable for May 2021" will be applicable.