

PAPER – 4 : CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2018 EXAMINATION

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

For November 2018 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 30th April, 2018 are relevant.

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

1	Study Material (Revised edition June 2018) containing Legislative amendments made upto 30 th April, 2018.
2	Practice Manual (January 2017 edition), wherein the questions & answers have been modified/ adapted on the basis of the legislative amendments made uptill 31 st of October 2016. However with respect to further amendments (For the period of 1st November 2016 to 30th April, 2018) answers have to be adapted as per the amendments.
3	RTP of May 2018 examination containing a gist of all the significant legislative amendments of one year i.e. from 1 st May 2017 to 30 th April, 2018 along with the suggested sample questions and answers for understanding and practice.

* Mentioned publications are available on the website.

Relevant amendments: The given list of relevant amendments shall be read in line with the principal Act.

SECTION A: COMPANY LAW

DECLARATION AND PAYMENT OF DIVIDEND

Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 123	In section 123 of the principal Act,— (a) in sub- section (1),— (i) in clause (a),— (A) for the words "both; or", the word "both:" shall be substituted; (B) the following proviso shall be inserted, namely:— "Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on

	measurement of the asset or the liability at fair value shall be excluded; or"; (ii) in the second proviso, for the words "transferred by the company to the reserves", the words "transferred by the company to the free reserves" shall be substituted; (b) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend: Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years."
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ACCOUNTS AND AUDIT

1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

(1) Section 143(3)(i) , shall not apply to a private company: -

- (i) which is a one person company or a small company; or
- (ii) which has turnover less than rupees fifty crores as per latest audited financial **statement** or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore."

2. Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015 Vide Notification G.S.R. 583(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

“2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”.

3. Corrigendum vide Notification S.O. 2218(E) dated 13th July 2017 with respect to the Notification G.S.R. 583(E) Dated 13TH June, 2017

Ministry of Corporate Affairs vide corrigendum stated that for the words “statement or” to read as “statement and” under section 143(3)(i).

4. Enforcement of the Companies (Audit and Auditors) Second Amendment Rules, 2017 vide Notification G.S.R. 621(E) dated 22nd June 2017 in exercise of powers conferred by section 139.

The Central Government hereby amends the Companies (Audit and Auditors) Rules, 2014. Through this amendment rule, in Rule 5(b), for the word “twenty”, the word “fifty” shall be substituted.

5. Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) vide circular no. 08/2017 dated 25th July 2017

Notification No. G.S.R. 583(E) dated 13th June, 2017 stated that requirements of reporting under section 143(3)(i) read Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Through issue of this circular, it is hereby clarified that the exemption shall be applicable for those audit reports in respect of financial statements pertaining to financial year, commencing on or after 1st April, 2016, which are made on or after the date of the said notification.

6. Enforcement of sub-section (3) and (11) of Section 132 of the Companies Act, 2013 vide Notification No. S.O. 1316(E) dated 21st March, 2018

The Central Government appoints the 21st March, 2018 as the date on which the provisions of subsections (3) and (11) of section 132 of the said Act shall come into force.

7. Amendment in the notification number G.S.R. 463(E) dated the 5th June, 2015 vide Notification no. S.O. 802(E) dated 23rd February, 2018

In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) and subsection (2) of section 462 of the Companies Act, 2013, the Central Government, in the interest of public amends the notification of the Government of India in the Ministry of Corporate Affairs number G.S.R. 463(E) dated the 5th June, 2015 namely:—

In the said notification, in the Table, for serial number 8 and entries relating thereto, the following serial number and entries shall be respectively substituted, namely:—

(1)	(2)	(3)
"8.	Chapter IX, Section 129	Shall not apply to the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting".

8. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 130.	In section 130 of the principal Act,— (i) in sub-section (1), in the proviso,— (a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted; (b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted; (ii) after sub-section (2), the following sub-section shall be inserted, namely:— "(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."
Amendment of section 132.	In section 132 of the principal Act,— (i) in sub-section (4), in clause (c), in sub-clause (A), in item (II), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted; (ii) in sub-section (5), for the words, brackets and figure "the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed", the words "the Appellate Tribunal in such manner and on payment of such fee as may be prescribed" shall be substituted; (iii) sub-sections (6), (7), (8) and (9) shall be omitted.

Amendment of section 136	In section 136 of the principal Act,— (i) in sub-section (1),— (a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted; (b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:— "Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members— (a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at the meeting: Provided further that"; (c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted; (d) for the fourth proviso, the following provisos shall be substituted, namely:— 'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any: Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")— (a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of
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	the listed company; (b) where such foreign subsidiary 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 holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.'; (ii) in sub-section (2), the following proviso shall be inserted, namely:— "Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."
Amendment of section 140.	In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted.
Amendment of section 141.	In section 141 of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:— ‘(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company. <i>Explanation.</i>—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the <i>Explanation</i> to section 144.’.
Amendment of section 143.	In section 143 of the principal Act,— (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted; (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial

	controls with reference to financial statements" shall be substituted; (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
Amendment of section 147.	In section 147 of the principal Act,— (i) in sub-section (2),— (a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted; (b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted; (ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted; (iii) in sub-section (5), the following proviso shall be inserted, namely:— "Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."
Amendment of section 148	In section 148 of the principal Act,— (i) in sub-section (3),— (a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted; (b) in the <i>Explanation</i>, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted; (ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.

APPOINTMENT AND QUALIFICATION OF DIRECTORS**1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017**

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

- (i) According to the amendment, section 152(6) & (7), shall not apply to –
 - (a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
 - (b) a subsidiary of a Government company, referred to in (a) above."

2. Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5th June 2015 Vide Notification G.S.R. 582(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

"2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13TH June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

Section 149(1)(b) & first proviso shall not apply on section 8 companies.

Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13TH June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar."

4. Enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Vide Notification G.S.R. 839(E) dated 5th July 2017

The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely:-

“(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.”

5. Exemptions given to certain unlisted public companies under the *Companies (Appointment and Qualification of Directors) Rules, 2014* from appointment of Independent Directors Vide notification of circular 09/2017 dated 5th September 2017

Vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

The said amended Rule 4 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

Through the issue of this circular, it is hereby clarified that a "joint venture, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

6. Enforcement of the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2018* Vide Notification G.S.R.51(E) dated 22nd January, 2018

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in rule 9,

- (A) for the marginal heading, the following marginal heading shall be substituted, namely:-

“Application for allotment of Director Identification Number before appointment in an existing company”;

- (B) for sub-rule (1), the following shall be substituted, namely:-

“(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN)

along with such fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe);

(C) in sub-rule (3),

(I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

“(iiiia) board resolution proposing his appointment as director in an existing company”;

(II) for clause (b), the following clause shall be substituted, namely:-

“(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company,”

7. Companies (Removal of Difficulties) Order, 2018 S.O. 768(E) dated 21st February, 2018

In the Companies Act, 2013, in section 169, in sub-section (1), –

(i) before the proviso, the following proviso shall be inserted, namely :-

“Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.”;

(ii) in the existing proviso, for the words “Provided that”, the words “Provided further that” shall be substituted.

8. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 152	In section 152 of the principal Act,— (a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted; (b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.

Amendment of section 153	In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."
Amendment of section 160.	In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee."
Amendment of section 161.	In section 161 of the principal Act,— (i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted; (ii) in sub-section (4),— (a) the words "In the case of a public company," shall be omitted; (b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.
Amendment of section 165.	In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:— "Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL**Amendments through the Companies (Amendment) Act, 2017**

Relevant Sections	Amendment
Amendment in Section 2(51)	in clause (51), — (a) in sub-clause (iv), the word "and" shall be omitted;

	(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:— "(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"
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MEETING OF BOARD AND ITS POWERS

1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

(i) With respect to Section 173(5), the following sub- section shall be substituted:

- (5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.

(ii) With respect to section 174(3)-

It shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015 Vide Notification G.S.R. 583(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

In section 186(7)- following proviso shall be inserted-

Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."

4. Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar."

5. Enforcement of the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 vide Notification G.S.R. 880(E) Dated 13th July 2017

The Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014.

Following are the amendments:

- (1) In rule 3 for clause (e), the following shall be substituted, -

"(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year: Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."

- (2) In the principal rules, for rule 6, the following rule shall be substituted, namely: -

"6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

6. Enforcement of the Companies (Restriction on number of layers) Rules, 2017 in exercise of the powers conferred under proviso to clause (87) of section 2 Vide notification G.S.R. 1176(E), dated 20th September 2017

Restriction on number of layers for certain classes of holding companies-

- (1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2) , shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

- (2) **The provisions of this rule shall not apply to the following classes of companies, namely:—**
- (a) a banking company as defined in the Banking Regulation Act, 1949
 - (b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;
 - (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999
 - (d) a Government company referred to in clause (45) of section 2 of the Companies Act.
- (3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.
- (4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –
- (i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;
 - (ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.
- (5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

7. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of Section 180	In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.
Amendment of Section 184	In section 184 of the principal Act,— (i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted; (ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:— "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."
Amendment of section 188.	In section 188 of the principal Act,— (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:" (ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.
Omission of section 194	Section 194 of the principal Act shall be omitted.
Omission of section 195	Section 195 of the principal Act shall be omitted.

INSPECTION, INQUIRY AND INVESTIGATION**1. Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24th of August, 2017**

The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24th day of August, 2017.

2. **Enforcement of the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017** Vide Notification G.S.R. 1062(E) dated 24th of August 2017

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*.

According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

The Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017

- a **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.
- b **Competent authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
- c **In case of Government Company /foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.
- d **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.
- e **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with

a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

- f **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
- g **Entry in arrest register:** The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
- h **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.
- i **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 223.	In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 236.	In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

COMPANIES INCORPORATED OUTSIDE INDIA**Amendments through the Companies (Amendment) Act, 2017**

Relevant Sections	Amendment
Amendment of section 379.	Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— "(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament."
Amendment of section 384.	In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.
Amendment of section 391.	In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— "(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply <i>mutatis mutandis</i> for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed."

MISCELLANEOUS PROVISIONS**1. Notification of Section 247 vide Notification S.O. 3393(E) dated 18th October 2017**

The Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

Section 247: Valuation by Registered Valuers.

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by 1[a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.
- (2) The valuer appointed under sub-section (1) shall,—
 - (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (b) exercise due diligence while performing the functions as valuer;
 - (c) make the valuation in accordance with such rules as may be prescribed; and
 - (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time 2[during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.]
- (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

However if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (4) Where a valuer has been convicted under sub-section (3), he shall be liable to—
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

2. Notification of the Companies (Registered Valuers and Valuation) Rules, 2017 vide Notification G.S.R 1316(E) dated 18th October, 2017

In exercise of the powers conferred by section 247, the Central Government hereby enforced the Companies (Registered Valuers and Valuation) Rules, 2017.

¹ Substituted by the Companies (Removal of Difficulties) Second Order 2017

² Amended through the Companies (Amendment) Act, 2017 on 9th February, 2018

Companies (registered Valuers and valuation) rules, 2017**1. Definitions**

- (1) In these rules, unless the context otherwise requires -

"authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;

"asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

"certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

"certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

"registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;

"valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

2. Eligibility for registered valuers

- (1) A person shall be eligible to be a registered valuer if he-

- (a) Is a valuer member of a registered valuers organisation;

Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

- (b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

- (c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

- (d) Possesses the qualifications and experience as specified in rule 4;

- (e) Is not a minor;

- (f) Has not been declared to be of unsound mind;

- (g) Is not an undischarged bankrupt, or has not applied to be adjudicated

as a bankrupt;

- (h) Is a person resident in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

- (i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

- (k) Is a fit and proper person:

Explanation.- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) Integrity, reputation and character,
- (ii) Absence of convictions and restraint orders, and
- (iii) Competence and financial solvency.

- (2) No partnership entity or company shall be eligible to be a registered valuer if-

- (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
- (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;
- (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);

- (d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
- (e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

3. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or
- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II.- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

4. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.

- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- (8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
 - (a) accept the application and grant the certificate of registration; or
 - (b) reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

5. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable alongwith director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

6. Conduct of Valuation

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:
Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
 - (a) internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuers organisation.

- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;
 - (k) conclusion; and
 - (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

7. Temporary surrender

- (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

8. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

9. Eligibility for registered valuers organisations

(1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -

- (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in Annexure-III of the said Rule.;
- (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

(2) The organisation referred to in sub-rule (1) shall be recognised if it –

- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
- (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation;
- (c) conducts training for the individual members before a certificate of practice is issued to them;
- (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
- (e) provides for continuing education of individuals who are its members;

- (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure- III**, within one year from the date of commencement of these rules.

10. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

- (a) at all times continue to satisfy the eligibility requirements specified under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- (d) make such reports to the authority as may be required by it;
- (e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;
- (f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- (g) shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as may be specified by authority.

11. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

12. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

13. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

14. Punishment for contravention

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

15. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. Enforcement of the Companies (Registered Valuers and Valuation) Amendment Rules, 2018 vide Notification No. G.S.R. 155 (E) dated 9th February, 2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013, the Central Government makes the **Companies (Registered Valuers and Valuation) Amendment Rules, 2018** to amend the Companies (Registered Valuers and Valuation) Rules, 2017, namely:-

In the Companies (Registered Valuers and Valuation) Rules, 2017, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

4. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of Section 247	In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.
Amendment of section 366.	In section 366 of the principal Act, in sub-section (2),— (i) for the words "seven or more members", the words "two or more members" shall be substituted; (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:— "(vii) a company with less than seven members shall register as a private company."
Amendment of section 374.	In section 374 of the principal Act, after clause (d), the following proviso shall be inserted, namely:— "Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed."
Amendment of section 447.	In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."
Amendment of section 458	In section 458 of the principal Act, in sub-section (1), the proviso shall be omitted.

COMPOUNDING OF OFFENCES, ADJUDICATION, SPECIAL COURTS**1. Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section 441.	In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.
Insertion of new section 446A. Factors for determining level of punishment.	After section 446 of the principal Act, the following sections shall be inserted, namely:— "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:— (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default.
Lesser penalties for One Person Companies or small companies.	446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL**1. Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29th June, 2017**

In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-

- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";

- (b) after the third proviso, the following proviso shall be inserted, namely: -

“Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 409	In section 409 of the principal Act, in sub-section (3),— (i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted; (ii) for clause (e), the following clause shall be substituted, namely:— "(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
Amendment of section 411.	In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."
Amendment of section 412	In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:— "(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of— (a) Chief Justice of India or his nominee—Chairperson; (b) a senior Judge of the Supreme Court or Chief Justice of High Court— Member;

	(c) Secretary in the Ministry of Corporate Affairs—Member; and (d) Secretary in the Ministry of Law and Justice—Member. (2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."
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INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) Enforcement of clause (a) to clause(d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

(2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

(3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code Vide Notification S.O.1911(E) dated 14th June 2017

In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016 , the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
- (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

(4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/2017 dated 25th October 2017

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each

resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.

Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

(5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.

Significant relevant changes are as follows:

- (i) Amendment in **section 2** of the Principal Act
 - (a) in clause (d), the word "and" shall be omitted;
 - (b) for clause (e), the following clauses shall be substituted, namely:—
 - "(e) personal guarantors to corporate debtors;
 - (f) partnership firms and proprietorship firms; and
 - (g) individuals, other than persons referred to in clause (e);".
- (ii) Amendment in **section 5** of the Principal Act
 - (a) for clause (25), the following clause shall be substituted, namely:—
 - '(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;';
 - (b) in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

- (iii) In **section 25** of the principal Act, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

"(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans."

- (iv) After **section 29** of the principal Act, the following section shall be inserted, namely:—

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

- (a) is an undischarged insolvent;
- (b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
- (c) 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 in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

- (d) has been convicted for any offence punishable with imprisonment for two years or more;
- (e) is disqualified to act as a director under the Companies Act, 2013;
- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (i) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- (j) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution

made by such creditor has been admitted under this Code;

- (k) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (l) has a connected person not eligible under clauses (a) to (i).

Explanation.— For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this *Explanation* shall apply to—

- (A) a scheduled bank; or
 - (B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and 54 of 2002. Enforcement of Security Interest Act, 2002; or an Alternate Investment Fund registered with the Securities and Exchange Board of India."
- (v) In **section 30** of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section."

- (vi) **In section 35** of the principal Act, in sub-section (1), in clause (f), the following proviso shall be inserted, namely:—"Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant."

SECTION B: ALLIED LAWS

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

- (1) **The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2017** vide Notification dated 31st May, 2017

- (a) in **regulation 2**, in sub -regulation (1), -
- i. in clause (zd), after sub -clause (xii), the following new sub-clause shall be inserted, namely, -
 "(xiii) systemically important non -banking financial companies."
 - ii. after clause (zl), the following new clause shall be inserted, namely, -
 "(zla) "systemically important non -banking financial company" means a non -banking financial company registered with the Reserve Bank of India and having a net - worth of more than five hundred crore rupees as per the last audited financial statements.
- (b) in **regulation 16**, -
- (i) in sub-regulation (1), -
 - a. after the words "If the issue size" and before the word "exceeds", the symbol and words " , excluding the size of offer for sale by selling shareholders," shall be added;
 - b. the words "five hundred" shall be substituted by the words "one hundred";
 - c. in the proviso, the words "an offer for sale or" shall be omitted.
 - ii. the existing sub-regulation (2) shall be substituted with the following, namely,
 "(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale

and amount raised for general corporate purposes, have been utilised.”

- iii. after sub-regulation (2), the following new sub-regulations shall be inserted—

“(3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.

(4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.”

- (c) in **regulation 70**, in sub -regulation (4), after the words “Insurance Regulatory and Development Authority” and before the symbol “.”, the following words and figures shall be inserted, namely, -

“of India or a Scheduled Bank listed under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013.”

- (2) **The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017 notified vide Notification dated 14th August, 2017**

In regulation 70-

- (i) in **sub- regulation (1)**, in clause (c), after the words and figure “ Sick Industrial Companies (Special Provisions) Act, 1985 or ” and before the words “ the Tribunal ”, the words “ the resolution plan approved by ” shall be inserted.
- (ii) **existing sub-regulation (5)** shall be substituted by the following new sub – regulation:
 - (a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013
 - (b) The conversion price shall be certified by two independent qualified valuers, and for this purpose ‘valuer’ shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder.
 - (c) specified securities so allotted shall be locked -in for a period of one year from the date of their allotment:

Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the

lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee;

- (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
- (e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution."

(iii) **existing sub-regulation (6)** shall be substituted by the following new sub-regulation, namely-

"(6) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

- (a) the guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;
- (b) the issue price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

- (c) the specified securities so allotted shall be locked-in for a period of at least three years from the date of their allotment;
- (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;
- (e) a special resolution has been passed by shareholders of the issuer before the preferential issue;
- (f) the issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory

statement to the notice for the general meeting proposed for passing the special resolution as stipulated at clause (e) of this sub-regulation:

- a. the identity including that of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);
- b. the business model;
- c. a statement on growth of business over the period of time;
- d. summary of audited financials of previous three financial years;
- e. track record in turning around companies, if any;
- f. the proposed roadmap for effecting turnaround of the issuer.
- g. the applicable provisions of the Companies Act, 2013 are complied with.

(3) SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018 w.e.f. 12.02.2018

Vide this amendment regulation, **Clause (c) of the Regulation 82** which dealt with the conditions for qualified institutions placement has been omitted. Following was the clause prior to the omission.

“(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;”

THE FOREIGN EXCHANGE AND MANAGEMENT ACT, 1999

Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018

1. **As per the Notification dated 26th of March, 2018**, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26th of March, 2018.
2. **Relevant Definitions:- In these Regulations, unless the context otherwise requires -**

‘Non-Resident Indian (NRI)’ means a person resident outside India who is a citizen of India;

‘Overseas Citizen of India (OCI)’ means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

‘Repatriation outside India’ means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian

currency maintained with an authorised dealer from which it can be converted in foreign currency;

3. Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-

An NRI or an OCI may-

- (a) acquire immovable property in India other than agricultural land/ farm house/ plantation property:

Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

- (b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

4. Acquisition of Immovable Property for carrying on a permitted activity:-

A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;

Provided that

- (i) all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and

(ii) the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.

(b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

5. Purchase/ sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals:-

A Foreign Embassy/ Diplomat/ Consulate General may purchase/ sell immovable property in India other than agricultural land/ plantation property/ farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

6. Joint acquisition by the spouse of an NRI or an OCI:-

A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Provided that

- (i) The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
- (iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;
- (iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

7. Acquisition by a Long-Term Visa holder:-

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and

Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions:

- a) the property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas;
- b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on LTV;
- c) the registration documents of the property should mention the nationality and the fact that such person is on LTV;
- d) the property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities;
- e) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
- f) such person shall be eligible to sell the property only after acquiring Indian citizenship. However, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP/FRO/FRRO concerned.

8. Repatriation of sale proceeds:-

- (a) A person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;
- (b) In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
 - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;
 - (ii) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account;
 - (iii) in the case of residential property, the repatriation of sale proceeds is

restricted to not more than two such properties.

- (c) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

9. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:-

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Provided this prohibition shall not apply to an OCI.

Explanation: For the purpose of this regulation the term "citizen" shall include natural persons and legal entities.

10. Prohibition on transfer of immovable property in India:-

Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India:-

Provided that

- (a) The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- (b) A bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.
- (c) An Authorized Dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender.

Provided

- (d) the funds shall be used by the borrowing company only for its core business purposes overseas;
- (e) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- (f) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

11. Miscellaneous:-

Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:

- (a) through banking channels in India;
- (b) subject to payment of applicable taxes and other duties/ levies in India.

12. Saving:-

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to confirm to these regulations.

THE COMPETITION ACT, 2002

(1) Exemption from giving notice in section 6(2) under the Competition Act, 2002 vide notification S.O. 2039(E) dated 29th June 2017

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts every person or enterprise who is a party to a combination as referred to in section 5 of the said Act from giving notice within thirty days mentioned in sub-section (2) of section 6 of the said Act, subject to the provisions of sub-section (2A) of section 6 and section 43A of the said Act, for a period of five years from the date of publication of this notification in the Official Gazette.

(2) Exemption to Regional Rural Banks from application of provisions of sections 5 & 6 of the Competition Act, 2002 vide notification S.O. 2561(E) dated 10th August, 2017

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts the Regional Rural Banks in respect of which the Central Government has issued a notification under sub-section (1) of section 23A of the Regional Rural Banks Act, 1976, from the

application of provisions of sections 5 and 6 of the Competition Act, 2002 for a period of five years from the date of publication of this notification in the Official Gazette.

(3) Exemption to the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said Competition Act, 2002 Vide Notification S.O. 1933(E) 16th June 2017

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government, in public interest, hereby exempts the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said Act, for a period of one year with effect from the 20th June, 2017, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers. During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with applicability during the said period along with other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping.

(4) Exemptions to all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002, Vide Notification S.O. 2828(E) dated 30th August, 2017

In exercise of the powers conferred by clause (a) of Section 54 of the Competition Act, 2002, the Central Government in the public interest hereby exempts, all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 for a period of ten years from the date of publication of this notification in the Official Gazette.

(5) Exemption to all cases of combinations under section 5 of the Competition Act, 2002 involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors vide notification S.O. 3714(E), dated 22nd November 2017

In exercise of the powers conferred by clause (a) of Section 54 of the Competition Act, 2002 (12 of 2003) (herein after referred to as the Act), the Central Government in the public interest hereby exempts all cases of combinations under section 5 of the Act involving the Central Public Sector Enterprises (CPSEs) operating in the Oil and Gas Sectors under the Petroleum Act, 1934 (30 of 1934) and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 (53 of

1948) and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, from the application of the provisions of sections 5 and 6 of the Act, for a period of five years from the date of publication of this notification in the Official Gazette.

BANKING REGULATION ACT, 1949

The Banking Regulation (Amendment) Act, 2017 Vide Notification dated 25th August, 2017 w.e.f 4th May 2017

Insertion of new sections 35AA and 35AB-

In the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), after section 35A, the following sections shall be inserted, namely:—

‘35AA. Power of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process: The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

Explanation.—For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

35AB. Power of Reserve Bank to issue directions in respect of stressed assets: (1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets. (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.’

PREVENTION OF MONEY LAUNDERING ACT, 2002

Amendments to the prevention of Money-Laundering Act, 2002 through the Finance Act, 2018 w.e.f 19.04.2018

In the Prevention of Money-laundering Act, 2002,—

- (a) in **section 2**, in sub-section (1), in clause (u), after the words “within the country”, the words “or abroad” shall be inserted;
- (b) in **section 5**,—
 - (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— “Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;
 - (ii) in sub-section (3), for the word, brackets and figure “sub-section (2)”, the word,

brackets and figure “sub-section (3)” shall be substituted;

- (c) in **section 8**,—
 - (i) in sub-section (3), in clause (a), after the words “continue during”, the words “investigation for a period not exceeding ninety days or” shall be inserted;
 - (ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:— “Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”;
- (d) in **section 19**, in sub-section (3),— (i) after the words “be taken to a”, the words “Special Court or” shall be inserted; (ii) in the proviso, after the words “from the place of arrest to the”, the words “Special Court or” shall be inserted;
- (e) in **section 45**, in sub-section (1), —
 - (i) for the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule”, the words “under this Act” shall be substituted;
 - (ii) in the proviso, after the words “sick and infirm,”, the words “or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees” shall be inserted;
- (f) in **section 50**, in sub-section (5), in the proviso, in clause (b), for the word “Director”, the words “Joint Director” shall be substituted;
- (g) **section 66** shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”;

In “**Paragraph 29** -Offence Under the Companies Act, 2013

Section 447 i.e., punishment for fraud has been inserted.

(B) Non-Applicability of the following chapters of the Study material/PM

1. Chapter 9 of the study material (June 18 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies, is omitted by the Ministry of Corporate Affairs.
2. Chapter 7 of the Practice Manual (January, 2017 edition)
3. Chapter 9 of the Practice Manual (January, 2017 edition)

PART – II: QUESTIONS AND ANSWERS**QUESTIONS****SECTION – A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016****Declaration and payment of Dividend**

1. (a) PET Ltd. incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013.
- (b) Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2017-18, except in the following two cases:
 - (i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.
 - (ii) Dividend amount of ₹ 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Accounts and audit

2. (a) Rera Ltd., a company incorporated under the Companies Act, 2013 with paid up capital 500 crore. The company have turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore (net profit is not considered in accumulated losses) and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2017-18.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not.
- (b) (i) Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.
- (ii) PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered

Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors) Rules, 2014?

Appointment and Qualifications of Directors

3. (a) Phil Health Radiators Ltd., a listed Public Limited Company has 15 directors on its Board. The Articles of Association of the said company provided for the maximum number of Directors to 18. Advise whether under the provisions of the Companies Act, 2013, the Board of Directors can do so? Will your answer differ:
- (i) If the said company would have been a Government company?
 - (ii) If the said company would have been a company registered under Section 8 of the Companies Act, 2013?
- (b) M/s. Bosch and Lawrence Limited, an unlisted company has a paid up equity share capital of ₹ 11 crores as on 31st March, 2013. Mr. Robert was appointed as an Independent Director at the Annual General Meeting of the company held on 29-09-2015 for a period of one year. Again, he was appointed in the subsequent Annual General Meeting held on 28-09-2016 for a period of two years as his second consecutive term. Examine under the provisions of the Companies Act, 2013 whether he can be again appointed in the Annual General Meeting to be held in September 2018 for another period of 2 years to complete his total term of 5 years?

Appointment and remuneration of Managerial Personnel

4. (a) The Article of Association of a listed company have fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹ 30,000. In view of the increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.
- (b) Mr. X, a Director of MJV Ltd., was appointed on 1st April, 2013, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31st March, 2017, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid ₹ 50 lacs for the year, as paid to other directors. The effective capital of the company is ₹150 crores. Referring to the provisions of Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to Mr. X.

Meetings of Board and its powers

5. (a) Woodworth Realtors Ltd. is a foreign collaborator in Jai Shri Realtors Limited. M/s. Jai Shri Realtors Ltd. was incorporated in India under the Companies Act, 2013. The foreign collaborator holds 49% of the shareholding. The Board meetings of Jai Shri Realtors Limited are usually held in India and sometimes meetings of the Board are

called at a very short notice for which there is a provision in the Articles of Association that during such situations notices of the meetings of the Board can be sent by e-mail. State in this connection whether such a provision in the Articles of Association of a foreign collaborated company is valid within the purview of the provisions of the Companies Act, 2013?

- (b) M/s. Multiplex Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Delhi. Since it is not possible to convene the Board Meeting immediately as the directors are at different place in connection with various works, the Managing Director seeks your advice on the following matters;
- (i) Whether the resolution pertaining to the joint venture agreement is required to be passed at the Board Meeting convened for this purpose or whether it can be passed by means of a circular resolution?
 - (ii) What are the resolutions that are required to be passed only at the meetings of the Board of Directors?
 - (iii) The steps that are required to be taken to pass the Board resolution by circulation.

Advise the managing Director in the light of the provisions of the Companies Act, 2013.

Inspection, inquiry and Investigation

6. (a) A group of creditors of MBIND Bronze Limited makes a complaint to the Registrar of Companies, Himachal Pradesh alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 am on 6th January, 2018 and the registrar has attempted to enter the premise of the company but has been denied by the company, due to not having order from the special court. It is contention of company being valid in terms of the Companies Act, 2013? Discuss.
- (b) The shareholders of Blue Stone Company Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 201 out of total 600 shareholders of the company have made an application to the Central Government to appoint an Inspector to carry out investigation and find out the true picture. With reference to the provisions of the Companies Act, 2013, advise whether the shareholders' application will be accepted?

Compromises, Arrangements and Amalgamations

7. (a) Cotton On Yarn Ltd., and Country Cotton Blossom Ltd., are two listed companies

engaged in the Business of Textiles. The companies are not making profits and as such their share's market price have gone down. A substantial portion of their share capital is held by Central Government as well as some Public Financial Corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a single company. Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 2013.

- (b) CPR Ltd. and TJC Ltd. are wholly owned by Government of Tamil Nadu. As a policy matter, the Government issued administrative orders for merging TJC Ltd. with CPR Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013. Also state the provisions governing the preservation of Books and Records of TJC Ltd. after merger under the said Act.

Prevention of Oppression and Mismanagement

8. A group of depositors in M/s. Bright Limited, a listed company, appointed Mr. Fair, an advocate as a representative to file an application in the National Company Law Tribunal (NCLT) on the behalf of the depositors to bring a Class Action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are being conducted in a manner which is prejudicial to the interest of the depositors being oppressive.

Examine in the given situation, whether the appointment of Mr. Fair is valid as regards to the filling of the application before the Tribunal in the light to the provisions of the Companies Act, 2013?

Winding Up

9. LED Bulb Ltd., has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company on the above ground under Section 272 of the Companies Act, 2013

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013?

Producer Companies

10. Rajeshree Producer Co. Ltd. was incorporated on 1st April 2010. Its paid up capital ₹ 10 lacs consists of 1 lac equity shares of ₹ 10 each held by 100 individuals. There are 6 directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:
- (i) What is the quorum for the Annual General Meeting?

- (ii) What is the quorum for the Board Meeting?
- (iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether is it permissible?
- (iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2018-19?

Companies incorporated outside India

11. Examine and state whether the following Companies can be considered as 'Foreign Company' under the Companies Act, 2013:
- (i) A company which is incorporated outside India employs agents in India but has no place of business in India.
 - (ii) A company incorporated outside India having shareholders who are all Indian citizens.
 - (iii) A company incorporated in India but all the shares are held by foreigners.
 - (iv) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.

Offences and Penalties, E-governance, National Company Law Tribunal and Appellate Tribunal and Special Courts

12. (a) State the provisions of the Companies Act, 2013 relating to the qualifications prescribed of the Chairperson, Judicial Member and technical Member of the National Company Law Appellate Tribunal. Under what circumstances can they be removed from their respective offices?
- (b) What is the object of constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?

Miscellaneous Provisions

13. (a) XYZ Ltd. had filed certain documents with Registrar of Companies (RoC). The said documents were authenticated by the RoC and kept on record. In a suit against the company the RoC produced the said documents in the court of law. XYZ Ltd. intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original document as evidence. Advise XYZ Ltd. as per the provisions of the Companies Act, 2013.
- (b) Kojol Research Development Ltd. was registered to innovate unique business idea emerging from research and development in a new area. It is a future project and the Company has no significant accounting transactions and business activities. Therefore the company made an application to RoC for obtaining the status of a Dormant Company. The application is under process. In the meantime, the Company

without extinguishing all its liabilities filed an application to RoC for removing the name of the Company, after passing a special resolution giving effect to this.

In the light of the provisions of the Companies Act, 2013, analyse the following:

- (1) Whether the application is tenable under the Act?
- (2) What are the restrictions imposed under the Act for making application by a Company to remove the name of the Company from the register of RoC?
- (3) What are the penal consequences in case of violation of restrictions?

Corporate Secretarial Practice–Drafting of Resolution, Minutes, Notices and Reports

14. Draft a resolution proposed to be passed at a General Meeting of M/s. Red Rooster Limited a public company giving consent to the Board of Directors for borrowing upto a specified amount in excess of the limits laid down under section 180(1)(c) of the Companies Act, 2013 and also state the borrowings, which are to be excluded from the said limits.

The Insolvency and Bankruptcy Code, 2016

15. The following particulars relate to BigRammy (Private) Ltd. which has gone into Corporate Insolvency Resolution Plan (CIRP):

Sr. No.	Particulars	Amount in ₹
1	Amount realized from the sale of liquidation of assets	14,00,000
2	Secured creditor who has relinquished the security	5,00,000
3	Unsecured financial creditors	4,00,000
4	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000
5	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000
6	Fees payable to resolution professional	75,000
7	Expenses incurred by the resolution professional in running the business of the BigRammy (Private) Ltd. on going concern	25,000
8	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month	3,00,000
9	Equity shareholders	10,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency and Bankruptcy Code 2016.

SECTION B: ALLIED LAWS (30 MARKS)**The Securities and Exchange Board of India Act, 1992, Rules, Regulations and Guidelines issued thereunder.**

16. (a) Modern Chemicals Limited, a listed company, propose to make a preferential issue of equity shares to the promoters of the Company. You are required to answer the following with reference to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:-
- (i) What are the conditions to be complied with by the Company to give effect to the proposed preferential issue?
 - (ii) What is the price at which the proposed issue can be made?
 - (iii) What is the lock-in period in respect of shares allotted on preferential basis to promoters?
- (b) On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992.

Securities Contracts (Regulation) Act, 1956

17. (a) SVGM Ltd. got its shares listed with a Stock Exchange. It has been regularly paying the listing fees. Certain information about share holding pattern etc. was asked by the Stock Exchange, which the company could not furnish in the prescribed time. It was then given a further opportunity to furnish the desired information along with supporting document, but in vain, as the company did not maintain any record. What are the penalties leviable against the company under the Securities Contracts (Regulation) Act, 1956 for the failure to furnish the information?
- (b) The Delhi Stock Exchange Ltd. was granted recognition by Securities Exchange Board of India. SEBI received complaint alleging that the said Stock Exchange is indulging in fraudulent activities. SEBI is of the opinion that the recognition granted should be withdrawn in the interest of trade and public. State the provisions to withdraw the recognition under the Securities Contracts (Regulation) Act, 1956. Examine the validity of the contracts entered by the Stock Exchange prior to such withdrawal order.

The Foreign Exchange Management Act, 1999

18. Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1st June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for ₹60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for ₹ 65 lacs. Mr. Henry Benjamin's flat was financed by a

loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are capital Account transactions and whether these transactions are permissible.

The Competition Act, 2002

19. The Competition Commission of India (CCI) has received a complaint from a State Government alleging that X Limited and Y Limited have entered into an informal agreement, not enforceable at law, to limit or control production, supply and market, to determine the sale price of their products. Such an action of these companies has an appreciable effect on competition.

Examining the provisions of the Competition Act, 2002:

- (A) Decide whether the above agreement has appreciable effect on competition.
- (B) What factors shall the Competition Commission of India consider while taking the above decision?
- (C) What orders can the Competition Commission of India pass on completion of the inquiry?

The Banking Regulation Act, 1949, The Insurance Act, 1938. The Insurance Regulatory and Development Authority Act, 1999. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

20. (a) M/s Solomon Optimum Nutrition Limited had availed credit facilities from Royal Bank Ltd. The company made repayment of loan to some extent and not entirely and accordingly, the bank took recourse under the provisions of Section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and was duly advertised by the bank. The company also filed an application under Section 17(1) of SARFAESI Act, 2002 before the debts recovery tribunal which was dismissed by the impugned order. Being aggrieved the company approached the court. Examine in the light of the SARFAESI Act, 2002 whether the company will succeed in the petition filed before the court.
- (b) XLR Bank Limited is not managing its affairs properly. Employees as well as depositors of the bank have complained to the Central Government from time to time about such mismanagement and requested the Central Government to acquire the undertaking of the Banking Company. Explain the powers of the Central Government in this regard under the Banking Regulation Act, 1949.

The Prevention of Money Laundering Act, 2002 and Interpretation of Statutes, Deeds and Documents.

21. (a) Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. Mr. Alfred, a known smuggler was caught in transfer

of funds illegally exporting narcotic drugs from India to some countries in South Africa. State the maximum punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.

- (b) Explain the importance of "Preamble" and "Proviso" being internal aids to interpretation.

SUGGESTED ANSWERS/HINTS

Declaration and payment of Dividend

1. (a) **Interim Dividend:** According to section 123(3) of the Companies Act, 2013, The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. (Amended through the Companies (Amendment) Act, 2017).

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, Interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

- (b) (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

- (ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not

allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

2. (a) **Corporate Social Responsibility Committee:** According to Section 135 of the Companies Act, 2013 read with the *Companies (Corporate Social Responsibility) Rules, 2014*, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -

- (1) net worth of rupees 500 crore or more, or
- (2) turnover of rupees 1000 crore or more or
- (3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

- Paid up share capital is 500 crore,
- turnover of Rera Ltd. is ₹ 100 crore,
- net profit of ₹ 3 crore and
- net worth of ₹ 753 crore (paid up capital + Net profit + securities premium - accumulated loss = 500 + 3 + 300 – 50 = 753 crore).

Hence, RERA Ltd. is fulfilling requirement of net worth prescribed for constitution of CSR committee. So, it is obligatory for Rera Ltd. to constitute CSR Committee.

- (b) (i) **Tenure of Auditor:** Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

- (1) an individual as auditor for more than one term of five consecutive years; and
- (2) an audit firm as auditor for more than two terms of five consecutive years.

Cooling off Period:

- (1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

- (2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

- (ii) As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The *Companies (Audit and Auditors) Rules, 2014* provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

- (A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (B) the proposed appointment is as per the term provided under the Act;
- (C) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Appointment and Qualifications of Directors

3. (a) Under Section 149(1) of the Companies Act, 2013, every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company and one director in the case of a One Person Company. The maximum number of Directors shall be 15. The proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

From the provisions of section 149(1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types of companies. In the given case, since the number of directors is proposed to be increased to 18, the company can do so, provided it complies with the following provisions:

- (1) Alter the Articles of Association under section 14 of the Act, so as to increase the number of directors in the Articles from 15 to 18.
 - (2) Approval by means of a special resolution of members shall be taken at a duly convened general meeting for increasing the number of directors to 18.
 - (i) If the said company would have been a Government Company, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to a Government Company vide Notification GSR 463(E) dated 5th June, 2015.
 - (ii) Similarly, the limit of 15 directors and their increase in limit by special resolution shall not apply to section 8 companies vide Notification GSR 466(E) dated 13th June, 2017.
- (b) As per Section 149(10) of the Companies Act 2013, an Independent Director shall hold office for a term up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) no independent director shall hold office for more than two consecutive terms. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director.

The Ministry of Corporate Affairs in its General Circular 14/2014 dated June 09, 2014 clarified that section 149 (10) of the Act provides for a term of "up to five consecutive years" for an independent director. As such while appointment of an independent director for a term of less than five years would be permissible, appointment of any term (whether for five years or less) is to be treated as one term under section 149 (10) of the Act. Further under section 149 (11) of the Act, no person hold office of independent director for more than 'two consecutive terms'. Such a person shall have to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.

Therefore Mr. Robert cannot be appointed as an Independent Director at the AGM proposed to be held in 2018. In such case, the person completing two consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

Appointment and remuneration of Managerial Personnel

4. (a) Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board / Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director attending meetings of the Board or committees thereof may be decided by the Board of Directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lac per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-dependent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹ 30000 to ₹ 45000 per meeting by passing a resolution in board meeting and altering the Articles of Association by passing special resolution.

- (b) Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding ₹ 120 Lakhs in the year in case the effective capital of the company is between ₹ 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lacs in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ₹ 120 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

Meetings of Board and its powers

5. (a) In terms of the proviso to section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

No exception is made for any class or classes of companies. Further, under section 173(3) a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his addressed registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Hence, the sending of notice by e-mail is an ordinary mode of sending notice of board meeting under the Companies Act, 2013.

Therefore, in the given case the shorter notice is legally permitted with the only condition being the presence of the quorum and at least one independent director. The provision of the Articles in this regard is not relevant as the position is amply clear in the Act itself.

- (b) The directors of the company act together as a body and generally at the meeting of the Board duly convened, unless special powers are delegated to an individual director or the managing director. Where it is not possible to hold board meetings because the directors are busy elsewhere or the time for convening such a meeting is short, it is possible that the required resolution can be passed by way of circular resolution as provided in section 175 of the Companies Act, 2013.

However under section 179 of the Companies Act, 2013, certain powers can be exercised by the Board of directors by means of a resolution passed at meeting convened for this purpose.

They are:

- (1) to make calls on shareholders in respect of money unpaid on their shares
- (2) to authorize buy back of securities under section 68
- (3i) to issue securities, including debentures, whether in or outside India
- (4) to borrow monies
- (5) to invest the funds of the company and
- (6) to grant loans or give guarantee or provide security in respect of loans
- (7) to approve financial statements and-the Board's report
- (8) to diversify the business of the company
- (9) to approve amalgamation, merger or reconstruction
- (10) to take over a company or acquire a controlling or substantial stake in another company.
- (11) Any other matter as prescribed in Rule 8 of the *Companies (Meetings of the Board and its Powers) Rules, 2014*.
 - (i) In view of the above, the Managing Director can go ahead and complete the joint venture agreement after obtaining the approval of the board by passing a circular resolution.
 - (ii) For this purpose, the proposed resolution has to be circulated in draft along with the other necessary papers, if any, to all the directors in India at their usual residential addresses.
 - (iii) The resolution will become valid if the same is approved by majority of the directors and who are entitled to vote on the resolution. There after the resolution as passed by way of circulation will be enterprises in the minutes book of the

Board of Directors and is enough compliance of provisions of the Companies Act, 2013 in this regard.

Inspection, inquiry and Investigation

6. (a) Section 209 of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of:

- A company or
- Relating to the key managerial personnel or
- any director or
- Auditor or
- Company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers:

- a. enter with such assistance as may be required and search the place where such books or papers are kept, and
- b. Seize such books and papers as he considers necessary after allowing the company to take copies of the order from the Special court.

In the given scenario, the registrar has failed to obtain possession from special court. So, he is not authorised to enter the premises of the company and seize the books of accounts of MBIND Bronze Limited. Hence, the contention of MBIND Bronze Limited is valid in law.

- (b) According to the Companies Act, 2013, the Central Government under Section 210(1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

- (i) On the receipt of a report of the Registrar or an Inspector under Section 208
- (ii) On intimation of a special resolution passed by a company that the affairs of the Company ought to be investigated
- (iii) in public interest

According to Section 210(3) of the Companies Act, 2013, the Central Government may appoint one or more persons as Inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

The shareholders application will not be accepted as under Section 210 of the Companies Act, 2013, the Central Government may order an investigation into affairs of the Company on the intimation of a special resolution passed by the Company that the affairs of the Company ought to be investigated and then appoint the Inspectors.

In the given case, the shareholders application will not be accepted as 201 out of total 600 shareholders of the company have made all application to carry out investigation but it is not sufficient as the Company has not passed the special resolution.

Compromises, Arrangements and Amalgamations

7. (a) Central Government may by order provide for amalgamation in public interest.

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government, may, by order notified in the official gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations, as may be specified in the order.

Continuation by or against the transferee company of any legal proceedings

The order may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to amalgamation.

Same interest rights or compensations

Every member or creditor including a debenture holder of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor and in case the interest or rights of such member or creditor in or against the transferee company are less than the interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the official gazette and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(b) Authority to whom the application for merger is to be made

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company.

Thus, In the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official

Gazette, will provide for the amalgamation of the two said companies into a single company.

Preservation of books and records of amalgamated companies

According to Section 239 of the Companies Act, 2013, the books and papers of a Company which has been amalgamated with, or whose shares have been acquired by, another Company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Prevention of Oppression and Mismanagement

8. In the given instance, an appointment of Mr. Fair was made by a group of depositors of M/s. Bright Limited (listed company), as their representative to bring a class action suit against the management of the Company.

The given problem will be dealt with Section 432 read with the 245(10) of the Companies Act, 2013. Section 432 states that a party to any proceeding or appeal before the Tribunal or Appellate Tribunal as the case may be, may appear in person or authorize one or more Chartered Accountant or Company Secretaries or Cost Accountants or legal practitioners or any other person to present his case before the Tribunal or Appellate Tribunal as the case may be.

Whereas, Section 245(10) of the Companies Act, 2013, provides that an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in section 245(1) subject to the compliances of this section.

In view of the above, the appointment of Mr. Fair is valid and an application of Mr. Fair who is a representative of depositors, will be admitted by the Hon'ble Tribunal, provided, the requirement of minimum number of members filing the application under Section 245(3)(ii) is fulfilled.

Winding Up

9. Validity of RoC's action

According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of LED Bulb Ltd. is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

Producer Companies

10. (i) As per Section 581Y of the Companies Act, 1956, unless the Articles requires a larger number, one fourth of the total number of members of the producer company shall be the quorum at a general meeting. In this case, the company has got 100 members and hence, the quorum is 25.
- (ii) Section 581 V of the Companies Act, 1956 provides that the quorum for a meeting of the Board shall be one third of the total strength of directors, subject to a minimum of three. In the given case, $1/3$ of 6 directors comes to 2, but minimum required is 3, hence, the quorum will be 3 directors for a board meeting.
- (iii) Section 581 P of the Companies Act, 1956 empowers the Board of Directors of Producer Company to co-opt one or more experts as director, but not exceeding one fifth of the total number of directors. As there are 6 directors in the given case, hence, co-opting one expert on the Board will be in order.
- (iv) Yes, as per Section 581ZF of the Companies Act, 1956, every producer company is required to have internal audit of its accounts carried out by a Chartered Accountant at such intervals and in such manner as may be specified in the Articles.

Companies incorporated outside India

11. (i) As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which-
- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.
- A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business India though employs agents in India. It will not be deemed to be a foreign company:
- (ii) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business in India.
- (iii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India.

- (iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:
- (a) Business to business and business to consumer transactions, data inter-change and other digital supply transactions
 - (b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India
 - (c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management,
 - (d) Online services such as telemarketing, telecommuting, telemedicine, education and information research.
 - (e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise.

Therefore, looking to the above description, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.

Offences and Penalties, E-governance, National Company Law Tribunal and Appellate Tribunal and Special Courts

12. (a) Section 411 of the Companies Act 2013 prescribes the qualification of the chairperson and the members of the National Company Law Appellate Tribunal.
- (i) **Qualifications of the Chairperson:** The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.
 - (ii) **Qualification of Members:**
 - Judicial Member:** A Judicial member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years.
 - Technical Member:** A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience of not less than 25 years in various specified disciplines related to the management, conduct of affairs, revival, rehabilitation and winding up of companies.
 - Removal of Members:** As per **Section 417** of the Companies Act, 2013, the Central Government may, after consultation with the Chief Justice of India and after providing an opportunity of being heard, remove from the office the President, Chairperson or any Member who:
 - a. has been adjudged an insolvent, or
 - b. been convicted of an offence, which in the opinion of the Central

Government involves moral turpitude; or

- c. has become physically or mentally incapable of acting as such president, Chairperson or Member;
 - d. has acquired financial or other interest as is likely to affect prejudicially his functions as such president, Chairperson or Member;
 - e. has so abused his position as to render his continuance in office prejudicial to the public interest.
- (b) Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government of the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation-and conciliation can be made by:

- (i) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)
- (ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending any, suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

Miscellaneous Provisions

13. (a) Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to the provisions of that section, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purpose of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof of production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

On the ground stated above, XYZ Ltd. cannot validly raise any objection on the documents already filed by it with the Registrar.

- (b) According to Section 248 (1) of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—
- (i) a Company has failed to commence its business within one year of its

incorporation, or;

- (ii) a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company under section 455,
- he shall send a notice to the Company and all the Directors of the Company, of his intention to remove the name of the Company from the register of Companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

According to Section 248 (2) of the Companies Act, 2013, a Company may, after extinguishing all its liabilities, by-

- a special resolution, or
- consent of seventy-five per cent. members in terms of paid-up share capital,
- file an application in the prescribed manner to the Registrar for removing the name of the Company from the register of Companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

(1) Whether the application is tenable under the Act?

In the light of the above provisions, since the Company has applied for the status of dormant Company and also without extinguishing its liabilities applied for the removal of the name of the Company from Register of members, such an application shall not be tenable.

(2) Restrictions

According to Section 249(1) of the Companies Act, 2013,

An application under Section 248 of the Companies Act, 2013, on behalf of a Company shall not be made if, at any time in the previous three months, the Company—

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before ceases of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that

section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(3) Penal Consequences

According to section 249(2) of the Companies Act, 2013, if a Company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.

Corporate Secretarial Practice–Drafting of Resolution, Minutes, Notices and Reports

14. Draft of ordinary resolution under Section 180(1)(c) of Companies Act, 2013

"Resolved that the company hereby consents to the Board of Directors borrowing monies not exceeding ₹ (Rupees) in excess of the aggregate of the *paid-up capital of the company and its free reserves, that is to say reserves not set apart for any specific purpose, as provided in Section 180(1)(c) of the Companies Act, 2013 and in addition to any temporary loans obtained from the company's bankers in the ordinary course of business".

Borrowings

Section 180(1)(c) does not apply to the borrowing by a company by way of temporary loans obtained from the company's bankers in the ordinary course of business. Therefore, in calculating the limits stipulated in this provision, temporary loans obtained from the company's bankers in the ordinary course of business shall be excluded.

The expression 'temporary loans' means loans repayable on demand or within six months from the date of the loan such as short term cash credit arrangements, the discounting of bills and the issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of capital nature [Explanation to Section 180 (1)(c)].

*** Through the enforcement of the Companies (Amendment) Act, 2017 w.e.f 9th February, 2018 , in section 180 in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves" the word "paid-up share capital, free reserves and securities premium" is substituted.**

The Insolvency and Bankruptcy Code, 2016

15. As per section 53 of Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

Insolvency Resolution Process Cost and Liquidation cost to be paid in full

(i)	Fees payable to Resolution Professional in full	75,000
(ii)	Expenses incurred by the Resolution professional in running the business on going concern	25,000
(iii)	Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance ₹ 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.	2,40,000
(iv)	Secured creditor who has relinquished the security	5,00,000
(v)	Unsecured Financial Creditors	4,00,000
(vi)	Income- tax payable with in the period 2 years	50,000
(vii)	Cess to State Government payable with in a period of one year	20,000
(vii)	Balance amount in workmen salary	60,000
	Total distribution in the above priority	13,70,000
	Amount realized from the sale of liquidation of assets	14,00,000
	Balance available to Equity share holder on pro rata basis	30,000

SECTION B: ALLIED LAWS (30 MARKS)

The Securities and Exchange Board of India Act, 1992, Rules, Regulations and Guidelines issued thereunder.

16. (a) (i) Conditions for preferential issue (Regulation 72)

- (1) A Modern Chemicals Limited may make a preferential issue of specified securities, if:
- a special resolution has been passed by its shareholders;
 - all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
 - the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
 - the issuer has obtained the Permanent Account Number of the proposed allottees.

Explanation: Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be

ineligible for allotment of specified securities on preferential basis.

- (2) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:
 - (a) the date of expiry of the tenure of the warrants due to non exercise of the option to convert; or
 - (b) the date of cancellation of the warrants as the case may be.

(ii) Pricing of equity shares (Regulation 76)

- (1) If the equity shares of the Modern Chemicals Ltd. have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
 - (a) The average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or
 - (b) The average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:
 - (a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or
 - (b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
 - (c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-

regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

Explanation: For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

(iii) Lock-in of specified securities (Regulation 78)

The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from the date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be:

Provided that not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of trading approval.

Provided further that equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of date of trading approval pursuant to exercise of options or otherwise, as the case may be.

(b) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or
- (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount

of profits made out of insider trading, whichever is higher.

Securities Contracts (Regulation) Act, 1956

17. (a) According to section 23A of the Securities Contracts (Regulation) Act, 1956, any person who is required under this Act or any rules made thereunder;
- (i) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or byelaws of the recognized stock exchange, 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 for each such failure;
 - (ii) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange and if there is failure to maintain the same, 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.

Therefore, in the given case, SVGM Ltd. is liable under section 23A of the Securities Contracts (Regulation) Act, 1956 as it could not supply the certain information asked by the stock exchange and also did not maintain any record.

(b) Withdrawal of Recognition

Section 5(1) of the Securities Contracts (Regulation) Act, 1956, states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn.

The Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter.

The Central Government may withdraw by notification in the Official Gazette, the recognition granted to the stock exchange.

Contract entered prior to such withdrawal: No such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

As per the proviso to section 5(1), all the contracts entered by the Stock Exchange prior to such withdrawal order shall be valid.

The Foreign Exchange Management Act, 1999

18. Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means

- (a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India
- (b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

- (1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.
- (2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India. In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

The Competition Act, 2002

19. (A) The term 'agreement' as defined in section 2 (b) of the Competition Act, 2002, includes any arrangement or understanding or action in concert.

- (i) whether or not such arrangement, understanding or action is formal or in writing, or

- (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Thus agreement between X Ltd. and Y Ltd. satisfies the above ingredients of an agreement as per section 2 (e) of the Act.

(B) Factors to be considered:

- (1) creation of barriers to new entrants in the market.
- (2) driving existing competitors out of the market.
- (3) foreclosure of competition by hindering entry into the market.
- (4) accrual of benefits to consumers.
- (5) improvements in production or distribution of goods or provision of services

(C) Orders of CCI: If after enquiry by the Director General, the Commission finds the agreement entered into by X Ltd. and Y Ltd. are in contravention of section 3, it may pass all or any of the following orders:

- (1) direct X Ltd. and Y Ltd. to discontinue and not to re-enter such agreement.
- (2) impose such penalty as it may deem fit which shall not be more than 10% of the average of the turnover for the last 3 preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse;
- (3) direct that agreement shall stand modified to the extent and in the manner as may be specified in the order by the commission;
- (4) direct X Ltd and Y Ltd. to abide by such other orders as the commission may pass and comply with the directions including payment of cost, if any.
- (5) pass such other orders or issue such directions as it may deem fit.

The Banking Regulation Act, 1949, The Insurance Act, 1938. The Insurance Regulatory and Development Authority Act, 1999. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

- 20. (a)** According to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with prescribed fees to the Appellate Tribunal within 30 days from the date of receipt of the order of Debts Recovery Tribunal.

Further, no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt.

Thus, in the given situation Solomon Optimum Nutrition Limited can appeal to the Appellate Tribunal (now to NCLAT) by following the above provisions.

- (b) Under Section 36AE of the Banking Regulation Act, 1949, if the Central Government upon a report from RBI, is of the opinion that a Banking company has failed to comply with the directions given by RBI relating to policy matters under section 21 and 35A and or the affairs of the Bank are being managed in a manner detrimental to the interest of depositors or that of the banking policy or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary that the Government may after consultation with RBI, by notified order, acquire the undertaking of a Banking Company. In such a case, on the date specified in the notification, the undertaking of the Banking Company and its assets and liabilities shall stand transferred to and vest in Central Government. Before acquiring the undertaking, the Central Government shall give a reasonable opportunity of hearing to the Banking Company.

The Prevention of Money Laundering Act, 2002 and Interpretation of Statutes, Deeds and Documents.

21. (a) Offence of Money Laundering: Section 2(i)(y) of the prevention of Money Laundering Act, 2002 defines the term "scheduled offence", which accordingly means -
- (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more.
 - (iii) The offences specified under Part C of the Schedule.

These Schedule to the Act gives a list of all the above offences.

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment:

Section 4 of the said Act provides for the punishment for Money- Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

- (b) **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The Preamble may recite the ground and the cause making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the Preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the Preamble does not over-ride the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g., where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.