PAPER – 4 : CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2020 EXAMINATION

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

For May 2020 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 31st October, 2019 are relevant.

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

1	Study Material (Revised edition June 2018) containing Legislative amendments made upto 30th April, 2018.
2	RTP of May 2020 examination containing a gist of all the significant legislative amendments i.e. from 1st May 2018 to 31st October, 2019 along with the suggested sample questions and answers for understanding and practice.
3	Revised chapter of FEMA due to inclusion of topics in the scope of syllabus [hosted on website at https://resource.cdn.icai.org/50863bos40319cp22.pdf
4	Detailed announcement dated 9.7.2019 w.r.t. Inclusions/Exclusions in the scope of syllabus [hosted on the website at https://resource.cdn.icai.org/55779bos45147fold.pdf]

Relevant amendments: Given here are the relevant amendments which shall be read in line with the principal Act. These amendments are arranged chapter wise as per the study material for the convenience of the students.

SECTION A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

Companies (Amendment) Act, 2019: On July 31, 2019, the Ministry of Corporate Affairs introduced the Companies (Amendment) Act, 2019. The Amendment considers changes brought in by the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019 to further amend the Companies Act, 2013.

The Amendment has reinforced the 2018 Ordinance and 2019 Ordinances, and all provisions are deemed to have come into force from November 2, 2018 except some sections which have come into force on August 15, 2019.

CHAPTER 2: ACCOUNTS AND AUDIT

1. Enforcement of the *Companies (Audit and Auditors) second Amendment Rules, 2018* vide Notification G.S.R. 432 (E) dated 7th May 2018

The Central Government makes the *Companies (Audit and Auditors) second Amendment Rules, 2018* to amend the *Companies (Audit and Auditors) Rules, 2014.*

In the Companies (Audit and Auditors) Rules, 2014,

(i) In **rule 3** which deals with the Manner and Procedure of selection and appointment of auditors, following are the amendments:

(a) Explanation shall be omitted.

(b) proviso to sub-rule (7) shall be omitted.

(ii) In the principal rules, **rule 9** which deals with the Liability to devolve on concerned partners only, shall be omitted.

(iii) In the principal rules, in **rule 10A** i.e., related to Internal Financial controls system, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.

(iv) In the principal rules, in **rule 14** which deals with the remuneration of the cost auditor, following are the changes-

(a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

(b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

2. Enforcement of the *Companies (Accounts) Amendment Rules, 2018* vide Notification G.S.R. 725(E) dated 31st July, 2018

The Central Government makes the *Companies (Accounts) Amendment Rules, 2018 to amend the Companies (Accounts) Rules, 2014.*

In the Companies (Accounts) Rules, 2014,

(i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-

"(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,"

(ii) after sub-rule (5), the following **Sub Rule (6),** rule shall be inserted, namely:-

"(6) This rule shall not apply to One Person Company or Small Company".

(iii) after rule 8, the following **rule 8A** shall be inserted, namely:-

"8A. Matters to be included in Board's Report for One Person Company and Small Company-

(1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

(d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

(f) the state of the company's affairs;

(g) the financial summary or highlights;

(h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

(i) the details of directors who were appointed or have resigned during the year;

(j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.".

3. Enforcement of the *Companies (Corporate Social Responsibility Policy) Amendment Rules*, 2018 vide Notification G.S.R. 865 (E) dated 19th September, 2018

The Central Government makes *the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* to amend the *Companies (Corporate Social Responsibility Policy) Rules, 2014.*

In *Companies (Corporate Social Responsibility Policy) Rules, 2014*,

(i) in rule 2 which deals with the definitions, -

(a) in sub-rule (1), in sub-clause (i) of clause (c) which defines "Corporate Social Responsibility (CSR)", after the words "relating to activities", the words ", areas or subjects" shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted;

(c) in sub-rule (1), in clause (e) which defines "CSR Policy", for the words "company as", the words "company in areas or subjects" shall be substituted.

(ii) in **rule 5** which deals with the "CSR Committees", in clause (i) of sub rule (1), for the words "an unlisted public company or a private company", the words "a company" shall be substituted.

(iii) In **rule 6** which states of **CSR Policy**, following are the changes-

(a) in sub-rule (1), in clause (a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted;

(b) in sub-rule (1), in second proviso to clause (b), for the words, "activities included in Schedule VII" the words "areas or subjects specified in Schedule VII" shall be substituted.

(iv) in **rule 7** i.e., "CSR Expenditure", for the words, "purview of", the words "areas or subjects, specified in" shall be substituted.

4. Constitution of NFRA

The Central Government vide Notification No. S.O. 5099(E) appoints the 1st October, 2018 as the date of constitution of National Financial Reporting Authority.

5. Enforcement of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 i.e., related "Constitution of National Financial Reporting Authority" of the Companies Act, 2013

The Central Government vide Notification S.O. 5385(E) appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013 shall come into force.

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

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	In section 129 of the principal Act, for **sub-section (*3*),** the following sub-section shall be substituted, namely:— "(*3*) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (*2*), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*):

	Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."
Amendment of section 134 (Financial statement, Board's report, etc.)	In section 134 of the principal Act,— (a) for **sub-section (1),** the following sub-section shall be substituted, namely:— "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; (b) in **sub-section (3),—** (i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"; (ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; (iii) after clause (q), the following provisos shall be inserted, namely:— "Provided that where disclosures referred to in this sub-section have been included in the financial

	statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available."; (c) after sub-section (3), the following **sub-section 3A** shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".
Amendment of section 135 (Corporate Social Responsibility)	In section 135 of the principal Act,— (i) in **sub-section (1),—** (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (*4*) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."; (ii) in **sub-section (3),** in clause (*a*), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (iii) in **sub-section (5),** for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'
Amendment of section 137 (Copy of financial statement to be filed with Registrar).	In section 137 of the principal Act,— (i) in **sub-section (1),—** (a) the words and figures "within the time specified under section 403" shall be omitted;

	(b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted; (*c*) after the fourth proviso, the following proviso shall be inserted, namely:— 'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'. (ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted; (iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in **sub-section (1),** the first proviso shall be omitted.

7. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of Section 132	(a) **after sub-section (*1*),** the following sub-section shall be inserted, namely:— "(*1A*) The National Financial Reporting Authority (NFRA) shall perform its functions through such divisions as may be prescribed." (b) **after sub-section (*3*),** the following sub-sections shall be inserted, namely:— "(*3A*) Each division of the NFRA shall be presided over by the	**15th August, 2019**

	Chairperson or a full-time Member authorised by the Chairperson. (*3B*) There shall be an executive body of the NFRA consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (*2*) [other than clause (*a*)] and sub-section (*4*)."; (c) **in sub-section (*4*),** in clause (*c*), for sub-clause (*B*), the following sub-clause shall be substituted, namely:— "(*B*) debarring the member or the firm from— I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA."	
Amendment of section 137.	**in sub-section (3),—** (a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted; (b) for the portion beginning with "punishable with imprisonment", and ending with "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a	**2nd November, 2018**

	maximum of five lakh rupees" shall be substituted.	
Amendment of section 140.	**for sub-section (3),** the following sub-section shall be substituted, namely:— "(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".	**2nd November, 2018**

8. Amendment in schedule VII: The MCA vide Notification No. G.S.R. 390(E) dated 30th May, 2019 has inserted the following item after item (xi) to Schedule VII:

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

CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. Enforcement of the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* vide Notification G.S.R. 431(E) dated 7th May 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

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

(a) **rule 5** which deals with the Qualifications of Independent director, shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

"(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year."

(b) In the principal rules, **in rule 16** which deals with the copy of resignation of director to be forwarded by him, for the word "shall", the word "may" shall be substituted.

2. Enforcement of the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* vide Notification G.S.R. 558 (E) dated 12th June 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the annexure, for form DIR-3 which deals with the Application for allotment of Director Identification Number, a new form shall be substituted.

3. Enforcement of the *Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018* vide Notification G.S.R. 615(E) w.e.f. 10th July, 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(i) The **rule 11** (related to cancellation or surrender or deactivation of DIN) shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following **rule 12A** shall be inserted, namely:-

"12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.";

(iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

4. Enforcement of the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* vide Notification G.S.R. 798 (E) dated 21st August 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

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

(i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

5. Enforcement of the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* vide Notification G.S.R. 904(E) dated 20th September 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014.*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the proviso to **rule 12A**, for the words and figures "before 15th September, 2018," the words and figures **"before 5th October, 2018 "** shall be substituted.

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

Relevant sections	Amendment
Amendment of section 149 (Company to have board of directors)	In section 149 of the principal Act,— (i) for **sub-section (3),** the following sub-section shall be substituted, namely:— "(*3*) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated"; (ii) in **sub-section (6),—** (a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten

	per cent. of his total income or such amount as may be prescribed," shall be substituted; (b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (*i*), (*ii*) or (*iii*);"; (*c*) in clause (*e*), in sub-clause (*i*), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.".
Amendment of Section 157 (Company to	In section 157 of the principal Act,—

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

Amendment of Section 168 (Resignation of Director)	In section 168 of the principal Act, in **sub-section (1),** in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

7. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section 157.	In section 157 of the principal Act, for **sub-section (2),** the following sub-section shall be substituted, namely:— "(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."	**2nd November, 2018**
Substitution of new section for section 159.	For section 159 of the principal Act, the following **Substitution of section** shall be substituted, namely: **Penalty for default of certain provisions.** "159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a	**2nd November, 2018**

	continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues."	
Amendment of section 164.	In section 164 of the principal Act, in **sub-section (1),** after clause (h), the following clause shall be inserted, namely:— "(i) he has not complied with the provisions of sub-section (1) of section 165."	**2nd November, 2018**
Amendment of section 165.	In section 165 of the principal Act, in **sub-section (6),** for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.	**2nd November, 2018**

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

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

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

(i) for the words "who has been allotted", the words "who holds" shall be substituted;

(ii) for the words, letters and figures "submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year", the words, letters and figures "submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year" shall be substituted;

(iii) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

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

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

CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R 875(E) dated 12th September 2018

The Central Government makes the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* to amend the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.* This amendment has omitted the requirement of approval of the Central Government for making payment of remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

(i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:

  (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.

  (b) the words 'Central Government' shall be omitted.

(ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted

(iii) for form no.MR-2, a new form MR-2 shall be substituted.

2. Amendment in Schedule V to the Companies Act, 2013

The Central Government vide Notification No. S.O. 4822(E) dated 12th September 2018 has amended the Schedule V to the Companies Act, 2013.

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

Relevant Sections	Amendment
Amendment of section 196 (Appointment of MD, WTD, Manager)	In section 196 of the principal Act,— (a) in **sub-section (3),** in clause (a), after the proviso, the following proviso shall be inserted, namely:— "Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.";

	(b) in **sub-section (4),** for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.
Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	In section 197 of the principal Act,— (a) in **sub-section (1),—** (i) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (ii) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted; (iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (b) in **sub-section (3),** the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (c) for **sub-section (9),** the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (d) in **sub-section (10),—** (i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or

	any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (e) in **sub-section (11),** the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (f) after **sub-section (15),** the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."
Amendment of Section 198 (Calculations of Profits)	In section 198 of the principal Act,— (i) in **sub-section (3),—** (a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted; (b) after clause (e), the following clause (f) shall be inserted, namely:— "(f) any amount representing unrealised gains, notional gains or revaluation of assets."; (ii) in **sub-section (4),** in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.

Amendment of section 200 (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section 201 (Forms of, and procedure in relation to, certain applications).	In section 201 of the principal Act,— (a) in **sub-section (1),** for the words "this Chapter", the word and figures "section 196" shall be substituted; (b) in **sub-section (2),** in clause (*a*), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

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

Relevant sections	Amendment	Date of enforcement
Amendment of section 197.	In section 197 of the principal Act (a) **sub-section (7)** shall be omitted; (b) for **sub-section (15),** the following sub-section shall be substituted, namely:— "(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.".	**2nd November, 2018**
Amendment of section 203.	In section 203 of the principal Act, **for sub-section (5),** the following sub-section shall be substituted, namely:— "(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a	**2nd November, 2018**

	further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees."	

CHAPTER 5: MEETING OF BOARD AND ITS POWERS

1. Enforcement of the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* vide Notification G.S.R. 429 (E) dated 7th May, 2018

The Central Government makes the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* to amend the *Companies (Meetings of Board and its Powers) Rules, 2014*.

In *Companies (Meetings of Board and its Powers) Rules, 2014*,

(i) in **rule 4** i.e., related the matters not to be dealt with in a meeting through video conferencing or other audio visual means, the following proviso shall be inserted, namely:-

"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

(ii) In the principal rules, in **rule 6** related to the Committees to the Board, for the words "every listed company", the words "every listed public company" shall be substituted.

(iii) In the principal rules, for **rule 13** i.e. related to the **Special Resolution**, the following rule shall be substituted, namely:-

"13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186."

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

Relevant sections	Amendment
Amendment of section 173 (Meetings of Board)	In section 173 of the principal Act, in **sub-section (2)**, after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other

	audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177 (Audit Committee).	In section 177 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (4),** in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."
Amendment of Section 178 (Nomination and Remuneration Committee and stake holders Relationship committee)	In section 178 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (2),** for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency

	and review its implementation and compliance" shall be substituted; (iii) in **sub-section (4),** in clause (*c*), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (iv) in **sub-section (8),** in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.
Substitution of new section for section 185. (Loan to Directors)	For **section 185** of the principal Act, the following section shall be substituted, namely:— '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (b) the loans are utilised by the borrowing company for its principal business activities.

	Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means— (a) any private company of which any such director is a director or member; (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (3) Nothing contained in sub-sections (*1*) and (*2*) shall apply to— (a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

	Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities. (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'
Amendment of section 186 (Loan and investment by company).	In section 186 of the principal Act,— (i) in **sub-section (2),** the following Explanation shall be inserted, namely:— *'Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'; (ii) for **sub-section (3),** the following sub-section shall be substituted, namely:— '(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly

	owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (*4*).". (iii) for **sub-section (11),** the following sub-section shall be substituted, namely:— "(*11*) Nothing contained in this section, except sub-section (*1*), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (*b*) to any investment— (i) made by an investment company; (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities."; (iv) **in the *Explanation***, in **clause (a),** after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares,

	debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."

3. Amendments through the Companies (Amendment) Act, 2019

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

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

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

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

CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of Section 212	(a) in **sub-section (*8*),** for the words "If the Director, Additional Director or Assistant Director", the words "If any officer not below the rank of Assistant Director" shall be substituted;	**15th August, 2019**

	(b) in **sub-section (*9*),** for the portion beginning with the words "The Director" and ending with the word, brackets and figure "sub-section (*8*)", the words, brackets and figure "The officer authorised under sub-section (*8*) shall, immediately after arrest of such person under such sub-section" shall be substituted; (c) in **sub-section (*10*),—** (i) for the words "Judicial Magistrate", the words "Special Court or Judicial Magistrate" shall be substituted; (ii) in the proviso, for the words "Magistrate's court", the words "Special Court or Magistrate's court" shall be substituted; (d) after **sub-section (*14*),** the following sub-section shall be inserted, namely:— "(*14A*) Where the report under sub-section (*11*) or sub-section (*12*) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."	

CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

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

Relevant sections	Amendment	Date of Enforcement
Amendment of section 238	In section 238 of the principal Act, in **sub-section (3),** for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.	**2nd November, 2018**

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

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

(a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

(b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

(c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

(d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT

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

Relevant sections	Amendment	Date of Enforcement
Amendment of Section 241	(a) **in sub-section (2),** the following proviso shall be inserted, namely:— "Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench."; (b) after **sub-section (2),** the following sub-sections shall be inserted, namely:— **"(3)** Where in the opinion of the Central Government there exist circumstances suggesting that— (a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust; (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or	**15th August, 2019**

		prudent commercial practices; (c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.	

	(4) The person against whom a case is referred to the Tribunal under sub-section (*3*), shall be joined as a respondent to the application. **(5)** Every application under sub-section (*3*)— (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.".	
Amendment of Section 242	after **sub-section (*4*),** the following sub-section shall be inserted, namely:— **"(*4A*)** At the conclusion of the hearing of the case in respect of sub-section (*3*) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.".	**15th August, 2019**
Amendment of Section 243	(a) after **sub-section (*1*),** the following sub-sections shall be inserted, namely:—	**15th August, 2019**

	"(*1A*) The person who is not a fit and proper person pursuant to sub-section (*4A*) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. (*1B*) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office."; (b) in **sub-section (*2*),** after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "or sub-section (*1A*)" shall be inserted.	

2. Enforcement of the *National Company Law Tribunal (Second Amendment) Rules, 2019* vide Notification G.S.R. 351(E) dated 8th May, 2019

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

In *National Company Law Tribunal Rules, 2016*,

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

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

(i) (a) at least five per cent. of the total number of members of the company; or

(b) one hundred members of the company,

whichever is less; or

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

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

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

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or

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

CHAPTER 10: WINDING UP

Amendments through the Companies (Amendment) Act, 2019

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

CHAPTER 16: SPECIAL COURTS

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

Relevant sections	Amendment
Amendment of section 435. (Establishment of Special Courts)	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

	(2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.".
Amendment of section 438 (Application of Code to proceedings before Special court)	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section 439 (Offences to be non cognizable).	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section 440 (Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

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

Relevant sections	Amendment	Date of Enforcement
Amendment of section 446B.	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.	2nd November, 2018

CHAPTER 17: MISCELLANEOUS PROVISIONS

1. Enforcement of the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017.*

In *Companies (Registered Valuers and Valuation) Rules, 2017,* **in rule 19** which relates to Committee to advise on valuation matters, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.".

2. Enforcement of the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* vide Notification G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017.*

In the *Companies (Registered Valuers and Valuation) Rules, 2017,*

(i) in **rule 11** i.e., related to **Transitional Arrangement,** for the figures, letters and word "30th September, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.

(ii) In the said **rules, in rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words "one year", the words "two years" shall be substituted.

3. Enforcement of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 vide Notification G.S.R.1108(E) dated 13th November 2018

The Central Government makes the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 *to amend the* Companies (Registered Valuers and Valuation) Rules, 2017.

In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules")

(i) **in rule 1, -**

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

"Short title, commencement and application";

(b) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

Explanation.- It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules."

(ii) **In the said rules, in rule 3, in sub-rule (2), -**

(a) in clause (a), the word "not" shall be omitted;

(b) in clause (c), after the brackets and letter "(e)", the brackets and letter "(f)," shall be inserted.

(iii) **In the said rules, in rule 4,-**

(a) in clause (c), the words, brackets and letters "and having qualification mentioned at clause (a) or (b)" shall be omitted;

(b) in Explanation II, the words "and examination or training" shall be omitted;

(c) after Explanation II, the following Explanation shall be inserted, namely :-

"Explanation III.— For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.".

(iv) In the said rules, **in rule 10**, the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority" shall be omitted.

(v) In the said rules, in **rule 11**, the Explanation shall be omitted.

(vi) In the said rules, in **rule 12**, in sub-rule (1), in clause (ii), for the words "a professional institute", the words "it is a professional institute" shall be substituted.

4. Enforcement of the *Companies (Adjudication of Penalties) Amendment Rules, 2019* vide Notification G.S.R. 131(E) dated 19th February, 2019

The Central Government makes the ***Companies (Adjudication of Penalties) Amendment Rules, 2019*** *to amend the Companies (Adjudication of Penalties) Rules, 2014.*

In the Companies (Adjudication of Penalties) Rules, 2014, for Rule 3, the following rule shall be substituted:

"3. Adjudication of Penalties. - (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than 15 days and more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, the company, and each of the officers in default, or the other person. as the case may be and also draw attention to the relevant

penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice.

However, the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding 15 days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

If any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment:

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

(a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);

(b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs portal only.

(15) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

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

Relevant sections	Amendment	Date of Enforcement
Amendment of section 248	In section 248 of the principal Act, in **sub-section (1),—** (i) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted; (ii) after clause (c) and before the long line, the following clauses shall be inserted, namely:— "(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or (e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".	**2nd November, 2018**
Amendment of section 447.	In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.	**2nd November, 2018**
Amendment of section 454	In section 454 of the principal Act, — (i) for **sub-section (3),** the following sub-section shall be substituted, namely: — "(3) The adjudicating officer may, by an order (a) impose the penalty on the company, the officer who is in default, or any other person, as	**2nd November, 2018**

	the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit."; (ii) in **sub-section (4),** for the words "such company and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted; (iii) in **sub-section (8),—** (a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted; (b) in clause (ii)— (i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted; (ii) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.	

Insertion of new section 454A.	After section 454 of the principal Act, the following section shall be inserted, namely: **Penalty for repeated default.** "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.".	**2nd November, 2018**

5. Amendment in Section 406: Section 406 has been substituted by the Companies (Amendment) Act, 2017, with effect from **15th August, 2019**

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

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

6. Enforcement of the *Nidhi (Amendment) Rules, 2019* via G.S.R. 467(E) dated 15th August, 2019

The Central Government makes *the Nidhi (Amendment) Rules, 2019* to amend *Nidhi Rules, 2014.*

In the *Nidhi rules, 2014* (hereinafter referred to as "said rules"):

1. in **rule 2**, after clause (c), the following clause shall be inserted, namely:-

   "(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act".

2. in **rule 3,** after clause (d), the following clause shall be inserted, namely:-

   '(da) "*Nidhi*" means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.'.

3. In the said rules, **after rule 3**, the following rule shall be inserted, namely:-

   "3A. Declaration of Nidhis.– The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette:

   Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:-

   (a) one year from the date of its incorporation; or

   (b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:

   Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein:

   Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).".

4. In the said rules, **in rule 4, -**

   (i) in sub-rule (1), the words, "to be incorporated under the Act" shall be omitted;

   (ii) in sub-rule (5), the words "Company incorporated as a" shall be omitted.

5. In the said rules, **in rule 5**, –

(i) in sub-rule (1), for the words "from the commencement of these rules", the words "from the date of its incorporation" shall be substituted;

(ii) in sub-rule (3), before the Explanation, the following proviso shall be inserted, namely:-

"Provided that the Regional Director may extend the period upto one year from the date of receipt of application.".

(iii) in sub-rule (4), after the words, brackets and figure "contained in sub-rule (1)", the words, brackets and figures "and gets itself declared under sub-section (1) of section 406" shall be inserted.

6. In the said rules, in **rule 7,** in sub-rule (1), after the words "shall issue" the words "fully paid up" shall be inserted.

7. In the said rules, in **rule 12,**–

(i) in sub-rule (1) after clause (b), the following clause shall be inserted namely:-

"(ba) The date of declaration or notification as Nidhi";";

(ii) in sub-rule (2), in clause (a), for the words "Registrar of Companies", the words "Bench of the National Company Law Tribunal" shall be substituted.

8. In the said rules, in **rule 23**, in sub-rule (2),-

(i) for the words "concerned Regional Director", the words, "Central Government" shall be substituted;

(ii) for the words "such Regional Director", the words, "Central Government" shall be substituted;

(iii) in the proviso, for the words "Regional Director", the words, "Central Government" shall be substituted.

9. In the said rules, **after rule 23**, the following rules shall be inserted, namely:-

23A. Compliance with rule 3A by certain Nidhis:- Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:

Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

23B. Companies declared as Nidhis under previous company law to file Form NDH-4:- Every company referred in clause (a) of rule 2 shall file Form NDH-4

alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:

Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019:

Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

(I) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018.**

Following are the relevant amendments:

(1) In **section 3(12),** in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.

(2) In **section 5** of the principal Act,

(i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'

(ii) in **clause (8)** prescribing the term **"Financial Debt"** in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iii) in **clause (12) i**.e., as to the **"Insolvency commencement date",** the following proviso shall be inserted, namely:—

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency

commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";

(iv) **after clause (24),** the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'

(3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

(4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—

(i) in **clause (a),** for the words "if any, and", the words "if any, or" shall be substituted;

(ii) in **clause (b),** for the word "repayment", the word "payment" shall be substituted;

In the Explanation, for the word "repayment", the word "payment" shall be substituted.

(5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—

(i) in **clause (c),** for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;

(ii) for **clause (d),** the following clauses shall be substituted, namely:—

"(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —

(a) in **clause (i), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted;

(b) in **clause (ii), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted.

(7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-

"(3) The corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";

(8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant**,** following amendments have been made—

(i) in **clause (a),** after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

(ii) in **clause (b),** after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

(9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.

(10) **After section 12** of the principal Act, the section 12A shall be inserted-

"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval

of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

(11) S**ection 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—

"(3) The provisions of **sub-section (1)** shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.".

(12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.

(13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.

(14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;

(15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP**,** the following **section 17(2)(e),** shall be inserted,

"(*e*) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

(16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —

(i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (*6*) or sub-section (*6A*) or sub-section (*5*) of section 24, if it is a related party of the corporate debtor," shall be substituted;

(ii) after this proviso under sub-section (*2*), the following **proviso is inserted**-

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

(iii) **Insertion of new sub-section 6(A) & 6(B)** after sub-section (*6*)-

"(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (*a*) or sub-section (*6*), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (*a*) or clause (*b*) or clause (*c*) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

(i) under clauses (*a*) and (*c*) of sub-section (*6A*), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (*b*) of sub-section (*6A*) shall be as specified which shall form part of the insolvency resolution process costs.";

(iv) for **sub-sections (7) and (8),** the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (*6*) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."

(17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;

(18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of

the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

(19) In **section 24(3)** of the principal Act, in clause (*a*), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (*6*) and (*6A*) of section 21 and sub-section (*5*)" shall be substituted;

(20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

'25A. (1) **Right to participate and Vote on behalf of FC:** The authorised representative(AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor(FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

Duty of AR to circulate agenda & minutes to FC: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

AR to act on instruction of FC: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

To ensure recording of instruction by IRP/RP: The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

(21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-

"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

(22) Amendment in **section 28(3)** of the principal Act which deals with the approval of committee of creditors for certain actions, for the word, "seventy-five", the word "sixty-six" shall be substituted.

(23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.

(i) in clause (c),—

(a) for the words "has an account,", the words "at the time of submission of the resolution plan has an account," shall be substituted;

(b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression **"related party"** here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (*iii*) of *Explanation* I;";

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

(v) in clause (h), —

(a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

(b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation* I*,* and in *Explanation* I as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (*iii*) of *Explanation* I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;';

(viii) after **Explanation I** as so numbered, the following Explanation shall be inserted, namely:—

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.'.

(24) **Amendment in section 30:** The said section deals with the submission of resolution plan. Following are the amendments-

(i) in **sub-section (1),** after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(ii) in **sub-section (2),—**

(a) in clauses (*a*) and (*b*), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (*f*), the following *Explanation* shall be inserted, namely:—

"Explanation.—For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

(iii) in **sub-section (4),—**

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

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

namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall

apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

25. **Amendment in section 31** of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(*4*) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (*1*), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (*1*) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;

b. in **sub-section (4)**,—

i. in clause (*b*), for the words "in writing", the words "in writing; or" shall be substituted;

ii. after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) the resolution professional fails to submit written consent under sub-section (*1*).";

c. in **sub-section (5),** for the word, brackets and letter "clause (*a*)", the words, brackets and letters "clauses (*a*) and (*c*)" shall be substituted;

d. in **sub-section (6),** after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.

28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

29. In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

(II) Usage of the word **"any other person on behalf of the financial creditor**, as may be notified by the Central Government" **under section 7(1)** of the IBC has been clarified by notification issued by Ministry of Corporate Affairs. **Vide Notification S.O. 1091(E), dated 27th February, 2019**, the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

(i) a guardian;

(ii) an executor or administrator of an estate of a financial creditor;

(iii) a trustee (including a debenture trustee); and

(v) a person duly authorised by the Board of Directors of a Company.

(III) The Insolvency and Bankruptcy Code (Amendment) Act, 2019

Ministry of Corporate Affairs vide Notification S.O. 2953(E) dated 16th August, 2019, in exercise of the powers conferred by sub-section (2) of section 1 of **the Insolvency and Bankruptcy Code (Amendment) Act, 2019**, the Central Government hereby appoints the date of publication of this notification in the Official Gazette as the date on which the provisions of the said Act shall come into force.

Following are the relevant amendments:

(i) In **section 5(26)** pertaining to the definition "resolution plan", following explanation is added.

"Explanation.—For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;"

(ii) **In section 7(4)** of the Code, following proviso shall be inserted:

"Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same."

(iii) In section 12 which deals with the Time-limit for completion of insolvency resolution process. – Following provisos have been added after the proviso to section 3:

"Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019".

(iv) In section 25A after sub-section 3, following sub-section shall be added:

"(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12 A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).**"**

(v) In section 30(2)(b), the following shall be substituted:

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code

(Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"

(vi) In section 31(1) of the Code, after the words "members, creditors," the following words shall be inserted:

"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,"

(vii) In section 33(2), following explanation shall be added:

"Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."

PART II: ALLIED LAWS

CHAPTER 20: SEBI ACT, 1992

Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated 21st February, 2019 has substituted Clause (e) of sub-section (4) of Section 11 of the SEBI Act, 1992 which is as follows:

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

CHAPTER 21: The Securities Contracts (Regulation) Act, 1965

Vide Finance Act, 2018, w.e.f. 8.3.2019 following Changes are made in the SCRA-

(i) In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Part referred to as the principal Act), section 12A shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

"(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.".

(ii) In section 23 of the principal Act, in sub-section (1), in the long line, after the words "Adjudicating officer", the words "or the Securities and Exchange Board of India" shall be inserted.

(iii) In section 23A of the principal Act, in sub-clause (a), after the words "bye-laws of the recognised stock exchange", the words "or who furnishes false, incorrect or incomplete information, document, books, return or report" shall be inserted.

(iv) In section 23E of the principal Act, after the words "mutual fund", the words "or real estate investment trust or infrastructure investment trust or alternative investment fund", shall be inserted.

(v) In section 23G of the principal Act, after the words "periodical returns", the words "or furnishes false, incorrect or incomplete periodical returns" shall be inserted.

(vi) After section 23G of the principal Act, the following section shall be inserted, namely:- "23GA. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.".

(vii) In section 23-I of the principal Act, in sub-section (1), for the word "shall", the word "may" shall be substituted.

(viii) In section 23J of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted, namely:- "Factors to be taken into account while adjudging quantum of penalty.";

(b) for the word, figures and letter "section 23-I" the words, figures and letters "section 12A or section 23-I" shall be substituted.

(c) for the words "the adjudicating officer", the words "the Securities and Exchange Board of India or the adjudicating officer" shall be substituted.

(ix) In section 23JA of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.".

(x) In section 23JB of the principal Act, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

(xi) After section 23JB of the principal Act, the following section shall be inserted, namely:-

'23JC. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly; (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.-For the purposes of this section ''Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'.

(xii) In section 23M of the principal Act,-

(1) after the words "adjudicating officer" at both the places where they occur, the words "or the Securities and Exchange Board of India" shall be inserted;

(2) in sub-section (2), for the words, "any of his direction or orders" the words "the direction or order" shall be substituted.

(xiii) In section 24 of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted:- "Contravention by companies;";

(b) in sub-section (1), for the words "an offence", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(c) in sub-section (2), for the words "an offence under this Act", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(d) for the word "offence", wherever it occurs, the word "contravention" shall be substituted.

CHAPTER 22: The Foreign Exchange and Management Act, 1999

[Amendments of this chapter has already been incorporated in the revised chapter hosted on the website]

(1) Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019 w.e.f. 26-2-2019. Following are the relevant amendments -

(i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:

"(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables."

(ii) **In schedule I** (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:

"(k) Undertake derivative contracts"

(iii) **In the schedule II** (classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:

"(**h) Undertake derivative contracts**"

(2) Amendment in Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f 15.10.2019.

Amended section with the changes marked in bold, is as follows:

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions;

(c) any conditions which may be placed on such transactions:

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

(3) [***]

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

(7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

(3) Amendments in External Commercial Borrowings

Vide FED Master Direction No.5/2018-19, amendments have been made in the Transactions on account of External Commercial Borrowings (ECB) . Here is the updated master direction –external commercial borrowings.

Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

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7.3	Refinancing of existing ECB
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Introduction: External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis.

2.1. ECB Framework: The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

Sr. No.	Parameters	Foreign Currency (FCY) denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; Foreign Currency Convertible Bond (FCCBs); Foreign Currency Exchangeable Bond (FCEBs) and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive Foreign Direct Investment. Further, the following	a) All entities eligible to raise FCY ECB; and

<table>
<tr><td></td><td></td><td>entities are also eligible to raise ECB:
i. Port Trusts;
ii. Units in SEZ;
iii. SIDBI; and iv. EXIM Bank of India.</td><td>b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.</td></tr>
<tr><td>iv</td><td>Recognised lenders</td><td colspan="2">The lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities Commission (IOSCO) compliant country, including on transfer of ECB. However,
a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).</td></tr>
<tr><td></td><td></td><td colspan="2">Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.</td></tr>
<tr><td>V</td><td>Minimum Average Maturity Period (MAMP)</td><td colspan="2">MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:
<table>
<tr><th>Sr. No.</th><th>Category</th><th>MAMP</th></tr>
<tr><td>(a)</td><td>ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td><td>1 year</td></tr>
<tr><td>(b)</td><td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans</td><td>5 years</td></tr>
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<tr><td></td><td></td><td>
<table>
<tr><td>[1](c)</td><td>ECB raised for
(i) working capital purposes or general corporate purposes
(ii) on-lending by NBFCs for working capital purposes or general corporate purposes</td><td>10 years</td></tr>
<tr><td>(d)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>7 years</td></tr>
<tr><td>(e)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for purposes other than capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>10 years</td></tr>
<tr><td colspan="3">for the categories mentioned at (b) to (e) –
(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks
(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</td></tr>
</table>
</td></tr>
<tr><td>vi</td><td>All-in-cost ceiling per annum</td><td>Benchmark rate plus 450 bps spread.</td></tr>
<tr><td>vii</td><td>Other costs</td><td>Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the ted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.</td></tr>
<tr><td>Viii</td><td>End-uses (Negative list)</td><td>The negative list, for which the ECB proceeds cannot be utilised, would include the following:
a) Real estate activities.
b) Investment in capital market.
c) Equity investment.</td></tr>
</table>

[1] Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

		d) [2]Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above. e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above. f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above. g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.
x	Hedging provision	The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of	Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.

[2] Substituted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019. Prior to substitution it read as below:

a) Working capital purposes except from foreign equity holder.
b) General corporate purposes except from foreign equity holder.
c) Repayment of Rupee loans except from foreign equity holder.
d) On-lending to entities for the above activities.

		the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured: **a. Coverage:** The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower). **b. Tenor and rollover:** A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB. **Natural Hedge:** Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

Note: The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. [3]Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

2.2. Limit and leverage: Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions: Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

4. Parking of ECB proceeds: ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

4.1 Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

4.2 Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

5. Procedure of raising ECB: All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework**.** For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.

[3] Inserted vide A.P. (DIR Series) Circular No. 17 dated January 16, 2019.

ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

6. Reporting Requirements: Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

6.1 Loan Registration Number (LRN): Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management (DSIM), External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

6.2 Changes in terms and conditions of ECB: Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

6.3 Monthly Reporting of actual transactions: The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

6.4 Late Submission Fee (LSF) for delay in reporting:

6.4.1 Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000

2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

6.4.2 The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

6.5 Standard Operating Procedure (SOP) for Untraceable Entities: The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

i. Definition: Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

(a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;

ii. Action: The followings actions are to be undertaken in respect of 'untraceable entities':

(a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

(b) No fresh ECB application by the entity should be examined/processed by the AD bank;

(c) Directorate of Enforcement should be informed whenever any entity is designated

(d) 'UNTRACEABLE ENTITY'; and

(e) No inward remittance or debt servicing will be permitted under auto route.

7. Powers delegated to AD Category I banks to deal with ECB cases: The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

7.1 Change of the AD Category I bank: AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

7.2 Cancellation of LRN: The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.

7.3 Refinancing of existing ECB: Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna public sector undertakings.

7.4 Conversion of ECB into equity: Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

(i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.

(ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

(iii) Applicable pricing guidelines for shares are complied with; iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:

(a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form

ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".

(b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

(c) For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.

(iv) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

(v) Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

(vi) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

7.5. Security for raising ECB: AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

i. the underlying ECB is in compliance with the extant ECB guidelines,

ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and

iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

iv Creation of Charge on Immovable Assets: The arrangement shall be subject to the following:

(a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.

(b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.

(c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

v **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.

vi **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:

(a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.

(b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.

(c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.

vii **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:

(a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.

(b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.

(c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.

(d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

7.6. Additional Requirements: While exercising the delegated powers, the AD Category I banks should ensure that:

i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring. ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.

8. Special Dispensations under the ECB framework:

8.1 ECB facility for Oil Marketing Companies: Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

8.2 ECB facility for Startups: AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

i. Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB.

ii. Maturity: Minimum average maturity period will be 3 years.

iii. Recognised lender: Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant

Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.

iv **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

v **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

vi **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

vii **All-in-cost:** Shall be mutually agreed between the borrower and the lender.

viii **End uses:** For any expenditure in connection with the business of the borrower.

ix **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.

x **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

xi **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

Note: Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

xii **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

xiii **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.

9. Borrowing by Entities under Investigation: All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

10. ECB by entities under restructuring/ ECB facility for refinancing stressed assets:

10.1 An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

10.2 [4]Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

10.3 Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.

11. Dissemination of information: For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

12. Compliance with the guidelines: The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned.

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[4] Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

CHAPTER 23: THE COMPETITION ACT, 2002

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, 13th August, 2019

Vide notification no. F.No. CCI/CD/Amend/Comb. Regl./2019, the Competition Commission of India hereby makes the following regulations further to amend the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, namely:—

(1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 w.e.f. 15th day of August, 2019.

(2) In **regulation 5** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the following regulation shall be inserted, namely:-

"5A. Notice for approval of combinations under Green Channel.-

(1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect, the notice given and the approval granted under this regulation shall be void *ab initio* and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an opportunity of being heard before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.";

(3) in **regulation 13,** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-

(a) for sub-regulation (1A), the following sub-regulation shall be substituted, namely: -

"(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to

the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.";

(b) sub-regulation (1B) shall be omitted;

CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002

(I) Amendment in section 8 vide Finance Act, 2019, w.r.e.f. 20-3-2019.

Sub-section (3) dealing with the computation of period of attachment/ retention of property / record seized / frozen during investigation, is amended as follows:

(3) Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(*a*) continue during investigation for a period not **exceeding three hundred and sixty-five days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(*b*) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(II) Insertion of section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Verification of identity by reporting entity.

11A. (1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) if the reporting entity is a banking company; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016); or

(c) use of passport issued under section 4 of the Passports Act, 1967 (15 of 1967); or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016), and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and the appropriate regulator.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.—The expressions "Aadhaar number" and "core biometric information" shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar [Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016).]

(III) Amendment in section 12 vide Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Clause (c) & (d) of section 12(1) have been omitted by the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. **25-7-2019**.

Prior to their omission, clauses (*c*) and (*d*) read as under:

"(*c*) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(*d*) identify the beneficial owner, if any, of such of its clients, as may be prescribed;"

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Integrated Multiple Choice Questions/ Multiple Choice Questions

1. Lagus Transport Services Limited (LTSL) is operating in logistics and public transport domain. The company has pan-India presence. As per its Articles of Association, the company can appoint a maximum of 15 directors and all of them shall be rotational directors. Presently, the company has a strength of 14 directors, of which 9 are executive directors and the remaining 5 are non-executive directors. As on 31st March, 2018, its paid-up share capital was ₹ 8.42 crore; the turnover was ₹ 84 crore; and it had, in the aggregate, outstanding loans, debentures and deposits to the tune of ₹ 42 crore.

   In the Annual General Meeting (AGM) held on 20th August, 2018, Anil, Badal, Chanchal and Damodar were appointed as directors in place of Mohan, Navin, Om and Prasad by passing a single resolution with simple majority. It is to be noted that earlier, a motion authorising the appointment of Anil, Badal, Chanchal and Damodar by a single resolution was passed in the meeting and not a single vote was cast against such motion.

   As on 31st March, 2019, the turnover of the company increased to ₹ 120.52 crore but the aggregate of outstanding loans, debentures and deposits reduced to ₹ 40 crore. The paid-up share capital was the same as earlier. Due to the increased turnover there arose the requirement of appointing two independent directors.

   Since the company was required to appoint two independent directors, the total strength of the Board with such appointments would go up to 16 directors from the present 14 whereas according to the Articles, the company can have a maximum of 15 directors. Accordingly, the Articles were altered, and the total strength was increased to 20 directors.

   After altering the Articles, the company proceeded to appoint four independent directors instead of the mandatorily required two since it was felt that such step would strengthen the corporate governance to the maximum extent. The independent directors were - Mrs. Eekam, who is considered 'influencer' on supply chain management and has a lot of expertise in the logistics field; Mrs. Prajna who is a marketing expert; Mrs. Ruchita, who is MBA (Finance and Accounting) from IIM, Ahmedabad; and Mr. Amit, who is skilled in developing customised software. Subsequent to the above developments, the time to hold Annual General Meeting (AGM) approached and it was held on 12th August, 2019, at the registered office of the company at Mumbai.

   Multiple Choice Questions (MCQs)

   1. In this case scenario, Anil, Badal, Chanchal and Damodar were appointed as directors by passing a single resolution at the AGM. Is such appointment valid?

      (a) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is valid because beforehand, a motion authorising their appointment by a single

resolution was passed in the meeting and not a single vote was cast against such motion.

(b) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is not valid because passing of resolution by simple majority indicates that it was not passed unanimously.

(c) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution with simple majority is not valid because such resolution is required to be passed as a special resolution.

(d) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is not valid because in no case more than one director can be appointed by passing a single resolution.

2. In the given case scenario, according to the Articles all the directors are rotational. Had this been not the case, how many directors were required to retire at the AGM which was held on 20th August, 2018?

(a) Five directors

(b) Four directors

(c) Three directors

(d) Two directors

3. In the given case scenario, if it is presumed that as on 31st March, 2019, the turnover of the company is ₹ 87.00 crore and the paid-up share capital is ₹ 12.00 crore, would the company be still mandatorily required to appoint two independent directors?

(a) There is no need to appoint two independent directors since the aggregate of turnover and paid-up share capital has not crossed the threshold of ₹ 100 crore.

(b) Instead of appointing two independent directors, the company is required to appoint only one independent director since the aggregate of turnover and paid-up share capital is above ₹ 90 crore but less than ₹ 100 crore.

(c) The company is required to appoint minimum two independent directors since the paid-up share capital is ₹ 12 crore.

(d) The company is required to appoint only one independent director since the paid-up share capital is below ₹ 15 crore.

4. According to the case scenario, the company altered its Articles of Association so as to increase the total strength of directors up to 20 from the present 15 directors. Which of the following options is applicable in such a case of alteration:

(a) The articles were altered by passing an ordinary resolution.

(b) The articles were altered by passing an ordinary resolution followed by approval sought from the jurisdictional Registrar of Companies.

(c) The articles were altered by passing a Board Resolution with more than seventy-five percent majority.

(d) The articles were altered by passing a special resolution.

5. As on 12th August, 2019, when the AGM of LTSL was held, the total strength of directors reached to 18 due to the appointment of four independent directors. When all the directors are rotational, how many directors shall get retired at this AGM?

(a) Six directors

(b) Five directors

(c) Four directors

(d) Two directors

2. Ali Baba Limited is a listed company incorporated under the provisions of Company Law having its registered office at Andhra Pradesh. Mrs. Smart is a Managing Director of Ali Baba Limited since its incorporation. She was first director and one of the promoters of the company. She has vast experience of managing the company in very efficient manner.

Ali Baba Ltd. is a holding company of PM Limited with a Fira Private Limited as a subsidiary to PM Limited.

Following are the details pertaining to the incorporation of the related entities and its capital structure:

S. No.	Particulars	Ali Baba Limited	PM Limited	Fira Private Limited
1.	Date of Incorporation	17/09/1985	06/09/1988	28/09/1989
2.	Place of Registered Office	Andhra Pradesh	Delhi	Hyderabad
3.	Authorised Share Capital	₹ 100,00,00,000/-	₹ 20,00,00,000/-	₹10,00, 00,000/-
4.	Paid Up Share Capital	₹ 99,00,00,000/-	₹ 10,00,00,000/-	₹ 10,00,00,000/-

Under the guidance of Mrs. Smart, Ali Baba Limited acquired shareholding in PM Limited and thus resulting it into a subsidiary company of Ali Baba Limited. Now the Board of Directors of Ali Baba Limited wishes to nominate Mrs. Smart for the position of Managing Director in PM Limited and also to appoint her as Whole Time Director (WTO) in Fira Private Limited, which is a wholly owned subsidiary (WOS) of PM Limited.

Therefore, the Board of Directors of PM Limited passed a Board Resolution through resolution by circulation to appoint Mrs. Smart as Managing Director of the company. Subsequently, the Board of Directors of Fira Private Limited passed the Board Resolution at Board Meeting, wherein all directors present in the meeting approved the resolution for appointing her as Whole Time Director of the company and then subsequent to unanimous

Board approval, Fira Private Limited also conducted the general meeting for getting approval of shareholders and passed the ordinary resolution to appoint her as Whole Time Director in the company.

Further, for appointment of Mrs. Smart, PM Limited and Fira Private Limited had complied with Schedule V of the Companies Act, 2013 as a result respective companies did not take any approval from Central Government for her appointment as Managing Director and Whole Time Director respectively.

Based on the above provided information and in the light of applicable provisions of the Companies Act, 2013, read with Schedule V of the Act, you are asked to advice on the following Multiple Choice Questions:

1. State on the validity of the appointment of Mrs. Smart as Managing Director in PM Limited in terms of the provisions of the Companies Act, 2013?
   (a) Invalid, as no such appointment was made or approved by resolution passed at the board meeting with the consent of all the directors present at the meeting and supported by general meeting's ordinary resolution under section 196.
   (b) Valid as whole time KMP shall hold office in its subsidiary at the same time.
   (c) Valid with further approval of the Central Government.
   (d) Invalid because a person cannot hold more than one office as Managing Director.
2. Whether Mrs. Smart appointment as Whole Time Director in Fira Private Limited is valid as per provisions of the Companies Act, 2013?
   (a) No, because being Fira Private Limited is private company so rule 8 & 8A of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, not applicable
   (b) Yes, as per section 2(71) it is deemed as public Company
   (c) Yes, on further approval of Central Government
   (d) No, because of restriction under section 203(3) on appointment in more than one company.
3. What will be legal position as to the appointment of Mrs. Smart as Managing Director in PM Limited, if Ali Baba Limited is a Government Company?
   (a) Invalid due to non-compliance of section 203
   (b) Valid in light of the provisions of section 203(4A)
   (c) Valid with approval of Central Government
   (d) Invalid because a person cannot hold office of Managing Director in more than one company.

4. What is the status of Fira Private Limited for the purpose of the applicability of the Companies Act, 2013, if Ali Baba Limited is a Government Company?
   (a) Private Company
   (b) Public Company
   (c) Government Company
   (d) Associate Company
5. Whether appointment of Mrs. Smart as Whole Time Director in Fira Private Limited is legally acceptable, if Ali Baba Limited is a Government Company?
   (a) No, because being Fira Private Limited is private company so rule 8 & 8A of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, not applicable
   (b) Yes, because section 203 is not applicable on Government Companies
   (c) Yes, with further approval Central Government
   (d) No, because of restriction under section 203(3)

3. In case of Topica Sugar Mills Limited, necessary arrangements are in place for conducting of Board Meetings through the means of video conferencing, a facility which Vaibhav and Yukta, the two directors out of six intend to utilize by participating in such meetings through it. During which part of the year they should intimate the company about their participation in Board Meetings through video conferencing?
   (a) At the beginning of the Financial Year.
   (b) At the beginning of the Calendar Year.
   (c) On 1st day of any month falling in the Financial Year.
   (d) Before the Board Meeting.
4. Blue Rose Agri-Products Limited, which is *inter-alia* listed on recognized Stock Exchange, has called an extra-ordinary general meeting (EGM) of the shareholders on 29th January, 2019 at its Head Office in New Delhi to seek approval in respect of certain matters. It so happened that the company received a notice on 25th January, 2019 from the requisite number of small shareholders who proposed appointment of Shivank as their director but it refused to entertain the notice as the same was served quite late. Advise the latest date by which the small shareholders must have given the notice for the appointment of Shivank so that it was not refused by the company.
   (a) The notice should have been served latest by 24th January, 2019.
   (b) The notice should have been served latest by 15th January, 2019.
   (c) The notice should have been served latest by 22nd January, 2019.
   (d) The notice should have been served latest by 19th January, 2019.

5. The IRP appointed for M Ltd. is seeking your views on the constitution of the Committee of creditors of M Ltd. M Ltd. does not have any financial debt other than loan obtained from Mr. A, son of Mr. B, the managing director of M Ltd. Considering the above, identify the appropriate constitution of the committee of creditors out of the following:
   (a) Mr. A, 18 largest operational creditors, 1 representative of all workmen
   (b) 18 largest operational creditors, 1 representative of workmen and 1 representative of employees.
   (c) Only Mr. A since he is the only financial creditor
   (d) 18 largest operational creditors, 1 representative of workmen and 1 representative of employees and the resolution professional.
6. Which of the following terms are not included within arrangements entered into by the Central Government with another country, in relation to reciprocal arrangements under PMLA, 2002?
   (a) Enforcement of the provisions of PMLA, 2002
   (b) Prevention of offence in India under the corresponding PMLA law in force in the other country
   (c) Exchange the history of person if it is wilful offender under the PMLA on annual basis.
   (d) Exchange information to prevent any offence under PMLA, 2002.
7. Mr. V, brother of Mr. R, is a resident of Singapore and he owns an immovable property in Chennai which he inherited from his father, who was a resident of India, Can Mr. V continue to hold the property?
   (a) No, he cannot hold transfer or invest In India, since he is resident outside India.
   (b) Yes, he can continue to hold in India, since he is person of India Origin and the property is located In India.
   (c) Yes, he can continue to hold the property, since this was inherited from a person who was resident in India.
   (d) Yes, he can continue to hold the property, since his brother (Mr. R) uses the property whenever he travels to Chennai.
8. Which among the following is the legally acceptable permissible source for funding overseas direct investment:
   (a) Proceeds of External Commercial Borrowings
   (b) Proceeds of Real estate business
   (c) Proceeds of Banking business
   (d) Proceeds of foreign currency funds raised through other than ADR / GDR issues

Descriptive Questions

9. Aster limited (a listed company) deals in business of trading of raw materials to the manufacturer of the garments. The company was running in losses for past two years. The Board of the company appointed Mr. C with good experience in cost management to overcome the said situation, as whole time director. He was of 70 years on the date of his appointment i.e. 18th December, 2019.

   Following were the relevant extracts from latest audited financial statements (as on 31 March 2019);

   1. Authorised Share capital is ₹ 390 crore, out of which paid up share capital was ₹ 215 crore; company was in process of FPO, hence had balance of ₹ 15 crore in share application money account.
   2. Balance of reserve and surplus was ₹ 170 crore, out of which ₹ 150 crore was general reserve and ₹ 20 crore was on accounts of revaluation reserve.
   3. Outstanding amount for long term loans was ₹ 200 crore
   4. Company had investment of ₹ 40 crore at book value; due to economic slowdown same is not liquid investment.
   5. Accumulated losses were of ₹ 10 crore.

   In the light of the given facts and figures, evaluate the given situations in terms of the relevant provisions of the Companies Act, 2013-

   (i) Validity of appointment of Mr. C, as Managerial Person in office of Whole Time Director in Aster Limited.

   (ii) Compute the Effective Capital of Aster Limited for payment of Managerial Remuneration.

   (iii) Since Aster Ltd. was running in losses, state the maximum amount of remuneration to be paid on yearly basis to each Managerial Person.

10. Fame Ltd. filed an application to the Registrar for removal of the name of company from the register of companies after passing special resolution. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the sanctioning of a compromise or arrangement proposal. The application was filed by the Fame Ltd. two months before the filing of this application to the Registrar.

    Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

    (i) Legality of filing an application by Fame Ltd. Before the Registrar.

    (ii) Consequences if Fame Ltd. files an application in the above given situation.

    (iii) In case Registrar notifies Fame Ltd. as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party?

11. Draft a Board Resolution of disclosure of interest by Mr. J, director of ABC Ltd. in a proposed contract to be entered into with M/s APL & Co. in which, such director is a partner.

12. Enumerate the given situations in the light of the term defined as Current Account Transaction under FEMA.

    (i) An Indian resident imports machinery from a vendor in UK for installing in his factory.

    (ii) An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.

    (iii) An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York.

13. Mr. X was found to be guilty of offence of money-laundering by being involved in an activity connected with proceeds of crime. Adjudicating Authority (AA) as per findings confirmed the attachment of the property and ordered for the investigation. The investigation was initiated by the AA on 1st February, 2019. The attachment of the property of Mr. X was still to be continued by 31st January 2020. Enumerate in the given situation the validity of the attachment period.

14. ABZ Ltd. an unlisted company with total assets of ₹ one crore as per financial statement as on 31st March, 2018, defaulted in the payment of the financial debt against the financial creditor Mr. X. Mr. X filed an application for initiation of insolvency process against ABZ Ltd. under the fast track corporate insolvency resolution process on 31st May 2019. Discuss the relevancy for disposal through the mechanism of the fast track corporate insolvency resolution process and the legal position of holding of fast track corporate insolvency resolution process by Mr. X in the term of the IBC, 2016. Compute the time period for completion of fast track process in the said situation.

15. Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013:

    (i) "Mr. Shyam" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Shyam" is holding securities of "XYZ Ltd." having face value of ₹ 80,000/- (market value ₹ 1,20,000/-). Directors of XYZ Ltd. want to appoint Mr. Shyam as an auditor of the company.

    (ii) Mr. Rakesh is a practicing Chartered Accountant indebted to PQR Ltd. for ₹ 7 Lacs. Directors of PQR Ltd. want to appoint Mr. Rakesh as an auditor of the company.

16. SEBI on a complaint of Mr. KG enquires that Mr. Mehta, a Chief Executive Officer of the X Company, on the basis of unpublished price sensitive information, has been indulged in the trading of the securities of that company. Examine, on the basis of the said finding, what action SEBI can take against Mr. Mehta under the Securities and Exchange Board of India Act, 1992.

17. Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

    (i) The Board of Directors of Happy Ltd. proposes to declare dividend at the rate of 22% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

    (ii) Whether a Company can declare dividend for the financial year in which it incurred loss.

18. PQR Ltd. is holding 30% of the paid up equity capital of Cochin Stock Exchange. The company appoints MNL Ltd. as its proxy who is not a member of the Cochin Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Cochin Stock Exchange can restrict the appointment of MNL Ltd. as proxy for PQR Ltd. and further restrict, the voting rights of PQR Ltd. in the Cochin Stock Exchange.

19. Mr. Mediator was proposed to be appointed as a resolution professional for the corporate insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. Mediator for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016.

20. In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were marked against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013.

21. Mr. Jaydev was the Chairperson of the Competition Commission of India and he ceased to hold his office on 31st March, 2019. Recently, he has been offered the post of the Executive Director with an attractive remuneration and perquisites in the following organisations :

    (i) Arnab Limited, a private sector public company, which has been a party to a proceeding before the Competition Commission of India.

    (ii) National Milk Products Limited, a Government Company, as defined under the provisions of the Companies Act, 2013.

    Mr. Jaydev is confused and seeks your advice regarding selection of the appropriate concern, with which he should join. Examine the situation in the light of the provisions of the Competition Act, 2002 and advise him.

22. Various complaints and allegations been received by the Reserve Bank of India against the conduct of a Co-operative Banking Company to the effect that if un-inspected, the shareholders, depositors and others will suffer heavily, and in this regard the complainants requested for the inspection of the records of the Co-operative bank. Analysing the provisions of the Banking Regulation Act, 1949, decide whether the RBI has powers to inspect the records of the Co-operative Bank to ascertain the truthfulness or otherwise of the complaints.

ANSWERS

Answer 1. Integrated Case Scenario

1. (a)

2. (c)

3. (c)

4. (d)

5. (b)

Answer 2. Integrated Case Scenario-2

1. (a)

2. (b)

3. (b)

4. (c)

5. (b)

Answer 3. (b)

Answer 4. (b)

Answer 5. (b)

Answer 6. (c)

Answer 7. (c)

Answer 8. (a)

9. (i) As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution (SR) with explanatory statement annexed to the notice for such an appointment of person.

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is

satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Therefore, appointment of Mr. C as Whole Time Director in Aster Ltd. being of 70 years, is valid in compliance to above legal provisions.

(ii) As per section II of Part II of Schedule V to the Companies Act 2013- "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

According to the particulars given:

Particulars	**Amounts (in Crore)**
Paid up share capital (Excluding share application money) (215-15)	₹ 200
General Reserve (Excluding Revaluation Reserve) (170-20)	₹ 150
Long term loans	₹ 200
Less; Investments (40) and Accumulated losses (10)	₹ 50
Effective Capital	₹ 500

(iii) As per Section II of Part II of Schedule V to the Companies Act 2013, in case of no or inadequate profits, if effective capital of company is ₹ 250 crore or more then, yearly remuneration per person payable shall not exceed by ₹ 120 lakh plus 0.01% of the effective capital in excess of ₹ 250 crore.

The maximum remuneration that may be paid to each managerial person will be [120 lakh + (0.01% x 250 cr)] = 122.5 lakh.

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

10. According to the 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 section 248(1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further, Section 249 provides restrictions on making application under section 248 .

An application under section 248 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 cesser 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.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1), any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However, a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

(i) As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts, application to the registrar for removal of the name of company from the register of companies, was filed by the Fame Ltd. within three months to the filing of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore, filing of such an application by Fame Ltd is not valid.

(ii) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

(iii) According to the provision given in section 252(1), a person aggrieved by an order of the Registrar, notifying Fame Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
- if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Fame Ltd. in the register of companies.
- A reasonable opportunity is given to the Fame Ltd. and all the persons concerned.

11. Board Resolution of disclosure of Interest U/s 184

Resolved that pursuant to section 184(1) of the Companies Act, 2013 read with Rule 9(1) of the *Companies (Meetings of Board and its powers) Rules, 2014*, and other applicable provisions of the Companies Act, 2013, the general notice of disclosure of interest or concern in Form *MBP-1* received from Mr. J, Director of the company, as placed before the meeting, be and hereby noted and taken on record by the Board.

Resolved further that Mr. J, Director of the company, and Mr. ----------Company Secretary of the company be and hereby severally authorised to make necessary entries in the register maintained for the purpose.

Further resolved that Mr. ---------- Company secretary and Mr. J director of the company, be and are severally authorised to affix his/ her DSC and file e-form MGT-14 with the Registrar of Companies.

12. (i) As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence, the said transaction, is a Current Account Transaction.

(ii) As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction

[Section 2(j)(i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence, import of machinery on credit terms is Current Account Transaction.

(iii) Under accounts and income-tax law, gift is a "capital receipt". However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence, it is a Current Account Transaction.

13. Order for attachment/retention of property etc.: As per section 8 of the PMLA, 2002, where the Adjudicating Authority (AA) decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect.

Period for attachment, retention, or freezing of the seized or frozen property or record: Whereupon such attachment, retention, or freezing of the seized or frozen property or record, AA shall—

(a) continue during investigation, for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under section 8(7) or section 8(5) or section 58B or section 60(2A) by the Special Court .

For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

Accordingly, the attachment of the property of Mr. X to be continued by 31st January 2020 is valid as it is within 365 days from the date of order of the investigation by the Adjudicating Authority.

14. Fast track corporate insolvency resolution process is a speedy process for corporate insolvency resolution for small corporates.

As per section 55 of the IBC, 2016, it is applicable to following corporate debtors - (a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or (c) such other category of corporate persons as may be notified by the Central Government.

Applicability of the provisions - The provisions are applicable to - (a) small company under section 2(85) of Companies Act (b) a start-up (other than partnership firm) [as defined by Ministry of Commerce and Industry notification No. GSR 501(E) dated 23-5-2017] (c) an unlisted company with total assets not exceeding ₹ one crore as per financial statement immediately preceding the financial year [SO 1911(E) dated 14-6-2017]

Time period for completion of fast track process

The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date. It can be extended by Adjudicating Authority by further 45 days, if resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent of the voting shares [section 56(3) of Insolvency Code, 2016].

According to the provision, fast track corporate insolvency resolution process shall be completed by 29th of August 2019. On further extension uptil by 13th of October, 2019 in compliance with above provision.

15. (i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ₹ 1,00,000.

In the present case, Mr. Aakash. (relative of Mr. Shyam, an auditor), is having securities of XYZ Ltd. having face value of ₹ 80,000 (market value ₹ 1,20,000), which is as per requirement of proviso to section 141 (3)(d)(i). Therefore, Mr. Shyam will not be disqualified to be appointed as an auditor of XYZ Ltd.

(ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lacs.

In the instant case, Mr. Rakesh will be disqualified to be appointed as an auditor of PQR Ltd. as he indebted to PQR Ltd. for ₹ 7 lacs.

16. 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 minimum ₹ 10 lacs which may extend upto ₹ 25 crore 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. Mehta. The maximum penalty that SEBI can impose is ₹ 25 crores or three times the amount of profits made out of insider trading, whichever is higher.

17. (i) Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of Happy Limited proposes to declare dividend at the rate of 22% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

(ii) As per Second Proviso to Section 123 (1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the *Companies (Declaration and Payment of Dividend) Rules, 2014.*

18. Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

(d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (*a*), (*b*) and (*c*).

As such Cochin Stock Exchange can restrict the appointment of MNL Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Cochin Stock Exchange can also restrict the voting rights of PQR Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of PQR Ltd. on appointment of proxies.

19. As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) is not an employee or proprietor or a partner:

(i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years; or

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

As per the given facts, Mr. Mediator was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Whereas, Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner.

Since, Mr. R is the partner in insolvency professional entity in which Mr. Mediator is also a partner, so, Mr. Mediator is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor, being a relative of director of BMR Ltd i.e. corporate debtor

20. Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:

1. Every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a

shareholder of the company or of a person authorized by the Central Government in this behalf.

21. As per the provisions of Section 12 of the Competition Act, 2002, the Chairman and other Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in or connected with the management or administration of any enterprise, which has been a party to a proceeding before the Commission.

However, these provisions will not apply to any appointment in a Government Company or the Central Government or any State Government or local authority or any Corporation established by or under any Central or State or Provincial Act.

(i) In view of the aforesaid, Mr. Jaydev cannot join Arnab Limited for a period of two years starting from 1st April, 2019.

(ii) However, there is no bar for him to join National Milk Products Limited, since it is a Government Company.

22. **Power of Reserve Bank of India (RBI) to inspect Banks (Section 35 of the Banking Regulation Act, 1949):** RBI is empowered to conduct inspection of any bank including co-operative banks and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers.

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits and direct the RBI to apply under Section 38 for the winding up of the bank.