PAPER 4: CORPORATE AND ECONOMIC LAWS

PART 1: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2020 EXAMINATION

For November 2020 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1st May 2019 to 30th April, 2020 are relevant and applicable.

Students are advised to refer study material of August 2019 edition with these applicable amendments.

Relevant amendments: Here are given relevant amendments arranged chapter wise.

PART I: CORPORATE LAWS

SECTION A: COMPANY LAW

Companies (Amendment) Act, 2019: The Companies Act, 2013 have been continuously amended by the Government vide enforcement of various amendment Act, namely Companies (Amendment) Act, 2017, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019 and 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 to have come into force from November 2, 2018 except some sections which have come into force on August 15, 2019.

CHAPTER 1: APPOINTMENT AND QUALIFICATION OF DIRECTORS

I. **The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019** notified by MCA vide notification no. G.S.R. 804(E), dated **22nd October, 2019 w.e.f. 1st day of December, 2019**. This amended rule is further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

For Rule 6, the following rule shall be substituted, namely: –

"6. **Compliances required by a person eligible and willing to be appointed as an independent director.—**

(1) Every individual –

(a) who has been appointed as an independent director in a company, **on the date of commencement** of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or

(b) who intends to get appointed as an independent director in a company **after such commencement,** shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test:

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than sixty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test."

II. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2020

MCA vide Notification G.S.R. 145(E) dated **28th February, 2020** notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020 further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014 w.e.f. the date of their publication in the Official Gazette.

[1]In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6:

Sl. No.	Previous Law	Amended law
1.	in sub-rule (1), in clause (a), for the words "**three months"**	the words **"five months"** shall be substituted;
2.	in sub-rule (4),- For the first Proviso- Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test.	Following proviso shall be substituted- "Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:- (a) listed public company; or (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or (c) body corporate listed on a recognized stock exchange:"
3.	in sub-rule (4),-	

[1] Vide notification no. G.S.R. 804(E), dated 22nd October, 2019 w.e.f. 1st day of December, 2019, Rule 6 have been amended. The amended Rule 6 is given in Point no. I., the above para. This Rule have been further amended by the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020, w.e.f. 29-3-2020 and Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, w.e.f. 8-2-2020.

	in the second proviso, for the word **"companies",**	the words **"companies or bodies corporate"** shall be substituted.

III. The Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020

Vide Notification G.S.R. 268 (E), dated 29th April, 2020, the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020 came into enforcement from the date of their publication in the Official Gazette further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

Sl. No.	Previous Law	Amended law
1.	In rule 6 in sub-rule (1), in clause (a), for the words "**five months"**	the words **"seven months"** shall be substituted;

CHAPTER 2: APPOINTMENT AND REMUNARATION OF MANAGERIAL PERSONNEL

The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

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

Sl. No.	Previous Law	Amended law
1.	According to Rule 8A, a company other than a company covered under Rule 8, which has a paid up share capital of ₹ 5 crore or more shall have a whole-time company secretary.	the following shall be substituted as under:- "8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary."
2.	in rule 9, in sub-rule (1), (i) after clause (b), at the end, (ii) No clause (c) was there (iii) No Explanation earlier	in rule 9, in sub-rule (1), (i) the word "or" shall be inserted. (ii) after clause (b), the following clause (c) shall be inserted, namely:- "(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.". (iii) following Explanation inserted, namely:-

		"Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.".

CHAPTER 3: MEETING OF BOARD AND ITS POWERS

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

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

Sl. No.	Previous Law	Amended law
1.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clauses (i) and (ii), the words "**or rupees one hundred crore, whichever is lower",**	shall be **omitted**
2.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iii), for the words "**amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower**",	the words "**amounting to ten per cent or more of the turnover of the company"** shall be substituted;
3.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iv), the words **"or rupees fifty crore, whichever is lower",**	shall be **omitted**

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

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

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

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

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

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

CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Earlier law	Amendment in law	Date of Enforcement
Amendment of Section 212	(a) in **sub-section (*8*),** for the words "**If the**	(a) the words **"If any officer not below**	**15th August, 2019**

	Director, Additional Director or Assistant Director"	**the rank of Assistant Director"** shall be substituted;	
	(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*)**",	(b) 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",** (ii) in the proviso, for the words **"Magistrate's court",**	(c) in **sub-section (10),—** (i) the words "**Special Court or Judicial Magistrate"** shall be substituted; (ii) "**Special Court or Magistrate's court**" shall be substituted;	
	(d) Earlier not there	(d) **New sub-section inserted** after sub-section 14, 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 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

I. 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.

II. **Enforcement of section 230(11) and 230(12):** Government of India through Ministry of Corporate Affairs vide notification dated 3rd February, 2020, appoints **3rd day of February, 2020** as the date on which the provisions of sub-sections (11) and (12) of section 230 of the said Act shall come into force.

CHAPTER 6: PREVENTION OF OPPRESSION AND MISMANAGEMENT

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

Relevant Section	Earlier Law	Amendment	Date of Enforcement
Amendment of Section 241	(a) **No proviso was there to sub-section (2)**	(a) **in sub-section (*2*),** the following proviso is inserted, namely:— "Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench."; (b) New insertion of sub-sections (3),(4) & (5) after **sub-section (*2*),** 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	**15th August, 2019**
	(b) Not there earlier		

		accordance with sound business principles or 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	Not there earlier	New insertion **sub-section 4A** After sub-section (*4*), , namely:—– **"(*4A*)** At the conclusion of the hearing of the case in respect of sub-section (*3*) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.".	**15th August, 2019**
Amendment of Section 243	(a) Earlier not there	(a) new insertion of **sub-section 1A & 1B** after sub-section (1), the following sub-sections shall be inserted, namely:— **"(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	**15th August, 2019**

		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) the words, brackets, figure and letter "**or sub-section (1A)"** shall be inserted.	
	(b) in **sub-section (2),** after the word, brackets and figure "sub-section (1)",		

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** which dealt with "Right to apply under section 245", after **sub-rule (2)**, the following sub-rules (3) & (4) 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 7: WINDING UP

Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Earlier Law	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 10: MISCELLANEOUS PROVISIONS

I. 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.

II. 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"):

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	In **rule 2**, after clause (c)	Insertion of clause (d), namely:- "(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act".
2.	In **rule 3,** after clause (d)	Following clause (da) is inserted:- '(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.	**After rule 3**	New rule 3A is inserted:- "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 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 rule 5** (i) in sub-rule (1), for the words **"from the commencement of these rules"**, (ii) in sub-rule (3), **before the Explanation,** (iii) in sub-rule (4), after the words, brackets and figure **"contained in sub-rule (1)",**	(i) the words **"from the date of its incorporation"** shall be substituted; (ii) 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) the words, brackets and figures **"and gets itself declared under sub-section (1) of section 406"** shall be inserted.
6.	In **rule 7,** in sub-rule (1), after the words "**shall issue"**	the words **"fully paid up"** shall be inserted.
7.	In **rule 12** (i) in sub-rule (1) after clause (b)	(i) the following **clause (ba) shall be inserted** namely:-

	(ii) in sub-rule (2), in clause (a), for the words **"Registrar of Companies",**	"(ba) The date of declaration or notification as Nidhi";"; (ii) 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",** (ii) for the words **"such Regional Director",** (iii) in the proviso, for the words **"Regional Director",**	(i) the words, **"Central Government"** shall be substituted; (ii) the words, **"Central Government"** shall be substituted; (iii) the words, **"Central Government"** shall be substituted.
9.	**After rule 23**	following rules 23A & 23B 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 along with 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).

III. The Nidhi (Second Amendment) Rules, 2020

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

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	in rule 23A, for the words **"six months"**	the words **"nine months"** shall be substituted

IV. Ministry of Corporate Affairs issued Corrigendum vide notification G.S.R. 150 (E) dated 2nd March, 2020

W.r.t. to the notification 2G.S.R. 114(E) of the Government of India, dated the 14th February, 2020, in line 9, for "**rule 23A" read "rule 23A and first proviso to rule 23B**".

SECTION B: SECURITIES LAWS

1. Amendments through Finance Act, 2018 w.e.f. 8.3.2019

1. In the Securities and Exchange Board of India Act, 1992 (hereafter in this Part referred to as the principal Act), in section 11 which deals with the Functions of Board,—

(i) **after sub-section (4),** the following sub-section shall be inserted, namely:—

"(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.";

[2] Given above in Point no. III

(ii) **in sub-section (5),** after the words and figures "the Depositories Act, 1996", the words, figures, letters and brackets shall be inserted, namely:—

"or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996,".

2. In **section 11B**, of the principal Act,—

(a) in the marginal heading, after the word ''directions'', the words ''and levy penalty'' shall be inserted;

(b) section 11B shall be numbered as sub-section (1) thereof and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.''.

3. In the principal Act, in **section 15A** which deals with the Penalty for failure to furnish information, return, etc.,—

(i) **in clause (a),** after the words "fails to furnish the same", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted;

(ii) **in clause (b),** after the words "furnish the same within the time specified therefor in the regulations", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted.

4. In the principal Act, after section 15E, the following sections shall be inserted, namely:—

"15EA. Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.".

5. In the principal Act, in **section 15F** which deals with the Penalty for default in case of stock brokers, in **clause (b),** for the words "he sponsors or carries on any such collective investment scheme including mutual funds", the words "such failure continues" shall be substituted.

6. In the principal Act, in **section 15-I** which deals with the Power to adjudicate, in sub-section (1),—

   (i) after the figures and letter "15E,", the figures and letters "15EA, 15EB," shall be inserted;

   (ii) for the word "shall" the word "may" shall be substituted. 185. In the principal Act, in section 15J,—

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

      (b) after the words, figures and letter "section 15-I, the adjudicating officer", the figures, letters and words "15-I or section 11 or section 11B, the Board or the adjudicating officer" shall be substituted;

      (c) in the Explanation, the words "of an adjudicating officer" shall be omitted.

7. In the principal Act, in **section 15JB** which deals with the Settlement of administrative and civil proceedings, after sub-section (4), the following subsection shall be inserted, namely:—

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

8. In the principal Act, **in section 24** which states about the Offences,—

   (i) after the words "adjudicating officer" at both the places where they occur, the words "or the Board" shall be inserted;

   (ii) in sub-section (2), the words "of his" shall be omitted.

9. In the principal Act, in **section 27** which deals with the Contravention by companies,—

   (i) for the marginal heading, the following marginal heading shall be substituted, namely:— "Contravention by companies.";

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

   (iii) for the word "offence", wherever it occurs, the word "contravention" shall be substituted. 189. In the principal Act, in section 28A, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

10. In the principal Act, after **section 28A** which deals with recovery of money, the following section shall be inserted, namely:—

'28B. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),—

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with. Amendment of section 15JB. Amendment of section 24. Amendment of section 27. Amendment of section 28A. Insertion of new section 28B. Continuance of proceedings.

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

2. Inserted by Finance (No. 2) Act, 2019, w.e.f. 20-1-2020.

(i) In section **15C of the principal Act**, which deals with the Penalty for failure to redress investors' grievances after the words "after having been called upon by the Board in

writing", the words "including by any means of electronic communication" shall be inserted.

(ii) In **section 15F** of the principal Act, which deals with the Penalty for default in case of stock brokers in sub-clause (*a*), after the words "one lakh rupees but which may extend to", the words "one crore rupees" shall be inserted.

(iii) After **section 15HA** of the principal Act, the following section shall be inserted, namely:—

'**15HAA**. Penalty for alteration destruction, etc., of records and failure to protect the electronic database of Board

Any person, who—

(*a*) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

Explanation.—For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any

investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

(b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;

(c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;

(d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;

(e) without authorisation disrupts the functioning of system database;

(f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or

(g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

Explanation.—In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000.

PART II: ECONOMIC LAWS

CHAPTER 1: THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

I. 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:

(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.

II. Amendments in External Commercial Borrowings

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

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

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

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

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; 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 FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, (a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; (b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and (c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).	
		Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	
V	Minimum Average Maturity Period (MAMP)	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:

Sr. No.	Category	MAMP
(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
[3](c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years
for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.		

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

vi	All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.	
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the	
		contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	
Viii	End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: (a) Real estate activities. (b) Investment in capital market. (c) Equity investment. (d) [4]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.

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

(a) Working capital purposes except from foreign equity holder.

(b) General corporate purposes except from foreign equity holder.

(c) Repayment of Rupee loans except from foreign equity holder.

(d) On-lending to entities for the above activities.

x	Hedging provision	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 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	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.

		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. **c. 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. [5]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

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

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. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered

Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

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

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

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

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

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

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

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

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/ Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year

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

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

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

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

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

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

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

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

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

(c) Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and

(d) 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; 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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 [6]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

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

Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

12. **Compliance with the guidelines:** The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

III. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2019

Vide Notification No. FEMA 23(R)/(2)/2019-RB dated **December 09, 2019**, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('the Principal Regulations'), namely:

In the Principal Regulations, in **regulation 4**, after sub-regulation (e), the following shall be inserted, namely :-

"(ea) re-export of leased aircraft/ helicopter and/or engines/auxiliary power units (APUs) re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' subject to permission by DGCA/Ministry of Civil Aviation for such export/s."

IV. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020

Vide Notification No. FEMA 23(R)/(3)/2020-RB dated **March 31, 2020**, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('the Principal Regulations'), namely:

- In the Principal Regulations, in regulation 9, in sub-regulation (1) and sub-regulation (2)(a), for the words **"nine months**", the words "**nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time"** shall be substituted.
- Similarly, in sub-regulation (1) (a), for the words **"fifteen months",** the **words "fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time"** shall be substituted.
- In Regulation 9 (1)(b), for the words "**period of nine months or fifteen months, as the case may be"**, the words **"said period"** shall be substituted.
- In proviso to Regulation 9 (2)(a), for the words "**period of nine months**", the words **"said period"** shall be substituted.

CHAPTER 3: 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 if the reporting entity is a banking company; or

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

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

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

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016,

and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

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

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

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

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

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

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

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;"

CHAPTER 4: FOREIGN CONTRIBUTION REGULATION ACT, 2010

Foreign Contribution (Regulation) (Second Amendment) Rules, 2019

Vide notification no. **G.S.R. 659(E),** dated 16th September, 2019, Central Government hereby enacts the Foreign Contribution (Regulation) (Second Amendment) Rules, 2019, further to amend the Foreign Contribution (Regulation) Rules, 2011.

In the Foreign Contribution (Regulation) Rules, 2011, —

(i) **in rule 6A**, for the words "rupees twenty-five thousand", the words "one lakh rupees" shall be substituted;

(ii) **in rule 7,** in sub-rule (4), for the words "sixty days", the words "one month" shall be substituted;

(iii) **in rule 12**, in sub-rule (2), after the prescribed form (i.e., FC- 3C) the words and letters "with an affidavit executed by each office bearer and key functionary and member in Performa 'AA' appended to these rules" shall be inserted;

CHAPTER 5: ARBITRATION AND CONCILIATION ACT, 1996

In section 1 which deals with the Short title, extent and commencement, proviso is omitted by the Jammu and Kashmir Reorganisation Act, 2019, dated 9-8-2019, w.e.f. **31-10-2019**, Prior to its omission read as under:

"Provided that Parts I, III and IV shall extent to the State of Jammu and Kashmir only insofar as they relate to international Commercial arbitration or, as the case may be, international Commercial Conciliation."

CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016

I. 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 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;"

(v) **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,"

(vi) 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."

II. The Insolvency and Bankruptcy Code (Amendment) Act, 2020

Ministry of law and justice notified on 13th March, 2020, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. **28th day of December, 2019**. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was hereby repealed.

Following are the relevant amendments:

1. In **section 5** of the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as the principal Act),—

Sl. No.	Earlier Law	Amended Law
1.	in **clause (12),** the given proviso- [7]"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority"	Omitted
2.	in **clause (15),** after the words "during the insolvency resolution process period" occurring at the end	the words "and such other debt as may be notified" shall be inserted.
3.	No such proviso to **section 7(1)** was there.	In section 7 of the principal Act, in sub-section (1), before the *Explanation*, the following provisos

[7] Proviso was Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018)

		inserted— "Provided that for the financial creditors, referred to in clauses (*a*) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less: Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less: Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the

		application shall be deemed to be withdrawn before its admission."
4.	In **section 11** of the principal Act, only an Explanation is there.	In section 11 of the principal Act, the *Explanation* shall be numbered as *Explanation* I and after *Explanation* I as so numbered, the following *Explanation* shall be inserted, namely:— "*Explanation* II—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (*a*) to (*d*) from initiating corporate insolvency resolution process against another corporate debtor."
5.	(a) In **section 14**, no explanation was there with Sub-section (1) of the principal Act.	In section 14 of the principal Act,— (a) in sub-section (1), the following Explanation inserted, namely:— "*Explanation*.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the

	(b) No Sub-section 2A was there in the Principal Act. (c) in sub-section (3), for clause (a), namely- "(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;"	license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"; (b) after sub-section (2), the following sub-section 2A shall be inserted, namely:— "(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."; (c) the following clause shall be substituted, namely:— "(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;".
6.	In **section 16** in sub-section (*1*), for the words "within fourteen days from the insolvency commencement	the words "on the insolvency commencement date" shall be substituted.

	date"	
7.	In **section 21**, in sub-section (2), in the second proviso, after the words "convertible into equity shares"	the words "or completion of such transactions as may be prescribed," shall be inserted.
8.	In **section 29A** of the principal Act- (i) in clause (c), in the second proviso, in Explanation I, after the words, "convertible into equity shares", (ii) in clause (j), in Explanation I, in the second proviso, after the words "convertible into equity shares",	(i) the words "or completion of such transactions as may be prescribed," shall be inserted; (ii) the words "or completion of such transactions as may be prescribed," shall be inserted.
9.	No such section 32A was there in the Principal Act.	After section 32 of the principal Act, the following section 32A shall be inserted, namely:— "32A. ***(1)*** Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (b) a person with regard to whom the relevant investigating

		authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court: **Provided that** if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: **Provided further** that every person who was a "designated partner" as defined in clause (*j*) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (*60*) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be

		prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section. **(2)** No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not— (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

		Explanation.—For the purposes of this sub-section, it is hereby clarified that,— (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor; (ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable. **(3)** Subject to the provisions contained in sub-sections (*1*) and (*2*), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any

		authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

III. Enhancement in the limit of amount of default: Ministry of Corporate Affairs vide notification S.O. 1205(E) dated **24th March, 2020,** in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.

IV. Ministry of Corporate Affairs Vide Notification S.O. 4126(E) dated **15th November, 2019**, in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the 1st day of December, 2019 as the date on which clause (e) of section 2 of the Code in so far as they relate to personal guarantors to corporate debtors, shall come into force.

V. Vide Notification S.O. 4139(E) dated 18th November, 2019, in exercise of the powers conferred by section 227 of the Insolvency and Bankruptcy Code, 2016, the Central Government in consultation with the Reserve Bank of India notifies that the insolvency resolution and liquidation proceedings of the Non-banking finance companies (which include housing finance companies) with asset size of ₹ 500 crore or more, as per last audited balance sheet, shall be undertaken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 and the applicable Regulations.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A: INTEGRATED CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Integrated Case scenario 1

DEF Limited is an unlisted public company, incorporated under the provisions of the Companies Act, 2013 having its registered office in the state of Rajasthan.

The Registrar after the inspection of the books of account or an inquiry under section 206 and other books and papers of DEF Limited under section 207, submitted a report in writing to the Central Government including a recommendation that further investigation into the affairs of the company was necessary, giving his reasons in support.

The Central Government was of the opinion, that it was necessary to investigate into the affairs of the company by the Serious Fraud Investigation Office (SFIO).

The director, SFIO appointed an investigating officer who called on the directors of the company and arrested the directors of the company. The directors demanded the reasons for such arrest which were informed to them.

The directors of the company were produced before the jurisdictional Judicial Magistrate who released them on bail though the prosecution opposed the application of bail in the court.

On completion of the investigation of the director, SFIO submitted the investigation report to the Central Government. The Central Government, after examination of the report, directed the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

A charge sheet was presented against the accused directors of the company before the Special Court and after the completion of the trial, the court convicted the directors and sentenced them with imprisonment for a term of six months and a fine of Rupees Two Thousand each.

Given the above situation, your opinion is sought on the following matters:

[Questions 1-5]

1. If the Central Government is of the opinion to order the investigation into affairs of a company on receipt of a report of the Registrar under section 208 of the Companies Act, state the correct statement as to the initiation of order of the investigation into affairs of a company-

   (a) It cannot order investigation by inspectors under the provisions of section 210 of the Companies Act.

   (b) It can order investigation by inspectors under the provisions of section 210 of the Companies Act.

(c) It cannot order investigation by SFIO under the provisions of section 212 of the Companies Act.

(d) It can order investigation by inspectors under section 210 or by SFIO under section 212 of the companies Act.

2. Is Director, SFIO a competent authority to arrest the directors of DEF Limited, an unlisted public company?

(a) Yes, Director, SFIO is competent authority to arrest the directors of the unlisted public company.

(b) Yes, Director, SFIO is competent authority subject to approval of Central Government.

(c) No, Director, SFIO cannot arrest the directors of the unlisted public company.

(d) Yes, Director, SFIO is competent authority subject to approval of special court to arrest the directors of the unlisted public company.

3. Is it the duty of the director, SFIO to inform the arrestee the grounds of arrest?

(a) Yes, it is the duty of the director, SFIO to inform the grounds of arrest and as well as right of arrestee to know the grounds of his arrest.

(b) No, it is not necessary to inform the grounds of arrest.

(c) No, the ground of arrest may be informed, if asked for.

(d) No, it is prerogative of the authority to arrest the accused, there is no need to inform the grounds of arrest.

4. Within how much time are the arrested directors of DEF Limited required to be produced before jurisdictional judicial magistrate by the director, SFIO after arrest?

(a) Within 24 hours of such arrest.

(b) Within 48 hours of such arrest.

(c) Within 72 hours of such arrest.

(d) Within 80 hours of such arrest.

5. When do the directors of DEF Limited vacate the office of director in the company?

(a) On the date when the directors were arrested by the SFIO.

(b) On the date when the charge sheet was submitted in the court by the SFIO.

(c) On the date when the directors were arrested and produced before jurisdictional Judicial Magistrate.

(d) On the date when the directors were convicted by the Special Court.

Integrated Case Scenario 2

Hansraj Power Distribution Ltd. (HPDL) was incorporated in the year 2008. The annual turnover of the company is two crore rupees. Mr. Raj Purohit, a Director of the company was appointed by company four years back. Mr. Raj Purohit is eligible for retirement by rotation at this AGM. The AGM is schedule to be held on 22nd August, 2020. He is also working as a director in Max International Limited and Trinity Infrastructure Limited. Trinity Infrastructure Limited did not file its financial statements for the last three years with the Registrar of Companies. Trinity Infrastructure Limited also defaulted in paying interest on loans taken from a Public Financial Institution in the last two years. The Board of HPDL has decided to propose Mr. Raj's name for re-appointment. Mr. Raj gave his consent for the same.

Application to the Tribunal for Compromise & Arrangement was submitted along with all the documents. The Tribunal fixed the time and place of the meeting and appointed a Chairperson for the meeting.

A meeting of members of the company was held as per the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent to all 1000 members. Notice of the meeting was also sent to all the creditors or class of creditors and to the debenture-holders of the company, individually at the address registered with the company which will be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees.

In total, the 1000 members of the company holds in aggregate 10,00,000 equity shares. The meeting was attended by 800 members holding 7,00,000 shares. Out of which 460 members holding 4,70,000 shares voted in favour of the scheme; 190 members holding 1,25,000 shares voted against the scheme. The remaining 150 members holding 1,05,000 shares abstained from voting. All the members voted for the scheme either in person or through proxies.

As prescribed under this Act, a notice along with all the documents was also sent to the Central Government, the Income-Tax Authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, and the Competition Commission of India. The Securities and Exchange Board made objection to scheme of arrangements after 45 days of receiving all the documents.

According to the last audit financial report, the outstanding debt on the company is ₹ 50 lakh rupees. The creditors of the company is as follows:

X-One financial Company	200,000 rupees	4%
Mr. Mohan Shah	1,250,000 rupees	25%
Radhey Finance Company	200,000 rupees	4%
Soham Company	700,000 rupees	14%
Onex National bank	1,000,000 rupees	20%
DXY National bank	1,650,000 rupees	33%

So from the above mentioned Creditors' list, X-One financial Company raised its objection in the Tribunal, to the aforementioned scheme. The creditor file the petition in the Tribunal.

The Chairperson of the meeting submitted the report to the Tribunal within the time fixed by the Tribunal. After hearing the creditors, the Tribunal finally approve the scheme of compromise and arrangement between the company and its members. The order of the Tribunal is binding on the company, all its members and creditors.

Answer the following questions in the light of the given information:

[Questions 6-10]

6. With reference to the provisions of the Companies Act, 2013, which value of the requisite majority will be considered to approve the scheme?

   (a) 3/4 th of the total value of shares held by 650 members.

   (b) 3/4th of the total value of shares held by 800 members.

   (c) 3/4 th of the total value of shares held by 1000 members.

   (d) 3/4th majority of 1000 shares holders present and voting.

7. According to the provision of the Companies Act, 2013, X-One financial company objected to the compromise held on the scheme in between the company and its shareholders? According to their respective percentage in debt owed to the company, choose the correct option?

   (a) X-One Finance Company can raise the objection as aggregate loan amount needs to be more than 2% of debt.

   (b) X-One Finance Company jointly with Radhey Finance company can raise the objection as the aggregate amount needs to be not less than 5%.

(c) Only X-One Finance Company along with Soham Finance company can jointly raise the objection as the aggregate amounts needs not to be less than 15%.

(d) Only X-One Finance Company jointly with Soham Finance company and Radhey Finance company can raise the objection the aggregate amounts needs not to be less than 20 %.

8. Evaluate the representation made by SEBI, after 45 days of receiving the notice and all the documents, is tenable or not?

(a) Not tenable. It is required to be made within 10 days

(b) Not tenable. It is required to be made within 15 days.

(c) Not tenable. It is required to be made within 30 days.

(d) Not tenable. It is required to be made within 45 days

9. While finally approving the scheme of compromise and arrangements between the company and its members, which of the below mentioned certificate is necessary to be filed with the Tribunal?

(a) Certificate from the Central Government

(b) Certificate from the Registrar.

(c) Certificate from the audit and accounts committee of the company

(d) Certificate from the company's auditor.

10. According to the above mentioned facts under the directorship of Mr. Raj Purohit, Trinity Infrastructure Limited, defaulted in filing statements and paying the interest due on the loans. How the default of Trinity Infrastructure Limited going to affect the directorship of Mr. Raj Purohit, in all the three companies?

(a) Mr. Raj has to immediately vacate his office as a director in all the three companies.

(b) Mr. Raj needs to vacate his office as a director in (HPDL).

(c) Mr. Raj needs to vacate his office as a director only in (HPDL) and in Max International Limited.

(d) Mr. Raj need not resign in any of the company, as the default makes him only ineligible for re-appointment.

INDEPENDENT MCQS [Question 11-15]

11. State under which given situation, a lender can avail the benefits of SARFAESI Act -

(i) An insolvency application has been launched against the borrower

(ii) The borrower is under BIFR

(iii) A winding up petition has been made against the borrower

(iv) A criminal proceeding has been launched by the lender against the borrower

(a) In situations (i) & (iii)

(b) In situations (ii) & (iv)

(c) In situations (ii), (iii) & (iv)

(d) In all the given situations (i), (ii), (iii) & (iv)

12. Mr. Kamal is accused of an offence as mentioned in Part B of Schedule to the PMLA, 2002. What must be the minimum amount of the offence for which Mr. Kamal is accused of?

(a) INR 25 Lakhs

(b) INR 50 Lakhs

(c) INR 100 Lakhs

(d) INR 75 Lakhs

13. Anna, a foreign citizen has made donations in kind to various individuals of Indian resident for their personal use. When shall such donation in kind will be excluded from the definition of Foreign Contribution considering the provisions of Foreign Contribution (Regulation) Act, 2010?

(a) If the market value, in India, of such article, on the date of such gift, is more than ₹ 1,00,000 but less than 5,00,000.

(b) If the market value, in India, of such article, on the date of such gift, is more than ₹ 500,000 but less than 10,00,000.

(c) Any donation in kind given for personal use is always excluded.

(d) If the market value, in India, of such article, on the date of such gift, is not more than ₹ 100,000.

14. Milan Limited entered into an agreement with Vinne Limited for the supply of confectionary biscuits and cakes for a period of 5 years. The Arbitration clause of the agreement states, "That all the disputes shall be submitted to arbitration." After a period, it was found that the principal contract is invalid in the light of the Indian Contract Act, 1872. You are required to select the best option in the given scenario considering the provisions of the Arbitration and Conciliation Act, 1996.

(a) The arbitration clause in the principal agreement also stands invalid due to the principal contract becoming invalid.

(b) The arbitration clause is an independent agreement of the principal agreement and cannot be treated as invalid merely because the principal contract was invalid.

(c) The arbitration clause shall be exercisable only if the Judicial Authority under the Arbitration and Conciliation Act, 1996 allows to treat it as an independent agreement.

(d) The arbitration clause in the principal agreement stands valid only till the time the principal contract was in force and valid.

15. MX Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under section 7 of the Insolvency and Bankruptcy Code (Code). The Resolution Professional (RP) of the MX Limited (Corporate Debtor) conducted the Committee of Creditors (CoC) meeting but the same was adjourned due to lack of quorum. Accordingly, in the adjourned meeting, a resolution was passed by the CoC members present, representing 51% of the voting rights for liquidation of the Corporate Debtor before the expiry of the Corporate Insolvency Resolution Process (CIRP). You as a qualified Chartered Accountant in the team of RP is required to advise RP whether the resolution of liquidation passed is valid in law considering the provisions of the Insolvency and Bankruptcy Code.

(a) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 90% of the voting shares of the financial creditors.

(b) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 66% of the voting shares of the financial creditors.

(c) The resolution passed for liquidation is not valid in law as it cannot be passed before the expiry of the CIRP.

(d) The resolution passed for liquidation is valid in law as it has been passed by 51% of the voting shares of the financial creditors.

Descriptive Questions [Questions 16-24]

16. The Board of Directors of the Universal Ltd. which is an MNC comprised of directors who were Indian as well as of Foreign Nationals. Mr. "X", who is a Director on the Board is very often on business tour abroad. He approached you being legal expert of the company to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors.

Examine the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

(a) Number of directors for which a person can be appointed as an alternate director.

(b) Where an alternate director is appointed in place of a director whose term is indefinite, then, what will be the tenure of such alternate director?

(c) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

17. International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

18. On an application filed from shareholder of Company, Tribunal (NCLT) passed an order on 20th December, 2019 without the consent of parties. Mr. Rama whose family's condition was not good so didn't take much interest in order of tribunal but after few days due to aggrieved by an order, he filled an appeal before Appellate Tribunal (NCLAT) on 15th March, 2020 showing sufficient cause of delay for not filling appeal up to 45 days from the date of order. Even after receiving order from Appellate Tribunal dated 30th April, 2020, Mr. Rama was not satisfied and desires to make application to Supreme Court on 30th October, 2020.

Considering the given situation, examine whether Appeal to be filed before the Supreme Court will be admissible?

19. 'X' Stock Exchange Limited was granted recognition by Securities and Exchange Board of India (SEBI). The stock brokers of the Stock Exchange did not pay much heed to the concept of governance and focused on increasing their wealth and snubbed the protection of investors. Their activities were against the interest of the trade and general public.

Examine whether the SEBI has the power to withdraw the recognition granted to 'X' Stock Exchange Limited under the provisions of Securities Contracts (Regulations) Act, 1956?

Whether a person can be a member of an unrecognized Stock Exchange for the purpose of performing any contracts in Securities?

20. The composition of Audit Committee of MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities?

21. Mr. Kunal used his car for smuggling cash and for other illegal activities. On trial before the Special Court, it was found that an offence of money laundering was committed by Mr. 'Kunal'. Also found that the car was under hypothecation to a Bank for the car loan obtained. Referring to provisions of the PMLA, 2002, examine whether the car can be confiscated in the light of the given situation?

22. Quality Rubber Limited, a supplier of raw materials filed a petition before the NCLT for the recovery of ₹ 10,00,000 against Smart Latex Limited. Smart Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ₹ 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

    Notice was issued on 1st August, 2019 for the conduct of the first meeting to be held on 5th August, 2019 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. Naveen as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting.

    Decide in terms of the given information whether the resolution passed to appoint Mr. Naveen is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of valid quorum for the conduct of the meeting.

23. XYZ Foundation, a society registered under the Societies Registration Act, 1860, has received foreign contribution from a Mala Company LLC, a company incorporated in Singapore. XYZ Foundation deposited the amount of foreign contribution in a bank and earned interest on it. XYZ Foundation desires to invest maturity proceeds from deposits in mutual funds. You are required to advise whether XYZ Foundation is allowed to make such investment considering the provisions of the Foreign Contribution (Regulation) Act, 2010 (Note: XYZ Foundation has obtained certificate of registration under section 11 of the Act).

24. Mr. Ramesh Kulkarni conducts private tuition classes from his residence. It was alleged by the Enforcement Directorate that Mr. Kulkarni has under reported his income and collected income in tax and used the proceeds to purchase a house property in Marol, Mumbai. The ED officers through written orders provisionally attached the properties on suspicion of it being derived from the proceeds of crime. Comment on the validity of the provisional attachment on the order issued by the ED officers.

SUGGESTED ANSWERS/HINTS

Answers to Integrated Case Scenario/Independent MCQs

1. (d)

2. (a)

3. (a)

4. (a)

5. (d)

6. (a)

7. (b)

8. (c)

9. (d)

10. (c)

11. (c)

12. (c)

13. (d)

14. (b)

15. (b)

Answers to Descriptive Questions

16. (a) According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Hence, in the instant case, a person can be appointed as an alternate director for only one director in the same company but maximum twenty different companies.

(b) According to second proviso to section 161(2), an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Hence, in the instant case, the alternate director shall hold office till the time original director returns to India.

(c) As per section 161(2), the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

From the above provision, it is clear that an alternate director can be appointed for any director by the board of directors and not by an Executive Director/Whole Time Director/Managing Director for themselves.

17. International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) **Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal**: Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company. Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by passing a special resolution.

18. According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within period.

In above case, since Mr. Rama even aggrieved by an order of Appellate Tribunal desires to fill an application before Supreme Court on 30th October 2020. But as Supreme Court can entertain appeal only upto 60 days + 60 Days (Extension if sufficient cause). Since this appeal was to be filled beyond 120 days by Mr. Rama, so, appeal to be filed before the Supreme Court will not be admissible.

19. (i) Section 5(1) of the Securities Contracts (Regulations) Act, 1956 states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn, the Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government or SEBI is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government/SEBI may withdraw the recognition granted to the stock exchange.

Thus, Central Government or SEBI can withdraw the recognition of 'X' Stock Exchange Limited on the grounds that their activities were against the interest of the trade and general public.

(ii) As per section 19 of the Securities Contracts (Regulations) Act, 1956, no person shall organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities, except with the approval of Central Government or SEBI.

Hence, no person can be a member of an unrecognised Stock exchange for the purpose of performing any contracts in Securities, except with the approval of Central Government or SEBI.

20. Audit Committee: According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) Minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

As per the facts of the question, MKBTC Limited, listed its securities in a recognised Stock Exchange in the month of August, 2019. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company requires to do the following:

(i) The audit committee of MKBTC Limited already has 7 directors as members, which is in compliance.

(ii) The audit committee has 4 directors as independent directors. However, once the company gets listed, at least 5 [7*(2/3)] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

(iii) In the existing audit committee though majority of the members have the ability to read and understand the financial statement but none of them has accounting or related financial management expertise. However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise.

In view of above, the existing audit committee cannot continue after listing of its securities.

21. Vesting of property in Central Government [Section 9]: Where an order of confiscation has been made under section 8(5) or section 8(7) or section 58B or section 60(2A) of PMLA, 2002 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

However, where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest.

In the instant case, Mr. Kunal used his car for smuggling cash and for other illegal activities for committing of an offence under the purview of the Prevention of Money Laundering Act. The Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. Kunal. The car was under hypothecation with the bank for the car loan obtained. As the encumbrance on the car has been created to defeat the provisions and special court may order to declare such encumbrance to be void and therefore the car can be confiscated and shall vest in the Central Government.

22. According to section 22 of the Insolvency and Bankruptcy Code, 2016, the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. The committee of creditors in the first meeting may by a majority vote of not less than sixty-six percent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.

The adjourned meeting shall quorate with the members of the committee attending the meeting.

As per the facts of the question and the provisions of law, the requisite quorum was present in the meeting as all 40 financial creditors attended the meeting and 5 abstained from voting.

The Act requires that not less 66% of the financial creditors shall resolve to appoint resolution professional. However, in the given case 71.4% [(25/35)* 100] voted in favour of Mr. Naveen. Hence, the said appointment is valid.

23. As per the explanation 2 to the definition of the Foreign Contribution under the Act, the interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Further as per section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall utilise such contribution for the purpose for which the contribution has been received.

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business, where as speculative business includes investment in mutual fund. XYZ Foundation cannot use the contribution as well as the interest component for the Investment in Mutual Fund.

24. As per Section 5(5) of the Prevention of Money Laundering Act, 2002, the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

As per Section 8(4) of the Prevention of Money Laundering Act, 2002, where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (IA) of section 17, in such manner as may be prescribed. Accordingly, the Director is to file a petition with the Adjudicating Authority within 30 days of attachment. After order of attachment is confirmed, the Director take possession of the attached property.