

PAPER –1: FINANCIAL REPORTING

PART – I : RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

A. Applicable for November, 2018 Examination

1. Applicability of Amendments to Ind AS 7 and Ind AS 102 issued by the MCA dated 17th March 2017

To align Ind AS with IFRS, the recent amendments made in IAS 7 and IFRS 2 by the IASB have been incorporated in Ind AS 7 'Statement of Cash Flows' and Ind AS 102 'Share-based Payment' by way of a notification issued by the Ministry of Corporate Affairs on 17th March, 2017.

I. Amendments in Ind AS 7 'Statement of Cash Flows'

(i) Disclosure requirements

The amendments made to Ind AS 7 require certain additional disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes.

In addition to the above, the disclosure is required for changes in financial assets (for example, assets that hedge liabilities arising from financing activities) if cash flows from those financial assets were, or future cash flows will be, included in cash flows from financing activities.

As per the amendment, one of the way for disclosure is providing a reconciliation between the opening and closing balances in the balance sheet for liabilities arising from financing activities, including the changes identified, by linking items included in the reconciliation to the balance sheet and the statement of cash flows for the sake of information to the users.

If an entity provides disclosures of changes in other assets and liabilities besides changes in liabilities arising from financing activities, it shall disclose the later changes separately from changes in those other assets and liabilities.

(ii) Transitional provisions and applicability of the amendment

Further, with respect to these amendments, an entity is not required to provide comparative information for preceding periods since these amendments will be applicable for the annual periods beginning on or after 1 April, 2017.

II. Amendments in Ind AS 102 'Share-based Payment'

(i) The amendments cover following accounting areas:

"Measurement of cash-settled share-based payments

Under Ind AS 102, the measurement basis for an equity-settled share-based

payment should not be 'fair value' in accordance with Ind AS 113, 'Fair value measurement'. However, 'fair value' was not defined in connection with a cash-settled share-based payment. The amendment clarifies that the fair value of a cash-settled award is determined on a basis consistent with that used for equity-settled awards. Market-based performance conditions and non-vesting conditions are reflected in the 'fair value', but non-market performance conditions and service conditions are reflected in the estimate of the number of awards expected to vest.

The amendment to Ind AS 102 with respect to measurement of cash-settled awards has most impact where an award vests (or does not vest) based on a non-marketing condition. Absent this clarification, it may be argued that the fair value of a cash-settled award is to be determined using the guidance in Ind AS 113 and reflecting the probability that non-market and service vesting conditions would be met. The amendment clarifies that non-market and service vesting conditions are ignored in the measurement of fair value.

"Classification of share-based payments settled net of tax withholdings

Tax laws or regulations may require the employer to withhold some of the shares to which an employee is entitled under a share-based payment, and to remit the tax payable on it to the tax authority.

Ind AS 102 would require such share based payment to be split into a cash settled component for the tax payment and an equity settled component for the net shares issued to the employee. The amendment now adds an exception that requires the share based payment to be treated as equity-settled in its entirety. The cash payment to the tax authority is treated as if it was part of an equity settlement. The exception would not apply to any equity instruments that the entity withholds in excess of the employee's tax obligation associated with the share-based payment.

"Accounting for a modification of a share-based payment from cash-settled to equity-settled

As per the amendment, if the terms and conditions of a cash-settled share-based payment transactions are modified with the result that it becomes an equity-settled share-based payment transaction, the transaction is accounted for as such from the date of the modification. Specifically:

- o The equity-settled share-based payment transaction is measured by reference to the fair value of the equity instruments granted at the modification date. The equity-settled share-based payment transaction is recognised in equity on the modification date to the extent to which goods or services have been received.
- o The liability for the cash-settled share-based payment transaction as at the modification date is derecognised on that date.

- o Any difference between the carrying amount of the liability derecognised and the amount of equity recognised on the modification date is recognised immediately in profit or loss.
 - o The amendment requires any change in value to be dealt with before the change in classification. Accordingly, the cash-settled award is remeasured, with any difference recognised in the statement of profit and loss before the remeasured liability is reclassified into equity.
- (ii) Transitional provisions
- The transition provisions specify that the amendments apply to share based payment that are not settled as at the date of first application or to modifications that happen after the date of first application, without restatement of prior periods. There is no income statement impact as a result of any reclassification from liability to equity in respect of 'net settled awards'; the recognised liability is reclassified to equity without any adjustment.
- The amendments can be applied retrospectively, provided that this is possible without hindsight and that the retrospective treatment is applied to all of the amendments.
- (iii) Applicability date of the amendment
- The amendment rules shall be applicable from annual periods beginning on or after 1 April 2017. Accordingly, these amendments are not applicable to Phase I entities preparing their first Ind AS financial statements for the year ended 31 March 2017. However, such entities would need to provide relevant disclosures under Ind AS 8, 'Accounting policies, changes in accounting estimates and errors' in their first Ind AS financial statements.

2. Applicability of Guidance Notes

Following Guidance Note not given in January, 2017 edition of the study is applicable to students for the forthcoming examinations

1. Guidance Note on Accounting for Real Estate Transactions (Revised 2012).

For full text of it, students are advised to refer the following link:

1. <https://resource.cdn.icai.org/25896asb15443.pdf>

3. Relevant Sections of the Companies Act, 2013

The relevant Sections of the Companies Act, 2013 notified up to 30th April, 2018 are applicable for November, 2018 Examination.

B. Not applicable for November, 2018 Examination

- I. Following Guidance Notes given in January, 2017 edition of the study are not applicable to students for the forthcoming examinations:
 1. Guidance Note on Accounting for Corporate Dividend Tax.
 2. Guidance Note on Accounting Treatment for Excise Duty.
 3. Guidance Note on Accounting Treatment for MODVAT/CENVAT.
 4. Guidance Note on Accounting for Depreciation in Companies in the context of Schedule II to the Companies Act, 2013.
- II. Ind AS 115 notified on 28.3.2018 alongwith the amendments made in other Ind AS as on 28.3.2018 by MCA is not applicable for November, 2018 examination.

PART – II : QUESTIONS AND ANSWERS**QUESTIONS****AS 1**

1. (a) State whether the following statements are 'True' or 'False'. Also give reason for your answer.
 - (i) Certain fundamental accounting assumptions underline the preparation and presentation of financial statements. They are usually specifically stated because their acceptance and use are not assumed.
 - (ii) If fundamental accounting assumptions are not followed in presentation and preparation of financial statements, a specific disclosure is not required.
 - (iii) All significant accounting policies adopted in the preparation and presentation of financial statements should form part of the financial statements.
 - (iv) Any change in an accounting policy, which has a material effect should be disclosed. Where the amount by which any item in the financial statements is affected by such change is not ascertainable, wholly or in part, the fact need not to be indicated.
 - (v) There is no single list of accounting policies which are applicable to all circumstances.

AS 2

- (b) In a manufacturing process of Atharv Ltd., one by-product BP emerges besides two main products MP 1 and MP 2 apart from scrap. Details of cost of production process are here under:

Item	Unit	Amount (₹)	Output (unit)	Closing inventory
Raw material	7,500	80,000	MP1-6,250	800
Wages	-	41,000	MP2- 5,000	200
Fixed overhead	-	29,000	BP-1,600	-
Variable overhead	-	20,000	-	-

Average market price of MP 1 and MP 2 is ₹ 40 per unit and ₹ 25 per unit respectively, by-product is sold @ ₹ 12.5 per unit. There is a profit of ₹ 2,500 on sale of by-product after incurring separate processing charges of ₹ 2,000 and packing charges of ₹ 3,000. ₹ 3,000 was realised from sale of scrap.

Calculate the value of closing inventory of MP 1 and MP 2.

AS 3

2. (a) How will you disclose following items while preparing Cash Flow Statement of Gagan Ltd. as per AS 3 for the year ended 31st March, 2018?
 - (i) 10% Debentures issued: As on 01-04-2017 ₹ 1,10,000
As on 31-03-2018 ₹ 77,000
 - (ii) Debentures were redeemed at 5% premium at the end of the year. Premium was charged to the Profit & Loss Account for the year.
 - (iii) Unpaid Interest on Debentures: As on 01-04-2017 ₹ 275
As on 31-03-2018 ₹ 1,175
 - (iv) Debtors of ₹ 36,000 were written off against the Provision for Doubtful Debts A/c during the year.
 - (v) 10% Bonds (Investments): As on 01-04-2017 ₹ 3,50,000
As on 31-03-2018 ₹ 3,50,000
 - (vi) Accrued Interest on Investments: As on 31-03-2018 ₹ 10,500

AS 4

- (b) A case is going on between ABC Ltd. and Tax department on claiming the exemption for certain goods, for the year 2016-2017. The court has issued the order on 15th April and rejected the claim of the company. Accordingly, company is liable to pay the additional tax. The financial statements were approved on 31st May, 2017. Shall company account for such tax in the year 2016-2017 or shall it account for in the year 2017-2018?

AS 7

3. A construction company spend ₹ 180 thousand for tendering and incidental expenses for securing a contract. The contract price is ₹ 55,000 thousand. The construction is expected to be completed in 2 years time.

The company has incurred the following expenses and has worked out the additional revenue.

₹ 000's			
	Year 0 Actual	Year 1 Actual	Year 2 Budgeted
Expenses:			
Tendering Costs	180		
Employee benefits: Site Costs		4,000	3,700
Transport charges		120	110
Depreciation		800	800
Materials		15,000	19,100
Contract overhead (10%)			
Insurance		2,000	2,200
Design and Technical Assistance		1,000	1,200
Contract Administration expenses		2,000	2,400
Additional Revenue:			
Claims		350	500
Variations		700	200
Incentives			500

Find out the estimated contract revenue and contract costs. Also calculate contract profit or loss.

AS 10

4. (a) ABC Ltd is setting up a new refinery outside the city limits. In order to facilitate the construction of the refinery and its operations, ABC Ltd. is required to incur expenditure on the construction/development of railway siding, road and bridge. Though ABC Ltd. incurs (or contributes to) the expenditure on the construction/development, it will not have ownership rights on these items and they are also available for use to other entities and public at large. Whether ABC Ltd. can capitalise expenditure incurred on these items as property, plant and equipment (PPE)? If yes, how should these items be depreciated and presented in the financial statements of ABC Ltd.?

AS 12

- (b) ABC Ltd. has received the following grants from the Government of Delhi for its newly started pharmaceutical business:
- ₹ 20 lakh received for immediate start-up of business without any condition.
 - ₹ 50 lakh received for research and development of drugs required for the treatment of cardiovascular diseases with following conditions:
 - that drugs should be available to the public at 20% cheaper from current market price: and
 - the drugs should be in accordance with quality prescribed by the World Health Organisation [WHO].
 - Two acres of land received for set up of plant.
 - ₹ 2 lakhs received for purchase of machinery of ₹ 10 lakhs. Useful life of machinery is 5 years. Depreciation on this machinery is to be charged on straight-line basis.

How should ABC Ltd. recognise the government grants in its books of accounts?

AS 14

5. (a) Som Ltd. agreed to takeover Dove Ltd. on 1st April, 2018. The terms and conditions of takeover were as follows:
- (i) Som Ltd. issued 56,000 equity shares of ₹100 each at a premium of ₹15 per share to the equity shareholders of Dove Ltd.
 - (ii) Cash payment of ₹ 39,000 was made to equity shareholders of Dove Ltd.
 - (iii) 24,000 fully paid preference shares of ₹ 50 each issued at par to discharge the preference shareholders of Dove Ltd.
 - (iv) The 8% Debentures of Dove Ltd. (₹ 78,000) converted into equivalent value of 9% debentures in Som Ltd.
 - (v) The actual cost of liquidation of Dove Ltd. was ₹ 23,000. Liquidation cost is to be reimbursed by Som Ltd. to the extent of ₹15,000.

You are required to:

- (1) Calculate the amount of purchase consideration as per the provisions of AS 14 and
- (2) Pass Journal Entry relating to discharge of purchase consideration in books of Som Ltd.

AS 29

- (b) A Ltd. manufactures engineering goods, provides after sales warranty for 2 years to its customers. Based on past experience, the company has been following the policy for making provision for warranties on the invoice amount, on the remaining balance warranty period:

Less than 1 year: 2% provision

More than 1 year: 3% provision

The company has raised invoices as under:

Invoice Date	Amount (₹)
19 th January, 2016	80,000
29 th January, 2017	50,000
15 th October, 2017	1,80,000

Calculate the provision to be made for warranty under AS 29 as at 31st March, 2017 and 31st March, 2018. Also compute amount to be debited to Profit and Loss Account for the year ended 31st March, 2018.

AS 19

6. (a) A Ltd. leased a machinery to B Ltd. on the following terms:

	(₹ in lakhs)
Fair value of the machinery	20.00
Lease term	5 years
Lease Rental per annum	5.00
Guaranteed Residual value	1.00
Expected Residual value	2.00
Internal Rate of Return	15%

Depreciation is provided on straight line method @ 10% per annum. Ascertain unearned financial income and necessary entries to be passed in the books of the Lessee in the First year.

AS 22

- (b) Akshara Ltd. is a full tax free enterprise for the first ten years of its existence and is in the second year of its operation. Depreciation timing difference resulting in a tax liability in year 1 and 2 is ₹ 400 lakhs and ₹ 800 lakhs respectively. From the third year it is expected that the timing difference would reverse each year by ₹ 20 lakhs. Assuming tax rate of 40%, find out the deferred tax liability at the end of the second year and any charge to the Profit and Loss account.

AS 25

7. (a) To comply with listing requirements and other statutory obligations, Prateek Ltd. prepares interim financial reports at the end of each quarter. The company has brought forward losses of ₹ 350 lakhs under Income-tax Law, of which 90% is eligible for set off as per the recent verdict of the Court, that has attained finality. No deferred tax asset has been recognized on such losses in view of the uncertainty over its eligibility for set off. The company has reported quarterly earnings of ₹ 350 lakhs and ₹ 150 lakhs respectively for the first two quarters of financial year 2017-2018 and anticipates net earnings of ₹ 400 lakhs in the coming half year ended March 2018 of which ₹ 50 lakhs will be the loss in the quarter ended December, 2017. The tax rate for the company is 30% with a 10% surcharge. You are required to calculate the amount of tax expense to be reported for each quarter of financial year 2017-2018.

AS 26

- (b) Change Ltd. acquired a patent at a cost of ₹ 2,40,00,000 for a period of 5 years and the product life-cycle is also 5 years. The company capitalized the cost and started amortizing the asset at ₹ 48,00,000 per annum. After two years it was found that the product life-cycle may continue for another 5 years from then. The net cash flows from the product during these 5 years were expected to be ₹ 36,00,000, ₹ 46,00,000, ₹ 44,00,000, ₹ 40,00,000 and ₹ 34,00,000. Find out the amortization cost of the patent for each of the years.

AS 28

8. M Ltd. has three cash-generating units: A, B and C. Due to adverse changes in the technological environment, M Ltd. conducted impairment tests of each of its cash-generating units. On 31st March, 2018, the carrying amounts of A, B and C are ₹ 100 lakhs, ₹ 150 lakhs and ₹ 200 lakhs respectively.

The operations are conducted from a headquarter. The carrying amount of the headquarter assets is ₹ 200 lakhs: a headquarter building of ₹ 150 lakhs and a research centre of ₹ 50 lakhs. The relative carrying amounts of the cash-generating units are a reasonable indication of the proportion of the head-quarter building devoted to each cash-generating unit. The carrying amount of the research centre cannot be allocated on a reasonable basis to the individual cash-generating units.

Following is the remaining estimated useful life of:

	A	B	C	Head quarter assets
Remaining estimated useful life	10	20	20	20

The headquarter assets are depreciated on a straight-line basis.

The recoverable amount of each cash generating unit is based on its value in use since net selling price for each CGU cannot be calculated. Therefore, Value in use is equal to

	A	B	C	M Ltd. as a whole
Recoverable amount	199	164	271	720*

*The research centre generates additional future cash flows for the enterprise as a whole. Therefore, the sum of the value in use of each individual CGU is less than the value in use of the business as a whole. The additional cash flows are not attributable to the headquarter building.

Calculate and show allocation of impairment loss as per AS 28. Ignore tax effects.

AS 16

9. DLF Limited has borrowed a sum of US\$ 20,00,000 at the beginning of financial year 2017-18 for its residential project at LIBOR + 3%. The interest is payable at the end of the financial year.

At the time of availment exchange rate was ₹ 61 per US \$ and the rate as on 31st March, 2018 was ₹ 65 per US \$. If DLF Limited had borrowed the loan in India in Indian Rupee equivalent, the pricing of loan would have been @ 10.50%.

Compute borrowing cost and exchange difference for the year ending 31st March, 2018 as per AS 16. (Applicable LIBOR is 1%).

Indian Accounting Standards (Ind AS)

10. Explain

- Carve Out in Ind AS 17 vis-à-vis IAS 17 alongwith the reason.
- Differences between Ind AS 21 vis-à-vis AS 11.

Accounting for Corporate Restructuring

11. The following are the summarized Balance Sheets of H Ltd. and S Ltd. as at 31.03.2018:

	H Ltd. (₹)	S Ltd. (₹)		₹ in lakhs	
				H Ltd. (₹)	S Ltd. (₹)
Share capital			Fixed assets	240	72
Share of ₹ 10 each	200	40	Investment in S Ltd. (2,40,000 shares)	24	-
General reserve	200	80	Trade receivables	140	20
Profit and Loss	80	60	Inventories	120	100
Secured loan	80	12	Cash at Bank	156	8
Current liabilities	<u>120</u>	<u>8</u>		—	—
	<u>680</u>	<u>200</u>		<u>680</u>	<u>200</u>

H Ltd. holds 60% of the paid up capital of S Ltd. and balance is held by a foreign company. The foreign company agreed with H Ltd. as under:

- (i) The shares held by the foreign company will be sold to H Ltd. at ₹ 50 above than nominal value of per share.
- (ii) The actual cost per share to the Foreign Company was ₹ 11, gain accruing to Foreign Company is taxable @ 20%. The tax payable will be deducted from the sale proceeds and paid to Government by H Ltd. 50% of the consideration (after payment of tax) will be remitted to Foreign Company by H Ltd. and also any cash for fractional shares allotted.
- (iii) For the Balance of consideration H Ltd. would issue its shares at their intrinsic value.

It was also decided that H Ltd. would also absorb S Ltd. simultaneously by writing down the fixed assets of S Ltd. by 10%. The Balance Sheet figure included a sum of ₹ 4 lakh due by S Ltd. to H Ltd, included inventory of ₹ 6 lakhs purchased from S Ltd. who sold them at cost plus 20%.

Pass Journal entries in the books of H Ltd. to record the above arrangement on 31.03.2018. Also prepare Balance Sheet of H Ltd. after absorption. Workings should form part of your answer.

Consolidated Financial Statements

12. The following information relates to the results of the parent and subsidiary (jointly) and the investment in associate and joint venture: (All figures are in rupees)

Summarised Balance Sheet as at 31.3.2018

	<i>Holding and subsidiary</i>	<i>Associate</i>	<i>Joint Venture</i>
Equity and Liabilities			
Called up equity shares of ₹ 1 each	1,00,000	40,000	10,000
General reserve	40,000		-
Profit and loss account	37,000	27,000	83,000
Minority Interest	20,000	-	-
Current Liabilities			
Trade payables	20,000	32,000	6,000
Provision for tax	<u>19,000</u>	<u>11,000</u>	<u>11,000</u>
	<u>2,36,000</u>	<u>1,10,000</u>	<u>1,10,000</u>

Assets			
Non-current assets			
Fixed assets- Tangible assets	1,95,000	74,000	41,000
Investments:			
8,000 shares in Associate	15,000	-	-
5,000 shares in Joint Venture	5,000	-	-
Current assets	<u>21,000</u>	<u>36,000</u>	<u>69,000</u>
	<u>2,36,000</u>	<u>1,10,000</u>	<u>1,10,000</u>

Details of Profit and Loss account for the year ended 31.3.2018

	<i>Holding and subsidiary</i>	<i>Associate</i>	<i>Joint Venture</i>
Retained profit for the year	15,000	11,000	23,000
Add: Retained profit brought forward	<u>22,000</u>	<u>16,000</u>	<u>60,000</u>
Retained profit carried forward	<u>37,000</u>	<u>27,000</u>	<u>83,000</u>

You are given the following additional information:

- The parent company purchased its investment in the associate two years ago when the balance on the profit and loss account was ₹ 17,000. There are no signs of impairment of the goodwill.
- The parent company entered into a joint venture to access a lucrative market in the former East Germany. It set up a company two years ago and has 50 per cent of the voting rights of the company set up for this joint venture.

Prepare the consolidated balance sheet for the Group as per relevant Accounting Standards for the year ended 31.3.2018.

Accounting and Reporting of Financial Instruments

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

<i>Nature</i>	<i>Non-cumulative redeemable preference shares</i>
Repayment	Redeemable after 3 years
Date of Allotment	1 st April 2015
Date of Repayment	31 st March 2018

Total Period	3 Years
Value of Preference Shares issued	5,00,00,000
Dividend Rate	0.0001% Per Annum
Market rate of interest	12% Per Annum
Present value factor	0.7118

Accounting for Share Based Payments

14. An enterprise grants to an employee the right to choose either a cash payment equal to the value of 1,000 shares, or 1,200 shares. The grant is conditional upon the completion of three years' service. If the employee chooses the equity alternative, the shares must be held for three years after vesting date. The face value of shares is ₹ 10 per share. At grant date, the fair value of the shares of the enterprise (without considering post-vesting restrictions) is ₹ 50 per share. At the end of years 1, 2 and 3, the said fair value is ₹ 52, ₹ 55 and ₹ 60 per share respectively.

The enterprise does not expect to pay dividends in the next three years.

After taking into account the effects of the post-vesting transfer restrictions, the enterprise estimates that the grant date fair value of the equity alternative is ₹ 48 per share. At the end of year 3, the employee chooses:

Scenario 1: The cash alternative

Scenario 2: The equity alternative

Pass necessary journal entries to account for the above options under both the alternatives.

Mutual Funds

15. On 1.4.2017, a mutual fund scheme had 54 lakh units of face value of ₹ 10 each was outstanding. The scheme earned ₹ 486 lakhs in 2017-2018, out of which ₹ 270 lakhs was earned in the first half of the year. On 30.9.2017, 6 lakh units were sold at a "NAV" of ₹ 70.

Pass Journal entries for sale of units and distribution of dividend at the end of 2017-2018.

Valuation of Shares

16. The following abridged Balance Sheet as at 31st March, 2018 pertains to Supreme Ltd.

Liabilities	₹ in lakhs	Assets	₹ in lakhs
Share Capital:		Fixed Assets	3,862
60 lakhs Equity shares of ₹ 10 each, fully paid up	600	Current Assets	970
30 lakhs Equity shares of ₹ 10		Loans and Advances	311

each, ₹ 8 paid up	240	
50 lakh Equity shares of ₹ 5 each, fully paid-up	250	
Reserves and Surplus	1,819	
Secured Loans	1,500	
Current Liabilities	414	
Provisions	<u>320</u>	
	<u>5,143</u>	<u>5,143</u>

You are required to calculate the following for each one of the three categories of equity shares appearing in the above mentioned Balance Sheet:

- (i) Intrinsic value on the basis of book values of Assets and Liabilities;
- (ii) Value per share on the basis of dividend yield.

Normal rate of dividend in the concerned industry is 15%, whereas Supreme Ltd. has been paying 20% dividend for the last four years and is expected to maintain it in the next few years; and

- (iii) Value per share on the basis of EPS.

For the year ended 31st March, 2018 the company has earned ₹ 457 lakhs as profit after tax, which can be considered to be normal for the company. Average EPS for a fully paid share of ₹ 10 of a Company in the same industry is ₹ 2.

Valuation of Business

17. From the following information of Nishtha Ltd. ascertain the value of business:

- (1) The company's equity share capital is ₹ 200 lakh, divided into shares of ₹ 50 each.
- (2) The company earned a profit after tax of ₹ 60 lakh for the year ended March 2018.
- (3) The rate for the year 2017-2018 is 40%. Future tax rate is estimated at 45%.
- (4) The company's equity shares are quoted at ₹ 120 at the balance sheet date.

The profits for the year 2017-2018 have been calculated after considering the following in the Profit and Loss Account:

- (i) Subsidy of ₹ 4 lakh is received from the Government towards fulfillment of certain social obligations. The Government has withdrawn this subsidy and hence, this amount will not be received in future.
- (ii) Interest of ₹ 10 lakh is on term loan. The final instalment of this term loan was fully settled in this year.

- (iii) Managerial remuneration is ₹ 18 lakhs. The shareholders have approved an increase of ₹ 8 lakh in the overall managerial remuneration, from the next year onwards.
- (iv) Loss on sale of fixed assets amounting to ₹ 10 lakh.

Value Added Statement

18. Piramal Enterprises Limited (PEL) has been consistently preparing Value Added Statement (VAS) as part of Financial Reporting. The Human Resource department of the Company has come up with a new scheme to link employee incentive with 'Value Added' as per VAS. As per the scheme an Annual Index of Employee cost to Value Added annually (% of employee cost to Value Added rounded off to nearest whole number) shall be prepared for the last 5 years and the best index out of results of the last 5 years shall be selected as the 'Target Index'. The Target Index percentage shall be applied to the figure of 'Value Added' for a given year to ascertain the target employee cost. Any saving in the actual employee cost for the given year compared to the target employee cost will be rewarded as 'Variable incentive' to the extent of 70% of the savings. From the given data, you are requested to ascertain the eligibility of 'Variable Incentive' for the year 2017-2018 for the employees of the PEL.

Value added statement of PEL for last 5 years (₹ in lakhs)

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Sales	3,200	3,250	2,900	3,800	4,900
Less: Bought out goods and services	<u>2,100</u>	<u>2,080</u>	<u>1,940</u>	<u>2,510</u>	<u>3,200</u>
Value added	<u>1,100</u>	<u>1,170</u>	<u>960</u>	<u>1,290</u>	<u>1,700</u>

Application of Value Added

Year	2012-13	2013-14	2014-15	2015-16	2016-17
To Pay Employees	520	480	450	600	750
To Providers of Capital	160	170	120	190	210
To Government Tax	210	190	220	300	250
For Maintenance and expansion	210	330	170	200	490

Summarized Profit and Loss Account of the PEL for 2017-2018 (₹ in lakhs)

Sales		5,970
Less: Material consumed	1,950	
Wages	400	
Production salaries	130	
Production expenses	500	

Production depreciation	150	
Administrative salaries	150	
Administrative expenses	200	
Administrative depreciation	100	
Interest	150	
Selling and distribution salaries	120	
Selling expenses	350	
Selling depreciation	<u>120</u>	<u>4,320</u>
Profit		<u>1,650</u>

Economic Value Added

19. Able Bank will give loans to companies that have an "Economic Value Added" greater than zero for the past three years on an average. The bank is considering lending money to a small company that has the economic value characteristics shown below. The data relating to the company is as follows:

- Average operating income after tax equals ₹ 25,00,000 per year for the last three years.
- Average total assets over the last three years equals ₹ 75,00,000.
- Weighted average cost of capital appropriate for the company is 10% which is applicable for all three years.
- The company's average current liabilities over the last three years are ₹ 15,00,000.

Does the company meet the bank's criterion for a positive economic value added?

Human Resource Accounting

- 20 The following information is supplied to you about Great Ltd.

Capital & Reserves	
Equity Shares of ₹ 100 each of which ₹ 75 has been called up	5,00,000
Equity Shares in respect of which calls are in arrear @ 25 per share	₹ 1,00,000
General Reserve	₹ 10,00,000
Profit & Loss account (balance at beginning of the year)	(₹ 25,00,000)
Profit/(loss) for the year	(₹ 1,80,000)
Industry Average Profitability	12.50%
8% Debentures of ₹ 10 each	8,00,000
Great Ltd. is proposing to hire the services of Mr. ABC to turn the company around.	

Minimum take home salary per month demanded by Mr. ABC	₹ 4,00,000
Average Income tax rate on salaries after considering the impact of ₹ 3 lakhs p.a. i.e., the exemption amount	25%
Provident Fund contribution by Employer per month	₹ 50,000
Profits over and above target expected by hiring Mr. ABC	10%

You are required to analyze the proposal and see whether it is worthwhile to employ Mr. ABC and also suggest the maximum emoluments that could be paid to him.

Note:

- (i) PF contributions are tax exempt.
- (ii) Take home salary is that remaining after employee's contribution to PF @ ₹ 50,000 per month and after deduction of Income-tax on salary.

ANSWERS

1. (a) (i) **False:** As per AS 1 "Disclosure of Accounting Policies", certain fundamental accounting assumptions underlie the preparation and presentation of financial statements. They are usually not specifically stated because their acceptance and use are assumed. Disclosure is necessary if they are not followed.
- (ii) **False:** As per AS 1, if the fundamental accounting assumptions, viz. Going Concern, Consistency and Accrual are followed in financial statements, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact should be disclosed.
- (iii) **True:** To ensure proper understanding of financial statements, it is necessary that all significant accounting policies adopted in the preparation and presentation of financial statements should be disclosed. The disclosure of the significant accounting policies as such should form part of the financial statements and they should be disclosed in one place.
- (iv) **False:** Any change in the accounting policies which has a material effect in the current period or which is reasonably expected to have a material effect in later periods should be disclosed. Where such amount is not ascertainable, wholly or in part, the fact should be indicated.
- (v) **True:** As per AS 1, there is no single list of accounting policies which are applicable to all circumstances. The differing circumstances in which enterprises operate in a situation of diverse and complex economic activity make alternative accounting principles and methods of applying those principles acceptable.

- (b) As per para 10 of AS 2 'Valuation of Inventories', most by-products as well as scrap or waste materials, by their nature, are immaterial. They are often measured at net realizable value and this value is deducted from the cost of the main product.

1. Calculation of net realizable value of by-product, BP

		₹
Selling price of by-product BP	(1,600 units x ₹ 12.5 per unit)	20,000
Less: Separate processing charges of by-product BP		(2,000)
Packing charges		<u>(3,000)</u>
Net realizable value of by-product BP		<u>15,000</u>

2. Calculation of cost of conversion for allocation between joint products MP 1 and MP 2

	₹	₹
Raw material		80,000
Wages		41,000
Fixed overhead		29,000
Variable overhead		<u>20,000</u>
		1,70,000
Less: NRV of by-product BP (See calculation 1)	(15,000)	
Sale value of scrap	<u>(3,000)</u>	<u>(18,000)</u>
Joint cost to be allocated between MP1 and MP2		<u>1,52,000</u>

3. Determination of "basis for allocation" and allocation of joint cost to MP 1 and MP 2

	MP 1	MP 2
Output in units (a)	6,250 units	5,000 units
Sales price per unit (b)	₹ 40	₹ 25
Sales value (a x b)	₹ 2,50,000	₹ 1,25,000
Ratio of allocation	2	1
Joint cost of ₹ 1,52,000 allocated in the ratio of 2:1 (c)	₹ 1,01,333	₹ 50,667
Cost per unit [c/a]	₹ 16.21	₹ 10.13

4. Determination of value of closing inventory of MP 1 and MP 2

	MP 1	MP 2
Closing inventory in units	800 units	200 units
Cost per unit	₹ 16.21	₹ 10.13
Value of closing inventory	₹ 12,968	₹ 2,026

2. (a) Cash Flow Statement of Gagan Ltd. for the year ended March 31, 2018

A	Cash Flow from Operating Activities	
	Net Profit as per Profit & Loss A/c	-----
	Add: Premium on Redemption of Debentures	1,650
	Add: Interest on 10% Debentures	11,000
	Less: Interest on 10% Investments	(35,000)
B	Cash Flow from Investing Activities	
	Interest on Investments [35,000-10,500]	24,500
C	Cash Flow from Financing Activities	
	Interest on Debentures paid [11,000 - (1,175 - 275)]	(10,100)
	Redemption of Debentures [(1,10,000 - 77,000) + 5% premium]	(34,650)

Note: Debtors written off against provision for doubtful debts does not require any further adjustment in Cash Flow Statement.

- (b) To decide whether, the event is adjusting or not adjusting two conditions need to be satisfied,

(a) There has to be evidence

(b) The event must have been related to period ending on reporting date.

Here both the conditions are satisfied. Court order is a conclusive evidence which has been received before approval of the financial statements since the liability is related to earlier year. The event will be considered as an adjusting event and accordingly the amounts will be adjusted in accounts of 2016-2017.

3. Analysis of Contract Revenue, Contract Costs and Profit/Loss

Particulars	Year 0 Actual	Year 1 Actual	Year 2 Budgeted	Total
Contract Revenue: Initial Revenue				55,000

Variations		700	200	900
Claims		350	500	850
Incentives			500	500
Total Estimated Revenue (A)		1,050	1,200	57,250
Contract Costs:				
Tendering Costs	180			180
Direct Costs				
Employee Benefits: Site Cost		4,000	3,700	7,700
Transport charges		120	110	230
Depreciation		800	800	1,600
Material after Inventory Adjustments		15,000	19,100	34,100
Total Direct Costs (B)	180	19,920	23,710	43,810
Contract Overheads				
Insurance		2,000	2,200	4,200
Design and Technical Assistance		1,000	1,200	2,200
Contract Administration		2,000	2,400	4,400
Total Contract Overhead		5,000	5,800	10,800
Allocation @ 10% (C)		500	580	1,080
Total Costs (B) + (C) = (D)	180	20,420	24,290	44,890
Stage of Completion (By ratio of costs incurred)		45.89%	54.11%	
Estimated Profit (A) - (D)				12,360
Proportionate Contract Revenue 45.89% of (55,000 – 1,050)		25,721	31,529	57,250
Less: Actual Costs (180 + 20,420)		<u>20,600</u>	<u>24,290</u>	<u>44,890</u>
Profit for the Year ended		<u>5,121</u>	<u>7,239</u>	<u>12,360</u>

4. (a) Paragraph 7 of AS 10 states that the cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

- it is probable that future economic benefits associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Further, paragraph 9 provides that the standard does not prescribe the unit of measure for recognition, i.e., what constitutes an item of property, plant and equipment. Thus, judgement is required in applying the recognition criteria to an entity's specific circumstances.

Paragraph 17, inter alia, states that the cost of an item of property, plant and equipment comprise any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

In the given case, railway siding, road and bridge are required to facilitate the construction of the refinery and for its operations. Expenditure on these items is required to be incurred in order to get future economic benefits from the project as a whole which can be considered as the unit of measure for the purpose of capitalisation of the said expenditure even though the company cannot restrict the access of others for using the assets individually. It is apparent that the aforesaid expenditure is directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

In view of this, even though ABC Ltd. may not be able to recognize expenditure incurred on these assets as an individual item of property, plant and equipment in many cases (where it cannot restrict others from using the asset), expenditure incurred may be capitalised as a part of overall cost of the project. From this, it can be concluded that, in the extant case the expenditure incurred on these assets, i.e., railway siding, road and bridge, should be considered as the cost of constructing the refinery and accordingly, expenditure incurred on these items should be allocated and capitalised as part of the items of property, plant and equipment of the refinery.

Depreciation

As per paragraph 45 and 47 of AS 10, if these assets have a useful life which is different from the useful life of the item of property, plant and equipment to which they relate, it should be depreciated separately. However, if these assets have a useful life and the depreciation method that are the same as the useful life and the depreciation method of the item of property, plant and equipment to which they relate, these assets may be grouped in determining the depreciation charge. Nevertheless, if it has been included in the cost of property, plant and equipment as a directly attributable cost, it will be depreciated over the useful lives of the said property, plant and equipment.

The useful lives of these assets should not exceed that of the asset to which it relates.

Presentation

These assets should be presented within the class of asset to which they relate.

- (b) ABC Ltd. should recognise the grants in the following manner:
- As per para 6.4 of AS 12, in certain circumstances, a government grant is awarded for the purpose of giving immediate financial support to an enterprise rather than as an incentive to undertake specific expenditure. Such grants may be confined to an individual enterprise and may not be available to a whole class of enterprises. These circumstances may warrant taking the grant

to income in the period in which the enterprise qualifies to receive it, as an extraordinary item if appropriate (see AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies). Therefore, ₹ 20 lakhs has been received for immediate start-up of business. This should be recognised in Statement of Profit and Loss immediately as there are no conditions attached to the grant.

- As per para 9.1, grants related to revenue are sometimes presented as a credit in the profit and loss statement, either separately or under a general heading such as 'Other Income'. Alternatively, they are deducted in reporting the related expense. ₹ 50 lakhs should be recognised in profit or loss on a systematic basis over the periods which the entity recognises as expense the related costs for which the grants are intended to compensate provided that there is reasonable assurance that ABC Ltd. will comply with the conditions attached to the grant.
- As per para 7.1, government grants may take the form of non-monetary assets, such as land or other resources, given at concessional rates. In these circumstances, it is usual to account for such assets at their acquisition cost. Non-monetary assets given free of cost are recorded at a nominal value. Accordingly, land should be recognised at nominal value in the balance sheet.
- The standard provides option to treat the grant either as a deduction from the gross value of the asset or to treat it as deferred income as per para 8.3 and 8.4 of the standard. Under first method, the grant is shown as a deduction from the gross value of the asset concerned in arriving at its book value. The grant is thus recognised in the profit and loss statement over the useful life of a depreciable asset by way of a reduced depreciation charge. Accordingly, the grant of ₹ 2 lakhs is deducted from the cost of the machinery. Machinery will be recognised in the books at ₹ 10 lakhs – ₹ 2 lakhs = ₹ 8 lakhs and depreciation will be charged on it as follows:

$$\text{₹ 8 lakhs} / 5 \text{ years} = \text{₹ 1.60 lakhs per year.}$$

Under the second method, grants related to depreciable assets are treated as deferred income which is recognised in the profit and loss statement on a systematic and rational basis over the useful life of the asset. Such allocation to income is usually made over the periods and in the proportions in which depreciation on related assets is charged.

₹ 2 lakhs should be recognised as deferred income and will be transferred to profit and loss over the useful life of the asset. In this cases, ₹ 40,000 [₹ 2 lakhs / 5 years] should be credited to profit and loss each year over the period of 5 years.

5. (a) As per AS 14, 'Accounting for Amalgamations' consideration for the amalgamation means the aggregate of shares and other securities issued and payment made in form of cash or other assets by the transferee company to the shareholders of the transferor company.

(i) **Computation of Purchase Consideration:**

	₹
(a) Preference Shares: ₹ 50 per share	
24,000 Preference shares in Som Ltd. @ ₹ 50 per share	12,00,000
(b) Cash	39,000
(c) Equity shares: 56,000 equity shares in Som Ltd. @ ₹ 115 per share	64,40,000
	<u>76,79,000</u>

(ii)

Journal entry

	₹	₹
Liquidator of Dove Ltd.	Dr.	76,79,000
To Cash		39,000
To Preference Share Capital A/c		12,00,000
To Equity Share Capital A/c		56,00,000
To Securities Premium A/c		8,40,000
[56,000 x 15 (115-100)]		
(Payment of cash and issue of shares to the shareholders of Dove Ltd. as purchase consideration)		

(b) **Provision to be made for warranty under AS 29 'Provisions, Contingent Liabilities and Contingent Assets'**

As at 31st March, 2017 = ₹ 80,000 x .02 + ₹ 50,000 x .03

= ₹ 1,600 + ₹ 1,500 = ₹ 3,100

As at 31st March, 2018 = ₹ 50,000 x .02 + ₹ 1,80,000 x .03

= ₹ 1,000 + ₹ 5,400 = ₹ 6,400

Amount debited to Profit and Loss Account for year ended 31st March, 2018

	₹
Provision required as on 31.03.2018	6,400

Less: Opening Balance of provision as on 1.4.2017	(3,100)
Amount debited to Profit and Loss account	<u>3,300</u>

Note: No provision will be made on 31st March, 2018 in respect of sales amounting ₹ 80,000 made on 19th January, 2016 as the warranty period of 2 years has already expired.

6. (a) Computation of Unearned Finance Income

As per AS 19 on Leases,

Unearned finance income = Gross investment in the lease – Present value of (minimum lease payments under a finance lease from the standpoint of the lessor and any unguaranteed residual value accruing to the lessor)

Where, Gross investment = Minimum lease payments + Unguaranteed residual value
= (Total lease rent + Guaranteed residual value) + Unguaranteed residual value
= [(₹ 5,00,000 × 5 years) + ₹ 1,00,000] + ₹ 1,00,000
= ₹ 27,00,000

**Table showing present value of (i) Minimum lease payments (MLP) and
(ii) Unguaranteed residual value (URV)**

Year	MLP inclusive of URV	Internal rate of return (Discount factor 15%)	Present Value	
	₹		₹	
1	5,00,000	0.8696	4,34,800	
2	5,00,000	0.7561	3,78,050	
3	5,00,000	0.6575	3,28,750	
4	5,00,000	0.5718	2,85,900	
5	5,00,000	0.4972	2,48,600	
	1,00,000	0.4972	49,720	
	(guaranteed residual value)			
			<u>17,25,820</u>	(i)
	1,00,000	.4972	49,720	(ii)
	(unguaranteed residual value)			
		(i) + (ii)	<u>17,75,540</u>	(b)

Unearned Finance Income = (a) – (b)

= ₹ 27,00,000 – ₹ 17,75,540 = ₹ 9,24,460

Journal Entries in the books of B Ltd.

	₹	₹
<i>At the inception of lease</i>		
Machinery account	Dr. 17,25,820*	
To A Ltd.'s account		17,25,820*
(Being lease of machinery recorded at present value of MLP)		
<i>At the end of the first year of lease</i>		
Finance charges account (Refer Working Note)	Dr. 2,58,873	
To A Ltd.'s account		2,58,873
(Being the finance charges for first year due)		
A Ltd.'s account	Dr. 5,00,000	
To Bank account		5,00,000
(Being the lease rent paid to the lessor which includes outstanding liability of ₹ 2,41,127 and finance charge of ₹ 2,58,873)		
Depreciation account	Dr. 1,72,582	
To Machinery account		1,72,582
(Being the depreciation provided @ 10% p.a. on straight line method)		

*As per para 11 of AS 19, the lessee should recognise the lease as an asset and a liability at an amount equal to the fair value of the leased asset at the inception of lease. However, if the fair value of the leased asset exceeds the present value of minimum lease payments from the standpoint of lessee, the amount recorded should be the present value of these minimum lease payments. Therefore, in this case, as the fair value of ₹ 20,00,000 is more than the present value amounting ₹ 17,25,820, the machinery has been recorded at ₹ 17,25,820 in the books of B Ltd. (the lessee) at the inception of the lease. According to para 13 of the standard, at the inception of the lease, the asset and liability for the future lease payments are recognised in the balance sheet at the same amounts.

Profit and loss account	Dr.	4,31,455	
To Depreciation account			1,72,582
To Finance charges account			2,58,873
(Being the depreciation and finance charges transferred to profit and loss account)			

Working Note:

Table showing apportionment of lease payments by B Ltd. between the finance charges and the reduction of outstanding liability.

Year	Outstanding liability (opening balance) ₹	Lease rent ₹	Finance charge ₹	Reduction in outstanding liability ₹	Outstanding liability (closing balance) ₹
(a)	(b)	(c)	(b) x 15% = (d)	(c)-(d) = (e)	(f) = (b) - (e)
1	17,25,820	5,00,000	2,58,873	2,41,127	14,84,693
2	14,84,693	5,00,000	2,22,704	2,77,296	12,07,397
3	12,07,397	5,00,000	1,81,110	3,18,890	8,88,507
4	8,88,507	5,00,000	1,33,276	3,66,724	5,21,783
5	5,21,783	5,00,000	<u>78,267</u>	<u>5,21,783</u>	1,00,050*
			<u>8,74,230</u>	<u>17,25,820</u>	

*The difference between this figure and guaranteed residual value (₹ 1,00,000) is due to approximation in computing the interest rate implicit in the lease.

- (b) As per an Explanation to para 13 of AS 22 'Accounting for Taxes on Income', deferred tax in respect of timing differences which originate during the tax holiday period and reverse during the tax holiday period, should not be recognised to the extent deduction from the total income of an enterprise is allowed during the tax holiday period as per the provisions of sections 10A and 10B of the Income-tax Act. Deferred tax in respect of timing differences which originate during the tax holiday period but reverse after the tax holiday period should be recognised in the year in which the timing differences originate. However, recognition of deferred tax assets

should be subject to the consideration of prudence as laid down in AS 22. For this purpose, the timing differences which originate first should be considered to reverse first.

Out of ₹ 400 lakhs depreciation timing difference, amount of ₹ 160 lakhs (₹ 20 lakhs x 8 years) will reverse in the tax holiday period and therefore, should not be recognised. However, for ₹ 240 lakhs (₹ 400 lakhs – ₹ 160 lakhs), deferred tax liability will be recognised for ₹ 96 lakhs (40% of ₹ 240 lakhs) in first year. In the second year, the entire amount of timing difference of ₹ 800 lakhs will reverse only after tax holiday period and hence, will be recognised in full. Deferred tax liability amounting ₹ 320 lakhs (40% of ₹ 800 lakhs) will be created by charging it to profit and loss account and the total balance of deferred tax liability account at the end of second year will be ₹ 416 lakhs (96 lakhs + 320 lakhs).

7. (a) Estimated tax liability on annual income = [Income ₹ 900 lakhs – b/f losses ₹ 315 lakhs (90% of 350)] x 33% = 33% of ₹ 585 lakhs = ₹ 193.05 lakhs

As per para 29(c) of AS 25 'Interim Financial Reporting', income tax expense is recognised in each interim period based on the best estimate of the weighted average annual income tax rate expected for the full financial year.

Thus, estimated weighted average annual income tax rate = ₹ 193.05 lakhs divided by ₹ 900 lakhs = 21.45%

Tax expense to be recognised in each quarter	₹ in lakhs
Quarter I – ₹ 350 lakhs x 21.45%	75.075
Quarter II – ₹ 150 lakhs x 21.45%	32.175
Quarter III – (₹ 50 lakhs) x 21.45%	(10.725)
Quarter IV – ₹ 450 lakhs x 21.45%	<u>96.525</u>
	<u>193.05</u>

- (b) Change Limited amortised ₹ 48,00,000 per annum for the first two years i.e. ₹ 96,00,000. The remaining carrying cost can be amortized during next 5 years on the basis of net cash flows arising from the sale of the product. The amortisation may be found as follows:

Year	Net cash flows ₹	Amortization Ratio	Amortization Amount ₹
I	-	0.20	48,00,000
II	-	<u>0.20</u>	48,00,000
III	36,00,000	0.180	25,92,000

IV	46,00,000	0.230	33,12,000
V	44,00,000	0.220	31,68,000
VI	40,00,000	0.200	28,80,000
VII	<u>34,00,000</u>	<u>0.170</u>	<u>24,48,000</u>
Total	<u>2,00,00,000</u>	<u>1.000</u>	<u>2,40,00,000</u>

It may be seen from above that from third year onwards, the balance of carrying amount i.e., ₹ 1,44,00,000 has been amortized in the ratio of net cash flows arising from the product of Change Ltd.

Note: The answer has been given on the basis that the patent is renewable and Change Ltd. got it renewed after expiry of five years.

8. 1. Identification of Corporate Assets of M Ltd.

Here, the corporate assets are the headquarter building and the research centre.

For corporate building

Since, the carrying amount of the headquarter building can be allocated on a reasonable and consistent basis to the cash-generating units under review. Therefore, only a 'bottom-up' test is necessary.

For research centre

Since the carrying amount of the research centre cannot be allocated on a reasonable and consistent basis to the individual CGU under review. Therefore, a 'top-down' test will be applied **in addition to** the 'bottom-up' test.

2. Allocation of Corporate Assets

Since the estimated remaining useful life of A's CGU is 10 years, whereas the estimated remaining useful lives of B and C's CGU are 20 years, the carrying amount of the headquarter building is allocated to the carrying amount of each individual cash-generating unit on weight basis.

3. Calculation of a weighted allocation of the carrying amount of the headquarter building
(Amount in ₹ lakhs)

On 31 st March, 2018	A	B	C	Total
Carrying amount (A)	100	150	200	450
Useful life	10 years	20 years	20 years	
Weight based on useful life	1	2	2	
Carrying amount after weight	100	300	400	800
Pro-rata allocation of the building	12.5%	37.5%	50%	100%
	(100/800)	(300/800)	(400/800)	
Allocation of the carrying amount of the				

building (based on pro-rata above) (B)	18.75	56.25	75	150
Carrying amount (after allocation of the building)	118.75	206.25	275	600

4. Calculation of Impairment Losses

(i) Application of 'bottom-up' test (Amount in ₹ lakhs)

31 st March, 2018	A	B	C
Carrying amount (after allocation of the building) (Refer point 3 above)	118.75	206.25	275
Recoverable amount (given in the question)	<u>199</u>	<u>164</u>	<u>271</u>
Impairment loss	<u>0</u>	<u>(42)</u>	<u>(4)</u>

(ii) Allocation of the impairment losses for cash-generating units B and C

(Amount in ₹ lakhs)

Cash-generating unit	B	C
To headquarter building	(12) (42*56/206)	(1) (4*75/275)
To assets in cash-generating unit	<u>(30)</u> (42*150/206)	<u>(3)</u> (4*200/275)
	<u>(42)</u>	<u>(4)</u>

Since the research centre could not be allocated on a reasonable and consistent basis to A, B and C's CGU, M Ltd. compares the carrying amount of the smallest CGU to which the carrying amount of the research centre can be allocated (i.e., M as a whole) to its recoverable amount, in accordance with the 'top-down' test.

(iii) Application of the 'top-down' test (Amount in ₹ lakhs)

31 st March, 2018	A	B	C	Building	Research centre	M Ltd.
Carrying amount	100	150	200	150	50	650
Impairment loss arising from the 'bottom-up' test	–	(30)	(3)	(13)	–	(46)
Carrying amount after the 'bottom-up' test	100	120	197	137	50	604
Recoverable amount						720

Since recoverable amount is more than the carrying amount of M Ltd., no additional impairment loss has been resulted from the application of the 'top-down' test. Only an impairment loss of ₹ 46 lakhs will be recognized as a result of the application of the 'bottom-up' test.

9. (i) Interest for the period 2017-2018

$$= \text{US \$ } 20 \text{ lakhs} \times 4\% \times \text{₹ } 65 \text{ per US \$} = \text{₹ } 52 \text{ lakhs}$$

(ii) Increase in the liability towards the principal amount

$$= \text{US \$ } 20 \text{ lakhs} \times \text{₹ } (65 - 61) = \text{₹ } 80 \text{ lakhs.}$$

(iii) Interest that would have resulted if the loan was taken in Indian currency

$$= \text{US \$ } 20 \text{ lakhs} \times \text{₹ } 61 \times 10.5\% = \text{₹ } 128.1 \text{ lakhs}$$

(iv) Difference between interest on local currency borrowing and foreign currency borrowing = ₹ 128.1 lakhs - ₹ 52 lakhs = ₹ 76.1 lakhs.

Therefore, out of ₹ 80 lakhs increase in the liability towards principal amount, only ₹ 76.1 lakhs will be considered as the borrowing cost. Thus, total borrowing cost would be ₹ 128.1 lakhs being the aggregate of interest of ₹ 52 lakhs on foreign currency borrowings plus the exchange difference to the extent of difference between interest on local currency borrowing and interest on foreign currency borrowing of ₹ 76.1 lakhs.

Hence, ₹ 128.1 lakhs would be considered as the borrowing cost to be accounted for as per AS 16 "Borrowing Costs" and the remaining ₹ 3.9 lakhs (₹ 80 lakhs – ₹ 76.1 lakhs) would be considered as the exchange difference to be accounted for as per AS 11 "The Effects of Changes in Foreign Exchange Rates".

10. (a) Major Changes in Ind AS 17 vis-à-vis IAS 17 resulting into Carve Out

As per IFRS: IAS 17 requires all lease rentals to be charged to statement of profit and loss on straight-line basis in case of operating leases unless another systematic basis is more representative of the time pattern of the user's benefit even if the payments to the lessor are not on that basis.

Carve out: A carve-out has been made in Ind AS 17 to provide that lease rentals, in case of operating leases, shall be charged to the statement of profit and loss in accordance with the lease agreement unless the payments to the lessor are structured to increase in line with expected general inflation to compensate for the lessor's expected inflationary cost increases. If payments to the lessor vary because of factors other than general inflation, then this condition is not met.

Reason: Companies enter into various kinds of lease agreements to get the right to use an asset of the lessor. Considering the Indian inflationary situation, lease agreements contain periodic rent escalation. Accordingly, where there is periodic rent escalation in line with the expected inflation so as to compensate the lessor for expected inflationary cost increases, the rentals shall not be straight-lined.

(b) Major Changes in Ind AS 21 vis-à-vis Notified AS 11

(i) **Forward Exchange Contracts and other similar Financial Instruments:**

Ind AS 21 excludes from its scope forward exchange contracts and other similar financial instruments, which are treated in accordance with Ind AS 109. AS 11

does not exclude accounting for such contracts.

- (ii) **Exchange Differences arising on Translation of Certain Long-term Monetary Items from Foreign Currency to Functional Currency:** AS 11, gives an option to recognise exchange differences arising on translation of certain long-term monetary items from foreign currency to functional currency directly in equity, to be transferred to profit or loss over the life of the relevant liability/asset if such items are not related to acquisition of fixed assets. Where such items are related to acquisition of fixed assets, the foreign exchange differences can be recognised as part of the cost of the asset.

Ind AS 21 does not give the above option. However, Ind AS 21 does not apply to long-term foreign currency monetary items recognised in the financial statements before the beginning of the first Ind AS financial reporting period as per the previous GAAP, i.e. AS 11. However, as provided in Ind AS 101, such an entity may continue to apply the accounting policy so opted for such long-term foreign currency monetary items as per the previous GAAP.

- (iii) **Approach for Translation:** AS 11 is based on integral foreign operations and non-integral foreign operations approach for accounting for a foreign operation, whereas Ind AS 21 is based on the functional currency approach.
- (iv) **Presentation Currency:** As per Ind AS 21, presentation currency can be different from local currency and it gives detailed guidance in this regard, whereas AS 11 does not explicitly state so.
- (v) **Additional Guidance:** Ind AS 21 includes Appendix B which gives guidance on foreign Currency Transactions and Advance Consideration whereas AS 11 does not contain such guidance.

11. Journal Entries in the books of H Ltd.

			₹	₹
1.	Business Purchase A/c Dr.		96,00,000	
	To Foreign Company (W.N.1)			96,00,000
	(Being business purchased)			
2.	Foreign Company Dr.		96,00,000	
	To Tax Payable A/c			15,68,000
	To Bank A/c (₹ 40,16,000 + ₹ 20)			40,16,020*
	To Equity Share Capital A/c			13,38,660

* It is assumed that payment of fractional shares has also been routed through Bank A/c along with 50% payment remitted to Foreign Company.

	To Securities Premium A/c (Being payment made to foreign company)		26,77,320
3.	Fixed Assets A/c [72,00,000 – 10%] Dr.	64,80,000	
	Trade receivables A/c Dr.	20,00,000	
	Inventories A/c Dr.	1,00,00,000	
	Cash at Bank A/c Dr.	8,00,000	
	To Current Liabilities A/c		8,00,000
	To Secured Loan A/c		12,00,000
	To Investment in S Ltd. A/c		24,00,000
	To Business Purchase A/c		96,00,000
	To Capital Reserve A/c (B.F.)		52,80,000
	(Being various assets and liabilities taken over)		
4.	Profit and Loss A/c Dr.	1,00,000	
	To Inventories A/c		1,00,000
	(Being elimination of unrealized profit i.e. $\frac{6,00,000}{(100+20)} \times 20 = ₹ 1,00,000$)		
5.	Current Liabilities A/c Dr.	4,00,000	
	To Trade Receivable A/c		4,00,000
	(Being elimination of mutual owing)		
6.	Tax Payable A/c Dr.	15,68,000	
	To Bank A/c		15,68,000
	(Being tax paid to Government)		

Balance Sheet of H Ltd. (After Absorption)

Particulars	Note No.	(₹)
I. Equity and Liabilities		
(1) Shareholder's Funds		
(a) Share Capital	1	2,13,38,660
(b) Reserves and Surplus	2	3,58,57,320

(2) Non-Current Liabilities			
Long-term borrowings	3	92,00,000	
(3) Current Liabilities			
₹ (1,20,00,000 + 8,00,000 – 4,00,000)		1,24,00,000	
Total		7,87,95,980	
II. Assets			
(1) Non-current assets			
(a) Fixed assets			
Tangible assets	4	3,04,80,000	
(2) Current assets			
(a) Inventories			
(₹ 1,20,00,000 - ₹ 1,00,000 + ₹ 1,00,00,000)		2,19,00,000	
(b) Trade receivables			
(₹ 1,40,00,000 – ₹ 4,00,000 + ₹ 20,00,000)		1,56,00,000	
(c) Cash and cash equivalents	5	1,08,15,980	
Total		7,87,95,980	

Notes to Accounts

		(₹)	(₹)
1.	Share Capital		
	21,33,866 Shares of ₹ 10 each (out of above, 1,33,866 shares issued for consideration other than cash)		2,13,38,660
2.	Reserves and surplus		
	General Reserve	2,00,00,000	
	Profit & Loss (₹ 80,00,000 – ₹ 1,00,000)	79,00,000	
	Capital Reserve	52,80,000	
	Securities Premium	<u>26,77,320</u>	3,58,57,320
3.	Long Term Borrowings		
	Secured Loan (₹ 80,00,000+₹ 12,00,000)		92,00,000
4.	Tangible Assets		
	Fixed Assets		
	(₹ 2,40,00,000+ ₹ 64,80,000)		3,04,80,000

5.	Cash and cash equivalents		
	Cash at Bank (₹ 1,56,00,000 + ₹ 8,00,000 – ₹ 40,16,020 – ₹ 15,68,000)		1,08,15,980

Working Notes:**1. Amount payable to foreign company & Capital Gain of Foreign Company**

Price per share of S Ltd. = ₹ 50 + ₹ 10 (Nominal value) = ₹ 60

Value of 40% shares held by foreign company = $40,00,000 \times 40\% \times \frac{60}{10}$
 = ₹ 96,00,000

Capital gain = ₹ 96,00,000 – $\left[16,00,000 \times \frac{11}{10} \right]$ = ₹ 78,40,000

Tax on capital gain = ₹ 78,40,000 × 20% = ₹ 15,68,000

Amount payable to Foreign Company after tax = ₹ 96,00,000 – ₹ 15,68,000
 = ₹ 80,32,000

50% of ₹ 80,32,000 = ₹ 40,16,000 to be remitted to foreign company.

2. Intrinsic value of shares of H Ltd. and balance payment to foreign company

	₹	₹
Total assets (Excluding Investment in S Ltd.)		6,56,00,000
Add: Investment in S Ltd. (2,40,000 shares x ₹ 60)		
(Since they have been purchased from Foreign Co.)		<u>1,44,00,000</u>
		8,00,00,000
Less: Liabilities:		
Secured Loan	80,00,000	
Current Liability	<u>1,20,00,000</u>	<u>(2,00,00,000)</u>
Net Assets		<u>6,00,00,000</u>
No. of equity shares		20,00,000
Intrinsic value per share		₹ 30

Number of shares to be issued for payment of 50% balance amount

$$\frac{₹ 40,16,000}{30} = 1,33,866 \text{ shares}$$

Cash for fractional shares = ₹ 40,16,000 – (1,33,866 x ₹ 30) = ₹ 20

12. Consolidated Balance Sheet as on 31.3.2018

Particulars	Note No.	₹
I. Equity and Liabilities		
(1) Shareholder's Funds		
(a) Share Capital	1	1,00,000
(b) Reserves and Surplus	2	1,20,700
(2) Minority Interest		20,000
(3) Current Liabilities		
(a) Trade Payables	3	23,000
(b) Short Term Provisions	4	24,500
Total		2,88,200
II. Assets		
(1) Non-current assets		
(a) Fixed assets		
Tangible assets	5	2,15,500
(b) Non-current investment	6	17,200
(2) Current assets	7	55,500
Total		2,88,200

Notes to Accounts

		₹
1.	Share Capital	
	Called up equity shares of ₹ 1 each	1,00,000
2.	Reserves and Surplus	
	General Reserve	40,000
	Profit and Loss A/c (W.N.3)	<u>80,700</u>
		1,20,700
3.	Trade Payables	
	Holding & Subsidiary	20,000
	Joint Venture (50%)	<u>3,000</u>
		23,000
4.	Short term provisions	
	Provisions for Tax	
	Holding & Subsidiary	19,000
	Joint Venture (50%)	<u>5,500</u>
		24,500

5.	Tangibles Assets		
	Holding & Subsidiary	1,95,000	
	Joint Venture (50%)	<u>20,500</u>	2,15,500
6.	Non-current investment		
	Investment in Associate (W.N.4)		17,200
7.	Current Asset		
	Holding & Subsidiary	21,000	
	Joint Venture (50%)	<u>34,500</u>	55,500

Working Notes:**1. Analysis of Profit & Loss of Associate / Joint Venture**

	Pre-acquisition	Post-acquisition
	₹	₹
Profit as on 31.3.2018 27,000	<u>16,000</u>	<u>11,000</u>
Share of Associate company (20%)	<u>3,200</u>	<u>2,200</u>
Analysis of Profit and Loss of Joint Venture	Nil	<u>83,000</u>
Share of Joint Venture (50%)		<u>41,500</u>

2. Calculation of Goodwill/Capital Reserve

	Associate		Joint Venture	
	₹		₹	
Investment		15,000		5,000
Less: Nominal Value	8,000		5,000	
Capital Profit	<u>3,200</u>	<u>(11,200)</u>	<u>-</u>	<u>(5,000)</u>
Goodwill		<u>3,800</u>		<u>Nil</u>

3. Calculation of Consolidated Profit and Loss Account

	₹
Profit and Loss Account of Holding & Subsidiary	37,000
Add: Share of Associate (W.N.1)	2,200
Joint Venture (W.N.1)	<u>41,500</u>
	<u>80,700</u>

4. Calculation of Investment in Associate

	₹
Goodwill (W.N.2)	3,800
Net worth	<u>11,200</u>
Cost	15,000
Add: Share of Revenue Profit	<u>2,200</u>
	<u>17,200</u>

Note: Out of ₹ 17,000 existed at the time of acquisition, only ₹ 16,000 (Opening Balance) is continuing in the books of the associate. Therefore, ₹ 16,000 is taken as capital profit assuming that it is a part of that ₹ 17,000 existed at the time of acquisition.

13. 1. Analysis of the financial instrument issued by S Ltd. to its holding company H Ltd.

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

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

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

Computations on initial recognition:

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

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

Year	Date	Opening Balance	Interest @ 12%	Closing balance
	1 st April, 2015	3,55,90,000	-	3,55,90,000
1	31 st March, 2016	3,55,90,000	42,70,800	3,98,60,800
2	31 st March, 2017	3,98,60,800	47,83,296	4,46,44,096
3	31 st March, 2018	4,46,44,096	53,55,904*	5,00,00,000

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

2.

In the books of H Ltd.

Journal Entries to be done at every reporting date

Date	Particulars		Amount	Amount
1 st April, 2015	Investment (Equity portion)	Dr.	1,44,10,000	
	Redeemable Preference Shares	Dr.	3,55,90,000	
	To Bank			5,00,00,000
	(Being initial recognition of transaction recorded)			
31 st March, 2016	Redeemable Preference Shares	Dr.	42,70,800	
	To Interest income			42,70,800
	(Interest income on loan component recognized)			
31 st March, 2017	Redeemable Preference Shares	Dr.	47,83,296	
	To Interest income			47,83,296
	(Interest income on loan component recognized)			
31 st March, 2018	Redeemable Preference Shares	Dr.	53,55,904	
	To Interest income			53,55,904
	(Interest income on loan component recognized)			

31 st March, 2018	Bank	Dr.	5,00,00,000	
	To Redeemable Preference Shares			5,00,00,000
	(Being settlement of transaction done at the end of the third year)			

14. The employee share-based payment plan granted by the enterprise has two components, viz., (i) a liability component, i.e., the employees' right to demand settlement in cash, and (ii) an equity component, i.e., the employees' right to demand settlement in shares rather than in cash. The enterprise measures, on the grant date, the fair value of two components as below:

Fair value under equity settlement 1,200 shares x ₹ 48 =	₹ 57,600
Fair value under cash settlement 1,000 shares x ₹ 50 =	₹ 50,000
Fair value of the equity component (₹ 57,600 – ₹ 50,000) =	₹ 7,600
Fair value of the liability component	₹ 50,000

Calculation of expenses to be recognised in respect of the liability component at the end of each year as below:

Year 1	
Provision required at the year-end 1,000 x ₹ 52.00 x 1/3 =	₹ 17,333
Less: provision at the beginning of the year	<u>Nil</u>
Expense for the year	<u>₹ 17,333</u>
Year 2	
Provision required at the year-end 1,000 x ₹ 55.00 x 2/3 =	₹ 36,667
Less: provision at the beginning of the year	<u>₹ 17,333</u>
Expense for the year	<u>₹ 19,334</u>
Year 3	
Provision required at the year-end 1,000 x ₹ 60.00 =	₹ 60,000

Less: provision at the beginning of the year	<u>₹ 36,667</u>
Expense for the year	<u>₹ 23,333</u>

The expense to be recognised in respect of the equity component at the end of each year is one third of the fair value (₹ 7,600) determined at (1) above.

Journal Entries

Year 1	Employee compensation expense A/c To Provision for liability component of employee share-based payment plan (Being compensation expense recognised in respect of liability component of employee share-based payment plan with cash alternative)	Dr.	17,333	17,333
	Employee compensation expense A/c To Stock Options Outstanding A/c (Being compensation expense recognised in respect of equity component of employee share- based payment plan with cash alternative)	Dr.	2,533	2,533
Year 2	Employee compensation expense A/c To Provision for liability component of employee share-based payment plan (Being compensation expense recognised in respect of liability component of employee share-based payment plan with cash alternative)	Dr.	19,334	19,334
	Employee compensation expense A/c To Stock Options Outstanding A/c (Being compensation expense recognised in respect of equity component of employee share- based payment plan with cash alternative)	Dr.	2,533	2,533
Year 3	Employee compensation expense A/c To Provision for liability component of employee share-based payment plan (Being compensation expense recognised in respect of liability component of employee share-based payment plan with cash alternative)	Dr.	23,333	23,333
	Employee compensation expense A/c To Stock Options Outstanding A/c	Dr.	2,533	2,533

	(Being compensation expense recognised in respect of equity component of employee share-based payment plan with cash alternative)			
On settlement of the employee share-based payment plan				
	Scenario 1: The cash alternative			
	Provision for liability component of employee share-based payment plan	Dr	60,000	
	To Bank A/c			60,000
	(Being cash paid on exercise of cash alternative under the employee share-based payment plan)			
	Stock Options Outstanding A/c	Dr.	7,600	
	To General Reserve			7,600
	(Being the balance standing to the credit of the Stock Options Outstanding Account transferred to the general reserve upon exercise of cash alternative)			
	Scenario 2: The equity alternative			
	Stock Options Outstanding A/c	Dr.	7,600	
	Provision for liability component of employee share-based payment plan	Dr.	60,000	
	To Share Capital A/c (1,200 shares x ₹ 10)			12,000
	To Securities Premium A/c			55,600
	(Being shares issued on exercise of equity alternative under the employee share-based payment plan)			

15.

Allocation of Earnings	Old Unit Holders	New Unit Holders	Total
	[54 lakhs units]	[6 lakhs units]	
	₹ in lakhs	₹ in lakhs	₹ in lakhs
First half year (₹ 5 per unit)	270.00	Nil	270.00
Second half year (₹ 3.60 per unit)	<u>194.40</u>	<u>21.60</u>	<u>216.00</u>
	464.40	21.60	486.00
Add: Equalization payment recovered	-	-	30.00

Total available for distribution @ ₹ 8.60 per unit Equalization Payment - ₹ 270 lakhs ÷ 54 lakhs = ₹ 5 per unit			516.00
		Old Unit Holders	New Unit Holders
		₹	₹
Dividend distributed		8.60	8.60
Less: Equalization payment		-	(5.00)
		<u>8.60</u>	<u>3.60</u>

Journal Entries

(₹ in lakhs)				
30.9.2017	Bank A/c	Dr.	450.00	
	To Unit Capital			60.00
	To Reserve			360.00
	To Dividend Equalization			30.00
	(Being the amount received on sale of 6 lakhs unit at a NAV of ₹ 70 per unit)			
31.3.2018	Dividend Equalization	Dr.	30.00	
	To Revenue A/c			30.00
	(Being the amount transferred to Revenue Account)			
30.9.2018	Revenue A/c	Dr.	516.00	
	To Bank			516.00
	(Being the amount distributed among 60 lakhs unit holders @ ₹ 8.60 per unit)			

16. (i) Intrinsic value on the basis of book values

	₹ in lakhs	₹ in lakhs
Fixed Assets		3,862
Current Assets		970
Loans and Advances		<u>311</u>
		5,143
Less: Secured loans	1,500	

Current liabilities	414	
Provisions	<u>320</u>	(2,234)
		2,909
Add: Notional call on 30 lakhs equity shares @ ₹ 2 per share		<u>60</u>
		<u>2,969</u>

Equivalent number of equity shares of ₹ 10 each.

	No. of Equity shares
Fully paid shares of ₹ 10 each	60
Partly-paid shares after notional call	30
Fully paid shares of ₹ 5 each $\left[\frac{50 \text{ lakhs}}{10} \times 5 \right]$	<u>25</u>
	<u>115</u>

Value per equivalent share of ₹ 10 each = $\frac{2,969 \text{ lakhs}}{115 \text{ lakhs}} = ₹ 25.82$

Hence, intrinsic values of each equity share are as follows:

Value of fully paid share of ₹ 10 = ₹ 25.82 per equity share.

Value of share of ₹ 10, ₹ 8 paid-up = ₹ 25.82 – ₹ 2 = ₹ 23.82 per equity share.

Value of fully paid share of ₹ 5 = $\frac{25.82}{2} = ₹ 12.91$ per equity share.

(ii) Valuation on dividend yield basis:

Value of fully paid share of ₹ 10 = $\frac{20}{15} \times 10 = ₹ 13.33$

Value of share of ₹ 10, ₹ 8 paid-up = $\frac{20}{15} \times 8 = ₹ 10.67$

Value of fully paid share of ₹ 5 = $\frac{20}{15} \times 5 = ₹ 6.67$

(iii) Valuation on the basis of EPS:

Profit after tax = ₹ 457 lakhs

Total share capital = ₹ (600 + 240 + 250) lakhs = ₹ 1,090 lakhs

Earning per rupee of share capital = $\frac{457 \text{ lakhs}}{1,090 \text{ lakhs}} = ₹ 0.419$

Earning per fully paid share of ₹ 10 = ₹ 0.419 × 10 = ₹ 4.19

Earning per share of ₹ 10 each, ₹ 8 paid-up = ₹ 0.419 × 8 = ₹ 3.35

Earning per share of ₹ 5, fully paid-up = ₹ 0.419 × 5 = ₹ 2.10

Value of fully paid share of ₹ 10 = $\frac{4.19}{2} \times 10 = ₹ 20.95$

Value of share of ₹ 10, ₹ 8 paid-up = $\frac{3.35}{2} \times 10 = ₹ 16.75$

Value of fully paid share of ₹ 5 = $\frac{2.10}{2} \times 10 = ₹ 10.50$

17. Computation of value of business of Nishtha Ltd.

Particulars	₹
Profit before tax for the year ended 31.3.2018 = $\frac{60,00,000}{100\% - 40\%}$	1,00,00,000
Adjustments in respect of non-recurring items	
Less: Subsidy income not receivable in future	(4,00,000)
Add: Interest on term loan not payable in future	10,00,000
Less: Additional managerial remuneration	(8,00,000)
Add: Loss on sale of fixed assets and investments (non-recurring)	<u>10,00,000</u>
Future Maintainable Profits before Tax	1,08,00,000
Less: Tax expense @ 45%	<u>(48,60,000)</u>
Future Maintainable Profit after Tax attributable to Equity	<u>59,40,000</u>
Value of business = $\frac{\text{Future Maintainable Profits}}{\text{Capitalisation Rate}} = \frac{59,40,000}{12.5\%}$	4,75,20,000

Working Note:

Computation of Capitalisation Rate	₹
(a) Profit after tax for the year ended 31.3.2018	60 lakh
(b) Number of equity shares $\frac{₹ 200 \text{ lakh}}{₹ 50 \text{ per share}}$	4 lakh
(c) Earnings per share (EPS) = $\frac{\text{PAT}}{\text{Number of equity shares}}$	15
(d) Market Price per share (MPS) on balance sheet date	120

(e)	Price earnings ratio = $\frac{\text{MPS}}{\text{EPS}} = \frac{120}{15}$	8
(f)	Capitalisation rate = $\frac{1}{\text{PE Ratio}} \times 100 = \frac{1}{8} \times 100$	12.5%

18. 1. Calculation of Target index

	(₹ in lakhs)				
Year	2012-13	2013-14	2014-15	2015-16	2016-17
Employees cost	520	480	450	600	750
Value added	1,100	1,170	960	1,290	1,700
Percentage of 'Employee cost' to 'Value added' (to the nearest whole number)	47%	41%	47%	47%	44%

Target index percentage is taken as least of the above from companies viewpoint on conservative basis i.e. 41%.

2. Value Added Statement for the year 2017-2018

	(₹ in lakhs)	(₹ in lakhs)
Sales		5,970
Less: Cost of bought in goods & services		
Material consumed	1,950	
Production expenses	500	
Administrative expenses	200	
Selling expenses	350	(3,000)
Added value		2,970

3. Employee cost for 2017-2018

	(₹ in lakhs)
Wages	400
Production salaries	130
Administrative salaries	150
Selling salaries	120
	800

4. **Calculation of target employee cost** = Target Index Percentage x Value added
 = 41% x ₹ 2,970 lakhs = ₹ 1217.70 lakhs

5. **Calculation of savings**

Target employee cost	=	₹ 1,217.70 lakhs
Less: Actual Cost	=	<u>₹ 800.00 lakhs</u>
Saving	=	₹ 417.70 lakhs

6. **Calculation of Variable incentive for the year 2016-17:**

70% of saving is variable incentive = 70% x ₹ 417.70 lakhs = ₹ 292.39 lakhs.

19. **Calculation of Economic Value Added**

	₹
Net Operating Profit After Tax	25,00,000
Less: Cost of capital employed (Refer W.N.)	<u>(6,00,000)</u>
Economic Value Added	<u>19,00,000</u>

Economic value added is greater than zero. Therefore, the company qualifies for the loan.

Working Note:

Calculation of Cost of Capital employed	₹
Average total assets	75,00,000
Less: Average current liabilities	<u>(15,00,000)</u>
Capital employed	<u>60,00,000</u>

Cost of capital = Capital employed x Weighted average cost of capital

$$= ₹ 60,00,000 \times \frac{10}{100} = ₹ 6,00,000$$

20. **Cost to Company in employing Mr. ABC**

	₹
Salary before tax ₹ 4,00,000 x 12 = $\frac{48,00,000}{0.75}$	64,00,000*
Add: Employee's PF contribution (50,000 x 12)	<u>6,00,000</u>
	70,00,000
Add: Employer's PF contribution (50,000 x 12)	<u>6,00,000</u>
	<u>76,00,000</u>

Capital base

	₹
Equity Share Capital paid up (5,00,000 shares of ₹ 75 each)	3,75,00,000
Less: Calls in arrears	<u>(1,00,000)</u>
	3,74,00,000
General Reserve	10,00,000
Profit & Loss A/c (balance) at the beginning of the year	(25,00,000)
Loss for the year	(1,80,000)
8% Debentures	<u>80,00,000</u>
Capital base	<u>4,37,20,000</u>
Target Profit 12.5% of capital base (4,37,20,000)	54,65,000
Profits achieved due to Mr. ABC 54,65,000 + 10% (54,65,000)	60,11,500

Maximum emoluments that can be paid to Mr. ABC = 60,11,500

Thus, the company is advised not to hire him as his CTC ₹ 76,00,000 is more than ₹ 60,11,500.

PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

QUESTIONS

Project Planning and Capital Budgeting

1. Skylark Airways is planning to acquire a light commercial aircraft for flying class clients at an investment of ₹ 50,00,000. The expected cash flow after tax for the next three years is as follows: (₹)

Year 1		Year 2		Year 3	
CFAT	Probability	CFAT	Probability	CFAT	Probability
14,00,000	0.1	15,00,000	0.1	18,00,000	0.2
18,00,000	0.2	20,00,000	0.3	25,00,000	0.5
25,00,000	0.4	32,00,000	0.4	35,00,000	0.2
40,00,000	0.3	45,00,000	0.2	48,00,000	0.1

The Company wishes to take into consideration all possible risk factors relating to airline operations. The company wants to know:

- The expected NPV of this venture assuming independent probability distribution with 6 per cent risk free rate of interest.
- The possible deviation in the expected value.
- How would standard deviation of the present value distribution help in Capital Budgeting decisions?

Leasing Decisions

2. Engineers Ltd. is in the business of manufacturing nut bolts. Some more product lines are being planned to be added to the existing system. The machinery required may be bought or may be taken on lease. The cost of machine is ₹ 20,00,000 having a useful life of 5 years with the salvage value of ₹ 4,00,000 (consider short term capital loss/gain for the Income tax). The full purchase value of machine can be financed by bank loan at the rate of 20% interest repayable in five equal instalments falling due at the end of each year. Alternatively, the machine can be procured on a 5 years lease, year-end lease rentals being ₹ 6,00,000 per annum. The Company follows the written down value method of depreciation at the rate of 25 per cent. Company's tax rate is 35 per cent and cost of capital is 14 per cent.

- Advise the company which option it should choose – lease or borrow.
- Assess the proposal from the lessor's point of view examining whether leasing the machine is financially viable at 14 per cent cost of capital.

Detailed working notes should be given.

Dividend Decisions

3. In December, 2011 AB Co.'s share was sold for ₹ 146 per share. A long term earnings growth rate of 7.5% is anticipated. AB Co. is expected to pay dividend of ₹ 3.36 per share.
- What rate of return an investor can expect to earn assuming that dividends are expected to grow along with earnings at 7.5% per year in perpetuity?
 - It is expected that AB Co. will earn about 10% on book Equity and shall retain 60% of earnings. In this case, whether, there would be any change in growth rate and cost of Equity?

Indian Capital Market

4. The following data relate to Anand Ltd.'s share price:
- | | |
|-------------------------------|---------|
| Current price per share | ₹ 1,800 |
| 6 months future's price/share | ₹ 1,950 |
- Assuming it is possible to borrow money in the market for transactions in securities at 12% per annum, you are required:
- to calculate the theoretical minimum price of a 6-months forward purchase; and
 - to explain arbitrage opportunity.
5. Sensex futures are traded at a multiple of 50. Consider the following quotations of Sensex futures in the 10 trading days during February, 2009:

Day	High	Low	Closing
4-2-09	3306.4	3290.00	3296.50
5-2-09	3298.00	3262.50	3294.40
6-2-09	3256.20	3227.00	3230.40
7-2-09	3233.00	3201.50	3212.30
10-2-09	3281.50	3256.00	3267.50
11-2-09	3283.50	3260.00	3263.80
12-2-09	3315.00	3286.30	3292.00
14-2-09	3315.00	3257.10	3309.30
17-2-09	3278.00	3249.50	3257.80
18-2-09	3118.00	3091.40	3102.60

Abhishek bought one sensex futures contract on February, 04. The average daily absolute change in the value of contract is ₹ 10,000 and standard deviation of these changes is ₹ 2,000. The maintenance margin is 75% of initial margin.

You are required to determine the daily balances in the margin account and payment on margin calls, if any.

6. The market received rumour about ABC corporation's tie-up with a multinational company. This has induced the market price to move up. If the rumour is false, the ABC corporation stock price will probably fall dramatically. To protect from this an investor has bought the call and put options.

He purchased one 3 months call with a striking price of ₹ 42 for ₹ 2 premium, and paid ₹ 1 per share premium for a 3 months put with a striking price of ₹ 40.

- (i) Determine the Investor's position if the tie up offer bids the price of ABC Corporation's stock up to ₹ 43 in 3 months.
- (ii) Determine the Investor's ending position, if the tie up programme fails and the price of the stocks falls to ₹ 36 in 3 months.

Security Analysis and Valuation

7. Pragya Limited has issued 75,000 equity shares of ₹ 10 each. The current market price per share is ₹ 24. The company has a plan to make a rights issue of one new equity share at a price of ₹ 16 for every four share held.

You are required to:

- (i) Calculate the theoretical post-rights price per share;
 - (ii) Calculate the theoretical value of the right alone;
 - (iii) Show the effect of the rights issue on the wealth of a shareholder, who has 1,000 shares assuming he sells the entire rights; and
 - (iv) Show the effect, if the same shareholder does not take any action and ignores the issue.
8. X Limited, just declared a dividend of ₹ 14.00 per share. Mr. B is planning to purchase the share of X Limited, anticipating increase in growth rate from 8% to 9%, which will continue for three years. He also expects the market price of this share to be ₹ 360.00 after three years.

You are required to determine:

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

Calculate rupee amount up to two decimal points.

	Year-1	Year-2	Year-3
FVIF @ 9%	1.090	1.188	1.295
FVIF @ 13%	1.130	1.277	1.443
PVIF @ 13%	0.885	0.783	0.693

9. Pet feed plc has outstanding, a high yield Bond with following features:

Face Value	£ 10,000
Coupon	10%
Maturity Period	6 Years
Special Feature	Company can extend the life of Bond to 12 years.

Presently the interest rate on equivalent Bond is 8%.

- (a) If an investor expects that interest will be 8%, six years from now then how much he should pay for this bond now.
- (b) Now suppose, on the basis of that expectation, he invests in the Bond, but interest rate turns out to be 12%, six years from now, then what will be his potential loss/ gain if company extends the life of bond by another 6 years.

Portfolio Theory

10. Mr. Tempest has the following portfolio of four shares:

Name	Beta	Investment ₹ Lac.
Oxy Rin Ltd.	0.45	0.80
Boxed Ltd.	0.35	1.50
Square Ltd.	1.15	2.25
Ellipse Ltd.	1.85	4.50

The risk free rate of return is 7% and the market rate of return is 14%.

Required.

- (i) Determine the portfolio return. (ii) Calculate the portfolio Beta.
11. A company has a choice of investments between several different equity oriented mutual funds. The company has an amount of ₹1 crore to invest. The details of the mutual funds are as follows:

Mutual Fund	Beta
A	1.6
B	1.0

C	0.9
D	2.0
E	0.6

Required:

- If the company invests 20% of its investment in each of the first two mutual funds and an equal amount in the mutual funds C, D and E, what is the beta of the portfolio?
- If the company invests 15% of its investment in C, 15% in A, 10% in E and the balance in equal amount in the other two mutual funds, what is the beta of the portfolio?
- If the expected return of market portfolio is 12% at a beta factor of 1.0, what will be the portfolios expected return in both the situations given above?

12. X Co., Ltd., invested on 1.4.2009 in certain equity shares as below:

Name of Co.	No. of shares	Cost (₹)
M Ltd.	1,000 (₹ 100 each)	2,00,000
N Ltd.	500 (₹ 10 each)	1,50,000

In September, 2009, 10% dividend was paid out by M Ltd. and in October, 2009, 30% dividend paid out by N Ltd. On 31.3.2010 market quotations showed a value of ₹ 220 and ₹ 290 per share for M Ltd. and N Ltd. respectively.

On 1.4.2010, investment advisors indicate (a) that the dividends from M Ltd. and N Ltd. for the year ending 31.3.2011 are likely to be 20% and 35%, respectively and (b) that the probabilities of market quotations on 31.3.2011 are as below:

Probability factor	Price/share of M Ltd.	Price/share of N Ltd.
0.2	220	290
0.5	250	310
0.3	280	330

You are required to:

- Calculate the average return from the portfolio for the year ended 31.3.2010;
- Calculate the expected average return from the portfolio for the year 2010-11; and
- Advise X Co. Ltd., of the comparative risk in the two investments by calculating the standard deviation in each case.

Mutual Funds

13. On 1st April, an open ended scheme of mutual fund had 300 lakh units outstanding with Net Assets Value (NAV) of ₹ 18.75. At the end of April, it issued 6 lakh units at opening NAV plus 2% load, adjusted for dividend equalization. At the end of May, 3 Lakh units were

repurchased at opening NAV less 2% exit load adjusted for dividend equalization. At the end of June, 70% of its available income was distributed.

In respect of April-June quarter, the following additional information are available:

	₹ in lakh
Portfolio value appreciation	425.47
Income of April	22.950
Income for May	34.425
Income for June	45.450

You are required to calculate

- (i) Income available for distribution;
- (ii) Issue price at the end of April;
- (iii) repurchase price at the end of May; and
- (iv) net asset value (NAV) as on 30th June.

Money Market Operations

14. M Ltd. has to make a payment on 30th January, 2010 of ₹ 80 lakhs. It has surplus cash today, i.e. 31st October, 2009; and has decided to invest sufficient cash in a bank's Certificate of Deposit scheme offering an yield of 8% p.a. on simple interest basis. What is the amount to be invested now?

Foreign Exchange exposure and Risk Management

15. JKL Ltd., an Indian company has an export exposure of JPY 10,000,000 payable August 31, 2014. Japanese Yen (JPY) is not directly quoted against Indian Rupee.

The current spot rates are:

INR/US \$ = ₹ 62.22

JPY/US\$ = JPY 102.34

It is estimated that Japanese Yen will depreciate to 124 level and Indian Rupee to depreciate against US \$ to ₹ 65.

Forward rates for August 2014 are

INR/US \$ = ₹ 66.50

JPY/US\$ = JPY 110.35

Required:

- (i) Calculate the expected loss, if the hedging is not done. How the position will change, if the firm takes forward cover?
- (ii) If the spot rates on August 31, 2014 are:

INR/US \$ = ₹ 66.25

JPY/US\$ = JPY 110.85

Is the decision to take forward cover justified?

16. Suppose you are a treasurer of XYZ plc in the UK. XYZ have two overseas subsidiaries, one based in Amsterdam and one in Switzerland. The Dutch subsidiary has surplus Euros in the amount of 725,000 which it does not need for the next three months but which will be needed at the end of that period (91 days). The Swiss subsidiary has a surplus of Swiss Francs in the amount of 998,077 that, again, it will need on day 91. The XYZ plc in UK has a net balance of £75,000 that is not needed for the foreseeable future.

Given the rates below, what is the advantage of swapping Euros and Swiss Francs into Sterling?

Spot Rate (€)	£0.6858 - 0.6869	
91 day Pts	0.0037	0.0040
Spot Rate (£)	CHF 2.3295 - 2.3326	
91 day Pts	0.0242	0.0228

Interest rates for the Deposits

Amount of Currency	91 day Interest Rate % p. a.		
	£	€	CHF
0 – 100,000	1	¼	0
100,001 – 500,000	2	1 ½	¼
500,001 – 1,000,000	4	2	½
Over 1,000,000	5.375	3	1

Note: Assume 360 days a year.

Mergers, Acquisitions and Reconstructing

17. T Ltd. Recently made a profit of ₹ 50 crore and paid out ₹ 40 crore (slightly higher than the average paid in the industry to which it pertains). The average PE ratio of this industry is 9. As per Balance Sheet of T Ltd., the shareholder's fund is ₹ 225 crore and number of shares is 10 crore. In case company is liquidated, building would fetch ₹ 100 crore more than book value and stock would realize ₹ 25 crore less.

The other data for the industry is as follows:

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

The estimated beta of T Ltd. is 1.2. You are required to calculate value of T Ltd. using

- (i) P/E Ratio
- (ii) Dividend Yield
- (iii) Valuation as per:
 - (1) Dividend Growth Model
 - (2) Book Value
 - (3) Net Realizable Value

18. The CEO of a company thinks that shareholders always look for EPS. Therefore, he considers maximization of EPS as his company's objective. His company's current Net Profits are ₹ 80.00 lakhs and P/E multiple is 10.5. He wants to buy another firm which has current income of ₹ 15.75 lakhs & P/E multiple of 10.

What is the maximum exchange ratio which the CEO should offer so that he could keep EPS at the current level, given that the current market price of both the acquirer and the target company are ₹ 42 and ₹ 105 respectively?

If the CEO borrows funds at 15% and buys out Target Company by paying cash, how much should he offer to maintain his EPS? Assume tax rate of 30%.

19. The following is the Balance-sheet of Grape Fruit Company Ltd as at March 31st, 2011.

Liabilities	(₹ in lakhs)	Assets	(₹ in lakhs)
Equity shares of ₹ 100 each	600	Land and Building	200
14% preference shares of ₹ 100/- each	200	Plant and Machinery	300
13% Debentures	200	Furniture and Fixtures	50
Debenture interest accrued and payable	26	Inventory	150
Loan from bank	74	Sundry debtors	70
Trade creditors	340	Cash at bank	130
		Preliminary expenses	10
		Cost of issue of debentures	5
		Profit and Loss account	525
	1440		1440

The Company did not perform well and has suffered sizable losses during the last few years. However, it is felt that the company could be nursed back to health by proper financial restructuring. Consequently the following scheme of reconstruction has been drawn up :

- (i) Equity shares are to be reduced to ₹ 25/- per share, fully paid up;

- (ii) Preference shares are to be reduced (with coupon rate of 10%) to equal number of shares of ₹ 50 each, fully paid up.
- (iii) Debenture holders have agreed to forgo the accrued interest due to them. In the future, the rate of interest on debentures is to be reduced to 9 percent.
- (iv) Trade creditors will forego 25 percent of the amount due to them.
- (v) The company issues 6 lakh of equity shares at ₹ 25 each and the entire sum was to be paid on application. The entire amount was fully subscribed by promoters.
- (vi) Land and Building was to be revalued at ₹ 450 lakhs, Plant and Machinery was to be written down by ₹ 120 lakhs and a provision of ₹15 lakhs had to be made for bad and doubtful debts.

Required:

- (i) Show the impact of financial restructuring on the company's activities.
 - (ii) Prepare the fresh balance sheet after the reconstructions is completed on the basis of the above proposals.
20. Write a short note on:
- (a) Financial Planning
 - (b) Role of Clearing Houses
 - (c) Pros and Cons of Depository Services
 - (d) Leading and Lagging in context of forex market
 - (e) Takeover by Reverse Bid

SUGGESTED ANSWERS

1. (i) Expected NPV

(₹ in lakhs)

Year I			Year II			Year III		
CFAT	P	CF×P	CFAT	P	CF×P	CFAT	P	CF×P
14	0.1	1.4	15	0.1	1.5	18	0.2	3.6
18	0.2	3.6	20	0.3	6.0	25	0.5	12.5
25	0.4	10.0	32	0.4	12.8	35	0.2	7.0
40	0.3	12.0	45	0.2	9	48	0.1	4.8
	$\bar{x}$ or $\overline{CF}$	27.0		$\bar{x}$ or $\overline{CF}$	29.3		$\bar{x}$ or $\overline{CF}$	27.9

NPV	PV factor @ 6%	Total PV
27	0.943	25.461
29.3	0.890	26.077
27.9	0.840	<u>23.436</u>
	PV of cash inflow	74.974
	Less: Cash outflow	<u>50.000</u>
	NPV	<u>24.974</u>

(ii) Possible deviation in the expected value

Year I				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	P_1	$(X - \bar{X})^2 P_1$
14 - 27	-13	169	0.1	16.9
18 - 27	-9	81	0.2	16.2
25 - 27	-2	4	0.4	1.6
40 - 27	13	169	0.3	<u>50.7</u>
				<u>85.4</u>

$$\sigma_1 = \sqrt{85.4} = 9.241$$

Year II				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	P_2	$(X - \bar{X})^2 \times P_2$
15-29.3	-14.3	204.49	0.1	20.449
20-29.3	-9.3	86.49	0.3	25.947
32-29.3	2.7	7.29	0.4	2.916
45-29.3	15.7	246.49	0.2	<u>49.298</u>
				<u>98.61</u>

$$\sigma_2 = \sqrt{98.61} = 9.930$$

Year III				
$X - \bar{X}$	$X - \bar{X}$	$(X - \bar{X})^2$	P_3	$(X - \bar{X})^2 \times P_3$
18-27.9	-9.9	98.01	0.2	19.602
25-27.9	-2.9	8.41	0.5	4.205
35-27.9	7.1	50.41	0.2	10.082
48-27.9	20.1	404.01	0.1	<u>40.401</u>
				<u>74.29</u>

$$\sigma\sigma_3 = \sqrt{74.29} = 8.619$$

Standard deviation about the expected value:

$$\sigma = \sqrt{\frac{85.4}{(1.06)^2} + \frac{98.61}{(1.06)^4} + \frac{74.29}{(1.06)^6}} = 14.3696$$

- (iii) Standard deviation is a statistical measure of dispersion; it measures the deviation from a central number i.e. the mean.

In the context of capital budgeting decisions especially where we take up two or more projects giving somewhat similar mean cash flows, by calculating standard deviation in such cases, we can measure in each case the extent of variation. It can then be used to identify which of the projects is least riskier in terms of variability of cash flows.

A project, which has a lower coefficient of variation will be preferred if sizes are heterogeneous.

Besides this, if we assume that probability distribution is approximately normal we are able to calculate the probability of a capital budgeting project generating a net present value less than or more than a specified amount.

2. Discounting Factor:

Cost of finance 20% - Tax 35% = 13%.

(i) PV of cash outflows under leasing alternative

Year-end	Lease rent after taxes P.A.	PVIFA at 13%	Total P.V.
1 – 5	₹ 3,90,000	3.517	₹ 13,71,630

PV of cash outflows under buying alternative

Year end	Loan Instalment	Tax advantage on Interest	Tax advantage on Depreciation	Net Cash Outflow	PVIF at 13%	Total PV
1	6,68,673	1,40,000	1,75,000	3,53,673	0.885	3,13,001
2	6,68,673	1,21,193	1,31,250	4,16,230	0.783	3,25,908
3	6,68,673	98,624	98,438	4,71,611	0.693	3,26,826
4	6,68,673	71,542	73,828	5,23,303	0.613	3,20,785
5	6,68,673	38,819	55,371	5,74,483	0.543	<u>3,11,944</u>
		Total PV outflows				15,98,464
		Less: PV of Salvage Value (₹ 4,00,000 * 0.543)				<u>2,17,200</u>
						13,81,264

		Less: PV of tax saving on short term capital loss (4,74,609 – 4,00,000) * 35% * .543	14,179
		NPV of Cash outflow	13,67,085

Working Notes:

(1) Schedule of Debt Payment

Year-end	Opening balance	Interest @ 20%	Repayment	Closing Balance	Principal Amount
1	20,00,000	4,00,000	6,68,673	17,31,327	2,68,673
2	17,31,327	3,46,265	6,68,673	14,08,919	3,22,408
3	14,08,919	2,81,784	6,68,673	10,22,030	3,86,889
4	10,22,030	2,04,406	6,68,673	5,57,763	4,64,267
5	5,57,763	1,10,910*	6,68,673	0	5,57,763

*Balancing Figure

(2) Schedule of Depreciation

Year	Opening WDV	Depreciation	Closing WDV
1	20,00,000	5,00,000	15,00,000
2	15,00,000	3,75,000	11,25,000
3	11,25,000	2,81,250	8,43,750
4	8,43,750	2,10,938	6,32,812
5	6,32,812	1,58,203	4,74,609

- (3) $EMI = ₹ 20,00,000 / \text{Annuity for 5 years @ 20\%} = \text{i.e. } ₹ 20,00,000 / 2.991 = ₹ 6,68,673.$

Advice: Company is advised to borrow and buy not to go for leasing as NPV of cash outflows is lower in case of buying alternative.

Note: Students may note that the cost of capital of the company given in the question is 14% at which cash flows may also be discounted.

(ii) Evaluation from Lessor's Point of View

	(1)	(2)	(3)	(4)	(5)
Lease Rent	6,00,000	6,00,000	6,00,000	6,00,000	6,00,000
Less: Depreciation	<u>5,00,000</u>	<u>3,75,000</u>	<u>2,81,250</u>	<u>2,10,938</u>	<u>1,58,203</u>
EBT	1,00,000	2,25,000	3,18,750	3,89,062	4,41,797
Less: Tax @ 35%	<u>35,000</u>	<u>78,750</u>	<u>1,11,563</u>	<u>1,36,172</u>	<u>1,54,629</u>

EAT	65,000	1,46,250	2,07,187	2,52,890	2,87,168
Add: Depreciation	<u>5,00,000</u>	<u>3,75,000</u>	<u>2,81,250</u>	<u>2,10,938</u>	<u>1,58,203</u>
Cash Inflows	<u>5,65,000</u>	<u>5,21,250</u>	<u>4,88,437</u>	<u>4,63,828</u>	<u>4,45,371</u>
PV factor @ 14%	0.877	0.769	0.675	0.592	0.519
PV of inflows	4,95,505	4,00,841	3,29,695	2,74,586	2,31,148

Evaluation:

Aggregate PV of cash inflows	17,31,775
Add: PV of salvage value (4,00,000 × 0.519)	2,07,600
Add: Tax shelter on short-term capital loss (4,74,609 – 4,00,000) × 0.35 × 0.519	<u>13,553</u>
PV of all cash inflows	19,52,928
Cost of the machine	20,00,000
NPV	–47,072

Hence, leasing at this rate is not feasible.

3. (i) According to Dividend Discount Model approach the firm's expected or required return on equity is computed as follows:

$$= \frac{D_1}{P_0} + g$$

Where,

K_e = Cost of equity share capital

D_1 = Expected dividend at the end of year 1

P_0 = Current market price of the share.

g = Expected growth rate of dividend.

$$\text{Therefore, } K_e = \frac{3.36}{146} + 7.5\%$$

$$= 0.0230 + 0.075 = 0.098 \quad \text{Or, } K_e = 9.80\%$$

- (ii) With rate of return on retained earnings (r) 10% and retention ratio (b) 60%, new growth rate will be as follows:

$$g = br \quad \text{i.e.}$$

$$= 0.10 \times 0.60 = 0.06$$

Accordingly, dividend will also get changed and to calculate this, first we shall calculate previous retention ratio (b_1) and then EPS assuming that rate of return on retained earnings (r) is same.

With previous Growth Rate of 7.5% and $r = 10\%$ the retention ratio comes out to be:

$$0.075 = b_1 \times 0.10$$

$$b_1 = 0.75 \text{ and payout ratio} = 0.25$$

With 0.25 payout ratio the EPS will be as follows:

$$\frac{3.36}{0.25} = 13.44$$

With new 0.40 ($1 - 0.60$) payout ratio the new dividend will be

$$D_1 = 13.44 \times 0.40 = 5.376$$

Accordingly, new K_e will be

$$K_e = \frac{5.376}{146} + 6.0\%$$

$$\text{or, } K_e = 9.68\%$$

Alternatively

EPS with 6% growth rate instead of 7.5%.

$$13.44 \times \frac{1.06}{1.075} = 13.25$$

With new 0.40 ($1 - 0.60$) payout ratio the new dividend will be

$$D_1 = 13.25 \times 0.40 = 5.30$$

Accordingly, new K_e will be

$$K_e = \frac{5.30}{146} + 6.0\%$$

$$\text{or, } K_e = 9.63\%$$

4. (i) Calculation of theoretical minimum price of a 6 months forward contract-

$$\text{Theoretical minimum price} = ₹ 1,800 + (₹ 1,800 \times 12/100 \times 6/12) = ₹ 1,908$$

(ii) Arbitrage Opportunity-

The arbitrageur can borrow money @ 12 % for 6 months and buy the shares at ₹ 1,800. At the same time he can sell the shares in the futures market at ₹ 1,950. On the expiry date 6 months later, he could deliver the share and collect ₹ 1,950 pay off ₹ 1,908 and record a profit of ₹ 42 (₹ 1,950 – ₹ 1,908).

5. Initial Margin $= \mu + 3\sigma$
 Where μ = Daily Absolute Change
 σ = Standard Deviation

Accordingly

Initial Margin = ₹ 10,000 + ₹ 6,000 = ₹ 16,000

Maintenance margin = ₹ 16,000 x 0.75 = ₹ 12,000

Day	Changes in future Values (₹)	Margin A/c (₹)	Call Money (₹)
4/2/09	-	16000	-
5/2/09	50 x (3294.40 - 3296.50) = -105	15895	-
6/2/09	50 x (3230.40 - 3294.40) = -3200	12695	-
7/2/09	50 x (3212.30 - 3230.40) = -905	16000	4210
10/2/09	50 x (3267.50 - 3212.30) = 2760	18760	-
11/2/09	50 x (3263.80 - 3267.50) = -185	18575	-
12/2/09	50 x (3292 - 3263.80) = 1410	19985	-
14/2/09	50 x (3309.30 - 3292) = 865	20850	-
17/2/09	50 x (3257.80 - 3309.30) = -2575	18275	-
18/2/09	50 x (3102.60 - 3257.80) = -7760	16000	5485

6. Cost of Call and Put Options

= (₹ 2 per share) x (100 share call) + (₹ 1 per share) x (100 share put)

= ₹ 2 x 100 + 1 x 100

= ₹ 300

- (i) Price increases to ₹43. Since the market price is higher than the strike price of the call, the investor will exercise it.

Ending position = (- ₹ 300 cost of 2 option) + (₹ 1 per share gain on call) x 100

= - ₹ 300 + 100

Net Loss = - ₹ 200

- (ii) The price of the stock falls to ₹36. Since the market price is lower than the strike price, the investor may not exercise the call option.

Ending Position = (- ₹300 cost of 2 options) + (₹4 per stock gain on put) x 100

= - ₹300 + 400

Gain = ₹100

7. (i) Calculation of theoretical Post-rights (ex-right) price per share:

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

Where,

M = Market price,

N = Number of old shares for a right share

S = Subscription price

R = Right share offer

$$= \left[\frac{(\text{₹ } 24 \times 4) + (\text{₹ } 16 \times 1)}{4 + 1} \right] = \text{₹ } 22.40$$

- (ii) Calculation of theoretical value of the rights alone:

= Ex-right price – Cost of rights share

= ₹ 22.40 – ₹ 16 = ₹ 6.40

$$\text{Or } = \frac{\text{₹ } 22.40 - \text{₹ } 16}{4} = \text{₹ } 1.60$$

- (iii) Calculation of effect of the rights issue on the wealth of a shareholder who has 1,000 shares assuming he sells the entire rights:

		₹
(a)	Value of shares before right issue (1,000 shares × ₹ 24)	24,000
(b)	Value of shares after right issue (1,000 shares × ₹ 22.40)	22,400
	Add: Sale proceeds of rights renunciation (250 shares × ₹ 6.40)	<u>1,600</u>
		<u>24,000</u>

There is no change in the wealth of the shareholder even if he sells his right.

- (iv) Calculation of effect if the shareholder does not take any action and ignores the issue:

	₹
Value of shares before right issue (1,000 shares × ₹ 24)	24,000
Less: Value of shares after right issue (1,000 shares × ₹ 22.40)	<u>22,400</u>
Loss of wealth to shareholders, if rights ignored	<u>1,600</u>

8. (i) Expected dividend for next 3 years.

$$\text{Year 1 (D}_1\text{)} \quad ₹ 14.00 (1.09) = ₹ 15.26$$

$$\text{Year 2 (D}_2\text{)} \quad ₹ 14.00 (1.09)^2 = ₹ 16.63$$

$$\text{Year 3 (D}_3\text{)} \quad ₹ 14.00 (1.09)^3 = ₹ 18.13$$

Required rate of return = 13% (Ke)

Market price of share after 3 years = (P₃) = ₹ 360

The present value of share

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

$$P_0 = \frac{15.26}{(1+0.13)} + \frac{16.63}{(1+0.13)^2} + \frac{18.13}{(1+0.13)^3} + \frac{360}{(1+0.13)^3}$$

$$P_0 = 15.26(0.885) + 16.63(0.783) + 18.13(0.693) + 360(0.693)$$

$$P_0 = 13.50 + 13.02 + 12.56 + 249.48$$

$$P_0 = ₹ 288.56$$

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

$$P_0 = \frac{D_1}{(ke-g)} = \frac{₹ 15.26}{0.13-0.09} = \frac{₹ 15.26}{0.04} = ₹ 381.50$$

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

$$P_3 = \frac{D_4}{k_e - g} = \frac{D_3(1.09)}{0.13 - 0.09} = \frac{18.13 \times 1.09}{0.04} = \frac{19.76}{0.04} = ₹ 494$$

9. (a) If the current interest rate is 8%, the company will not extent the duration of Bond and the maximum amount the investor would ready to pay will be:

$$= ₹ 1,000 \text{ PVIAF (8\%, 6)} + ₹ 10,000 \text{ PVIF (8\%, 6)}$$

$$= ₹ 1,000 \times 4.623 + ₹ 10,000 \times 0.630$$

$$= ₹ 4,623 + ₹ 6,300$$

$$= ₹ 10,923$$

- (b) If the current interest rate is 12%, the company will extent the duration of Bond. After six years the value of Bond will be

$$= ₹ 1,000 \text{ PVIAF (12\%, 6)} + ₹ 10,000 \text{ PVIF (12\%, 6)}$$

$$\begin{aligned}
 &= ₹1,000 \times 4.111 + ₹10,000 \times 0.507 \\
 &= ₹4,111 + ₹5,070 \\
 &= ₹9,181
 \end{aligned}$$

Thus, potential loss will be ₹9,181 - ₹10,923 = ₹1,742

10. Market Risk Premium (A) = 14% - 7% = 7%

Share	Beta	Risk Premium (Beta x A) %	Risk Free Return %	Return %	Return ₹
Oxy Rin Ltd.	0.45	3.15	7	10.15	8,120
Boxed Ltd.	0.35	2.45	7	9.45	14,175
Square Ltd.	1.15	8.05	7	15.05	33,863
Ellipse Ltd.	1.85	12.95	7	19.95	89,775
Total Return					<u>1,45,933</u>

Total Investment ₹ 9,05,000

$$(i) \text{ Portfolio Return} = \frac{₹1,45,933}{₹9,05,000} \times 100 = 16.13\%$$

- (ii) Portfolio Beta

$$\text{Portfolio Return} = \text{Risk Free Rate} + \text{Risk Premium} \times \beta = 16.13\%$$

$$7\% + 7\beta = 16.13\%$$

$$\beta = 1.30$$

Alternative Approach

First we shall compute Portfolio Beta using the weighted average method as follows:

$$\begin{aligned}
 \text{Beta}_P &= 0.45 \times \frac{0.80}{9.05} + 0.35 \times \frac{1.50}{9.05} + 1.15 \times \frac{2.25}{9.05} + 1.85 \times \frac{4.50}{9.05} \\
 &= 0.45 \times 0.0884 + 0.35 \times 0.1657 + 1.15 \times 0.2486 + 1.85 \times 0.4972 \\
 &= 0.0398 + 0.058 + 0.2859 + 0.9198 = 1.3035
 \end{aligned}$$

Accordingly,

- (i) Portfolio Return using CAPM formula will be as follows:

$$\begin{aligned}
 R_P &= R_F + \text{Beta}_P(R_M - R_F) \\
 &= 7\% + 1.3035(14\% - 7\%) = 7\% + 1.3035(7\%) \\
 &= 7\% + 9.1245\% = 16.1245\%
 \end{aligned}$$

- (ii) Portfolio Beta

As calculated above 1.3035

11. With 20% investment in each MF Portfolio Beta is the weighted average of the Betas of various securities calculated as below:

(i)

<i>Investment</i>	<i>Beta (β)</i>	<i>Investment (₹ Lacs)</i>	<i>Weighted Investment</i>
A	1.6	20	32
B	1.0	20	20
C	0.9	20	18
D	2.0	20	40
E	0.6	20	12
		<u>100</u>	<u>122</u>
Weighted Beta (β) = 1.22			

(ii) With varied percentages of investments portfolio beta is calculated as follows:

<i>Investment</i>	<i>Beta (β)</i>	<i>Investment (₹ Lacs)</i>	<i>Weighted Investment</i>
A	1.6	15	24
B	1.0	30	30
C	0.9	15	13.5
D	2.0	30	60
E	0.6	10	6
		<u>100</u>	<u>133.5</u>
Weighted Beta (β) = 1.335			

(iii) Expected return of the portfolio with pattern of investment as in case (i)

$$= 12\% \times 1.22 \text{ i.e. } 14.64\%$$

Expected Return with pattern of investment as in case (ii) = $12\% \times 1.335$ i.e., 16.02%.

12.

<i>Calculation of return on portfolio for 2009-10</i>	<i>(Calculation in ₹ / share)</i>		
	<i>M</i>	<i>N</i>	
Dividend received during the year	10	3	
Capital gain/loss by 31.03.10			
Market value by 31.03.10	220	290	

Cost of investment	200	300	7.55%
Gain/loss	20	(-)10	
Yield	30	(-)7	
Cost	200	300	
% return	15%	(-)2.33%	
Weight in the portfolio	57	43	
Weighted average return			
Calculation of estimated return for 2010-11			
Expected dividend	20	3.5	
Capital gain by 31.03.11			
(220x0.2) + (250x0.5) + (280x0.3) – 220 = (253-220)	33	-	18.02%
(290x0.2) + (310x0.5) + (330x0.3) – 290 = (312 – 290)	-	22	
Yield	53	25.5	
*Market Value 01.04.10	220	290	
% return	24.09%	8.79%	
*Weight in portfolio (1,000x220): (500x290)	60.3	39.7	
Weighted average (Expected) return			
(*The market value on 31.03.10 is used as the base for calculating yield for 10-11)			

Calculation of Standard Deviation

M Ltd.

Exp. market value	Exp. gain	Exp. div.	Exp. Yield (1)	Prob. Factor (2)	(1) x (2)	Dev. ($P_M - \overline{P_M}$)	Square of dev. (3)	(2) x (3)
220	0	20	20	0.2	4	-33	1089	217.80
250	30	20	50	0.5	25	-3	9	4.50
280	60	20	80	0.3	24	27	729	218.70
					53			$\sigma^2_M = 441.00$

Standard Deviation (σ_M)

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N Ltd.

Exp. market value	Exp. gain	Exp. div.	Exp Yield (1)	Prob. Factor (2)	(1) X(2)	Dev. ($P_N - \overline{P_N}$)	Square of dev. (3)	(2) X (3)
290	0	3.5	3.5	0.2	0.7	-22	484	96.80
310	20	3.5	23.5	0.5	11.75	-2	4	2.00
330	40	3.5	43.5	0.3	13.05	18	324	97.20
					25.5			$\sigma_N^2 = 196.00$

Standard Deviation (σ_N)

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Share of company M Ltd. is more risky as the S.D. is more than company N Ltd.

13.

Calculation of Income available for Distribution

	Units (Lakh)	Per Unit (₹)	Total (₹ In lakh)
Income from April	300	0.0765	22.9500
Add: Dividend equalization collected on issue	6	0.0765	0.4590
	306	0.0765	23.4090
Add: Income from May		0.1125	34.4250
	306	0.1890	57.8340
Less: Dividend equalization paid on repurchase	3	0.1890	(0.5670)
	303	0.1890	57.2670
Add: Income from June		0.1500	45.4500
	303	0.3390	102.7170
Less: Dividend Paid		0.2373	(71.9019)
	303	0.1017	30.8151

Calculation of Issue Price at the end of April

	₹
Opening NAV	18.750
Add: Entry Load 2% of ₹ 18.750	(0.375)
	19.125

Add: Dividend Equalization paid on Issue Price	0.0765
	19.2015

Calculation of Repurchase Price at the end of May

	₹
Opening NAV	18.750
Less: Exit Load 2% of ₹ 18.750	(0.375)
	18.375
Add: Dividend Equalization paid on Issue Price	0.1890
	18.564

Closing NAV

		₹ (Lakh)
Opening Net Asset Value (₹ 18.75 × 300)		5625.0000
Portfolio Value Appreciation		425.4700
Issue of Fresh Units (6 × 19.2015)		115.2090
Income Received (22.950 + 34.425 + 45.450)		102.8250
		6268.504
Less: Units repurchased (3 × 18.564)	-55.692	
Income Distributed	-71.9019	(-127.5939)
Closing Net Asset Value		6140.9101
Closing Units (300 + 6 – 3) lakh		303 lakh
∴ Closing NAV as on 30 th June		₹ 20.2670

14. Calculation of Investment Amount

Amount required for making payment on 30 th January, 2010	= ₹ 80,00,000
Investment in Certificates of Deposit (CDs) on 31 st October, 2009	
Rate of interest	= 8% p.a.
No. of days to maturity	= 91 days
Interest on ₹ 1 of 91 days (₹ 1 × 0.08 × 91/365)	= 0.0199452
Amount to be received for ₹ 1 (₹ 1.00 + ₹ 0.0199452)	= 1.0199452

Calculation of amount to be invested now to get ₹ 80 lakhs after 91 days:

$$= \frac{₹ 80,00,000}{₹ 1.0199452} = ₹ 78,43,558.65$$

Or, ₹ 78,43,600 or ₹ 78,44,000 approximately.

15. Since the direct quote for ¥ and ₹ is not available it will be calculated by cross exchange rate as follows:

$$₹/\$ \times \$/\text{¥} = ₹/\text{¥}$$

$$62.22/102.34 = 0.6080$$

Spot rate on date of export 1¥ = ₹ 0.6080

Expected Rate of ¥ for August 2014 = ₹ 0.5242 (₹ 65/¥124)

Forward Rate of ¥ for August 2014 = ₹ 0.6026 (₹ 66.50/¥110.35)

(i) Calculation of expected loss without hedging

Value of export at the time of export (₹ 0.6080 x ¥10,000,000)	₹ 60,80,000
Estimated payment to be received on Aug. 2014 (₹ 0.5242 x ¥10,000,000)	₹ 52,42,000
Loss	₹ 8,38,000

Hedging of loss under Forward Cover

₹ Value of export at the time of export (₹ 0.6080 x ¥10,000,000)	₹ 60,80,000
Payment to be received under Forward Cover (₹ 0.6026 x ¥10,000,000)	₹ 60,26,000
Loss	₹ 54,000

By taking forward cover loss is reduced to ₹ 54,000.

(ii) Actual Rate of ¥ on August 2014 = ₹ 0.5977 (₹ 66.25/¥110.85)

Value of export at the time of export (₹ 0.6080 x ¥10,000,000)	₹ 60,80,000
Estimated payment to be received on Aug. 2014 (₹ 0.5977 x ¥10,000,000)	₹ 59,77,000
Loss	₹ 1,03,000

The decision to take forward cover is still justified.

Alternatively, it can be shown as follows:

Value of export as per Forward Contract ($\text{₹ } 0.6026 \times \text{₹}10,000,000$)	₹ 60,26,000
Estimated payment to be received on Aug. 2014 ($\text{₹ } 0.5977 \times \text{₹}10,000,000$)	₹ 59,77,000
Loss	₹ 49,000

The decision to take forward cover is still justified.

16. Individual Basis

	Interest	Amt. after 91 days	Conversion in £
Holland $\text{€ } 725,000 \times 0.02 \times 91/360 =$	€ 3,665.28	€ 728,665.28	£502,414.71 (728,665.28 $\times$ 0.6895)
Switzerland $\text{CHF } 998,077 \times 0.005 \times 91/360 =$	CHF 1,261.46	CHF 999,338.46	£432,651.51 (999,338.46 $\div$ 2.3098)
UK $\text{£ } 75,000 \times 0.01 \times 91/360 =$	£ 189.58	£ 75,189.58	£ 75,189.58
Total GBP at 91 days			<u>£ 1,010,255.80</u>

Swap to Sterling

Sell € 7,25,000 (Spot at 0.6858) buy £	£ 4,97,205.00
Sell CHF 9,98,077 (Spot at 2.3326) buy £	£ 4,27,881.76
Independent GBP amount	£ 75,000.00
	£ 1,000,086.76
Interest ($\text{£ } 1,000,086.76 \times 0.05375 \times 91/360$)	£ 13,587.98
Total GBP at 91 days	£ 1,013,674.74
Less: Total GBP at 91 days as per individual basis	£ 1,010,255.80
Net Gain	£ 3,418.94

17. (i) ₹ 50 crore $\times$ 9 = ₹ 450 crore

(ii) ₹ 50 crore $\times \left(\frac{0.80}{0.06} \right) = ₹ 666.67$

(iii) (1) $K_e = 6\% + 1.2 (11\% - 6\%)$
 $= 12\%$

$$= \frac{40 \text{ crore} \times 1.04}{0.12 - 0.4} = ₹ 520 \text{ crore}$$

(2) ₹ 225 crore

(3) ₹ 225 crore + ₹ 100 crore – ₹ 25 crore = 300 crore

18. (i)

	<i>Acquirer Company</i>	<i>Target Company</i>
Net Profit	₹ 80 lakhs	₹ 15.75 lakhs
PE Multiple	10.50	10.00
Market Capitalization	₹ 840 lakhs	₹ 157.50 lakhs
Market Price	₹ 42	₹ 105
No. of Shares	20 lakhs	1.50 lakhs
EPS	₹ 4	₹ 10.50

Maximum Exchange Ratio 4 : 10.50 or 1 : 2.625

Thus, for every one share of Target Company 2.625 shares of Acquirer Company.

(ii) Let x lakhs be the amount paid by Acquirer company to Target Company. Then to maintain same EPS i.e. ₹ 4 the number of shares to be issued will be:

$$\frac{(80 \text{ lakhs} + 15.75 \text{ lakhs}) - 0.70 \times 15\% \times x}{20 \text{ lakhs}} = 4$$

$$\frac{95.75 - 0.105x}{20} = 4$$

x = ₹ 150 lakhs

Thus, ₹ 150 lakhs shall be offered in cash to Target Company to maintain same EPS.

19. Impact of Financial Restructuring

(i) Benefits to Grape Fruit Ltd.

(a) *Reduction of liabilities payable*

	<i>₹ in lakhs</i>
Reduction in equity share capital (6 lakh shares x ₹ 75 per share)	450
Reduction in preference share capital (2 lakh shares x ₹ 50 per share)	100
Waiver of outstanding debenture Interest	26
Waiver from trade creditors (₹ 340 lakhs x 0.25)	<u>85</u>
	<u>661</u>

(b) <i>Revaluation of Assets</i>	
Appreciation of Land and Building (₹ 450 lakhs - ₹ 200 lakhs)	<u>250</u>
Total (A)	<u>911</u>

- (ii) Amount of ₹ 911 lakhs utilized to write off losses, fictitious assets and over-valued assets.

Writing off profit and loss account	525
Cost of issue of debentures	5
Preliminary expenses	10
Provision for bad and doubtful debts	15
Revaluation of Plant and Machinery (₹ 300 lakhs – ₹180 lakhs)	120
Total (B)	<u>675</u>
Capital Reserve (A) – (B)	236

- (ii) Balance sheet of Grape Fruit Ltd as at 31st March 2011 (after re-construction)

(₹ in lakhs)

<i>Liabilities</i>	<i>Amount</i>	<i>Assets</i>	<i>Amount</i>
12 lakhs equity shares of ₹ 25/- each	300	Land & Building	450
10% Preference shares of ₹ 50/- each	100	Plant & Machinery	180
Capital Reserve	236	Furnitures & Fixtures	50
9% debentures	200	Inventory	150
Loan from Bank	74	Sundry debtors	70
Trade Creditors	255	Prov. for Doubtful Debts	<u>-15</u>
		Cash-at-Bank	280
		(Balancing figure)*	
	<u>1165</u>		<u>1165</u>

*Opening Balance of ₹130/- lakhs + Sale proceeds from issue of new equity shares ₹ 150/- lakhs.

20. (a) Financial planning is the backbone of the business planning and corporate planning. It helps in defining the feasible area of operation for all types of activities and thereby defines the overall planning framework. Financial planning is a systematic approach whereby the financial planner helps the customer to maximize his existing financial resources by utilizing financial tools to achieve his financial goals.

There are 3 major components of Financial planning:

- Financial Resources (FR)
- Financial Tools (FT)
- Financial Goals (FG)

Financial Planning: $FR + FT = FG$
--

For an individual, financial planning is the process of meeting one's life goals through proper management of the finances. These goals may include buying a house, saving for children's education or planning for retirement. It is a process that consists of specific steps that helps in taking a big-picture look at where you financially are. Using these steps you can work out where you are now, what you may need in the future and what you must do to reach your goals.

Outcomes of the financial planning are the financial objectives, financial decision-making and financial measures for the evaluation of the corporate performance. Financial objectives are to be decided at the very outset so that rest of the decisions can be taken accordingly. The objectives need to be consistent with the corporate mission and corporate objectives. Financial decision making helps in analyzing the financial problems that are being faced by the corporate and accordingly deciding the course of action to be taken by it. The financial measures like ratio analysis, analysis of cash flow statement are used to evaluate the performance of the Company. The selection of these measures again depends upon the corporate objectives.

- (b) Clearing house is an exchange-associated body charged with the function of ensuring (guaranteeing) the financial integrity of each trade. Orders are cleared by means of the clearinghouse acting as the buyer to all sellers and the seller to all buyers. Clearing houses provide a range of services related to the guarantee of contracts, clearance and settlement of trades, and management of risk for their members and associated exchanges.

Role of Clearing Houses

- It ensures adherence to the system and procedures for smooth trading.
- It minimises credit risks by being a counter party to all trades.
- It involves daily accounting of all gains or losses.
- It ensures delivery of payment for assets on the maturity dates for all outstanding contracts.

It monitors the maintenance of speculation margins.

- (c) The major benefits accruing to investors and other market players are as follows:
1. Securities are held in a safe and convenient manner
 2. Transfer of securities is effected immediately

3. Stamp duty for transfer is eliminated and transaction costs are reduced
4. Paper work is minimized
5. Bad deliveries, fake securities and delays in transfers are eliminated.
6. Routine changes viz. change in address of one person owning securities issued by different companies can be taken care of simultaneously for all securities with little delay.
7. Benefit accruing from issue of bonus shares, consolidation, split or merger is credited without much difficulty.
8. Payment of dividends and interest is expedited by the use of electronic clearing system.
9. Securities held in electronic form can be locked in and frozen from either a sale or purchase for any definite period.
10. Securities held in electronic form can also be pledged for any credit facility. Both the lender (pledge) and the investor- borrower (pledgor) are required to have a depository account. Once the pledgee confirms the request of the investor the depository takes action and the pledge is in place. By a reverse process, the pledge can be released once the pledge confirms receipt of funds.

There are however risks as well

1. Systemic failure – Input control, process control and output control being parts of computerized environment apply equally to the dematerialization process. Unforeseen failures, intentional or otherwise, on the part of the individuals entrusted with protecting data integrity, could lead to chaos.
 2. Additional record keeping – In built provisions for rematerialization exist to take care of the needs of individuals who wish to hold securities in physical form. Companies will invariably need to maintain records on a continuous basis for securities held in physical form. Periodical reconciliation between demat segment and physical segment is very much necessary.
 3. Cost of Depository Participant (DP) – For transacting business, investors have to deal not only with brokers but also with depository participant which acts as an additional tier in the series of intermediaries. A one time fee is levied by the depository participant which small investors consider to be an avoidable cost.
 4. Human Fraud – Dematerialization is not a remedy for all ills. Unlawful transfers by individuals against whom insolvency proceedings are pending or transfers by attorney holders with specific or limited powers are possible.
- (d) Leading means advancing a payment i.e. making a payment before it is due. Lagging involves postponing a payment i.e. delaying payment beyond its due date.

In forex market Leading and lagging are used for two purposes: -

- (1) Hedging foreign exchange risk: A company can lead payments required to be made in a currency that is likely to appreciate. For example, a company has to pay \$100000 after one month from today. The company apprehends the USD to appreciate. It can make the payment now. Leading involves a finance cost i.e. one month's interest cost of money used for purchasing \$100000.

A company may lag the payment that it needs to make in a currency that it is likely to depreciate, provided the receiving party agrees for this proposition. The receiving party may demand interest for this delay and that would be the cost of lagging. Decision regarding leading and lagging should be made after considering (i) likely movement in exchange rate (ii) interest cost and (iii) discount (if any).

- (2) Shifting the liquidity by modifying the credit terms between inter-group entities: For example, A Holding Company sells goods to its 100% Subsidiary. Normal credit term is 90 days. Suppose cost of funds is 12% for Holding and 15% for Subsidiary. In this case the Holding may grant credit for longer period to Subsidiary to get the best advantage for the group as a whole. If cost of funds is 15% for Holding and 12% for Subsidiary, the Subsidiary may lead the payment for the best advantage of the group as a whole. The decision regarding leading and lagging should be taken on the basis of cost of funds to both paying entity and receiving entity. If paying and receiving entities have different home currencies, likely movements in exchange rate should also be considered.

- (e) In ordinary case, the company taken over is the smaller company; in a 'reverse takeover', a smaller company gains control of a larger one. The concept of takeover by reverse bid, or of reverse merger, is thus not the usual case of amalgamation of a sick unit which is non-viable with a healthy or prosperous unit but is a case whereby the entire undertaking of the healthy and prosperous company is to be merged and vested in the sick company which is non-viable. A company becomes a sick industrial company when there is erosion in its net worth. This alternative is also known as taking over by reverse bid.

The three tests should be fulfilled before an arrangement can be termed as a reverse takeover are specified as follows:

- (i) The assets of the transferor company are greater than the transferee company,
- (ii) Equity capital to be issued by the transferee company pursuant to the acquisition exceeds its original issued capital, and
- (iii) The change of control in the transferee company through the introduction of a minority holder or group of holders.

PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS

PART – I : ACADEMIC UPDATE

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

Chapter 6 - The Company Audit

1. In exercise of powers conferred by section 143 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby inserted the clause **“(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.”**, after clause (c) in rule 11 of the Companies (Audit and Auditors) Rules, 2014.
2. In exercise of the powers conferred by section 139 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby amend Rule 5 of the Companies (Audit and Auditors) Rules, 2014 i.e. in rule 5, in clause (b), for the word “twenty”, the word **“fifty”** shall be substituted.
3. Additional requirement for claiming exemption under section 141(3)(g) for counting ceiling limit is available only if such company has not committed default in filing its financial statements under section 137 and annual returns under section 92 of the Act to the registrar as per notification dated 13 June 2017.
4. As per provisions of Section 143(3)(i) of companies Act, The Auditor Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such controls. MCA vide its notification dated 13th June 2017 (G.S.R. 583(E)) amended the notification of the Government of India, In the ministry of corporate of affair, vide no G.S.R. 464(E) dated 05th June 2015 providing exemption from Internal Financial Controls to following private companies which is one person Company (OPC) or a Small Company; or Which has turnover less than Rs. 50 Crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than Rs. 25 Crore. The above exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the Companies Act 2013 or annual return under section 92 of Act with the Registrar.
5. **Amendment due to Companies (Amendment) Act 2017**
 - (i) By virtue of notification dated 21st March 2018, in exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 21st March, 2018 as the date on which the provisions of subsections (3) and (11) of section 132 of the said Act shall come into force.

- (ii) Ratification for appointment of auditors is not required at every AGM when auditors have been appointed for five years - Proviso to section 139(1) omitted as per Companies (Amendment) Act, 2017.
- (iii) As per section 140(2), the auditor who has resigned from the company shall file within a period of 30 days from the date of resignation, a statement in the prescribed **Form ADT-3** (as per Rule 8 of CAAR) with the company and the Registrar, and in case of the companies referred to in section 139(5) i.e. Government company, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation. In case of failure the auditor shall be punishable with fine which shall not be less than fifty thousand rupees **or the remuneration of the auditor, whichever is less**, but which may extend to five lakh rupees as per section 140(3).
- (iv) Under sub-section (3) of section 141 along with Rule 10 of the Companies (Audit and Auditors) Rules, 2014 a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company shall not be eligible for appointment as an auditor of a company
- (v) By virtue of notification dated February 23, 2018, the Central Government has exempted the companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting.
- (vi) The Order for reopening of accounts not to be made beyond eight financial years immediately preceding the current financial year unless and until Government has, under Section 128(5) issued a direction for keeping books of account longer than 8 years, reopening of accounts can be made for such longer period.
- (vii) As per Section 143(3)(i) The auditors of all the companies shall report on the adequacy of internal financial control systems and its operating effectiveness. As per the recent amendment, the auditors are required to report on Internal Financial Control with reference to financial statements.
- (viii) Right of access by the auditor of a holding company to the accounts and records of the associate company, whose accounts are required to be consolidated. As per the recent amendment, this right has been extended to associates also.
- (ix) Enabling provisions for opportunity of being heard in Section 130 for auditor/ Chartered Accountant of the Company. As of now, there is no provision in the section for serving notice to the auditor/ chartered accountant in case of reopening of accounts. As per the recent amendment in the section has been brought enabling the Court/ Tribunal to give notice to any other party/ person concerned.
- (x) Section 147 of the Companies Act, 2013 prescribes following punishments for contravention:
 - (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-

five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

- (2) If an auditor of a company contravenes any of the provisions of section 139 section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees **or four times the remuneration of the auditor, which ever is less** .

It may be noted that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall **not be less than fifty thousand rupees** but which may extend to twenty-five lakh rupees **or eight times the remuneration of the auditor, which every is less**

- (3) Where an auditor has been convicted under sub-section (2), he shall be liable to:-
- (i) refund the remuneration received by him to the company;
 - (ii) and pay for damages to the company statutory bodies or authorities or to **members or the creditors of the Company** for loss arising out of incorrect or misleading statements of particulars made in his audit report.
- (4) The Central Government shall, by notification, specify any statutory body or authority of an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages the such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.
- (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in an fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil criminal as provided in this Act or in any other law for the time being in force, for such act shall be the partner or partners concerned of the audit firm and of the firm jointly and severally **Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.**

Chapter 14 - Audit of Non-Banking Financial Companies :
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1. **Compliance with NBFC Auditors Report - RBI Directions:** Report to Board of Directors under RBI Directions as per Master Direction No. DNBS. PPD.03/66.15.001/2016-17 dated September 29, 2016
2. **Auditors to submit additional Report to the Board of Directors:** In addition to the Report made by the auditor under Section 143 of the Companies Act, 2013 or section 227 of the Companies Act, 1956 (Act 1 of 1956) on the accounts of a non-banking financial company examined for every financial year ending on any day on or after the commencement of these Directions, the auditor shall also make a separate report to the Board of Directors of the Company on the matters specified in paragraphs 3 and 4 below.
3. **Material to be included in the Auditor's report to the Board of Directors:** The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely -

(A) In the case of all non-banking financial companies:

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| <ol style="list-style-type: none"> I. Conducting Non-Banking Financial Activity without a valid Certificate of Registration (CoR) granted by the Bank is an offence under chapter V of the RBI Act, 1934. Therefore, if the company is engaged in the business of non-banking financial institution as defined in section 45-I (a) of the RBI Act and meeting the Principal Business Criteria (Financial asset/income pattern) as laid down vide the Bank's press release dated April 08, 1999, and directions issued by DNBR, auditor shall examine whether the company has obtained a Certificate of Registration (CoR) from the Bank. II. In case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its Principal Business Criteria (Financial asset/income pattern) as on March 31 of the applicable year. III. Whether the non-banking financial company is meeting the required net owned fund requirement as laid down in Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016. |
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Note: Every non-banking financial company shall submit a Certificate from its Statutory Auditor that it is engaged in the business of non-banking financial institution requiring it to hold a Certificate of Registration under Section 45-IA of the RBI Act and is eligible to hold it. A certificate from the Statutory Auditor in this regard with reference to the position of the company as at end of the financial year ended March 31 may be submitted to the Regional Office of the Department of Non-Banking Supervision under whose jurisdiction the non-banking financial company is registered, within one month from the date of finalization of the balance

sheet and in any case not later than December 30th of that year. The format of Statutory Auditor's Certificate (SAC) to be submitted by NBFCs has been issued vide DNBS. PPD.02/66.15.001/2016-17 Master Direction- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.

(B) In the case of a non-banking financial companies accepting/holding public deposits:

Apart from the matters enumerated in (A) above, the auditor shall include a statement on the following matters, namely-

- (i) Whether the public deposits accepted by the company together with other borrowings indicated below viz.
 - (a) from public by issue of unsecured non-convertible debentures/bonds;
 - (b) from its shareholders (if it is a public limited company); and
 - (c) which are not excluded from the definition of 'public deposit' in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, are within the limits admissible to the company as per the provisions of the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (ii) Whether the public deposits held by the company in excess of the quantum of such deposits permissible to it under the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 are regularised in the manner provided in the said Directions;
- (iii) Whether the non banking financial company is accepting "public deposit" without minimum investment grade credit rating from an approved credit rating agency as per the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (iv) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in terms of the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 has been correctly determined and whether such ratio is in compliance with the minimum CRAR prescribed therein;
- (v) In respect of non-banking financial companies referred to in clause (iii) above,
 - (a) whether the credit rating, for each of the fixed deposits schemes that has been assigned by one of the Credit Rating Agencies listed in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016 is in force; and
 - (b) whether the aggregate amount of deposits outstanding as at any point during the year has exceeded the limit specified by the such Credit Rating Agency;

- (vi) Whether the company has violated any restriction on acceptance of public deposit as provided in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016;
- (vii) Whether the company has defaulted in paying to its depositors the interest and /or principal amount of the deposits after such interest and/or principal became due;
- (viii) Whether the company has complied with the prudential norms on income recognition, accounting standards, asset classification, provisioning for bad and doubtful debts, and concentration of credit/investments as specified in the Directions issued by the Bank in terms of the Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (ix) Whether the company has complied with the liquid assets requirement as prescribed by the Bank in exercise of powers under section 45-IB of the RBI Act and whether the details of the designated bank in which the approved securities are held is communicated to the office concerned of the Bank in terms of NBS 3; Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (x) Whether the company has furnished to the Bank within the stipulated period the return on deposits as specified in the NBS 1 to – Non- Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xi) Whether the company has furnished to the Bank within the stipulated period the quarterly return on prudential norms as specified in the Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016;
- (xii) Whether, in the case of opening of new branches or offices to collect deposits or in the case of closure of existing branches/offices or in the case of appointment of agent, the company has complied with the requirements contained in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

(C) In the case of a non-banking financial company not accepting public deposits:

Apart from the aspects enumerated in (A) above, the auditor shall include a statement on the following matters, namely: -

- (i) Whether the Board of Directors has passed a resolution for non- acceptance of any public deposits;
- (ii) Whether the company has accepted any public deposits during the relevant period/year;
- (iii) Whether the company has complied with the prudential norms relating to income recognition, accounting standards, asset classification and provisioning for bad and doubtful debts as applicable to it in terms of Non-Banking Financial Company – Non-Systemically Important Non-Deposit

- taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016;
- (iv) In respect of Systemically Important Non-deposit taking NBFCs as defined in Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016:
- (a) Whether the capital adequacy ratio as disclosed in the return submitted to the Bank in form NBS- 7, has been correctly arrived at and whether such ratio is in compliance with the minimum CRAR prescribed by the Bank;
- (b) Whether the company has furnished to the Bank the annual statement of capital funds, risk assets/exposures and risk asset ratio (NBS-7) within the stipulated period.
- (v) whether the non banking financial company has been correctly classified as NBFC Micro Finance Institutions (MFI) as defined in the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

- (D) **In the case of a company engaged in the business of non-banking financial institution not required to hold CoR subject to certain conditions:** Apart from the matters enumerated in (A)(I) above where a company has obtained a specific advice from the Bank that it is not required to hold CoR from the Bank, the auditor shall include a statement that the company is complying with the conditions stipulated as advised by the Bank.

4. **Reasons to be stated for unfavourable or qualified statements**

Where, in the auditor's report, the statement regarding any of the items referred to in paragraph 3 above is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified statement, as the case may be. Where the auditor is unable to express any opinion on any of the items referred to in paragraph 3 above, his report shall indicate such fact together with reasons therefor.

5. **Obligation of auditor to submit an exception report to the Bank**

- (I) Where, in the case of a non-banking financial company, the statement regarding any of the items referred to in paragraph 3 above, is unfavorable or qualified, or in the opinion of the auditor the company has not complied with:
- (a) the provisions of Chapter III B of RBI Act (Act 2 of 1934); or
- (b) Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016; or
- (c) Non-Banking Financial Company – Non-Systemically Important Non-Deposit

taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

It shall be the obligation of the auditor to make a report containing the details of such unfavourable or qualified statements and/or about the non-compliance, as the case may be, in respect of the company to the concerned Regional Office of the Department of Non-Banking Supervision of the Bank under whose jurisdiction the registered office of the company is located as per first Schedule to the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

- (II) The duty of the Auditor under sub-paragraph (I) shall be to report only the contraventions of the provisions of RBI Act, 1934, and Directions, Guidelines, instructions referred to in sub-paragraph (1) and such report shall not contain any statement with respect to compliance of any of those provisions.

Chapter 15 - Audit under Fiscal Laws:

I. Audit Provisions Under Direct Tax Law

(A) Sec. 40 A(3): Where any expenditure in respect of which payment is made in excess of Rs. 20,000 at a time otherwise than by Account-payee cheque or draft, 100% of such payment shall be disallowed.

(B) Section 44AB of the Income Tax Act, 1961



Section 44AB provides for the compulsory audit of accounts of certain persons carrying on business or profession. Section 44AB reads as under:

“Audit of accounts of certain persons carrying on business or profession”.

Every person -

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds **one crore** rupees in any previous year.
- (b) carrying on profession shall, if his gross receipts, in profession exceed **fifty lakhs** rupees in any previous year,

- | | |
|-----|---|
| (c) | carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year, |
| (d) | carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or |
| (e) | carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. |

[Note: Sub section (4) of section 44AD of the Income Tax Act, 1961 states that where an eligible assessee declares profit for any Previous Year in accordance with the provisions of this section 44AD and he declares profit for any of the 5 Assessment Years relevant to the Previous Year succeeding such Previous Year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 Assessment Years subsequent to the Assessment Year relevant to the Previous Year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.]

It may be noted that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later.

It may also be noted that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.



Applicability of Tax Audit Provisions

DB Pvt. Ltd. has total turnover of ₹ 125 lacs for the FY 2017-18.

✓	Section 44AD is not applicable to company assessee, hence Limit of ₹ 2 crore is not applicable to DB Pvt. Ltd and it has to conduct the Audit of Books of Accounts under section 44AB of the Act for the FY 2017-18 as turnover exceeds ₹ 1 crore.
	ABC & Co. (a partnership firm) engaged in trading of electronic goods having a turnover of ₹ 165 lacs for the FY 2017-18.
✓	Section 44AD is applicable to Partnership Firm. Thus, ABC & Co. can declare the minimum profit @ 8% of the turnover as its turnover during the PY 2017-18 does not exceed ₹ 2 crores. If the firm do not opt for presumptive income scheme under section 44AD, it has to get books of accounts audited u/s 44AB of the Act.
	Mr. Anand Khater, a Commission Agent has commission receipts of ₹ 137 lacs during the FY 2017-18.
✓	Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Anand earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2017-18 in respect of commission income exceeds ₹ 1 crore, he has to get his books of accounts audited u/s 44AB of the Act.
	Mr. Vishal Raka, owning an Agency of Samsung Mobile for the city of Pune and makes the turnover of ₹ 87 lacs during the FY 2017-18.
✓	Though Section 44AD is applicable to an Individual, it is not applicable to Commission income. In the given case, since, Mr. Vishal earns the commission income, he cannot take the benefit of section 44AD. His total turnover during the FY 2017-18 in respect of commission income does not exceeds ₹ 1 crore, therefore, he need not to get his books of accounts audited u/s 44AB of the Act.

Explanation : For the purposes of this section,

- (i) "accountant" shall have the same meaning as in the explanation below sub-section (2) of Section 288;
- (ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means the due date for furnishing the return of income under sub-section (1) of section 139.

The above section stipulates that every person carrying on business is required to get his accounts audited before the "specified date" by a chartered accountant, if the total sales turnover or gross receipts in the business in any previous year exceed ₹ 1 crore. A person carrying on a profession will also have to get his accounts audited before the "specified date" by a chartered accountant if his gross receipts in profession in any previous year exceed ₹ 50 lakhs w.e.f. A.Y. 2018-19.

Clause (c) of Section 44AB, provides that in the case of an assessee carrying on a business of the nature specified in sections 44AE, 44BB or 44BBB, tax audit will be required if he claims his income to be lower than the presumptive income deemed under those sections. Therefore, such assesseees will be required to have a tax audit even if their sales, turnover or gross receipts do not exceed ₹ 100 lakhs (one crore rupees).

If a person is carrying on business(es), coming within the scope of sections 44AE, 44BB or 44BBB but he exercises his option given under these sections to get his accounts audited under Section 44AB, tax audit requirements would apply, in respect of such business(es) even if the turnover of such business(es) does not exceed ₹ 100 lakhs (one crore rupees).

In the case of a person carrying on businesses covered by sections 44AE, 44BB or 44BBB and opting for presumptive taxation, tax audit requirement would not apply in respect of such businesses, if such person is carrying on other business(es) not covered by presumptive taxation, tax audit requirements would apply in respect thereof if the turnover of such business(es), other than the business covered by presumptive taxation thereof, exceed ₹ 100 lakhs (one crore rupees).

The first proviso to section 44AB stipulates that the provisions of that section will not be applicable to a person who derives income of the nature referred to in sections 44B, or 44BBA. Where the assessee is carrying on any one or more of the businesses specified in section 44B or 44BBA referred to in the first proviso to section 44AB, the sales/turnover/gross receipts from such businesses shall not be included in the total sales/turnover/gross receipts for determining the applicability of section 44AB.

The report of such audit, duly signed and verified by the chartered accountant is required to be given in such form and setting forth such particulars as prescribed by the Board. Rule 6G provides that such audit report and particulars should be given in Form No. 3CA/3CB as may be applicable and the statement of particulars should be given in Form No.3CD.

A question may arise in the case of an assessee who is eligible to claim deductions under sections 80-IA, 80-IB, 80-IC etc., as to whether, it will be necessary for him to get separate audit reports/certificates under these sections in addition to an audit report under Section 44AB. The requirement of section 44AB is a general requirement covering the overall position of the accounts of the assessee. This applies to the consolidated accounts of the assessee for the relevant previous year covering the results of all the units owned by the assessee whether situated at one place or at different places. If turnover of all the units put together exceeds prescribed limits, the assessee would be required to get a separate audit report/certificate under above said sections he wants to avail deduction under the respective sections. Therefore it will be necessary for an assessee to get separate audit reports/certificates under above said sections in addition to an audit report, if any, required under section 44AB.

(C) AMENDMENT IN CLAUSE 31 OF FORM 3CD

- **Clause 31 (a)*: Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-**
 - (i) name, address and permanent account number (if available with the assessee) of the lender or depositor;
 - (ii) amount of loan or deposit taken or accepted;
 - (iii) whether the loan or deposit was squared up during the previous year;
 - (iv) maximum amount outstanding in the account at any time during the previous year;
 - (v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
 - (v) in case the loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

***(These particulars need not be given in the case of a Government company, a banking company or a corporation established by a Central, State or Provincial Act.)**

Section 269SS prescribes the mode of taking or accepting certain loans and deposits. As per this section, no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,-

- (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
- (b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
- (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more.

For the purposes of section 269SS "loan or deposit" means loan or deposit of money.

If the total of all loans/deposits from a person exceed ₹ 20,000 but each individual item is less than ₹ 20,000, the information will still be required to be given in respect of all such entries starting from the entry when the balance reaches ₹ 20,000 or more and until the balance goes down below ₹ 20,000. As such the tax auditor should verify all loans/deposits

taken or accepted where balance has reached ₹ 20,000 or more during the year for the purpose of reporting under this clause.

- **Clause 31 (b): Particulars of each specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year:-**
 - (i) name, address and Permanent Account Number (if available with the assessee) of the person from whom specified sum is received;
 - (ii) amount of specified sum taken or accepted;
 - (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account;
 - (iv) in case the specified sum was taken or accepted by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

(Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act.)

- **Clause 31 (c): Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year:-**
 - (i) name, address and Permanent Account Number (if available with the assessee) of the payee;
 - (ii) amount of the repayment;
 - (iii) maximum amount outstanding in the account at any time during the previous year;
 - (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account;
 - (i) in case the repayment was made by cheque or bank draft, whether the same was taken or accepted by an account payee cheque or an account payee bank draft.

This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limits specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loans or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. The tax auditor should verify such repayments and report accordingly.

- **Clause 31 (d): Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque**

or bank draft or use of electronic clearing system through a bank account during the previous year:-

- (i) name, address and Permanent Account Number (if available with the assessee) of payer;
 - (ii) amount of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.
- **Clause 31 (e):** Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year:
 - (i) name, address and Permanent Account Number (if available with the assessee) of the payer;
 - (ii) amount of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee cheque or account payee bank draft during the previous year.

(Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act).

II. Audit provisions under Indirect Tax Laws



The GST roll out on 1st July 2017 has paved the way for realization of the goal of “one nation-one tax-one market”. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It is a trust based taxation regime wherein the assessee is required to self-assess his

returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Definition of “Audit” has been as per section 2(13) of the CGST Act, 2017 is given below:

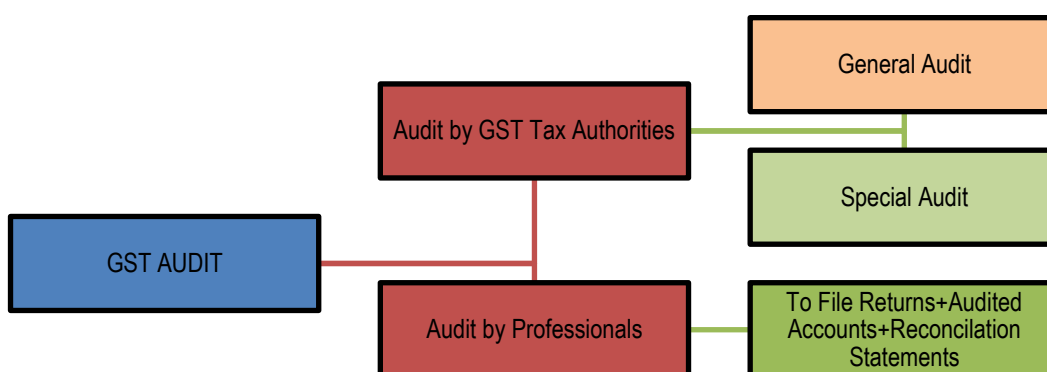
“audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.”

The definition of 'audit' under the Act is a wide term covering the examination of records, returns and documents maintained/ furnished under this Act or Rules and under any other law in force. Any document, record maintained by a registered person under any law can thus be called upon and audited. It becomes critical for the person to maintain true documents/ records to ensure correctness and smooth conduct of audit.

7.1 Types of Audit under GST

GST envisages three types of Audit.

- (1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]
- (2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]
- (3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]



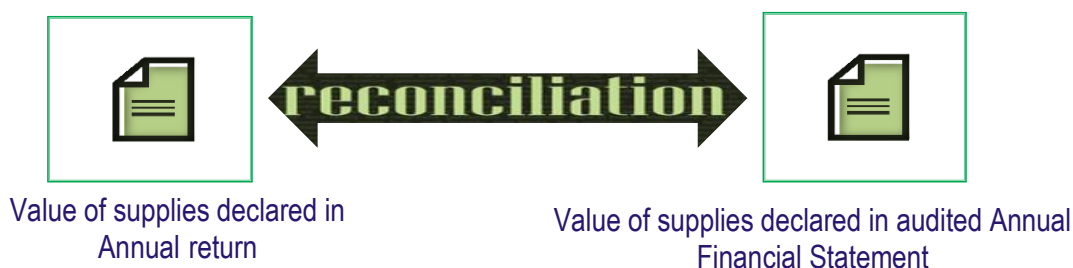
7.1.1. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

(i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ` 2 crores.	Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of: ☐ Audited annual accounts
--	---

	☐ A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.
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Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.



7.1.2. Audit under section 65:

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

7.1.3. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- ✍ Value has not been correctly declared; or
- ✍ Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

Circumstances for Notice for Special Audit: An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny,

enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of Rule 102 (1) FORM GST ADT-03

The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

Time Limit to Submit the Audit Report: The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) FORM GST ADT-04.

Extension in Submission of Audit Report: In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

Considering the special nature of this audit, i.e. audit having been conducted under other proceedings or under other laws; this does not preclude the proper officer from exercising this option.

While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

Expenses for Examination and Remuneration for Audit: The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

During the course of audit, the registered person to afford the auditor with the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the CGST Rules on Assessment and Audit Rules, the auditor shall verify the documents on the basis of which the accounts are

maintained and the periodical returns/statements are furnished. While conducting the audit, the auditor is authorized to:

- ☐ Verify books & records
- ☐ Returns & statements
- ☐ Correctness of turnover, exemptions & deductions
- ☐ Rate of tax applicable in respect of supply of goods and/or services
- ☐ The input tax credit claimed/availed/unutilized and refund claimed.

Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused. This could be done by verifying:

- (a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.
- (b) The Information System Audit report and the internal audit report.
- (c) Internal Control questionnaire designed for GST compliance.
 - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.
 - (ii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.
 - (iii) The review of the gross trial balance for detecting any incomes being set off with expenses.
 - (iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
 - (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
 - (vi) Ratio analysis could provide vital clues on areas of non-compliance.

7.2 Format of Audit report under the GST law:

Form GST ADT-04

[See Rule 102(2)]

Reference No. :

Date :

To,

GSTIN

Name

Address

Information of Findings upon Special Audit

Your books of account and records for the F.Y..... has been examined by (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of information available/documents furnished by you and the findings/discrepancies are as under :

Short payment of	Integrated tax	Central tax	State/UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature

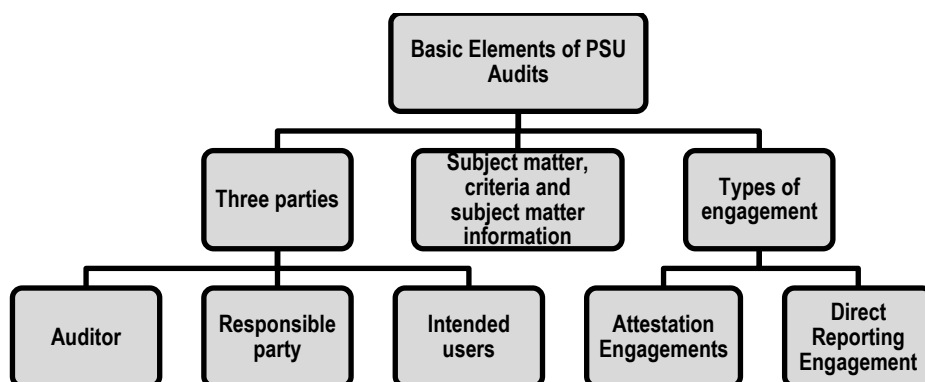
Name

Designation

Chapter 18 - Audit of Public Sector Undertakings

Elements of PSU Audits: Public sector auditing augments the confidence of the intended users by providing relevant information and independent and objective assessments concerning deviations from accepted standards or principles of good governance.

Audit of all public-sector undertakings has the following basic elements:



(a) **The Three parties - Auditor, Responsible party and Intended users.**

Auditor: The role of auditor is fulfilled by Supreme Audit Institution (SAI), India and by its personnel delegated with the duty of conducting audits.

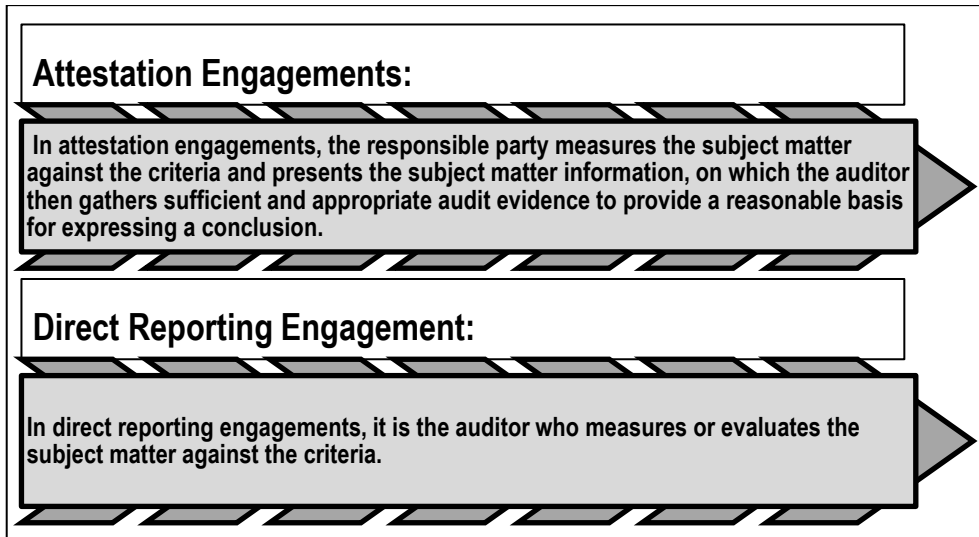
Responsible party: The relevant responsibilities are determined by constitutional or legislative arrangement. Generally, auditable entities and those charged with governance of the auditable entities would be the responsible parties. The responsible parties may be responsible for the subject matter information, for managing the subject matter or for addressing recommendations.

Intended users: Intended users are the individuals, organizations or classes thereof for whom the auditor prepares the audit report.

(b) **Subject matter, criteria and subject matter information.**

Subject matter	• This refers to the information, condition or activity that is measured or evaluated against certain criteria.
Criteria	• These are the benchmarks used to evaluate the subject matter.
Subject matter information	• This refers to the outcome of evaluating or measuring the subject matter against the criteria.

(c) **Types of engagement - Attestation Engagements and Direct Reporting Engagement.**



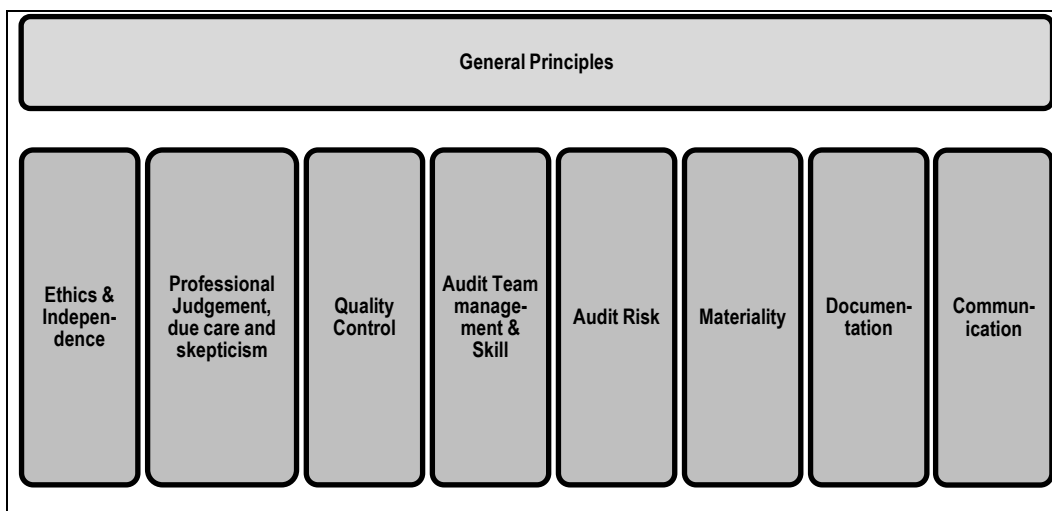
*Financial audits are always **attestation engagements**, as they are based on financial information presented by the responsible party.*

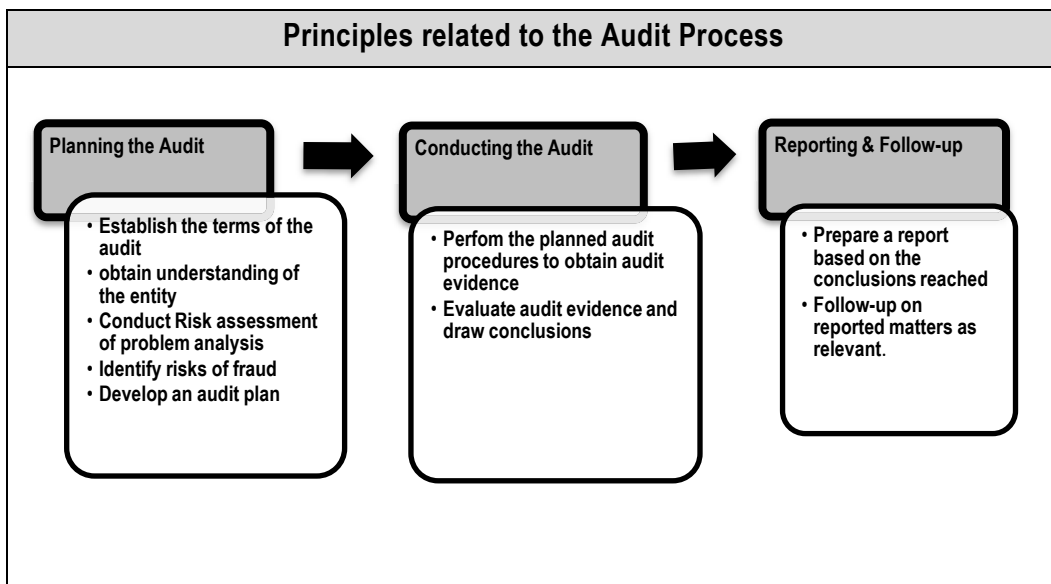
*Performance audits and compliance audits are generally **direct reporting engagements**.*

Principles of PSU Audits: The principles of PSU Audits constitute the general standards that apply to SAI India's personnel as auditors and are fundamental to the conduct of all types of PSU Audits.

The principles are categorized into two distinct groups as below:

- I. General Principles
- II. Principles related to the Audit Process





Financial Audit: Financial audit is primarily conducted to:

- ✓ express an audit opinion on the financial statements
- ✓ enhance the degree of confidence of intended users in the financial statements.

The C&AG shall express an opinion as to whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

In the case of financial statements prepared in accordance with a fair presentation financial reporting framework, whether the financial statements are presented fairly, in all material respects, or give a true and fair view, in accordance with that framework.

Compliance Audit: Compliance audit is the independent assessment of whether a given subject matter is in compliance with the applicable authorities identified as criteria.

This audit is carried out by assessing whether activities, financial transactions and information comply in all material respects, with the regulatory and other authorities which govern the audited entity.

Compliance audit is concerned with:

- (a) **Regularity-** adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity.
- (b) **Propriety-** observance of the general principles governing sound financial management and the ethical conduct of public officials.

While regularity is emphasized in compliance auditing, propriety is equally pertinent in the public-sector context, in which there are certain expectations concerning financial management and the conduct of officials.

Perspective of Compliance

Audit: Compliance Audit is part of a combined audit that may also include other aspects. Compliance auditing is generally conducted either-

- (i) in relation with the audit of financial statements, or
- (ii) separately as individual compliance audits, or
- (ii) in combination with performance auditing.

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(i) in relation with the audit of financial statements, or

(ii) separately as individual compliance audits, or

(iii) in combination with performance auditing

Chapter 22 - Code of Ethics**KYC Norms for CA in Practice**

The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI thought it necessary to issue such norms to be observed by the members of the profession who are in practice.

In light of this background, the Council of ICAI approved the following KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attest functions.

The KYC Norms approved by the Council of ICAI are given below:

1. Where Client is an Individual/ Proprietor**A. General Information**

- 👤 Name of the Individual
- 👤 PAN No. or Aadhar Card No. of the Individual
- 👤 Business Description
- 👤 Copy of last Audited Financial Statement

B. Engagement Information

- 👤 Type of Engagement

2. Where Client is a Corporate Entity**A. General Information**

-  Name and Address of the Entity
-  Business Description
-  Name of the Parent Company in case of Subsidiary
-  Copy of last Audited Financial Statement

B. Engagement Information

-  Type of Engagement

C. Regulatory Information

-  Company PAN No.
-  Company Identification No.
-  Directors' Names & Addresses
-  Directors' Identification No.

3. Where Client is a Non-Corporate Entity**A. General Information**

-  Name and Address of the Entity
-  Copy of PAN No.
-  Business Description
-  Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)
-  Copy of last Audited Financial Statement

B. Engagement Information

-  Type of Engagement

Recent Decisions of Ethical Standards Board

1. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
2. A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.

3. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
4. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed Rs 10000 beyond the prescribed credit period limit on credit card given to him.
5. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
6. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.
7. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.

8. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics.

Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.

9. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.
10. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.
11. It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violative of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.

12. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.
13. It is permissible for a member in practice to be a settlor of a trust.
14. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.
15. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
16. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
17. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
18. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
19. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplicitor (which is generally permitted as per ICAI norms), if he is non –executive director, required in the Board Meetings only, and not paid any remuneration except for attending such Board Meetings.

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

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Standards on Auditing, Statements and Guidance Notes

1. (a) Auditor of EXE Ltd. desires to use confirmation request as audit evidence during the course of audit. Explain the factors to be considered by the auditor when designing a confirmation request? Also state the effects of using positive external confirmation request by the auditor.

(b) The auditor CA M of ABC Ltd wanted to perform the audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements by inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations and inspecting correspondence, if any, with the relevant licensing or regulatory authorities.

Auditor CA M seeks your guidance for identifying the indications of non-compliance with Laws and Regulations.

(c) The management of CSITA Ltd. has prepared its summary financial statements for the year 2017-18 to be provided to its investors. Consequently the company wants to appoint you for conducting audit of summary financial statements. What are the procedures that you will perform and consider necessary as the basis for forming an opinion on the summary financial statements?

(d) The financial statements of Ace Ltd. have been prepared by the management in accordance with special purpose framework to meet the financial reporting provisions of a regulator. As an auditor, what considerations would be undertaken while planning and performing an audit in case of such special purpose frame work?
2. CA. Ashutosh has been appointed as an auditor of Awesome Health Ltd. for the financial year 2017-18 which was audited by CA. Amrawati in 2016-17. As the Auditor of Awesome Health Ltd., state the steps that CA. Ashutosh would take to ensure that the Closing Balances of the financial year 2016-17 have been brought to account in 2017-18 as Opening Balances and the Opening Balances do not contain any misstatements.

Audit Strategy Planning and Programming

3. (a) BSA & Company, Chartered Accountants are duly appointed auditors of ASB LTD engaged in manufacturing of various FMCG products and having its manufacturing facilities spread across India. Senior partner CA B has called meeting of audit staff to plan the conduct of audit for the year 2017-18 and at the meeting he addresses as under:

“SA 200 “Overall Objectives of the Independent Auditor and the Conduct of an Audit in accordance with Standards on Auditing”, states that to achieve the overall

objectives of the auditor, the auditor shall use the objectives stated in relevant SAs in planning and performing the audit. Without a careful plan, the overall objective of an audit may not be achieved. The audit planning is necessary to conduct an effective audit in an efficient and timely manner”.

In view of above, you are required to analyse and explain the benefits of Planning in an Audit of Financial Statements.

- (b) “Planning is not a discrete phase of an audit but rather a continual and iterative process.” Analyse explaining the matters to be considered while planning an audit.
- (c) “The auditor shall document (i) The overall audit strategy; (ii) The audit plan; and (iii) Any significant changes made during the audit engagement to the overall audit strategy or the audit plan, and the reasons for such changes.” Explain.

Risk Assessment and Internal Control

- 4. (a) XYZ LTD has **Policy and Procedure Manual** containing various accounting policies and established procedures followed by it. Policies and procedures means those policies and procedures in addition to the control environment and accounting systems which the management of XYZ has established to achieve the entity’s specific objectives. The management is responsible for maintaining an adequate accounting system incorporating various internal controls to the extent that they are appropriate to the size and nature of the business. There should be reasonable assurance for the HBC & Associates, the auditors that the accounting system is adequate and that all the accounting information required to be recorded has in fact been recorded. Internal controls normally contribute to such assurance. Explain with the help of relevant SA.
- (b) The effectiveness of controls cannot rise above the integrity and ethical values of the people who create, administer, and monitor them. Explain.
- (c) Auditor A of ABC & Co., Chartered Accountants appointed as Auditors of a Ltd Company observes that certain type of audit evidence obtained by him are more reliable than others. CA A is of the opinion that his observation would provide more reliable audit evidence than merely making inquiries. In determining the appropriate audit evidence to support a conclusion about control risk, the auditor A shall consider the audit evidence obtained in prior audits. Mr A thinks that he should also consider whether the internal controls were in use throughout the period. The auditor A decides to perform some tests of control during an interim visit in advance of the period end. Explain in detail.

Audit under CIS Environment

5. The growth and development in the field of information technology is a fast paced one and unless the auditors are alert to such developments and take pre-emptive action in upgrading their knowledge, they may find difficulty in coping with such advancement.

Explain few instance of the recent changes which may need to be addressed in discharging their responsibilities in such environment.

The Company Audit

6. (a) Pirana Ltd. issued 10,000 shares of face value of ₹ 10 each at a premium of ₹ 490 each in May, 2017. The company received the stated minimum amount in the prospectus and transferred a sum equal to the aggregate amount of the premium received on shares (i.e. ₹ 49 lakhs) to the 'Securities Premium Account'.

Unfortunately, in the month of July, the godown of the company caught fire and stock worth ₹ 45 lakhs burnt to ashes.

Now, the management desires to adjust the loss due to fire against the said premium account.

- (b) Ram and Hanuman Associates, Chartered Accountants in practice have been appointed as Statutory Auditor of Krishna Ltd. for the accounting year 2017-2018. Mr. Hanuman, a partner of the Ram and Hanuman Associates, holds 100 equity shares of Shiva Ltd., a subsidiary company of Krishna Ltd.
- (c) Subject to the provisions of sub-rule (1) of Rule 3 of The Companies (Audit and Auditors) Rules, 2014 where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.

Explain manner and procedure of selection and appointment of auditors as per Rule 3 of CAAR 2014.

Audit Report

7. (a) (i) Paragraph 3(x) of CARO, 2016 requires the auditor to report whether any fraud by the company or any fraud on the company by its officers or employees has been noticed or reported during the year. The clause does not require the auditor to discover such frauds.

The scope of auditor's inquiry under this clause is restricted to frauds 'noticed or reported' during the year. Comment.

- (ii) As per Paragraph 3(vi) of CARO, 2016, auditor is required to report whether maintenance of cost records has been specified by the Central Government under sub-section (1) of Section 148 of the Companies Act, 2013 and whether

such accounts and records have been so made and maintained. Explain audit procedure and reporting in relation to this clause.

- (b) SA 260 requires the auditor to communicate with those charged with governance on a timely basis. The appropriate timing for communications about key audit matters will vary with the circumstances of the engagement. However, the auditor may communicate preliminary views about key audit matters when discussing the planned scope and timing of the audit, and may further discuss such matters when communicating about audit findings. Doing so may help to alleviate the practical challenges of attempting to have a robust two-way dialogue about key audit matters at the time the financial statements are being finalized for issuance. Explain in detail why it is important to communicate key audit matters to those charged with governance.
- (c) The auditor's inability to obtain sufficient appropriate audit evidence (also referred to as a limitation on the scope of the audit) may arise from:
 - (i) Circumstances beyond the control of the entity;
 - (ii) Circumstances relating to the nature or timing of the auditor's work; or
 - (iii) Limitations imposed by management.

Explain with the help of examples.

Liabilities of Auditor

- 8. Mr. Fresh, a newly qualified chartered accountant, wants to start practice and he requires your advice, among other things, on criminal liabilities of an auditor under the Companies Act, 2013. Kindly guide him.

Audit of Consolidated Financial Statements

- 9. Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own. Explain clearly with reference of relevant Sections of the Companies Act, 2013 and The Companies (Accounts) Rules, 2014.

Audit of Banks

- 10. (a) While doing the audit of a nationalized bank, your Audit Assistant informed you that there are a lot of irregularities in Telegraphic Transfers and Demand Drafts. What guidance would be given to the Audit Assistant?
- (b) As a Statutory Auditor, how would you verify advances against Goods?

Audit of Insurance Company

- 11. What are the steps to be taken while verifying the Premium of a General Insurance Company?

Audit of Non-Banking Financial Companies

12. You are appointed as the auditor of a NBFC which is an Investment company registered with RBI. What shall be the special points to be covered for the audit of NBFC in case of Investment companies?

Audit under Fiscal Laws

13. (a) You are doing the tax audit of a Limited Company. After submission of Tax Audit Report, management notices that there was apparent mistake of law and due to this mistake, revised the final accounts. As a tax auditor, company seeks your opinion whether the tax audit can also be revised or not.
- (b) XYZ Limited is looking for an auditor for getting its accounts audited as per GST. Being an expert in the indirect taxes field XYZ Limited is seeking your advice on types of audit to be envisaged as per GST Law. Explain.

Cost Audit

14. XYZ Ltd is engaged in the manufacturing of various products in its factories spread across northern states of India. It seeks your advice about cost audit. Senior partner Mr A holds a meeting and addresses as under:

Cost audit is basically carried out at the instance of the management for obvious advantages. The principal object of this audit is to see that the cost data placed before the management are verified and reliable and they are prepared in such detail as will serve the purpose of the management in taking appropriate decisions. Explain stating clearly the objectives of cost audit on behalf of management.

Special Audit Assignments

15. (a) The objective of the Environmental Audit is to evaluate the efficacy of the utilisation of resources of man, machines and materials, and to identify the areas of environmental risks and liabilities and weakness(es) of management system and problems in compliance of the directives of the regulatory agencies and control the generation of pollutants and/or waste.
- Explain and enumerate the main areas to be covered by the auditor in the case of environment audit of an industrial unit.
- (b) Write short notes on the following –
- (1) Contract notes.
 - (2) Suda Book.

Audit of Public Sector Undertaking

16. The Comptroller and Auditor General assists the legislature in reviewing the performance of public undertakings. He conducts an efficiency-cum-performance audit other than the field which has already been covered either by the internal audit of the individual concerns

or by the professional auditors. He locates the area of weakness and extravagance for managements' information. Explain stating clearly the issues examined in comprehensive audit.

Internal Audit, Management and Operational Audit

17. (a) The main objective of operational auditing is to verify the fulfillment of plans, and sound business requirements while in financial auditing, the concentration is more in the financial and accounting areas to ensure that possibilities of loss, wastage and fraud are minimized or removed. Analyze and Explain stating clearly major differences between Financial and Operational Auditing.
- (b) The internal auditor must be regarded as part of the management and not merely as an assistant thereto. He must have authority to investigate from the financial angles every phase of the organisational activity under any circumstances. Explain.

Investigation and Due Diligence

18. The general approach for investigation under Sections 210 and 213 of the Companies Act, 2013 is conditioned by the legal requirements in these regards. Explain the approach/Steps for pursuing the investigation.

Professional Ethics

19. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:
- (a) Mr. Raj, a renowned practicing Chartered Accountant, decided to tie his knot with Ms. Anjani. While giving order for marriage invitation cards, Mr. Raj instructed to add his designation "Chartered Accountant" with his name. Later on, the cards were distributed to all his relatives, close friends and clients.
- (b) CA Ram is practicing in the field of financial management planning for over 12 years. He has gained expertise in this domain over others.
- Mr. Ratan, a student of Chartered Accountancy course, is very much impressed with the knowledge of CA. Ram. He approached CA. Ram to take guidance on some topics of financial management subject related to his course. CA. Ram, on request, decided to spare some time and started providing private tutorship to Mr. Ratan along with some other aspirants. However, he forgot to take specific permission for such private tutorship from the Council.
- (c) Mr. Sam, a Chartered Accountant in practice, provides guidance on post-issue activities to his clients e.g. follow up steps which include listing of instruments, dispatch of certificates and refunds etc. with the various agencies connected with the work. During the year 2017-18, looking to the growing needs of his clients to invest in the stock markets, he also started advising them on Portfolio Management Services whereby he managed portfolios of some of his clients.

- (d) Mr. P and Mr. Q are running a firm of Chartered Accountants in the name of M/s PQ & Co. On 23.05.2018, they included the name of Mr. R, a practicing Chartered Accountant, without his knowledge, as a partner while submitting an application for empanelment as auditor for Public Sector Bank branches to the Institute. However, they added Mr. R as a partner to their firm offering a share of 25% of the profits, on 25.05.2018.
20. Write a short note on the following:
- (a) Stepwise approach adopted by the Peer reviewer.
 - (b) Special features of Co-operative Societies Audit.
 - (c) Issues addressed in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 regarding Corporate Governance.
 - (d) The purpose of communicating key audit matters

SUGGESTED ANSWERS/HINTS

1. (a) As per SA 505, "External Confirmation", factors to be considered when designing confirmation requests include:
- (i) The assertions being addressed.
 - (ii) Specific identified risks of material misstatement, including fraud risks.
 - (iii) The layout and presentation of the confirmation request.
 - (iv) Prior experience on the audit or similar engagements.
 - (v) The method of communication (for example, in paper form, or by electronic or other medium).
 - (vi) Management's authorisation or encouragement to the confirming parties to respond to the auditor. Confirming parties may only be willing to respond to a confirmation request containing management's authorisation.
 - (vii) The ability of the intended confirming party to confirm or provide the requested information (for example, individual invoice amount versus total balance).

A positive external confirmation request asks the confirming party to reply to the auditor in all cases, either by indicating the confirming party's agreement with the given information, or by asking the confirming party to provide information. A response to a positive confirmation request ordinarily is expected to provide reliable audit evidence. There is a risk, however, that a confirming party may reply to the confirmation request without verifying that the information is correct. The auditor may reduce this risk by using positive confirmation requests that do not state the amount (or other information) on the confirmation request, and ask the confirming party to fill

in the amount or furnish other information. On the other hand, use of this type of “blank” confirmation request may result in lower response rates because additional effort is required of the confirming parties.

- (b) As per SA 250, “Consideration of Laws and Regulations, the auditor shall perform the audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements by inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and Inspecting correspondence, if any, with the relevant licensing or regulatory authorities.

However, when the auditor becomes aware of the existence of, or information about, the following matters, it may also be an indication of non-compliance with laws and regulations:

- Investigations by regulatory organisations and government departments or payment of fines or penalties.
 - Payments for unspecified services or loans to consultants, related parties, employees or government employees.
 - Sales commissions or agent’s fees that appear excessive in relation to those ordinarily paid by the entity or in its industry or to the services actually received.
 - Purchasing at prices significantly above or below market price.
 - Unusual payments in cash, purchases in the form of cashiers’ cheques payable to bearer or transfers to numbered bank accounts.
 - Unusual payments towards legal and retainership fees.
 - Unusual transactions with companies registered in tax havens.
 - Payments for goods or services made other than to the country from which the goods or services originated.
 - Payments without proper exchange control documentation.
 - Existence of an information system which fails, whether by design or by accident, to provide an adequate audit trail or sufficient evidence.
 - Unauthorised transactions or improperly recorded transactions.
 - Adverse media comment.
- (c) As per SA 810, “Engagement to Report on Summary Financial Statements”, the auditor shall perform the following procedures, and any other procedures that the auditor may consider necessary, as the basis for the auditor’s opinion on the summary financial statements:
- (i) Evaluate whether the summary financial statements adequately disclose their summarised nature and identify the audited financial statements.
 - (ii) When summary financial statements are not accompanied by the audited

financial statements, evaluate whether they describe clearly:

- (1) From whom or where the audited financial statements are available; or
 - (2) The law or regulation that specifies that the audited financial statements need not be made available to the intended users of the summary financial statements and establishes the criteria for the preparation of the summary financial statements.
- (iii) Evaluate whether the summary financial statements adequately disclose the applied criteria.
- (iv) Compare the summary financial statements with the related information in the audited financial statements to determine whether the summary financial statements agree with or can be re-calculated from the related information in the audited financial statements.
- (v) Evaluate whether the summary financial statements are prepared in accordance with the applied criteria.
- (vi) Evaluate, in view of the purpose of the summary financial statements, whether the summary financial statements contain the information necessary, and are at an appropriate level of aggregation, so as not to be misleading in the circumstances.
- (vii) Evaluate whether the audited financial statements are available to the intended users of the summary financial statements without undue difficulty, unless law or regulation provides that they need not be made available and establishes the criteria for the preparation of the summary financial statements.
- (d) Considerations for Planning and Performing Audit in case of Special Purpose Framework: As per SA 800 “Special Considerations-Audits of Financial Statements Prepared in accordance with Special Purpose Frameworks”, financial statements prepared in accordance with a special purpose framework may be the only financial statements an entity prepares. In such circumstances, those financial statements may be used by users other than those for whom the financial reporting framework is designed.

While planning and performing audit of such special purpose framework based company, the auditor should consider below mentioned factors:

- (i) To obtain an understanding of the entity's selection and application of accounting policies. In the case of financial statements prepared in accordance with the provisions of a contract, the auditor shall obtain an understanding of any significant interpretations of the contract that management made in the preparation of those financial statements.
- (ii) Compliance of all SAs relevant to audit, the auditor may judge it necessary to depart from a relevant requirement in an SA by performing alternative audit

procedures to achieve the aim of that requirement.

- (iii) Application of some of the requirements of the SAs in an audit of special purpose financial statements may require special consideration by the auditor. For example, in SA 320, judgments about matters that are material to users of the financial statements are based on a consideration of the common financial information needs of users as a group. In the case of an audit of special purpose financial statements, however, those judgments are based on a consideration of the financial information needs of the intended users.
- (iv) In the case of special purpose financial statements, such as those prepared in accordance with the requirements of a contract, management may agree with the intended users on a threshold below which misstatements identified during the audit will not be corrected or otherwise adjusted. The existence of such a threshold does not relieve the auditor from the requirement to determine materiality in accordance with SA 320 for purposes of planning and performing the audit of the special purpose financial statements.
- (v) Communication with those charged with governance in accordance with SAs is based on the relationship between those charged with governance and the financial statements subject to audit, in particular, whether those charged with governance are responsible for overseeing the preparation of those financial statements. In the case of special purpose financial statements, those charged with governance may not have such a responsibility.

2. Obtaining sufficient appropriate audit evidence while conducting Initial Audit

Engagement: According to SA 510 on “Initial Audit Engagements- Opening Balances”, the objective of the Auditor while conducting an initial audit engagement with respect to opening balances is to obtain sufficient appropriate audit evidence so that the -

- (i) opening balances of the preceding period have been correctly brought forward to the current period;
- (ii) opening balances do not contain any misstatement that materially affect the current period's financial statements; and
- (iii) appropriate accounting policies reflected in the opening balances have been consistently applied in the current period's financial statements, or changes thereto are properly accounted for and adequately presented and disclosed in accordance with the applicable financial reporting framework.

Being a new assignment, audit evidence regarding opening balances can be obtained by perusing the copies of the audited financial statements.

For current assets and liabilities, some audit evidence about opening balances may be obtained as part of the current period's audit procedures. For example, the collection/ payment of opening accounts receivable/ accounts payable during the

current period will provide some audit evidence of their existence, rights and obligations, completeness and valuation at the beginning of the period.

In respect of other assets and liabilities such as property plant and equipment, investments, long term debts, the auditor will examine the records relating to opening balances. The auditor may also be able to get the confirmation from third parties (e.g., balances of long term loan obtained from banks can be confirmed from the Bank Loan statement).

3. (a) SA 200 “Overall Objectives of the Independent Auditor and the Conduct of an Audit in accordance with Standards on Auditing” states that to achieve the overall objectives of the auditor, the auditor shall use the objectives stated in relevant SAs in planning and performing the audit. Without a careful plan, the overall objective of an audit may not be achieved. The audit planning is necessary to conduct an effective audit in an efficient and timely manner.

Benefits/Advantages of Planning in an Audit of Financial Statements

Planning an audit involves establishing the overall audit strategy for the engagement and developing an audit plan. Adequate planning benefits the audit of financial statements in several ways described hereunder-

- (i) Attention to Important Areas - Planning would help the auditor to devote appropriate attention to important areas of the audit.
 - (ii) Timely resolution of Potential Problems - It would also help the auditor identify and resolve potential problems on a timely basis.
 - (iii) Proper Organisation and Management of Audit Engagement - Adequate planning would help the auditor in properly organizing and managing the audit engagement so that it is performed in an effective and efficient manner.
 - (iv) Proper Selection of Engagement Team - Planning would assist the auditor in the selection of engagement team members with appropriate levels of capabilities and competence to respond to anticipated risks, and the proper assignment of work to them.
 - (v) Direction and Supervision of Engagement Team - It would further facilitate the direction and supervision of engagement team members and the review of their work.
 - (vi) Easy Coordination - Also, planning would be helpful to the auditor in coordination of work done by auditors of components and experts.
- (b) **Planning is not a discrete phase of an audit but rather a continual and iterative process.** It often begins shortly after (or in connection with) the completion of the previous audit and continues until the completion of the current audit engagement. Planning includes consideration of the timing of certain activities and audit procedures.

For example, planning includes the need to consider such matters as:

- The analytical procedures to be applied as risk assessment procedures.
- Obtaining a general understanding of the legal and regulatory framework applicable to the entity and how the entity is complying with that framework.
- The determination of materiality.
- The involvement of experts.
- The performance of other risk assessment procedures.

(c) Documenting the Audit Plan

The auditor shall document-

- (i) The overall audit strategy;
 - (ii) The audit plan; and
 - (iii) Any significant changes made during the audit engagement to the overall audit strategy or the audit plan, and the reasons for such changes as under -
 - (a) **Record of Key Decisions:** The documentation of the overall audit strategy is a record of the key decisions considered necessary to properly plan the audit and to communicate significant matters to the engagement team. For example, the auditor may summarize the overall audit strategy in the form of a memorandum that contains key decisions regarding the overall scope, timing and conduct of the audit.
 - (b) **Record of Nature:** Timing and Extent of Risk Assessment Procedures: The documentation of the audit plan is a record of the planned nature, timing and extent of risk assessment procedures and further audit procedures at the assertion level in response to the assessed risks. It also serves as a record of the proper planning of the audit procedures that can be reviewed and approved prior to their performance. The auditor may use standard audit programs and/or audit completion checklists, tailored as needed to reflect the particular engagement circumstances.
 - (c) **Record of reasons for Change in Audit Plans:** A record of the significant changes to the overall audit strategy and the audit plan, and resulting changes to the planned nature, timing and extent of audit procedures, explains why the significant changes were made, and the overall strategy and audit plan finally adopted for the audit. It also reflects the appropriate response to the significant changes occurring during the audit.
4. (a) Policies and procedures means those policies and procedures in addition to the control environment and accounting systems which the management has established to achieve the entity's specific objectives.

In this regard, the management is responsible for maintaining an adequate accounting system incorporating various internal controls to the extent that they are appropriate to the size and nature of the business. There should be reasonable assurance for the auditor that the accounting system is adequate and that all the accounting information required to be recorded has in fact been recorded. Internal controls normally contribute to such assurance. The auditor should gain an understanding of the accounting system and related internal controls and should study and evaluate the operation of those internal controls upon which he wishes to rely in determining the nature, timing and extent of other audit procedures. Where the auditor concludes that he can rely on certain internal controls, he could reduce his substantive procedures which otherwise may be required and may also differ as to the nature and timing.

Specific Requirement under **SA 315 - "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment"** deals with the auditor's responsibility to identify and assess the risks of material misstatement in the financial statements, through understanding the entity and its environment, including the entity's internal control. SA 315 defines the system of internal control as the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. SA 315 further states that the auditor should identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement and assertion levels, through understanding the entity and its environment, including the entity's internal control, thereby providing a basis for designing and implementing responses to the assessed risks of material misstatement. This will help the auditor to reduce the risk of material misstatement to an acceptably low level.

- (b) **Communication and enforcement of integrity and ethical values.** The effectiveness of controls cannot rise above the integrity and ethical values of the people who create, administer, and monitor them. Integrity and ethical behavior are the product of the entity's ethical and behavioral standards, how they are communicated, and how they are reinforced in practice. The enforcement of integrity and ethical values includes, for example, management actions to eliminate or mitigate incentives or temptations that might prompt personnel to engage in dishonest, illegal, or unethical acts. The communication of entity policies on integrity and ethical values may include the communication of behavioral standards to personnel through policy statements and codes of conduct and by example.
- (c) Certain types of audit evidence obtained by the auditor are more reliable than others. Ordinarily, the auditor's observation provides more reliable audit evidence than merely making inquiries, for example, the auditor might obtain audit evidence about

the proper segregation of duties by observing the individual who applies a control procedure or by making inquiries of appropriate personnel. However, audit evidence obtained by some tests of control, such as observation, pertains only to the point in time at which the procedure was applied. The auditor may decide, therefore, to supplement these procedures with other tests of control capable of providing audit evidence about other periods of time.

In determining the appropriate audit evidence to support a conclusion about control risk, the auditor may consider the audit evidence obtained in prior audits. In a continuing engagement, the auditor will be aware of the accounting and internal control systems through work carried out previously but will need to update the knowledge gained and consider the need to obtain further audit evidence of any changes in control. Before relying on procedures performed in prior audits, the auditor should obtain audit evidence which supports this reliance. The auditor would obtain audit evidence as to the nature, timing and extent of any changes in the entity's accounting and internal control systems since such procedures were performed and assess their impact on the auditor's intended reliance. The longer the time elapsed since the performance of such procedures the less assurance that may result.

The auditor should consider whether the internal controls were in use throughout the period. If substantially different controls were used at different times during the period, the auditor would consider each separately. A breakdown in internal controls for a specific portion of the period requires separate consideration of the nature, timing and extent of the audit procedures to be applied to the transactions and other events of that period.

The auditor may decide to perform some tests of control during an interim visit in advance of the period end. However, the auditor cannot rely on the results of such tests without considering the need to obtain further audit evidence relating to the remainder of the period. Factors to be considered include:

- ◆ The results of the interim tests.
- ◆ The length of the remaining period.
- ◆ Whether any changes have occurred in the accounting and internal control systems during the remaining period.
- ◆ The nature and amount of the transactions and other events and the balances involved.
- ◆ The control environment, especially supervisory controls.
- ◆ The nature, timing and extent of substantive procedures which the auditor plans to carry out.

5. The growth and development in the field of information technology is a fast paced one and unless the auditors are alert to such developments and take pre-emptive action in upgrading their knowledge, they may find difficulty in coping with such advancement.

Following are a few instance of the recent changes which may need to be addressed in discharging their responsibilities in such environment:

- (1) Mainframes are substituted by mini/micro users.
- (2) There is a shift from proprietary operating system to more universal ones like UNIX, LINUX, Programming in 'C' etc.
- (3) Relational Data Base Management (RDBMS) are increasingly being used.
- (4) The methodology adopted for systems development is becoming crucial and CASE (Computer Aided Software Engineering) tools are being used by many organisation.
- (5) End user computing is on the increase resulting in decentralized data processing.
- (6) The need for data communication and networking is increasing.
- (7) Common business documents are getting replaced by paperless electronic data interface (EDI).
- (8) Conventional data entry giving way to scanner, digitized image processes, voice recognition system etc.

The impact of all such change on auditing may be summarised as:

- (a) wide-spread end-user computing may result in unintentional errors creeping into systems owing to inept handling. Also coordinated program modification may not be possible.
 - (b) improper use of decision support system can have serious repercussion. Also their underlying assumption must be clearly documented.
 - (c) Usage of sophisticated audit software would be a necessity.
 - (d) Auditors non-participation at System Development Life Cycle State (SDLC) pose considerable problem in understanding the operational controls.
 - (e) Data communication and networking would introduce new audit risk.
 - (f) The move toward paperless EDI would eliminate much of the traditional audit trail radically changing the nature of audit trails.
6. (a) **Application of Securities Premium Account:** Section 52 of the Companies Act, 2013 (herein after referred as the Act) deals with the application of premium received on issue of shares. The said section provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to an account called "Securities Premium Account" and the provisions of this Act relating to reduction of share capital of a company except as provided in this section shall apply as if the

securities premium account was the paid up share capital of the company.

However, as per section 52, the securities premium account may be applied for the following purposes:

- (i) towards the issue of fully paid bonus shares;
- (ii) in writing off the preliminary expenses;
- (iii) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures;
- (iv) in providing for the premium payable on the redemption of any redeemable preference shares or debentures; or
- (v) for the purchase of its own shares or other securities under section 68 of the Companies Act, 2013.

In the given case, the management of Pirana Ltd. desires to adjust the loss due to fire against the securities premium account.

In view of the above provisions of the Companies Act, 2013, it may be noted that the company is not permitted to adjust its loss against the securities premium account.

- (b) Auditor Holding Securities of a Company:** As per sub-section (3)(d)(i) of Section 141 of the Companies Act, 2013 along with Rule 10 of the Companies (Audit and Auditors) Rule, 2014, a person shall not be eligible for appointment as an auditor of a company, who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Provided that the relative may hold security or interest in the company of face value not exceeding rupees one lakh.

Also, as per sub-section (4) of Section 141 of the Companies Act, 2013, where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

In the present case, Mr. Hanuman, Chartered Accountant, a partner of M/s Ram and Hanuman Associates, holds 100 equity shares of Shiva Ltd. which is a subsidiary of Krishna Ltd. Therefore, the firm, M/s Ram and Hanuman Associates would be disqualified to be appointed as statutory auditor of Krishna Ltd. as per section 141(3)(d)(i), which is the holding company of Shiva Ltd., because Mr. Hanuman one of the partner is holding equity shares of its subsidiary.

- (c) Rule 3 of CAAR 2014 prescribes the following manner and procedure of selection and appointment of auditors.**

- (1) In case of a company that is required to constitute an Audit Committee under section 177, the committee, and, in cases where such a committee is not

required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

It may be noted that while considering the appointment, the Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.

- (2) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit.
- (3) Subject to the provisions of sub-rule (1), where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.
- (4) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.
- (5) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.
- (6) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.
- (7) The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.

7. (a) (i) Paragraph 3(x) of CARO, 2016 states that :

Whether any fraud by the company or any fraud on the company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated

This clause requires the auditor to report whether any fraud by the company or

any fraud on the company by its officers or employees has been noticed or reported during the year. If yes, the auditor is required to state the amount involved and the nature of fraud. The clause does not require the auditor to discover such frauds. The scope of auditor's inquiry under this clause is restricted to frauds 'noticed or reported' during the year. The use of the words "noticed or reported" indicates that the management of the company should have the knowledge about the frauds by the company or on the company by its Officer and employees that have occurred during the period covered by the auditor's report. It may be noted that this clause of the Order, by requiring the auditor to report whether any fraud by the company or on the company by its Officer or employees has been noticed or reported, does not relieve the auditor from his responsibility to consider fraud and error in an audit of financial statements. In other words, irrespective of the auditor's comments under this clause, the auditor is also required to comply with the requirements of Standard on Auditing (SA) 240, "The Auditor's Responsibility Relating to Fraud in an Audit of Financial Statements".

(ii) Audit Procedures and Reporting - Paragraph 3(vi) of CARO, 2016

- (i) The Order requires the auditor to report whether cost accounts and records have been made and maintained. The word "made" applies in respect of cost accounts (or cost statements) and the word "maintained" applies in respect of cost records relating to materials, labour, overheads, etc. The auditor has to report under the clause irrespective of whether a cost audit has been ordered by the central government. The auditor should obtain a written representation from the management stating (a) whether cost records are required to be maintained for any product(s) or services of the company under section 148 of the Act, and the Companies (Cost Records and Audit) Rules, 2014; and (b) whether cost accounts and records are being made and maintained regularly. The auditor should also obtain a list of books/records made and maintained in this regard. The Order does not require a detailed examination of such records. The auditor should, therefore, conduct a general review of the cost records to ensure that the records as prescribed are made and maintained. He should, of course, make such reference to the records as is necessary for the purposes of his audit.
- (ii) It is necessary that the extent of the examination made by the auditor is clearly brought out in his report. The following wording is, therefore, suggested:

"We have broadly reviewed the books of account maintained by the company pursuant to the Rules made by the Central Government for the maintenance of cost records under section 148 of the Act, and are of the opinion that *prima facie*, the prescribed accounts and records have been made and maintained."

- (iii) Where the auditor finds that the records have not been written or are not *prima facie* complete, it will be necessary for the auditor to make a suitable comment in his report.
- (b) SA 260 (Revised) requires the auditor to communicate with those charged with governance on a timely basis. The appropriate timing for communications about key audit matters will vary with the circumstances of the engagement. However, the auditor may communicate preliminary views about key audit matters when discussing the planned scope and timing of the audit, and may further discuss such matters when communicating about audit findings. Doing so may help to alleviate the practical challenges of attempting to have a robust two-way dialogue about key audit matters at the time the financial statements are being finalized for issuance.

Communication with those charged with governance enables them to be made aware of the key audit matters that the auditor intends to communicate in the auditor's report, and provides them with an opportunity to obtain further clarification where necessary. The auditor may consider it useful to provide those charged with governance with a draft of the auditor's report to facilitate this discussion. Communication with those charged with governance recognizes their important role in overseeing the financial reporting process, and provides the opportunity for those charged with governance to understand the basis for the auditor's decisions in relation to key audit matters and how these matters will be described in the auditor's report. It also enables those charged with governance to consider whether new or enhanced disclosures may be useful in light of the fact that these matters will be communicated in the auditor's report.

- (c) The auditor's inability to obtain sufficient appropriate audit evidence (also referred to as a limitation on the scope of the audit) may arise from:
- (i) Circumstances beyond the control of the entity;
 - (ii) Circumstances relating to the nature or timing of the auditor's work; or
 - (iii) Limitations imposed by management.

An inability to perform a specific procedure does not constitute a limitation on the scope of the audit if the auditor is able to obtain sufficient appropriate audit evidence by performing alternative procedures. Limitations imposed by management may have other implications for the audit, such as for the auditor's assessment of fraud risks and consideration of engagement continuance.

Examples of circumstances beyond the control of the entity include when:

- The entity's accounting records have been destroyed.
- The accounting records of a significant component have been seized indefinitely by governmental authorities.

Examples of circumstances relating to the nature or timing of the auditor's work include when:

- The entity is required to use the equity method of accounting for an associated entity, and the auditor is unable to obtain sufficient appropriate audit evidence about the latter's financial information to evaluate whether the equity method has been appropriately applied.
- The timing of the auditor's appointment is such that the auditor is unable to observe the counting of the physical inventories.
- The auditor determines that performing substantive procedures alone is not sufficient, but the entity's controls are not effective.

Examples of an inability to obtain sufficient appropriate audit evidence arising from a limitation on the scope of the audit imposed by management include when:

- Management prevents the auditor from observing the counting of the physical inventory.
- Management prevents the auditor from requesting external confirmation of specific account balances.

8. Criminal Liability of an Auditor under the Companies Act, 2013: The circumstances in which an auditor can be prosecuted under the Companies Act and the penalties to which he may be subjected are briefly stated below-

- (i) **Criminal liability for Misstatement in Prospectus-** As per Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.

This section shall not apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

- (ii) **Punishment for False Statement -** According to Section 448 of the Companies Act, 2013, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement-

- (1) which is false in any material particulars, knowing it to be false; or
- (2) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Punishment for Fraud - As per Section 447 of the Companies Act, 2013, without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less

than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

It may be noted that where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

Explanation — For the purposes of this section—

- (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

Direction by Tribunal in case auditor acted in a fraudulent manner: As per sub-section (5) of the section 140, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

However, if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

It may be noted that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

9. **Responsibility of Holding Company for preparation of Consolidated Financial Statements:** As per Section 129(3) of the Companies Act, 2013, where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same

form and manner as that of its own. The responsibility for the preparation and presentation of consolidated financial statements, among other things, is that of the management of the parent/holding company. This includes:

- (i) identifying components, and including the financial information of the components to be included in the consolidated financial statements;
- (ii) where appropriate, identifying reportable segments for segmental reporting;
- (iii) identifying related parties and related party transactions for reporting;
- (iv) obtaining accurate and complete financial information from components; and
- (v) making appropriate consolidation adjustments.

Apart from the above, the parent ordinarily issues instructions to the management of the component specifying the parent's requirements relating to financial information of the components to be included in the consolidated financial statements. The instructions ordinarily cover the accounting policies to be applied, statutory and other disclosure requirements applicable to the parent, including the identification of and reporting on reportable segments, and related parties and related party transactions, and a reporting timetable.

However, the requirement related to preparation of consolidated financial statements shall not apply to a company if it meets the following conditions:

- (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
- (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

10. (a) In respect of Telegraphic Transfers and Demand Drafts, the audit assistant would be given the following guidance -

- (i) The bank should have a reliable private code known only to responsible officers of its branches, coding and decoding of telegrams should be done only by such officers.
- (ii) The signatures on a demand draft should be checked by an officer with the Signature Book.
- (iii) All the T.Ts and D.Ds. sold by a branch should be immediately confirmed by the advices to the branches concerned.

- (iv) If the paying branch does not receive proper confirmation of any T.T. or D.D. from the issuing branch or does not receive credit in its account with that branch, it should take immediate steps to ascertain the reasons.

(b) Verification of Advances against Goods (Banking Companies):

- (i) **Sanction:** Examine the sanction letter, letter of hypothecation and note the important terms and conditions of the advances.
- (ii) **Stock statements:** Verify the quantity and value of goods hypothecated based on the stock statements received from the borrower. Test check the Godown Register and examine the valuation of goods to ascertain the reasonableness of the same.
- (iii) **Inspection:** Ascertain as to whether the premises of the borrowers are periodically visited by the bank officials to verify the quantity as per the periodic stock statements.
- (iv) **Stock Audit:** See whether the bank has got a system of obtaining stock and receivables audit report in respect of such advances. If so, review the stock audit report and identify adverse comments, if any.
- (v) **Hypothecation/Pledge:** Examine the letter of hypothecation and certificate of registration of charge, in respect of goods pledged with the bank.
- (vi) **Insurance:** Examine the insurance policies for their validity, adequacy etc. and see that policies are in favour of the bank.
- (vii) **Documents of title:** Inspect the documents of title to goods like bill of lading, dock warrant, railway receipts etc. to ensure that they are endorsed registered in favour of the bank.
- (viii) **Third party certificate:** Where the hypothecated goods are in possession of third parties, such as clearing and forwarding agents, transporters, bankers, etc. undertaking has been obtained by the bank that they will handover the goods or sale proceeds thereof to the bank only. In such cases, certificate should be obtained by the bank from such third parties regarding quantities on hand, on balance sheet date. The valuation of such goods should be checked by the auditor.

11. Verification of Premiums: Verification of premium is of utmost importance to an auditor. The auditor should apply, inter alia, the following procedures for verification of premium-

- (i) Before commencing verification of premium income, the auditor should look into the internal controls and compliance thereof as laid down for collection and recording of the premiums.
- (ii) The auditor should ascertain that all the cover notes relating to the risks assumed have been serially numbered for each class of business. The auditor should also

verify that there is an adequate internal check on the issue of stationery comprising of cover notes, policy documents, stamps, etc. The auditor may apply sampling techniques for verification of larger volume of transactions.

- (iii) The auditor should ensure that premium in respect of risks incepting during the relevant accounting year has been accounted as premium income of that year on the basis of premium revenue recognition. The auditor, as part of his audit procedures, should make an assessment of the reasonability of the risk pattern established by the management. The auditor should also see whether the premium received during the year but pertaining to risk commencing in the following year has been accounted for under the head 'Premium Received in Advance' and has been disclosed separately. Normally, such instances relate to the issue of cover notes and certificates at the end of the accounting year relating to risks commencing in the next accounting period. Generally, there is a column in the Premium Register called "Commencement of Risk", indicating the date and time from which the risk under the policy issued has commenced. The auditor should verify that policy documents have not been issued, or where issued, the company was not at risk, in case:
 - (a) premium had not been collected at all;
 - (b) premium had been collected but the relevant cheques have been dishonoured;
 - (c) premium had not immediately been collected due to furnishing of a bank guarantee or cash deposit but either the deposit or guarantee had fallen short or has expired or the premium had been collected beyond the stipulated time limit (i.e., there is a shortfall in bank guarantee account or cash deposit account of the insured);
 - (d) premium had not been collected due to risk cover being increased or where stipulated limits have been exhausted in respect of open declaration policies (i.e., where premium has accrued but has not been received); and
 - (e) instalments of premium have not been collected in time in respect of certain categories of policies, e.g., marine-cum-erection policies where facility has been granted for premium being paid in instalments (such facility is normally available subject to certain conditions, e.g., that the first equated instalment is more by 5 per cent of the total premium payable by instalments).
- (iv) The auditor should examine whether the reinsurance company is not under a risk in respect of amount lying at credit and outstanding as at the year-end in the following accounts:
 - (a) Deposit Premium Account;
 - (b) Premium Received in Advance Account;
 - (c) Inspectors' Deposits Account; and
 - (d) Agent's Premium Accounts.

- (v) The auditor should verify the collections lodged by agents after the balance sheet date to see whether any collection pertains to risk commencing for the year under audit. The auditor should also check that the premium has been recorded originally at the gross figure, i.e., without providing for unexpired risks and reinsurances.
- (vi) In case of co-insurance business, where the company is not the leader, because of the non-availability of the relevant information in many cases the premium is not booked even though the risk has commenced during the relevant accounting year. The auditor should see that the company's share of the premium has been accounted for on the basis of the available information on nature of risk and the provisional premium charged by the leading insurer. The auditor should examine the communications issued to the company by the leading insurers advising them of the company's share of premium income. Such communications should be seen even in respect of the post-audit period. Where the company is the leader, the auditor should obtain a reasonable assurance that only the company's own share of premium has been shown as income and accounts of the other companies have been credited with their share of the premium collected.
- (vii) The auditor should check whether Premium Registers have been maintained chronologically, for each underwriting department, giving full particulars including service tax charged as per acceptance advice on a day-to-day basis. The auditor should verify whether the figures of premium mentioned in the register tally with those in General Ledger.
- (viii) Where policies have been issued with a provision to collect premium periodically (i.e., under instalment clause, special declaration policy or periodical declaration under open policies in marine insurance), the auditor should check whether premium are collected as and when they become due.
- (ix) The auditor should verify whether instalments falling due on or before the balance sheet date, whether received or not, have been accounted for as premium income as for the year under audit. Also examine whether instalments of premium falling due in the subsequent year have not been recognised in the accounts as outstanding premium.
- (x) The auditor should verify the year end transactions to check that amounts received during the year in respect of risks commencing/ instalments falling due on or after the first day of next financial year are not credited to premium account but credited to Premium Received in Advance Account.
- (xi) The auditor should verify the collections remitted by agents immediately after the cut-off date to verify the risk assumed during the year under audit on those collections.
- (xii) The auditor should also check that in case of cancellation of policies/cover notes issued, no risk has been assumed between the date of issue and subsequent cancellation thereof.

- (xiii) Where premium originally received has been refunded, the auditor should verify whether the agency commission paid on such premium has been recovered.
- (xiv) The auditor should verify whether service tax has been charged from the insured, at the rates in force, on the total premium for all classes of business other than those exempted under service tax laws. Check whether service tax so collected is disclosed under 'Current Liabilities' to the extent not deposited in Government's Account.
- (xv) In the case of co-insurance business, the auditor should verify whether service tax at the rates in force on the whole premium has been charged or collected from the insured by the company in case it is the leader.

Check that service tax so collected on premium charged from the insured by the company has been regularly deposited in the Government's Account.

12. Special points that may be covered in the audit of NBFCs in case of Investment Companies are given below:

- (i) Physically verify all the shares and securities held by a NBFC. Where any security is lodged with an institution or a bank, a certificate from the bank/institution to that effect must be verified.
- (ii) NBFC Prudential Norms stipulates that NBFCs should not lend more than 15% of its owned funds to any single borrower and not more than 25% to any single group of borrower. The ceiling on investments in shares by a NBFC in a single entity and the aggregate of investments in a single group of entities has been fixed at 15% and 25% respectively. Moreover, a composite limit of credit to and investments in a single entity/group of entities has been fixed at 25% and 40% respectively of the owned fund of the concerned NBFC. Verify that the credit facilities extended and investments made by the concerned NBFC are in accordance with the prescribed ceiling.
- (iii) Verify whether the NBFC has not advanced any loans against the security of its own shares.
- (iv) Verify that dividend income wherever declared by a company, has been duly received by a NBFC and interest wherever due [except in case of NPAs] has been duly accounted for.
- (v) Test check bills/contract notes received from brokers with reference to the prices vis-à-vis the stock market quotations on the respective dates.
- (vi) Verify the Board Minutes for purchase and sale of investments. Ascertain from the Board resolution or obtain a management certificate to the effect that the investments so acquired are current investments or Long Term Investments.
- (vii) Check whether the investments have been valued in accordance with the NBFC Prudential Norms Directions and adequate provision for fall in the market value of securities, wherever applicable, have been made there against, as required by the Directions.

- (viii) Obtain a list of subsidiary/group companies from the management and verify the investments made in subsidiary/group companies during the year. Ascertain the basis for arriving at the price paid for the acquisition of such shares.
- (ix) Check whether investments in unquoted debentures/bonds have not been treated as investments but as term loans or other credit facilities for the purposes of income recognition and asset classification.
- (x) An auditor will have to ascertain whether the requirements of AS 13 “Accounting for Investments” (to the extent they are not inconsistent with the Directions) have been duly complied with by the NBFC.
- (xi) In respect of shares/securities held through a depository, obtain a confirmation from the depository regarding the shares/securities held by it on behalf of the NBFC.
- (xii) In the case of securities lent/borrowed under the Securities Lending Scheme of SEBI, verify the agreement entered into with the approved intermediary (i.e. the person through whom the lender will deposit and the borrower will borrow the securities for lending/borrowing) with regards to the period of depositing/lending securities, fees for depositing/lending, collateral securities and provision for the return including premature return of the securities deposited/lent.
- (xiii) Verify that securities of the same type or class are received back by the lender/paid by the borrower at the end of the specified period together with all corporate benefits thereof (i.e. dividends, rights, bonus, interest or any other rights or benefit accruing thereon.)
- (xiv) Verify charges received or paid in respect of securities lent/borrowed.
- (xv) Obtain a confirmation from the approved intermediary regarding securities deposited with/borrowed from it as at the year end.

13. (a) Revision of Tax Audit Report:

- (i) Normally, the report of the tax auditor cannot be revised later.
- (ii) However, when the accounts are revised in the following circumstances, the tax Auditor may have to revise his Tax audit report also.
 - (a) Revision of accounts of a company after its adoption in the annual general meeting.
 - (b) Change in law with retrospective effect.
 - (c) Change in interpretation of law (e.g.) CBDT Circular, Notifications, Judgments, etc.

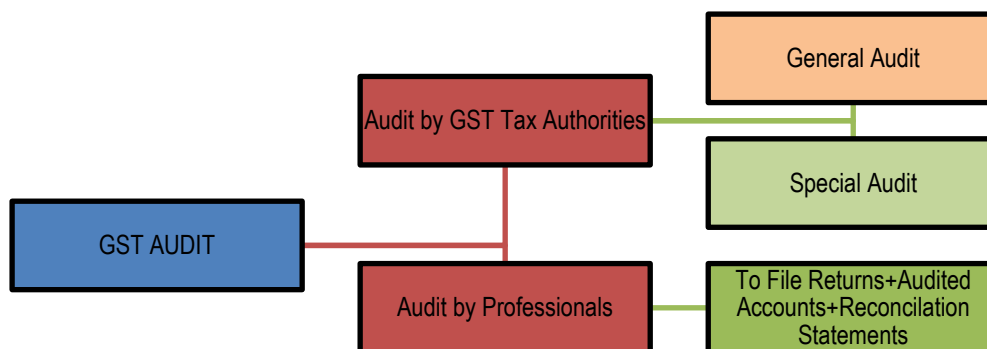
The Tax Auditor should state it is a revised Report, clearly specifying the reasons for such revision with a reference to the earlier report.

Thus, the Tax Audit Report can be changed under the given circumstances.

(b) Types of Audit under GST Law:

GST envisages three types of Audit.

- (1) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]
- (2) Audit by Tax Authorities wherein the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. [Section 65 and rule 101]
- (3) Special Audit wherein the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. [Section 66 and rule 102]

**1. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]**

As per sub-section 5 of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores.	Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of: ☐ Audited annual accounts ☐ A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.
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Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.

2. Audit under section 65:

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

3. Special Audit under section 66:

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

- Value has not been correctly declared; or
- Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

- 14.** Cost audit is basically carried out at the instance of the management for obvious advantages. Apart from this, different other circumstances also sometimes occasion audit of cost accounts. The principal object of this audit is to see that the cost data placed before the management are verified and reliable and they are prepared in such detail as will serve the purpose of the management in taking appropriate decisions. The detailed objectives include-

- (a) Establishing the accuracy of the costing data, as for example, cost of material used, allocation of wages into direct and indirect and on different products, functions and cost centres.
- (b) Ensuring that the objectives of cost accounting are being achieved through appropriate collection, segregation, analysis and compilation of data.
- (c) Ascertaining abnormal losses and gains along with the relevant causes, expressed in financial terms in a manner that the person responsible for such loss or gain is identified.
- (d) Determination of the unit cost of production in a precise but practicable manner.

- (e) Establishing proper overhead rates for absorption of overheads by various units of costs so that the cost is properly ascertained and there is no significant over or under recovery of expenses.
 - (f) Fixation of contract price and the determination of the additional or supplementary charge that can be raised against customers for alterations, etc.
 - (g) Improving the quality of cost accounting system by obtaining the audit observations and suggestions of cost auditor.
15. (a) The objective of the Environmental Audit is to evaluate the efficacy of the utilisation of resources of man, machines and materials, and to identify the areas of environmental risks and liabilities and weakness(es) of management system and problems in compliance of the directives of the regulatory agencies and control the generation of pollutants and/or waste.

As the Environmental Audit, especially in India, is still in its infancy the information usually gathered in the course of Environmental Audit is only what is required for the compliance of the statutory requirements, i.e., for Water Act, 1974, Air Act, 1981, etc., and for environmental clearance required before establishing an industry.

Main areas to be covered in the case of environment audit of an industrial unit

- (i) **Layout and Design** – The layout to be sketched in the style which will allow adequate provisions for installing pollution control devices, as well as provision for up gradation of pollution control measures and the meeting of the requirements of the regulations framed by the Government. In the course of the audit, the area which requires attention but not attended to by the industry to be pinpointed as well as the future requirements of the environmental measures required in commensuration with the proposed future course of working plan are to be identified.
- (ii) **Management of Resources** – Management resources includes air, water, land, energy, raw materials and human resources besides others. The use of all resources is interlinked and the best uses in a synchronised manner results the best output and minimum waste. The waste of resources to the minimum possible extent is good for the health of the industry as well as the environment.
- (iii) **Pollution Control System** – An effective system of pollution control should be in existence. One aspect should be whether all required pollution control measures are in vogue or not next aspect should be whether the same is effective or not, further it is to investigate, whether more measures are required, keeping in view the type of industry and its nature of working with respect to its grade of polluting the environment.
- (iv) **Emergent Safety Arrangement** – The chemical, gas, etc., industries which are prone to sudden requirement of safety arrangements, must remain alert all the while. The emergency plans are to be reviewed periodically; sufficient staff along

with other required safety amenities should be kept ready. The staff, remained so engaged, must possess the required awareness and alertness to meet the contingency. The degree of awareness, however, can be upgraded with proper training provisions.

- (v) **Medical & Healthcare Facilities** – The medical services should be maintained. The health of the workers should be a big consideration for the management.
- (vi) **Industrial Hygiene** – Proper system should be in vogue to eliminate industrial unhygienic state.
- (vii) **Occupational Health** – The requirement for safeguarding against occupational health hazards should be available for all the workers. As the occupational health hazards varies from industry to industry due to the difference in the nature of working atmosphere and the pollutants present in it, the concerned industry must pay proper weightage to those diseases which are prone to that particular type of industry.
- (viii) **Information Assimilation and Reporting System** – The information system should be strengthened to generate and its reporting system should be proper, keeping in view, the authorities, responsibilities and subsequent delegations. A report of compliance of all statutory environmental laws along with other preventive and precautionary measures should be put to Board at regular intervals.
- (ix) **EIA Methodology** – The Environmental Impact Assessment (EIA) is usually are pre-requisites to start an industry. This is done considering the known spheres of activities on the existing environmental conditions. But the predictions necessarily deviate from the actual happenings when the industry starts working. To accommodate the deviation in the system is also to be incorporated in the EIA report, if it is noticed that the degradation to the environment caused on the establishment and running of the industry is much higher than what was predicted, the mitigatory measures suggested must also be furthered.
- (x) **Compliance to the Regulatory Mechanism** – As the persons who are directly working with the system, may be unaware of the latest developments and requirements for the compliance of stipulations and standards prescribed by the various regulatory authorities, they should be trained and instructed on regular basis, to avoid making the Board/owner vulnerable to prosecution and penalty.
- (xi) **Concern for the Society** – The industry very often transforms the agrarian environment into an industrial environment. The people so displaced by industrialisation feel alienated and develop a feeling of facing the gaseous, dustful, clumsy state of surroundings. The audit should look into this aspect how the industry is making a balance between its own development and the society's concern.

- (b) (1) **Contract Notes:** Contract note is a document through which a contractual obligation is established between a member and a client. Every member of the stock-exchange has to issue contract notes to his clients for the trades executed on their behalf. The contract notes are required to be issued to the Client within 24 hours of execution of the trades. Members are also required to preserve counter-foils or duplicates of the copies of contract notes issued to clients. The member is also required to maintain written consent of clients for the contracts entered into as Principal. Contract notes issued to clients should show the brokerage separately. The total brokerage charged by the member should not exceed the specified value of the trade. It may be noted that the brokerage percentage is prescribed from time to time. The Contract Notes are required to be signed either by the member himself or his constituted attorney. In case of a sole proprietor / partnership firm wishes to authorise another person to sign the contract notes, then the member is required to submit a power of attorney to the Exchange. In case of corporate membership, a board resolution is required to authorise a person including Directors to sign the contract notes.

The member then prepares a Contract Note in the prescribed form after adding the brokerage and sends the original Contract Note to the client. The auditor should evaluate the internal control procedures instituted by the stock broker for proper maintenance and issuance of contract notes. The auditor should verify that the transactions done by a member are recorded in the sauda book. It should also be examined that contract notes are issued for all the business conducted on behalf of the clients. The auditor should verify the list of trades executed with the bills raised. The auditor should apply appropriate audit procedures to satisfy himself that -

- (i) Contract notes have been serially numbered.
- (ii) No serial number has been left blank.
- (iii) Format of the Contract Note is as prescribed by the Regulations of the Exchange.
- (iv) Duplicate copies / counterfoils of contract notes are maintained.
- (v) Brokerage charged in contract notes is within the permissible limits and is indicated separately including service tax.
- (vi) Contract notes have been signed by an authorised person.
- (vii) Contract notes have been issued in respect of all transactions.
- (viii) Transaction Identification, Trade Identification and Trade Execution time has been printed on the contract note issued.
- (ix) SEBI Registration number, Settlement number, Settlement dates have been mentioned.

- (x) PAN number of the member and client has been mentioned on Contract Note where if required.
 - (xi) All clauses specified by the Exchange have been printed on the reverse of the contract notes.
- (2) **Sauda Book:** All members are required to maintain a 'Sauda Book', which contains details of all deals transacted by them on a day to day basis. This is a basic record, which each member is required to maintain regularly on day-to-day basis. It contains the details regarding the name of the code of the client on whose behalf the deals have been done, rate and quantity of bought or sold. These details are maintained date wise. This register contains all the transactions, which may be of any of the kind mentioned below:
- (i) member's own business on the Exchange;
 - (ii) member's business on the Exchange on behalf of clients;
 - (iii) member's business with the clients on principal-to-principal basis;
 - (iv) member's business with the members of other Stock Exchanges;
 - (v) member's business on behalf of his clients with the members of other Stock Exchanges;
 - (vi) Spot transactions, etc.
16. The Comptroller and Auditor General assist the legislature in reviewing the performance of public undertakings. He conducts an efficiency-cum-performance audit other than the field which has already been covered either by the internal audit of the individual concerns or by the professional auditors. He locates the area of weakness and extravagance for managements' information.
- The areas covered in comprehensive audit naturally vary from enterprise to enterprise depending on the nature of the enterprise, its objectives and operations. However, in general, the covered areas are those of investment decisions, project formulation, organisational effectiveness, capacity utilisation, management of equipment, plant and machinery, production performance, use of materials, productivity of labour, idle capacity, costs and prices, materials management, sales and credit control, budgetary and internal control systems, etc.
- Some of the issues examined in comprehensive audit are:
- (a) How does the overall capital cost of the project compare with the approved planned costs? Were there any substantial increases and, if so, what are these and whether there is evidence of extravagance or unnecessary expenditure?
 - (b) Have the accepted production or operational outputs been achieved? Has there been under-utilisation of installed capacity or shortfall in performance and, if so, what has caused it?

- (c) Has the planned rate of return been achieved?
- (d) Are the systems of project formulation and execution sound? Are there inadequacies? What has been the effect on the gestation period and capital cost?
- (e) Are cost control measures adequate and are there inefficiencies, wastages in raw materials consumption, etc.?
- (f) Are the purchase policies adequate? Or have they led to piling up of inventory resulting in redundancy in stores and spares?
- (g) Does the enterprise have research and development programmes? What has been the performance in adopting new processes, technologies, improving profits and in reducing costs through technological progress?
- (h) If the enterprise has an adequate system of repairs and maintenance?
- (i) Are procedures effective and economical?
- (j) Is there any poor or insufficient or inefficient project planning?

The efficiency and effectiveness audit of public enterprises is conducted on the basis of certain standards and criteria. Profit is not the key criterion on performance; management's performance in the economical and efficient use of public funds and in the achievement of objectives is more relevant. Public enterprises have been set up with certain socio-economic purposes and for fulfillment of certain objectives. The objectives vary from enterprise to enterprise. Audit appraisal analyses the performance of an enterprise to bring out the extent to which the objectives for which the enterprise was set up have been served.

17. (a) **Differences between Financial and Operational Auditing:** The major differences between financial and operational auditing can be described as follows-
- (i) **Purpose** - The financial auditing is basically concerned with the opinion that whether the historical information recorded is correct or not, whereas the operational auditing emphasizes on effectiveness and efficiency of operations for future performance.
 - (ii) **Area** - Financial audits are restricted to the matters directly affecting the appropriateness of the presented financial statements but the operational auditing covers all the activities that are related to efficiency and effectiveness of operations directed towards accomplishment of objectives of organization.
 - (iii) **Reporting** -The financial audit report is sent to all stock holders, bankers and other persons having stake in the Organisation. However, the operational audit report is primarily for the management.
 - (iv) **End Task** - The financial audit has reporting the findings to the persons getting the report as its end objective, however, the operational auditing is not limited to reporting only but includes suggestions for improvement also

The main objective of operational auditing is to verify the fulfillment of plans, and sound business requirements. Operational auditing is considered as specialized management information tool. Operational auditing is essentially a function of internal auditing staff. Operational auditing is a systematic process of evaluating an organisation's effectiveness, efficiency and economy of operations under management control and reporting to appropriate persons, the result of the evaluation along with recommendations for improvements. Operational audit concentrates on effectiveness, efficiency and economy of operations and therefore it is future oriented. It does not end with the reporting of the findings but also recommends the steps for improvements in future. Operational auditing is not different from internal auditing; it is merely an extension of internal auditing into operational areas.

While in financial auditing, the concentration is more in the financial and accounting areas to ensure that possibilities of loss, wastage and fraud are minimized or removed. In financial auditing, an auditor is called upon to review the financial statements of an enterprise to ascertain whether they reflect true and fair view of its state of affairs and of its working results. He may analyse the operations of an enterprise to appraise their cost effectiveness and also he may seek evidence to review the managerial performances.

- (b) To be effective, the internal auditor must be regarded as part of the management and not merely as an assistant thereto. He must have authority to investigate from the financial angles, every phase of the organisational activity under any circumstances. In recent years, there has been a growing tendency in Western countries to make the internal auditor responsible directly to the Board of Directors for the maintenance of adequate accounting procedures and for the preparation of financial statements and reports as regards the functioning of the business. His main responsibility, however, must be to maintain adequate system of internal control by a continuous examination of accounting procedures, receipts and disbursements and to provide adequate safeguards against misappropriation of assets. In carrying out these functions, he must operate independently of the accounting staff and must not in any way divest himself of any of the responsibilities placed upon him. He should also not involve himself in the performance of executive functions in order that his objective outlook does not get obscured by the creation of vested interest.

It may be further pointed out that internal auditors who are qualified accountants, because of their training and experience, can be of great assistance to the management even in fields other than accounting. They can observe facts and situations and bring them to notice of authorities who would otherwise never know them; also, they critically appraise various policies of the management and draw its attention to any deficiencies, wherever these require to be corrected. In order that an internal auditor may be able to play such a role in the field of management, he must be closely associated with it and his knowledge must be kept up to date by his being kept informed about all important occurrences and events affecting the business, as

well as the changes that are made in business policies. Also, he must enjoy an independent status.

In addition, the Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

It may also be noted that the Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

- 18. Approach in investigation under section 210 and 213 into the affairs of the Companies:** The general approach for investigation under Sections 210 and 213 of the Companies Act, 2013 is conditioned by the legal requirements in these regards. The affairs of the company may include everything such as goodwill, profit and loss, contracts, investments, assets, shareholding in subsidiaries, decision making, etc. Also the specific circumstances mentioned in these sections like fraud, mismanagement, oppression of any shareholder etc. come within the term "affairs of the company."

Investigation under Sections 210 and 213 do not call for any special approach. Approach/Steps for pursuing the investigation are:

- (i) **Clarity of Terms of Reference:** The approach to any investigation is determined on a consideration of the nature of the investigation and the terms of reference. However, the inspector should ensure that the terms of reference are clear, unambiguous and in writing. If he has any doubt about any item in the terms, he should obtain clarification in writing. It should also be seen that the terms of reference are not too general, because that may frustrate the whole objective of the investigation; the scope of the investigation will become unwieldy and ill defined. An investigation order to investigate into the affairs of the company would be an instance at point. Therefore, the inspector should ask for reframing of the order specifying the exact matters to be investigated. He should also take into consideration the possible effect of limitations, if any, put in the terms of reference and should keep the Central Government informed in writing about their effect on the investigation.
- (ii) **Scope of Investigation:** The next point for consideration of the inspector would be the determination of the scope of the investigation on the basis of the terms of reference. At this stage, it may be useful for the inspector to go into the history of the company and its affiliates or associates. He should evaluate the terms of reference in sketching the scope of investigation; this will enable him to locate the limitation, if any, in the terms of reference, not clearly mentioned. For a purposeful investigation, he may need to stretch his inquiry into the books and records of allied and associated persons and concerns and may require to arm himself with the powers given under the Companies Act.

- (iii) **Period for investigation:** He should also have regard to the period over which the investigation should stretch. The evaluation of terms of reference and the consequential determination of the scope of investigation are the twin props on which the entire investigation would rest and, therefore, the inspector appointed under Sections 210 and 213 should devote careful attention to these.
- (iv) **Framing of Programme:** The next step is the investigator/inspector should frame his programme for investigation in a systematic manner. He should keep adequate working notes and papers with references and cross references in a proper and methodical way to aid him in the preparation of the report. The actual process of investigation would be essentially an evidence gathering procedure and, at every step, he should have regard to the procedures laid down in these sections regarding production of documents and evidence, examination on oath and seizure of documents. He should also keep his mind open to the revelations he comes across in the process of evidence collection and should assess whether the programme of investigation needs amendment or modification.
- (v) **Using the work of Experts:** He should also consider whether assistance of other experts like engineers, lawyers, etc., is necessary in the interest of a comprehensive and full proof examination of the documents and information.
- (vi) **Legal requirements and investigation Report:** Only after he has completed the steps in the investigation programme and has marshaled all the information that he needed should he prepare his report. He, however, can also make interim report. The findings should be completed and exhaustive. Before he makes his final report he should obtain and keep on record the evidences relied upon by him. By the nature of things, such evidence should be as conclusive as possible depending on circumstances of the case. He should make his report in accordance with the provisions of the Companies Act, 2013.

The general approach for investigations under Sections 210 and 213 should, therefore, be formulated having regard to the terms of reference, scope, the period, the programme and procedure of the investigation and the attending legal requirements specified above.

19. (a) **Printing of Designation “Chartered Accountant” on Marriage Invitations:** As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. However, the Council of the ICAI is of the view that the designation “Chartered Accountant” as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any other specified matters, provided that such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the members concerned.

In the given case, Mr. Raj instructed to write designation "Chartered Accountant" on his marriage invitation cards and distributed the same to all his relatives, close friends and clients.

On this context, it may be noted that the Council has allowed using designation "Chartered Accountant" in invitations for marriages, provided these are sent only to clients, relatives and close friends of the members concerned. Therefore, Mr. Raj would not be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (b) **Permission for Providing Private Tutorship:** As per Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

Further, regulation 190A of the Chartered Accountants Regulation, 1988 provides that a Chartered Accountant in practice shall not engage in any other business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council. According to the same there is no specific permission from the council would be necessary in the case of private tutorship.

In the given case, CA. Ram has started providing private tutorship to Mr. Ratan along with some other aspirants, without obtaining specific or prior approval of the Council.

On this context, it may be noted that the Council has provided general permission for providing such private tutorship. Therefore, CA. Ram would not be held guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (c) **Advising on Portfolio Management Services:** The Council of the Institute of Chartered Accountants of India (ICAI) pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services". A clause of the aforesaid resolution allows Chartered Accountants in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, underwriters etc., advice regarding post issue activities, like, follow up steps for listing of instruments, dispatch of certificates, refunds etc. It is, however, specifically stated that Chartered Accountants in practice are not permitted to undertake the activities of broking, underwriting and portfolio management services.

In the given case, Mr. Sam has started advising his clients on portfolio management along with other management consultancy services related to an issue.

Therefore, Mr. Sam would be guilty of misconduct under the Chartered Accountants Act, 1949 as a chartered accountant in practice is not permitted to manage portfolios of his clients.

- (d) **Submitting Wrong Information to the Institute:** As per Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

In the instant case, Mr. P and Mr. Q, partners of M/s PQ & Co., included the name of Mr. R, another Chartered Accountant, as partner in their firm, without his knowledge, in their application for empanelment as auditor of branches of Public Sector Banks submitted to the Institute. However, such a member was not a partner of the said firm as on the date of application submitted. Here, Mr. P and Mr. Q have submitted wrong information to the Institute.

Therefore, Mr. P and Mr. Q, both, would be held guilty of professional misconduct under Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

20. (a) **Approach of the Reviewer:** The stepwise approach which may be adopted by the reviewer is discussed below-

- (i) The reviewer should gain an understanding of the engagement letter since an assurance engagement or for that matter any other kind of engagement should begin with an engagement letter. This understanding would help him in planning the review of documentation.
- (ii) The number of assurance engagements to be selected requires the exercise of judgement by the reviewer based on the evaluation of replies given in the questionnaire and the size of the practice unit.
- (iii) The practice unit may have policies and procedures for accepting a particular engagement. The reviewer should, wherever possible, examine that the policies and procedures for acceptance of audit have been complied with and necessary documentation with regard to the same exists.
- (iv) The reviewer may follow a combination of compliance procedures and substantive procedures throughout the peer review process.
- (v) Finally, the reviewer while evaluating records may consider the following:
 - ❖ determine that any significant issues, matters, problems that arose during the course of the engagement have been appropriately considered, resolved and documented;

- ❖ determine that adequate audit evidence or other relevant evidence in relation to the engagement is obtained to support the reasonableness of the conclusions drawn; and
- ❖ determine that significant decisions relating to the engagement, use of professional judgement, resolution of significant matters have been properly documented.

(b) **Special features of Co-operative Societies Audit:** The special features of co-operative societies audit, to be borne in mind in general while conducting the audit are as follows-

- (i) **Examination of overdue debts:** Overdue debts for a period from six months to five years and more than five years will have to be classified and shall have to be reported by an auditor. Overdue debts have far reaching consequences on the working of a credit society. It affects its working capital position. A further analysis of these overdue debts from the viewpoint of chances of recovery will have to be made, and they will have to be classified as good or bad. The auditor will have to ascertain whether proper provisions for doubtful debts are made and whether the same is satisfactory. The percentage of overdue debts to the working capital and loans advanced will have to be compared with last year, so as to see whether the trend is increasing or decreasing whether due and proper actions for recovery are taken, the position regarding cases in co-operative courts, District Courts etc. and the results thereof.
- (ii) **Overdue Interest:** Overdue interest should be excluded from interest outstanding and accrued due while calculating profit. Overdue interest is interest accrued or accruing in accounts, the amount of which the principal is overdue. In practice an overdue interest reserve is created and the credit of overdue interest credited to interest account is reduced.
- (iii) **Certification of Bad Debts:** A peculiar feature regarding the writing off of the bad debts as per Maharashtra State Co-operative Rules, 1961, is very interesting to note. As per Rule No. 49, bad debts can be written off only when they are certified as bad by the auditor. Bad debts and irrecoverable losses before being written off against Bad Debts Funds, Reserve Fund etc. should be certified as bad debts or irrecoverable losses by the auditor where the law so requires. Where no such requirement exists, the managing committee of the society must authorise the write-off.
- (iv) **Valuation of Assets and Liabilities:** Regarding valuation of assets there are no specific provisions or instructions under the Act and Rules and as such due regard shall be had to the general principles of accounting and auditing conventions and standards adopted. The auditor will have to ascertain existence, ownership and valuation of assets. Fixed assets should be valued at cost less adequate provision for depreciation. The incidental expenses incurred

in the acquisition and the installation expenses of assets should be properly capitalised. If the difference in the original cost of acquisition and the present market price is of far reaching significance, a note regarding the present market value may be appended; so as to have a proper disclosure in the light of present inflationary conditions. The current assets should be valued at cost or market price, whichever is lower. Regarding the liabilities, the auditor should see that all the known liabilities are brought into the account, and the contingent liabilities are stated by way of a note.

- (v) **Adherence to Co-operative Principles:** The auditor will have to ascertain in general, how far the objects, for which the co-operative organisation is set up, have been achieved in the course of its working. The assessment is not necessarily in terms of profits, but in terms of extending of benefits to members who have formed the society. Considered from the viewpoint of social benefits it may be looked into that how far the sales could be effected at lower prices. For the achievement of these activities, cost accounting methods, store control methods, techniques of standard costing, budgetary control etc. should be adopted. However, these modern techniques are mostly not in application and as such in practice a wide gap is found in the goals to be achieved and the actual achievements. While auditing the expenses, the auditor should see that they are economically incurred and there is no wastage of funds. Middlemen commissions are, as far as possible, avoided and the purchases are made by the committee members directly from the wholesalers. The principles of propriety audit should be followed for the purpose.
- (vi) **Observations of the Provisions of the Act and Rules:** An auditor of a co-operative society is required to point out the infringement with the provisions of Co-operative Societies Act and Rules and bye-laws. The financial implications of such infringements should be properly assessed by the auditor and they should be reported. Some of the State Acts contain restrictions on payment of dividends, which should be noted by the auditor.
- (vii) **Verification of Members' Register and examination of their pass books:** Examination of entries in members pass books regarding the loan given and its repayments, and confirmation of loan balances in person is very much important in a co-operative organisation to assure that the entries in the books of accounts are free from manipulation. Specifically in the rural and agricultural credit societies, members are not literate and as such this is a good safeguard on their part. Ofcourse this checking will be resorted to on a test basis, which is a matter of judgement of the auditor.
- (viii) **Special report to the Registrar:** During the course of audit, if the auditor notices that there are some serious irregularities in the working of the society, he may report these special matters to the Registrar, drawing his specific attention to the points. The Registrar on receipt of such a special report may

take necessary action against the society. In the following cases, for instance a special report may become necessary:

- (a) Personal profiteering by members of managing committee in transactions of the society, which are ultimately detrimental to the interest of the society.
 - (b) Detection of fraud relating to expenses, purchases, property and stores of the society.
 - (c) Specific examples of mis-management like decisions of management against co-operative principles.
 - (d) In the case of urban co-operative banks, disproportionate advances to vested interest groups, such as relatives of management, and deliberate negligence about the recovery thereof. Cases of reckless advancing, where the management is negligent about taking adequate security and proper safeguards for judging the credit worthiness of the party.
- (ix) **Audit classification of society:** After a judgement of an overall performance of the society, the auditor has to award a class to the society. This judgement is to be based on the criteria specified by the Registrar. It may be noted here that if the management of the society is not satisfied about the award of audit class, it can make an appeal to the Registrar, and the Registrar may direct to review the audit classification. The auditor should be very careful, while making a decision about the class of society.
- (x) **Discussion of draft audit report with managing committee:** On conclusion of the audit, the auditor should ask the Secretary of the society to convene the managing committee meeting to discuss the audit draft report. The audit report should never be finalised without discussion with the managing committee. Minor irregularities may be got settled and rectified. Matters of policy should be discussed in detail.
- (c) **Issues of Corporate Governance:** Issues addressed in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 regarding corporate governance are-
- (i) Responsibilities and key functions of the Board, its composition, compensation and disclosures;
 - (ii) Code of Conduct and vigil mechanism;
 - (iii) Composition, meetings, powers, role and responsibilities of the Audit Committee which is an important pillar of corporate governance;
 - (iv) Management of subsidiary companies;
 - (v) Procedures related to risk management;
 - (vi) Disclosures on important issues regarding related party transactions, accounting treatment, etc.;

- (vii) Content of management discussion and analysis;
 - (viii) Information to shareholders;
 - (ix) Compliance Certificate by the CEO and CFO;
 - (x) Compliance Certificate from either the auditors or practising company secretaries regarding compliance of conditions on corporate governance.
- (d) The purpose of communicating key audit matters is to enhance the communicative value of the auditor's report by providing greater transparency about the audit that was performed. Communicating key audit matters provides additional information to intended users of the financial statements ("intended users") to assist them in understanding those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period. Communicating key audit matters may also assist intended users in understanding the entity and areas of significant management judgment in the audited financial statements.

PAPER – 4 : CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2018 EXAMINATION

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

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

This RTP of November 2018 examination contains the relevant amendments for the period 1st May 2017 to 30th April, 2018.

Students referring Study material of January 2016 have to read it with Supplementary Study Papers (Part I & II), and the reading material available on the Insolvency and Bankruptcy Code, 2016 containing amendments from 1st November 2015 to 30th April, 2017.

All the amendments for the period 1st November 2015 to 30th April, 2017 given under different publications mentioned above, have been compiled and given as an Annexure in the RTP arranged chapter wise.

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

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

* Mentioned publications are available on the website.

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

SECTION A: COMPANY LAW

DECLARATION AND PAYMENT OF DIVIDEND

Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 123	In section 123 of the principal Act,—

	(a) in sub- section (1),— (i) in clause (a),— (A) for the words "both; or", the word "both:" shall be substituted; (B) the following proviso shall be inserted, namely:— "Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or"; (ii) in the second proviso, for the words "transferred by the company to the reserves", the words "transferred by the company to the free reserves" shall be substituted; (b) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend: Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years."
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ACCOUNTS AND AUDIT

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

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

- (1) Section 143(3)(i) , shall not apply to a private company:-
- (i) which is a one person company or a small company; or
 - (ii) which has turnover less than rupees fifty crores as per latest audited

financial **statement** or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant sections	Amendment
Amendment of section 130.	In section 130 of the principal Act,— (i) in sub-section (1), in the proviso,— (a) after the words "regulatory body or authorities concerned", the words "or any other person concerned" shall be inserted; (b) after the words "the body or authority concerned", the words "or the other person concerned" shall be inserted; (ii) after sub-section (2), the following sub-section shall be inserted, namely:— "(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period."

Amendment of section 132.	In section 132 of the principal Act,— (i) in sub-section (4), in clause (c), in sub-clause (A), in item (II), for the words "ten lakh rupees", the words "five lakh rupees" shall be substituted; (ii) in sub-section (5), for the words, brackets and figure "the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed", the words "the Appellate Tribunal in such manner and on payment of such fee as may be prescribed" shall be substituted; (iii) sub-sections (6), (7), (8) and (9) shall be omitted.
Amendment of section 136	In section 136 of the principal Act,— (i) in sub-section (1),— (a) the words and figures "Without prejudice to the provisions of section 101," shall be omitted; (b) in the first proviso, for the words "Provided that", the following shall be substituted, namely:— "Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members— (a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at the meeting: Provided further that"; (c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted; (d) for the fourth proviso, the following provisos shall be substituted, namely:— 'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any:

	Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")— (a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company; (b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.'; (ii) in sub-section (2), the following proviso shall be inserted, namely:— "Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."
Amendment of section 140.	In section 140 of the principal Act, in sub-section (3), for the words "fifty thousand rupees", the words "fifty thousand rupees or the remuneration of the auditor, whichever is less," shall be substituted.
Amendment of section 141.	In section 141 of the principal Act, in sub-section (3), for clause (i), the following clause shall be substituted, namely:— '(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

	<i>Explanation.</i> —For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the <i>Explanation</i> to section 144.'.
Amendment of section 143.	In section 143 of the principal Act,— (i) in sub-section (1), in the proviso, for the words "its subsidiaries", at both the places, the words "its subsidiaries and associate companies" shall be substituted; (ii) in sub-section (3), in clause (i), for the words "internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted; (iii) in sub-section (14), in clause (a), for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
Amendment of section 147.	In section 147 of the principal Act,— (i) in sub-section (2),— (a) after the words "five lakh rupees", the words "or four times the remuneration of the auditor, whichever is less" shall be inserted; (b) in the proviso, for the words "and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees", the words "and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less" shall be substituted; (ii) in sub-section (3), in clause (ii), for the words "or to any other persons", the words "or to members or creditors of the company" shall be substituted; (iii) in sub-section (5), the following proviso shall be inserted, namely:— "Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable."
Amendment of section 148	In section 148 of the principal Act,— (i) in sub-section (3),—

	(a) for the words "Cost Accountant in practice", the words "cost accountant" shall be substituted; (b) in the <i>Explanation</i>, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost Accountants of India" shall be substituted; (ii) in sub-section (5), in the proviso, for the words "cost accountant in practice", the words "cost accountant" shall be substituted.
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APPOINTMENT AND QUALIFICATION OF DIRECTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

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

- (C) in sub-rule (3),

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

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

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

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

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

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

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

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

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

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

Relevant sections	Amendment
Amendment of section 161.	In section 161 of the principal Act,— (i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted; (ii) in sub-section (4),— (a) the words "In the case of a public company," shall be omitted; (b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.
Amendment of section 165.	In section 165 of the principal Act, in sub-section (1), the <i>Explanation</i> shall be renumbered as <i>Explanation I</i> and after <i>Explanation I</i> as so numbered, the following <i>Explanation</i> shall be inserted, namely:— <i>"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."</i>

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

Relevant Sections	Amendment
Amendment in Section 2(51)	in clause (51), — (a) in sub-clause (iv), the word "and" shall be omitted; (b) for sub-clause (v), the following sub-clauses shall be substituted, namely:— "(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"

MEETING OF BOARD AND ITS POWERS**1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Following are the amendments:

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

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

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

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

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

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

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

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

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries

shall not be taken into account.

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

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

Relevant sections	Amendment
Amendment of Section 180	In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words

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

INSPECTION, INQUIRY AND INVESTIGATION

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

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

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

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

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

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

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

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

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

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

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

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

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

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

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

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

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

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

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

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

Section 247: Valuation by Registered Valuers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Eligibility for registered valuers

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

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

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

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

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

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

- (e) Is not a minor;

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

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

as a bankrupt;

- (h) Is a person resident in India;

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

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

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

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

- (k) Is a fit and proper person:

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

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

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

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

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

3. Qualifications and experience

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

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

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

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

4. Application for certificate of registration

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

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

5. Conditions of Registration

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

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

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

6. Conduct of Valuation

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

- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
 - (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;
 - (k) conclusion; and
 - (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.
7. Temporary surrender
- (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
 - (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
 - (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

8. Functions of a Valuer

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

9. Eligibility for registered valuers organisations

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

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

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

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

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

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

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

10. Conditions of Recognition

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

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

11. Cancellation or suspension of certificate of registration or recognition

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

12. Complaint against a registered valuer or registered valuers organisation

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

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

13. Valuation Standards

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

14. Punishment for contravention

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

15. Punishment for false statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

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

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

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

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

Significant relevant changes are as follows:

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

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

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

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

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

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

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

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

made by such creditor has been admitted under this Code;

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

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

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

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

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

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

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

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

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

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

SECTION B: ALLIED LAWS

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

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

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

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

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

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

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

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

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

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

In regulation 70-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

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

As per the Notification dated 26th of March, 2018, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26th of March, 2018.

2. Relevant Definitions:- In these Regulations, unless the context otherwise requires -

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

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

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

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

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

An NRI or an OCI may-

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

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

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

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

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

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

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

Provided that

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

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

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

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

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

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

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

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

Provided that

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

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

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

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

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

8. Repatriation of sale proceeds:-

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

restricted to not more than two such properties.

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

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

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

Provided this prohibition shall not apply to an OCI.

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

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

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

Provided that

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

Provided

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

11. Miscellaneous:-

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

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

12. Saving:-

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

THE COMPETITION ACT, 2002

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

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

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

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

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

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

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

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

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

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

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

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

BANKING REGULATION ACT, 1949

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

Insertion of new sections 35AA and 35AB-

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

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

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

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

PREVENTION OF MONEY LAUNDERING ACT, 2002

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

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

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

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

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

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

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

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

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

Chapter 9 of the study material (June 18 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies, is omitted by the Ministry of Corporate Affairs.

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

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

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

Accounts and audit

2. (a) Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2017-18.

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

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

Appointment and Qualifications of Directors

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

Appointment and remuneration of Managerial Personnel

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

Meetings of Board and its powers

5. (a) Woodworth Realtors Ltd. is a foreign collaborator in Jai Shri Realtors Limited. M/s. Jai Shri Realtors Ltd. was incorporated in India under the Companies Act, 2013. The foreign collaborator holds 49% of the shareholding. The Board meetings of Jai Shri Realtors Limited are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association

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

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

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

Inspection, inquiry and Investigation

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

Compromises, Arrangements and Amalgamations

7. (a) Cotton On Yarn Ltd., and Country Cotton Blossom Ltd., are two listed companies engaged in the Business of Textiles. The companies are not making profits and as

such their share's market price have gone down. A substantial portion of their share capital is held by Central Government as well as some Public Financial Corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a single company. Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 2013.

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

Prevention of Oppression and Mismanagement

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

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

Winding Up

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

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

Producer Companies

10. Rajeshree Producer Co. Ltd. was incorporated on 1st April 2010. Its paid up capital INR 10 lacs consists of 1 lac equity shares of INR 10 each held by 100 individuals. There are 6 directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:

- (i) What is the quorum for the Annual General Meeting?

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

Companies incorporated outside India

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

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

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

Miscellaneous Provisions

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

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

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

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

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

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

The Insolvency and Bankruptcy Code, 2016

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

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

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

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

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

Securities Contracts (Regulation) Act, 1956

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

The Foreign Exchange Management Act, 1999

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

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

The Competition Act, 2002

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

Examining the provisions of the Competition Act, 2002:

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

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

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

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

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

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

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

SUGGESTED ANSWERS/HINTS

Declaration and payment of Dividend

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

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

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

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

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

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

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

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

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

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

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

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

In the present case,

- turnover of Rera Ltd. is ₹ 100 crore,
- net profit of ₹ 3 crore and
- net worth of ₹ 253 crore (Net profit + securities premium - accumulated loss = 3 + 300 - 50 = 253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

[Note 1: - It can be presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[Note 2: Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

- (b) (i) Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

Tenure of Auditor: Section 139(2) of the Companies Act, 2013, provides that

listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

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

Cooling off Period:

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

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

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

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

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

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

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

Appointment and Qualifications of Directors

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

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

- i) Alter the Articles of Association under section 14 of the Act, so as to increase the number of directors in the Articles from 15 to 18.
- ii) Approval by means of a special resolution of members shall be taken at a duly convened general meeting for increasing the number of directors to 18.

If the said company would have been a Government Company, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to a Government Company vide Notification GSR 463(E) dated 5th June, 2015. Similarly, the limit of 15 directors and their increase in limit by special resolution shall not apply to section 8 companies vide Notification GSR 466(E) dated 13th June, 2017.

- (b) As per Section 149(10) of the Companies Act 2013, an Independent Director shall hold office for a term up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) no independent director shall hold office for more than two consecutive terms. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director.

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

to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.

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

Appointment and remuneration of Managerial Personnel

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

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

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

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

Meetings of Board and its powers

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

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

If we examine the above provision, it is clear that the notice shall be sent by hand delivery or by post or by electronic means. Hence, the sending of notice by e-mail is an ordinary mode of sending notice of board meeting under the Companies Act, 2013.

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

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

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

They are:

- (i) to make calls on shareholders in respect of money unpaid on their shares
- (ii) to authorize buy back of securities under section 68
- (iii) to issue securities, including debentures, whether in or outside India
- (iv) to borrow monies
- (v) to invest the funds of the company and
- (vi) to grant loans or give guarantee or provide security in respect of loans
- (vii) to approve financial statements and-the Board's report
- (viii) to diversify the business of the company
- (ix) to approve amalgamation, merger or reconstruction
- (x) to take over a company or acquire a controlling or substantial stake in another company.
- (xi) Any other matter as prescribed in Rule 8 of the *Companies (Meetings of the Board and its Powers) Rules, 2014*.

In view of the above, the Managing Director can go ahead and complete the joint venture agreement after obtaining the approval of the board by passing a circular resolution.

For this purpose, the proposed resolution has to be circulated in draft along with the other necessary papers, if any, to all the directors in India at their usual residential addresses.

The resolution will become valid if the same is approved by majority of the directors and who are entitled to vote on the resolution. There after the resolution as passed by way of circulation will be entered in the minutes book of the Board of Directors and is enough compliance of the provisions of Companies Act, 2013 in this regard.

Inspection, inquiry and Investigation

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

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

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

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

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

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

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

(iii) in public interest

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

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

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

Compromises, Arrangements and Amalgamations

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

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

Continuation by or against the transferee company of any legal proceedings

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

Same interest rights or compensations

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

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

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

Thus, In the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide for the amalgamation of the two said companies into a single company.

Preservation of books and records of amalgamated companies

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

Prevention of Oppression and Mismanagement

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

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

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

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

Winding Up

9. Validity of RoC's action

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

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

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

Producer Companies

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

Companies incorporated outside India

11. (i) As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which-
 - (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
 - (b) conducts any business activity in India in any other manner.

A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company

has not established a place of business in India though employs agents in India. It will not be deemed to be a foreign company:

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

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

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

12. (a) Section 411 of the Companies Act 2013 prescribes the qualification of the chairperson and the members of the National Company Law Appellate Tribunal.
- (i) **Qualifications of the Chairperson:** The Chairperson shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.
 - (ii) **Qualification of Members:**
 - Judicial Member:** A Judicial member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years.
 - Technical Member:** A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience of not less than

25 years in various specified disciplines related to the management, conduct of affairs, revival, rehabilitation and winding up of companies.

Removal of Members: As per **Section 417** of the Companies Act, 2013, the Central Government may, after consultation with the Chief Justice of India and after providing an opportunity of being heard, remove from the office the President, Chairperson or any Member who:

- a. has been adjudged an insolvent, or
 - b. been convicted of an offence, which in the opinion of the Central Government involves moral turpitude; or
 - c. has become physically or mentally incapable of acting as such president, Chairperson or Member;
 - d. has acquired financial or other interest as is likely to affect prejudicially his functions as such president, Chairperson or Member;
 - e. has so abused his position as to render his continuance in office prejudicial to the public interest.
- (b) Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government of the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.
- Filing of application: Application for mediation-and conciliation can be made by:
- (i) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)
 - (ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending any, suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

Miscellaneous Provisions

13. (a) Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to the provisions of that section, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purpose of this Act

and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof of production of the original as evidence of any contents of the original of or any fact stated therein of which direct evidence is admissible.

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

(b) According to Section 248 (1) of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—

- (i) a Company has failed to commence its business within one year of its incorporation, or;
- (ii) a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company under section 455,

- he shall send a notice to the Company and all the Directors of the Company, of his intention to remove the name of the Company from the register of Companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

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

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

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

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

(2) Restrictions

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

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

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before ceases of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(3) Penal Consequences

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

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

14. Draft of ordinary resolution under Section 180(1)(c)

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

Borrowings

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

The expression 'temporary loans' means loans repayable on demand or within six months from the date of the loan such as short term cash credit arrangements, the discounting of bills and the issue of other short term loans of a seasonal character, but does not include

loans raised for the purpose of financing expenditure of capital nature [Explanation to Section 180 (1)(c)].

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

The Insolvency and Bankruptcy Code, 2016

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

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

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

SECTION B: ALLIED LAWS (30 MARKS)

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

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

- (1) A Modern Chemicals Limited may make a preferential issue of specified securities, if:
- a special resolution has been passed by its shareholders;
 - all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;

- (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
- (d) the issuer has obtained the Permanent Account Number of the proposed allottees.

Explanation: Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

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

(ii) Pricing of equity shares (Regulation 76)

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

- (b) the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
 - (c) the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the closing prices of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

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

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

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

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

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

- (b)** Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider
- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
 - (ii) communicates any unpublished price sensitive information to any person, with

or without his request for such information except as required in the ordinary cause of business or under any law, or

- (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

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

Securities Contracts (Regulation) Act, 1956

17. (a) According to section 23A of the Securities Contracts (Regulation) Act, 1956, any person who is required under this Act or any rules made thereunder;

- (i) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or byelaws of the recognized stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;
- (ii) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange and if there is failure to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

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

(b) Withdrawal of Recognition

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

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

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

Contract entered prior to such withdrawal: No such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and

the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

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

The Foreign Exchange Management Act, 1999

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

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

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

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

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

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

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

The Competition Act, 2002

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

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

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

(B) Factors to be considered:

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

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

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

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

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

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

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

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

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

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

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

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

Punishment:

Section 4 of the said Act provides for the punishment for Money- Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved

in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

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

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

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

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

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