

**FINAL COURSE**

**GROUP – I**

**REVISION TEST PAPERS**

**NOVEMBER, 2020**



**BOARD OF STUDIES**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
*(Set up by an Act of Parliament)*

*New Delhi*

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## **REVISION TEST PAPER, NOVEMBER, 2020 – OBJECTIVE & APPROACH**

***(Students are advised to go through the following paragraphs carefully to derive maximum benefit out of this RTP)***

### **I Objective of Revision Test Paper**

Revision Test Papers are one among the many educational inputs provided by the Board of Studies (BOS) to its students. Popularly referred to as RTP by the students, it is one of the very old publications of the BOS whose significance and relevance from the examination perspective has stood the test of time.

RTPs provide glimpses of not only the desirable ways in which examination questions are to be answered but also of the professional quality and standard of the answers expected of students in the examination. Further, aspirants can assess their level of preparation for the examination by answering various questions given in the RTP and can also update themselves with the latest developments in the various subjects relevant from the examination point of view.

The primary objectives of the RTP are:

- To help students get an insight of their preparedness for the forthcoming examination;
- To provide an opportunity for a student to find all the latest developments relevant for the forthcoming examination at one place;
- To supplement earlier studies;
- To enhance the confidence level of the students adequately; and
- To leverage the preparation of the students by giving guidance on how to approach the examinations.

RTPs contain the following:

- (i) Planning and preparing for examination
- (ii) Subject-wise guidance – An overview
- (iii) Updates applicable for a particular exam in the relevant subjects
- (iv) Topic-wise questions and detailed answers thereof in respect of each paper
- (v) Relevant publications/announcement applicable for the particular examination

Students must bear in mind that the RTP contains a variety of questions based on different sections of the syllabi and thus a comprehensive study of the entire syllabus is a pre-requisite before answering the questions of the RTP. In other words, in order to derive maximum benefit out of the RTPs, it is advised that before proceeding to solve the questions given in the RTP, students ought to have thoroughly read the Study Materials,

solved the questions given in the Practice Manual and gone through the Suggested Answers of the earlier examinations. It is important to remember that there can be large number of other complex questions which are not covered in the RTP. In fact, questions contained herein are only illustrative in nature.

The topics on which the questions are set herein have been carefully selected and meticulous attention has been paid in framing different types of questions. Detailed answers are provided to enable the students to do a self-assessment and have a focused approach for effective preparation.

Students are welcome to send their suggestions for fine tuning the RTP to the Director, Board of Studies, The Institute of Chartered Accountants of India, A-29, Sector-62, Noida 201 309 (Uttar Pradesh). RTP is also available on the Institute's website [www.icaai.org](http://www.icaai.org) under the BOS knowledge portal in students section for downloading.

## II. Planning and preparing for examination

Ideally, when you receive the RTP, you should have completed the entire syllabus of all the subjects at least once. RTP is an effective tool to revise and refresh your concepts and knowledge gained through the first round of study of the whole course. When the RTP reaches your hand, your study plan should have been completed as under:

### ❖ *Study Materials*

You must have finished reading the relevant Study Materials of all the subjects. Make sure you go through the Study Material as they cover the syllabus comprehensively.

### ❖ *Other Educational Inputs*

In case of papers on Taxation, you must have carefully perused the Supplementary Study paper containing the latest amendments made through the relevant Finance Act and notifications and circulars issued from time to time which are applicable for the forthcoming examinations.

### ❖ *Practice Manuals*

Practice Manuals are an excellent medium of understanding the practical aspects of the various provisions learnt through the Study Materials. Solving the Practice Manual at least once before proceeding to the RTP will ensure that you have a grasp of the application and computational aspect of the syllabus as well.

### ❖ *Suggested Answers*

Giving an honest attempt to solve the previous attempts suggested answers on your own, will give you a flavour of the pattern of question paper and type of questions which are being asked in the examination.

After completing the above process, you should go through the Updates provided in the RTP and then proceed to solve the questions given in the RTP on your own. RTPs are provided to you to check your preparation standards and hence it must be solved on your own in a time-bound manner.

The stratagem and the fine points requiring careful consideration in respect of preparation for the CA examinations are explained in comprehensive details in BOS' publication "How to face CA Examinations? A Matrix of Winning Strategies". The publication may be referred to when you start preparing for a subject.

### **Examination tips**

How well a student fares in the examination depends upon the level and depth of his preparation. However, there are certain important points which can help a student better his performance in the examination. These useful tips are given below:

- Reach the examination hall well in time.
- As soon as you get the question paper, read it carefully and thoroughly. You are given separate 15 minutes for reading the question paper.
- Plan your time so that appropriate time is awarded for each question. Keep sometime for checking the paper as well.
- First impression is the last impression. The question which you can answer in the best manner should be attempted first.
- Always attempt to do all questions. Therefore, it is important that you must finish each question within allocated time.
- Read the question carefully more than once before starting the answer to understand very clearly as to what is required.
- Answer all parts of a question one after the other; do not answer different parts of the same question at different places.
- Write in a neat and legible hand-writing.
- Always be concise and write to the point and do not try to fill pages unnecessarily.
- There must be logical expression of the answer.
- In case a question is not clear, you may state your assumptions and then answer the question.
- Check your answers carefully and underline important points before leaving the examination hall.

### III. Subject-wise Guidance – An Overview

#### PAPER 1: FINANCIAL REPORTING

The Revisionary Test Paper (RTP) of Financial Reporting is divided into two parts viz Part I - Relevant Amendments, Notifications and Announcements for November, 2020 examination and Part II – Questions and Answers.

**Part I of the Revisionary Test Paper** consists of the 'Relevant Amendments, Notifications and Announcements not applicable and applicable' for November, 2020 examination. The purpose of this information in the RTP is to apprise the students with the latest developments applicable for November, 2020 examination. The brief summary of the same has been tabulated as under:

**Not applicable for November, 2020 examination:**

Non-applicability of Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities since the same has been withdrawn on 6<sup>th</sup> July, 2020 by the Institute.

**Applicable for November, 2020 examination:**

1. The Companies (Indian Accounting Standards) Second Amendments Rules, 2019 notified on 30<sup>th</sup> March, 2019
2. Amendment in Schedule III notified by MCA on 12.10.2018
3. Amendment in Ind AS 20 notified by MCA in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 20<sup>th</sup> September 2018
4. Notification of Ind AS 115 and withdrawal of Ind AS 11 and Ind AS 18 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 28<sup>th</sup> March, 2018
5. Applicability of Amendments to Ind AS 7 and Ind AS 102 issued by the MCA dated 17<sup>th</sup> March 2017
6. Notification of Ind AS 116 and withdrawal of Ind AS 17 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 30<sup>th</sup> March, 2019.

**Part II of the Revisionary Test Paper** contains twenty questions and their answers. The questions in the RTP have been broadly arranged in the same sequence as prescribed in the study material to facilitate easy revision by the students. The details of topics, on which questions in the RTP are based, are as under:

Question No.	Topic
1 to 9	Accounting Standards
10	Indian Accounting Standards
11	Accounting for Corporate Restructuring
12	Consolidated Financial Statements
13	Financial Instruments
14	Share Based Payments
15	Mutual Funds
16	Non Banking Financial Companies
17	Valuation of Brand
18	Value Added Statement
19	Market Value Added
20	Human Resource Accounting

Answers to the questions have been given in detail along with the working notes for easy understanding and comprehending the steps in solving the problems. The answers to the questions have been presented in the manner which is expected from the students in the examination. The students are expected to solve the questions under examination conditions and then compare their solutions with the solutions given in the Revisionary Test Paper and further strategize their preparation for scoring more marks in the examination.

## PAPER 2: STRATEGIC FINANCIAL MANAGEMENT

Basically, the subject of Strategic Financial Management is the application of financial management techniques in strategic decisions of business. The major topics from which practical questions are normally asked are as follows:

- Capital Budgeting Decisions
- Leasing Decisions
- Dividend Divisions
- Derivatives
- Security Analysis and Valuation
- Portfolio Theory
- Factoring
- Mutual Funds
- Money Market Operations
- International Financial Management
- Foreign Exchange Exposure and Risk Management

- Mergers and Acquisitions and Valuation of Business

Accordingly, the detail of the topics, on which questions in this Revisionary Test Paper are based, is as follows:

Question No.	Topic
1	Capital Budgeting Decisions
2	Capital Budgeting Decisions
3	Leasing Decisions
4	Dividend Decisions
5	Dividend Decisions
6	Derivatives (Indian Capital Market)
7	Derivatives (Indian Capital Market)
8	Derivatives (Indian Capital Market)
9	Security Analysis and Valuation
10	Security Analysis and Valuation
11	Portfolio Theory
12	Portfolio Theory
13	Financial Services
14	Mutual Funds
15	International Financial Management
16	Foreign Exchange Exposure and Risk Management
17	Foreign Exchange Exposure and Risk Management
18	Mergers, Acquisitions and Restructuring
19	Mergers, Acquisitions and Restructuring
20	A blend of short notes of theoretical concepts as without them their application in practical situations becomes impossible.

### PAPER 3: ADVANCED AUDITING AND PROFESSIONAL ETHICS

RTP is a tool to refresh your knowledge which you have acquired while doing conceptual study from Study Material, Practice Manual and other modes of knowledge like student journal, bare acts etc.

This RTP of Advanced Auditing and Professional Ethics is relevant for November 2020 Examination. Total 20 Questions consisting of integrated case scenario based multiple choice questions, independent multiple choice questions and descriptive questions have been taken from the entire syllabus divided into Twenty one chapters along with Engagement and Quality Control Standards, Statements, Guidance Notes, etc. (Chapter on Special Audit Assignments has been excluded from the syllabus).

These questions are taken from different topics like Engagement and Quality Control Standards, Statements and Guidance Notes, Company Audit, Audit Reports, Audit Committee and Corporate Governance, Audit of Consolidated Financial Statements, Audit under Fiscal Laws (including Audits under direct tax laws as well as indirect tax laws), Audit of Banks, NBFCs and Insurance Companies, Investigation and Due Diligence, Professional Ethics, Peer Review etc. of different level. Some of the questions given in the RTP are descriptive i.e. direct theory questions (knowledge and Comprehension) based whereas some of them are practical case studies based i.e., application-oriented theory question (Application and Analysis / Evaluation and Synthesis). The name of the chapter is clearly indicated before each descriptive question.

This RTP of Advanced Auditing and Professional Ethics has been divided into two parts viz Part I – Legislative Amendments/Notifications/Circulars/Rules/Guidelines issued by Regulating Authority relevant for November 2020 examination and Part II – Questions and Answers.

The relevant notified sections of the Companies Act, 2013 and legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 30<sup>th</sup> April 2020 are applicable for November 2020 Examination. The questions have been answered in this RTP keeping in view latest amendments as per above mentioned dates.

#### PAPER 4: CORPORATE AND ALLIED LAWS

In the paper of Corporate and Allied Laws, students should be able to emphasise on the legal point or issue involved in any problem and synchronize the same with the relevant legal provisions in a clear and logical manner. Students needs to focus on the presentation of answer to enhance the quality of the answer. This can be improved by writing the answers under examination conditions and also undertaking self-assessment by going through Revision Test Papers (RTP).

RTP is divided into two parts:

**Part I** : Relevant amendments applicable for November 2020 examinations.

**Part II** : Comprising of Multiple Choice Questions with correct options and Descriptive Questions with detailed answers.

**Part I** talks about the applicability of relevant amendments made vide Circulars, Notifications, Regulations issued by concerned departments for November 2020 examinations.

The relevant legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 30<sup>th</sup> April, 2020 are applicable for November 2020 Examination. The questions have been answered in this RTP keeping in view latest amendments as per above mentioned dates.

**Part II** contains 24 Questions (both MCQs and Descriptive) with their answers. Some questions are divided into sub parts. The topics amongst which these questions are divided are as follows:

Question No.	Topic
1	The Companies Act, 2013
2	The Companies Act, 2013
3	The Companies Act, 2013
4	The Companies Act, 2013
5	The Companies Act, 2013
6	The Companies Act, 2013
7	The Companies Act, 2013
8	The Companies Act, 2013
9	The Companies Act, 2013
10	The Companies Act, 2013
11	The Companies Act, 2013
12	The Prevention of Money Laundering Act, 2002
13	The Companies Act, 2013
14	The Foreign Exchange Management Act, 1999
15	The Insolvency and Bankruptcy Code, 2016
16	The Companies Act, 2013
17	The Companies Act, 2013
18	The Companies Act, 2013
19	Securities Contracts (Regulation) Act, 1956
20	The Companies Act, 2013
21	The Prevention of Money Laundering Act, 2002
22	The Insolvency and Bankruptcy Code, 2016
23	The Foreign Exchange Management Act, 1999
24	The Prevention of Money Laundering Act, 2002

**Guidance on Sections and Case Laws:** It is imperative for Final students to remember major section numbers and relevant case laws. Extra efforts are to be made in this direction. If by any chance, students do not remember the Section numbers and Case Law while answering any question in the examination paper on the subject, they may not lose heart on this score. They may otherwise strengthen their answer by appropriate reasoning and examples. However, they may desist from citing wrong Section numbers or irrelevant Case laws.



## PAPER –1: FINANCIAL REPORTING

### PART I

#### RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

##### A. Not Applicable for November, 2020 Examination

Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities has been withdrawn on 6<sup>th</sup> July, 2020 by the Institute. Hence, the same has been removed from the list of Guidance Notes applicable for November, 2020. Students are advised not to study the same for November, 2020 examination.

##### B. Applicable for November, 2020 Examination

##### 1. The Companies (Indian Accounting Standards) Second Amendments Rules, 2019 notified on 30<sup>th</sup> March, 2019

Headings	Details
Appendix C, Uncertainty over Income Tax Treatments, to Ind AS 12	<p>MCA has inserted a new Appendix C to Ind AS 12, <i>Uncertainty over Income Tax Treatments</i>. The appendix explains how to recognise and measure deferred and current income tax assets and liabilities where there is uncertainty over a tax treatment. In particular, it discusses:</p> <ul style="list-style-type: none"><li>➤ how to determine the appropriate unit of account, and that each uncertain tax treatment should be considered separately or together as a group, depending on which approach better predicts the resolution of the uncertainty;</li><li>➤ that the entity should assume a tax authority will examine the uncertain tax treatments and have full knowledge of all related information, i.e. detection risk should be ignored;</li><li>➤ that the entity should reflect the effect of the uncertainty in its income tax accounting when it is not probable that the tax authorities will accept the treatment;</li><li>➤ that the impact of the uncertainty should be measured using either the most likely amount or the expected value method, depending on which method better predicts the resolution of the uncertainty; and</li><li>➤ that the judgements and estimates made must be reassessed whenever circumstances have changed or there is new information that affects the judgements.</li></ul>

Amendments to Ind AS 12 – Income tax consequences of payments on financial instruments classified as equity	The amendments clarify that the income tax consequences of dividends on financial instruments classified as equity should be recognised according to where the past transactions or events that generated distributable profits were recognised. These requirements apply to all income tax consequences of dividends. Previously, it was unclear whether the income tax consequences of dividends should be recognised in profit or loss, or in equity, and the scope of the existing guidance was ambiguous
Amendments to Ind AS 19 – Plan amendment, curtailment or settlement	<p>The amendments to Ind AS 19 clarify the accounting for defined benefit plan amendments, curtailments and settlements. They confirm that entities must:</p> <ul style="list-style-type: none"> <li>➤ calculate the current service cost and net interest for the remainder of the reporting period after a plan amendment, curtailment or settlement by using the updated assumptions from the date of the change;</li> <li>➤ any reduction in a surplus should be recognised immediately in profit or loss either as part of past service cost, or as a gain or loss on settlement. In other words, a reduction in a surplus must be recognised in profit or loss even if that surplus was not previously recognised because of the impact of the asset ceiling; and</li> <li>➤ separately recognise any changes in the asset ceiling through other comprehensive income.</li> </ul>
Amendments to Ind AS 23 – Borrowing costs eligible for capitalisation	In computing the capitalisation rate for generally borrowed funds, the entity should exclude borrowing costs on borrowings which are specifically used for the purpose of obtaining a qualifying asset until that specific asset is ready for its intended use or sale. Once such specific asset is ready for its intended use or sale, borrowing costs related to borrowings of such asset shall be considered as part of general borrowing costs of the entity and be used for computation of capitalisation rate on general borrowings.
Amendment to Ind AS 28 - Long-term Interests in Associates and Joint Ventures	An entity's net investment in associate or joint venture includes investment in ordinary shares, other interests that are accounted using the equity method, and other long term interests, such as preference shares and long term receivables or loans, the settlement of which is neither planned nor likely to occur in the foreseeable future. These

	<p>long term interests are not accounted for in accordance with Ind AS 28, instead they are governed by the principles of Ind AS 109.</p> <p>As per para 10 of Ind AS 28, the carrying amount of entity's investment in its associate and joint venture increases or decreases (as per equity method) to recognise the entity's share of profit or loss of its investee associate and joint venture.</p> <p>Para 38 of Ind AS 38 further states that the losses that exceed the entity's investment in ordinary shares are applied to other components of the entity's interest in the associate or joint venture in the reverse order of their superiority.</p> <p>In this context, the amendments to Ind AS 28 clarify that the accounting for losses allocated to long-term interests would involve the dual application of Ind AS 28 and Ind AS 109. The annual sequence in which both standards are to be applied can be explained in a three step process:</p> <p><b>Step 1: Apply Ind AS 109 independently</b></p> <p>Apply Ind AS 109 (such as impairment, fair value adjustments etc.) ignoring any adjustments to carrying amount of long-term interests under Ind AS 28 (such as allocation of losses, impairment etc.)</p> <p><b>Step 2: True-up past allocations</b></p> <p>If necessary, prior years' Ind AS 28 loss allocation is trued up in the current year, because Ind AS 109 carrying value may have changed. This may involve recognizing more prior year's losses, reversing these losses or re-allocating them between different long-term interests.</p> <p><b>Step 3: Book current year equity share</b></p> <p>Any current year Ind AS 28 losses are allocated to the extent that the remaining long-term interest balance allows. Any current year Ind AS 28 profits reverse any unrecognized prior years' losses and then allocations are made against long-term interests.</p>
Amendment to Ind AS 103 – Control over a joint operation achieved in stages	When a party to a joint operation, obtains control of a joint operation business, the transaction will be considered as a business combination achieved in stages. The acquirer should re-measure its previously held interest in the joint operation at fair value at the acquisition date.
Amendment to Ind AS 109 –	Some prepayment options could result in other party being forced to accept negative compensation – e.g. the lender receives an amount

Prepayment Features with Negative Compensation	<p>less than the unpaid amounts of principal and interest if the borrower chooses to prepay.</p> <p>Earlier, these instruments were measured at FVTPL. However, now after amendment, such financial assets could be measured at amortised cost or at FVOCI if they meet the other relevant requirements of Ind AS 109. In other words, to qualify for amortised cost measurement, <b>the negative compensation must be 'reasonable compensation'</b> for early termination of the contract' and the asset must be held within a 'held to collect' business model.</p> <p>To be eligible for the exception, the fair value of the prepayment feature would have to be <b>insignificant on initial recognition</b> of the asset. If this is impracticable to assess based on the facts and circumstances that existed on initial recognition of the asset, then the exception would not be available. Also financial assets prepayable at current fair value would be measured at FVTPL.</p>
Amendment to Ind AS 111 – Joint control over a joint operation achieved in stages	<p>The amendments clarify that the entity, who is a party to joint operation but was not having joint control earlier, now obtains joint control of a business that is a joint operation should not re-measure its previously held interest in the joint operation.</p>

## 2. Amendment in Schedule III notified by MCA on 12.10.2018

Following amendments have been made in Schedule III to the Companies Act, 2013

### (a) In Division I which covers formats and instructions for financial statements drawn as per Accounting Standards ie Indian GAAP

*Following amendments have been made*

- (i) Clause (ii) of paragraph 4 under 'General instructions for preparation of Balance Sheet and statement of Profit and Loss of a company', states uniform use of unit of measurement in the financial statements. In the given sentence the word 'shall' has been replaced with the word 'should' through this notification. Hence, now the clause (ii) of paragraph 4 shall be read as follows:  
*"Once a unit of measurement is used, it **should** be used uniformly in the Financial Statements."*
- (ii) Underneath Part I in the format of Balance Sheet, under the heading "II Assets" sub-heading "Non-current assets", **the words "Fixed assets" should be replaced as "Property, Plant and Equipment"**. This amendment has been

done since the title of revised AS 10 is now 'Property, Plant and Equipment' instead of 'Fixed Assets'.

Similar substitution has been done in Point W of the "Notes" under the heading "General Instructions for preparation of Balance Sheet".

- (iii) Point 6B of the "Notes", under the heading "General Instructions for preparation of Balance Sheet" deals with the classification of Reserves and Surplus. One of the category was 'Securities Premium Reserve'. As per the amendment the word 'Reserve' after Securities Premium has been omitted. Now it should be read as '**Securities Premium**' only.

**(b) In Division II which covers formats and instructions for financial statements drawn as per Indian Accounting Standards ie Ind AS**

*Following amendments have been made*

- (i) In Part I which specifies the format of Balance Sheet, under the heading 'Equity and Liabilities', Trade Payables (both under 'non-current liabilities' and 'current liabilities') shall further be classified as
  - "(A) total outstanding dues of micro enterprises and small enterprises; and
  - (B) total outstanding dues of creditors other than micro enterprises and small enterprises.";
- (ii) In the table (format) for 'Other Equity' under the 'Statement of Changes in Equity', "Securities Premium Reserve" is substituted as "Securities Premium". Also below the table on 'Other Equity' a note has been given which shall be renumbered as '(i)' and further a note has been added as follows:
  - "(ii) A description of the purposes of each reserve within equity shall be disclosed in the Notes."
- (iii) Paragraph 6A and 6B of "General Instructions for Preparation of Balance Sheet" is on 'Non-current assets' and 'current assets' respectively.
  - (A) Under point 'VII. Trade Receivables' of 6A and 'III. Trade Receivables' of 6B, sub point (i) has been substituted as follows:
    - "(i) Trade Receivables shall be sub-classified as:
      - (a) Trade Receivables considered good - Secured;
      - (b) Trade Receivables considered good - Unsecured;
      - (c) Trade Receivables which have significant increase in Credit Risk; and
      - (d) Trade Receivables - credit impaired."

- (B) Under point 'VIII. Loans' of 6A and 'V. Loans' of 6B, sub point (ii) is substituted as follows:

*"(ii) Loans Receivables shall be sub-classified as:*

- (a) Loans Receivables considered good - Secured;*
- (b) Loans Receivables considered good - Unsecured;*
- (c) Loans Receivables which have significant increase in Credit Risk; and*
- (d) Loans Receivables - credit impaired,"*

- (iv) After paragraph F of "General Instructions for Preparation of Balance Sheet" paragraph FA shall be inserted as follows:

***"FA. Trade Payables***

*The following details relating to micro, small and medium enterprises shall be disclosed in the notes:*

- (a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year;*
- (b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;*
- (c) the amount of interest due and payable for the period of delay in making payment (which has been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;*
- (d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and*
- (e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.*

***Explanation-*** *The terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning as assigned to them under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006."*

- (v) In paragraph 9, after the words “For instance,”, the words “plain vanilla” has been inserted. This amendment has been done to bring clarity to the treatment of redeemable preference shares ie which redeemable preference shares should fall in the category of ‘borrowings’. Accordingly, the last sentence of para 9 will be read as follows:

*“For instance, **plain vanilla** redeemable preference shares shall be classified and presented under ‘non-current liabilities’ as ‘borrowings’ and the disclosure requirements in this regard applicable to such borrowings shall be applicable mutatis mutandis to redeemable preference shares.”*

**(c) Division III (newly notified division applicable for NBFCs)**

Through this notification, MCA added/notified Division III in the Schedule III which is applicable to Non-Banking Financial Company (NBFC) whose financial statements are drawn up in compliance of the Companies (Indian Accounting Standards) Rules, 2015. **However, this Division III has not been made applicable for CA Final Students.**

**3. Amendment in Ind AS 20 notified by MCA in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 20<sup>th</sup> September 2018**

Amendment has been made in Ind AS 20 ‘Accounting for Government Grants and Disclosure of Government Assistance’. The amendment provides entities the option for recording non-monetary government grants at a nominal amount and presenting government grants related to assets by deducting the grant from the carrying amount of the asset.

**4. Notification of Ind AS 115 and withdrawal of Ind AS 11 and Ind AS 18 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 28<sup>th</sup> March, 2018**

The Rules have brought in the following significant amendments to Ind AS:

- New revenue standard Ind AS 115 has been notified which supersedes Ind AS 11, Construction Contracts and Ind AS 18, Revenue. **(Refer Annexure IV for overview of Ind AS 115)**
- Appendix B, Foreign Currency Transactions and Advance Consideration to Ind AS 21, The Effects of Changes in Foreign Exchange Rates has been notified. The appendix applies where an entity either pays or receives consideration in advance for foreign currency-denominated contracts. The date of the transaction determines the exchange rate to be used for initial recognition of the related asset, expense or income. Ind AS 21 requires an entity to use the exchange rate at the ‘date of the transaction’, which is defined as the date when the transaction first qualifies for initial recognition.

Here, the question arises that whether the date of the transaction is the date when the asset, expense or income is initially recognised, or an earlier date on which the advance consideration is paid or received, resulting in recognition of a prepayment or deferred income.

The appendix provides guidance for when a single payment/receipt is made, as well as for situations where multiple payments/receipts are made.

- **Single payment/receipt** The appendix states that the date of the transaction, for the purpose of determining the exchange rate to use on initial recognition of the related asset, expense or income, should be the date on which an entity initially recognises the non-monetary asset or liability arising from an advance consideration paid/received.
- **Multiple receipts/payments** The appendix states that, if there are multiple payments or receipts in advance of recognising the related asset, income or expense, the entity should determine the date of the transaction for each payment or receipt.
- Amendment to Ind AS 40, Investment Property stating that when assets are transferred to, or from, investment properties. The amendment states that to transfer to, or from, investment properties there must be a change in use supported by evidence. A change in intention, in isolation is not enough to support a transfer.

The amendment has re-described the list of evidence of change in use as a non-exhaustive list of examples and scope of these examples have been expanded to include assets under construction and development and not only transfers of completed properties.

Examples of evidence of a change in use include:

- a) commencement of owner-occupation, or of development with a view to owner-occupation, for a transfer from investment property to owner-occupied property;
- b) commencement of development with a view to sale, for a transfer from investment property to inventories;
- c) end of owner-occupation, for a transfer from owner-occupied property to investment property;
- d) inception of an operating lease to another party, for a transfer from inventories to investment property.

- Amendments to Ind AS 12, Income Taxes elucidate the existing guidance in Ind AS 12. They do not change the underlying principles of recognition of deferred tax asset. As per the amendment:
  - Existence of a deductible temporary difference depends solely on a comparison of the carrying amount of an asset and its tax base at the end of the reporting period and is not affected by possible future changes in the carrying amount. Consequently, decreases below cost in the carrying amount of a fixed-rate debt instrument measured at fair value in the books of the holder for which the tax base remains at cost gives rise to a deductible temporary difference. This is regardless of whether the holder expects to collect all the contractual cash flows of the debt instrument.
  - Determining the existence and amount of temporary differences and estimating future taxable profit against which deferred tax assets can be utilised are two separate steps. Recovering assets for more than their carrying amounts is inherent in an expectation of taxable profits and should therefore be included in estimated taxable profit if there is sufficient evidence to conclude that it is probable that the entity will recover the asset for more than its carrying amount. For example, an entity should assume that a debt investment measured at fair value will be recovered for more than its carrying value when that outcome is probable even if carrying value is below its tax base (original investment cost).
  - Recoverability of deferred tax assets are assessed in combination with other deferred tax assets where the tax law does not restrict the source of taxable profits against which particular types of deferred tax assets can be recovered. Where restrictions apply (for example where capital losses can be set off against capital gains), deferred tax assets are assessed in combination only with other deferred tax assets of the same type.
  - When comparing deductible temporary differences against future taxable profits, the determination of future taxable profits shall exclude tax deductions resulting from reversal of these deductible temporary differences.
- Amendment to Ind AS 28, Investments in Associates and Joint Ventures and Ind AS 112, Disclosure of Interests in Other Entities stating that:
  - Disclosures requirement of Ind AS 112 are applicable to interest in entities classified as held for sale except for summarised financial information (para B17 of Ind AS 112).
  - In Ind AS 28, the option available with venture capital organisations, mutual funds, unit trusts and similar entities to measure their investments in associates or joint ventures at fair value through profit or loss (FVTPL) is available for each investment in an associate or joint venture.

- Consequential amendments to other Ind AS due to notification of Ind AS 115 and other amendments discussed above
  - (i) **Ind AS 101, First-time Adoption of Indian Accounting Standards:** The Rules introduce two additional exemptions in Ind AS 101 related to Ind AS 115 and Appendix B to Ind AS 21. These are:
    - Ind AS 115: A first-time adopter can apply the transition provisions in paragraphs C5 and C6 of Ind AS 115 (related to practical expedients when applying Ind AS 115 retrospectively) at the date of transition to Ind AS. Further, a first-time adopter is not required to restate contracts that were completed before the earliest period presented.
    - Appendix B to Ind AS 21: A first-time adopter need not apply Appendix B to Ind AS 21 to assets, expenses and income in the scope of the appendix initially recognised before the date of transition to Ind AS.
  - (ii) **Ind AS 2, Inventories:** Costs of services by a service provider that does not give rise to inventories will need to be accounted for as costs incurred to fulfil a contract with customer in accordance with Ind AS 115. Such costs can be capitalised under Ind AS 115 if they
    - (1) relate directly to the contract,
    - (2) enhance the resources of the entity to perform under the contract and relate to satisfying a future performance obligation, and
    - (3) are expected to be recovered.

Earlier paragraph 8 of Ind AS 2 which stated that in case of a service provider, inventories include costs of the service, for which the entity has not yet recognised the related revenue, has been deleted.
  - (iii) **Ind AS 16, Property, Plant and Equipment, Ind AS 38, Intangible Assets and Ind AS 40, Investment Property:** These standards have been amended to require use of principles of Ind AS 115 for recognition of a gain or loss on the transfer of non-financial assets i.e. property, plant and equipment, intangible asset and investment property, that are not an output of an entity's ordinary activities. Although a gain or loss on this type of sale generally does not meet the definition of revenue, an entity should apply the guidance in Ind AS 115 related to the transfer of control and measurement of the transaction price including the constraint on variable consideration, to evaluate the timing and amount of the gain or loss recognised.

Further, since Ind AS 115 deals with accounting for contract assets, Ind AS 38 has been amended to add a scope exclusion for such contract assets.

- (iv) **Ind AS 37, Provisions, Contingent Assets and Contingent Liabilities:** Ind AS 115 does not have any specific requirement to address the accounting of contracts with customers that are, or have become, onerous. Previously, depending upon type of contract, such onerous contracts were accounted under Ind AS 11 or Ind AS 37. With the omission of Ind AS 11, a consequential amendment has been made to Ind AS 37 to bring all onerous revenue contracts within the scope of the Ind AS 37. Ind AS 37 defines onerous contract as a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. If an entity has a contract that is onerous, the present obligation under the contract shall be recognised and measured as a provision.
- (v) **Ind AS 109, Financial Instruments:** Amendments to Ind AS 109 are discussed below:
- (i) The current Ind AS 109 states that an entity shall measure trade receivables at their transaction price. Due to notification of Ind AS 115, an entity is required to measure trade receivables at their transaction price if the trade receivables do not contain a significant financing component in accordance with Ind AS 115.
  - (ii) An entity shall have an accounting policy choice to measure loss allowance on trade receivables or contracts assets within the scope of Ind AS 115 containing a significant financing component at an amount equal to life time expected credit losses (simplified approach) or using the general model (3 stage).
  - (iii) Entities shall now consider the principles of Ind AS 115 for subsequent measurement of financial guarantee and loan commitments.

**5. 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'- 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. Amendments in Ind AS 102 'Share-based Payment'**

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.

**6. Notification of Ind AS 116 and withdrawal of Ind AS 17 alongwith the consequential amendments in other Ind AS and other amendments notified in the Companies (Indian Accounting Standards) Second Amendment Rules, 2018 on 30<sup>th</sup> March, 2019.**

***(Refer Annexure V for overview of Ind AS 116)***

## **Annexure IV**

### **Overview of Ind AS 115 “Revenue from Contracts with Customers”**

The objective of Ind AS 115 is to establish the principles that an entity shall apply to report useful information to users of financial statements about the nature, amount, timing and uncertainty of revenue and cash flows arising from a contract with a customer.

The standard applies to all contracts with customers, except the lease contracts within the scope of Ind AS 17, Leases; insurance contracts within the scope of Ind AS 104, Insurance Contracts; financial instruments and other contractual rights or obligations; and non-monetary exchanges between entities in the same line of business to facilitate sales to customers or potential customers.

The core principle of Ind AS 115 is that an entity recognises revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Revenue shall be recognised by an entity in accordance with this core principle by applying the following five steps:

1. **Identify contract with a customer:** This Standard defines a 'contract' and a 'customer' and specifies five mandatory criteria to be met for identification of a contract.
2. **Identify performance obligations in contract:** At contract inception, assess the goods or services promised and identify as a performance obligation each promise to transfer to the customer either:
  - (a) a good or service (or a bundle of goods or services) that is distinct; or
  - (b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer.
3. **Determine transaction price:** This Standard uses transaction price approach instead of fair value approach in Ind AS 18 while determining amount of consideration. The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties (for example, some sales taxes). The consideration promised may include fixed amounts, variable amounts, or both. If the consideration promised in a contract includes a variable amount, an entity shall estimate the amount of consideration to which the entity will be entitled in exchange for transferring the promised goods or services to a customer. Estimate amount of variable consideration by using either the expected value method or the most likely amount method. The transaction price is also adjusted for the effects of the time value of money if the contract includes a significant financing component for any consideration payable to the customer.
4. **Allocate the transaction price to the performance obligations in the contract:** An entity typically allocates the transaction price to each performance obligation on the basis of the relative stand-alone selling prices of each distinct good or service promised in the contract. If a stand-alone selling price is not observable, an entity estimates it. Sometimes, the transaction price includes a discount or a variable amount of consideration that relates entirely to a part of the contract. The requirements specify when an entity allocates the discount or variable consideration to one or more, but not all, performance obligations in the contract. Any subsequent changes in the transaction price shall be allocated to the performance obligations on the same basis as at contract inception. Amounts allocated to a satisfied performance obligation shall be recognised as revenue, or as a reduction of revenue, in the period in which the transaction price changes.

5. **Recognise revenue when the entity satisfies a performance obligation:** An entity recognises revenue when it satisfies a performance obligation by transferring a promised good or service to a customer (which is when the customer obtains control of that good or service). The amount of revenue recognised is the amount allocated to the satisfied performance obligation. A performance obligation may be satisfied at a point in time or over time. If an entity does not satisfy a performance obligation over time, the performance obligation is satisfied at a point in time. For performance obligations satisfied over time, an entity recognises revenue over time by selecting an appropriate method (output methods and input methods) for measuring the entity's progress towards complete satisfaction of that performance obligation.

#### **Treatment of Contract Costs**

Ind AS 115 specifies the following requirements for contract costs:

1. *Incremental costs of obtaining a contract:*

Those costs that an entity incurs to obtain a contract with a customer that it would not have incurred if the contract had not been obtained. An entity shall recognise these costs as an asset if the entity expects to recover those costs. Costs to obtain a contract that would have been incurred regardless of whether the contract was obtained shall be recognised as an expense when incurred, unless those costs are explicitly chargeable to the customer regardless of whether the contract is obtained.

2. *Costs to fulfil a contract:*

If costs incurred in fulfilling a contract are not within scope of another Standard, entity shall recognise an asset from the costs incurred to fulfil a contract only if some specified criteria are met. If costs incurred in fulfilling a contract are within scope of another Standard, entity shall account for those costs in accordance with those other Standards.

Contract costs recognised as an asset shall be amortised on a systematic basis that is consistent with the transfer to the customer of the goods or services to which the asset relates.

An impairment loss shall be recognised in profit or loss to the extent that the carrying amount of contract costs recognised as an asset exceeds the remaining amount of consideration that the entity expects to receive in exchange for the goods or services to which the asset relates after deducting the costs that relate directly to providing those goods or services and that have not been recognised as expenses.

#### **Presentation**

When either party to a contract has performed, an entity shall present the contract in the balance sheet as a contract asset or a contract liability, depending on the relationship between the entity's performance and the customer's payment.

- If a customer pays consideration, or an entity has a right to an amount of consideration that is unconditional (i.e. a receivable), before the entity transfers a good or service to

the customer, the entity shall present the contract as a contract liability when the payment is made or the payment is due (whichever is earlier).

- If an entity performs by transferring goods or services to a customer before the customer pays consideration or before payment is due, the entity shall present the contract as a contract asset, excluding any amounts presented as a receivable.
- An entity shall present any unconditional rights to consideration separately as a receivable.

### **Sale with a right of return**

To account for the transfer of products with a right of return (and for some services that are provided subject to a refund), an entity shall recognise all of the following:

- revenue for the transferred products in the amount of consideration to which the entity expects to be entitled (therefore, revenue would not be recognised for the products expected to be returned);
- a refund liability; and
- an asset (and corresponding adjustment to cost of sales) for its right to recover products from customers on settling the refund liability.

### **Warranties**

If customer has the option to purchase warranty separately, the warranty is a distinct service because the entity promises to provide the service to the customer in addition to the product that has the functionality described in the contract. In that case, entity shall account for the promised warranty as a performance obligation and allocate a portion of the transaction price to that performance obligation.

### **Principal versus agent considerations**

When another party is involved in providing goods or services to a customer, the entity shall determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (i.e. the entity is a principal) or to arrange for those goods or services to be provided by the other party (i.e. the entity is an agent). An entity determines whether it is a principal or an agent for each specified good or service promised to the customer. A specified good or service is a distinct good or service (or a distinct bundle of goods or services) to be provided to the customer. If a contract with a customer includes more than one specified good or service, an entity could be a principal for some specified goods or services and an agent for others.

### **Repurchase agreements**

Repurchase agreements generally come in three forms viz. (i) an entity's obligation to repurchase the asset (a forward); (ii) an entity's right to repurchase the asset (a call option); and an entity's obligation to repurchase the asset at the customer's request (a put option).

**Bill-and-hold arrangements**

A bill-and-hold arrangement is a contract under which an entity bills a customer for a product but retains physical possession of the product until it is transferred to the customer at a point in time in the future. Ind AS 115 specifies four criteria that must be fulfilled for a customer to have obtained control of a product in a bill-and-hold arrangement.

**Disclosure**

The objective of the disclosure requirements is for an entity to disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. To achieve that objective, an entity shall disclose qualitative and quantitative information about all of the following:

- its contracts with customers
- the significant judgements, and changes in the judgements, made in applying this Standard to those contracts and
- any assets recognised from the costs to obtain or fulfil a contract with a customer

Appendix D of Ind AS 115 gives guidance on the accounting by operators for public-to-private service concession arrangements. This Appendix applies to both (a) infrastructure that the operator constructs or acquires from a third party for the purpose of the service arrangement; and (b) existing infrastructure to which the grantor gives the operator access for the purpose of the service arrangement. Infrastructure within the scope of this Appendix shall not be recognised as property, plant and equipment of the operator because the contractual service arrangement does not convey the right to control the use of the public service infrastructure to the operator.

**Carve out in Ind AS 115 from IFRS 15****As per IFRS**

IFRS 15 provides that all types of penalties which may be levied in the performance of a contract should be considered in the nature of variable consideration for recognising revenue.

**Carve out**

Ind AS 115 has been amended to provide that penalties shall be accounted for as per the substance of the contract. Where the penalty is inherent in determination of transaction price, it shall form part of variable consideration, otherwise the same should not be considered for determining the consideration and the transaction price shall be considered as fixed.

**Significant differences in Ind AS 115 from AS 7 and AS 9**

S. No.	Particular	Ind AS 115	AS 7 and AS 9
1.	Framework of Revenue Recognition	Ind AS 115 gives a framework of revenue recognition within a standard. It specifies the core principle for revenue recognition which requires the 'revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services'.	AS 7 and AS 9 do not provide any such overarching principle to fall upon in case of doubt.
2.	Comprehensive Guidance on Recognition and Measurement of Multiple Elements within a Contract with Customer:	Ind AS 115 gives comprehensive guidance on how to recognise and measure multiple elements within a contract with customer.	AS 7 and AS 9 do not provide comprehensive guidance on this aspect.
3.	Coverage	Ind AS 115 comprehensively deals with all types of performance obligation contract with customer. However, it does not deal with revenue from 'interest' and 'dividend' which are covered in financial instruments standard.	AS 7 covers only revenue from construction contracts which is measured at consideration received / receivable. AS 9 deals only with recognition of revenue from sale of goods, rendering of services, interest, royalties and dividends.
4.	Measurement of Revenue	As per Ind AS 115, revenue is measured at transaction price, i.e., the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer,	As per AS 9, Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities. Revenue is measured by the charges

		excluding amounts collected on behalf of third parties.	made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. As per AS 7, revenue from construction contracts is measured at consideration received / receivable and to be recognised as revenue as construction progresses, if certain conditions are met.
5.	Recognition of Revenue	As per Ind AS 115, revenue is recognised when the control is transferred to the customer.	As per AS 9, revenue is recognised when significant risks and rewards of ownership is transferred to the buyer. As per AS 7, revenue is recognised when the outcome of a construction contract can be estimated reliably, contract revenue should be recognised by reference to the stage of completion of the contract activity at the reporting date.
6.	Capitalisation of Costs	Ind AS 115 provides guidance on recognition of costs to obtain and fulfill a contract, as asset	AS 7 and AS 9 do not deal with such capitalisation of costs.
7.	Guidance on Service Concession Arrangements	Ind AS 115 gives guidance on service concession arrangements and disclosures thereof	AS does not provide such guidance.
8.	Disclosure Requirements	Ind AS 115 contains detailed disclosure requirements.	Less disclosure requirements are prescribed in AS

**Annexure V****Overview of Ind AS 116 “Leases”****Objective**

Ind AS 116 sets out the principles for the recognition, measurement, presentation and disclosure of leases and faithful representation of the transactions by lessees and lessors. This information gives a basis for users of financial statements to assess the effect that leases have on the financial position, financial performance and cash flows of an entity.

**Scope**

The standard applies to all leases, including leases of right-of-use assets in a sublease, except for:

- (a) Leases to explore for or use minerals, oil, natural gas and similar non-regenerative resources;
- (b) Leases of biological assets within the scope of Ind AS 41, Agriculture held by a lessee;
- (c) Service concession arrangements within the scope of Appendix D, Service Concession Arrangements of Ind AS 115, Revenue from Contracts with Customer;
- (d) Licences of intellectual property granted by a lessor within the scope of Ind AS 115, Revenue from Contracts with Customers; and
- (e) Rights held by a lessee under licensing agreements within the scope of Ind AS 38, Intangible Assets for such items as motion picture films, video recordings, plays, manuscripts, patents and copyrights.

A lessee may, but is not required to, apply Ind AS 116 to leases of intangible assets other than those described in point (e) above.

This Standard specifies the accounting for an individual lease. However, as a practical expedient, an entity may apply this Standard to a portfolio of leases with similar characteristics if the entity reasonably expects that the effects on the financial statements would not differ materially.

**Recognition exemption**

In addition to the above scope exclusions, a lessee can elect not to apply the recognition, measurement and presentation requirements of Ind AS 116 to short-term leases; and low value leases.

If a lessee elects for the exemption, then it shall recognise the lease payments associated with those leases as an expense on either a straight line basis over the lease term or another systematic basis if that basis is more representative of the pattern of the lessee's benefit.

The election for short-term leases shall be made by class of underlying asset to which the right of use relates. The low value lease exemption can be applied on a lease-by-lease basis.

The assessment of whether an underlying asset is of low value is performed on an absolute basis. Leases of low-value assets qualify for exemption regardless of whether those leases are material to the lessee. The assessment is not affected by the size, nature or circumstances of the lessee. Accordingly, different lessees are expected to reach the same conclusions about whether a particular underlying asset is of low value.

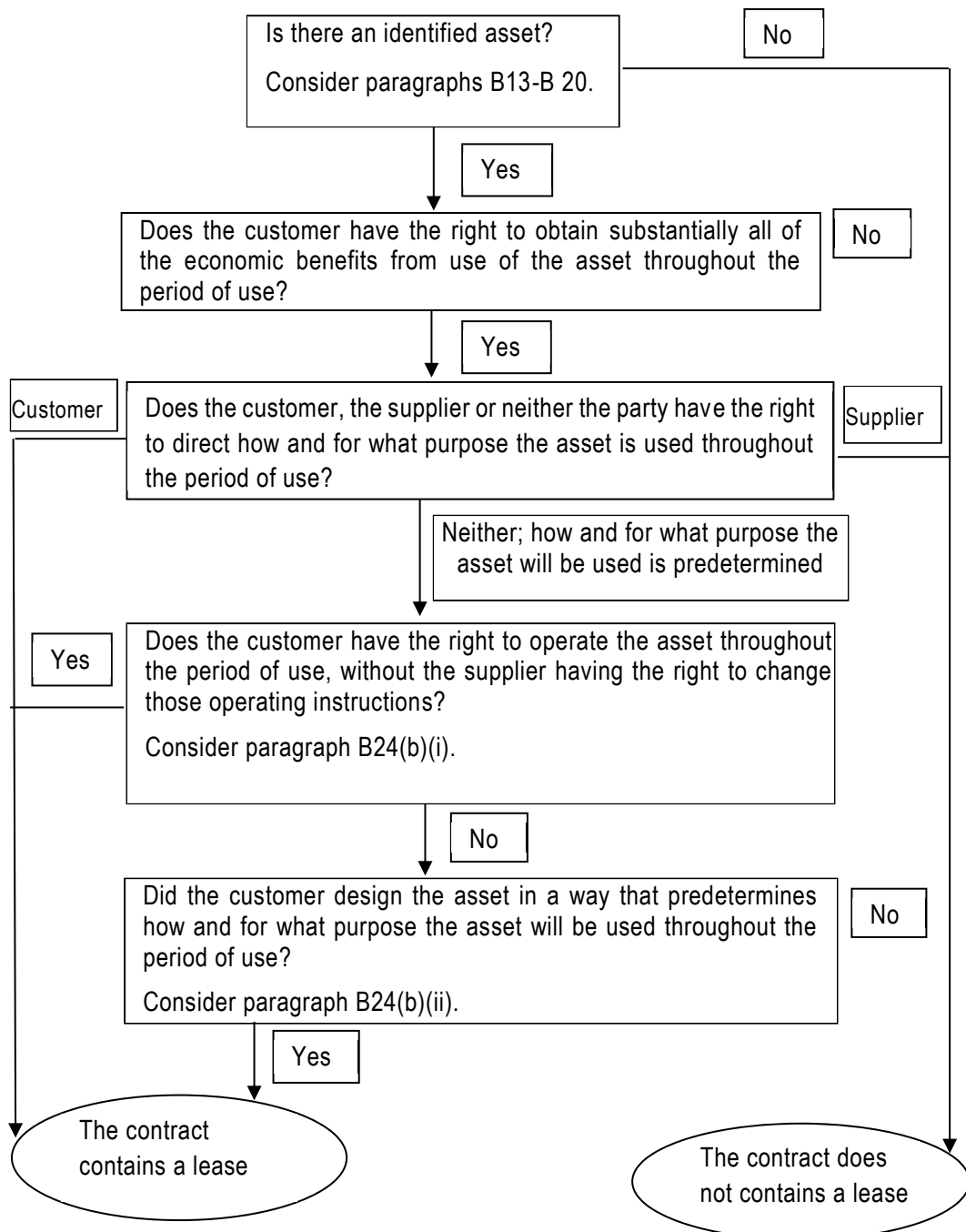
If a lessee subleases an asset, or expects to sublease an asset, the head lease does not qualify as a lease of a low-value asset. Examples of low-value underlying assets can include tablet and personal computers, small items of office furniture and telephones.

If an entity applies either exemption, it must disclose that fact and certain information to make the effect of the exemption known to users of its financial statements. (Refer – Disclosure)

**Identifying a lease**

At inception of a contract, an entity shall assess whether the contract is, or contains, a lease. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

An entity shall reassess whether a contract is, or contains, a lease only if the terms and conditions of the contract are changed.



**Separating component of contract**

For a contract that contains a lease component, an entity accounts for each lease component within the contract separately from non-lease components. A lessee shall allocate the total contract consideration to each lease component on the basis of relative stand-alone price of the lease component and the aggregate stand-alone price of the non-lease components. A lessee shall account for non-lease components applying other applicable Standards.

As a practical expedient, a lessee may elect not to separate non-lease components from the lease components. Instead it may account for the entire contract including non-lease components as a single lease component.

The practical expedient shall not be applied to embedded derivatives that meet the criteria given Ind AS 109, Financial Instruments.

**Lease term**

If a contract is, or contains, a lease, the lease term needs to be determined.

The lease term begins on the commencement date (i.e. the date on which the lessor makes the underlying asset(s) available for use by the lessee) and includes any rent-free or reduced rent periods. It comprises:

- (a) The non-cancellable period of the lease;
- (b) Periods covered by an option to extend the lease if the lessee is reasonably certain to exercise that option; and
- (c) Periods covered by an option to terminate the lease if the lessee is reasonably certain not to exercise that option

A lease is no longer enforceable when the lessee and the lessor each have the right to terminate the lease without permission from the other party with no more than an insignificant penalty.

An entity shall revise the lease term if there is a change in the non-cancellable period of a lease.

**Recognition and Measurement of lease in the books of Lessee**

On the commencement of the lease, lessee needs to recognise the right-of use asset and measure it at cost. Lessee should also recognise a lease liability and measure it at the present value of the lease payments that are not paid at that date. The lease payments should be

discounted using the interest rate implicit in the lease, if readily determinable or else using the lessee's incremental borrowing rate.

$A\ Cost = Lease\ Liability + Lease\ payments\ made - lease\ incentives\ received + initial\ direct\ costs + estimated\ dismantling\ and\ restoration\ costs.$

$Lease\ Payments = Fixed\ payments\ (including\ in-substance\ fixed\ lease\ payments) - lease\ incentives + variable\ payments + expected\ guaranteed\ residual\ value + exercise\ price\ of\ purchase\ option\ (if\ reasonably\ certain\ to\ be\ exercised) + penalties\ for\ termination\ (if\ reasonably\ certain\ to\ be\ terminated).$

In-substance fixed lease payments are payments that may, in form, contain variability but that, in substance, are unavoidable.

### **Subsequent measurement**

Subsequently, the right-of-use asset shall be measured by applying a cost model or revaluation model if the underlying asset belongs to the class of assets to which the entity applies revaluation model as per Ind AS 16, Property, Plant and Equipment.

### **Cost model**

Lessee shall measure the right-of-use asset at cost less accumulated depreciation and any accumulated impairment losses.

Lessees adjust the carrying amount of the right-of-use asset for remeasurement of the lease liability, unless the carrying amount has already been reduced to zero or the change in the lease liability relates to a variable lease payment that does not depend on an index or rate.

### **Subsequent measurement of lease liability**

After initial recognition, the lease liability is measured at amortised cost using the effective interest method and remeasuring the carrying amount to reflect any reassessment or lease modifications or to reflect revised in-substance fixed lease payments.

### **Reassessment of lease liability**

After the commencement date, a lessee shall remeasure the lease liability in accordance with the standard to reflect changes to the lease payments. A lessee shall recognise the amount of the remeasurement of the lease liability as an adjustment to the right-of-use asset. However, if the carrying amount of the right-of-use asset is reduced to zero and there is a further reduction in the measurement of the lease liability, a lessee shall recognise any remaining amount of the remeasurement in profit or loss.

### **Presentation**

The right-of-use assets should be either presented separately from other assets in the balance sheet or disclosed in the notes. If not presented separately, they should be presented in the

appropriate line item of the balance sheet as if they were owned and disclose in the notes the line items which include such assets.

The lease liabilities should be presented either separately from other liabilities in the balance sheet or disclose in the notes the line items which include the lease liabilities.

Right-of-use assets that meet the definition of investment property are presented within investment property.

In the statement of profit and loss, a lessee shall present interest expense on the lease liability separately from the depreciation charge for the right-of-use asset. Interest expense on the lease liability is a component of finance costs requires to be presented separately in the statement of profit and loss.

In the statement of cash flows, a lessee shall classify:

- a) cash payments for the principal portion of the lease liability within financing activities;
- b) cash payments for the interest portion of the lease liability within financing activities applying the requirements in Ind AS 7, Statement of Cash Flows, for interest paid; and
- c) short-term lease payments, payments for leases of low-value assets and variable lease payments not included in the measurement of the lease liability within operating activities.

## **Accounting in the books of Lessor**

### **Classification of leases**

A lessor shall classify each of its leases as either an operating lease or a finance lease. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership of an underlying asset.

Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. The standard also provides examples of situations that individually or in combination would/could normally lead to a lease being classified as a finance lease.

Lease classification is made at the inception date and is reassessed only if there is a lease modification. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the underlying asset), or changes in circumstances (for example, default by the lessee), do not give rise to a new classification of a lease for accounting purposes.

**Finance lease and Operating lease****Recognition and measurement**

Particulars	Finance lease	Operating lease
Balance Sheet impact	Derecognised the underlying asset	Continue to present the underlying asset
	Present lease receivable at an amount equal to the net investment in lease	Add any initial direct costs incurred in connection with obtaining the lease to the carrying amount of the underlying asset
Statement of profit and loss	lessor shall recognise finance income over the lease term, based on a pattern reflecting a constant periodic rate of return on the lessor's net investment in the lease	Lessor shall recognise lease payments from operating leases as income on either a straight-line basis or another systematic basis. The lessor shall apply another systematic basis if that basis is more representative of the pattern in which benefit from the use of the underlying asset is diminished
Statement of profit and loss: In case manufacturer or dealer is lessor	revenue being the fair value of the underlying asset, or, if lower, the present value of the lease payments accruing to the lessor, discounted using a market rate of interest	Recognise depreciation expense over the useful life of asset
	the cost of sale being the cost, or carrying amount if different, of the underlying asset less the present value of the unguaranteed residual value	
	selling profit or loss in accordance with its policy for outright sales to which Ind AS 115 applies	

A lessor initially measures a finance lease receivable at the present value of the future lease payments plus any unguaranteed residual value accruing to the lessor. The lessor discounts these amounts using the rate implicit in the lease.

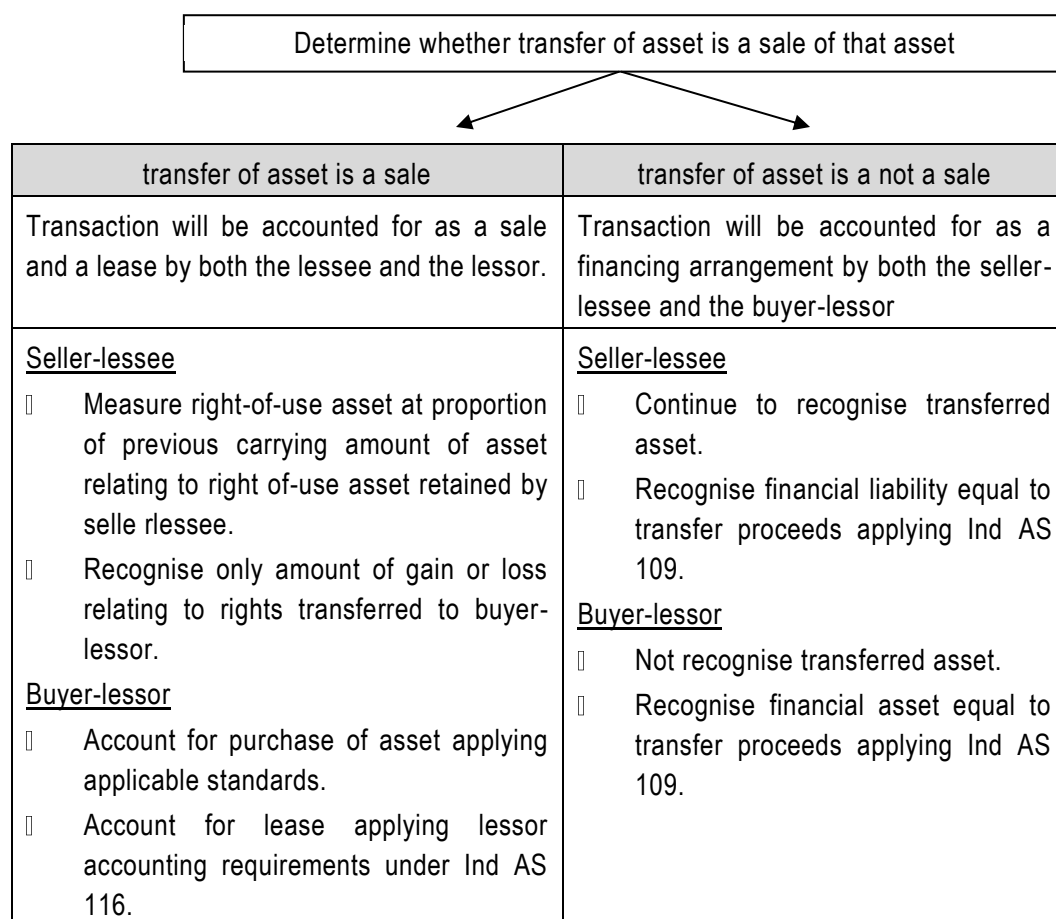
A lessor includes the following lease payments in the measurement of the finance lease receivable:

- fixed payments (including in-substance fixed payments), less lease incentives payable;
- variable payments that depend on an index or rate;
- residual value guarantees provided to the lessor at the guaranteed amount;
- the exercise price of purchase options if the lessee is reasonably certain to exercise; and
- termination penalties payable in accordance with the expected lease term.

### Presentation

Lessor shall present underlying assets subject to operating leases in its balance sheet according to the nature of the underlying asset.

### Sale and lease back – recognition and measurement



**Transition date accounting****Definition of lease**

On the date of initial application of Ind AS 116, companies have an option not to reassess its previously identified leases contracts (as per Ind AS 17, Leases) and apply the transition provisions of this standard to those leases.

Also, they have an option not to apply this Standard to contracts that were not previously identified as containing a lease applying Ind AS 17.

If an entity chooses the above options then it shall disclose that fact and apply the practical expedient to all of its contracts.

**Transition accounting: In the books of Lessee**

A lessee is permitted to:

- adopt the standard retrospectively; or
- follow a modified retrospective approach.

A lessee applies the election consistently to all of its leases.

**Modified retrospective approach**

Lessee shall not restate comparative information and recognise the cumulative effect of initially applying Ind AS 116 as an adjustment to the opening balance of retained earnings (or other component of equity, as appropriate) at the date of initial application.

For leases previously classified as operating leases and finance Leases, the following may be noted:

Operating lease	Lease liability	Measure at the present value of the remaining lease payments, discounted using lessee's incremental borrowing rate at the date of initial application
	Right-of-use asset	Retrospective calculation, using a discount rate based on lessee's incremental borrowing rate at the date of initial application. or Amount of lease liability (adjusted by the amount of any previously recognised prepaid or accrued lease payments relating to that lease).

		Lessee can choose one of the alternatives on a lease-by-lease basis.
Finance lease	Lease liability	Carrying amount of the lease liability immediately before the date of initial application.
	Right-of-use asset	Carrying amount of the lease asset immediately before the date of initial application.
	Application of Ind AS 116	Apply the provisions of this standard to Right of Use asset and lease liability from the date of initial application.

The standard also prescribes certain practical expedients under Modified retrospective approach to leases previously classified as operating leases applying Ind AS 17.

#### **Transition accounting: In the books of Lessor**

Except for sub-leases and sale-and-leaseback transactions, a lessor does not make any adjustments on transition:

#### **Sales and leaseback transaction**

Sale and leaseback transactions entered into before the date of initial application shall not be reassessed to determine whether the transfer of the underlying asset satisfies the requirements in Ind AS 115 to be accounted for as a sale.

For a sale-and-leaseback transaction accounted for as a sale and finance lease in accordance with Ind AS 17, the seller-lessee:

- ▮ accounts for the leaseback in the same way as for any finance lease that exists at the date of initial application; and
- ▮ continues to amortise any gain on the sale over the lease term

For a sale-and-leaseback transaction accounted for as a sale and operating lease in accordance with Ind AS 17, the seller-lessee:

- ▮ accounts for the leaseback in the same way as for any other operating lease that exists at the date of initial application; and
- ▮ adjusts the leaseback right-of-use asset for any deferred gains or losses that relate to off-market terms recognised in the statement of financial position immediately before the date of initial application.

**Major change in Ind AS 116 vis-à-vis IFRS 16 not resulting in carve out**

1. With regard to subsequent measurement, paragraph 34 of IFRS 16 provides that if lessee applies fair value model in IAS 40 to its investment property, it shall apply that fair value model to the right-of use assets that meet the definition of investment property. Since Ind AS 40, Investment Property, does not allow the use of fair value model, paragraph 34 has been deleted in Ind AS 116.
2. Paragraph 50(b) of IFRS 16 requires to classify cash payments for interest portion of lease liability applying requirements of IAS 7, Statement of Cash Flows. IAS 7 provides option of treating interest paid as operating or financing activity. However, Ind AS 7 requires interest paid to be treated as financing activity only. Accordingly, paragraph 50(b) has been modified in Ind AS 116 to specify that cash payments for interest portion of lease liability will be classified as financing activities applying Ind AS 7.

**Major Changes in Ind AS 116 vis-à-vis AS 19**

S. No.	Particular	Ind AS 116	AS 19
1.	<b>Lease definition</b>	Under Ind AS 116, the definition of lease is similar to that in AS 19. But, in Ind AS 116, there is substantial change in the guidance of how to apply this definition. The changes primarily relate to the concept of 'control' used in identifying whether a contract contains a lease or not.	No such guidance given therein
2.	<b>Modifications</b>	Ind AS 116 brings in comprehensive prescription on accounting of modifications in lease contracts.	No such guidance given therein
3.	<b>Scope:</b>	Ind AS 116 has no such scope exclusion.	AS 19 excludes leases of land from its scope.
4.	<b>Inception of lease and commencement of lease</b>	Ind AS 116 makes a distinction between 'inception of lease' and 'commencement of lease'	No such distinction is there
5	<b>Classification</b>	Ind AS 116 eliminates the requirement of classification of leases as either operating leases or finance leases for a lessee and instead, introduces a single	AS 19 requires a lessee to classify leases as either finance leases or operating leases.

		lessee accounting model which requires lessee to recognise assets and liabilities for all leases unless it applies the recognition exemption applies.	
6	<b>Sale &amp; Leaseback transactions</b>	In Ind AS 116, the approach for computation of gain/loss for a completed sale is different. The amount of gain/loss should reflect the amount that relates to the right transferred to the buyer-lessor.	As per AS 19, if a sale and leaseback transaction results in a finance lease, excess, if any, of the sale proceeds over the carrying amount shall be deferred and amortised by the seller-lessee over the lease term in proportion to depreciation of the leased asset.
		Ind AS 116 requires a seller-lessee and a buyer-lessor to use the definition of a sale as per Ind AS 115, Revenue from Contracts with Customers to determine whether a sale has occurred in a sale and leaseback transaction. If the transfer of the underlying asset satisfies the requirements of Ind AS 115 to be accounted for as a sale, the transaction will be accounted for as a sale and a lease by both the lessee and the lessor. If not, then the seller-lessee shall recognise a finance liability and the buyer-lessor will recognise a financial asset to be accounted for as per the requirements of Ind AS 109, Financial Instruments.	AS 19 does not contain such specific requirement.

7.	For lessor, the treatment of initial direct costs -Finance lease lessor accounting		
	Non-manufacturer/Non-dealer	Interest rate implicit in the lease is defined in such a way that the initial direct costs included automatically in the finance lease receivable.	Either recognised as expense immediately or allocated against the finance income over the lease term.
	Manufacturer/dealer	Same as per AS 19.	Recognised as expense immediately.
	Operating lease-Lessor accounting	Added to the carrying amount of the leased asset and recognised as expense over the lease term on the same basis as lease income.	Either deferred and allocated to income over the lease term in proportion to the recognition of rent income or recognized as expense in the period in which incurred.
8.	<b>Interest rate implicit in the lease'</b>	Definition of the term 'interest rate implicit in the lease' has been modified	Different definition given
9.	<b>Presentation</b>	As a consequence of introduction of single lease model for lessees, there are many changes in the presentation in the three components of financial statements viz. Balance sheet, Statement of P&L, Statement of Cash flows.	Difference in presentation requirement
10.	<b>Disclosure</b>	There are a number of changes in the disclosure relating to qualitative aspects of leasing transactions. For eg. Entities are required to disclose the nature and risks arising from leasing transactions. Also, in case of lessor, there are changes in the disclosure of maturity analysis of leases payments receivable.	Difference in disclosure requirement

## PART – II : QUESTIONS AND ANSWERS

## QUESTIONS

## AS 1

1. (a) J Ltd. had made a rights issue of shares in 2018. In the offer document to its members, it had projected a surplus of ₹ 40 crore during the accounting year to end on 31<sup>st</sup> March, 2020. The draft results for the year, prepared on the hitherto followed accounting policies and presented for perusal of the board of directors showed a deficit of ₹ 10 crore. The board in consultation with the managing director, decided on the following:
- (i) Value year-end inventory at works cost (₹ 50 crore) instead of the hitherto method of valuation of inventory at prime cost (₹ 30 crore).
  - (ii) Provide depreciation for the year on straight line basis on account of substantial additions in gross block during the year, instead of on the reducing balance method, which was hitherto adopted. As a consequence, the charge for depreciation at ₹ 27 crore is lower than the amount of ₹ 45 crore which would have been provided had the old method been followed, by ₹ 18 crore.
  - (iii) Not to provide for “after sales expenses” during the warranty period. Till the last year, provision at 2% of sales used to be made under the concept of “matching of costs against revenue” and actual expenses used to be charged against the provision. The board now decided to account for expenses as and when actually incurred. Sales during the year total to ₹ 600 crore.
  - (iv) Provide for permanent fall in the value of investments - which fall had taken place over the past five years - the provision being ₹ 10 crore.

As chief accountant of the company, you are asked by the managing director to draft the notes on accounts for inclusion in the annual report for 2019-2020.

## AS 2

- (b) XYZ Limited is engaged in a business of manufacturing and supply of lubricants. For manufacturing of lubricant, company generally requires two types of raw material i.e. 1) Base Oil & 2) Additives.

For Base Oil procurement, the company's cost structure per litre is as follows:

- (1) Material Cost (Base Oil) - ₹ 100 per Litre
- (2) Custom Duty – 5% on Material Cost.
- (3) Storage Tank Rent – ₹ 2 per litre.
- (4) Custom House Agent charges – ₹ 1 per litre

- (5) Inward Freight (i.e. Transportation cost for transferring the goods from Shore Tanks to Plants) – ₹ 3 per litre.

Costing manager informed you the following facts:

- (1) We have purchased a 100 Litres of Base Oil from one of our Group Company situated in Singapore.
- (2) Base Oil material is duly arrived at port and goods have been duly unloaded in storage tanks.
- (3) Due to Covid 19 Lockdown, Base Oil is still lying in storage tanks as at 31.03.2020.

Costing Manager requires your assistance at what value Base Oil should be recorded as Inventory as per the provisions of AS 2:

### AS 3

2. (a) From the following summary of cash account for the year ended 31<sup>st</sup> March, 2020 of X Ltd., calculate cash flow from Operating Activities using direct method.

Particulars	₹	Particulars	₹
To Balance b/d	1,25,000	By Cash purchases	1,30,000
To Cash sales	1,50,000	By Trade payables	1,44,000
To Trade receivables	1,60,000	By Rent paid	50,000
To Interest & dividend	2,000	By Office expenses	25,000
To Loan from Bank	1,50,000	By Income tax	30,000
To Sale of investment	80,000	By Investment	90,000
To Trade commission	40,000	By Repayment of loan	1,00,000
		By Interest on loan	7,000
		By Balance c/d	<u>1,31,000</u>
	<u>7,07,000</u>		<u>7,07,000</u>

### AS 4

- (b) Veera Limited is private Limited company. The year-end date for the company is 31<sup>st</sup> March, 2020. As at 31<sup>st</sup> March, 2020 a company has a total debtors of 30 crore (entire amount is overdue for payment). A company generally provide a provision for doubtful debts @ 5% of overdue debtor's amount and therefore during the year 2019-2020, Veera Limited recognises a provision for doubtful debts amounting ₹ 1.5 crore. Out of ₹ 30 crore, Company has one debtor called Swan Limited from which Veera limited has booked a receivable balance of ₹ 5 crore. On 31<sup>st</sup> March, 2020, RBI issues a list of defaulters in their website where Swan Limited had defaulted in paying the 5 EMI to their current banker. Hence company had made a

provision of 50% for Swan Limited amounting ₹ 2.5 crore (including general provision for doubtful debts @ 5%). On 30<sup>th</sup> April, 2020, Swan Limited had filed the Bankruptcy application and become bankrupt on 15<sup>th</sup> May, 2020.

Board members of Veera Limited decided a board meeting date of 20<sup>th</sup> May, 2020 for adopting the 2019-2020 financials

Determine the Net Debtor Balance as at year ended 31<sup>st</sup> March, 2020.

**AS 12**

3. (a) XYZ Limited, engaged in providing support services to its group of companies which are situated outside India. The services provided broadly relates to support in new market development, financial control for group companies, taxation, marketing support, supply chain support and other related services. In respect of the export services, company is entitled to get benefit under the Service exports from India Scheme (SEIS). As per the scheme initiated by the government, they will give 5% incentive on net foreign exchange earned on services rendered to foreign entities. As per scheme, incentive will be in the form of duty credit which can be used for payment of various taxes levied on goods and services. These scripts come with a validity period of 18 months and with option to transfer or sale to other parties.

During the current period 2019-2020, company have raised an invoice amounting ₹ 2,00,000 for the above mentioned services to one of its group company i.e. Vera Limited - Singapore. Based on the company's previous experience, the Vera limited had defaulted in payments of sale proceeds. There were no foreign currency expenditure in FY 2019-2020.

You need to suggest the appropriate accounting treatment to finance manager as per the provisions of AS 12.

**AS 13**

- (b) The following are the details of various investments held by Great Finance Ltd. as on 31.03.2020: (₹ in lakh)

Scripts		Cost	Market Price
A.	Equity Shares		
	A	55	57.50
	B	34	31.20
	C	72	67.00
	D	48	53.00
	E	88	102.30
	F	24	18.50

B.	Mutual Funds		
	MF-1	50.55	46.10
	MF-2	27.00	29.00
	MF-3	16.00	12.90
C.	PSUs Bonds		
	PB-1	14.00	15.50
	PB-2	9.00	8.70
	PB-3	7.00	7.80

- (i) Find out the value of investments as on 31.03.2020 when:
- Considered category-wise
  - Considered scrip-wise
- Assuming investments in equity shares and mutual funds are current investments.
- (ii) Can depreciation in the value of investment in mutual funds be offset against appreciation in the value of investment in equity shares and bonds of PSUs. Comment.

**AS 15**

4. Luv limited is a private Limited company. As per HR policy of Luv Limited, Grade F employees are eligible for sabbatical leave (Long term compensated absences as per AS 15). Till previous year, there were 15 employees who are eligible for Sabbatical leave and company had duly recorded the liability for long term compensated absences based on the actuarial valuation for eligible employees. During the current period out of total 15 employees, 13 employees have left the organisation and only 2 employees are continuing in LUV Limited. Due to budget constraint, CFO has denied to involve actuary and told finance manager to determine the liability based on the recent actuarial report available with them. Finance manager ensured the following:

- There is no material change in interest rate
- There is no change in fair value of plan assets.

Based on that, Finance manager have manually computed an amount of ₹ 5,00,000 (considering last year actuarial report as base) towards long term compensation liability without involving Actuary during the period ended 31.03.2020. Is this treatment is in line with AS 15?

**AS 19**

5. (a) WIN Ltd. has entered into a three year lease arrangement with Tanya sports club in respect of Fitness Equipment costing ₹ 16,99,999.50. The annual lease payments to be made at the end of each year are structured in such a way that the sum of the Present Values of the lease payments and that of the residual value together equal the cost of the equipment leased out. The unguaranteed residual value of the equipment at the expiry of the lease is estimated to be ₹ 1,33,500. The assets would revert to the lessor at the end of the lease. Given that the implicit rate of interest is 10% you are required to compute the amount of the annul lease and the unearned finance income. Discounting Factor at 10% for years 1, 2 and 3 are 0.909, 0.826 and 0.751 respectively.
- (b) ABC Company limited had an investment in Venture Capital amounting ₹ 10 crore. Venture capital in turn had invested in the below portfolio companies (New Start- ups) on behalf of ABC Limited:

Portfolio Companies	Amount of investment (in crore)
Oscar Limited	2
Zee Limited	3
Star Limited	4
Sony Limited	<u>1</u>
<b>Total</b>	<b><u>10</u></b>

During the financial year 2019-2020, Venture Capital had sold their investment in Star Limited and realised an amount of ₹ 8 crore on sale of shares of star Limited and entire proceeds of ₹ 8 crore have been transferred by Venture Capital to ABC Limited.

Accounts manager have received the following additional information from venture capital on 31.03.2020:

- (1) 8 crore have been deducted from their cost of investment and carrying amount of investment as at year end is 2 crore.
- (2) Company had to offer capital gain tax @ 20% on the net sale consideration of ₹ 4 crore.
- (3) Due to COVID 19, the remaining start-ups (i.e. Oscar Limited, Zee Limited, and Sony Limited) are not performing well and sooner they will wind up their operations. Venture capital is monitoring the situation and if required they will provide impairment in June 2020 Quarter.

You need to suggest accounts manager the correct accounting treatment as per AS 22 "Accounting for Taxes on Income".

**AS 25**

6. (a) A Ltd. is dealing in seasonal products. The following is the quarterly sales pattern of the product:

Quarter 1	II	III	IV
Ending 31 <sup>st</sup> March 20%	30 <sup>th</sup> June 20%	30 <sup>th</sup> September 50%	31 <sup>st</sup> December 25%*

For the first quarter ending 31<sup>st</sup> March, 2020, A Ltd. gives you the following information:

	₹ in crore
Sales	100
Salary and other expenses	60
Advertisement expenses (routine)	4
Administrative and selling expenses	8

While preparing interim financial report for the first quarter, A Ltd. wants to defer ₹ 42 crore expenditure to third quarter on the argument that third quarter is having more sales, therefore third quarter should be debited by higher expenditure, considering the seasonal nature of business. The expenditures are uniform throughout all quarters.

Calculate the result of first quarter as per AS 25 and comment on the A Ltd. view.

**AS 26**

- (b) X Ltd. carried on business of manufacturing of Bakery products. The company has two trademarks "Sun" and "Surya". One month before the company knows through one of the marketing managers that both trademarks have allegedly been infringed by other competitors engaged in the same field. After investigation, legal department of the company informed that it had weak case on trademark "Sun" if and strong case in regard to trademark "Surya".

X Ltd. incurred additional legal fees to stop infringement on both trademarks.

Both trademarks have a remaining legal life of 10 years.

How should X Ltd. account for these legal costs incurred relating to the two trademarks?

7. (a) V Ltd. has 40% share in joint venture with S Ltd. V Ltd. sold a machinery of ₹ 200 lakh (WDV value), for ₹ 240 lakh on behalf of the Joint Venture. Calculate how

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\* P.S. :Read 25% as 10%.

much profit V Ltd. should recognize in its book in case the joint venture is a

- Jointly controlled operation.
- Jointly controlled asset.
- Jointly controlled entity.

Will your answer change, if V Ltd. sold a machinery of ₹ 200 lakh (WDV value), for ₹ 240 lakh to the Joint Venture?

#### AS 28

- (b) H Ltd. which is in a business of manufacturing and export of its product. Sometimes, back in 2018, the Government put restriction on export of goods exported by H Ltd. and due to that restriction H Ltd. impaired its assets. H Ltd. acquired identifiable assets worth of ₹ 4,000 lakh for ₹ 6,000 lakh at the end of the year 2014. The difference is treated as goodwill. The useful life of identifiable assets is 15 years and depreciated on straight line basis. When Government put the restriction at the end of 2018, the company recognised the impairment loss by determining the recoverable amount of assets for ₹ 2,720 lakh. In 2020 Government lifted the restriction imposed on the export and due to this favourable change, H Ltd. re-estimate recoverable amount, which was estimated at ₹ 3,420 lakh.

Required:

- (i) Calculation and allocation of impairment loss in 2018.
- (ii) Reversal of impairment loss and its allocation as per AS 28 in 2020.

#### AS 29

8. An entity engaged in automobile sector has assessed the impact of COVID-19 outbreak on its future viability of business model. Senior Management has identified the need for restructuring some of its business activities and retrenching its employees in many areas. Senior Management is drawing up a plan for the consideration of the Board of Directors in their meeting scheduled in May 2020, which is subsequent to the reporting date of the current financial year i.e. 31<sup>st</sup> March, 2020. Can the entity recognise provisions for restructuring costs in the financial statements of the current year i.e. 2019-2020?
9. An entity engaged in tourism and hospitality is heavily dependent upon the tourists from India travelling overseas and foreign nationals visiting India. In the light of COVID-19 outbreak across the globe, the entity has analysed the likely impact of customers behaviour coupled with employment scenario on its revenue over the next one year. This review has indicated possible substantial operating losses during the next financial year i.e. 2020-2021. The entity is exploring the possibility of recognising certain amount of operating losses as provision in the financial statements of the current year itself i.e. 2019-2020. Is this accounting permitted under AS?

**Ind AS vs IFRS**

10. Highlight significant differences Ind AS 7 vis-a-vis AS 3 with reference to the followings:

- (i) Bank Overdraft Repayable on-demand;
- (ii) Cash Flows associated with extra-ordinary activities;
- (iii) Investment in Subsidiaries, Associates and Joint Ventures (Investee), and
- (iv) Disclosures.

**Accounting for Corporate Restructuring**

11. The summarised Balance Sheet of P Ltd. as on 31<sup>st</sup> March, 2020 is as under:

**I. Equity and Liabilities**

	Particulars	₹
1.	Shareholders Fund	
	Equity shares of ₹10 each	3,00,000
	6,000, 9% cumulative preference shares of ₹ 10 each	60,000
	Reserves & Surplus	(1,70,000)
2.	Non-current Liabilities	
	10% Debentures of ₹ 100 each	2,00,000
3.	Current Liabilities	
	Interest accrued on Debentures	20,000
	Trade Payables	<u>1,50,000</u>
	<b>Total</b>	<b><u>5,60,000</u></b>

**II. Assets**

	Particulars	₹
1.	Non-current Assets	
	Property, Plant and Equipment	3,40,000
	Intangible - Goodwill	10,000
2.	Current Assets	
	Inventory	80,000
	Trade Receivables	1,10,000
	Bank Balance	<u>20,000</u>
	<b>Total</b>	<b><u>5,60,000</u></b>

The following scheme of reconstruction is passed and sanctioned by the Court:

- (i) A new company R Ltd. is formed with authorised share capital of ₹ 5,00,000 divided into 40,000 Equity Shares of ₹ 10 each and 10,000 9% Preference Shares of ₹ 10 each.
- (ii) The new company will acquire the assets and liabilities of P Ltd. on the following terms:
  - (a) P Ltd.'s debentures are paid by similar debentures in new company and for outstanding accrued interest on debentures, equity shares of equal amount are issued at par.
  - (b) The trade payables are paid by issue of 12,000 equity shares at par in full and final settlement of their claims.
  - (c) Preference shareholders are to get equal number of equity shares issued at par. Dividend on preference shares is in arrears for three years. Preference shareholders to forgo dividend for two years. For balance dividend, equity shares of equal amount are issued at par.
  - (d) Equity shareholders are issued one share at par for every three shares held in P Ltd.
- (iii) Current Assets are to be taken at book value (except inventory, which is to be reduced by 10%). Goodwill is to be eliminated. Balance of purchase consideration being attributed to property, plant and equipment.
- (iv) Remaining equity shares of the new company are issued to public at par fully paid up.
- (v) Expenses of ₹ 5,000 to be met from bank balance of P Ltd.

You are required to present:

- (a) In the books of P Ltd.:
  - (i) Realisation and Reconstruction (combined) account.
  - (ii) Equity Shareholders' account.
- (b) In the books of R Ltd.
  - (i) Bank Account.
  - (ii) Summarised Balance Sheet with notes to accounts.

**Consolidated Financial Statements**

12. On 1<sup>st</sup> April, 2019, Investments Ltd. a new company, raised its first Capital of ₹ 3,00,000 from the issue of 30,000 shares of ₹ 10 each at par, and on that date acquired the following shareholdings:

A Ltd. – 3,000 shares of ₹ 10 each fully paid for ₹ 35,000

B Ltd. – 10,000 shares of ₹ 10 each fully paid for ₹ 72,000

C Ltd. – 8,000 shares of ₹ 10 each fully paid for ₹ 92,000.

Apart from these transactions and those detailed below, investments Ltd. neither paid nor received other monies during 2019-2020.

The following are the summarised Balance Sheets of the Subsidiary Companies on 31<sup>st</sup> March, 2020:

	A Ltd. ₹	B Ltd. ₹	C Ltd. ₹
Goodwill	4,000	—	15,000
Freehold Property	18,000	41,000	50,000
Plant	16,000	30,000	12,000
Inventory	11,000	32,000	21,000
Trade Receivables	4,000	8,000	17,000
Cash at Bank	1,000	2,000	11,500
Profit and Loss Account	—	18,000	—
	<u>54,000</u>	<u>1,31,000</u>	<u>1,26,500</u>
Share Capital	40,000	1,20,000	1,00,000
Reserves (as on 1.4.2019)	3,000	—	7,500
Profit and Loss Account	6,000	—	15,000
Trade Payables	<u>5,000</u>	<u>11,000</u>	<u>4,000</u>
	<u>54,000</u>	<u>1,31,000</u>	<u>1,26,500</u>

Other relevant information:

- (1) The freehold property of C Ltd. is to be revalued at ₹ 65,000 as on 1.4.2019.
- (2) Additional depreciation for the year 2019-2020 of ₹ 3,000 on the plant of B Ltd is to be provided.
- (3) The inventory of A Ltd. as on 31<sup>st</sup> March, 2020 has been undervalued by ₹ 2,000 and is to be adjusted.
- (4) As on 31<sup>st</sup> March, 2020 Investments Ltd. owed A Ltd. ₹ 3,500 and is owed ₹ 6,000 by B Ltd. C Ltd. is owed ₹ 1,000 by A Ltd. and ₹ 2,000 by B Ltd.

- (5) The balances on Profit and Loss Accounts as on 31<sup>st</sup> March, 2019 were: A Ltd. ₹ 2,000 (credit); B Ltd. ₹ 12,000 (debit); and C Ltd. ₹ 4,000 (credit).

The credit balances of A Ltd. and C Ltd. were wholly distributed as dividends in June, 2019.

- (6) During 2019-2020, A Ltd. and C Ltd. declared and paid interim dividends of 8% and 10% respectively.

You are required to prepare the Consolidated Balance Sheet of Investments Ltd. and its subsidiary companies as on 31<sup>st</sup> March, 2020, ignore taxation.

### Financial Instruments

13. (a) T Motors Ltd. has issued puttable ordinary shares and puttable 'A' ordinary shares whereby holders of ordinary shares are entitled to one vote per share whereas holders of 'A' ordinary shares are not entitled to any voting rights. The holders of two classes of shares are equally entitled to receive share in net assets upon liquidation. Examine whether the financial instrument will be classified as equity.
- (b) A Ltd. invested in equity shares of C Ltd. on 15<sup>th</sup> March for ₹ 10,000. Transaction costs were ₹ 500 in addition to the basic cost of ₹ 10,000. On 31<sup>st</sup> March, the fair value of the equity shares was ₹ 11,200 and market rate of interest is 10% per annum for a 10 year loan. Pass necessary journal entries. Analyse the measurement principle and pass necessary journal entries.
- (c) Metallica Ltd. has made an investment in equity instrument of a company – Castor Ltd. for 19% equity stake. Significant influence not exercised. The investment was made for ₹ 5,00,000 for 10,000 equity shares on 1<sup>st</sup> April, 2019. On 30<sup>th</sup> June, 2019, the fair value per equity share is ₹ 45. The Company has taken an irrevocable option to measure such investment at fair value through other comprehensive income. Analyse the measurement principle and pass necessary journal entries.

### Share Based Payment

14. Kishan Ltd. grants 250 stock options to each of its 800 employees on 1<sup>st</sup> April, 2018, conditional upon the employee remaining in the company for 2 years. The fair value of the option is ₹ 22 on the grant date and the exercise price is ₹ 70 per share. The number of employees expected to satisfy service condition are 720 in the first year and 670 in the second year. 30 employees left the company in the first year of service and 700 employees have actually completed second year vesting period. The profit of the enterprise before amortisation of the compensation cost on account of ESOP is ₹ 58,65,000 for 2018-2019 and ₹ 76,45,000 for 2019-2020. The fair value of shares for these years were ₹ 90 and ₹ 100 respectively. The company has 5 lakh shares of ₹ 10 each, outstanding at the end of both years.

Ignore taxation impacts, compute Basic and Diluted EPS for both the years.

**Mutual Funds**

15. A Mutual Fund raised funds on 01.04.2020 by issuing 10 lakh units @ 17.50 per unit. Out of this Fund, ₹ 160 lakh invested in several capital market instruments. The initial expenses amount to ₹ 9 lakh. During June, 2020, the Fund sold certain securities worth ₹ 100 lakh for ₹ 125 lakh and it bought certain securities for ₹ 90 lakh. The Fund Management expenses amounting to ₹ 5 lakh per month. The dividend earned was ₹ 3 lakh. 80% of the realised earnings were distributed among the unit holders. The market value of the portfolio was ₹ 175 lakh. Determine Net Asset value (NAV) per unit as on 30.06.2020.

**NBFC**

16. While closing its books of account on 31<sup>st</sup> March, 2020 a Non-Banking Finance Company has its advances classified as follows:

	₹ in lakh
Standard assets	16,800
Sub-standard assets	1,340
Secured portions of doubtful debts:	
— upto one year	320
— one year to three years	90
— more than three years	30
Unsecured portions of doubtful debts	97
Loss assets	48

Calculate the amount of provision, which must be made against the advances as per

- 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.

**Valuation of Brand**

17. A Ltd. is a manufacturer-cum-dealer of 'Ruff-Tuff' brand of trousers. With passage of time, its brand has been well accepted in the market. The company has been approached by a foreign company engaged in the same trade to enter as partner in its business. A Ltd., in order to negotiate the deal wants to get its brand valued. The following information based on market research is available:
- Garment industry of which A Ltd. is a constituent, is expected to grow by 9% per annum during the next five years. The present market size of the industry is ₹ 7,500 crore.

- (ii) There are other brands both national and international in the market. The existence of duplicate brands is unavoidable. The share of such players is estimated to be 63% of the total industry market. The market share of other national brands will increase @ 0.25% year on year basis in the next 5 years. The share of international brands is expected to grow 1.5 times of national brands. But the existence of duplicate brands is to fall by 2.5% over the period of next 5 years, spread equally.
- (iii) The expected foreign partner needs the production line of the company to be re-engineered which will lead to an increase in the yield of the company by 3% after one year over the present yield of 10% followed thereafter by further increase of 5% year on year.

Following the market oriented approach, determine the brand value to be used for negotiation with the foreign company, considering the discount factor for 1<sup>st</sup> five years as 0.909; 0.826; 0.751; 0.683 and 0.621 (Monetary values in crore to be rounded off to nearest 2 decimal places).

### Value Added Statement

18. The following data is given in respect of Happy Ltd. for the year ended 31.3.2020:

#### Abstract of Statement of Profit & Loss for the year ended 31.3.2020

	₹ in '000	₹ in '000
<u>Income</u>		
Sale	2,380	
Other Income	<u>370</u>	<u>2,750</u>
<u>Expenditure</u>		
Operating Cost	1,855	
Administrative Expenses	150	
Interest Cost	215	
Depreciation	<u>240</u>	<u>2,460</u>
Profit before tax		290
Provision for tax		87
Profit after tax		203
Credit balance as per last balance sheet		<u>60</u>
		<u>263</u>

Other Information:

		₹ in '000
1.	Operating cost consists of:	
	Material cost	1,220

	Wages, salaries & other benefits to employees	330
	Local taxes including cess	70
	Other manufacturing expenses	235
2.	Administrative expenses consist of:	
	Directors' Remuneration	55
	Audit Fee	25
	Provision for doubtful debts	8
	Others	62
3.	Interest cost consists of:	
	Interest on 10% debentures	180
	Interest on temporary bank overdraft	35
4.	The capital structure of the company consists of:	
	Equity share capital	1,500
	9% Preference share capital	600

You are required to prepare a Gross Value Added (GVA) statement and calculate the following ratios:

- GVA to Material Cost Ratio (Industry average 0.80)
- GVA to Employee Cost Ratio (Industry average 3.82)
- GVA to Sales Ratio (Industry average 0.70)
- GVA to Capital Employed Ratio (Industry average 0.30)

Also comment on the utility of the above ratios in comparison to the Industry average.

#### Market Value Added

19. The capital structure of W Ltd. whose shares are quoted on the NSE is as under:

Equity Shares of ₹ 100 each fully paid	₹ 505 lakh
9% Convertible Pref. Shares of ₹ 10 each	₹ 150 lakh
12% Secured Debentures of ₹ 10 each	5,00,000
Reserves	₹ 101 lakh
Statutory Fund	₹ 50,50,000

The Statutory Fund is compulsorily required to be invested in Government Securities. The ordinary shares are quoted at a premium of 500%; Preference Shares at ₹ 30 per share and debentures at par value.

You are required to ascertain the Market Value added of the company and also give your assessment on the market value added as calculated by you.

### Human Resource Accounting

20. From the following information in respect of E Ltd., calculate the total value of human capital by following Lev and Schwartz model:

#### Distribution of employees of E Ltd.

Age	Unskilled		Semi-skilled		Skilled	
	No.	Av. Annual earnings (₹ '000)	No.	Av. Annual earnings (₹ '000)	No.	Av. annual earnings (₹ '000)
30-39	70	3	50	3.5	30	5
40-49	20	4	15	5	15	6
50-54	10	5	10	6	5	7

Apply 15% discount factor.

### SUGGESTED ANSWERS

1. (a) As per AS 1, 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. In the case of a change in accounting policies which has a material effect in the current period, the amount by which any item in the financial statements is affected by such change should also be disclosed to the extent ascertainable. Where such amount is not ascertainable, wholly or in part, the fact should be indicated. Accordingly, the notes on accounts should properly disclose the change and its effect.

#### Notes on Accounts:

- During the year inventory has been valued at factory cost, against the practice of valuing it at prime cost as was the practice till last year. This has been done to take cognizance of the more capital intensive method of production on account of heavy capital expenditure during the year. As a result of this change, the year-end inventory has been valued at ₹ 50 crore and the profit for the year is increased by ₹ 20 crore.
- In view of the heavy capital intensive method of production introduced during the year, the company has decided to change the method of providing depreciation from reducing balance method to straight line method. As a result of this change, depreciation has been provided at ₹ 27 crore which is lower than the charge which

would have been made had the old method and the old rates been applied, by ₹ 18 crore. To that extent, the profit for the year is increased.

- (iii) So far, the company has been providing 2% of sales for meeting "after sales expenses during the warranty period. With the improved method of production, the probability of defects occurring in the products has reduced considerably. Hence, the company has decided not to make provision for such expenses but to account for the same as and when expenses are incurred. Due to this change, the profit for the year is increased by ₹ 12 crore than would have been the case if the old policy were to continue.
- (iv) The company has decided to provide ₹ 10 crore for the permanent fall in the value of investments which has taken place over the period of past five years. The provision so made has reduced the profit disclosed in the accounts by ₹ 10 crore.

(b)

Particulars	Amount	Remarks
Material Cost	10,000	(100 Quantity x ₹ 100)
Custom Duty	500	(5% of Material Value)
Storage Tank	200	(100 Quantity x ₹ 2)
CHA Charges	100	(100 Quantity x ₹ 1)
Inward Freight	<u>0</u>	<Not yet incurred>
<b>Total</b>	<b><u>10,800</u></b>	

As per AS 2, the cost of inventories shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

As per AS 2, the costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services. Trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

In above case, all the expenses (i.e. Custom duty, Storage Tank, CHA Charges) are directly attributable to the acquisition of material. Though, inward freight cost is directly attributable to the acquisition but it will be incurred once movement of goods happened between the Storage Tanks to plant, as at year end, the goods are still lying at Shore Tanks and hence such inward freight cost is not directly attributable to the acquisition of materials and hence considered as NIL.

2. (a)

**Cash Flow Statement of X Ltd.**  
**for the year ended 31<sup>st</sup> March, 2020 (Direct Method)**

Particulars	₹	₹
Cash flow from Operating Activities:		
Cash received from sale of goods	1,50,000	
Cash received from trade receivables	1,60,000	
Trade commission received	<u>40,000</u>	3,50,000
Less: Payment for cash purchases	1,30,000	
Payment to trade payables	1,44,000	
Office expenses	25,000	
Rent	50,000	
Payment of Income-tax	<u>30,000</u>	<u>(3,79,000)</u>
Net cash used in Operating Activities		<u>(29,000)</u>

- (b) As per the definition of 'Events after the Reporting Period' of AS 4, financial statements should be adjusted for events occurring after the reporting period that provide evidence of conditions that existed at the end of the reporting period. In the instant case, the Swan Limited had defaulted in payments of their EMI's before the end of the reporting period, i.e., on 31<sup>st</sup> March 2020. Therefore, the condition exists at the end of the reporting date though the debtor is declared Bankrupt after the reporting period.

Accordingly, full provision for bad debt amounting to ₹ 5 crore should be made to cover the loss arising due to the bankruptcy of the Swan Limited in the financial statements for the year ended March 31, 2020. Since provision for bad debts on account of amount due from that debtor was made @ 5%, XYZ Ltd should provide for the remaining amount as a consequence of declaration of this debtor as bankrupt i.e. ₹ 4.75 crore.

**Calculation:**

Particulars	Swan Limited	Others	Total
Balance as at 31.03.2020	5	25	30
General PDD @ 5%	(0.25)	(1.25)	(1.5)
Increased PDD after RBI list of defaulters	(2.25)		(2.25)
Adjusting event	(2.50)	0	(2.50)
<b>Total</b>	<b>0</b>	<b>23.75</b>	<b>23.75</b>

Debtor as at 31.03.2020 will be ₹ 23.75 crore.

3. (a) As per para 6 of AS 12, Government grants available to the enterprise are considered for inclusion in accounts: (i) where there is reasonable assurance that the enterprise will comply with the conditions attached to them; and (ii) where such benefits have been earned by the enterprise and it is reasonably certain that the ultimate collection will be made. Mere receipt of a grant is not necessarily a conclusive evidence that conditions attaching to the grant have been or will be fulfilled.

Hence in the above scenario, Duty Credit scrips is provided by the government on 5 % of net foreign exchange earned. Based on the company's previous experience, the Vera limited (Customer) had defaulted in payments of sale proceeds and hence XYZ Limited does not have reasonable assurance that they will comply with the important condition of net foreign exchange earned and hence should not record a duty credit scrips as there is no reasonable assurance that the grant will be received from the government.

(b) (i) **Value of investments as on 31.3.2020**

Current investments for each category shall be valued at cost or market value, whichever is lower. For this purpose, the investments in each category shall be valued at the lower of cost and market value either scrip-wise or category-wise.

(a) **Value of Investments as on 31.3.2020 (category-wise)**

Type of Investment	Valuation Principle	Cost (₹ in lakh)	Fair value i.e. market price (₹ in lakh)	Value (₹ in lakh)
Equity Shares (Aggregated)	Lower of cost or fair value	321.00	329.50	321.00
Mutual Funds	Lower of cost or fair value	93.55	88.00	88.00
PSUs Bonds	Cost	30.00	32.00	30.00
				439.00

(b) **Value of Investments as on 31.3.2020 (scrip-wise)**

Scripts:		Cost	Market Price	Value	
A.	Equity Shares (Lower of cost or fair value)				
	A	55.00	57.50	55.00	
	B	34.00	31.20	31.20	
	C	72.00	67.00	67.00	

	D	48.00	53.00	48.00	
	E	88.00	102.30	88.00	
	F	24.00	18.50	<u>18.50</u>	307.70
B.	Mutual funds (Lower of cost or fair value)				
	MF-1	50.55	46.10	46.10	
	MF-2	27.00	29.00	27.00	
	MF-3	16.00	12.90	<u>12.90</u>	86.00
C.	PSUs Bonds				
	PB-1	14.00	15.50	14.00	
	PB-2	9.00	8.70	9.00	
	PB-3	7.00	7.80	<u>7.00</u>	<u>30.00</u>
					<u>423.70</u>

(ii) Inter category adjustments of appreciation and depreciation in values of investments cannot be done. Therefore, it is not possible to offset depreciation in investment in mutual funds against appreciation in the value of investments in equity shares and bonds of PSUs.

4. As per para 58 of the AS 15, the detailed actuarial valuation of the present value of defined benefit obligations may be made at intervals not exceeding three years. However, with a view that the amounts recognised in the financial statements do not differ materially from the amounts that would be determined at the balance sheet date, the most recent valuation is reviewed at the balance sheet date and updated to reflect any material transactions and other material changes in circumstances (including changes in interest rates) between the date of valuation and the balance sheet date. The fair value of any plan assets is determined at each balance sheet.

Since AS-15 (Para 58) states that actuarial valuation needs to be done at least once in three years. Since management had done the actuarial valuation in Previous Year, they can go ahead with exemption for this year subject to evaluation and conclusion by management as at balance sheet date that there are no significant changes in the amount of liability compared to previous year. Hence working done by the finance manager is appropriate. It is in line with AS 15, since company had recently done the actuarial valuation in previous year and there is no material changes in the external environment.

5. (a) (i) **Computation of annual lease payment to the lessor**

	₹
Cost of equipment	16,99,999.50
Unguaranteed residual value	1,33,500.00

Present value of residual value after third year @ 10% (₹ 1,33,500 × 0.751)	1,00,258.50
Fair value to be recovered from lease payments (₹ 16,99,999.50 – ₹ 1,00,258.50)	15,99,741.00
Present value of annuity for three years is 2.486	
Annual lease payment = ₹ 15,99,741 / 2.486	6,43,500.00

## (ii) Computation of Unearned Finance Income

	₹
Total lease payments (₹ 6,43,500 × 3)	19,30,500.00
Add: Unguaranteed residual value	<u>1,33,500.00</u>
Gross investment in the lease	20,64,000.00
Less: Present value of investment (lease payments and residual value) (₹ 1,00,258.50 + ₹ 15,99,741)	<u>(16,99,999.50)</u>
Unearned finance income	<u>3,64,000.50</u>

- (b) As company have to pay capital gain tax @ 20% on the net sale consideration as per income tax laws, then company have to recognise a current tax liability of 0.8 crore.

Particulars	Amount
Sale Consideration	8
Cost of Investment	<u>4</u>
Net gain on Sale Consideration	<u>4</u>
Tax @ 20%	0.8

As per para 7 of AS 22, Timing differences are those differences between taxable income and accounting income for a period that originate in one period and are capable of reversal in one or more subsequent periods.

Particulars	Amount	Rationale
Taxable Income	4	As per income tax laws
Accounting Income	Nil	As the same is deducted from the cost of investment
<b>Timing Difference</b>	<b>4</b>	

As per para 15 of AS 22, deferred tax assets should be recognised and carried forward only to the extent that there is a reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realised.

Since in current scenario, due to Covid 19 the portfolio companies are not performing well and hence company may not have sufficient future taxable income which will reverse deferred tax assets and hence company should not recognise DTA of ₹ 0.8 crore and company should recognise only current tax liability of ₹ 0.8 crore.

**6. (a) Calculation of the result of first quarter as per AS 25**

Particulars	(₹ in crore)
Result of first quarter ending 31 <sup>st</sup> March, 2020	
Turnover	100
Other Income	<u>Nil</u>
Total (a)	<u>100</u>
Less: Changes in inventories	Nil
Salaries and other expenses	60
Administrative and selling expenses (4 + 8)	<u>12</u>
Total (b)	<u>72</u>
Profit (a)-(b)	28

As per AS 25 on Interim Financial Reporting, the income and expense should be recognised when they are earned and incurred respectively. As per AS 25, the costs should be anticipated or deferred only when

- (i) it is appropriate to anticipate that type of cost at the end of the financial year, and
- (ii) costs are incurred unevenly during the financial year of an enterprise.

The expenditure of ₹ 42 crore made in the first quarter shall be charge in that quarter only i.e. when they are earned and incurred. Therefore, the argument given by A Ltd. relating to deferment of ₹ 42 crore is not tenable as expenditures are uniform throughout all quarters.

- (b)** As per para 59 of AS 26, subsequent expenditure on an intangible asset after its purchase or its completion should be recognized as an expense. However, if the subsequent expenditure enables the asset to generate future economic benefits in excess of its originally assessed standard of performance or can be measured and attributed to the asset reliably, then such subsequent expenditure should be added to the cost of the intangible asset.

The legal costs incurred for both the trademarks do not enable them to generate future economic benefits in excess of its originally assessed standard of performance. They only ensure to maintain them if the case is decided in favour of the company. Therefore, such legal costs must be recognised as an expense.

7. (a) (i) Machinery sold by V Ltd. is on behalf of the Joint Venture

V Ltd. will be recognizing 40% shares of profit in its financial statements irrespective of the kind of Joint Venture.

**Calculation of share of profit of V Ltd. in the Joint Venture would be:**

(₹ in lakh)

Sale price of machinery	240
Less: WDV of machinery	<u>(200)</u>
Profit on sale	<u>40</u>
Share of V Ltd. (40 lakh x 40%)	16

- (ii) Machinery is sold by V Ltd. to the Joint Venture

As per AS 27, in case of 'jointly controlled operation' and 'jointly controlled assets' joint venture, the venturer should recognize the profit to the extent of other venturer's interest.

In the instant case, V Ltd. should recognize profit of  $(240 - 200) = 40 \times 60\%$

= ₹ 24 lakh only.

However, in case of jointly controlled entities, V Ltd. should recognize full profit of ₹ 40 lakh in its separate financial statements. However, while preparing consolidated financial statement it should recognize the profit only to the extent of 60% i.e. ₹ 24 lakh.

- (b) (i) **Calculation and allocation of impairment loss in 2018**

(Amount in ₹ lakh)

	Goodwill	Identifiable assets	Total
Historical cost	2,000	4,000	6,000
Accumulated depreciation/amortisation (4 yrs.)	<u>(1,600)</u>	<u>(1,067)</u>	<u>(2,667)</u>
Carrying amount before impairment	400	2,933	3,333
Impairment loss*	<u>(400)</u>	<u>(213)</u>	<u>(613)</u>
Carrying amount after impairment loss	<u>0</u>	<u>2,720</u>	<u>2,720</u>

**\*Notes:**

- As per para 87 of AS 28, an impairment loss should be allocated to reduce the carrying amount of the assets of the unit in the following order:
  - first, to goodwill allocated to the cash-generating unit (if any); and

(b) then, to the other assets of the unit on a pro-rata basis based on the carrying amount of each asset in the unit.

Hence, first goodwill is impaired at full value and then identifiable assets are impaired to arrive at recoverable value.

2. Since the goodwill has arisen on acquisition of assets, AS 14 comes into the picture. As per para 19 of AS 14, goodwill shall amortise over a period not exceeding five years unless a somewhat longer period can be justified. Therefore, the amortization period of goodwill is considered as 5 years.

(ii) Carrying amount of the assets at the end of 2020 (Amount in ₹ lakh)

End of 2020	Goodwill	Identifiable assets	Total
Carrying amount in 2020	0	2,225	2,225
Add: Reversal of impairment loss (W.N.2)	-	175	175
Carrying amount after reversal of impairment loss	-	2,400	2,400

**Working Note:**

1. Calculation of depreciation after impairment till 2020 and reversal of impairment loss in 2020

(Amount in ₹ lakh)			
	Goodwill	Identifiable assets	Total
Carrying amount after impairment loss in 2018	0	2,720	2,720
Additional depreciation (i.e. $(2,720/11) \times 2$ )	-	(495)	(495)
Carrying amount	0	2,225	2,225
Recoverable amount			3,420
Excess of recoverable amount over carrying amount			1,195

**Note:** It is assumed that the restriction by the Government has been lifted at the end of the year 2020.

2. Determination of the amount to be impaired by calculating depreciated historical cost of the identifiable assets without impairment at the end of 2020

(Amount in ₹ lakh)

End of 2020	Identifiable assets
Historical cost	4,000

Accumulated depreciation	(266.67 x 6 years) = <u>(1,600)</u>
Depreciated historical cost	2,400
Carrying amount (in W.N.1)	<u>2,225</u>
Amount of reversal of impairment loss	<u>175</u>

**Notes:**

- As per para 107 of AS 28, in allocating a reversal of an impairment loss for a cash-generating unit, the carrying amount of an asset should not be increased above the lower of:
  - its recoverable amount (if determinable); and
  - the carrying amount that would have been determined (net of amortisation or depreciation) had no impairment loss been recognised for the asset in prior accounting periods.

Hence impairment loss reversal is restricted to ₹ 175 lakh only.
- The reversal of impairment loss took place in the 6<sup>th</sup> year. However, goodwill is amortised in 5 years. Therefore, there would be no balance in the goodwill account in the 6<sup>th</sup> year even without impairment loss. Hence in W.N. 2 above there is no column for recalculation of goodwill.

- In accordance with AS 29, Provisions, Contingent Liabilities and Contingent Assets, a constructive obligation to restructure arises only when an entity has detailed formal plan for restructuring identifying the business or part of business concerned; the principal locations affected; the location, function, and approximate number of employees who will be compensated for terminating their services; the expenditures that will be undertaken; and when the plan will be implemented; and has raised a valid expectation in those affected that it will carry out the restructuring by starting to implement that plan or announcing its main features to those affected by it.

Further, AS 29 provides that a management or board decision to restructure taken before the end of the reporting period does not give rise to a constructive obligation at the end of the reporting period unless the entity has, before the end of the reporting period

- started to implement the restructuring plan; or
- announced the main features of the restructuring plan to those affected by it in a sufficiently specific manner to raise a valid expectation in them that the entity will carry out the restructuring.

In the given case, since COVID-19 pandemic impact started during March 2020, it is likely that the senior management started drawing up the plan for restructuring of some of its business activities after the end of the reporting period, i.e., 2019-2020. If that be so, as

per AS 29, the management decisions subsequent to reporting date do not give rise to constructive obligation as of reporting date and no provision is required for restructuring costs as at 31 March 2020.

In this regard, AS 29 provides that if an entity starts to implement a restructuring plan, or announces its main features to those affected, only after the reporting period, disclosure is required AS 4, if the restructuring is material and non-disclosure could influence the economic decisions that users make on the basis of the financial statements.

9. AS 29 defines a liability as a present obligation of the entity arising from past events, the settlement of which is expected to result in an outflow from the entity of resources embodying economic benefits.

Further, in accordance AS 29 a provision is required to be recognised only when the following conditions are met:

- (a) an entity has a present obligation (legal or constructive) as a result of a past event;
- (b) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- (c) a reliable estimate can be made of the amount of the obligation. However, it has been specifically provided in AS 29 that provisions for future operating losses shall not be recognised since the same do not meet the definition of liability and also conditions set out for recognising provisions.

In the given case, the entity, in the light of COVID-19 outbreak across the globe, after the review expected that there might be possible substantial operating losses during the next financial year i.e. 2020-2021. In this scenario, for losses expected in the next financial year, entity cannot create provisions for operating losses in the current financial year itself in accordance with AS 29.

However, AS 29 provides that an expectation of future operating losses might be an indication that certain assets of the operation may be impaired and an entity tests these assets for impairment AS 28, 'Impairment of Assets'.

**10. Significant differences in Ind AS 7 vis-à-vis AS 3**

- (i) **Bank Overdraft Repayable on Demand:** Ind AS 7 specifically includes bank overdrafts which are repayable on demand as a part of cash and cash equivalents, whereas AS 3 is silent on this aspect.
- (ii) **Cash Flows associated with Extraordinary Activities:** AS 3 requires cash flows associated with extraordinary activities to be separately classified as arising from operating, investing and financing activities, whereas Ind AS 7 does not contain this requirement. As per Ind AS, there is no concept of extra-ordinary item.
- (iii) **Investment in Subsidiaries, Associates and Joint Ventures (Investee):** Ind AS 7 mentions the use of equity or cost method while accounting for an investment in an

associate, joint venture or a subsidiary. It also specifically deals with the reporting of interest in an associate or a joint venture using equity method. AS 3 does not contain such requirements.

- (iv) **Disclosures:** Ind AS 7 requires more disclosures as compared to AS 3 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. Ind AS 7 requires disclosure of segmental cash flows from the operating, investing and financing activities of each reportable segment. However, no such requirement is there in AS 3.

11. (a) **In the books of P Ltd.**

(i) **Realisation and Reconstruction Account**

	₹		₹
To Goodwill	10,000	By 10% Debentures	2,00,000
To Property, plant and equipment	3,40,000	By Interest accrued on debentures	20,000
To Inventory	80,000	By Trade payables	1,50,000
To Trade receivables	1,10,000	By R Ltd. (Purchase consideration) (W.N. 1)	1,65,400
To Bank (20,000 - 5,000)	15,000	By Equity shareholders A/c (loss on realization) (Bal. fig.)	25,000
To Preference share holders A/c (W.N.3)	5,400		
	<u>5,60,400</u>		<u>5,60,400</u>

**Note:** Expenses of ₹ 5,000, to be met from bank balance of P Ltd. Is adjusted from the bank balance of P Ltd. before its acquisition.

(ii) **Equity shareholders' Account**

	₹		₹
To Profit & loss A/c	1,70,000	By Equity Share capital	3,00,000
To Expenses	5,000		
To Equity shares in R Ltd.	1,00,000		
To Realisation and Reconstruction A/c	<u>25,000</u>		
	<u>3,00,000</u>		<u>3,00,000</u>

## (b) In the books of R Ltd.

## (i) Bank Account

	₹		₹
To Business Purchase	15,000	By Balance c/d (Bal. fig.)	1,09,600
To Equity shares application & allotment A/c (W.N. 4)	<u>94,600</u>		
	<u>1,09,600</u>		<u>1,09,600</u>

(ii) Balance Sheet as on 31<sup>st</sup> March, 2020

Particulars	Note No.	₹
<b>I. Equity and Liabilities</b>		
(1) Shareholder's Funds		
Share Capital	1	4,00,000
(2) Non-Current Liabilities		
Long-term borrowings	2	<u>2,00,000</u>
<b>Total</b>		<u>6,00,000</u>
<b>II. Assets</b>		
(1) Non-current assets		
Property, Plant and Equipment (W.N.2)		3,08,400
(2) Current assets		
(a) Inventories		72,000
(b) Trade receivables		1,10,000
(c) Cash and cash equivalents		<u>1,09,600</u>
<b>Total</b>		<u>6,00,000</u>

## Notes to Accounts

	₹
<b>1. Share Capital</b>	
Authorised share capital	
40,000 equity shares of ₹ 10 each	4,00,000
10,000, 9% Preference shares of ₹ 10 each	<u>1,00,000</u>
	<u>5,00,000</u>

	Issued and Subscribed 40,000 shares of ₹ 10 each fully paid up (out of the above, 30,540 (W.N.4) shares have been allotted as fully paid-up pursuant to contract without payment being received in cash)	4,00,000
<b>2.</b>	<b>Long Term Borrowings</b> 10% Debentures	2,00,000

**Working Notes:****1. Calculation of Purchase consideration**

	₹
<b>Payment to preference shareholders</b>	
6,000 equity shares @ ₹ 10	60,000
For arrears of dividend: (6,000 x ₹ 10) x 9%	5,400
<b>Payment to equity shareholders</b>	
(30,000 shares x 1/3) @ ₹ 10	<u>1,00,000</u>
Total purchase consideration	<u>1,65,400</u>

**2. Calculation of fair value at which property, plant and equipment have been acquired by R Ltd.**

Since, the question states that “balance of purchase consideration is being attributed to fixed assets”, it is implied that the amount of purchase consideration is equal to the fair value at which the net assets have been acquired.

Therefore, the difference of fair value of net assets (excluding property, plant and equipment) and the purchase consideration is the fair value at which the property, plant and equipment have been acquired.

	₹
Purchase consideration / Net assets	1,65,400
Add: Liabilities:	
10% Debentures (including interest on debentures)	2,20,000
Trade payables	<u>1,20,000</u>
	5,05,400
Less: Inventory ₹ (80,000 - 8,000)	72,000
Trade receivables	<u>1,10,000</u>

Bank	<u>15,000</u>	(1,97,000)
Fair value at which property, plant and equipment has been acquired		<u>3,08,400</u>

**3. Preference shareholders' Account**

	₹		₹
To Equity Shares in R Ltd.	65,400	By Preference Share capital	60,000
		By Realisation and Reconstruction A/c (Bal. fig.)	<u>5,400</u>
	<u>65,400</u>		<u>65,400</u>

**4. Calculation of number of Equity shares issued to public**

	Number of shares	
Authorised equity shares		40,000
Less: Equity shares issued for		
Interest accrued on debentures	2,000	
Trade payables of P Ltd.	12,000	
Preference shareholders of P Ltd.	6,000	
Arrears of preference dividend	540	
Equity shareholders of P Ltd.	<u>10,000</u>	<u>(30,540)</u>
Number of equity shares issued to public at par for cash		<u>9,460</u>

**12. Consolidated Balance Sheet of Investments Ltd. and its subsidiaries A Ltd., B Ltd. and C Ltd. as on 31<sup>st</sup> March, 2020**

Particulars	Note No.	(₹)
<b>I. Equity and Liabilities</b>		
<b>(1) Shareholder's Funds</b>		
(a) Share Capital	1	3,00,000
(b) Reserves and Surplus	2	46,850
<b>(2) Minority Interest (W.N vi)</b>		56,750
<b>(3) Current Liabilities</b>		
(a) Trade Payables	3	11,000
<b>Total</b>		<u>4,14,600</u>

<b>II. Assets</b>		
<b>(1) Non-current assets</b>		
Property, Plant and Equipment	4	1,79,000
Intangible assets	5	19,000
<b>(2) Current assets</b>		
(a) Inventories (W.N viii)		66,000
(b) Trade receivables	6	22,500
(c) Cash & Cash equivalents (W.N vii)		1,28,100
<b>Total</b>		<b>4,14,600</b>

**Notes to Accounts**

			₹
<b>1. Share Capital</b>			
30,000 shares of ₹ 10 each			3,00,000
<b>2. Reserves and Surplus</b>			
Capital Reserves (W.N. v)	25,950		
Profit & loss (W.N. iv)	<u>20,900</u>		46,850
<b>3. Trade Payables</b>			
Trade Payables [5+11+4+3.5]	23,500		
Less : Inter Co.[3.5+6+1+2]	<u>(12,500)</u>		11,000
<b>4. Property, Plant and Equipment</b>			
Freehold property (W.N. viii)	1,24,000		
Plant (W.N viii)	<u>55,000</u>		1,79,000
<b>5. Intangible assets</b>			
Goodwill (Given in balance sheet)			19,000
<b>6. Trade Receivables (W.N. viii)</b>	35,000		
Less : Inter Co. debts	<u>(12,500)</u>		22,500

**Shareholding Pattern**

	A Ltd.	B Ltd.	C Ltd.
No. of shares	4,000	12,000	10,000
Held by Investment	3,000 i.e. 3/4 <sup>th</sup>	10,000 i.e. 5/6 <sup>th</sup>	8,000 i.e. 4/5 <sup>th</sup>
Minority Interest	1/4 <sup>th</sup>	1/6 <sup>th</sup>	1/5 <sup>th</sup>

**Working Notes:****Analysis of Profits:**

		Capital Profit ₹	Revenue Profit ₹
(i)	<b>C Ltd.</b>		
	Profit & Loss Account on 1.4.2019 less Div. (4,000 – 4,000)	—	
	Reserve on 1 <sup>st</sup> April, 2019	7,500	
	Appreciation in the value of Freehold Property [65,000 - 50,000]	15,000	
	Profit for the year after interim dividend		<u>15,000</u>
	Total	22,500	15,000
	Minority Interest 20%	<u>4,500</u>	<u>3,000</u>
	Share of Investments Ltd.	<u>18,000</u>	<u>12,000</u>
(ii)	<b>B Ltd.</b>		
	Loss on the date of acquisition	(12,000)	
	Loss suffered during the year after additional dep of (18,000 + 3,000 – 12,000)		<u>(9,000)</u>
		(12,000)	(9,000)
	Minority Interest (1/6)	<u>2,000</u>	<u>1,500</u>
	Share of Investment Ltd. (5/6)	<u>(10,000)</u>	<u>(7,500)</u>
(iii)	<b>A Ltd.</b>		
	Reserve on 1.4.2019	3,000	
	Profit on 1.4.2019 less Dividend (2,000 – 2,000)	—	—
	Profit earned during the year (after interim dividend ₹ 3,200) and Inventory adjustment [6,000 + 2,000]		<u>8,000</u>
		3,000	8,000
	Minority Interest (1/4)	<u>750</u>	<u>2,000</u>
		<u>2,250</u>	<u>6,000</u>
(iv)	Profit & Loss of Investment Ltd.		
	Revenue Profit of C Ltd. [WN (i)]	₹ 12,000	

	Revenue Loss of B Ltd. [WN (ii)]	(7,500)	
	Revenue Profit of A Ltd. [ WN (iii)]	<u>₹ 6,000</u>	10,500
	Add: Interim dividend received [30,000 x 8 % + 80,000 x 10%]		<u>10,400</u>
			<u>20,900</u>
(v)	<b>Cost of Control / Capital Reserve</b>		
	Cost of Investments in A Ltd. less Dividend (35,000 – 1,500)		33,500
	Cost of Investments in B Ltd.		72,000
	Cost of Investments in C Ltd. less Dividend (92,000 – 3,200)		<u>88,800</u>
			1,94,300
	Paid up value of Shares held in A Ltd.	30,000	
	Paid up value of Shares held in B Ltd.	1,00,000	
	Paid up value of Shares held in C Ltd.	80,000	
	Capital Profits in A Ltd.	2,250	
	Capital Loss in B Ltd.	(10,000)	
	Capital Profits in C Ltd.	<u>18,000</u>	<u>2,20,250</u>
	Capital Reserve		<u>25,950</u>

**(vi) Minority Interest**

	A Ltd. ₹	B Ltd. ₹	C Ltd. ₹
Share Capital	10,000	20,000	20,000
Capital Profits/(Loss)	750	(2,000)	4,500
Revenue Profits	<u>2,000</u>	<u>(1,500)</u>	<u>3,000</u>
	<u>12,750</u>	<u>16,500</u>	<u>27,500</u>
			56,750

**(vii)****Bank A/c - Investments Ltd.**

	₹		₹
To Share Capital	3,00,000	By Investments in A Ltd.	35,000
To Investments in A Ltd. [Dividend]	1,500	By Investments in B Ltd.	72,000

To Investments in C Ltd. [Dividend]	3,200	By Investments in C Ltd.	92,000
To Dividends - A Ltd. [Dividend]	2,400	By B Ltd. (indebtedness)	6,000
C Ltd. [Dividend]	8,000	By Balance c/d	1,13,600
To A Ltd.	<u>3,500</u>		<u>          </u>
	<u>3,18,600</u>		<u>3,18,600</u>

**(viii) Sundry Assets**

		Freehold Property ₹	Plant ₹	Inventory ₹	Trade Receivables ₹	Cash at Bank ₹
(a)	Investments Ltd.	—	—	—	6,000	1,13,600
(b)	A Ltd.	18,000	16,000	13,000	4,000	1,000
(c)	B Ltd.	41,000	27,000	32,000	8,000	2,000
(d)	C Ltd.	<u>65,000</u>	<u>12,000</u>	<u>21,000</u>	<u>17,000</u>	<u>11,500</u>
		1,24,000	55,000	66,000	35,000	1,28,100
	Less: Inter Co. debts				<u>(12,500)</u>	
					<u>22,500</u>	

13. (a) Neither of the two classes of puttable shares can be classified as equity, as they do not have identical features due to the difference in voting rights. It is not possible for T Motors Ltd. to achieve equity classification of the ordinary shares by designating them as being more subordinate than the 'A' ordinary shares, as this does not reflect the fact that the two classes of share are equally entitled to share in entity's residual assets on liquidation.
- (b) The above investment is in equity shares of C Ltd. and hence, does not involve any contractual cash flows that are solely payments of principal and interest. Hence, these equity shares shall be measured at fair value through profit or loss. Also, an irrecoverable option exists to designate such investment as fair value through other comprehensive income.

**Journal Entries**

Particulars	Amount	Amount
<b>Upon initial recognition –</b>		
Investment in equity shares of C Ltd. Dr.	10,000	
Transaction cost Dr.	500	

To Bank A/c (Being investment recognized at fair value plus transaction costs upon initial recognition)		10,500
Profit and Loss A/c Dr.	500	
To Transaction cost (Being transaction cost incurred on assets measured at FVTPL transferred to P&L A/c)		500
<b>Subsequently –</b>		
Investment in equity shares of C Ltd. Dr.	1,200	
To Fair value gain on financial instruments (Being fair value gain recognized at year end in P&L)		1,200
Fair value gain on financial instruments Dr.	1,200	
To Profit and Loss A/c (Being fair value gain transferred to P&L A/c)		1,200

- (c) The Company has made an irrecoverable option to carry its investment at fair value through other comprehensive income. Accordingly, the investment shall be initially recognised at fair value and all subsequent fair value gains/ losses shall be recognised in other comprehensive income (OCI).

#### Journal Entries

Particulars	Amount	Amount
<b>Upon initial recognition –</b>		
Investment in equity shares of C Ltd. Dr.	5,00,000	
To Bank A/c (Being investment recognized at fair value plus transaction costs upon initial recognition)		5,00,000
<b>Subsequently –</b>		
Fair value loss on financial instruments Dr.	50,000	
To Investment in equity shares of C Ltd. (Being fair value loss recognised)		50,000
Fair value reserve in OCI Dr.	50,000	
To Fair value loss on financial instruments (Being fair value loss recognized in other comprehensive income)		50,000

**14. Calculation of Basic & Diluted EPS**

	2018-2019	2019-2020
Profit before amortization of ESOP cost	58,65,000	76,45,000
Less: ESOP cost amortised (W.N. 2)	<u>(19,80,000)</u>	<u>(18,70,000)</u>
Net profit for shareholders	<u>38,85,000</u>	<u>57,75,000</u>
No. of shares outstanding (A)	5,00,000	5,00,000
Basic EPS	7.77	11.55
Potential equity (W.N. 1) (B)	19,250	52,500
Total number of equity shares (A + B)	5,19,250	5,52,500
Diluted EPS	7.48	10.45

**Working Notes:****1. Calculation of Potential Equity**

		2018-2019	2019-2020
a.	Actual number of employees	770	700
b.	Options granted per employee	250	250
c.	No. of options outstanding (a x b)	1,92,500	1,75,000
d.	Unamortised ESOP cost per option (₹)	(22-22/2) 11	0
e.	Exercise price (₹)	70	70
f.	Expected exercise price to be received (c x e) (₹)	1,34,75,000	1,22,50,000
g.	Unamortised ESOP cost (c x d) (₹)	<u>21,17,500</u>	<u>-</u>
h.	Total proceeds (₹) (f + g)	1,55,92,500	1,22,50,000
i.	Fair value per share	90	100
j.	No. of shares issued for consideration (h / i)	1,73,250	1,22,500
k.	Potential Equity (c - j)	19,250	52,500

**2. Calculation of ESOP cost to be amortised**

	2018-2019	2019-2020
Fair value of options per share	₹ 22	₹ 22
No. of options expected to/actually to vest under the scheme	(720 x 250) 1,80,000	(700 x 250) 1,75,000
Fair value of options	₹ 39,60,000	₹ 38,50,000

Value of options recognized as expenses	(₹ 39,60,000 / 2) 19,80,000	(₹ 38,50,000 – ₹ 19,80,000) 18,70,000
---	--------------------------------	---

**15. Total Funds raised by Mutual Fund = 17.5 x10 lakh = ₹ 175 lakh (₹ in lakh)**

		₹	₹
Opening Bank Balance(175-160-9)		6	
Add: Proceeds from sale of securities		125	
Add: Dividend received		<u>3</u>	
Less:			134
Cost of securities purchased	90		
Management expenses (₹ 5 lakh x3 months)	15		
Realised gains distributed [80% of (₹ 125 lakh – ₹ 100 lakh)]	20		
Dividend distributed (80% of ₹ 3 lakh)	<u>2.40</u>		<u>(127.40)</u>
Closing Bank Balance			6.60
Closing Market value of portfolio			<u>175.00</u>
Closing Net Assets			<u>181.60</u>

No. of Units (Lakh) 10.00 lakh units

Closing NAV = ₹ 181.60 lakh divided by 10 lakh units = ₹ 18.16

**16. Calculation of provision required on advances as on 31<sup>st</sup> March, 2020 as per the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016**

	Amount ₹ in lakh	Percentage of provision	Provision ₹ in lakh
Standard assets	16,800	0.25	42.00
Sub-standard assets	1,340	10	134.00
Secured portions of doubtful debts—			
– upto one year	320	20	64.00
– one year to three years	90	30	27.00
– more than three years	30	50	15.00
Unsecured portions of doubtful debts	97	100	97.00
Loss assets	48	100	<u>48.00</u>
			<u>427.00</u>

**Calculation of provision required on advances as on 31<sup>st</sup> March, 2020 as per the Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016**

	Amount ₹ in lakh	Percentage of provision	Provision ₹ in lakh
Standard assets	16,800	0.40	67.20
Sub-standard assets	1,340	10	134.00
Secured portions of doubtful debts—			
— upto one year	320	20	64.00
— one year to three years	90	30	27.00
— more than three years	30	50	15.00
Unsecured portions of doubtful debts	97	100	97.00
Loss assets	48	100	48.00
			<u>452.20</u>

**17. Market Share of A Ltd.**

**Calculation of last year's market share = 100% – 63% = 37%**

Increase or decrease in market share of other players  $[0.25 + (.25 \times 150\%) - 2.5/5] = 0.125\%$  i.e. increase in others' market share every year over the period of 5 years. Hence, market share of A Ltd. is expected to decrease by 0.125% every year over the period of 5 years, from the current level of 37%.

**Brand Valuation under Market Approach**

Year	Market Size (₹ in crore)	Market Share of A Ltd.	Market Share (₹ in crore)	Expected Profit (₹ in crore)	Discount Factor	Discounted Cash Flow (₹ in crore)
1	7500 x 109% = 8,175	36.875%	3014.53	@ 10% = 301.45	0.909	274.02
2	8,175 x 109% = 8910.75	36.75%	3274.70	@ 13% = 425.71	0.826	351.64
3	8,910.75 x 109% = 9712.72	36.625%	3557.28	@ 18% = 640.31	0.751	480.87
4	9,712.72 x 109% = 10,586.86	36.5%	3864.20	@ 23% = 888.77	0.683	607.03
5	10,586.86 x 109% = 11,539.68	36.375%	4197.56	@ 28% = 1,175.32	0.621	<u>729.87</u>
	Brand Value					<u>2,443.43</u>

Brand Value of A Ltd. under Market Oriented Approach is ₹ 2,443.43 crore.

18.

Happy Ltd.

**Value Added Statement for the year ended 31<sup>st</sup> March, 2020**

	(in ₹ '000)	
Sales		2,380
Less: Cost of Bought in Materials and Services:		
Operational Cost ₹ (1,220 + 235)	1,455	
Administrative Expenses ₹ (25+8+62)	95	
Interest cost	<u>35</u>	<u>(1,585)</u>
Value addition by manufacturing and trading activities		795
Add: Other Income		<u>370</u>
Gross Value Added		<u>1,165</u>

**Application of Gross Value Added**

	(₹ in '000)	(₹ in '000)	%
To Pay Employees:			
Wages/ Salaries to Administrative Staff		330	0.28
To Pay Directors:			
Directors' Remuneration		55	0.05
To Pay Government:			
Local taxes including cess	70		
Provision for tax	<u>87</u>	157	0.14
To Pay Providers of Capital			
Interest on Debentures		180	0.15
To Provide for maintenance			
Depreciation	240		
Retained Profit	<u>203</u>	<u>443</u>	<u>0.38</u>
		<u>1,165</u>	<u>1.00</u>

**Ratios**

$$(a) \text{ Gross Value Added to Material Cost Ratio} = \frac{\text{Gross Value Added}}{\text{Market Cost}} = \frac{1,165}{1,220} = 0.95$$

Higher GVA ratio of Happy Ltd. in comparison to Industry shows that it has better material utilisation policy than industry's material utilisation policy.

$$(b) \text{ Gross Value Added to Employee Cost Ratio} = \frac{\text{Gross Value Added}}{\text{Employee Cost}} = \frac{1,165}{330} = 3.53$$

Higher GVA ratio of Industry in comparison to Happy Ltd. shows that Industry's labour productivity or policy is better than Happy Ltd.'s labour productivity or policy.

$$(c) \text{ Gross Value Added to Sales Ratio} = \frac{\text{Gross Value Added}}{\text{Sales}} = \frac{1,165}{2,380} = 0.49$$

Higher GVA ratio of Industry in comparison to Happy Ltd. shows that Industry's sales policy is better than Happy Ltd.'s sales policy.

$$(d) \text{ Gross Value Added to Capital Employed Ratio}$$

$$= \frac{\text{Gross Value Added}}{\text{Equity share capital} + \text{Preference share capital} + \text{Retained Earnings}}$$

$$= \frac{1,165}{(1,500 + 600 + 263)} = 0.49$$

Higher GVA ratio of Happy Ltd. in comparison to Industry shows that managerial efficiency of Happy Ltd. is better than Industry. Happy Ltd. is able to efficiently utilise its capital in the generation of profit and in addition of value to its organisation.

**Note:** Capital Employed may also include Debentures ₹ 18,00,000 as per the concept of Value Added. In such a case, the ratio would be as follows:

Gross Value Added to Capital Employed Ratio

$$= \frac{\text{Gross Value Added}}{\text{Equity share capital} + \text{Preference share capital} + \text{Retained Earnings} + \text{Debentures}}$$

$$= \frac{1,165}{(1,500 + 600 + 263 + 1,800)} = 0.28$$

Lower GVA ratio of Happy Ltd. in comparison to Industry shows that Happy Ltd. is marginally below the industry average.

19. Market Value Added (MVA) is the difference between the current market value of a firm and the capital contributed by investors (both debenture holders and shareholders). In other words, it is the sum of all capital claims held against the company plus market value of debt and equity. If MVA is positive, firm has added value.

Market Value Added = Market value of firm less amount invested in the firm

		₹ in lakh
Equity Share Capital (market value) (505 lakh x 600%)		3030
Preference share capital (15,00,000 x 30)		450
Debentures		50
Current market value of firm		3,530
Less: Equity Share Capital	505	
Preference share capital	150	
Reserves	101	
Debentures	50	
Statutory Reserve	50.50	(856.50)
Market Value Added		2,673.50
The significant Market Value addition implies that the management of W Ltd. has created wealth for its shareholders and that market investors are willing to pay a price greater than the historical net worth of the company.		

20. The present value of earnings of each category of employees by applying 15% discount factor is ascertained as below:

**(A) Unskilled employees:**

Age group 30-39. Assume that all 70 employees are just 30 years old:

	Present value ₹
₹ 3,000 p.a. for next 10 years	15,057
₹ 4,000 p.a. for years 11 to 20	4,960
₹ 5,000 p.a. for years 21 to 25	<u>1,025</u>
	<u>21,042</u>

Age group 40-49. Assume that all 20 employees are just 40 years old:

₹ 4,000 p.a. for next 10 years	20,076
₹ 5,000 p.a. for years 11 to 15	<u>4,140</u>
	<u>24,216</u>

Age group 50-54: Assume that all 10 employees are just 50 years old:

₹ 5,000 p.a. for next 5 years	<u>16,760</u>
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Similarly, present value of each employee under other categories will be calculated.

**(B) Semi-skilled employees:**

Age group 30-39

	Present value ₹
₹ 3,500 p.a. for next 10 years	17,567
₹ 5,000 p.a. for years 11 to 20	6,200
₹ 6,000 p.a. for years 21 to 25	<u>1,230</u>
	<u>24,997</u>

Age group 40-49

₹ 5,000 p.a. for next 10 years	25,095
₹ 6,000 p.a. for years 11 to 15	<u>4,968</u>
	<u>30,063</u>

Age group 50-54

₹ 6,000 p.a. for next 5 years	<u>20,112</u>
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**(C) Skilled employees:**

Age group 30-39

	Present value ₹
₹ 5,000 p.a. for next 10 years	25,095
₹ 6,000 p.a. for years 11 to 20	7,440
₹ 7,000 p.a. for years 21 to 25	<u>1,435</u>
	<u>33,970</u>

Age group 40-49

₹ 6,000 p.a. for next 10 years	30,114
₹ 7,000 p.a. for years 11 to 15	<u>5,796</u>
	<u>35,910</u>

Age group 50-54

₹ 7,000 p.a. for next 5 years	<u>23,464</u>
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**Total value of Human Capital**

Age	Unskilled		Semi-skilled		Skilled		Total	
	No.	Av. Annual earnings (₹ '000)	No.	Av. Annual earnings (₹ '000)	No.	Av. Annual earnings (₹ '000)	No.	Av. Annual earnings (₹ '000)
30-39	70	14,72,940	50	12,49,850	30	10,19,100	150	37,41,890
40-49	20	4,84,320	15	4,50,945	15	5,38,650	50	14,73,915
50-54	<u>10</u>	<u>1,67,600</u>	<u>10</u>	<u>2,01,120</u>	<u>5</u>	<u>1,17,320</u>	25	<u>4,86,040</u>
	<u>100</u>	<u>21,24,860</u>	<u>75</u>	<u>19,01,915</u>	<u>50</u>	<u>16,75,070</u>		<u>57,01,845</u>

## PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

### QUESTIONS

#### Project Planning and Capital Budgeting

1. SS Company is considering the replacement of its existing machine with a new machine. The Purchase price of the New machine is ₹ 26 Lakhs and its expected Life is 8 years. The company follows straight-line method of depreciation on the original investment (scrap value is not considered for the purpose of depreciation). The other expenses to be incurred for the New Machine are as under:

- (i) Installation Charges ₹ 9,000
- (ii) Fees paid to the consultant for his advice to buy New Machine ₹ 6,000.
- (iii) Additional Working Capital required ₹ 17,000. (will be released after 8 years)

The written down value of the existing machine is ₹ 76,000, and its Cash Salvage Value is ₹ 12,500. The dismantling of this machine would cost ₹ 4,500. The Annual Earnings (before tax but after depreciation) from the New Machine would amount to ₹ 3,15,000. Income tax rate is 35%. The Company's required Rate of Return is 13%.

You are required to advise on the viability of the proposal.

$$PVIF (13\%, 8) = 0.376$$

$$PVIFA (13\%, 8) = 4.80$$

2. Airborne Ltd. wants to take advantage of a new government scheme of connecting smaller towns and wants to purchase one-turboprop airplane at a cost of ₹ 5 crores. It has obtained permission to fly on 4 sectors.

The company had provided the following estimates of its costs and revenues. The cost of capital is 16% and the company depreciates its assets over a period of 25 years on a straight-line basis. Currently it is operating in a 30% tax regime and under the new government scheme it enjoys a 100% tax waiver for the first 3 years.

- Passenger Capacity of the aircraft: 60 passengers
- Expected Operational Capacity: 80%
- Per aircraft no. of trips on a daily basis: 4

	Amount in (₹)
Average realization per passenger	2,000
Annual Cost of Manpower	2,50,00,000
Airport handling charges - Fixed per day	10,000
Annual Repairs and Maintenance	5,00,00,000
Daily Operating Costs	75,000

The costs with the exception of Airport handling charges are expected to increase 10% year on year and the Operational Capacity would go up to 90% from Year 3.

The certainty of achieving the projected cash flows in the first five years are 0.8, 0.9, 0.75, 0.7 and 0.7 and PV at 16% are 0.862, 0.743, 0.641, 0.552, 0.476 respectively.

Advise the management on the feasibility of the project, assuming the aircraft operates on all the 365 days in a year.

### Leasing Decisions

3. Robust Tech, an IT company had purchased printers 5 years ago which are due for replacement. The cost of the printers was ₹ 75,00,000 and the company depreciates these class of assets on a straight-line basis for 10 years. The printers are expected to realize ₹ 7,50,000.

There is a proposal to replace all the printers in the company and as a Finance Manager; you are presented with the following alternatives:

*Proposal 1:* Purchase a new Class of sophisticated network printers at a cost of ₹ 1,00,00,000 which would be depreciated over a period of 5 years and expected to realize ₹ 10,00,000 at the end. The purchase could either be funded through a loan at 14% repayable in 5 equal annual installments at the end of the year. PVAF at 14% for 5 years is 3.433

OR

*Proposal 2:* Help Printers Ltd. had submitted a proposal to take over the existing printers and provide on rent the new class of sophisticated network printers for the next 5 years at an annual rental of ₹ 18,00,000 payable at the end of the year with a clause to increase the rentals by ₹ 2,00,000 on an annual basis.

You are required to suggest the best alternative to the management assuming the company's income tax rate is 50% and discount rate is 7%.

You may ignore realization of scrap value and their short term capital gains/loss under both the options.

Year	1	2	3	4	5
PV@7 %	0.935	0.873	0.816	0.763	0.713

### Dividend Decisions

4. The following information is given for QB Ltd.

Earning per share	₹ 12
Dividend per share	₹ 3
Cost of capital	18%

Internal Rate of Return on investment 22%

Retention Ratio 75%

Calculate the market price per share using

(i) Gordon's formula

(ii) Walter's formula

5. In December, 2019 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.
- (i) 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?
- (ii) 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

6. Mr. SG sold five 4-Month Nifty Futures on 1<sup>st</sup> February 2020 for ₹ 9,00,000. At the time of closing of trading on the last Thursday of May 2020 (expiry), Index turned out to be 2100. The contract multiplier is 75.

Based on the above information calculate:

- (i) The price of one Future Contract on 1<sup>st</sup> February 2020.
- (ii) Approximate Nifty Sensex on 1<sup>st</sup> February 2020 if the Price of Future Contract on same date was theoretically correct. On the same day Risk Free Rate of Interest and Dividend Yield on Index was 9% and 6% p.a. respectively.
- (iii) The maximum Contango/ Backwardation.
- (iv) The pay-off of the transaction.

**Note:** Carry out calculation on month basis.

7. A Rice Trader has planned to sell 22000 kg of Rice after 3 months from now. The spot price of the Rice is ₹ 60 per kg and 3 months Future on the same is trading at ₹ 59 per kg. Size of the contract is 1000 kg. The price is expected to fall as low as ₹ 56 per kg, 3 months hence.

Required:

- (i) to interpret the position of trader in the Cash Market.
- (ii) to advise the trader the trader should take in Future Market to mitigate its risk of reduced profit.

- (iii) to demonstrate effective realized price for its sale if he decides to make use of future market and after 3 months, spot price is ₹ 57 per kg and future contract price for closing the contract is ₹ 58 per kg.
8. Two companies ABC Ltd. and XYZ Ltd. approach the DEF Bank for FRA (Forward Rate Agreement). They want to borrow a sum of ₹ 100 crores after 2 years for a period of 1 year. Bank has calculated Yield Curve of both companies as follows:

Year	XYZ Ltd.	ABC Ltd.*
1	3.86	4.12
2	4.20	5.48
3	4.48	5.78

\*The difference in yield curve is due to the lower credit rating of ABC Ltd. compared to XYZ Ltd.

- (i) You are required to calculate the rate of interest DEF Bank would quote under 2V3 FRA, using the company's yield information as quoted above.
- (ii) Suppose bank offers Interest Rate Guarantee for a premium of 0.1% of the amount of loan, you are required to calculate the interest payable by XYZ Ltd. if interest rate in 2 years turns out to be
- (a) 4.50%
- (b) 5.50%

### Security Analysis and Valuation

9. Today being 1<sup>st</sup> January 2019, Ram is considering to purchase an outstanding Corporate Bond having a face value of ₹ 1,000 that was issued on 1<sup>st</sup> January 2017 which has 9.5% Annual Coupon and 20 years of original maturity (i.e. maturing on 31<sup>st</sup> December 2027). Since the bond was issued, the interest rates have been on downside and it is now selling at a premium of ₹ 125.75 per bond.

Determine the prevailing interest on the similar type of Bonds if it is held till the maturity which shall be at Par.

PV Factors:

	1	2	3	4	5	6	7	8	9
6%	0.943	0.890	0.840	0.792	0.747	0.705	0.665	0.627	0.592
8%	0.926	0.857	0.794	0.735	0.681	0.630	0.583	0.540	0.500

10. The following data is available for NNTC bond:

Face value: ₹ 1000

Coupon rate: 7.50%

Years to maturity: 8 years

Redemption Value: ₹ 1000

YTM: 8%

Calculate:

- (i) The current market price, duration and volatility of the bond.
- (ii) The expected market price if there is a decrease in required yield by 50 bps.

### Portfolio Theory

11. A study by a Mutual fund has revealed the following data in respect of three securities:

Security	$\sigma$ (%)	Correlation with Index, $P_m$
A	20	0.60
B	18	0.95
C	12	0.75

The standard deviation of market portfolio (BSE Sensex) is observed to be 15%.

- (i) What is the sensitivity of returns of each stock with respect to the market?
  - (ii) What are the covariances among the various stocks?
  - (iii) What would be the risk of portfolio consisting of all the three stocks equally?
  - (iv) What is the beta of the portfolio consisting of equal investment in each stock?
  - (v) What is the total, systematic and unsystematic risk of the portfolio in (iv) ?
12. Mr. Abhishek is interested in investing ₹ 2,00,000 for which he is considering following three alternatives:
- (i) Invest ₹ 2,00,000 in Mutual Fund X (MFX)
  - (ii) Invest ₹ 2,00,000 in Mutual Fund Y (MFY)
  - (iii) Invest ₹ 1,20,000 in Mutual Fund X (MFX) and ₹ 80,000 in Mutual Fund Y (MFY)

Average annual return earned by MFX and MFY is 15% and 14% respectively. Risk free rate of return is 10% and market rate of return is 12%.

Covariance of returns of MFX, MFY and market portfolio Mix are as follow:

	MFX	MFY	Mix
MFX	4.800	4.300	3.370
MFY	4.300	4.250	2.800
Mix	3.370	2.800	3.100

You are required to calculate:

- variance of return from MFX, MFY and market return,
- portfolio return, beta, portfolio variance and portfolio standard deviation,
- expected return, systematic risk and unsystematic risk; and
- Sharpe ratio, Treynor ratio and Alpha of MFX, MFY and Portfolio Mix

### Financial Services

13. AC Co. Ltd. has a turnover of ₹ 1600 Lakhs and is expecting growth of 17.90% for the next year. Average credit period is 100 days. The Bad Debt losses are about 1.50% on sales. The administrative cost for collecting receivables is ₹ 8,00,000. The AC Co. Ltd. decides to make use of Factoring Services by FS Ltd. on terms as under:

- that the factor will charge commission of 1.75%.
- 15% Risk with recourse and
- Pay an advance on receivables to AC Co. Ltd. at 14% p.a. interest after withholding 10% as reserve.

You are required to calculate the effective cost of factoring to AC Co. Ltd. for the year.

Show amount in Lakhs of ₹ with two decimal points. Assume 360 days in a year.

### Mutual Fund

14. There are two Mutual Funds viz. D Mutual Fund Ltd. and K Mutual Fund Ltd. Each having close ended equity schemes.

NAV as on 31-12-2019 of equity schemes of D Mutual Fund Ltd. is ₹ 70.71 (consisting 99% equity and remaining cash balance) and that of K Mutual Fund Ltd. is 62.50 (consisting 96% equity and balance in cash).

Following is the other information:

Particular	Equity Schemes	
	D Mutual Fund Ltd.	K Mutual Fund Ltd.
Sharpe Ratio	2	3.3
Treynor Ratio	15	15
Standard deviation	11.25	5

There is no change in portfolios during the next month and annual average cost is ₹ 3 per unit for the schemes of both the Mutual Funds.

If Share Market goes down by 5% within a month, calculate expected NAV after a month for the schemes of both the Mutual Funds.

For calculation, consider 12 months in a year and ignore number of days for particular month.

### International Financial Management

15. Suppose you are a treasurer of XYZ plc in the UK. XYZ have two overseas subsidiaries, one is based in Amsterdam and another in Switzerland. The surplus position of funds in hand is as follows which it does not need for the next three months but will be needed at the end of that period (91 days).

Holding Company	£ 150,000
Swiss Subsidiary	CHF 1,996,154
Dutch Subsidiary	€ 1,450,000

Exchange Rate as on date are as follows:

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

91-Day Interest rates on p.a. basis on the Deposits in Money Market are as follows:

Amount of Currency	£	€	CHF
0 – 200,000	1.00	0.25	Nil
200,001 – 1,000,000	2.00	1.50	0.25
1,000,001 – 2,000,000	4.00	2.00	0.50
Over 2,000,000	5.38	3.00	1.00

You have been approached by your banker wherein the above-mentioned surplus was lying, requesting you to swap the surplus lying with other two subsidiaries and place them in deposit with them.

Determine the minimum interest rate per annum (upto 3 decimal points) that should be offered by the bank to your organization so that your organization is ready to undertake such swap arrangement.

Note: Consider 360 days a year.

**Foreign Exchange Exposure and Risk Management**

16. Citi Bank quotes JPY/ USD 105.00 -106.50 and Honk Kong Bank quotes USD/JPY 0.0090 - 0.0093.
- Are these quotes identical if not then how they are different.
  - Is there a possibility of arbitrage?
  - If there is an arbitrage opportunity, then show how would you make profit from the given quotation in both cases if you are having JPY 1,00,000 or US\$ 1,000.
17. (a) Given:
- US\$ 1 = ¥ 107.31
- £ 1 = US\$ 1.26
- A\$ 1 = US\$ 0.70
- Calculate the cross rate for Pound in Yen terms
  - Calculate the cross rate for Australian Dollar in Yen terms
  - Calculate the cross rate for Pounds in Australian Dollar terms
- (b) The current spot exchange rate is \$1.35/£ and the three-month forward rate is \$1.30/£. According to your analysis of the exchange rate, you are quite confident that the spot exchange rate will be \$1.32/£ after 3 months.
- Suppose you want to speculate in the forward market then what course of action would be required and what is the expected dollar Profit (Loss) from this speculation?
  - What would be your Profit (Loss) in Dollar terms on the position taken as per your speculation if the spot exchange rate turns out to be \$1.26/£.
- Assume that you would like to buy or sell £1,000,000.

**Merger, Acquisition & Restructuring**

18. Following information is given in respect of WXY Ltd., which is expected to grow at a rate of 20% p.a. for the next three years, after which the growth rate will stabilize at 8% p.a. normal level, in perpetuity.

	For the year ended March 31, 2014
Revenues	₹ 7,500 Crores
Cost of Goods Sold (COGS)	₹ 3,000 Crores
Operating Expenses	₹ 2,250 Crores
Capital Expenditure	₹ 750 Crores
Depreciation (included in Operating Expenses)	₹ 600 Crores

During high growth period, revenues & Earnings before Interest & Tax (EBIT) will grow at 20% p.a. and capital expenditure net of depreciation will grow at 15% p.a. From year 4 onwards, i.e. normal growth period revenues and EBIT will grow at 8% p.a. and incremental capital expenditure will be offset by the depreciation. During both high growth & normal growth period, net working capital requirement will be 25% of revenues.

The Weighted Average Cost of Capital (WACC) of WXY Ltd. is 15%.

Corporate Income Tax rate will be 30%.

Required:

Estimate the value of WXY Ltd. using Free Cash Flows to Firm (FCFF) & WACC methodology.

The PVIF @ 15 % for the three years are as below:

Year	$t_1$	$t_2$	$t_3$
PVIF	0.8696	0.7561	0.6575

19. The following is the Balance-sheet of Grape Fruit Company Ltd as at March 31<sup>st</sup>, 2019.

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.

### Theoretical Questions

20. Write short notes on:

- (a) Key decisions that fall within the scope of financial strategy
- (b) Market Indicators for Technical Analysis
- (c) Difference between Forward Contract and Future Contract
- (d) Limitations of Social Cost Benefit Analysis
- (e) Manner of purchase of Assets by Asset Reconstruction Companies

### SUGGESTED ANSWERS/HINTS

#### 1. Working Notes:

##### a. Computation of Annual Depreciation-

Particulars	₹
Purchase Price	26,00,000
Add: 1. Installation Charges	9,000
2. Fees Paid to Consultant for Advice	6,000
Total Cost of New Machine	26,15,000
Useful Life	8 Years
Annual Depreciation (Total Cost/No. of Years)	3,26,875

**b. Computation of Annual Cash Savings-**

Particulars	₹
Annual Earnings	3,15,000
Less-Tax @35%	1,10,250
Earning after Tax	2,04,750
Add-Depreciation on New Machine	3,26,875
Annual Cash Savings	5,31,625

**c. Tax effect on sale of Old Machine-**

Particulars	₹
Proceeds of Sale	12,500
Less- Cost of Removal	4,500
Net Proceeds	8,000
Less: WDV	76,000
Net Loss due to Sale	68,000
Tax savings due to Loss on Sale @35%	23,800
Total Cash Inflow due to Sale (₹ 8,000+₹ 23,800)	31,800

**Computation of Net Present Value**

Particulars	Period	Cash Flow (₹)	PVF @13%	PV (₹)
(a) Annual Cash inflow after Tax	1-8	5,31,625	4.8	25,51,800
(b) Net Salvage Value of Existing Machine	0	31,800	1.0	31,800
(c) Working Capital Realized	8	17,000	0.376	6,392
Present Value of Cash Inflows				25,89,992
Less: 1. Initial Investment	0	26,15,000	1.0	26,15,000
2. Initial Working Capital	0	17,000	1.0	17,000
NPV of the Proposal				(42,008)

Decision: Since NPV of the project is negative it is not viable.

**2. Working Notes:**

(i) Depreciation =  $\frac{\text{₹ } 5,00,00,000}{25} = \text{₹ } 20,00,000$  Per Annum

## (ii) Realization from Passenger

	Year 1	Year 2	Year 3	Year 4	Year 5
Passenger Capacity	60	60	60	60	60
Exp. Operational Capacity	80%	80%	90%	90%	90%
No. of Trips per Day	4	4	4	4	4
Average Realization Per Passenger (₹)	2,000	2,000	2,000	2,000	2,000
No. of Days	365	365	365	365	365
Realizations (₹)	14,01,60,000	14,01,60,000	15,76,80,000	15,76,80,000	15,76,80,000

## (iii) Statement Showing Cost (₹)

	Year 1	Year 2	Year 3	Year 4	Year 5
Annual Cost of Manpower	2,50,00,000	2,75,00,000	3,02,50,000	3,32,75,000	3,66,02,500
Airport Handling Charges	36,50,000	36,50,000	36,50,000	36,50,000	36,50,000
Annual Repair & Maintenance	5,00,00,000	5,50,00,000	6,05,00,000	6,65,50,000	7,32,05,000
Daily Operating Exp.	2,73,75,000	3,01,12,500	3,31,23,750	3,64,36,125	4,00,79,738
Total	10,60,25,000	11,62,62,500	12,75,23,750	13,99,11,125	15,35,37,238

## (iv) Statement Showing NPV (Amount in ₹)

	Year 1	Year 2	Year 3	Year 4	Year 5
Realizations	14,01,60,000	14,01,60,000	15,76,80,000	15,76,80,000	15,76,80,000
Cost of Operations	10,60,25,000	11,62,62,500	12,75,23,750	13,99,11,125	15,35,37,238
Depreciation	20,00,000	20,00,000	20,00,000	20,00,000	20,00,000
Profit Before Tax	3,21,35,000	2,18,97,500	2,81,56,250	1,57,68,875	21,42,762
Less: Tax	---	---	---	47,30,663	6,42,829
Profit after Tax	3,21,35,000	2,18,97,500	2,81,56,250	1,10,38,212	14,99,933
Add: Depreciation	20,00,000	20,00,000	20,00,000	20,00,000	20,00,000
	3,41,35,000	2,38,97,500	3,01,56,250	1,30,38,212	34,99,933
CE Factor	0.8	0.9	0.75	0.70	0.70
Certain Cash Flow	2,73,08,000	2,15,07,750	2,26,17,188	91,26,748	24,49,953
PVF@16%	0.862	0.743	0.641	0.552	0.476
PV of Cash Inflow	2,35,39,496	1,59,80,258	1,44,97,618	50,37,965	11,66,178
Total PV of Cash Inflow				6,02,21,515	

PV of Cash Outflow	5,00,00,000
NPV	1,02,21,515

Since NPV is positive Airborne Ltd. should accept the project.

### 3. Proposal 1

The loan amount is repayable together with the interest at the rate of 14% on loan amount and is repayable in equal installments at the end of each year. The PVAF at the rate of 14% for 5 years is 3.433, the amount payable will be

$$\text{Annual Payment} = \frac{\text{₹ } 100,00,000}{3.433} = \text{₹ } 29,12,904 \text{ (rounded)}$$

#### Schedule of Debt Repayment

End of Year	Total Payment ₹	Interest ₹	Principal ₹	Principal Amount Outstanding ₹
1	29,12,904	14,00,000	15,12,904	84,87,096
2	29,12,904	11,88,193	17,24,711	67,62,385
3	29,12,904	9,46,734	19,66,170	47,96,215
4	29,12,904	6,71,470	22,41,434	25,54,781
5	29,12,904	3,58,123*	25,54,781	-----

\* Balancing Figure

#### Schedule of Cash Outflows: Debt Alternative (Amount in ₹)

(1)	(2)	(3)	(4)	(3) + (4)	(5)	(6)	(7)	(8)
End of year	Debt Payment	Interest	Dep		Tax Shield [(3) + (4)] 0.50	Cash outflows (2) – (5)	PV factors @ 7%	PV
1	29,12,904	14,00,000	18,00,000	32,00,000	16,00,000	13,12,904	0.935	12,27,565
2	29,12,904	11,88,193	18,00,000	29,88,193	14,94,097	14,18,807	0.873	12,38,619
3	29,12,904	9,46,734	18,00,000	27,46,734	13,73,367	15,39,537	0.816	12,56,262
4	29,12,904	6,71,470	18,00,000	24,71,470	12,35,735	16,77,169	0.763	12,79,680
5	29,12,904	3,58,123	18,00,000	21,58,123	10,79,062	18,33,842	0.713	13,07,529
								63,09,655

Total present value of Outflows = ₹ 63,09,655

**Proposal 2**

(1)	(2)	(3)	(4)	(5)	(6)
End of year	Lease Rent	Tax Shield	Cash outflows (2) – (3)	PV factors @ 7%	PV
1	18,00,000	9,00,000	9,00,000	0.935	8,41,500
2	20,00,000	10,00,000	10,00,000	0.873	8,73,000
3	22,00,000	11,00,000	11,00,000	0.816	8,97,600
4	24,00,000	12,00,000	12,00,000	0.763	9,15,600
5	26,00,000	13,00,000	13,00,000	0.713	9,26,900
					44,54,600

Since PV of outflows is lower in the Leasing option, Robust Tech should go for leasing option to acquire printer.

**4. (i) Gordon's Formula**

$$\text{Retention Ratio} = \frac{\text{EPS} - \text{Dividend Per Share}}{\text{EPS}} = \frac{\text{₹}12 - \text{₹}3}{\text{₹}12} = 0.75 \text{ i.e. } 75\%$$

$$P_0 = \frac{E(1-b)}{K-br}$$

$$P_0 = \text{Present value of Market price per share}$$

$$E = \text{Earnings per share}$$

$$K = \text{Cost of Capital}$$

$$b = \text{Retention Ratio (\%)}$$

$$r = \text{IRR}$$

$$br = \text{Growth Rate}$$

$$P_0 = \frac{12(1-0.75)}{0.18 - (0.75 \times 0.22)}$$

$$= \frac{3}{0.18 - 0.165} = \text{₹ } 200$$

## (ii) Walter's Formula

$$V_c = \frac{D + \frac{R_a}{R_c}(E - D)}{R_c}$$

$$V_c = \text{Market Price}$$

$$D = \text{Dividend per share}$$

$$R_a = \text{IRR}$$

$$R_c = \text{Cost of Capital}$$

$$E = \text{Earnings per share}$$

$$= \frac{\text{₹ } 3 + \frac{0.22}{0.18}(\text{₹ } 12 - \text{₹ } 3)}{0.18}$$

$$= \frac{\text{₹ } 3 + \text{₹ } 11}{0.18} = \text{₹ } 77.77$$

5. (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.

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

$$= 0.0230 + 0.075 = 0.098$$

$$\text{Or, } K_e = 9.80\%$$

- (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

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

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

6. (i) The price of one Future Contract

Let X be the Price of Future Contract. Accordingly,

$$5 = \frac{\text{Rs. } 9,00,000}{X}$$

$$X (\text{Price of One Future Contract}) = ₹ 1,80,000$$

- (ii) Current Future price of the index =  $\frac{\text{Rs. } 1,80,000}{75} = 2400$

Let Y be the current Nifty Index (on 1<sup>st</sup> February 2020) then

$$\text{Accordingly, } Y + Y (0.09 - 0.06) \frac{4}{12} = 2400$$

$$\text{and } Y = \frac{2400}{1.01} = 2376.24$$

Hence Nifty Index on 1<sup>st</sup> February 2020 shall be approximately 2376.

- (iii) To determine whether the market is in Contango/ Backwardation first we shall compute Basis as follows:

$$\text{Basis} = \text{Spot Price} - \text{Future Price}$$

If Basis is negative the market is said to be in Contango and when it is positive the market is said to be Backwardation.

Since current Spot Price is 2400 and Nifty Index is 2376, the Basis is negative and hence there is Contango Market and maximum Contango shall be 24 (2400 – 2376).

- (iv) Pay off on the Future transaction shall be [(2400-2100) x 375] ₹ 112500

The Future seller gains if the Spot Price is less than Futures Contract price as position shall be reversed at same Spot price. Therefore, Mr. SG has gained Rs. 1,12,500/- on the Short position taken.

7. (i) Since trader has planned to sell after 3 months now it implies, he is in Long Position in Cash or Spot Market.
- (ii) Since the trader is in Long Position in Cash Market, he can mitigate its risk of reduced profit by hedging his position by selling Rice Futures i.e. Short Position in Future Market.

(iii) The gain on futures contract

$$= (\text{₹ } 59 - \text{₹ } 58) \times 22,000 \text{ kg.} = \text{₹ } 22,000$$

Revenue from the sale of Rice

$$= 22,000 \times \text{₹ } 57 = \text{₹ } 12,54,000$$

$$\text{Total Cash Flow} = \text{₹ } 12,54,000 + \text{₹ } 22,000 = \text{₹ } 12,76,000$$

$$\text{Cash Flow per kg. of Rice} = \frac{\text{₹ } 12,76,000}{22,000} = \text{₹ } 58$$

8. (i) DEF Bank will fix interest rate for 2V3 FRA after 2 years as follows:

XYZ Ltd.

$$(1+r) (1+0.0420)^2 = (1+0.0448)^3$$

$$(1+r) (1.0420)^2 = (1.0448)^3$$

$$r = 5.04\%$$

Bank will quote 5.04% for a 2V3 FRA.

ABC Ltd.

$$(1+r) (1+0.0548)^2 = (1+0.0578)^3$$

$$(1+r) (1.0548)^2 = (1.0578)^3$$

$$r = 6.38\%$$

Bank will quote 6.38% for a 2V3 FRA.

(ii)

		4.50% - Allow to Lapse	5.50%-Exercise
Interest	₹ 100 crores X 4.50%	₹ 4.50 crores	-
	₹ 100 crores X 5.04%	-	₹ 5.04 crores
Premium (Cost of Option)	₹ 100 crores X 0.1%	₹ 0.10 crores	₹ 0.10 crores
		4.60 crores	5.14 crores

9. To determine the prevailing rate of interest for the similar type of Bonds we shall compute the YTM of this Bond using IRR method as follows:

$$M = \text{₹ } 1000$$

$$\text{Interest} = \text{₹ } 95 (0.095 \times \text{₹ } 1000)$$

$n = 9$  years

$$V_0 = ₹ 1125.75 \text{ (₹ 1,000 + ₹ 125.75)}$$

YTM can be determined from the following equation

$$₹ 95 \times PVIFA (YTM, 9) + ₹ 1000 \times PVIF (YTM, 9) = ₹ 1125.75$$

Let us discount the cash flows using two discount rates 8% and 10% as follows:

Year	Cash Flows	PVF@6%	PV@6%	PVF@8%	PV@8%
0	-1125.75	1	-1125.75	1	-1125.75
1	95	0.943	89.59	0.926	87.97
2	95	0.890	84.55	0.857	81.42
3	95	0.840	79.80	0.794	75.43
4	95	0.792	75.24	0.735	69.83
5	95	0.747	70.97	0.681	64.70
6	95	0.705	66.98	0.630	59.85
7	95	0.665	63.18	0.583	55.39
8	95	0.627	59.57	0.540	51.30
9	1095	0.592	648.24	0.500	547.50
			112.37		-32.36

Now we use interpolation formula

$$6.00\% + \frac{112.37}{112.37 - (-32.36)} \times 2.00\%$$

$$6.00\% + \frac{112.37}{144.73} \times 2.00\% = 6.00\% + 1.553\%$$

YTM = 7.553% say 7.55%

Thus, prevailing interest rate on similar type of Bonds shall be approx. 7.55%.

10. (i) Current Market Price of Bond shall be computed as follows:

Year	Cash Flows	PVF@ 8%	PV@8%
1	75	0.926	69.45
2	75	0.857	64.28
3	75	0.794	59.55
4	75	0.735	55.13

5	75	0.681	51.08
6	75	0.630	47.25
7	75	0.583	43.73
8	1075	0.540	580.50
			970.97

Thus, the current market price of the Bond shall be ₹ 970.97.

**Alternatively**, using the Short-cut method the Market Price of Bond can also be computed as follows:

Interest+(Discount/Premium)/ Years to maturity

(Face Value + market Value)/2

Let market price be X

$$0.08 = \frac{75 + (1000 - X)/8}{(1000 + X)/2}$$

$$(1000 + X)/2$$

Thus, Value of X i.e. the price of Bond shall be ₹ 969.70

For the duration of the bond, we have to see the future cash flow and discount them as follows:

Year	CF	PV@8%	DCF	Proportion	Prop* Time (Yrs)
1	75	0.926	69.45	0.071	0.071
2	75	0.857	64.28	0.066	0.132
3	75	0.794	59.55	0.061	0.183
4	75	0.735	55.13	0.057	0.228
5	75	0.681	51.08	0.053	0.265
6	75	0.630	47.25	0.049	0.294
7	75	0.583	43.73	0.045	0.315
8	1075	0.540	580.50	0.598	4.784
		Total	970.97	1.000	6.272

Volatility of the bond = Duration / (1 + Yield) = 6.272/1.08 = 5.81

- (ii) If there is decrease in required yield by 50 bps the expected market price of the Bond shall be increased by:

$$= ₹ 970.97 \times 0.50 (5.81/100) = ₹ 28.21$$

Hence expected market price is ₹ 970.97 + ₹ 28.21 = ₹ 999.18

Alternatively, this portion using Bond Price as per Short-cut method can also be computed as follows:

$$= ₹ 969.70 \times 0.50 (5.81/100) = ₹ 28.17$$

then the market price will be = ₹ 969.70 + ₹ 28.17 = ₹ 997.87

11. (i) Sensitivity of each stock with market is given by its beta.

Standard deviation of market Index = 15%

Variance of market Index = 0.0225

Beta of stocks =  $\sigma_i r / \sigma_m$

$$A = 20 \times 0.60/15 = 0.80$$

$$B = 18 \times 0.95/15 = 1.14$$

$$C = 12 \times 0.75/15 = 0.60$$

- (ii) Covariance between any 2 stocks =  $\beta_1 \beta_2 \sigma_m^2$

**Covariance matrix**

Stock/Beta	0.80	1.14	0.60
A	400.000	205.200	108.000
B	205.200	324.000	153.900
C	108.000	153.900	144.000

- (iii) Total risk of the equally weighted portfolio (Variance) =  $400(1/3)^2 + 324(1/3)^2 + 144(1/3)^2 + 2(205.20)(1/3)^2 + 2(108.0)(1/3)^2 + 2(153.900)(1/3)^2 = 200.244$

- (iv)  $\beta$  of equally weighted portfolio =  $\beta_p = \sum \beta_i / N = \frac{0.80 + 1.14 + 0.60}{3}$

$$= 0.8467$$

- (v) Systematic Risk  $\beta_p^2 \sigma_m^2 = (0.8467)^2 (15)^2 = 161.303$

Unsystematic Risk = Total Risk – Systematic Risk

$$= 200.244 - 161.303 = 38.941$$

12. (i) Variance of Returns

$$\text{Cor}_{ij} = \frac{\text{Cov}(i, j)}{\sigma_i \sigma_j}$$

Accordingly, for MFX

$$1 = \frac{\text{Cov}(X, X)}{\sigma_X \sigma_X}$$

$$\sigma_X^2 = 4.800$$

Accordingly, for MFY

$$1 = \frac{\text{Cov}(Y, Y)}{\sigma_Y \sigma_Y}$$

$$\sigma_Y^2 = 4.250$$

Accordingly, for Market Return

$$1 = \frac{\text{Cov}(M, M)}{\sigma_M \sigma_M}$$

$$\sigma_M^2 = 3.100$$

(ii) Portfolio return, beta, variance and standard deviation

$$\text{Weight of MFX in portfolio} = \frac{1,20,000}{2,00,000} = 0.60$$

$$\text{Weight of MFY in portfolio} = \frac{80,000}{2,00,000} = 0.40$$

Accordingly Portfolio Return

$$0.60 \times 15\% + 0.40 \times 14\% = 14.60\%$$

Beta of each Fund

$$\beta = \frac{\text{Cov}(\text{Fund}, \text{Market})}{\text{Variance of Market}}$$

$$\beta_X = \frac{3.370}{3.100} = 1.087$$

$$\beta_Y = \frac{2.800}{3.100} = 0.903$$

Portfolio Beta

$$0.60 \times 1.087 + 0.40 \times 0.903 = 1.013$$

Portfolio Variance

$$\begin{aligned}\sigma_{XY}^2 &= w_X^2 \sigma_X^2 + w_Y^2 \sigma_Y^2 + 2 w_X w_Y \text{Cov}_{X,Y} \\ &= (0.60)^2 (4.800) + (0.40)^2 (4.250) + 2(0.60) (0.40) (4.300) \\ &= 4.472\end{aligned}$$

Or Portfolio Standard Deviation

$$\sigma_{XY} = \sqrt{4.472} = 2.115$$

(iii) Expected Return, Systematic and Unsystematic Risk of Portfolio

$$\text{Portfolio Return} = 10\% + 1.013 (12\% - 10\%) = 12.03\%$$

$$\text{MF X Return} = 10\% + 1.087(12\% - 10\%) = 12.17\%$$

$$\text{MF Y Return} = 10\% + 0.903(12\% - 10\%) = 11.81\%$$

$$\text{Systematic Risk} = \beta^2 \sigma^2$$

Accordingly,

$$\text{Systematic Risk of MFX} = (1.087)^2 \times 3.10 = 3.663$$

$$\text{Systematic Risk of MFY} = (0.903)^2 \times 3.10 = 2.528$$

$$\text{Systematic Risk of Portfolio} = (1.013)^2 \times 3.10 = 3.181$$

$$\text{Unsystematic Risk} = \text{Total Risk} - \text{Systematic Risk}$$

Accordingly,

$$\text{Unsystematic Risk of MFX} = 4.80 - 3.663 = 1.137$$

$$\text{Unsystematic Risk of MFY} = 4.250 - 2.528 = 1.722$$

$$\text{Unsystematic Risk of Portfolio} = 4.472 - 3.181 = 1.291$$

(iv) Sharpe and Treynor Ratios and Alpha

*Sharpe Ratio*

$$\text{MFX} = \frac{15\% - 10\%}{\sqrt{4.800}} = 2.282$$

$$\text{MFY} = \frac{14\% - 10\%}{\sqrt{4.250}} = 1.94$$

$$\text{Portfolio} = \frac{14.6\% - 10\%}{2.115} = 2.175$$

*Treynor Ratio*

$$\text{MFX} = \frac{15\% - 10\%}{1.087} = 4.60$$

$$\text{MFY} = \frac{14\% - 10\%}{0.903} = 4.43$$

$$\text{Portfolio} = \frac{14.6\% - 10\%}{1.013} = 4.54$$

*Alpha*

$$\text{MFX} = 15\% - 12.17\% = 2.83\%$$

$$\text{MFY} = 14\% - 11.81\% = 2.19\%$$

$$\text{Portfolio} = 14.6\% - 12.03\% = 2.57\%$$

13. Expected Turnover = ₹ 1600 lakhs + ₹ 286.40 = ₹ 1886.40 lakhs

	₹ in Lacs	₹ in Lacs
<i>Advance to be given:</i>		
Debtors ₹1886.40 lakhs x 100/360	524.00	
Less: 10% withholding	<u>52.40</u>	
		471.60
Less: Commission 1.75%		<u>9.17</u>
Net payment		462.43
Less: Interest @14% for 100 days on ₹ 462.43 lacs		<u>17.98</u>
		<u>444.45</u>
<i>Calculation of Average Cost:</i>		
Total Commission ₹1886.40 lakhs x 1.75%		33.01
Total Interest ₹ 17.98 lacs x 360/100		<u>64.73</u>
		97.74
Less: Admin. Cost	8.00	
Saving in Bad Debts (₹1886.40 lacs x 1.50% x 85%)	<u>24.05</u>	<u>32.05</u>
		<u>65.69</u>
Effective Cost of Factoring = 65.69/444.45 x 100		14.78%

**14. Working Notes:**

## (i) Decomposition of Funds in Equity and Cash Components

	D Mutual Fund Ltd.	K Mutual Fund Ltd.
NAV on 31.12.19	₹ 70.71	₹ 62.50
% of Equity	99%	96%
Equity element in NAV	₹ 70	₹ 60
Cash element in NAV	₹ 0.71	₹ 2.50

## (ii) Calculation of Beta

## (a) D Mutual Fund Ltd.

$$\text{Sharpe Ratio} = 2 = \frac{E(R) - R_f}{\sigma_D} = \frac{E(R) - R_f}{11.25}$$

$$E(R) - R_f = 22.50$$

$$\text{Treynor Ratio} = 15 = \frac{E(R) - R_f}{\beta_D} = \frac{22.50}{\beta_D}$$

$$\beta_D = 22.50/15 = 1.50$$

## (b) K Mutual Fund Ltd.

$$\text{Sharpe Ratio} = 3.3 = \frac{E(R) - R_f}{\sigma_K} = \frac{E(R) - R_f}{5}$$

$$E(R) - R_f = 16.50$$

$$\text{Treynor Ratio} = 15 = \frac{E(R) - R_f}{\beta_K} = \frac{16.50}{\beta_K}$$

$$\beta_K = 16.50/15 = 1.10$$

## (iii) Decrease in the Value of Equity

	D Mutual Fund Ltd.	K Mutual Fund Ltd.
Market goes down by	5.00%	5.00%
Beta	1.50	1.10
Equity component goes down	7.50%	5.50%

## (iv) Balance of Cash after 1 month

	D Mutual Fund Ltd.	K Mutual Fund Ltd.
Cash in Hand on 31.12.19	₹ 0.71	₹ 2.50
Less: Exp. Per month	₹ 0.25	₹ 0.25
Balance after 1 month	₹ 0.46	₹ 2.25

## NAV after 1 month

	D Mutual Fund Ltd.	K Mutual Fund Ltd.
Value of Equity after 1 month		
70 x (1 - 0.075)	₹ 64.75	-
60 x (1 - 0.055)	-	₹ 56.70
Cash Balance	0.46	2.25
	65.21	58.95

15. XYZ plc shall be ready to undertake this swap arrangement only if it receives the interest on the surplus funds if invested on individual basis as follows:

	Interest	Amt. after 91 days	Conversion in £
Holland € 1,450,000 x 0.02 x 91/360 =	€ 7,330.56	€ 1,457,330.56	£1,004,829.42 (1,457,330.56 x 0.6895)
Switzerland CHF 1,996,154 x 0.005 x 91 / 360 =	CHF 2,522.92	CHF 1,998,676.92	£865,303.02 (1,998,676.92 ÷ 2.3098)
UK £ 150,000 x 0.01 x 91/360 =	£ 379.17	£ 150,379.17	£ 150,379.17
Total GBP at 91 days			£ 2,020,511.61

## Swap to Sterling

Sell € 1,450,000 (Spot at 0.6858) buy £	£ 994,410.00
Sell CHF 1,996,154 (Spot at 2.3326) buy £	£ 855,763.53
Independent GBP amount	£ 150,000.00
	£ 2,000,173.53
Amount accrued on Individual Basis (Principal + Interest)	£ 2,020,511.61
Interest Required	£ 20,338.08
Required Interest Rate on Per Annuam Basis $\frac{20,338.08}{2,000,173.53} \times \frac{360}{91} \times 100$	4.023%

Thus, the minimum rate that should be offered is 4.023%.

16. (a) No, while Citi Bank's quote is a Direct Quote for JPY (i.e. for Japan) the Hong Kong Bank quote is a Direct Quote for USD (i.e. for USA).
- (b) Since Citi Bank quote imply USD/ JPY 0.0094 - 0.0095 and both rates exceed those offered by Hong Kong Bank, there is an arbitrage opportunity.

Alternatively, it can also be said that Hong Kong Bank quote imply JPY/ USD 107.53 – 111.11 and both rates exceed quote by Citi Bank, there is an arbitrage opportunity.

- (c) Let us how arbitrage profit can be made.

(i) Covert US\$ 1,000 into JPY by buying from Hong Kong Bank JPY 1,07,530

Sell these JPY to Citi Bank at JPY/ USD 106.50 and convert in US\$ US\$ 1009.67

Thus, arbitrage gain (US\$ 1009.67 - US\$ 1000.00) US\$ 9.67

(ii) Covert JPY 1,00,000 into USD by buying from Citi Bank at JPY/ USD 106.50  
US\$ 938.97

Sell these US\$ to Hong Kong Bank at JPY/ USD 107.53 and convert in US\$  
JPY 100967.44

Thus, arbitrage gain (JPY 1,00,967.44 - JPY 1,00,000) JPY 967.44

17. (a) (i) Calculate the cross rate for Pounds in Yen terms

1£ = ? ¥

US\$1 = ¥ 107.31

£ 1 = US\$ 1.26

$$\frac{¥}{\$} \times \frac{\$}{£} = \frac{¥}{£}$$

$$\frac{¥}{£} = 107.31 \times 1.26$$

£1 = ¥ 135.21

- (ii) Calculate the cross rate for Australian Dollar in Yen terms

A\$1 = ¥ ?

US\$1 = ¥ 107.31

A\$ 1 = US\$ 0.70

$$\frac{¥}{\$} \times \frac{\$}{A\$} = \frac{¥}{A\$}$$

$$\frac{\text{¥}}{\text{A\$}} = 107.31 \times 0.70$$

$$\text{A\$ } 1 = \text{¥ } 75.12$$

(iii) Calculate the cross rate for Pounds in Australian Dollar terms

$$\text{£ } 1 = \text{A\$ } ?$$

$$\text{A\$ } 1 = \text{US\$ } 0.70$$

$$\text{US\$ } 1 = \text{A\$ } 1.4286$$

$$\text{£ } 1 = \text{US\$ } 1.26$$

$$\frac{\text{A\$}}{\text{\$}} \times \frac{\text{\$}}{\text{£}} = \frac{\text{A\$}}{\text{£}}$$

$$\frac{\text{A\$}}{\text{£}} = 1.4286 \times 1.26 = 1.80$$

$$\text{£ } 1 = \text{A\$ } 1.80$$

(b) (i) If you believe the spot exchange rate will be \$ 1.32/£ in three months, you should buy £ 1,000,000 forward for \$1.30/£ and sell at \$ 1.32/£ 3 months hence.

Your expected profit will be: £1,000,000 x (\$1.32 - \$1.30) = \$20,000

(ii) If the spot exchange rate turns out to be \$1.26/£ in three months, your loss from the long position in Forward Market will be: -

$$\text{£ } 1,000,000 \times (\$ 1.26 - \$1.30) = \$ 40,000$$

**18. Determination of forecasted Free Cash Flow of the Firm (FCFF) (₹ in crores)**

	Yr. 1	Yr. 2	Yr 3	Terminal Year
Revenue	9000.00	10800.00	12960.00	13996.80
COGS	3600.00	4320.00	5184.00	5598.72
Operating Expenses	1980.00*	2376.00	2851.20	3079.30
Depreciation	720.00	864.00	1036.80	1119.74
EBIT	2700.00	3240.00	3888.00	4199.04
Tax @30%	810.00	972.00	1166.40	1259.71
EAT	1890.00	2268.00	2721.60	2939.33
Capital Exp. – Dep.	172.50	198.38	228.13	-
Δ Working Capital	375.00	450.00	540.00	259.20
Free Cash Flow (FCF)	1342.50	1619.62	1953.47	2680.13

\* Excluding Depreciation.

Present Value (PV) of FCFF during the explicit forecast period is:

FCFF (₹ in crores)	PVF @ 15%	PV (₹ in crores)
1342.50	0.8696	1167.44
1619.62	0.7561	1224.59
1953.47	0.6575	1284.41
		3676.44

PV of the terminal, value is:

$$\frac{2680.13}{0.15 - 0.08} \times \frac{1}{(1.15)^3} = ₹ 38287.57 \text{ Crore} \times 0.6575 = ₹ 25174.08 \text{ Crore}$$

The value of the firm is :

$$₹ 3676.44 \text{ Crores} + ₹ 25174.08 \text{ Crores} = ₹ 28,850.52 \text{ Crores}$$

#### 19. (a) Impact of Financial Restructuring

##### (i) Benefits to Grape Fruit Ltd.

##### (1) Reduction of liabilities payable

	₹ in lakhs
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)	85
	661
(2) Revaluation of Assets	
Appreciation of Land and Building (₹450 lakhs - ₹200 lakhs)	250
Total (X)	911

##### (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 (Y)	675
Capital Reserve (X) – (Y)	236

(b) Balance sheet of Grape Fruit Ltd as at 31<sup>st</sup> March 2019 (after re-construction)

(₹ in lakhs)

Liabilities	Amount	Assets		Amount
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	-15	55
		Cash-at-Bank (Balancing figure)*		280
	1165			1165

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

20. (a) The key decisions falling within the scope of financial strategy are as follows:

1. **Financing decisions:** These decisions deal with the mode of financing or mix of equity capital and debt capital.
2. **Investment decisions:** These decisions involve the profitable utilization of firm's funds especially in long-term projects (capital projects). Since the future benefits associated with such projects are not known with certainty, investment decisions necessarily involve risk. The projects are therefore evaluated in relation to their expected return and risk.
3. **Dividend decisions:** These decisions determine the division of earnings between payments to shareholders and reinvestment in the company.
4. **Portfolio decisions:** These decisions involve evaluation of investments based on their contribution to the aggregate performance of the entire corporation rather than on the isolated characteristics of the investments themselves.

(b) The various market indicators are as follows:

- (i) **Breadth Index:** It is an index that covers all securities traded. It is computed by dividing the net advances or declines in the market by the number of issues

traded. The breadth index either supports or contradicts the movement of the Dow Jones Averages. If it supports the movement of the Dow Jones Averages, this is considered sign of technical strength and if it does not support the averages, it is a sign of technical weakness i.e. a sign that the market will move in a direction opposite to the Dow Jones Averages. The breadth index is an addition to the Dow Theory and the movement of the Dow Jones Averages.

- (ii) **Volume of Transactions:** The volume of shares traded in the market provides useful clues on how the market would behave in the near future. A rising index/price with increasing volume would signal buy behaviour because the situation reflects an unsatisfied demand in the market. Similarly, a falling market with increasing volume signals a bear market and the prices would be expected to fall further. A rising market with decreasing volume indicates a bull market while a falling market with dwindling volume indicates a bear market. Thus, the volume concept is best used with another market indicator, such as the Dow Theory.
- (iii) **Confidence Index:** It is supposed to reveal how willing the investors are to take a chance in the market. It is the ratio of high-grade bond yields to low-grade bond yields. It is used by market analysts as a method of trading or timing the purchase and sale of stock, and also, as a forecasting device to determine the turning points of the market. A rising confidence index is expected to precede a rising stock market, and a fall in the index is expected to precede a drop in stock prices. A fall in the confidence index represents the fact that low-grade bond yields are rising faster or falling more slowly than high grade yields. The confidence index is usually, but not always a leading indicator of the market. Therefore, it should be used in conjunction with other market indicators.
- (iv) **Relative Strength Analysis:** The relative strength concept suggests that the prices of some securities rise relatively faster in a bull market or decline more slowly in a bear market than other securities i.e. some securities exhibit relative strength. Investors will earn higher returns by investing in securities which have demonstrated relative strength in the past because the relative strength of a security tends to remain undiminished over time.

Relative strength can be measured in several ways. Calculating rates of return and classifying those securities with historically high average returns as securities with high relative strength is one of them. Even ratios like security relative to its industry and security relative to the entire market can also be used to detect relative strength in a security or an industry.

- (v) **Odd - Lot Theory:** This theory is a contrary - opinion theory. It assumes that the average person is usually wrong and that a wise course of action is to pursue strategies contrary to popular opinion. The odd-lot theory is used primarily to predict tops in bull markets, but also to predict reversals in individual securities.

(c) Difference between forward and future contract is as follows:

S. No.	Features	Forward	Futures
1.	Trading	Forward contracts are traded on personal basis or on telephone or otherwise.	Futures Contracts are traded in a competitive arena.
2.	Size of Contract	Forward contracts are individually tailored and have no standardized size.	Futures contracts are standardized in terms of quantity or amount as the case may be.
3.	Organized exchanges	Forward contracts are traded in an over the counter market.	Futures contracts are traded on organized exchanges with a designated physical location.
4.	Settlement	Forward contracts settlement takes place on the date agreed upon between the parties.	Futures contracts settlements are made daily via. Exchange's clearing house.
5.	Delivery date	Forward contracts may be delivered on the dates agreed upon and in terms of actual delivery.	Futures contracts delivery dates are fixed on cyclical basis and hardly takes place. However, it does not mean that there is no actual delivery.
6.	Transaction costs	Cost of forward contracts is based on bid – ask spread.	Futures contracts entail brokerage fees for buy and sell orders.
7.	Marking to market	Forward contracts are not subject to marking to market	Futures contracts are subject to marking to market in which the loss on profit is debited or credited in the margin account on daily basis due to change in price.
8.	Margins	Margins are not required in forward contract.	In futures contracts every participants is subject to maintain margin as decided by the exchange authorities.
9.	Credit risk	In forward contract, credit risk is born by each party and, therefore, every party has to bother for the creditworthiness.	In futures contracts the transaction is a two way transaction, hence the parties need not to bother for the risk.

- (d) Limitations of Social Cost Benefit Analysis are as follows:
- (i) Successful application depends upon reasonable accuracy and dependability of the underlying forecasts as well as assessment of intangibles.
  - (ii) Technique does not indicate whether given project evaluated on socio-economic considerations is best choice to reach national goals or whether same resources if employed in another project would yield better results.
  - (iii) Cost of evaluation by such technique could be enormous for smaller projects.
  - (iv) Social Cost Benefit Analysis takes into consideration those aspects of social costs and benefits which can be quantified. Other aspects like happiness, satisfaction, aesthetic pleasure, better quality of life cannot be quantified.
- (e) The Asset Reconstruction Companies purchase assets in the following manner and the whole process is closely monitored by the banking regulator:
- (i) *Raising Funds* - Asset Reconstruction Companies are allowed to raise funds from Qualified Institutional Buyers only in order to make payment to buy discounted debts from banks. They raise fund through the issue of security receipts to QIB's. The security receipt gives the QIB a right, title or interest in the financial asset that is brought by the ARC. ARC's also issues debt instruments or even sells equity to raise funds. Further, they have to take a special precaution that retail investors are excluded from it. The reason is that ARC's are highly risky and only QIB's are able to withstand such risk in case of a loss.
  - (ii) *Partnership Method* – Many times, ARC's do not directly buy debts from the banks. They remain on the banks books. And, the bank hires the ARC to do the debt recovery process. Whatever revenue generated is divided between banks and ARC in a predetermined manner.

## **PAPER – 3 : ADVANCED AUDITING AND PROFESSIONAL ETHICS**

### **PART – I : ACADEMIC UPDATE**

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

#### **Chapter 1 : Auditing Standards, Statements and Guidance Notes-An Overview**

**1 SA 299: Joint Audit of Financial Statements** - This SA deals with the special considerations in carrying out audit by joint auditors. Accordingly, in addition to the requirements enunciated in this Standard, the joint auditors also need to comply with all the relevant requirements of other applicable Standards on Auditing. This Standard deals with the special considerations in carrying out audit by joint auditors. The objectives of this Standard are to lay down broad principles for the joint auditors in conducting the joint audit, to provide a uniform approach to the process of joint audit, to identify the distinct areas of work and coverage thereof by each joint auditor and to identify individual responsibility and joint responsibility of the joint auditors in relation to audit.

The SA became effective for all audits relating to accounting periods commencing on or after April 1, 2018.

**2 SA 720: The Auditor's Responsibility in Relation to Other Information** - This Standard on Auditing (SA) deals with the auditor's responsibilities relating to other information, whether financial or non-financial information (other than financial statements and the auditor's report thereon), included in an entity's annual report. An entity's annual report may be a single document or a combination of documents that serve the same purpose. This SA requires the auditor to read and consider the other information because other information that is materially inconsistent with the financial statements or the auditor's knowledge obtained in the audit may indicate that there is a material misstatement of the financial statements or that a material misstatement of the other information exists, either of which may undermine the credibility of the financial statements and the auditor's report thereon. Such material misstatements may also inappropriately influence the economic decisions of the users for whom the auditor's report is prepared.

This SA is effective for audits of financial statements for periods beginning on or after April 1, 2018.

**(Note: Text of revised SA 299 and revised SA 720 is reproduced in Auditing Pronouncements.)**

#### **Chapter 6 : The Company Audit**

- (i) Additional requirement for claiming exemption under section 141(3)(g) for counting ceiling limit is available only if such private 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.

- (ii) Notification No. G.S.R. 583(E) stated that requirements of reporting under section 143(3)(i) read with Rule 10 A of the Companies (Audit and Auditors) Rules, 2014 of the Companies Act 2013 shall not apply to certain private companies. Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) (vide circular no. 08/2017) 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.
- (iii) As per provisions of Section 143(3)(i) of Companies Act, the Auditor's 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 reporting on Internal Financial Controls to following private companies which is one person Company (OPC) or a Small Company; or which has turnover less than ₹ 50 Crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than ₹ 25 Crore. In addition, 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.
- (iv) 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.
- (v) Submission of Cost Audit Report to the Central Government- The company shall within 30 days from the date of receipt of a copy of the cost audit report prepared (in pursuance of a direction issued by Central Government) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein in Form CRA-4 in Extensible Business Reporting Language (XBRL) format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014. ***Provided that the companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013 as per MCA notification dated 3 December 2018 vide Companies (cost records and audit) Amendment Rules, 2018.***
- (vi) **Duty to report on any other matter specified by Central Government:** The Central Government may, in consultation with the National Financial Reporting Authority (NFRA),

by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.

(vii) **Constitution of National Financial Reporting Authority:** According to Section 132 of the Act, the Central Government may, by notification, constitute a National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards for adoption by companies or class of companies under the Act.

**The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.**

As per Section 132 (2) of the Companies Act 2013, notwithstanding anything contained in any other law for the time being in force, the NFRA shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

**In exercise of the powers conferred under sub-sections (2) and (4) of section 132, the Central Government made the National Financial Reporting Authority Rules, 2018 (NFRA Rules) (MCA Notification dated 13 November 2018).**

As per NFRA rules, NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate:

- (a) companies whose securities are listed on any stock exchange in India or outside India;
- (b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

- (c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of section 1 (4) of the Companies Act, 2013;

*“Explanation.- For the purpose of this clause, “banking company” includes ‘corresponding new bank’ as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) and ‘subsidiary bank’ as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959).”*

- (d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and
- (e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net-worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net-worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above.

Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.

Every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate. Provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein (i.e. mentioned in points (a) to (e) above).

***Every auditor referred to in Rule 3 shall file a return with the NFRA on or before 30th November every year in Form NFRA-2”***

**Recommending accounting standards (AS) and auditing standards (SA)** - For the purpose of recommending AS or SA for approval by the Central Government, the NFRA -

- (a) shall receive recommendations from the ICAI on proposals for new AS or SA or for amendments to existing AS or SA;
- (b) may seek additional information from the ICAI on the recommendations received under clause (a), if required.

The NFRA shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.

**Monitoring and Enforcing Compliance with Auditing Standards -**

- (1) For the purpose of monitoring and enforcing compliance with auditing standards under the Act by a company or a body corporate governed under rule 3, the NFRA may:
  - (a) review working papers (including audit plan and other audit documents) and communications related to the audit;
  - (b) evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and
  - (c) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.
- (2) The NFRA may require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
- (3) The NFRA may seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
- (4) The NFRA shall perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
- (5) The NFRA shall publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.
- (6) The NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.
- (7) The NFRA may send a separate report containing proprietary or confidential information to the Central Government for its information.

- (8) Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

**Overseeing the quality of service and suggesting measures for improvement**

- (1) On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
- (2) It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.
- (3) The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
- (4) The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
- (5) The NFRA may take the assistance of experts for its oversight and monitoring activities.

**Punishment in case of non-compliance** - If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of NFRA Rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

*Further, as per Section 132(4) of the Companies Act, 2013 as amended by the Companies Amendment Act, 2019, National Financial Reporting Authority, where professional or other misconduct is proved, have the power to make order for:*

**(A) imposing penalty of—**

- I. not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and*
- II. not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;*

**(B) debarring the member or the firm from:**

- I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or*
- II. performing any valuation as provided under section 247,*  
*for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.*

**Financial reporting advocacy and education** - The NFRA shall take suitable measures for the promotion of awareness and significance of AS, SA, auditors' responsibilities, audit quality and such other matters through education, training, seminars, workshops, conferences and publicity.

- (viii) 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 liable to a penalty which shall not be less than fifty thousand rupees *or the remuneration of the auditor, whichever is less*, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees as per section 140(3) [Companies (Amendment) Second Ordinance, 2019 dated 21 February, 2019].
- (ix) 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.
- (x) By virtue of notification dated February 23, 2018, the Central Government has exempted the companies engaged in defence production from section 129 of the Companies Act, 2013 to the extent of application of relevant Accounting Standard on segment reporting.
- (xi) As per MCA notification dated February 5, 2018, the provision of deferred tax asset/liability as per Ind AS 12 or Accounting Standard 22 shall not apply, for 7 years with effect from 1<sup>st</sup> April, 2017, to Government Company which is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013; is a Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and is engaged in the business of infrastructure finance leasing with not less than seventy five percent of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government.

- (xii) The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind AS has been prescribed.
- (xiii) 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.
- (xiv) Enabling provisions regarding serving notice along with getting 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, it has been brought enabling the Court/ Tribunal to give notice to any other party/ person concerned and consider the representations, if any.
- (xv) 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 amended 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, thereby enhancing the limit for applicability of rotational provisions on private limited company.
- (xvi) 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, whichever 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, whichever 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. However, 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.**
- (xvii) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed”.

As per Advisory issued by ICAI, the aforesaid reporting requirement for auditors of public companies needs to be covered in auditor's report under the Section "Report on Other Legal and Regulatory Requirements". Accordingly, auditors of public companies are advised to comply with the aforesaid reporting requirements in their auditor's reports. (in) (insertion in Duty to Audit Report under heading Duties of Auditors.)

#### Chapter 7 : Liabilities of Auditors

1. **A civil action against the auditor may either take in the form of claim for damages on account of negligence or that of misfeasance proceeding for breach of trust or duty:**
  - (I) **Damages for negligence:** Civil liability for mis-statement in prospectus under section 35 of the Companies Act, 2013, are:
    - (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a)	is a director of the company at the time of the issue of the prospectus;
(b)	has authorized himself to be named and is named in the prospectus as a director of the company or has agreed to become such director either immediately or after an interval of time;
(c)	is a promoter of the company;
(d)	has authorised the issue of the prospectus; and
(e)	is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

- (2) No person shall be liable under sub-section (1), if he proves—
- that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
  - that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
  - that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.***
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

It may be noted that the term “expert” as defined in Section 2(38) of the Companies Act, 2013 includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. Also that under

Section 26 of the Act a statement may be considered to be untrue, not only because it is so but also if it is misleading in the form and context in which it is included.

The liability would arise if the written consent of the auditor to the issue of the prospectus, including the report purporting to have been made by him as an “expert” has been obtained.

**2. 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, involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten 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 three years.

It may also be noted 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 fifty lakh rupees or with both.

**3. Liabilities under Income Tax Act 1961:** In connection with proceedings under the Income Tax Act 1961, a Chartered Accountant often acts as the authorised representative of his clients and attends before an Income Tax Authority or the appellate tribunal. His liabilities under the Income Tax Act of 1961 are as below:

- (i) **Under Section 288:** A person who has been convicted of any offence connected with any Income Tax proceeding or on whom a penalty has been imposed under the said Act (except under clause (ii) of sub section (1) of Section 271) is disqualified from representing an assessee. The Chief Commissioner/Commissioner of Income Tax has been given powers to determine the period of such disqualification of a person.

<b>Section 288 (4) &amp; (5) of the Income Tax Act, 1961</b>	
<b>Sub section 4 of Section 288 of the Income Tax Act:</b>	
No person-	
(a)	who has been dismissed or removed from Government service after the 1 <sup>st</sup> day of April, 1938; or
(b)	Who has been convicted of an offence connected with any income tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under [clause(ii) of sub section (1) of section 271 [or clause(d) of sub-section (1) of section 272A]; or

- (c) who has become an insolvent; or
- (d) who has been convicted by a court for an offence involving fraud, shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in clause (a), for such time as the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, by order determine in the case of a person referred to in clause (b), for the period during which the insolvency continues in the case of a person referred to in clause (c), and for a period of ten years from the date of conviction in the case of a person referred to in clause (d).

**Sub section 5 of Section 288 of the Income Tax Act:**

If any person-

- (a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practice as a legal practitioner or account, as the case may be;
- (b) Who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority (Chief Commissioner or Commissioner having requisite jurisdiction) may direct that he shall thenceforth be disqualified to represent an assessee under sub section (1).

A Chartered Accountant found guilty of professional misconduct in his professional capacity by the Council of the Institute of Chartered Accountants of India, can not act as an authorised representative (for any matter within the definition of a member in practice) for such time that the order of the Council disqualifies him from practising.

- (ii) **Under Section 278:** "If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income [or any fringe benefits] chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,-

**Section 278 of the Income Tax Act, 1961:**

- (i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds [twenty five] hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to [two] years and with fine

- (iii) **Under Rule 12A of the Income Tax Rules:** Under this rule a Chartered Accountant who as an authorised representative has prepared the return filed by the assessee, has to furnish to the Assessing Officer, the particulars of accounts, statements and other documents supplied to him by the assessee for the preparation of the return.

Where the Chartered Accountant has conducted an examination of such records, he has also to submit a report on the scope and results of such examination. The report to be submitted will be a statement within the meaning of Section 277 of the Income Tax Act. Thus, if this report contains any information which is false and which the Chartered Accountant either knows or believes to be false or untrue, he would be liable to rigorous imprisonment which may extend to seven years and to a fine.

- (iv) **Under Section 271J of the Income Tax Act:** As per new section inserted by the Finance Act, 2017 if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty. [ section 271J]

### Chapter 9: Audit Committee and Corporate Governance

Certain amendments to the LODR Regulations have been made vide SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018. The LODR Regulations and the amendments made thereto are collectively referred to as LODR Regulations.

- (1) **Applicability of LODR Regulations [Regulation 3]:** Unless otherwise provided, these regulations shall apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

<b>Applicability</b>	<ul style="list-style-type: none"> <li>• specified securities listed on main board or SME Exchange or institutional trading platform;</li> <li>• non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;</li> <li>• Indian depository receipts;</li> <li>• securitised debt instruments;</li> <li>• security receipts (added w.e.f. September 06, 2018);</li> <li>• units issued by mutual funds;</li> <li>• any other securities as may be specified by the Board.</li> </ul>
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### (2) Role of Audit Committee [Part C (A) of Schedule II]

Inserted point no (21) The role of the Audit Committee shall also include **reviewing the utilization of loans and/ or advances from/investment by the holding company in the**

**subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments as on April 01, 2019.**

**Audit Committee under Section 177 of the Companies Act, 2013:** As per section 177 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014, **every listed public company** and the following classes of companies shall constitute an Audit Committee –

- (a) all public companies with a paid up capital of ten crore rupees or more;
- (b) all public companies having turnover of one hundred crore rupees or more;
- (c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

**(3) Functions of The Audit Committee:** The Audit Committee performs various important functions like investigating the matters referred by board, discuss about internal control system etc. These sub-sections of Section 177 are reproduced hereunder which specify the terms of reference as well as functions of the Audit Committee:

**Sub Section 4:** “Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,—

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor’s independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors’ report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

**(However, the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.**

**In case of transactions other than transactions referred to in section 188 of the Companies Act 2013, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.**

**Also, in case any transaction involving an amount not exceeding Rupees 1 crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it.**

These provisions shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.”

**Sub Section 7:** The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor’s report but shall not have the right to vote.

**Sub Section 8:** The Board’s report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

**(4) Verification regarding Composition of Board [Regulation 17]**

- (i) The auditor should ascertain whether, throughout the reporting period, the Board of Directors comprises an optimum combination of executive and non-executive directors, with at least one woman director and not less than 50% of the Board of Directors comprising non-executive directors. *It may be noted that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;*

*The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.*

*The auditor should also ensure that no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

*The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -*

*(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:*

*It may be noted that a person shall not serve as an independent director in more than seven listed entities.*

***(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.***

***For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”***

The minutes of the Board of Directors' meetings should be verified to ascertain whether a director is an executive director or a non-executive director.

- (ii) ***The auditor should ensure that the board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.***

***Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.***

***With effect from 1<sup>st</sup> April 2019, the statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS / IndAS in accordance with guidelines issued by SEBI on this matter”. Consequently,***

- ***all listed entities whose equity shares and convertible securities are listed on a recognised stock exchange,***
- ***the statutory auditors of such entities,***
- ***all entities whose accounts are to be consolidated with the listed entity and***
- ***the statutory auditors of entities whose accounts are to be consolidated with the listed entity***

***shall comply with the prescribed procedure.***

**(5) Approval of Remuneration of Directors [Regulation 17 (6)]:** All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate. ***However, w.e.f. April 01, 2019, approval of shareholders by special resolution shall be obtained every year, in case the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors.***

The requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under

the Companies Act, 2013 for payment of sitting fees without approval of the Central Government. Provided further that independent director shall not be entitled to any stock option.

***The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-***

- (i) ***the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or***
- (ii) ***where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:***

***It may be noted that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director. For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.***

**(6) Obligations With respect to employees including Senior management, key managerial persons, directors and promoters [Regulations 17(2) to 17(4), 25(5) to 25(6), 26(1) to 26(2), 26(4) to 26(6)]:**

- (i) The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. ***The quorum for every meeting of the board of directors of the top 1,000 listed entities with effect from April 1, 2019 and of the top 2,000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director. The participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum. The top 1,000 and 2,000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.***

***The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time:***

- (a) ***A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:***

***It may be noted that a person shall not serve as an independent director in more than seven listed entities.***

- (b) ***Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.***

***For the purpose of this abovementioned provision, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.***

**(7) Subsidiary of Listed Entity [Regulations 16(c), 24 and 46 and Part C of Schedule V]:**

(i) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, ***whether incorporated in India or not.*** [Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year]

(vi) A listed entity shall not dispose off shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal, ***or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.***

(vii) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal, ***or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event has been disclosed to the recognized stock exchanges within one day of the resolution plan being approved.***

***Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.***

**(Note:** As per Regulation 16(c), “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds ***ten percent*** of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. [Explanation- The listed entity shall formulate a policy for determining ‘material’ subsidiary.]

**(8) Statement of Deviation(s) or Variation(s) [Regulation 32 and Part C of Schedule II]:**

**(3) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.**

**(9) Disclosures - Management Discussion and Analysis [Schedule V]**

<p><b>(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:</b></p> <p><b>(i) Debtors Turnover</b>  <b>(ii) Inventory Turnover</b>  <b>(iii) Interest Coverage Ratio</b>  <b>(iv) Current Ratio</b>  <b>(v) Debt Equity Ratio</b>  <b>(vi) Operating Profit Margin (%)</b>  <b>(vii) Net Profit Margin (%)</b>  <b>or sector-specific equivalent ratios, as applicable</b></p>	<p><b>(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.</b></p>
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**(10) Stakeholders Relationship Committee [Regulation 20 and Part D of Schedule II]**

<b>(i)</b> The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the - <b>various aspects of interest of shareholders</b> , debenture holders and other security holders.
<b>(ii)</b> The chairperson of this Committee shall be a non-executive director.
<b>(iii)</b> At least three directors, with at least one being an independent director, shall be members of the Committee.
<b>(iv)</b> The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.
<b>(v)</b> The stakeholders relationship committee shall meet at least once in a year.
<p><b>(iv)</b> The role of the committee shall inter-alia include the following :</p> <p><b>1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.</b></p>

- 2) *Review of measures taken for effective exercise of voting rights by shareholders.*
- 3) *Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.*
- 4) *Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.*

**(11) Related Party Disclosure [Regulations 27, 46 and Schedule V]:** *The listed entity shall disclose the transactions with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.*

*The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.*

**(12) Disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. (Schedule V) :** *Amongst other matters, following should be disclosed in the section on Corporate Governance of the Annual Report:*

<i>a. number of complaints filed during the financial year</i>
<i>b. number of complaints disposed of during the financial year</i>
<i>c. number of complaints pending as on end of the financial year”</i>

**(13) Risk Management Committee [Regulation 21]:**

- (a) *The risk management committee shall meet at least once in a year.*
- (b) The Board of Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit and **such function shall specifically cover cyber security.**
- (c) The provisions of this regulation shall be applicable to **top 500 listed entities**, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

**(14) Nomination and Remuneration Committee [Regulation 19 and Part D of Schedule II]:** The Board of Directors of **every listed public company** shall constitute the Nomination and Remuneration Committee which shall comprise at least three directors, all of whom shall be

non-executive directors and at least half shall be independent. Chairperson of the committee shall be an independent director. It may be noted that the Chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such committee.

The role of such committee shall, inter-alia, include

- (i) Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board of Directors a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
- (ii) Formulation of criteria for evaluation of performance of independent directors and the Board of Directors;
- (iii) Devising a policy on Board diversity;
- (iv) Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal;
- (v) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.
- (vi) recommend to the board, all remuneration, in whatever form, payable to senior management.**

***The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.***

***The nomination and remuneration committee shall meet at least once in a year.***

***(15) As per Stock and Exchange Board of India circular no. CIR/CFD/CMD1/114/2019 dated 18<sup>th</sup> October, 2019 on resignation of statutory auditors from listed entities and their material subsidiaries:***

1. Listed companies are required to make timely disclosures to investors in the securities market for enabling them to take informed investment decisions.
2. Under Sub-clause (2) of Clause A in Part C of Schedule II under Regulation 18(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations"), the Audit Committee of a listed entity, inter alia, has to make recommendations for the appointment, remuneration and terms of appointment of auditors of a listed entity. Under Sub-clause (7), the Audit Committee is also responsible for reviewing and monitoring the independence and performance of auditors and the effectiveness of the audit process.
3. Further, Sub-clause (7A) inserted under Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations requires detailed reasons to be disclosed by the listed entities to the stock exchanges in case of resignation of the auditor of a listed

entity as soon as possible but not later than twenty-four hours of receipt of such reasons from the auditor.

4. Regulation 36(5) of the SEBI LODR Regulations lays down certain disclosures to be made part of the notice to the shareholders for an AGM, where the statutory auditors are proposed to be appointed/re-appointed, including their terms of appointment.
5. Resignation of an auditor of a listed entity / its material subsidiary before completion of the audit of the financial results for the year due to reasons such as pre-occupation may seriously hamper investor confidence and deny them access to reliable information for taking timely investment decisions.
6. In light of the above, the conditions to be complied with upon resignation of the statutory auditor of a listed entity/material subsidiary w.r.t. limited review / audit report as per SEBI LODR Regulations, are as under:

**A. All listed entities/material subsidiaries shall ensure compliance with the following conditions while appointing/re-appointing an auditor:**

- (i) If the auditor resigns within 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter.
- (ii) If the auditor resigns after 45 days from the end of a quarter of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for such quarter as well as the next quarter.
- (iii) Notwithstanding the above, if the auditor has signed the limited review/ audit report for the first three quarters of a financial year, then the auditor shall, before such resignation, issue the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year.

**B. Other conditions relating to resignation shall include:**

- (i) Reporting of concerns with respect to the listed entity/its material subsidiary to the Audit Committee:
  - a. In case of any concern with the management of the listed entity/material subsidiary such as non-availability of information or non-cooperation by the management which may hamper the audit process, the auditor shall approach the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.
  - b. In case the auditor proposes to resign, all concerns with respect to the proposed resignation, along with relevant documents shall be brought to the notice of the Audit Committee. In cases where the proposed resignation is due to non-receipt of information or explanation from the company, the auditor shall inform the Audit Committee of the details of information or

explanation sought and not provided by the management, as applicable.

- c. On receipt of such information from the auditor relating to the proposal to resign as mentioned above, the Audit Committee I board of directors, as the case may be, shall deliberate on the matter and communicate its views to the management and the auditor.
- (ii) Disclaimer in case of non-receipt of information: In case the listed entity/ its material subsidiary does not provide information required by the auditor, to that extent, the auditor shall provide an appropriate disclaimer in the audit report, which may be in accordance with the Standards of Auditing as specified by ICAI/ NFRA.

The listed entity/ material subsidiary shall ensure that the conditions as mentioned in 6(A) and 6(B) above are included in the terms of appointment of the statutory auditor at the time of appointing/re-appointing the auditor. In case the auditor has already been appointed, the terms of appointment shall be suitably modified to give effect to 6(A) and 6(B) above.

The practicing company secretary shall certify compliance by a listed entity with 6(A) and 6(B) above in the annual secretarial compliance report issued in terms of SEBI Circular no. CIR/CFD/CMD1/27/2019 dated February 08, 2019.

**C. Obligations of the listed entity and its material subsidiary:**

- (i) Format of information to be obtained from the statutory auditor upon resignation: Upon resignation, the listed entity/ its material subsidiary shall obtain information from the Auditor in the format as specified in Annexure A to this Circular. The listed entity shall ensure disclosure of the same under Sub-clause (7A) of Clause A in Part A of Schedule III under Regulation 30(2) of SEBI LODR Regulations.
- (ii) Co-operation by listed entity and its material subsidiary: During the period from when the auditor proposes to resign till the auditor submits the report for such quarter I financial year as specified above, the listed entity and its material subsidiaries shall continue to provide all such documents/information as may be necessary for the audit I limited review.
- (iii) Disclosure of Audit Committee's views to the Stock Exchanges: Upon resignation of the auditor, the Audit Committee shall deliberate upon all the concerns raised by the auditor with respect to its resignation as soon as possible, but not later than the date of the next Audit Committee meeting and communicate its views to the management. The listed entity shall ensure the disclosure of the Audit Committee's views to the stock exchanges as soon as possible but not later than twenty-four hours after the date of such Audit Committee meeting.

- 7. In case an entity is not mandated to have an Audit Committee, then the board of directors of the entity shall ensure compliance of this circular.

8. The Stock Exchanges are advised to bring the provisions of this circular to the notice of all listed entities and their material subsidiaries and also disseminate it on their websites.
9. In case the auditor is rendered disqualified due to operation of any condition mentioned in Section 141 of the Companies Act, 2013, then the provisions of this Circular shall not apply.
10. The Circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with regulations 18(3), 30(2) and 36(5) of the SEBI LODR Regulations and shall be in addition to the provisions of Companies Act, 2013. For more details visit: [https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsidiaries\\_44703.html](https://www.sebi.gov.in/legal/circulars/oct-2019/resignation-of-statutory-auditors-from-listed-entities-and-their-material-subsidiaries_44703.html)

#### Chapter 14 : Audit of Non-Banking Financial Companies

1. **Merging three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called Investment and Credit Company (NBFC-ICC)** :As per circular RBI/2018-19/130 DNBR (PD) CC.No.097/03.10.001/2018-19 dated February 22, 2019, in order to provide NBFCs with greater operational flexibility, it has been decided that harmonisation of different categories of NBFCs into fewer ones shall be carried out based on the principle of regulation by activity rather than regulation by entity. Accordingly, it has been decided to merge the three categories of NBFCs viz. Asset Finance Companies (AFC), Loan Companies (LCs) and Investment Companies (ICs) into a new category called NBFC - Investment and Credit Company (NBFC-ICC). Investment and Credit Company (NBFC-ICC) means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and is not any other category of NBFC as defined by the RBI in any of its Master Directions. (Circular DBR.BP.BC.No.25/21.06.001/2018-19 dated 22 February 2019)

Differential regulations relating to bank's exposure to the three categories of NBFCs viz., AFCs, LCs and ICs stand harmonised vide Bank's circular DBR.BP.BC.No.25/21.06.001/2018-19 dated, February 22, 2019. Further, a deposit taking NBFC-ICC shall invest in unquoted shares of another company which is not a subsidiary company or a company in the same group of the NBFC, an amount not exceeding twenty per cent of its owned fund. All related Master Directions (Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016, Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016, Standalone Primary Dealers (Reserve Bank) Directions, 2016 and Residuary Non-Banking Companies (Reserve Bank) Directions, 2016) have also been updated accordingly. These directions can be accessed at <https://www.rbi.org.in/>.

**Some points that may be covered in the audit of NBFC - Investment and Credit Company (NBFC-ICC) 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. Verify whether the NBFC has not advanced any loans against the security of its own shares.
- iii. Verify that dividend income wherever declared by a company, has been duly received by an NBFC and interest wherever due [except in case of NPAs] has been duly accounted for. NBFC Prudential Norms directions require dividend income on shares of companies and units of mutual funds to be recognised on cash basis. However, the NBFC has an option to account for dividend income on accrual basis, if the same has been declared by the body corporate in its Annual General Meeting and its right to receive the payment has been established. Income from bonds/debentures of corporate bodies is to be accounted on accrual basis only if the interest rate on these instruments is predetermined and interest is serviced regularly and not in arrears.
- iv. Test check bills/contract notes received from brokers with reference to the prices vis-à-vis the stock market quotations on the respective dates.
- v. 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.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. An auditor will have to ascertain whether the requirements of AS 13 "Accounting for Investments" or other accounting standard, as applicable, (to the extent they are not inconsistent with the Directions) have been duly complied with by the NBFC.
- x. 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.

- xi. 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).
- xii. Verify charges received or paid in respect of securities lend/borrowed.
- xiii. Obtain a confirmation from the approved intermediary regarding securities deposited with/borrowed from it as at the year end.
- xiv. An auditor should examine whether each loan or advance has been properly sanctioned. He should verify the conditions attached to the sanction of each loan or advance i.e. limit on borrowings, nature of security, interest, terms of repayment, etc.
- xv. An auditor should verify the security obtained and the agreements entered into, if any, with the concerned parties in respect of the advances given. He must ascertain the nature and value of security and the net worth of the borrower/guarantor to determine the extent to which an advance could be considered realisable.
- xvi. Obtain balance confirmations from the concerned parties.
- xvii. As regards bill discounting, verify that proper records/documents have been maintained for every bill discounted/rediscouted by the NBFC. Test check some transactions with reference to the documents maintained and ascertain whether the discounting charges, wherever, due, have been duly accounted for by the NBFC.
- xviii. Check whether the NBFC has not lent/invested in excess of the specified limits to any single borrower or group of borrowers as per NBFC Prudential Norms Directions.
- xix. An auditor should verify whether the NBFC has an adequate system of proper appraisal and follow up of loans and advances. In addition, he may analyse the trend of its recovery performance to ascertain that the NBFC does not have an unduly high level of NPAs.
- xx. Check the classification of loans and advances (including bills purchased and discounted) made by a NBFC into Standard Assets, Sub-Standard Assets, Doubtful Assets and Loss Assets and the adequacy of provision for bad and doubtful debts as required by NBFC Prudential Norms Directions.

(Note: The above checklist is not exhaustive. It is only illustrative. There could be various other audit procedures which may be performed for audit of an NBFC.)

3. **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

4. **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.
5. **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:**

- 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.

**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.

#### 6. 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.

#### 7. 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.

**8. Applicability of Indian Accounting Standards (Ind- AS) on NBFCs** – As per Rule 4 (1)(iv) of the Companies (Indian Accounting Standards) Rules, 2015 and as amended by Companies (Indian Accounting Standards) (Amendment) Rules, 2016, NBFCs are required to comply with Indian Accounting Standards (Ind- AS) as under-

- (i) **Accounting periods beginning 1 April 2018:** Listed and unlisted NBFCs having a net worth of ₹ 500 crore or more and holding, subsidiary, joint venture or associate companies of such NBFCs;
- (ii) **Accounting periods beginning 1 April 2019:** All other listed NBFCs, unlisted NBFCs having a net worth of ₹ 250 crore or more but less than ₹ 500 crore and holding, subsidiary, joint venture or associate companies of such NBFCs.

The net worth shall be calculated in accordance with the standalone financial statements of the NBFCs as on 31st March 2016 or the first audited financial statements for accounting period which ends after that date.

**9. Format for preparation of financial statements by NBFCs under Ind- AS** – The Ministry of Corporate Affairs (MCA) vide notification dated October 11, 2018 introduced Division III under Schedule III of the Companies Act, 2013, wherein a format for preparation of financial statements by NBFCs complying with Ind- AS has been prescribed.

Every NBFC required to comply with Ind - AS shall prepare its financial statements as per below format:

Illustrative format of Balance Sheet under Division III of Schedule III-

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>ASSETS</b>			
<b>(1) Financial Assets</b> (a) Cash and cash equivalents (b) Bank balance other than (a) above (c) Derivative financial instruments (d) Receivables (1) Trade Receivables (2) Other Receivables (e) Loans (f) Investments (g) Other Financial assets			
<b>(2) Non-Financial Assets</b> (a) Inventories (b) Current tax assets (net) (c) Deferred tax assets (net) (d) Investment property (e) Biological assets other than bearer plants (f) Property, Plant and Equipment (g) Capital work-in-progress (h) Intangible assets under development (i) Goodwill (j) Other intangible assets (k) Other non-financial assets (to be specified)			
<b>Total Assets</b>			
<b>LIABILITIES AND EQUITY</b>			
<b>LIABILITIES</b>			
<b>(1) Financial Liabilities</b> (a) Derivative financial instruments (b) Payables (l) Trade Payables			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
(i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (II) Other Payables (i) total outstanding dues of micro enterprises and small enterprises (ii) total outstanding dues of creditors other than micro enterprises and small enterprises (c) Debt Securities (d) Borrowings (other than debt securities) (e) Deposits (f) Subordinated liabilities (g) Other financial liabilities (to be specified)			
<b>(2) Non-financial Liabilities</b> (a) Current tax liabilities (net) (b) Provisions (c) Deferred Tax Liabilities (net) (d) Other non-financial liabilities (to be specified)			
<b>(3) Equity</b> (a) Equity share capital (b) Other equity			
<b>Total Liabilities and Equity</b>			

Illustrative format of Statement of Profit and Loss prescribed under Division III of Schedule III-

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>Revenue from operations</b>			
(a) Interest Income			
(b) Dividend income			
(c) Rental income			
(d) Fee and commission income			
(e) Net gain on fair value changes			
(f) Net gain on derecognition of financial instruments under amortised category			
(g) Sale of products (including Excise duty)			
(h) Sale of services			
(i) Others (to be specified)			
<b>Total revenue from operations (I)</b>			
Other income (to be specified) (II)			
<b>Total Income (III= I + II)</b>			
<b>Expenses</b>			
(a) Finance costs			
(b) Fees and commission expense			
(c) Net loss on fair value changes			
(d) Net loss on derecognition of financial instruments under amortised category			
(e) Impairment on financial instruments			
(f) Cost of material consumed			
(g) Purchases of stock-in-trade			
(h) Changes in Inventories of finished goods, stock-in-trade and work-in- progress			
(i) Employee Benefits Expenses			
(j) Depreciation, amortization and impairment			
(k) Other expenses (to be specified)			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>Total Expenses (IV)</b>			
<b>Profit / (loss) before exceptional items and tax (V= III - IV)</b>			
Exceptional items (VI)			
<b>Profit / (loss) before tax (VII= V - VI)</b>			
Tax Expense (VIII): (1) Current tax (2) Deferred tax			
<b>Profit / (loss) for the period from continuing operations (IX= VII - VIII)</b>			
<b>Profit / (loss) for the period from discontinued operations (X)</b>			
Tax Expense of discontinued operations (XI)			
<b>Profit / (loss) for the period from discontinued operations after tax (XII= X - XI)</b>			
<b>Profit / (loss) for the period (XIII = IX + XII)</b>			
<b>Other Comprehensive Income (XIV)</b>			
(A) (i) Items that will not be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will not be reclassified to profit or loss SUB-TOTAL (A)			
(B) (i) Items that will be reclassified to profit or loss (specify items and amounts) (ii) income tax relating to items that will be reclassified to profit or loss SUB-TOTAL (B)			
<b>Other Comprehensive Income (A+B)</b>			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
<b>Total Comprehensive Income for the period (XV = XIII + XIV) (Comprising Profit (Loss) and other Comprehensive Income for the period)</b>			
<b>Earnings per equity share (for continuing operations) (XVI)</b> Basic (₹) Diluted (₹)			
<b>Earnings per equity share (for discontinued operations) (XVII)</b> Basic (₹) Diluted (₹)			
<b>Earnings per equity share (for continuing and discontinued operations) (XVIII)</b> Basic (₹) Diluted (₹)			

**Note :** Student may refer illustrative format of Statement of Changes in equity prescribed under Division III of Schedule III for more understanding.

**10. Differences between Division II (Ind- AS- Other than NBFCs) and Division III (Ind- AS- NBFCs) of Schedule III** –The presentation requirements under Division III for NBFCs are similar to Division II (Non NBFC) to a large extent except for the following:

- NBFCs have been allowed to present the items of the balance sheet in order of their liquidity which is not allowed to companies required to follow Division II. Additionally, NBFCs are required to classify items of the balance sheet into financial and non-financial whereas other companies are required to classify the items into current and non-current.
- An NBFC is required to separately disclose by way of a note any item of 'other income' or 'other expenditure' which exceeds 1 per cent of the total income. Division II, on the other hand, requires disclosure for any item of income or expenditure which exceeds 1 per cent of the revenue from operations or ₹10 lakhs, whichever is higher.
- NBFCs are required to separately disclose under 'receivables', the debts due from any Limited Liability Partnership (LLP) in which its director is a partner or member.

NBFCs are also required to disclose items comprising 'revenue from operations' and 'other comprehensive income' on the face of the Statement of profit and loss instead of as part of the notes.

### Chapter 15 : Audit under Fiscal Laws

#### A. AUDIT PROVISIONS UNDER DIRECT TAX LAWS

(A) **Sec. 40 A(3):** Where any expenditure in respect of which payment is made in excess of ₹ 10,000 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:



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

<b>"Audit of accounts of certain persons carrying on business or profession".</b>	
<b>Every person -</b>	
(a)	carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds <b>one crore</b> rupees in any previous year.
(b)	carrying on profession shall, if his gross receipts, in profession exceed <b>fifty lakhs</b> 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 2018-19.

- ✓ 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 2018-19 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 2018-19.

- ✓ 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 2018-19 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 2018-19.

✓ 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 2018-19 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 2018-19.

✓ 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 2018-19 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 assessee 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.

#### AMENDMENTS IN FORM 3CD

- **Clause (4), Details as to Indirect Tax Registration:** Part A of Form No. 3CD generally requires the auditor to ensure whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and service tax, custom duty, etc. If yes, please furnish the registration number or GST number or any other identification number allotted for the same. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

• **Clause 19: Amounts admissible under sections:**

Section:	Amount debited to profit and loss account:	Amounts admissible as per the provisions of the Income-tax Act, 1961 and also fulfils the conditions. If any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf:
32AC, <b>32AD</b> , 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AC, 35AD, 35CCA, 35CCB, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E.		

- **Clause 29 A : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub section (2) of section 56**

**(b) If yes, Please Furnish Following Details**

Sr. No.	Nature of Income	Amount thereof

**Clause 29 B : (a) Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub section (2) of section 56**

**(b) If yes, Please Furnish Following Details**

Sr. No.	Nature of Income	Amount

**Audit checklist for practical understanding :**

- (a) This provision is applicable where a company has issued shares during the year. This can be checked from the Financial Statements/Share Register/ MCA records etc.

- (b) Clause 29(A) The tax auditor should obtain a certificate from taxpayer regarding all such advances received towards transfer of capital asset which have been forfeited during the year. The advances might have been received during the previous year or earlier years. The auditor should examine whether any such advances have been written back during the year and examine basis for written back of such advances and determine whether such written back was on account of forfeiture.
- (c) Clause 29(B) With effect from assessment year 2019-20, in case of an immovable property, where the stamp duty value exceeds the consideration by less than the higher of (i) ₹ 50,000 or (ii) 5% of the consideration, the difference is not chargeable to tax. Therefore, for any immovable property, where the stamp duty value is up to 105% of the sale consideration, no addition can be made under section 56(2)(x). Till assessment 2018-19, the permissible difference was only ₹ 50,000 per property, and was not linked to the percentage of the consideration.
- (d) The tax auditor should obtain a certificate from the assessee regarding any such receipts during the year, either received in his business or profession or recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein.
- (e) In case of other assets, the provisions of rule 11UA(1) read with rule 11U are to be followed for determination of the fair market value, to compute the income under this section.
- (f) Wherever there is a dispute or doubt as to the valuation of an asset, it would be advisable for the tax auditor to request the assessee to obtain a valuation report from a registered valuer. The report of the tax auditor may then be based on such valuation report.

- **Clause 30A. (a) Whether primary adjustment to transfer price, as referred to in sub-section (1) of section 92CE, has been made during the previous year? (Yes/No)**
  - (b) **If yes, please furnish the following details:-**
    - (i) **Under which clause of sub-section (1) of section 92CE primary adjustment is made?**
    - (ii) **Amount (in ₹) of primary adjustment:**
    - (iii) **Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)**

(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)

(v) If no, the amount (in ₹) of imputed interest income on such excess money which has not been repatriated within the prescribed time:

A new clause 30A has been introduced, requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under section 92CE. Section 92CE, providing for secondary transfer pricing adjustments, has been introduced by the Finance Act 2017, with effect from assessment year 2018-19.

The section requires making of a secondary adjustment in certain cases where primary transfer pricing adjustments have been made. These cases are where transfer pricing adjustment has been:

- i. made by the taxpayer of his own accord in his return of income;
- ii. made by the assessing officer and accepted by the taxpayer;
- iii. determined under an Advance Pricing Agreement entered into by the assessee under section 92CC;
- iv. made as per Safe Harbour Rules framed under section 92CB; or
- v. arising as a result of a resolution of an assessment under Mutual Agreement Procedure under a double taxation avoidance agreement (DTAA) entered into under section 90 or 90A.

No secondary adjustment is required if the amount of primary adjustment made in any previous year does not exceed ₹ 1 crore.

Due to the primary adjustment, if there is an increase in the total income or a reduction in the loss of the assessee, the adjustment (difference between the arm's length price and the actual transaction price) is regarded as excess money available with the associated enterprise, and is to be repatriated to India within the prescribed time. Rule 10CB provides for a time limit of 90 days for repatriation of the excess money. Where the excess money is not repatriated to India within the prescribed time, it is deemed as an advance to the associated enterprise and interest is to be computed on such advance in the prescribed manner, as a secondary adjustment.

Secondary adjustments are applicable only in respect of transfer pricing adjustments relating to international transactions, and not in respect of domestic transfer pricing adjustments.

Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus the tax auditor is required to verify whether any primary adjustment is 'made' in terms of S. 92CE(1) during the previous year under consideration. The primary adjustment made may not necessarily relate to previous year under consideration.

Primary adjustments which do not warrant secondary adjustments should also be reported.

**Audit checklist for practical understanding :**

- For this purpose, the tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return/(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence.
- With respect to reporting of interest income computed, there is an ambiguity whether interest income computed till the end of the previous year is to be reported or whether interest income computed up to the date of furnishing Form 3CD.
- In case interest upto to the date of filing is given, it is advisable for the tax auditor to provide breakup of the amount of interest imputed till end of relevant previous year and for the period post the end of the relevant previous year ending with the date of filing Form 3CD.
- It is advisable all the secondary adjustments made during the year irrespective of the previous year the primary adjustment is made is to be reported to avoid difference between the amounts reported in Form 3CD and the income tax return.

- **Clause 30B – Limitation on Interest Deduction**

**30B. (a) Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)**

**(b) If yes, please furnish the following details:-**

- (i) Amount (in ₹) of expenditure by way of interest or of similar nature incurred:
- (ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in ₹):
- (iii) Amount (in ₹) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above:
- (iv) Details of interest expenditure brought forward as per subsection (4) of section 94B: A.Y. Amount (in ₹)
- (v) Details of interest expenditure carried forward as per subsection (4) of section 94B:

Assessment Year	Amount

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The newly inserted clause 30B requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident associated enterprise ("AE") under section 94B, while computing income under the head "Profits and Gains of Business or Profession".

The excess interest is to be computed as the lower of:
(i) Total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation ("EBITDA") of the borrower in the previous year; or
(ii) Interest paid or payable to AEs for that previous year.

The excess interest, which is disallowed, is allowed to be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profits and gains of any business in the subsequent years, to the extent of maximum allowable interest expenditure under this section.

- **Clause 30C\*. (a) Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)**  
**(b) If yes, please specify:—**  
**(i) Nature of impermissible avoidance arrangement:**  
**(ii) Amount (in ₹) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:**

**\*Note : Clause 30C is not applicable.**

- **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 (ba) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account:-
  - (i) Name, address and Permanent Account Number (if available with the assessee) of the payer;
  - (ii) Nature of transaction;
  - (iii) Amount of receipt (in ₹);
  - (iv) Date of receipt;
- Clause 31 (bb) Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, received by a cheque or bank draft, not being an account payee cheque or an 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 receipt (in ₹);
- Clause 31 (bc) Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, 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 the payee;
  - (ii) Nature of transaction;
  - (iii) Amount of payment (in ₹);
  - (iv) Date of payment;

- **Clause 31 (bd) Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:—**

(i) **Name, address and Permanent Account Number (if available with the assessee) of the payee;**

(ii) **Amount of payment (in ₹);**

**(Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in Notification No. S.O. 2065(E) dated 3rd July, 2017)”**

Section 269ST was introduced by the Finance Act, 2017 with effect from 1 April 2017. It provides that no person shall receive sum of ₹ 2 lakh or more

- a) in aggregate from a person in a day; or
- b) in respect of a single transaction; or
- c) in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or an account payee demand draft or by use of electronic clearing system through a bank account.

Contravention of section 269ST attracts penalty under section 271DA. The new sub-clauses 31(ba), (bb), (bc) and (bd) deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 2 section 269ST. Provisions of section 269ST do not apply to receipt by Government, any banking company, post office savings bank or a co-operative bank or transactions of loan or deposit or ₹ specified sum' referred to in section 269SS. 'Specified sum' means any sum of money receivable, whether as an advance or otherwise, in relation to transfer of an immovable property, whether not the transfer takes place. (Refer clause (iv) of the Explanation below section 269SS.)

New sub-clauses have been introduced under Clause 31 which deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in Section 269ST.

The particulars required under these sub- clauses need not be given in case of a receipt by or a payment to a government company, a banking company, a post office savings bank, cooperative bank or in the case of transactions referred to in Section 269SS or in the case of persons referred to in the Notification. Effectively, particulars are not required to be furnished of transactions to which provisions of Section 269ST do not apply. It may be noted that neither Section 269ST nor the notifications issued under this section exclude

a government company from the application of the provisions of Section 269ST. However, in view of the note under the sub-clauses, particulars required under these sub-clauses need not be given in case of a government company. On the other hand, provisions of Section 269ST do not apply to any receipt by the government. However, the note under sub clauses does not specifically refer to receipt by or payment to the government. Considering the provisions of Section 269ST, particulars of the payments made to the government need not be included and a suitable note may be given to the effect that details of payments made to government have not been included in the particulars.

Section 269ST does not distinguish between receipt on capital account and revenue account. Similarly, new sub-clauses do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified, the particulars of such transactions will have to be reported under these clauses.

While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in Section 269ST. Whether the receipts or payments, as the case may be, are pertaining to a single transaction or different transaction will depend on the facts of the case. A single invoice may relate to multiple transactions and vice-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments are pertaining to a single transaction.

Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion.

If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then the tax auditor will have to verify the mode of the receipt of payment. The tax auditor will have to classify the receipt or the payment, as the case may be, as under:

- Otherwise than by the cheque or bank draft or use of electronic clearing system through a bank account
- By cheque or bank draft not being an account payee cheque or an account payee bank draft.

Where the receipts or the payments, as the case may be, pertain to a single transaction or transactions relating to one event or occasion, such receipts/payments may be grouped together while reporting. The tax auditor may also keep in his record date of the receipts and date of the payments reported under, although the same is not required to be reported.

Where payment is made by cheque or demand draft, there will be practical difficulties in verifying whether the relevant receipt or payment is by account payee cheque or account payee draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, the guidance given by the Council of the ICAI in similar cases to the tax auditors is to be followed. The tax auditor, in his report, may make suggested comment while reporting.

The tax auditor should maintain the specified information in his working papers for the purpose of reporting of receipts.

- **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;
- (ii) 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 the lender, or depositor or person from whom specified advance is received;
  - (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 lender, or depositor or person from whom specified advance is received;
- (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).

- **Clause 36A:**

- (a) Whether the assessee has received any amount in the nature of dividend as referred to in sub-clause (e) of clause (22) of Section 2.

- (b) If yes, please furnish the following details :-

In order to enable reporting under the new Clause 36A, the tax auditor should obtain from the taxpayer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10 per cent of the voting power and list of concerns in which he has a substantial interest.

The tax auditor should also obtain a certificate from the taxpayer giving particulars of any loans or advances received by any concern in which he has substantial interest from any closely held company in which he is a beneficial owner of shares carrying not less than 10 per cent voting power.

These certificates are necessary since the tax auditor may not be able to verify the above from the books of account of the taxpayer. The tax auditor should include appropriate remarks of his inability to independently verify the information and reliance on the certificates obtained from the taxpayer. These remarks may be included in Form No. 3CA/3CB.

The tax auditor should also verify Form 26AS in the case of the taxpayer to know if the closely held company has deducted tax at source from any payment made by it to the taxpayer or the concern under Section 194. This will indicate the view taken by the closely held company making the payment. The tax auditor may consider the same before coming to a conclusion.

So far as any payment by the closely held company made on behalf of or for the individual benefit of the taxpayer is concerned, there may not be any record available for the auditor to verify the same. In such a case auditor may make appropriate remarks in Form No. 3CA/3CB. It may be noted that if the closely held company has made payment on behalf of or for the individual benefit of the taxpayer in his capacity, say, as the managing director

of the closely held company and if such payment has been considered as part of the taxpayer's remuneration, the same payment is not again chargeable to tax under Section 2(22)(e) and is not required to be reported under this clause.

Whether an amount is chargeable to tax as dividend under Section 2(22)(e) has always been a subject matter of litigation before various judicial forums. The tax auditor needs to consider various issues while reporting under this clause, e.g. wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make an appropriate remark about the basis of reporting in Form No. 3CA/3CB.

Further, the tax auditor may not be able to determine the accumulated profits of the closely held company making the payment for various reasons. The tax auditor will not have access to the records of such closely held company, the payment would often be during the course of a financial year and accounts will not have been made up as of the date of payment. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case the auditor should include appropriate remarks in Form No. 3CA/3CB about the methodology adopted by him.

Business advance or trade advances from closely held companies to the taxpayer or concerns in which the taxpayer has a substantial interest are out of the purview of Section 2(22)(e) and need not be reported dividend under this clause of Form No. 3CD.

The taxpayer or the concern may maintain two accounts of the closely held company in its books of account. Amounts received from the closely held company and the amount receivable from the closely held company may be accounted in two separate accounts. In such a case the tax auditor will have to consider whether, for reporting under this clause only net amount should be considered.

The taxpayer or the concern may have a current account of the closely held company in its books of account. In such a case there could be various transactions accounted for in such a current account. The tax auditor will have to consider if all the transactions in such a current account are on account of normal business transactions or the transactions are in the nature of loans or advances received by the taxpayer or the concern.

Considering various judicial decisions, the tax auditor will have to take a considered view while reporting under this clause. If reliance has been placed on any judicial decision, a reference of the same may be given by the tax auditor as observations in Form No. 3CA/3CB.

It may be noted that any payment made after 1 April 2018 which satisfies the conditions of Section 2(22)(e), would be subject to Dividend Distribution Tax (DDT) under Section 115-O in the hands of the company making the payment and not in the hands of the shareholder.

- **Clause 42 (a) Whether the assessee is required to furnish statement in Form No.61 or Form No. 61A or Form No. 61B? (Yes/No)**

**(b) If yes, please furnish:**

S. No.	Income Tax Department Reporting entity Identification No.	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the form contains information about all details/transactions which are required to be reported	If not please furnish list of the details/transactions which are not reported

New Clause 42 has been introduced where the tax auditor has to report that whether the taxpayer is required to furnish a statement of the specified financial transaction (in Form No.61 or Form No. 61A or Form No. 61B).

With respect to Form 61, the tax auditor should verify whether the taxpayer has entered into any transaction where the other party was required to quote PAN. He should verify whether the taxpayer has obtained declaration in Form No. 60 where the other party has not furnished his PAN. Wherever the taxpayer has received declarations in Form No. 60, the auditor should verify if the taxpayer has filed Form No. 61 including therein all the necessary particulars.

With respect to Form 61A, the tax auditor should ascertain whether the taxpayer is required to report any transactions under Section 285BA read with Rule 114E. It may be noted that specified transactions under Section 285BA include the issue of bonds, issue of shares, buy-back of shares by a listed company, etc. These transactions may not happen every year and hence special attention should be given in the year when a company taxpayer issues any security or a listed company undertakes buyback of shares.

While verifying the same, the tax auditor should ensure that the provisions of Rule 114E(3) have been properly considered and applied.

Failure to do so may result in a certain transaction not being reported. It may be noted that the payment may be received for various transactions and on different dates, and hence these may not be covered under Section 269ST but will have to be reported under Section 285BA.

With respect to Form 61B14, the tax auditor should review the due diligence procedures carried out by the taxpayer in accordance with provisions of Rule 114H and the results of such procedures. The tax auditor should review the list of Reportable Accounts identified by the due diligence process and the information to be maintained and reported by the taxpayer.

In case any reportable account has been omitted, or there is any error or omission in Form 61B, the same may be reported under the Form No. 3CD. The auditor should verify if the taxpayer has filed Form No. 61B for correcting errors or omissions in the form filed originally. In such a case the auditor should give details of both the forms filed. The errors in the original Form 61B which are corrected in the revised Form 61B need not be reported under Form No. 3CD.

The tax auditor should verify that Form 61B is duly signed by the designated director and filed.

- **Clause 43 (a) Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in subsection (2) of section 286 (Yes/No)**
  - (b) if yes, please furnish the following details:**
    - (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity**
    - (ii) Name of parent entity**
    - (iii) Name of alternate reporting entity (if applicable)**
    - (iv) Date of furnishing of report**

Clause 43 has been newly introduced in Form No. 3CD. The Finance Act, 2016 by introducing Section 286 in the Act, has introduced provisions relating to the Country by Country Report (CbCR) and Master File pursuant to the adoption of OECD's Base Erosion and Profit Shifting (BEPS), Action Plan 13 in India.

Under Section 286, an international group has to furnish CbCR containing information about the whole group comprising of various constituent entities.

Such a report is to be filed in India if the parent entity is resident of India or the international group has appointed a constituent entity which is resident in India to file CbCR on behalf of the whole group.

The report under Section 286(2) is filed by the parent entity which is resident in India or the alternate reporting entity which is resident in India.

For tax audit for the assessment year 2018-19, the tax auditor should comment upon report Section 286(2) that was required to be filed on or before 31 March 2018.

The tax auditor should verify if the taxpayer is required to file the Form 3CEAC based on the satisfaction of the conditions prescribed

The tax auditor should also verify if the taxpayer whose parent is a non-resident has filed Form No. 3CEAC.

The tax auditor may obtain a necessary certificate from the taxpayer in respect of constitution of the international.

- **Clause 44\*. Break-up of total expenditure of entities registered or not registered under the GST:**

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure in respect of entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
(1)	(2)	(3)	(4)	(5)	(6)	(7)

**\*Note: Clause 44 is not applicable.**

## **B. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS**



The GST roll out on 1<sup>st</sup> 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.

**Objective of GST Audit:** The objective of the GST audit can be ascertained from the definition of Audit given in Section 2(13) of Central Goods and Services Tax Act, 2017 (CGST Act). The said definition reads as follows:

*“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 there under.”*

From the above, it can be deduced that:

- (a) Audit is examination of records, returns and other documents;
- (b) Those records, returns and documents might have been maintained or furnished under GST Law or any other law;
- (c) The examination is to verify the correctness of
  - (i) Turnover declared;
  - (ii) Taxes paid;
  - (iii) Refund claimed; and
  - (iv) Input tax credit availed;
- (d) The examination is also to assess auditee's compliance with the provisions of GST Act and Rules.

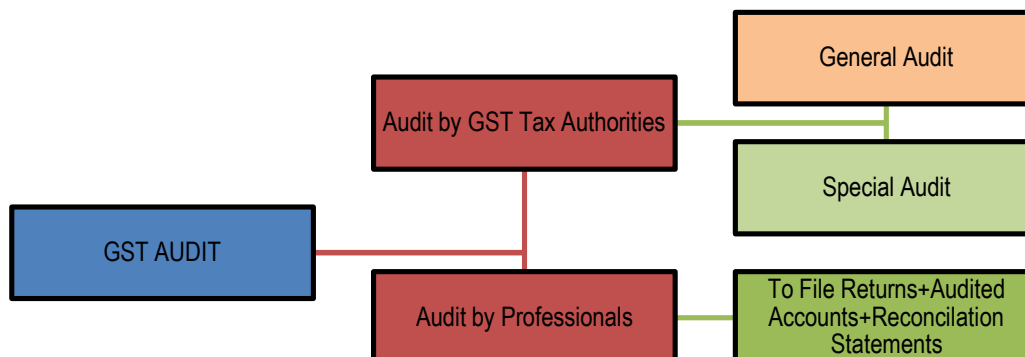
All this makes it clear that the objective of GST is to ensure the correctness of Turnover declared, Taxes paid, Refund claimed, and Input Tax Credit availed in addition to compliance of the GST Act and Rules. The intent is that the compliance of the GST law has to be confirmed by the GST audit.

### 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]





### 1.1 Threshold for Audit:

Section 35(5) begins with the expression “every registered person whose **turnover** during a financial year exceeds the prescribed limit” whereas the relevant Rule 80(3) uses the expression “every registered person whose **aggregate turnover** during a financial year exceeds **two crore rupees**”. It must be noted that the word **turnover** has not been defined whereas the expression **aggregate turnover** has been defined. One may note that the expression **turnover in State or turnover in the Union territory** is defined. In this backdrop the following understanding is relevant:

- Aggregate turnover is PAN based while turnover in a State/UT, though similarly worded, is limited to turnover in a State / UT, which is limited to a State;
- It is therefore, reasonable to interpret that the word turnover used in Section 35(5) ought to be understood as aggregate turnover.
- For the financial year 2017-18, the GST period consists of 9 months whereas the relevant Section 35(5) uses the expression financial year; Therefore, in the absence of clarification from the government, and to avoid any cases of default, it is reasonable to understand that to reckon the turnover limits prescribed for audit i.e., ₹ 2 crores one has to reckon the turnovers for the whole of the financial year which would also include the first quarter of the financial year 2017-18.

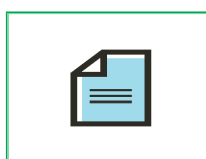
### 1.2. Audit of Accounts [Section 35(5) read alongwith section 44(2) and rule 80]

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: <input type="checkbox"/> Audited annual accounts
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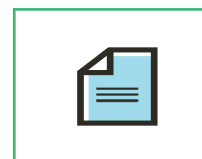
	<input type="checkbox"/> A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.
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**Reconciliation Statement** will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.



Value of supplies declared in  
Annual return

**reconciliation**



Value of supplies declared in audited  
Annual Financial Statement

### 1.3. 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.

### 1.4. 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.

### **1.5 Preparation for the GST Audit:**

To start with, the following (among others) are the various steps an auditor can take in connection with the forthcoming GST audit:

- (a) Inform the concerned assessee about the applicability of the GST audit;
- (b) Confirm the eligibility to be the GST auditor under the related legislation;
- (c) Understand the nature of business, the products or services, requirements of records to be maintained, and advise the auditee to maintain accounts and records so required, beforehand;
- (d) Prepare a questionnaire to understand the operations / activities of the auditee, and specifically develop questions on those issues on which the GST law would have a bearing
- (e) Preparation of the detailed audit program and list of records to be verified;
- (f) Host of relevant reconciliations.

**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.

**Consequences of failure to submit the annual return and not getting the accounts audited:**

Section 47(2) provides that in case of failure to submit the annual return within the specified time, a late fee shall be leviable. The said late fee would be ₹ 100 per day during which such failure continues subject to a maximum of a quarter percent of the turnover in the State/UT. There would be an equal amount of late fee under the respective State/UT GST law.

However, there is no specific penalty prescribed in the GST Law for not getting the accounts audited by a Chartered Accountant or a Cost Accountant. Therefore, in terms of Section 125 of CGST Act he shall be subjected to a penalty of up to 25,000/-. This section deals with the general penalty that gets attracted where any person, who contravenes any of the provisions this Act, or any rules made thereunder for which no penalty is separately provided. Similar provision also exists under the State/UT GST law as well. It is possible that since the return is to be accompanied with the report, if not done it may amount to non-filing of return and late fee also may be levied.

### **1.6. Audit Approach**

There are no prescribed or specified approaches for conducting audit under the GST laws. Similarities can be drawn between a GST Audit and / or Tax Audit under Section 44AB of the Income-tax Act and audit under the Companies Act. The GST Auditor is not required to express his opinion on truth and fairness of the financials when it is audited by others. In any case, he is required to certify the correctness and completeness of certain reconciled data. The verification would necessarily have to be substantially more than the opinion on truth and fairness.

In this background certain time-tested methods of conducting an audit have evolved into guidelines, which among others are as follows:

- (a) Obtaining prior knowledge of the business and comparing them with similar businesses;
- (b) Preparing a master file of the clients (permanent master file);
- (c) Discussing on with the audit team on the methodology to proceed with the audit;
- (d) Studying and evaluating systems (including business systems) and internal control of the business entity;
- (e) Assessing the audit risks and deploying of suitable personnel;
- (f) Assessing the risk appetite of the business entity;
- (g) Preparing of an audit plan / audit program and conducting the audit accordingly;
- (h) Reviewing meetings with the audit team;
- (i) Drawing conclusions on the basis of audit evidence obtained in the course of conducting the audit and a discussion with the client on the observations and findings;
- (j) Discussing with the registered person and obtaining various management certificates;
- (k) Reporting the observations in the prescribed statutory format, if any, or evolving a suitable format of reporting;

- (l) Maintaining Audit working papers file (Filing of documents either in permanent file or working papers file);
- (m) Concluding the audit and intimating the management.

### **1.7. Accounting Standard Vs. GST**

The auditor should also take into account the accounting standards followed at the time of preparation of financial statements. There could be differences in the manner of accounting treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. Some of the differences are:

- Supplies on behalf of the principal are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover.
- Under the Accounting Standard 19 in the case of finance lease, in the books of the lessor, the cost of the asset is recorded as a receivable whereas in the books of the lessee, it would be recorded as an asset purchased. However, under the GST, the cost of the asset would be recorded as a purchase and the fair value of the asset would not be recorded in the books of the lessee as a purchase. In the case of the lessor, only the financial charges would be treated as revenue as per the AS, whereas under the GST, the entire amount would be treated as revenue. Similarly, as per the Accounting Standard, in the case of lessee, the amount of lease rentals would be bifurcated into interest charges and liability, whereas under the GST, the entire amount would be treated as expense.

The above is only illustrative and there could be many more cases of differences in the turnovers between the financial statements and the GST Law.

### **1.8. GST Audit in Computerised Environment**

Compliances under the GST law are dependent upon technology because transactions are numerous. It is not only the Government which has adopted technology; businesses too have adopted technology at different levels to meet the compliance requirement.

In the GST regime, Information Systems have become an integral part of enterprise day-to-day operation, such as return filing, payment of taxes, rectification of returns filed, reconciliation of multiple returns GSTR 1, GSTR 2A, GSTR 3B, e-Way Bill, GSTR 9 etc. The increased usage of technology has pitfalls when sufficient controls are not built within. The primary responsibility of the GST Auditor is to assess the entire Computerized Information System (CIS) environment and get macro perspective of data availability and systems reliability.

Unlike the traditional audit methodology which involved manual process of checking and verification, the GST audit processes for larger assesses is carried out by using Computer Systems and Technology. For example, verification for the matching of Input Tax Credit availed with the Outward Supply declared by the supplier being large in numbers, cannot be done manually. Hence different computerized tools and methods have to be used for the purpose.

Though it is clear that computerized tools and methods have to be used for conducting the audit, at the same time it is important that the Auditor is aware of such computerized environment which can be called Computerized Information System (CIS) Environment, and the audit risks involved therein.

GST Auditor should also try to know whether the computer of any type or size used by the entity for processing financial information is important for the purposes of audit, and if it is operated by the entity or by a third party.

Controls can be classified based on whether they are, preventive, detective or corrective or based on some other parameters like physical, logical or environmental. More classifications are also possible, based on the assets they protect.

### 1.9 Audit Planning

The auditors should obtain an understanding of the organization Internal Process of

- (a) accounting of Transactions
- (b) reporting to the GSTN Portal
- (c) reconciliation of filed data and
- (d) internal control systems implemented

To plan the audit and develop an effective audit approach to meet audit requirements.

In planning the portions of the audit which may be affected by the client's CIS environment, the auditors should obtain an understanding of the significance and complexity of the CIS activities and the availability of data for use in the audit.

### Preliminary Review

Before starting his work, the GST Auditor shall conduct a preliminary review to assess the CIS controls and the risks that could impact his work by considering the following points:

- Knowledge of the Business
- Understanding the technology deployed
- Understanding Internal Control System
- Risk assessment and Materiality

### 1.10. Various Returns Under GST

Following are the various forms to be filed under GST Act

- **GSTR 9:** GSTR 9 should be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3
- **GSTR 9A:** GSTR 9A should be filed by the persons registered under composition scheme under GST.
- **GSTR 9B:** To be filed by e-commerce operators

- **GSTR 9C:** Should be by the taxpayers whose annual turnover exceeds ₹ 2 Crores during the financial year. All such taxpayers are also required to get their accounts audited and file a copy of audited annual accounts and reconciliation statement of tax already paid and tax payable as per audited accounts alongwith GSTR 9C.

#### **GSTR 9 - Annual Return Filing, Format, Eligibility & Rules**

GSTR 9 form is an annual return to be filed once in a year by the registered taxpayers under GST including those registered under composition levy scheme. It consists of details regarding the supplies made and received during the year under different tax heads i.e. CGST, SGST and IGST. It consolidates the information furnished in the monthly/quarterly returns during the year.

All the registered taxable persons under GST must file GSTR 9 form. However, the following persons are **not** required to file GSTR 9

- Casual Taxable Person
- Input service distributors
- Non-resident taxable persons
- Persons paying TDS under section 51 of GST Act.

#### **Details required in the GSTR 9**

Sr. No.	Parts of GSTR – 9	Information Required
1.	<b>Part – I</b>	Basic details of the taxpayer. This detail will be auto-populated.
2.	<b>Part – II</b>	Details of Outward and Inward supplies declared during the financial year(FY). This detail must be picked up by consolidating summary from all GST returns filed in previous FY.
3.	<b>Part – III</b>	Details of ITC declared in returns filed during the FY. This will be summarised values picked up from all the GST returns filed in previous FY.
4.	<b>Part – IV</b>	Details of tax paid as declared in returns filed during the FY.
5.	<b>Part – V</b>	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to the date of filing of annual returns of previous FY whichever is earlier. Usually, the summary of amendment or omission entries belonging to previous FY but reported in Current FY would be segregated and declared here.
6	<b>Part – VI</b>	Other information comprising details of : GST demands and refunds, HSN wise summary of the quantity of goods supplied and received with its corresponding Tax details against each HSN code, Late Fees payable and paid details, segregation of inwards supplies received from different categories of taxpayers like Composition dealers, deemed supply and goods supplied on approval basis.

#### **Analysis of GSTR 9C**

Form GSTR 9C is the relevant form prescribed in terms of Rule 80(3) of the CGST Rules. This has two parts to it: Part A titled the “Reconciliation Statement” and Part B is the Certification portion. Part I captures the basic details of the Registered Person under Part A (Reconciliation Statement) which has 4 Sl. Nos. Each of the Sl. Nos is significant in terms of the disclosure requirement.

#### Comparative view of Form GSTR-9 and GSTR 9C

Sr. No.	Return in GSTR 9	Return in GSTR 9C
1.	It is the report of a formal or official character giving information	Means the formal statement to be made under the provisions of the Act the veracity of which needs an enquiry as to its correctness
2.	Prescribed under a Statute	Prescribed under a Statute
3.	To be filed by all registered persons	To be filed only if the aggregate turnover in a financial year exceeds ₹ 2 Crores.
4.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.	Not required to be filed by a Casual Taxable Person, Non-Resident Taxable Person, Input Service Distributor, Online Information and Database Access Retrieval Service, Composition Dealers, persons required to deduct taxes under Section 51 and persons required to collect taxes under Section 52.
5.	No need to annex financials	Financials to be annexed
6.	A plain reading of the relevant provisions indicate that the said Annual Return in GSTR 9 and the Reconciliation Statement in GSTR 9C must be filed together. However, if one were to peruse GSTR 9C there are certain tables which state that “turnover as declared in annual return” indicating thereby that GSTR 9C is dependent on GSTR 9. This anomaly can be addressed only on the basis of the finalized annual return initialled and presented to the GST auditor by the registered person.	

#### Analysis of Form GSTR 9C

##### PART-I - Sl. No. 1 : Financial Year

This Sl. No. requires disclosure of the “financial year” to which the Reconciliation Statement in Part A relates to. The expression financial year has not been defined under the GST laws. However, in terms of the General Clauses Act “financial year” shall mean the year commencing on the 1st day of April and closing on the 31st day of March.

##### Part I - Sl. No. 2 : GSTIN

GSTIN means the “Goods and Services tax Identification Number” of the tax payer or the Registered Person. Each tax payer, on his successful registration, would be assigned a State-wise PAN based 15-digit GSTIN. The first 2 digits of the said GSTIN would represent the State code, as per the Indian Census 2011 viz., Karnataka 29, Delhi 07 etc. The next 10 digits would be the PAN of the tax payer. It implies that if one is not allotted a PAN, he cannot be registered under the GST Laws. The 13th digit would be based on the number of registrations within a State, while the 14th digit would be assigned based on the nature of the business of the Registered person. The 15th digit is a check code which can be a “numeral” or an “alphabet”.

In the case of a Non-resident taxable person (“NRTP”), Rule 13 of the CGST Rules permits registration even without PAN. In such case, registration shall be granted based on the tax identification number or unique number on the basis of which the entity is identified by the Government where the said entity is based.

GSTIN based on PAN ought to be validated. As and when such errors are noticed during the GST audit, the GST Auditor should disclose such information appropriately. He must also consider other implications due to such errors.

#### **Part I - Sl. No. 3A and 3B: Legal Name and Trade Name**

The word “trade” used in Sl.No. 3B of Part A may not be limited to occupation or business. It could be a connotation. The word “trade” ought to be understood in its ordinary sense, without any reference to “business”. For instance, “Indigo” could be a trade name while the legal name is “InterGlobe Aviation Limited”.

Therefore, understood, trade name is used by trade and industry to identify their businesses symbolizing their reputation. Caution must be exercised in listing the trade name and legal name in Sl. Nos. 3A and 3B.

It is possible that some Registered Persons may not have a trade name. In such situations, Sl.No. 3B of Part A would not be applicable. Therefore, NOT APPLICABLE is to be stated in Part A which could be verified from the <<auto populated>> data.

The legal name and trade name ought to be verified with the certificate of registration issued by the tax department in Form GST REG – 06. Similarly, if the Registered Person is a company registered under the Companies Act, 2013, the legal name / trade name can be verified with the Certificate of Incorporation and in case of partnership firm by the certificate issued by the Registrar of Firms.

Therefore, the distinction between a trade name and a legal name must be clearly understood and borne out in Sl.No. 3A and 3B of Part A, and should not be used interchangeably.

#### **Part I - Sl. No. 4 : Are you liable to audit under any Act?**

The Sl. No. “Are you liable to audit under any Act?” mentioned in GSTR 9C needs elaboration. It is possible that an entity could be subjected to audit under several statutes. For instance a Proprietary Concern could be subject to audit under the Income tax Act, 1961 and a Private Limited Company could be subject to the

statutory audit under the Companies Act, 2013 as well as under the Income tax Act. Similarly, a society registered under the Societies Registration Act may be subject to audit under that Act as well as under the Income tax Act. This fact must be specified in Sl. No. 4. It is currently not clear if the response to this question would be YES / NO or would be to select from a drop-down menu the statute under which the tax payer has been subjected to audit.

**Part II - Sl. No. 5A: turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)**

Sl. No. 5A is intended to report the turnover as per the audited Annual Financial Statement for a GSTIN. There may be cases where multiple GSTINs (State-wise) registrations exist for the same PAN. This is common for persons / entities with presence over multiple States or in respect of multiple registration in a single State/UT. The Government vide its instructions has indicated that such persons / entities would have to internally derive their GSTIN wise turnover and provide to the Auditor to verify and declare in this Sl. No.

The Auditor must bear in mind that in a real business environment several entities may not be in a position to provide such derived turnovers. In such a situation, the Auditor has to engage suitably himself and carryout this exercise.

**Checks and balances to validate correctness and completeness:**

To ensure completeness and correctness of the details of turnover to be declared under this Sl.No., the following checks could be used:

1. turnover in State/UT (in case of single registration) must reconcile to the turnover disclosed in the audited financial statements;
2. turnover in State/UT (in case of multiple registration) must reconcile to the turnover as recorded in the books of accounts of each registration;
3. Master reconciliation to ensure that the details of turnover declared for different registrations (in case of multiple registrations either due to presence in multiple States/UTs' or due to unit(s) in SEZ) with the total turnover of the entity

**List of documents**

The following list of documents could be obtained by the Auditor for the purpose of declaring the details of turnover under this Sl. No.:

- a. Annual Financial Statements
- b. Registrant wise Trial Balance to facilitate furnishing the Form GSTR 9C for each registrant;
- c. Communication with the other Auditor to obtain details of the turnover declared by them to ensure completeness and holistic reconciliation of turnover of the Registered Person;
- d. Form GSTR 9C, if already filed by a different Auditor, in case of multiple registrations of the Registered Person;

- e. GST (Viz. Form GSTR 3B and Form GSTR 1) returns filed by the Registered Person to ensure that the turnover declared in the returns match the turnover captured in the audited financial statements
- f. Income tax Returns (ITR) to ensure that the turnover details are reconciled with the turnover per GST.

**Sl. No. 5B. Unbilled revenue at the beginning of Financial Year**

To comprehend the scope of these Sl. Nos, there is need to understand the concept of 'Unbilled revenue'. In simple terms, unbilled revenue is the revenue recognized in the books of accounts before the issue of an invoice at the end of a particular period. Accounting Standard- 9 / IND AS 115 provides for recognition of revenue on full completion / partial completion of the services though the due date for issuing invoice as per the contract would be on a later date. It is advisable to refer to AS-9 / IND AS 115 for a better understanding of the concept.

Clause 5B requires the addition of unbilled revenue at the beginning of a Financial Year. Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting in the earlier financial year for which the invoice is issued under the GST law is required to be declared here. In other words, when GST is payable during the financial year on such revenue (which was recognized as income in the earlier year), the value of such revenue is to be declared here.

Unbilled revenue would appear in the profit and loss account of the previous year. For information of unbilled revenue at the beginning of a Financial Year, reference may be made to previous year's audited financial statements. However, as the GST was introduced from 1<sup>st</sup> July 2017 one needs to be careful to exclude invoices raised during the period April 2017 to June 2017 from the computation.

**Sl. No. 5C Add: Unadjusted advances at the end of the Financial Year**

The scope of Part II Sl No. 5C and 5I is to make adjustment of Unadjusted Advances to Audited Financials for arriving towards the GSTR 9 turnover.

It is a business practice to collect advances from customers before effecting supplies. When an advance is received, since the goods and / or services would not have been delivered / rendered, the revenue is not yet earned, whereby this advance would be recorded as a liability (either as current liability or long-term liability) in the balance sheet as at the end of the financial year.

***For Supply of Goods***

Sec 12(2): The time of supply of goods shall be the earlier of the following dates, namely: —

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-Section (1) of Section 31, to issue the invoice with respect to the supply; or
- (b) ***the date on which the supplier receives payment with respect to the supply:***

The Government issued NN 40/2017-CT dated 13th October 2017 in terms of Section 148 of CGST Act to relax Registered Persons having aggregate turnover less than ₹ 1.5 crores from paying tax on such advances. This facility was extended to all Registered Persons without threshold limit vide NN 66/2017-Central tax, dated 15th Nov 2017 but only in the case of supply of goods.

In terms of the above notifications, an Auditor has to examine whether the Registered Person has paid tax on advances till 15th Nov 2017.

### ***For Supply of Services***

CGST Section 13 (2)

The time of supply of services shall be the earliest of the following dates, namely: —

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31 or the ***date of receipt of payment***, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Explanation—For the purposes of clauses (a) and (b)—

- the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Therefore, any advances received from customers before the date of supply, on receipt of advance GST, have to be discharged.

### **Sl. No. 5D. Deemed Supply under Schedule I**

Clause 5D seeks to cover aggregate value of four classes of deemed supplies transactions specified under Schedule I of the CGST Act. Any deemed supply which is already reported as part of the turnover in the audited Annual Financial Statements is not required to be included in this Sl. No.

As the requirement of this Sl. No. is to report the transactions which were not reported in the financial statements, though the same are reported in the returns filed since they are treated as deemed supplies under the GST law, there is no direct source will indicate the value of deemed supplies under any part of the returns or statement filed. Details regarding this have to be extracted from the books/records.

E-Way bills raised would be a good guiding factor to identify such instances in respect of goods while an Auditor may have to delve deeper to understand the transactions relating to services.

For instance, transactions relating to stock transfer of goods may be extracted from delivery challans or on an analysis of e-way bills, whereas transactions of service transfers will be based on an understanding of the nature business. It is better to take proper management representation for the completeness of these transactions.

The Auditor should look beyond the books of accounts and look for alternative evidence and information for reporting in Sl. No. 5D. Such as

1. Permanent Transfer or disposal of business assets where input tax credit has been availed on such assets
2. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.
3. Supply of goods-
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

#### **Disclosure by Auditor**

1. The Auditor has to assess the systems and processes adopted by the entity with a view to identifying such transactions. Suitable disclosure may need to be provided by the Auditor for the basis of such identification and its treatment under the GST Laws.
2. If there is any system / methodology for such an identification, then the Audit has to assess the completeness and correctness of the said system so as to cover all the aspects;
3. To examine records and to confirm if the system is followed consistently.
4. If there is no proper system, to consider the possibility of any transactions that may have escaped attention.
5. In cases of deemed supply transactions, it would be relevant to include suitable disclosures even in the management representation letter.

#### **Sl. No.5E. Credit notes issued after the end of the financial year but reflected in the annual return.**

This Sl. No. mandates reporting of the aggregate value of credit notes which were issued after Mar 31, 2018 in respect of any supply accounted in the current financial year (2018-19) but for credit notes were reflected in the annual return (GSTR –9 for the financial year 2017-18). But, it is uncommon, although not impossible, for credit notes dated beyond Apr 1, 2018 to be given effect in the financial accounts. This Sl. No. applies only in such rare cases. For the most part, this Sl. No. may well be 'nil'.

5E of GSTR 9C contains information pertaining to credit notes which were issued after 31st of March for any supply accounted in the current financial year but such credit notes were reflected in the annual return (GSTR-9).

**Sl. No. 5F. Trade discounts accounted for in the audited Annual Financial Statement but are not permissible under GST**

Clause 5F requires disclosure of trade discounts which have been given effect to, in the audited financial statements but which are not permissible as part of deductions from the value of supply under the GST Laws.

This data / information can generally be obtained from the credit side of the Profit and Loss account. It is also a business practice that trade discounts would be netted off against the turnover of outward supplies. In the case of entities with multiple registration, a separate statement is to be obtained for each GSTIN reconciling the total with the amount disclosed in the financials.

Non-allowance of the same has to be identified on the basis of the documents maintained by looking into the conditions of allowance as deduction against the supply made as per Section 15(3) of the CGST Act.

Since it may be difficult to verify all the cases of trade discounts by the Auditor to consider the eligibility for deduction, it may have to adopt some other audit techniques to ascertain the same. Also, it would be important to obtain the appropriate management representation letter from the entity.

The following are the control checks that a person should perform for validation of the amounts reported under this head:

- (a) The valuation of trade discounts for the purposes of disclosures under this head, has to be clearly documented.
- (b) The input tax credit reflected in GSTR-2A attributable to such trade discounts has to be maintained.
- (c) The trade discount has to be demarcated between the supplies made in the erstwhile law and the GST regime.
- (d) The customer agreements have to be scrutinised to determine the quantum of nonallowable discounts.

**Sl. No. 5G: turnover from April 2017 to June 2017**

In terms of this Sl. No. the turnovers included in the audited financial statement for the period April 2017 to June 2017 shall be declared and deducted from the annual turnover to arrive at the turnover as per the GST Laws.

There could be cases where the books of accounts are closed quarterly, or financial statements are drawn up quarterly. In such cases, the quarterly turnovers can be adopted, and adjustments can be made relating to the point of taxation under the excise law, State level vat law and service

tax law to arrive at taxable values as per the erstwhile laws. The said value must be entered under this head.

Turnovers forming part of the tax periods 1.4.17 to 30.06.17, which were *liable* to tax under the erstwhile laws as per the provisions relating to the point of taxation rules should be deducted from the turnover.

It may be noted that tax is liable to be paid on removal in case of excise/ on sale under VAT law/ on provision of service or issue of invoice as the case may be under service tax law provisions and not on accrual basis or cash basis (which is the basis of accounting and hence basis of annual turnover as per financial statements). Thus, the criteria for reducing turnover for the period April 2017 to June 2017 is not when the revenue was recognised as per relevant accounting standards, but whether or not the said amounts were liable to tax under the erstwhile laws as per the point of taxation under the said laws.

Amounts forming part of turnover relating to works contracts, where consideration was received during the period April 2017 to June 2017, but supplies were effected or services were rendered after June 2017, needs to be deducted under this Sl. No. because the said consideration was liable to tax on receipt basis as per the service tax law and State level VAT laws. However, the self-same value needs to be added back in Sl. No. 5(O), since the aforesaid supplies would be liable to tax under the GST law also as per Section 142(11)(c). At this juncture, it is important to note that the relevant service tax and value added tax paid on such advances for which supplies are effected during the GST regime would be available as CGST / SGST credit as per section 142(11)(c) of the CGST Act.

It is opportune to mention at this stage that there is a saving clause in section 142(11)(a) and (b) of CGST/ SGST Act, which states that transactions liable to VAT/ service tax would not be eligible to GST in case the provision of time of supply under the GST also stands attracted to the very same transaction. There is no such saving clause mentioned for excise duty (i.e. for goods manufactured and *cleared* from April 2017 to June 2017) but sold after June 2017 (e.g.: clearances made on sale or approval basis prior to July 2017, sold after July 2017). However, N.No.12/17 CE dt.30.6.17 grants exemption in the case of goods manufactured prior to 30.6.2017 but cleared/ supplied after 1.7.2017, provided GST is leviable on such goods.

### Illustration

Please specify which of the following supplies would form part of reporting under turnover for the period April 2017 to June 2017

- (a) Services were provided during the period June 2017. The service was completed on 20.6.2017, but invoice for the service was raised only on 1.8.2017.

**Reply:** Since the invoice was raised after a period of thirty days, service tax is liable to be paid for the period ending June 2017 as per the proviso to Rule 3(a) of the Clause of Taxation Rules. Since the said transaction is liable to service tax, it is not liable to GST as per Section 142(11)(b) of the CGST Act, though the invoice is raised during the GST

regime. Therefore, the said value of invoice must be deducted for the period April 17 to June 2017.

- (b) Service has been provided in the month of May 17 amounting to ₹ 1,00,000/-. Invoice has been raised within 30 days. There was a deficiency in the provision of service. The customer has paid only ₹ 20,000/-. The company has issued credit note amounting to ₹ 80,000/- on 31.3.2018 and closed the customer's account. Should any amount be reduced for the period April 2017 to June 2017. Are any adjustments required to be made for the period July 2017 to March 2018?

**Reply:** As per S.142(2)(b) of the GST Act, where in pursuance of contract entered into prior to the appointed date, where the price of service is revised downwards after 1.7.2017 and the provider issues a credit note within 30 days of such price revision, such credit note shall be deemed to have been issued in respect of outward supply, provided the recipient has reduced his input tax credit. Assuming the input tax credit is reduced by the recipient, the credit note shall be reduced from outward supply for the tax period March 2018. Thus ₹ 80,000/- would be reduced from the GST turnover for the period of March 2018. The said amount of ₹ 80,000/- would be reduced from the turnover in the month of March 2018 because credit note is issued in the month of March 2018. Thus, only ₹ 20,000/- is required to be reduced for the period April 2017 to June 2017, though invoice for ₹ 1,00,000/- is issued in the month of May 2017 and service tax is paid on ₹ 1,00,000/- in the month of May 2017.

**Sl. No. 5H. Unbilled revenue at the end of Financial Year**

Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting during the current financial year, but GST was not payable on such revenue in the same financial year shall be declared here.

**Sl. No. 5I Less: Unadjusted Advances at the beginning of the Financial Year**

Value of all advances for which GST has not been paid but the same has been recognized as revenue in the audited Annual Financial Statement shall be declared here.

**Sl. No. - 5J. Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST**

This Sl. No. has to be filled up with the information available in the audited Financial Statements whereas such amounts have not been adjusted against the supplies in the GST returns. All the adjustments made to the turnover where there is an effect of reduction due to a Credit Note issued have to be quantified for the purpose of reconciliation between the books of accounts and the GST returns to be filed. There could be an adjustment made to the receivable and payable in the books of accounts. Care should be exercised to extract the information of credit note that only calls for reduction of the turnover.

Auditor has to disclose the practice adopted for collating relevant information from the books of accounts and the basis for determining the adjustments eligible for reconciliation purposes.

**Sl. No. 5K. Adjustments on account of supply of goods by SEZ units to DTA Units**

Such outward supplies are not required to be reported by SEZ units in their GST Returns and hence the data cannot be retrieved from the returns filed by such SEZ units.

SEZ units are required to maintain records of the assets / goods admitted into the SEZ unit and also the details of disposal of such goods. Such records can assist an Auditor in identifying the outward supply made by the SEZ unit. Additionally, disposal of capital goods would be disclosed as deletion in the Fixed Asset Registers.

**Sl. No. 5L. Turnover for the period under composition scheme**

There may be cases where Registered Persons might have opted out of the composition scheme during the year. Their turnover as per the audited Annual Financial Statement would include turnover both as composition taxpayer as well as normal taxpayer. Therefore, the turnover for which GST was paid under the composition scheme shall be declared under this Sl. No. 5L.

A person registered under the composition scheme who has opted out of the scheme should file both GSTR 9 and GSTR 9A. An Auditor may note that even a person violating the conditions stipulated in Section 10 of the CGST Act or Rule 5 of the CGST Rules or Notification CT 8/2017 dated 27/06/2017 would stand to exit the scheme. In such cases, the composition person should file Form COMP-4 and opt out of the scheme.

**Sl. No. 5M. Adjustments in turnover under section 15 and rules thereunder**

There may be cases where the taxable value and the invoice value differ due to valuation principles under section 15 of the CGST Act, 2017 and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to difference in valuation of supplies shall be declared here.

In terms of Section 9 of the CGST Act, GST is applicable on supplies of goods or services on the value of supply as determined under Section 15. Section 15 of the CGST, 2017 provides that the transaction value (value at which the supply has been transacted) would be the basis for the computation of tax when two conditions are satisfied

1. The price actually paid or payable should be the sole consideration for the supply; and
2. The supplier and the recipient are not related.

Even if the price for a supply is agreed to be the transaction value, few adjustments (provided for under Section 15 itself) are required to be carried out to such price for the purpose of the computation of value on which GST is required to be paid.

Valuation Rules also provide instances where the value of a transaction as per the financial records can be significantly different from the value to be considered for discharge of taxes under the GST.

There may be cases where the taxable value and the invoice value differ due to valuation principles under Section 15 of the CGST Act and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to differences in the valuation of supplies shall be declared here.

**Sl. No. 5N. Adjustments in turnover due to foreign exchange fluctuations (+/-)**

Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to foreign exchange fluctuations shall be declared here.

**Illustration**

1. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

*CBEC Notified ₹ 65*

*RBI Reference Rate ₹ 68*

*At the time of receiving money, the bank exchanged the foreign currency at ₹ 70.*

**Solution**

For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, difference in the amount booked in the accounts and actual amount received being ₹ 70 – ₹ 68 = ₹ 2 x \$100,000 = ₹ 200,000 would be credited to the Profit and Loss Account as Forex Gain which again needs to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

2. *PQR Limited has exported goods to a Company located in USA. The value of goods is \$100,000. The exchange rate (Rs/\$) on the date of filing Shipping Bill is*

*CBEC Notified ₹ 65*

*RBI Reference Rate ₹ 68*

*At the time of receiving money, the bank exchanged the foreign currency at ₹ 66.*

**Solution:** For the purpose of GST Returns, the exchange rate would be ₹ 65 and the exports to be disclosed in the GST Returns would be ₹ 65,00,000. For the purpose of accounting records, the exchange rate would be ₹ 68 and the exports recorded in the books would be ₹ 68,00,000. The difference in revenue being ₹ 300,000 would have to be **reduced** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

Additionally, the difference in the amount booked in the accounts and actual amount received being ₹ 66 – ₹ 68 = (-) ₹ 2 x \$100,000 = (-) ₹ 200,000 would be debited to the Profit and Loss Account as Forex Loss which again needs to be **added** from the Annual turnover as per the financials to arrive at the revenue as per GSTR 9.

**Sl. No. 5O. Adjustments in turnover due to reasons not listed above (+/-)**

Clause 5O is a residuary Sl.No. which requires disclosure of reconciliation details relating to adjustments for which specific column is not provided under any other Sl.No.s under Item No. 5. This Sl.No. may contain an option to insert multiple line items to add / reduce the amount from the gross turnover declared in the audited Annual Financial Statements so as to reconcile the same with the turnover declared in Form GSTR 9.

**Sl. No. 5P: Annual turnover after adjustments as above**

The reconciliation statement in Sl.No.5P is auto-populated and based on the values declared against Sl. Nos. 5B to 5O.

**Sl. No.5Q: turnover as declared in Annual Return (GSTR 9)**

Clause 5Q requires a taxable person to disclose his turnover as per the Annual Return i.e., GSTR 9 filed for the relevant financial year. Therefore, the turnover arrived at Sl. No. 5N as per the Annual Return in GSTR – 9 should be declared under Sl. No. 5Q. Accordingly, the Annual Return in GSTR – 9 should be filed along with or before filing the reconciliation statement in Form GSTR – 9C.

The turnover arrived at Sl. No. 5P of Form GSTR 9C as stated earlier, should match with the turnover as declared in the Annual Return if the turnover is reckoned appropriately as per the GST law and declared in the returns filed in GSTR – 3B and the annual return in GSTR – 9. The turnover as arrived at Sl. No. 5N of the Annual Return in Form GSTR 9 shall be the turnover to be declared against Sl. No. 5Q.

The turnover as declared in the monthly return in GSTR – 1 by virtue of which the same is declared in the annual return in GSTR – 9 may not include all the taxable outward supplies on account of omissions or errors. Such differences in the turnover should not be adjusted under Sl. No. 5O for the purpose of matching the turnover between the annual return and the audited annual financial statements. The turnover as arrived at Sl. No. 5N of the Annual Return in Form GSTR 9 shall be declared against Sl. No. 5Q of GSTR 9C. The differences in turnover as per the audited annual financial statement and the turnover as per the annual return in GSTR – 9 should be reconciled and the reasons thereof should be mentioned at Part II Sl. No. 6.

**Sl. No. 5R: non-reconciled turnover (Q-P)**

The un-reconciled turnover at Sl. No. 5R is the difference between the 'Annual turnover after adjustments as above' at Sl.No. 5P and 'turnover as declared in the Annual Returns (GSTR 9)' as declared at Sl.No. 5Q. The difference would be auto generated.

The value of supplies either taxable, exempted or non-GST outward supplies not declared in the monthly returns and annual returns would form part of the auto-generated value at Sl.No. 5R. The reasons for such un-reconciled turnover should be given under Part II Sl. No. 6 of the reconciliation statement in GSTR – 9C. This could lead to any one of the following two situations:

**(i) The 'Annual turnover after adjustments as above' at Sl.No. 5P is higher than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:**

This situation arises if a taxable person has not declared some taxable outward supplies, exempted supplies and non-GST outward supplies. The value of taxable supplies forming part of the differences should be declared under Part III Sl. No. 11 and the applicable taxes thereon shall be paid appropriately by cash. The differences in exempt supplies and non-GST outward supplies shall be declared against Part II Sl. No. 7B or 7C as *the case may be* and reduction from the total turnover may be sought.

**(ii) The 'Annual turnover after adjustments as above' at Sl.No. 5P is lower than the 'turnover as declared in the Annual Return (GSTR 9)' at Sl.No. 5Q:**

This situation may arise if a taxable person has erroneously declared a higher turnover in the monthly return in GSTR – 3B and the annual return in GSTR – 9. The reconciliation statement in GSTR – 9C does not specifically provide to claim the benefit of tax paid erroneously. The statement which would be made available on the GST portal should be checked to verify whether the taxable value at Sl. No. 11 may be declared in the negative so that refund of tax remitted on such turnover can be claimed. Clarification on this issue is awaited.

**Sl. No. 6- Reasons for Un - Reconciled difference in Annual Gross turnover**

This portion of GSTR 9C identifies the turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to be flown from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on a special approval basis, which are not reconciled at turnover level should be disclosed in this Sl. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts.

Examine the turnover available as per the Audited Financial Statements with that of the Annual turnover determined as per GSTR 9. Information available in Notes to Accounts as per the Audited Financial statements gives the additional information for the Exceptions if any to the regular practice of maintenance of the Books of Accounts.

Information has to be compared on equitable basis for clarity on what is to be compared as turnover considered in the Financial Statements with that of the turnover compared in the GST Returns. For instance, turnover on the sale of Fixed Assets should be considered for the whole consideration value in the GST Returns. However, only Profit/ Loss on such sale shall be considered in the Books of Accounts. For having an equitable basis for both the turnovers, we need to gross up the Profit/Loss in the Books of Accounts for a matching comparison with the GST Returns.

The Auditor shall make a reference to the basis for reconciliation of the turnover related adjustments called for on the basis of the information available in the Notes to Accounts and any special adjustments caused by reference to other statutory requirements.

The Auditor needs to report whether the Books and Returns can be compared and quantify the reasons duly justifiable for the discrepancies reported, if any.

The Auditor should make a disclosure regarding the reasons that come in the way of the reconciliation process or concluded for sake of clarity on taxable nature.

**Sl. No. 7B. Value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover**

7	RECONCILIATION OF TAXABLE TURNOVER	
7A	Annual Turnover after Adjustments (From 5P Above)	<Auto>
7B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply Turnover	

Clause 7B requires reduction of value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover from the Annual turnover after adjustments to arrive at taxable turnover.

All the supplies on which tax has not been charged except for exports and reverse charge supplies should be reported under Clause 7B. The information can generally be obtained from the credit side of the Profit and Loss account. In case of a barter transaction, the sale of fixed assets at loss etc would not appear in the profit and loss account. Therefore, that information shall be obtained from the Fixed assets schedule or the stock register. The value of No-supply can be taken as reported in the Books.

Clause 7B essentially comprises the following 4 classes / types of supplies:

- (a) Supplies taxable at a 'NIL' rate of tax; currently there are no goods / services under 'NIL' rate category
- (b) Supplies that are wholly or partially exempted from CGST, SGST or IGST, by way of a notification; E.g.: Milk, water, education service, health care services, etc.,

- (c) Non-taxable supplies as defined under Section 2(78) of the CGST Act – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).
- (d) No supplies include the activities covered under Schedule III which are neither a supply of goods nor a supply of services. Examples- Sale of land or completed building, actionable claims, other than lottery, betting, and gambling.

#### Illustration

The following supplies would form part of the reporting under value of Exempted, Nil rated, Non-GST supplies, No-Supply turnover in the case of a hospital:

- (a) Consultation fees received by the hospital ₹ 2,50,00,000/- (Exempted supply)
- (b) Diagnostic services provided by the hospital ₹ 40,00,000/- (Exempted supply)
- (c) Excess petrol available in the hospital sold to a related party ₹ 10,000/- (Non-GST supply)
- (d) Land sold by the hospital ₹ 5,00,00,000/- (No-supply)

#### Sl. No. 7C. Zero rated supplies without payment of tax

7C	Zero rated supplies without payment of tax	
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Clause 7C of GSTR 9C requires disclosure of value of zero-rated supplies without the payment of tax which forms part of the 'Annual turnover after adjustments (from 5P above)' at Sl.No. 5P. This should also consist of the value of zero-rated supplies which have not been declared in the monthly return / annual return erroneously for the reason that the adjusted turnover at Sl.No. 5P contains even such zero-rated supplies. Therefore, such value of zero-rated supplies should be deducted from the adjusted annual turnover arrived at Sl.No. 5P so as to claim exemption. In short, the zero-rated supplies as recorded in the audited annual financial statements should be declared against Sl.No. 7C provided such zero-rated supplies have also not been declared in monthly returns filed for the period April to September following the relevant financial year.

Zero rated supply under the provisions of GST law means:

- (a) Exports of goods or services or both.
- (b) Supply of goods or services or both to Special Economic Zone developer /Special Economic Zone unit.

The source of information for zero-rated supplies shall be obtained from the outward supply statement in GSTR – 1 and revenue register forming part of books of accounts. The outward supply statement filed in GSTR -1 shall be correlated with the zero-rated supplies declared in the monthly returns in GSTR – 3B.

#### Sl No. 7D - Supplies on which tax is to be paid by recipient on reverse charge

7D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
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Section 2(98) defines reverse charge to mean a case where liability to pay tax is on recipient of supply of goods or service instead of supplier u/s 9(3) and 9(4) of CGST/SGST Act or S.5(3) or 5(4) of IGST Act.

The Auditor has to verify if the supplier has more than one vertical. One of them vertical must be on forward charge and one on reverse charge. The vertical on reverse charge should be taken under '*supplies on which tax is to be paid by recipient on reverse charge basis*'.

Data entered Table 4B of GSTR 1 (Supplies attracting tax on reverse charge) should be taken as the source for this information. The data would have been entered in Table 4B providing invoice level details.

The aforesaid information should be also entered in Table 3.1(c) (Other outward supplies – Nil rated, exempted) of GSTR 3B.

Table 7 provides for 'Reconciliation of taxable turnover'. Table 7A starts from the Annual turnover after adjustments. The data in Table 7A is auto populated from entries in Table 5P, which refers to 'Annual turnover after adjustments. From the said turnover, the following turnovers are reduced:

- (a) value of the exempted turnover
- (b) nil rated turnover
- (c) Non-GST turnovers
- (d) No Supply turnovers
- (e) Zero rated turnover made without payment of tax

In light of the above, it can be inferred and concluded that the data to be entered under Sl.No. 7D is supplies made by the supplier, on which tax is to be paid by the recipient.

It is reiterated at the sake of repetition that expenses on which tax is paid by Registered person as recipient of service should not be inserted in this column and reduced from Annual Adjusted turnover since table 7 is seeking to reduce items from Annual turnover after adjustments to arrive at turnover of Registered person which is liable to tax.

***In case the invoice does not contain the declaration required under Rule 46 or credit has not been reversed under Rule 39, 42 or 43 or tax has been wrongly collected by the supplier on services liable for reverse charge (and retained by the supplier), then such infractions should be reported in the Audit Report because the Audit Report has to have disclosures regarding non-maintenance of records and documents/ observations and inconsistencies relating to reversals of credit.***

**Illustration**

Please state which of the following are liable to reverse charge

- (a) GTA issued a consignment note on 1.1.18. The consignment notes charges GST @ 12%. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- (b) GTA issued a consignment note on 1.1.18. The consignment note does not charges GST. The consignor has booked the GTA. The recipient has paid the freight to GTA on 'to collect' basis. Would this turnover be mentioned in Table 7D?
- (c) Advocate Mr. X has provided legal service and charged GST of ₹ 18 on his invoice of ₹ 100. The advocate's client has paid 118 to the advocate. The advocate has remitted ₹ 18 to government and is of the opinion that the aforesaid transaction should not be reduced in Table 7D. Is the stand taken by the advocate correct?

**Solution**

1. The Consignment note contains GST @ 12%, so reverse charge does not attract as per N.No.13/17 CT (R) w.e.f 22.8.10. Hence tax has to be paid by GTA under forward charge, and this transaction should not be entered in Table 7D.
2. Since consignment note has not charged GST @ 12%, reverse charge provisions would apply. Tax is to be paid by the person liable to pay freight, that is, the recipient and not the GTA under forward charge. Because of this, the impugned transaction has to be entered in Table 7D.
3. Supplies by a Registered Person, whose suppliers are liable for reverse charge, are to be inserted in Table 7D. Legal service provided by the advocate to his client is liable for reverse charge (assuming all other conditions in reverse charge notification stand satisfied). Hence the impugned transaction should be inserted in Table 7D. GST wrongly collected and paid by the advocate under forward charge will not change the fact that the aforesaid service is liable to reverse charge and hence merits insertion in Table 7D.

It must be ensured that if the supplier has turnover which is liable to both forward charge and reverse charge then the turnover liable to reverse charge should be accounted in FORM 7D. It may be ensured for purposes of control that the aggregate of turnover under forward charge and reverse charge is the total turnover.

**Sl. No. 7F - taxable turnover as per liability declared in Annual Return**

7F	Taxable turnover as per liability declared in Annual Return (GSTR9)	
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Clause 7F of GSTR 9C requires that the taxable turnover as per the liability should be declared in the Annual Return (GSTR 9).

Instruction as per GSTR 9C - taxable turnover as declared in Table 4N of the Annual Return (GSTR 9) shall be declared here. The information must flow from GSTR 9 which contains supplies and advances on which tax is paid. The turnover arrived at Part II Sl. No. 8F of Form GSTR 9C should match the turnover as declared in the Annual Return.

**Sl. No.8 Reasons for Un - Reconciled difference in Taxable Turnover**

8	Reasons for Un - Reconciled difference in Taxable Turnover	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

This part of GSTR 9C identifies the taxable turnover differences to be placed on record for explaining the differences between the GST Returns and the Audited Financials. All the information filled up in the GST returns has to flow from the Books of Accounts. However, the un-reconciled turnover on account of disclosure norms as per the Accounting Standard issued by the ICAI or other statutory provisions or practices adopted by the Registered Person on special approval basis, which are not reconciled at turnover level should be disclosed in this Sl. No.

For instance, the mechanism for the determination of Revenue in case of Sale of a Capital Asset shall differ for the value to be disclosed in the GST Returns compared with that of the practice adopted in the Book of Accounts.

The data which has to be filled up in this table is drawn out of Sl. No.s 5, 6, 7. Further, review of the transactions effected through the E-Way Bill gives details about the exceptional transactions, if any, to be reported through the above reconciliation

**Illustration**

The following illustrations can be considered for reporting the reconciliation differences:

- (a) Zero-rated supply made by the Registered person during the previous year. If the conditions relevant for the supply have not been complied by the Registered person, then the supplies can be construed to be regular supplies.
- (b) Transaction reported in a delivery challan during the financial year for supply on sale or approval basis beyond a period of six months shall be deemed to be supply under the GST. However, that may not be a sale for revenue recognition in the books of accounts for such a transaction. Assuming the GST returns carry the supply details and no revenue recognition has been done in the books of accounts, this shall call for reconciliation.
- (c) Exemption conditions not fulfilled by the Registered person while exercising the option to supply either a Nil rated or Exemption, shall be reported as Regular Supply.

**Part III: Reconciliation of tax Paid**

After reconciling the turnover declared and reported in the Audited Financial Statement with turnover declared in Annual Return along with reasons for reconciliation if any, the relevant Part III of Form 9C requires an Auditor to reconcile the rate-wise liability of tax, total amount payable thereon with tax actually paid as declared in the Annual Return and recommendation of additional tax payable due to non-reconciliation of the taxable value.

Pt. III	Reconciliation of tax paid					
9	<b>Reconciliation of rate wise liability and amount payable thereon</b>					
			Tax payable			
	Description	Taxable Value	Central tax	State tax/ UT tax	Integrated Tax	Cess, if applicable
	1	2	3	4	5	6
A	5%					
B	5% (RC)					
C	12%					
D	12% (RC)					
E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
I	3%					
J	0.25%					
K	0.10%					
L	Interest					
M	Late Fee					
N	Penalty					
O	Others					
P	Total amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)					
R	Un-reconciled payment of amount				PT 1	

The relevant Table 9 requires the Auditor to provide details of taxable value along with the Gross tax Liability booked by the Registered Person whose Form 9C is being filed by him. The said tax liability needs to be reported rate wise in Table 9. Further, the taxable value and liability of tax on which the given Registered Person is required to pay tax under Reverse Charge Mechanism are also required to be reported rate-wise separately. After reporting of the same, the details of Total tax payable for the Financial Year 2017-18 as declared in GSTR 9 i.e. under the Annual Return is also required to be disclosed. The given table also requires the disclosure of Interest, Late Fees and Penalty Payable.

From the scheme of Table 9 it is clear that the Auditor is required to report the GST payable rate wise dissected total taxable turnover calculated in Table 7E under Part II of GSTR 9C. Once the taxable value is reported under various rates as specified in sub-parts A, C, E, G, I, J, and K, the relevant amount of tax shall be calculated by the system.

The values that are to be reported in Table 9 should be taxable value as reported under Table 7E of GSTR 9C, i.e. Adjusted Total turnover for the FY 2017-18 under the GST and the amount of tax (rate wise) should be derived mathematically.

7E	Taxable turnover as per adjustments above (A-B-C-D)	<Auto>
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The details of adjusted Total turnover needs to be broken down in accordance with the GST rates based on the reports generated from the books of accounts and necessary adjustments made in Part II of GSTR 9C which have not impacted the books of accounts of the Registered Person should also be considered rate-wise for the purpose of finding the taxable value.

Once all the details are entered, and the difference in tax payable as per the books with actual tax payable is identified, the amounts of non-reconciliation shall be raised as per CGST, SGST, IGST and Cess wise. On these amounts the Auditor shall be required to disclose the reasons in Table 10.

#### Sl. No.10: Reasons for un-reconciled payment of amount

10	Reasons for un-reconciled payment of amount	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

The given table mandates the Auditor to identify and disclose the reasons for un-reconciled payment of amount of tax, Interest, Penalty, Cess and Others. Reasons, amounts along with description of reason needs to be disclosed.

The Auditor needs to identify the reasons due to which some amount is reflected in Table 9R.

The various reasons can be as under

#### (A) GSTR 3B shows less/more tax paid

- GSTR 1 matches with the audited financials with regard to the tax payable

- GSTR 3B shows the tax paid differently from the books of accounts.

In this situation, even though Table 6 and 8 may not show any differences as given in point (i) above, Table 10 would show a difference of the amount of tax to be paid and tax actually paid. So, any tax payable occurring due to this would automatically form part of Table 11 and the Auditor's recommendations in Part V.

In case any excess tax has been paid, there will be no reporting in Table 11. There is also no provision of negative reporting in Table 11.

**(B) GSTR 1 and GSTR 3B inter se matching but not with the Audited Financials**

- GSTR 3B and GSTR 1 match with each other
- Matched GSTR 1 and GSTR 3B are different with regard to the audited financial statements.

Such differences would be depicted in Table 6, 8 and 10. If the turnover is lesser than what it is in the audited financials, they could indicate a short payment of tax, if differences thereof are not explained. The cause of the differences needs to be clearly identified. Taking the values after considering the audited financial statements Table 10 will be compared with the actual tax paid as per GSTR 3B. As there is a difference between the audited financial statements and GSTR 3B, an unreconciled difference would be shown in Table 10.

**(C) Taxable turnover as per the books matching in GSTR 1 and GSTR 3B but tax is not matching.**

- The value of taxable supply in Form GSTR 3B matches with that in GSTR 1
- Tax payable as self-assessed in GSTR 3B is different from what is shown in GSTR 1.

The possible reason for the same can be because of the difference in the classification of supply in GSTR 1 and GSTR 3B. The reporting shall be required in Table 10 only in such cases where an error has occurred in Form GSTR 3B due to reasons of classification like the following

- HSN Disputes
- GST rate disputes
- Inter State vs Intra State Supply
- Place of Supply
- Type of Supply Dispute- taxable, Exempt, Nil rated

As the amount of tax in Table 9P shall be calculated on the basis of turnover reported and shall be treated as correct. Any deviation from the same shall be disclosed in Table 10.

It has to be ensured that for the whole amount of non-reconciliation reported in Table 9, the reason wise quantification of the same is done in Table 10.

**Sl. No. 11: Additional amount payable but not paid (due to reasons specified under Tables 6, 8 and 10 above)**

11	Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above)					
			To be paid through Cash			
	Description	Taxable Value	Central tax	State tax/ UT tax	Integrated tax	Cess, if applicabl e
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Interest					
	Late Fee					
	Penalty					
	Others (please specify)					

In the Table 11 under Part III of the GSTR 9C, the amount of tax, interest, penalty, late fees and their dues which are payable in accordance with the non-reconciliation reported under Table 6, 8 and 10 but not actually paid as declared in Annual Return in GSTR 9 are to be reported with rate-wise bifurcation.

**A) For Additional tax Payable**

After due verification and analysis of the amounts along with reasons reported in Table 6, 8 and 10 in the GSTR 9C pertaining to non-reconciliation of Annual Gross turnover, taxable turnover and tax payable, the details of taxable value needs to be identified GST rate-wise which should be reported in Table 11 on which appropriate tax has not been paid as declared in the Annual Return i.e. Form GSTR 9.

There may be several reasons due to which amounts may be reported in Table 6 and 8.

However, in the case of amounts reported in Table 6, reasons for non-reconciliation may be due to difference in timing or due to a permanent difference in turnover as per the books of accounts and the GST Returns. However, every non-reconciliation might not lead to a situation where there is a requirement to pay GST on the said difference.

Some examples where non-reconciliation is reported in Table 6 in Form GSTR 9C but shall not require any additional tax payment are illustrated as under:

- Difference in turnover where the time of Supply is postponed but revenue is recognized in books of accounts (Supply between Developer and Landlord in light of Notification No 04/2018-CT rate)
- Difference in the value of Export turnover reported in the books of accounts on the basis of Invoice value shown in the Shipping Bill whereas turnover reported in GSTR 1 on the basis of Invoice prepared in INR on the basis of Exchange rate applicable on the date of preparation of Invoice.
- Difference in turnover of Services due to tax paid on advances and shown in GSTR 1 but not required to be disclosed as turnover in the Audited Financial Statements.
- Difference in turnover due to disclosure of Profit / Loss on Sale of Fixed Assets in the Audited Financial Statements and disclosure of whole sale proceeds in GST Returns.

In the given cases, no reporting is required to be done in Table 11.

Further, in other types of non-reconciliations reported in Table 6, there can be an impact on the tax Liability to be paid. The instances for the same shall principally cover such cases where there is difference in taxable turnover in GST Returns and the Adjusted Total turnover. These set of differences which shall have impact on tax Liability shall actually be a part of Table 8 again.

However, out of such non-reconciliation filtered out and reported in Table 8, a further filter of non-reconciliation shall be reported in Table 10 regarding tax Liability which should have been paid on un-reconciled turnover reported in Table 8, but the same was not paid as declared in GSTR 9, i.e. the Annual Return.

Since Table 11 requires the disclosure of Additional tax Liability payable and not paid on non-reconciliations, it is evident that such details shall be reported in Table 10 also.

#### **B) For Interest, Penalty and Late Fees Payable**

The method suggested for calculating Interest, Late Fees and Penalty shall be employed to find the Gross amounts and difference of amounts not reported in GSTR 9 shall be required to be disclosed in the given Table.

## PART IV

## Sl. No. 12 – Reconciliation of Net ITC

**12A. ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)**

Pt. IV	Reconciliation of Input Tax Credit (ITC)
12	Reconciliation of Net Input Tax Credit (ITC)
12A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)

Clause 12A of GSTR 9C is the detail of ITC availed in the audited financial statements. The row aims to collect information on the ITC availed in the books of accounts by the Registered person. This shall be the total ITC including the one availed in the books of accounts on Inputs, Input Services and Capital Goods.

Right in the beginning, information of all the tax account codes / ledger names should be obtained from the Registered person in which he enters the ITC availed. ITC availed (after reversals) as per the audited Annual Financial Statement shall be declared here. There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. This is common for persons / entities with presence in multiple States. Such persons / entities would have to internally derive their ITC for each individual GSTIN and declare the same here. It may be noted that reference to the audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence in multiple States. Further, it is important to understand from the Registered person whether he has maintained separate ledgers for availing ITC for different States or a common one.

**12B. ITC booked in earlier Financial Years claimed in current Financial Year**

12B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
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Any ITC which was booked in the audited Annual Financial Statement of the earlier financial year(s) but availed in the ITC ledger in the financial year for which the reconciliation statement is being filed shall be declared here. Since this is the first year of the GST, this column should ideally be zero. However, as per the instruction related to the form, transitional credit which was booked in earlier years but availed during Financial Year 2017-18, the same would not be required to be reported here. This would leave the Registered person with ITC which are carry forward balances of the earlier taxes.

However, from next year onwards, this column would have the same amount as is reported in column 12C of Form 9C of the previous financial year. Hopefully, the same should be auto populated by the system. There can be a scenario also where an Input tax credit which related to FY 2017-18 was not booked in the books in FY 2017-18 inadvertently and was also not

claimed in GSTR 3B of FY 2017-18. However, during reconciliation of returns during FY 2018-19 the claim was taken in both the books of accounts as well as GSTR 3B filed during FY 2018-19, such cases would not be reported in this column.

#### 12C. ITC booked in current Financial Year to be claimed in subsequent Financial Years

12C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
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Clause 12C of GSTR 9C is the Input tax Credit which is booked in the current financial year but claimed in the returns of GSTR 3B filed during FY 2018-19. This includes all credits which were for any reason (inadvertent or conditions not being fulfilled) were not taken in returns as filed from July 2017- March 2018.

All amounts which are debited in the books of accounts but not claimed as Credit should be reported here. The Auditor must run a check to arrive at Input tax Credits which appear in the GST receivable ledgers but do not find place in the Input tax register providing amounts as reported in GSTR 3B of FY 2017-18. The difference of such unclaimed balance shall be reported here.

Value in this Sl.No. should be equal to the amount reported in Clause 13 of GSTR 9. However, amount of Credits relating to FY 2017-18 which are booked in FY 2018-19 only in the books of accounts shall be subtracted from such reported amount in Clause 13 of GSTR 9.

#### Illustration

The Input tax credit as booked in the GST receivable ledger for the month of August 2017 includes the following:

- (a) Input tax credit on purchase of inputs claimed in GSTR 3B of August 2017: ₹ 3,00,000
- (b) Input tax credit on purchase of inputs claimed in GSTR 3B of December 2017: ₹ 150,000
- (c) Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

**Ans.** The reporting of the following transactions shall be made in this column:

Input tax credit on purchase of inputs claimed in GSTR 3B of May 2018: ₹ 2,00,000

#### 12E. ITC Claimed in Annual Return (GSTR 9)

Clause 12E of GSTR 9C Net ITC available for utilization as declared in Table 7J of Annual Return (GSTR 9) shall be declared here.

#### 12F. And 13 Unreconciled ITC

12F	Un-reconciled ITC	
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Clause 12F of GSTR 9C provides for the difference between the ITC as computed from the books of account in Clause 12D and ITC as claimed for the financial year in Clause 7J of Annual return. Reasons for such difference shall be explained in point 13 of GSTR 9C.

13	<b>Reasons for un-reconciled difference in ITC</b>	
A B C	Reason 1	<<Text>>
	Reason 2	<<Text>>
	Reason 3	<<Text>>

While 12F is the differential value and has no source. Clause 13 seeks reasons from the books of accounts and claims in GSTR 9 for the difference. In case the difference is positive, possible reasons of difference should primarily include:

- the amount of ITC for the financial year claimed in point 13 of the Annual return form which is the amount of ITC claimed in returns of the subsequent year for the financial year.
- the amount of ITC available but not availed which can be divided in two further categories:
  - Ineligible ITC not availed in the return
  - ITC which has lapsed as not availed

In case the difference is negative, the matter is of concern as it is a clear indication of more than available ITC claimed. This could be on account of the following reasons:

- ITC of another GSTIN claimed in returns of GSTIN under audit
- IGST on imported goods used as FOC replacement warranty (customs duty + IGST paid by Exporter of original equipment.
- Duplicate ITC availed
- ITC of subsequent year where goods / services were received later but their invoice was received prior was availed.

**14. Reconciliation of ITC declared in Annual Return (GSTR 9) with ITC availed on expenses as per audited Annual Financial Statement or books of account**

14	<b>Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account</b>			
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
D	Imported goods (Including received from SEZs)			

E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed	<<Auto>>		
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC	ITC 2		

This table is for reconciliation of ITC declared in the Annual Return (GSTR 9) against the expenses booked in the audited Annual Financial Statement or books of account. This point calls for examination of ITC detailed by the Auditor to determine the available ITC as booked in ledgers of various expenses and in the books of accounts viz a viz the ITC availed by the Registered person. In case the Auditor finds any ineligible or unavailable ITC as per the books of accounts, suitable disclosures are to be made in this regard.

**Illustration: The Input tax credit as booked in purchase account is as follows:**

- (a) ITC on purchase of raw material: ₹ 1,50,000 (Purchase value: 20,00,000)
- (b) ITC on purchase of consumable: ₹ 60,000 (Purchase value: 4,00,000)
- (c) ITC on purchase of food items for staff: ₹ 12,000 (Purchase value: 120,000)
- (d) ITC availed by the registered person from the Purchase account: ₹ 222,000

**Ans.** The reporting of the following transactions shall be made in this column:

- value of Purchases: 25,20,000
- Amount of Total ITC: 222,000

Amount of eligible ITC availed: ₹ 210,000

**15. Reasons for un-reconciled difference in ITC**

15	<b>Reasons for un - reconciled difference in ITC</b>	
A B C	Reason 1	<<Text>>
	Reason 2	<<Text>>
	Reason 3	<<Text>>

Reasons for non-reconciliation between ITC availed on the various expenses declared in Table 14R and ITC declared in Table 14S shall be specified here.

This column is auto populated as it is a calculation of difference between Table 14R and 14S. This is the differential amount between the eligible availed ITC and the availed ITC. Difference can arise on any of the following counts:

- Ineligible ITC availed by the Registered person
- ITC booked in the books of accounts but not availed including ineligible ITC not availed (lapsed)

In case of a negative amount, such difference can arise on account of ITC booked in the books of accounts but availed in return GSTR 3B of the subsequent year. This can be correlated with point 13 of GSTR 9.

**16. Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)**

Any amount which is payable due to reasons specified in Table 13 and 15 above shall be declared here.

**Part V to GSTR 9C****Auditor's Recommendation on additional liability due to non-reconciliation**

Pt. V	<b>Auditor's recommendation on additional Liability due to non-reconciliation</b>					
			To be paid through Cash			
	Description	Value	Central tax	State tax/ UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					

Input Tax Credit					
Interest					
Late Fee					
Penalty					
Any other amount paid for supplies not included in Annual Return					

Part V consists of the auditor's recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. The auditor shall also recommend if there is any other amount to be paid for supplies not included in the Annual Return. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demands which is recommended to be settled by the auditor shall be declared in this Table.

#### Some issues

##### (a) Is the additional liability determined by the Auditor binding on the Registered person?

- ✓ At the outset, it can be inferred from the heading to Part V of GSTR 9C that the Auditor has only a recommendatory power, for recommendations given by the Auditor may or may not be acceptable to the Registered Person. If it is acceptable, there are no further questions. But if it is not acceptable, then the question that arises is how can the Auditor resolve the issue.
- ✓ At this juncture, the Auditor needs to exercise his professional diligence, skill, legal knowledge and care in determining any additional tax liability which is payable by the Registered Person. The Registered Person has the option to accept, reject or partially accept the recommended additional tax liability. In line with such recommendations, though not explicitly stated anywhere in the relevant Form or GST laws –
  - (i) the Registered Person can choose to make the payment of the additional tax liability in full or in part;
  - (ii) the Registered Person can even choose to reject the complete recommendations of the Auditor and not make the payment at all.
- ✓ Before an Auditor ventures into recommending any additional tax liability due care, caution and diligence must be exercised. For instance, in respect of commodity classification based on HSN if an Auditor believes that there are two possibilities then he may choose to place reliance on an expert opinion. In such a situation, a proper disclosure may suffice.

- ✓ However, when looked at from the perspective of the government, the recommendation shall form the foundation for an effective show cause notice and enquiry into the affairs of the Registered Person.

**(b) Scope of the Auditor's review for recommendation**

- ✓ On a perusal of the heading to Part V of GSTR 9C, it appears that the responsibility of the Auditor is restricted to report only the additional liability which may arise on account of non-reconciliation matters only. An Auditor may take the view that he is not required to step into the shoes of an investigator to mine any undisclosed supplies which are neither reported in the annual return nor in the financial statements. But at this point in time the instruction provided to fill in the relevant GSTR 9C plays an important role.
- ✓ Para 7 of the instructions provided to the relevant GSTR 9C makes it clear that apart from recommending any additional tax liability that may arise on account of reconciliations matters, an Auditor is also required recommend:
  - cases relating to supplies that are not reported in the annual return;
  - refunds erroneously taken;
  - any outstanding demands that may be settled by the Registered Person.
- ✓ Performing this reconciliation accurately and analysing reasons for the differences falls within the domain of the Auditor's responsibility. Making disclosures in respect of the differences which are accurate, exhaustive and understandable form an intrinsic part of his duty.

**(c) Reasons for additional tax liability**

- ✓ Non-reconciliation between the books of accounts and the annual return can either occur (among other reasons) in respect of the turnover, tax paid or availment of the input tax credit. Any additional tax liability that may arise due to non-reconciliation between the turnovers or the tax payable on such turnovers would be reported in Table 11 of GSTR 9C. Further, any additional tax liability arising due to non-reconciliation of the input tax credit are to be disclosed in Table 16 of GSTR 9C. The amount reported in these two tables would be summarized and reported in Part V of the GSTR 9C.

- ✓ Additional tax liability may arise on account of any other amount paid for supplies not included in the annual return, erroneous refund to be paid back, outstanding demands to be settled, etc., (if any).

Verification	
I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.	
**Signature and stamp/seal of Auditor	
Place:	Name of Signatory
Date:	Membership No.
	Full address

#### Understanding “Verification” under GSTR 9C

- I. In terms of Rule 80(3) of the CGST rules, 2017 the relevant “verification” portion to the reconciliation statement in Form GSTR 9C reads as under :
- II. The verification part of the said GSTR 9C is quite crucial in so far as the GST Auditor is concerned. Several important words and phrases are used in this part, such as **“solemnly affirm, declare, true and correct, knowledge and belief, conceal etc.”** An understanding of the true import of these words is crucial for understanding the manner in which the Auditor is expected to meet his professional obligation.
- III. According to The Random House Dictionary the word solemn means **“serious or earnest”** and the word **affirm** means **“confirm, establish or ratify”**. A solemn affirmation is ratification under a statute.
- IV. In the case of Dilip N. Shroff V. Joint Commissioner of Income tax, 2007 (219) ELT 15 (SC) their lordships extracted the meaning of the word “conceal” from the Law Lexicon which reads:

“to hide or keep secret. The word “conceal” is con + celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities.”

In the very same judgement in para 67 and 68 the Honourable Supreme Court goes on to analyse certain phrases, which are relevant and reproduced below:

‘Concealment of income’ and ‘furnishing of inaccurate particulars’ are different. Both concealment and furnishing inaccurate particulars refer to deliberate act

on the part of the Registered person. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi. Although it may not be very accurate or apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars.

The authorities did not arrive at a finding that the consideration amount fixed for the sale of property was wholly inadequate. The authorities also do not show the inaccurate particulars furnished by the Appellant. They also do not state what should have been the accepted principles of valuation. We, therefore, do not accept the submissions of the learned Additional Solicitor General that concealment or furnishing of inaccurate particulars would overlap each other, the same would not mean that they do not represent different concepts. Had they not been so, the Parliament would not have used the different terminologies.

To conclude, malafide or dolus molus becomes a pre-requisite to prove an act of concealment. While every action is not malafide – negligence, carelessness, recklessness coupled with intention to withhold information tantamount to malafide. It is reiterated that mere failure to provide information or providing inaccurate information also would not amount to concealment.

#### V. Certificate and Report:

A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. It is certification of factual accuracy of what is stated therein.

A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting an opinion thereon. It is giving an opinion based on factual data and that is arrived at by the application of due care and skill.

### Part B - GSTR 9C – An analysis

#### **Module I – Certification in cases where the reconciliation statement (FORM GSTR 9C) is drawn up by the person who had conducted the audit and GST audit certification**

##### Hierarchy of Clauses for Certification

Step 1: 'Examine' the 'financials'

Step 2: Based on such 'audit', report that books of account, etc. under the GST Acts have or have not been maintained

Step 3: Report the following observations / comments / discrepancies / inconsistencies, if any:

Step 3(b): Report further whether:

Step 3(b) (A): Information and explanations has / has not been obtained which were necessary

Step 3(b)(B): Proper books of accounts have / have not been kept Step 3(b)(C): Financials are/are not in agreement with the books

Step 4: State whether GSTR 9C and other relevant documents are annexed

Step 5: Particulars in GSTR 9C are 'true and correct' subject to observations / qualifications:

Step 5(a): .....

Step 5(b): ..... refer list of matter's for Auditor's attention listed below.....

Step 5(c): .....

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address

**Module II – Certification in cases where the reconciliation statement in (GSTR 9C) is drawn up by a person other than the person who had conducted the audit of the accounts**

Hierarchy of Clauses for Certificate

Step 1: Audit conducted by another Auditor and a copy of the Audit Report and Financials to be annexed

Step 2: Even without conducting audit, report whether books of account, etc. under the Act have / have not been maintained; It means the Auditor has to analyse, understand and check the nature of books and records that are to be maintained or have / have not been maintained;

Step 3: Report the following observations / comments / discrepancies / inconsistencies

Step 4: State whether GSTR 9C is annexed

Step 5(a): Now 'examine' books of accounts and other relevant documents Step

5(b): Then, particulars in GSTR 9C are true and correct subject to:

Step 5(c): .....

Step 5(d): .....refer list of matter's for the Auditor's attention listed below.....

Step 5(e): .....

Step 6: Signature and Stamp and Seal of the Auditor duly disclosing the date, place and full address.

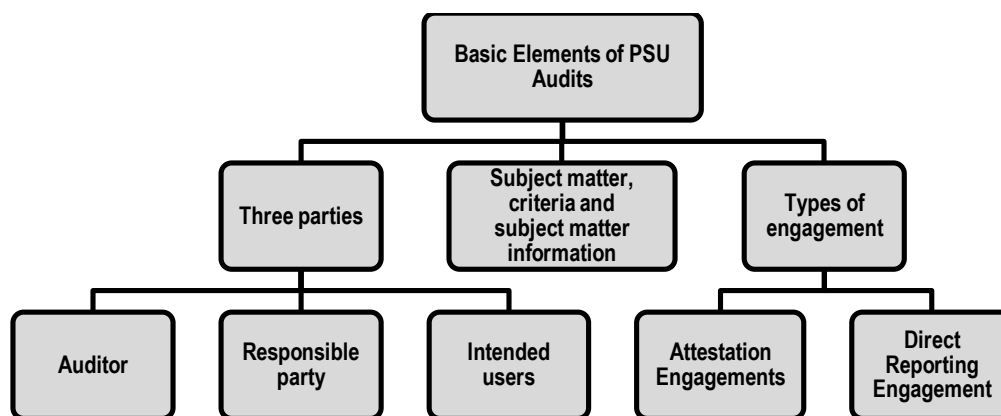
**1.11 Format of Audit report under the GST law: Form GST ADT - 04**

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.**

**Attestation Engagements:** In attestation engagements, the responsible party measures the subject matter against the criteria and presents the subject matter information, on which the auditor then gathers sufficient and appropriate audit evidence to provide a reasonable basis for expressing a conclusion.

**Direct Reporting Engagement:** In direct reporting engagements, it is the auditor who measures or evaluates the subject matter against the criteria.

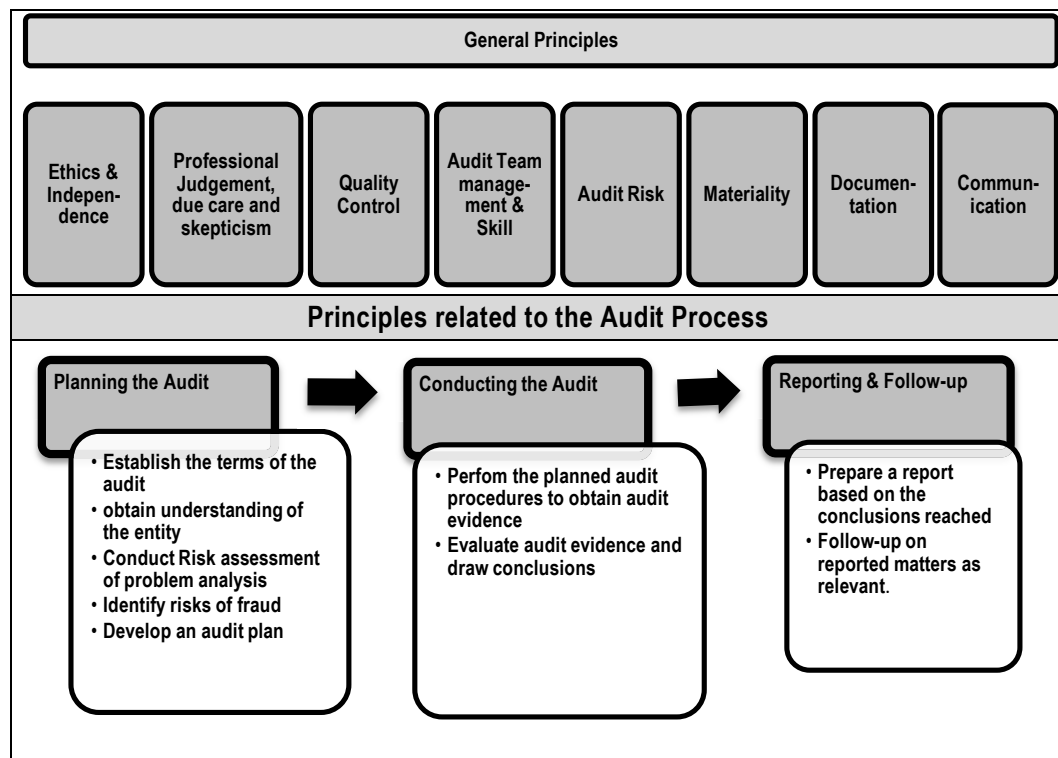
**Financial audits** are always **attestation engagements**, as they are based on financial information presented by the responsible party.

**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
- (iii) in combination with performance auditing.

**Compliance Auditing is generally conducted either:**

**(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

**I. 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:

<b>1. Where Client is an Individual/ Proprietor</b> 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
<b>2. Where Client is a Corporate Entity</b> 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.
<b>3. Where Client is a Non-Corporate Entity</b> 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

**II. Joining/Association with “Networks” by Members in Practice:** It is hereby clarified that associations with “Network” as a medium of referral of professional work is permissible only if the Network is registered with the Institute, comprising only of Chartered Accountants/Chartered Accountant Firms, and governed by the Institute’s Network Guidelines, which may be accessed at <https://resource.cdn.icai.org/24427announ14280.pdf>

Members' attention is also drawn towards following provisions of Chartered Accountants Act, 1949 (hereinafter referred to as the "Act") :-

**Clause (2) of Part I of First Schedule to the Act**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the Fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation — In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

**Clause (3) of Part I of First Schedule to the Act**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

**Clause (5) of Part I of First Schedule to the Act**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he secures, either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

**Clause (6) of Part I of First Schedule to the Act**

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:

Provided that nothing herein contained shall be construed as preventing or prohibiting —

- (i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

In view of the above provisions, it is not permissible for members in practice to join Networks (by whatever name called) other than the Networks registered with the Institute.

Members may note that joining such Networks as mentioned above may result in noncompliance of the above stated provisions of the Act resulting in disciplinary proceedings in accordance with the provisions of the Act.

#### **A - Meaning of Network & Network Firm –**

**Network** - A larger structure (a) That is aimed at co-operation; and (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

**Network Firm** – “Network Firm” means a firm or Entity that belongs to a Network.

#### **B - Concept of Network**

1. To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.
2. The judgment as to whether the larger structure is a network shall be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgment shall be applied consistently throughout the network.
3. Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network. However, the sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network.  
  
Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product does not in itself create a network.
4. Where the larger structure is aimed at cooperation and the entities within the structure share common ownership, control or management, it is deemed to be a network. This could be achieved by contract or other means.

5. Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is deemed to be a network. For this purpose, common quality control policies and procedures are those designed, implemented and monitored across the larger structure.
6. Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not deemed to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision.
7. Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is deemed to be a network. A common brand name includes common initials or a common name. A firm is deemed to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an audit report.
8. Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms. Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.
9. Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is deemed to be a network. Professional resources include:
  - Common systems that enable firms to exchange information such as client data, billing and time records;
  - Partners and staff;
  - Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements;
  - Audit methodology or audit manuals; and
  - Training courses and facilities.
10. The determination of whether the professional resources shared are significant, and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical

advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

**C - Forms of the Network:** The different forms of Network can be as under:-

1. A network can be constituted as a mutual entity which will act as a facilitator for the constituents of the Network. In such a case the Network itself will not carry out any professional practice.
2. A network can be constituted as a partnership firm subject to the condition that the total number of partners does not exceed twenty.
3. A network can be constituted as a Limited Liability Partnership subject to the provision of the Chartered Accountant Act and Rules and such other laws as may be applicable.
4. A network can be constituted as company subject to the guidelines prescribed by Institute for corporate form of practice and formation of management consultancy services company.
5. Network Firms shall consist of sole Practitioner/proprietor, partnership or any such entity of professional accountants as may be permitted by the Act
6. A firm is allowed to join only one network.
7. Firms having common partners shall join only one Network.

**D - Approval of Name of Network amongst firms registered with Institute:**

1. The Network may have distinct name which should be approved by the Institute. To distinguish a "Network" from a "firm" of Chartered Accountants, the words "& Affiliates" shall be used after the name of the network and the words "& Co." / "& Associates" shall not be used. The prescribed format of application for approval of Name for Network is at Form 'A' (enclosed). Illustrative examples of names of Network: -
  - (a) If the Network is a Mutual Entity or Partnership Firm: AB & Affiliates
  - (b) If the Network is a LLP: AB Affiliates LLP
  - (c) If the Network is a Limited Company: AB Affiliates P. Ltd/Limited
2. Provisions of Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is approved and subsequently it is found that the same is undesirable then, the said name may be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of names of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit.
3. The Institute shall approve or reject the name of the Network and intimate the same to the Network at its address mentioned in Form 'A' within a period which shall not be later than 30 days from the date of receipt of the said Form.

4. Mere approval of the name of the Network shall not entitle the Network to carry on practice in its own name.

**E - Registration of Network with entities in India**

1. After the name of a Network is approved as per provision under Guideline 5, the Institute same shall reserve such name for a period of three (3) months from the date of approval.
2. The Network shall get itself registered with the Institute by applying in Form B within the period of 3 months, failing which the name assigned shall stand cancelled on the expiry of the said period.
3. Registration of Network with Institute is mandatory.
4. If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of network.

**F - Listing of Network with entities outside India**

1. The duly authorized representative(s) of the Indian Member firm (s)/Member constituting the Network with entities outside India shall file a declaration with the Institute in Form 'D' for Listing of such Network within 30 days from the date of entering into the Network arrangement.
2. Proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members as may be permitted by the Act, shall be permitted to join such network with entities outside India provided that the proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members are allowed to join only one network and firms having common partners shall join only one such network.

**G- Change in constitution of registered Network:** In case of change in the constitution of registered Network on account of any entry into or exit from the Network, the network shall communicate the same to the Institute by filing Form 'C' within a period of thirty (30) days from the date of change in the constitution.

**H - Ethical Compliance:** Once the relationship of network arises, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and the following requirements in particular: -

1. If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly shall not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.
2. The guidelines of ceiling on Non-audit fees is applicable in relation to a Network as follows:
  - i) For a Network firm who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said

notification; and ii) For other firms of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/company.

3. In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.
4. The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting the network are permitted to use the words "Network Firms" on their professional stationery.
5. The constituent member firms of a Network and the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

**I - Consent of Client:** The effect of registration of network with Institute will be deemed to be a public notice of the network and therefore consent of client will be deemed to be obtained.

**J - Framework of Internal Byelaws of Network:** To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

- (i) Appointment of a Managing Committee, from among the managing partners of the member firms of the network and the terms and conditions under which it should function. The minimum and maximum number of members of the Managing Committee shall also be agreed upon.
- (ii) Administration of the network
- (iii) Contribution of membership fees to meet the cost of the administration of the network.
- (iv) Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner)
- (v) Dispute settlement procedures through arbitration and conciliation
- (vi) Development of training materials for members of the network
- (vii) Issue of News-letters for staff and clients
- (viii) Development of softwares for different types of assignments
- (ix) Development and maintenance of data bases relevant for different types of assignments
- (x) Library
- (xi) Appointment of a technical director to whom references can be made
- (xii) Determining the methodology for drawing resources from each member firm
- (xiii) Determining compensation to member firms for resources to be drawn from them
- (xiv) Peer review of the member firms These clauses are illustrative.

**K - Repeal and Saving:** The erstwhile "Rules/Guidelines of Network" issued by the Institute stands repealed from the date of commencement of these Guidelines.

Provided that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken in respect of the erstwhile Rules/Guidelines prior to the date of applicability of these Guidelines shall be deemed to have been done or taken under the corresponding provisions of these Guidelines.

### **III. 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 rupees 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 violation 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.
21. Internal Auditor not to undertake GST Audit simultaneously.

**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****PART A: MULTIPLE CHOICE QUESTIONS****Integrated Case Scenario 1.**

YS & Associates, a firm of Chartered Accountants, having CA. Y and CA. S as partners, is based at Mumbai. YS & Associates get their website developed as [www.ysassociates.com](http://www.ysassociates.com) from KPY Ltd. The colour of their website was very bright and attractive to run on a “push” technology. Names of the partners of the firm and the major clients were also displayed on the web-site without any disclosure obligation from any regulator.

CA. Y, accepted his appointment as tax auditor of a firm under Section 44AB, of the Income-tax Act, and commenced the tax audit within two days of appointment since the client was in a hurry to file Return of Income before the due date. After commencing the audit, CA. Y realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement.

CA. S, provides management consultancy and other services to his clients. During 2019, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients. Looking at his expertise in financial management, Mr. Tarak, a student of Chartered Accountancy course, is very much impressed with his knowledge. He approached CA. S to take guidance on some topics of financial management subject related to his course. CA. S, on request, decided to spare some time and started providing classes to Mr. Tarak along with some other aspirants for 3 days in a week and for 1 hours in a day. However, he has not taken any specific permission for such private tutorship from the Council.

YS & Associates is appointed to conduct statutory audit of XYZ Ltd. XYZ Ltd is required to appoint internal auditor as per statutory provisions given in the Companies Act, 2013 and appointed CA. IA as its internal auditor. YS & Associates asked Mr. IA to provide direct assistance to him regarding evaluating significant accounting estimates by the management and assessing the risk of material misstatements. He also seeks his direct assistance in assembling the information necessary to resolve exceptions in confirmation responses with respect to external confirmation requests and evaluation of the results of external confirmation procedures.

XYZ Ltd is seeking advice of YS & Associates to appoint CA. IA for conducting GST Audit.

**Question No.: (1-5)**

1. YS & Associates sought direct assistance from CA. IA, internal auditor as stated in the above scenario. Advise as to whether he is permitted to do so in accordance with relevant Standards on Auditing.
  - (a) YS & Associates cannot ask CA. IA for direct assistance regarding evaluating significant accounting estimates and assessing the risk of material misstatements. However, CA. IA may assist YS & Associates in assembling information necessary to resolve exceptions in confirmation responses as per SA 610.
  - (b) CA. IA cannot assist YS & Associates in assembling information necessary to resolve exceptions in confirmation responses. However, YS & Associates can ask Mr. IA for direct assistance regarding evaluating significant accounting estimates and assessing the risk of material misstatements as per SA 610.
  - (c) YS & Associates cannot ask CA. IA for direct assistance regarding evaluating significant accounting estimates and assessing the risk of material misstatements and in assembling the information necessary to resolve exceptions in confirmation responses as per SA 610.
  - (d) YS & Associates can ask CA. IA for direct assistance regarding evaluating significant accounting estimates and assessing the risk of material misstatements and in assembling the information necessary to resolve exceptions in confirmation responses as per SA 610.
2. Whether CA S is guilty of professional misconduct in providing private tutorship to Mr. Tarak along with some other aspirants for 3 days in a week and for 1 hours in a day in the absence of specific approval.
  - (a) CA. S is not guilty of professional misconduct as he is teaching within prescribed hours i.e. not exceeding 25 hours a month as per Regulation 192A
  - (b) CA. S is not guilty of professional misconduct as he is teaching within prescribed hours i.e. not exceeding 25 hours a month as per Regulation 190A
  - (c) CA. S is guilty of professional misconduct as he has not obtained specific permission for the same.
  - (d) CA. S is not guilty of professional misconduct as he is teaching within prescribed hours i.e. not exceeding 25 hours a week as per Regulation 190A
3. Before signing the tax audit report, CA. Y sent a registered post to the previous auditor and obtained the postal acknowledgement. Will CA. Y be held guilty of professional misconduct under the Chartered Accountants Act, 1949?
  - (a) As per Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 CA. Y will not be held guilty of professional misconduct as he communicated with the previous tax auditor before signing the audit report.

- (b) As per Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, CA. Y will not be held guilty of professional misconduct since the requirement for communicating with the previous auditor being a chartered accountant in practice would apply to statutory audit only.
  - (c) As per Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, CA. Y will be held guilty of professional misconduct since he has accepted the tax audit, without first communicating with the previous auditor in writing.
  - (d) As per Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949, CA. Y will be held guilty of professional misconduct since he has accepted the tax audit, without first communicating with the previous auditor in writing.
4. In view of YS & Associates, whether CA. IA is eligible to undertake Goods and Service Tax (GST) Audit of XYZ Ltd simultaneously?
- (a) CA. IA is internal auditor of XYZ Ltd and therefore, is eligible to undertake Goods and Service Tax (GST) Audit of XYZ Ltd simultaneously
  - (b) CA. IA is internal auditor of XYZ Ltd and therefore, not eligible to undertake Goods and Service Tax (GST) Audit of XYZ Ltd simultaneously
  - (c) Being Internal Auditor CA. IA is appropriate person to carry out Goods and Service Tax (GST) Audit of XYZ Ltd
  - (d) None of the above
5. Whether, website designed for [www.ysassociates.com](http://www.ysassociates.com) is in compliance with the guidelines given in Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949:
- (a) Yes, website can have names of partners and major clients along with its fees.
  - (b) Yes, as the websites can be designed on a "push" technology.
  - (c) Yes, as there is no restriction on the colours used in the website.
  - (d) No, as names of the partners of the firm and the major clients were displayed without any disclosure obligation from any Regulator.

### Integrated Case Scenario 2.

M/s ANS & Associates have been appointed as statutory auditors of Delco Ltd., listed company (referred to as 'Company') for the Financial Year 2019-20. Delco Ltd. deals in the manufacture of shoes.

During the course of the audit, the auditor found that the company has acquired two subsidiaries namely Sole Ltd. dealing in the manufacture of shoe soles and Soccer Ltd. dealing in the manufacture of kid shoes. The auditors of Sole Ltd. and Soccer Ltd. are M/s XYZ & Associates.

Delco Ltd. has prepared the consolidated financial statements under Indian Accounting Standards and consolidated the financial statements of subsidiary Sole Ltd. during the current financial year. However, the company has not consolidated the financial statements of Soccer

Ltd. which was also acquired during the current financial year as the company has not yet been able to ascertain the fair values of certain material assets and liabilities of Soccer Ltd. as on the acquisition date. This acquisition is accounted for as an investment in the books of Delco Ltd. Had the company consolidated the financial statements of both the subsidiary, there would have been material impact on important elements of the financial statements.

At the time of finalization of the Audit Report of the company for the year ended March 31, 2020, the auditors are considering their reporting responsibility for non-consolidation of the financial statements of Soccer Limited.

The auditors also asked the management to disclose their reason for non-consolidation of financial of Soccer Ltd. in the notes to accounts.

Also the financial statements of Delco Ltd. of the current financial year include the corresponding figures (without consolidation) of the previous financial year i.e. FY 2018-19.

Further, the auditors are also considering the implications on their responsibilities and the management's responsibilities with respect to the financial statements and in the audit of such financial statements.

**Question No.: (6-10)**

6. With respect to the non-consolidation of financial statements of Soccer Ltd. with the financial statements of Delco Ltd., how should the auditor deal with the same in their audit report?
  - (a) The auditor should give a disclaimer of opinion.
  - (b) The auditor should give an adverse opinion if the impact is material and pervasive in his audit report.
  - (c) The auditor should mention this fact in the emphasis of matter paragraph pervasive in his audit report.
  - (d) The auditor should mention this fact in other matter paragraph pervasive in his audit report.
7. What are the auditors reporting responsibility with respect to the corresponding figures of the financial year 2018-19 in the current year financial statements, for the same?
  - (a) The auditor's opinion should refer to each period for which the financial statements are presented.
  - (b) The auditors need to report on the current year financials only be it comparative or corresponding figures.
  - (c) The auditor's opinion shall not refer to the corresponding figures except if the previous period audit report is other than an unqualified opinion or the auditor has sufficient evidence that a material misstatement exist in the financial statement of prior period which was not addressed earlier.

- (d) The auditor has no reporting responsibility for the financial statements of any year other than the current financial year for which they have been appointed.
8. What is the reporting responsibility of the auditor in case, the prior period financial statements are not audited?
- (a) The auditors need to report such matter in the Key Audit Matters paragraph in his report.
- (b) The auditors need to report such matter in the other matter paragraph in his report.
- (c) The auditor will be responsible for obtaining sufficient appropriate audit evidence that opening balance so not contain any material misstatement.
- (d) Both b & c.
9. Preparation of the financial statements in accordance with the applicable financial reporting framework is the responsibility of the management of Delco Ltd. Which of the following is correct in regard to the disclosure of such management responsibility:-
- (a) This is implied responsibility of management and is presumed in an audit of financial statements and therefore need not be specifically mentioned anywhere.
- (b) The management may undertake to accept such responsibility through an engagement letter itself.
- (c) The auditor report should describe the management responsibility in a section with heading "responsibility of management for financial statements".
- (d) The auditor's report should refer to the responsibility of auditors and not that of the management as the same is obvious.
10. If the auditors of Delco Ltd. decides to give a qualified/ adverse opinion in the current financial year with respect to the non-consolidation of financials of Soccer Ltd., which of the following is true with regard to the use of EOM paragraph for some other matter:-
- (a) The auditor cannot add EOM paragraph in his report on any matter as a qualified/ adverse opinion is given by the auditor.
- (b) EOM paragraph on a matter can be added if auditors opinion is neither qualified/ nor adverse in respect to that particular matter and the matter is fundamental to the user's understanding of financial statements.
- (c) EOM paragraph on any matter can be added in the auditor's report even if the report is qualified/ adverse with respect to that particular matter.
- (d) EOM paragraph indicates that the auditor's opinion is modified in respect to the matter emphasized.

**Independent MCQs**

11. NIC Chartered Accountants was appointed as statutory auditors by PNG Ltd. for the audit of their financial statements. During the course of audit the auditors noticed a fraud of ₹ 101 lac committed by an officer of the Company. The officer sanctioned and made the payment to fake vendors for purchase of fixed assets, however, the assets were not entered in the Fixed Assets Register. The auditor reported the fraud in his audit report to the shareholders of the Company presented in the Annual General Meeting, but did not mention the name of the parties involved. The Board of Directors of the Company asked ICAI to take necessary action against the auditor as he did not comply with his duty to report fraud as per Section 143(12) of the Companies Act, 2013. What is the duty of the auditor as per the Companies Act, 2013 in reporting the fraud committed by officers / employees of the Company?
- (a) As per the Companies Act, 2013, since the amount of fraud is more than ₹ 100 lac; the auditor should have reported the matter within 2 days of his knowledge to the Board of Directors/ Audit committee of the Company seeking their reply or observations within 45 days. After completion of 45 days, the auditor should forward his report to the Central Government along with the reply, if any, received from Board/ Audit Committee.
  - (b) As per the Companies Act, 2013, during the course of audit if the auditor has reason to believe that a fraud has been committed by the officers or employees of the Company, the auditor shall report the matter to the Central Government immediately.
  - (c) The auditor's duty is restricted to reporting the fraud to shareholders and he is not required to report the matter to the Board of Directors/ Audit Committee/ Central Government.
  - (d) The auditor can submit his report on fraud to shareholders but is required to mention the name of the parties involved in fraud, as per Section 143(12) of the Companies Act, 2013.
12. Before concluding the audit, there was a difference of opinion between the audit committee and the auditors as to which among the following are the areas which the auditor should take into account to determine "Key Audit Matter" as per SA 701:
- (I) The effect on audit of significant transactions that took place in the FY.
  - (II) Areas of high risk as assessed and reported by management's expert.
  - (III) Significant auditor judgement relating to areas in the financials that involved significant management judgement.
- As per SA 701- Communicating Key audit matters in the Independent auditor's Report, which among the above-mentioned areas should CA & Co. take into account to determine "Key Audit Matter"?
- (a) (I) & (III)

- (b) (II) only
- (c) (I) & (II)
- (d) (I), (II) & (III)

## **PART B : DESCRIPTIVE QUESTIONS**

### **Standards on Auditing, Statements and Guidance Notes**

13. (a) MEA Limited is a listed company having its operation across India. MEA Limited appointed Mr. X, Mr. Y and Mr. Z, as its joint auditors for the year 2019-20. After making sure that all of them are qualified to be appointed as statutory auditor, MEA Limited issued engagement letter to all of them. But Mr. X was not clear on some points, so he requested MEA Limited to slightly change the terms of his engagement. This change will not impact the ultimate opinion on the financial statement. The engagement letter contains the details on objective and scope of audit, responsibilities of auditor and identification of framework applicable. It also contains the reference to expected form and content of report from all three joint auditors. In your opinion what was the discrepancy in the Audit engagement letter issued by MEA Limited?

- (b) ENN Limited is availing the services of APP Private Limited for its payroll operations. Payroll cost accounts for 65% of total cost for ENN Limited. APP Limited has provided the type 2 report as specified under SA 402 for its description, design and operating effectiveness of control.

APP Private Limited has also outsourced a material part of payroll operation M/s SMP & Associates in such a way that M/s SMP & Associates is sub-service organization to ENN Limited. The Type 2 report which was provided by APP Private Limited was based on carve-out method as specified under SA 402.

CA Raman while reviewing the unmodified audit report drafted by his assistant found that, a reference has been made to the work done by the service auditor. CA Raman hence asked his assistant to remove such reference and modify report accordingly.

Comment whether CA Raman is correct in removing the reference of the work done by service auditor?

### **The Company Audit & Audit Report**

14. (a) Petro Ltd. is engaged in generation of electricity for captive consumption through Captive Generating Plant. The Company also maintains cost records in its books of account as required under Cost Records and Audit Rules. Mr. Xylo, friend of Managing Director of the Company, suggested name of his brother, who is a Cost Accountant in Practice, for the purpose of cost audit. However, the statutory auditor of the company, is of the view that the Company is not legally required to conduct cost audit. Now, the Managing Director is in dilemma about the requirement of cost audit. Being an expert in cost records and audit rules, you are required to guide in this regard.

- (b) AKB Associates, a renowned audit firm in the field of CA practice for past two decades. The firm was appointed to conduct statutory audit of Rica Ltd. an unlisted company, which is engaged in the business of paper manufacturing. It decided to commence the audit for the recently concluded financial year. Once after making significant progress in the audit, the auditors made the following observations:

**Observation 1:** The management had disclosed in the financials that, during the year, one of the warehouses of the Company was affected due to a major flood. As a result of the same, the Company had incurred some losses. But the management was of the view that it was not material.

**Observation 2:** Due to flood, few records maintained by the Company with respect to a particular transaction was completely destroyed and there was no duplicate record maintained by the Company. However, those details were not pervasive, but material.

You are required to advise, whether AKB Associates should report Observation 1 and 2 in its audit report? If so, under which heading should it be reported?

#### **Audit Committee and Corporate Governance**

15. M/s FCA & Associates, Chartered Accountants is one of the leading auditing firms in Guwahati. The firm received an assignment to examine the compliance conditions [as stated in SEBI (LODR) Regulations] of corporate governance by ABC Ltd., a listed entity with no outstanding SR equity shares. The firm had made the following observations:

**Observation No. 1:** Mr. Fine, one of the Director of the Company, also the Chairman of the Stakeholder Relationship Committee, was acting as the audit committee Chairman in 4 other listed companies as well & 1 private company, simultaneously.

**Observation No. 2:** The Nomination & Remuneration Committee consisted of 6 members, which regularly met biannually.

**Observation No. 3:** The Risk Management Committee consisted of 9 directors, out of which, the number of independent directors is the majority, but it was less than two thirds of the total strength.

Which among the above three observations made by the auditor of ABC Ltd. should be reported by M/s. FCA & Associates?

#### **Audit of Banks & Insurance Company**

16. (a) ABN Bank was engaged in the business of providing Portfolio Management Services to its customers, for which it took prior approval from RBI. Your firm has been appointed as the statutory auditors of the Bank's financial statements for the year 2019-20. Your senior has instructed you to verify the transactions of Portfolio Management Services (PMS). While verifying the transactions you noticed that the bank has not maintained separate record for PMS transactions from the Bank's own investments. As a statutory auditor what methodology will be adopted by you for verification of PMS transactions?

- (b) M/s MPS & Associates, Chartered Accountants started the statutory audit of their client Contingencies Ltd., a General Insurance company, which has a paid-up capital of ₹ 16,800/- lac. During the course of the audit, it was found that the Company was not maintaining the required solvency margin as per the provisions of Insurance Act, 1938. When the issue was escalated to the management, they replied that solvency margin needs to be maintained as per limits prescribed only on last day of the financial year. Comment whether reply of management is tenable or not.

#### **Audit under Fiscal Laws**

17. (a) M/s PQRS & Associates is appointed for conducting tax audit as per Income Tax Act, 1961 of QW Ltd., a cotton textile company. The Company had incurred ₹ 6 lac towards advertisement expenditure on a brochure/ pamphlet published by a political party in Pune. Advise the auditor whether such expenditure should be included in the tax audit report or not.
- (b) Mr. Ramanuj, a Chartered Accountant by profession, has been appointed as GST auditor for ABC Ltd. The management has asked Mr. Ramanuj for GST audit and to file GSTR-3B for the months of July and August 2019 and filing of annual return in FORM GSTR-9. Mr. Ramanuj contended that he has been appointed only for GST audit and the above are his scope limitations and cannot be conducted as the compliances and returns are to be filed by the management. In context of above dispute, you have to suggest whether the contention of Mr. Ramanuj is correct or not. Justify.

#### **Due Diligence, Investigation and Forensic Audit**

18. APK Bank Ltd., received an application from a Pharmaceutical Company for takeover of their outstanding term loans secured on its assets, availed from and outstanding with a nationalised bank. APK Bank Ltd., requires you to conduct a due diligence audit in the areas of assets of Pharmaceutical Company especially with reference to valuation aspect of assets. State what may be your areas of analysis in order to ensure that the assets are not stated at overvalued amounts.

#### **Professional Ethics**

19. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:
- (a) CA. Srishti and CA. Mishti are two partners of the CA firm 'Srishti Mishti & Associates'. Being very pious, CA. Srishti organised a religious ceremony at her home for which she instructed her printing agent to add her designation "Chartered Accountant" with her name in the invitation cards. Later on, the invitations were distributed to all the relatives, close friends and clients of both the partners.

- (b) Ms. Preeto, a CA, had an account with a bank. The normal balance in this account remained at a level below ₹ 5,000. The bank inadvertently credited this account with a cheque of ₹ 2,70,000 belonging to another account holder. When CA. Preeto came to know about this she withdrew the amount of ₹ 2,75,000 and closed the bank account. After 1 year the bank noticed the mistake and claimed ₹ 2,75,000 with interest. CA. Preeto contested this claim. Can the bank approach the Institute of Chartered Accountants of India for disciplinary action against CA. Preeto?
- (c) CA. Moni is practicing since 2009 in the field of company audit. Due to her good practical knowledge, she was offered editorship of a 'Company Audit' Journal which she accepted. However, she did not take any permission from the Council regarding such editorship.
20. Write a short note on the following:
- (a) Selection of sample by the reviewer in case of peer review.
  - (b) Classification of frauds by NBFC.
  - (c) General steps in the conduct of risk based audit.
  - (d) Contents of an audit plan.

### SUGGESTED ANSWERS/HINTS

#### PART A : ANSWERS TO MULTIPLE QUESTIONS

- 1. (a)
- 2. (d)
- 3. (c)
- 4. (b)
- 5. (d)
- 6. (b)
- 7. (c)
- 8. (d)
- 9. (c)
- 10. (b)
- 11. (a)
- 12. (a)

**PART B**

- 13. (a) Agreement on Audit Engagement Terms :** As per SA 210, "Agreeing the Terms of Audit Engagements", the auditor shall agree the terms of the audit engagement with management or those charged with governance, as appropriate.

Subject to prescribed details under Law or Regulations, the agreed terms of the audit engagement shall be recorded in an audit engagement letter or other suitable form of written agreement and shall include:

- (i) The objective and scope of the audit of the financial statements;
- (ii) The responsibilities of the auditor;
- (iii) The responsibilities of management;
- (iv) Identification of the applicable financial reporting framework for the preparation of the financial statements; and
- (v) Reference to the expected form and content of any reports to be issued by the auditor and a statement that there may be circumstances in which a report may differ from its expected form and content.

In the given scenario, MEA Limited appointed Mr. X, Mr. Y and Mr. Z, as its joint auditors for the year 2019-20 and issued engagement letter to all of them. The engagement letter contains the details on objective and scope of audit, responsibilities of auditor, identification of framework applicable and reference to expected form and content of report from all three joint auditors. However, engagement letter issued by MEA Ltd. doesnot specify the responsibilities of management, whereas as per SA 210, it should also specify responsibilities of management.

- (b) Reporting by the User Auditor:** As per SA 402, "Audit Considerations Relating to an Entity Using a Service Organisation", the user auditor shall modify the opinion in the user auditor's report in accordance with SA 705, "Modifications to the Opinion in the Independent Auditor's Report", if the user auditor is unable to obtain sufficient appropriate audit evidence regarding the services provided by the service organisation relevant to the audit of the user entity's financial statements.

The user auditor shall not refer to the work of a service auditor in the user auditor's report containing an unmodified opinion unless required by law or regulation to do so. If such reference is required by law or regulation, the user auditor's report shall indicate that the reference does not diminish the user auditor's responsibility for the audit opinion.

Thus, in view of above, contention of CA. Raman in removing reference of the work done by service auditor is in order as in case of unmodified audit report, user auditor cannot refer to the work done by service auditor.

14. (a) **Applicability of Provisions related to Cost Records and Audit:** The provisions relating to cost records and audit are governed by section 148 of the Companies Act, 2013 read with the Companies (Cost Records and Audit) Rules, 2014. The audit conducted under this section shall be in addition to the audit conducted under section 143.

Rule 3 of the Companies (Cost Records and Audit) Rules, 2014 provides the classes of companies, engaged in the production of goods or providing services, required to include cost records in their books of account.

However, the requirement for cost audit under these rules shall not be applicable to a company which is covered under Rule 3, and,

- (i) whose revenue from exports, in foreign exchange, exceeds 75 per cent of its total revenue; or
- (ii) which is operating from a special economic zone.
- (iii) which is engaged in generation of electricity for captive consumption through Captive Generating Plant.

In the given case, Petro Ltd. is engaged in generation of electricity for captive consumption through Captive Generating Plant. Therefore, Petro Ltd. is not required to conduct cost audit as it is falling under the exemption criteria. Hence, the opinion of statutory auditor of the Company regarding non-applicability of cost audit is correct.

- (b) **Observation 1 - The management had disclosed in the financials that, during the year, one of the warehouses of the Company was affected due to a major flood. As a result of the same, the Company had incurred some losses. But the management was of the view that it was not material:** As per SA 706, "Emphasis of Matter Paragraph & Other Matter Paragraph in the Independent Auditor's Report", an Emphasis of Matter Paragraph refers to matter appropriately disclosed in the financials, that in the auditor's judgement is of such importance that it is fundamental to users' understanding of the financials. Hence, in this case, the auditor shall report about the consequences of the flood which affected the Company's warehouse under Emphasis of Matter Paragraph.

**Observation 2 - Due to flood, few records maintained by the Company with respect to a particular transaction was completely destroyed and there was no duplicate record maintained by the Company. However, those details were not pervasive, but material:** As per SA 705, "Modification to Opinion in the Independent Auditor's Report", where the auditor is unable to obtain sufficient and appropriate audit evidence and where such matter is material but not pervasive, the auditor shall issue a qualified opinion.

Thus, in the given situation, on account of flood few records pertaining to particular transactions was completely destroyed and in the absence of duplicate records, the auditor was unable to obtain sufficient and appropriate audit evidence and those

details were material but not pervasive. Therefore, in accordance with SA 705, the auditor is required to issue qualified opinion.

15. **Observation No. 1 - Mr. Fine, one of the Director of the Company, also the Chairman of the Stakeholder Relationship Committee, was acting as the Audit committee Chairman as well in 4 other listed companies & 1 private Company, simultaneously:** As per Regulation 26 of SEBI (LODR) Regulations, a Director cannot be a Chairman in more than 5 committees across all listed entities. However, for the purpose of reckoning the limit under this Regulation, chairmanship of committees in a private company shall be excluded. In this case, since Mr. Fine is the Chairman of audit committee in ABC Ltd. and Chairman in 4 other listed companies, there is no violation of the limit specified under the Regulation 26. Accordingly, **this observation need not be reported by the auditor.**

**Observation No. 2: The Nomination & Remuneration Committee consisted of 6 members, who regularly met biannually:** As per Regulation 19, Part D of Schedule II of SEBI (LODR) Regulations, every listed company should have a Nomination & Remuneration Committee, which shall meet at least once in a year. **Since, in the given case the committee met biannually (i.e. once in 2 years), the said observation needs to be reported by the auditor.**

**Observation No. 3: The Risk Management committee consisted of 9 directors, out of which the number of independent directors is the majority, but it was less than two thirds of the total strength:** As per Regulation 21 of SEBI (LODR) Regulations, only in case of a listed entity having outstanding SR equity shares, at least two thirds of Risk Management Committee shall comprise of independent directors. In the given case, ABC Ltd. does not have outstanding SR equity shares. **Accordingly, this observation need not be reported by the auditor.**

Thus, in the given scenario, only observation 2 will be reported.

16. (a) **Separation of Investment Functions:** The auditor needs to examine whether the bank, as required by the RBI, is maintaining separate accounts for the investments made by it on their own Investment Account, PMS clients' account, and on behalf of other Constituents (including brokers). As per the RBI guidelines, banks are required to get their investments under PMS separately audited by external auditors.

Thus, in the instant case, ABN Bank is required to prepare separate records for PMS and as per RBI guidelines PMS investments need to be audited separately by the external auditors and the auditors are required to give a certificate separately for the same. So, in the above case the auditor should not verify the PMS transactions and advise the bank to segregate the PMS transactions from its own investments and provide the certificate of external auditor as described above. In case ABN Bank does not provide the same the auditor may report accordingly.

- (b) **Maintenance of Solvency Margin:** Section 64VA of the Insurance Act, 1938 as amended by Insurance Laws (Amendment) Act, 2015 requires every insurer and re-insurer to maintain an excess of the value of assets over the amount of liabilities at all times which shall not be less than 50% of the amount of minimum capital as stated under section 6 (requirement as to capital) of the Act and arrived at in the manner specified by the regulations.

If, at any time, an insurer or re-insurer does not maintain the required control level of solvency margin, he is required to submit a financial plan to the Authority indicating the plan of action to correct the deficiency. If, on consideration of the plan, the Authority finds it inadequate, the insurer has to modify the financial plan.

Sub-section (2) of section 64VA states that if an insurer or re-insurer fails to comply with the prescribed requirement of maintaining excess of value of assets over amount of liabilities, it shall be deemed to be insolvent and may be wound up by the Court on an application made by the authority.

Therefore, in the said case Contingencies Ltd has not maintained the Solvency Margin throughout the year. Accordingly, contention of Contingencies Ltd. that solvency margin is required to be maintained as per limits prescribed only on last day of the financial year is not tenable.

17. (a) **Expenses on Advertisement in the Media of a Political Party:** In the given situation, M/s PQRS & Associates is appointed for conducting tax audit as per Income Tax Act, 1961 of QW Ltd., a cotton textile company. The Company had incurred ₹ 6 lac towards advertisement expenditure on a brochure/ pamphlet published by a political party.

As per Clause 21(a) of Form 3CD, the auditor is required to furnish the details of amounts debited to the Profit and Loss Account, being in the nature of advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party in his tax audit report.

Therefore, advertisement expenditure of ₹ 6 lac on brochure/pamphlet published by a political party shall be reported in the tax audit report as per Clause 21 (a) of Form 3CD.

- (b) **Responsibility of Compliances and filing of Returns:** GST auditor's prime responsibility on this engagement is limited to GST audit, audit of reconciliation statement between books of accounts *vis-a-vis* GST returns prepared by the Company. The GST auditor is, however, not responsible for any compliances like uploading GST periodic returns for the relevant audit period.

Since, in the given situation, Management has asked the auditor Mr. Ramanuj to conduct besides GST Audit filing of GSTR-3B for the months of July and August 2019 and filing of annual return in FORM GSTR-9.

Accordingly, Mr. Ramanuj has rightly refused that his scope is limited to GST Audit and the scope does not cover any of the management functions.

In view of above, **Contention of Management to Ramanuj is not tenable** as preparation of annual returns and its filing was the responsibility of management.

18. **Over-Valued Assets** : The areas of analysis in order to ensure that the assets are not stated at overvalued amounts during conduct of Due Diligence are:

- ✍ Uncollected/uncollectable receivables.
- ✍ Obsolete, slow non-moving inventories or inventories valued above NRV; huge inventories of packing materials etc. with name of company.
- ✍ Underused or obsolete Plant and Machinery and their spares; asset values which have been impaired due to sudden fall in market value etc.
- ✍ Assets carried at much more than current market value due to capitalization of expenditure/foreign exchange fluctuation, or capitalization of expenditure mainly in the nature of revenue.
- ✍ Litigated assets and property.
- ✍ Investments carried at cost though realizable value is much lower.
- ✍ Investments carrying a very low rate of income / return.
- ✍ Infertuous project expenditure/deferred revenue expenditure etc.
- ✍ Group Company balances under reconciliation etc.
- ✍ Intangibles of no value.

19. (a) **Printing of Designation “Chartered Accountant” on Invitations for Religious Ceremony**: 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, 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, CA. Srishti has instructed to write designation “Chartered Accountant” on invitation cards for a religious ceremony and distributed the same to all the relatives, close friends and clients of both the partners.

In this context, it may be noted that the Council has allowed using designation “Chartered Accountant” in invitations for religious ceremony, provided these are sent to clients, relatives and close friends of the members concerned only.

Therefore, CA. Srishti would be held guilty of professional misconduct under the said clause for sending such invitations to the relatives, close friends and clients of CA. Mishti as well.

- (b) **Disrepute to the Profession:** As per Clause 2 of Part IV of First Schedule of the Chartered Accountant Act, 1949, a Chartered Accountant will be deemed to be guilty of other misconduct if he in the opinion of the Council brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

In the instant case, CA. Preeto, a CA, had an account with a bank from which she withdrew the amount of ₹ 2,75,000 and closed the account. This amount of ₹ 2,75,000 was pertaining to ₹ 5,000 minimum balance and ₹ 2,70,000 belonging to other account holder and inadvertently credited to his account by the bank. The said act of CA. Preeto to withdraw the money which does not belongs to her will bring disrepute to the profession. Hence under this clause the bank can file a suitable complaint under Clause 2 of Part IV of First Schedule of the Chartered Accountant Act, 1949 with the Institute of Chartered Accountants of India.

- (c) **Permission from the Council:** As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will 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.

However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In the instant case, CA. Moni accepted editorship of a journal for which she did not take any permission from the Council. In this context, it may be noted that the editorship of professional journals is covered under the general permission and specific permission is not required.

Therefore, CA. Moni shall not be held guilty of professional misconduct in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

**20. (a) Selection of Sample by the Reviewer in case of Peer Review:**

- (i) The Reviewer shall within 15 days of receiving the information from the Practice Unit select a sample of the assurance services that he would like to Review and intimate the same to the Practice Unit.

- (ii) The Reviewer may also seek further / additional clarification from the Practice Unit on the information furnished / not furnished.
  - (iii) The Reviewer shall plan for an on-site Review visit or initial meeting in consultation with the Practice Unit. The Reviewer shall give the Practice Unit at least fifteen days' time to keep ready the necessary records of the selected assurance services.
  - (iv) The Reviewer and Practice Unit shall mutually cooperate and ensure that the entire Review process is completed within 90 days from the date of notifying the Practice Unit about its selection for Review.
- (b) Classification of Frauds by NBFC:** In order to have uniformity in reporting, frauds have been classified as under based mainly on the provisions of the Indian Penal Code:
- (i) Misappropriation and criminal breach of trust.
  - (ii) Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.
  - (iii) Unauthorised credit facilities extended for reward or for illegal gratification.
  - (iv) Negligence and cash shortages.
  - (v) Cheating and forgery.
  - (vi) Irregularities in foreign exchange transactions.
  - (vii) Any other type of fraud not coming under the specific heads as above.
- Cases of 'negligence and cash shortages' and 'irregularities in foreign exchange transactions'** referred to in items (d) and (f) above are to be reported as fraud if the intention to cheat/ defraud is suspected/ proved. However, the following cases where fraudulent intention is not suspected/ proved, at the time of detection, will be treated as fraud and reported accordingly:
- (I) cases of cash shortages more than ₹ 10,000/- and
  - (II) cases of cash shortages more than ₹ 5000/- if detected by management/ auditor/ inspecting officer and not reported on the occurrence by the persons handling cash.

- (c) General Steps in the Conduct of Risk Base Audit:** RBA consists of four main phases starting with the identification and prioritization of risks, to the determination of residual risk, reduction of residual risk to acceptable level and the reporting to auditee of audit results. These are achieved through the following:

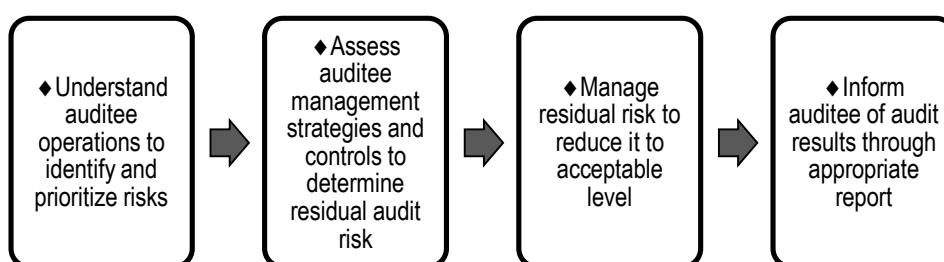
**Step 1 Understand auditee operations to identify and prioritize risks:** Understanding auditee operations involves processes for reviewing and understanding the audited organization's risk management processes for its

strategies, framework of operations, operational performance and information process framework, in order to identify and prioritize the error and fraud risks that impact the audit of financial statements. The environment in which the auditee operates, the information required to monitor changes in the environment, and the process or activities integral to the audited entity's success in meeting its objectives are the key factors to an understanding of agency risks. Likewise, a performance review of the audited entity's delivery of service by comparing expectations against actual results may also aid in understanding agency operations.

**Step 2 Assess auditee management strategies and controls to determine residual audit risk:** Assessment of management risk strategies and controls is the determination as to how controls within the auditee are designed. The role of internal audit in promoting a sound accounting system and internal control is recognized, thus the SAI should evaluate the effectiveness of internal audit to determine the extent to which reliance can be placed upon it in the conduct of substantive tests.

**Step 3 Manage residual risk to reduce it to acceptable level:** Management of residual risk requires the design and execution of a risk reduction approach that is efficient and effective to bring down residual audit risk to an acceptable level. This includes the design and execution of necessary audit procedures and substantive testing to obtain evidence in support of transactions and balances. More resources should be allocated to areas of high audit risks, which were earlier known through the analytical procedures undertaken.

**Step 4 Inform auditee of audit results through appropriate report:** The results of audit shall be communicated by the auditor to the audited entity. The auditor must immediately communicate to the auditee reportable conditions that have been observed even before completion of the audit, such as weaknesses in the internal control system, deficiencies in the design and operation of internal controls that affect the organization's ability to record, process, summarize and report financial data.



(d) **Contents of an Audit Plan:** The auditor shall develop an audit plan that shall include a description of-

- (i) The nature, timing and extent of planned risk assessment procedures, as determined under SA 315 "Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment".

- (ii) The nature, timing and extent of planned further audit procedures at the assertion level, as determined under SA 330 "The Auditor's Responses to Assessed Risks".
- (iii) Other planned audit procedures that are required to be carried out so that the engagement complies with SAs.

The audit plan is more detailed than the overall audit strategy that includes the nature, timing and extent of audit procedures to be performed by engagement team members. Planning for these audit procedures takes place over the course of the audit as the audit plan for the engagement develops. For example, planning of the auditor's risk assessment procedures occurs early in the audit process. However, planning the nature, timing and extent of specific further audit procedures depends on the outcome of those risk assessment procedures. In addition, the auditor may begin the execution of further audit procedures for some classes of transactions, account balances and disclosures before planning all remaining further audit procedures.

## PAPER 4: CORPORATE AND ALLIED LAWS

### PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2020 EXAMINATION

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

For November 2020 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 30<sup>th</sup> April, 2020 are relevant.

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

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

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

#### Part I: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

The Companies Act, 2013 have been continuously amended by the Government vide enforcement of various amendment Act, namely Companies (Amendment) Act, 2017, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019 and Companies (Amendment) Act, 2019. However, on July 31, 2019, the Ministry of Corporate Affairs introduced the Companies (Amendment) Act, 2019.

This Amendment Act considers the changes brought in by the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019 to further amend the Companies Act, 2013.

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

Following are the relevant amendments pertaining to Companies Act, 2013:-

**CHAPTER 2: ACCOUNTS AND AUDIT****1. Enforcement of the Companies (Audit and Auditors) second Amendment Rules, 2018 vide Notification G.S.R. 432 (E) dated 7<sup>th</sup> May 2018**

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

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

- (i) In **rule 3** which deals with the Manner and Procedure of selection and appointment of auditors, following are the amendments:
  - (a) Explanation shall be omitted.
  - (b) proviso to sub-rule (7) shall be omitted.
- (ii) In the principal rules, in **rule 10A** i.e., related to Internal Financial controls system, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.
- (iii) In the principal rules, in **rule 14** which deals with the remuneration of the cost auditor, following are the changes-
  - (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;
  - (b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

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

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

In the Companies (Accounts) Rules, 2014,

- (i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-
  - “(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
  - (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,”
- (ii) after sub-rule (5), the following **Sub Rule (6)**, rule shall be inserted, namely:-
  - “(6) This rule shall not apply to One Person Company or Small Company”.

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

**“8A. Matters to be included in Board’s Report for One Person Company and Small Company-**

- (1) The Board’s Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-
  - (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
  - (b) number of meetings of the Board;
  - (c) Directors’ Responsibility Statement as referred to in sub-section (5) of section 134;
  - (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
  - (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
  - (f) the state of the company’s affairs;
  - (g) the financial summary or highlights;
  - (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
  - (i) the details of directors who were appointed or have resigned during the year;
  - (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.”.

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

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

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

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

- (a) in sub-rule (1), in sub-clause (i) of clause (c) which defines "Corporate Social Responsibility (CSR)", after the words "relating to activities", the words " , areas or subjects" shall be inserted;
- (b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted;
- (c) in sub-rule (1), in clause (e) which defines "CSR Policy", for the words "company as", the words "company in areas or subjects" shall be substituted.
- (ii) **in rule 5 which deals with the "CSR Committees", in clause (i) of sub rule (1), for the words "an unlisted public company or a private company", the words "a company" shall be substituted.**
- (iii) In **rule 6** which states of **CSR Policy**, following are the changes-
  - (a) in sub-rule (1), in clause (a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted;
  - (b) in sub-rule (1), in second proviso to clause (b), for the words, "activities included in Schedule VII" the words "areas or subjects specified in Schedule VII" shall be substituted.
- (iv) In **rule 7** i.e., "CSR Expenditure", for the words, "purview of", the words "areas or subjects, specified in" shall be substituted.

#### 4. Constitution of NFRA

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

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

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

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

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	In section 129 of the principal Act, for <b>sub-section (3)</b> , the following sub-section shall be substituted, namely:— "(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form

	<p>and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).</p> <p>Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed.</p> <p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."</p>
Amendment of section 134 (Financial statement, Board's report, etc.)	<p>In section 134 of the principal Act,—</p> <p>(a) for <b>sub-section (1)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."</p> <p>(b) in <b>sub-section (3)</b>,—</p> <p>(i) for clause (a), the following clause shall be substituted, namely:—</p> <p>"(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"</p> <p>(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;</p>

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

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

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

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

	<p>“(3A) Each division of the NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.</p> <p>(3B) There shall be an executive body of the NFRA consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).”;</p> <p>(c) <b>in sub-section (4)</b>, in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—</p> <p>“(B) debaring the member or the firm from—</p> <ol style="list-style-type: none"> <li>I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or</li> <li>II. performing any valuation as provided under section 247,</li> </ol> <p>for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA.”</p>	
<p><b>Amendment of section 137.</b></p>	<p><b>in sub-section (3),—</b></p> <p>(a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted;</p> <p>(b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with</p>	<p><b>2<sup>nd</sup> November, 2018</b></p>

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

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

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

9. **Amendments in Schedule VII vide** Notification G.S.R. 776(E) dated **11<sup>th</sup> October, 2019**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely:

“(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).”

**10. Enforcement of the Companies (Accounts) Amendment Rules, 2019 vide Notification G.S.R. 803 (E) dated 22nd October, 2019 w.e.f. 1<sup>st</sup> December, 2019**

The Central Government has amended the Companies (Accounts) Rules, 2014, by the Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

“(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”.

Explanation.—For the purposes of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

**11. Explanation added in the definition of "Government company" [Section 2(45)]:**

In this section, the following explanation has been inserted in the definition **[inserted by notification dated 2-3-2020 by way of Exemptions to Government Companies under section 462 with effect from 3-3-2020]**

“Explanation.- For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.”

**12. Amendments related to Schedule VII vide Notification G.S.R. 313(E) dated 26th May, 2020 w.e.f. 28th March, 2020**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

**CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.
- (ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

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

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

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

**5. Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of <b>section 149</b> (Company to have board of directors)	<p>In section 149 of the principal Act,—</p> <p>(i) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:</p> <p>Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated";</p> <p>(ii) in <b>sub-section (6)</b>,—</p> <p>(a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;</p> <p>(b) for clause (d), the following clause shall be substituted, namely:—</p> <p>"(d) none of whose relatives—</p> <p>(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:</p> <p>Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or</p>

	<p>associate company or such higher sum as may be prescribed;</p> <p>(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;</p> <p>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or</p> <p>(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);"</p> <p>(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—</p> <p>"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."</p>
Amendment of <b>Section 157</b> (Company to inform DIN to registrar)	<p>In section 157 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(ii) in <b>sub-section (2)</b>, the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.</p>
Amendment of <b>section 164</b> (Disqualifications for appointment of director)	<p>In section 164 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following proviso shall be inserted, namely:—</p> <p>"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment."</p> <p>(ii) in <b>sub-section (3)</b>, for the proviso, the following proviso shall be substituted, namely:—</p>

	"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of <b>section 167</b> (Vacations of office of director).	<p>In section 167 of the principal Act, in <b>sub-section (1)</b>,—</p> <p>(i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";</p> <p>(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (a) for thirty days from the date of conviction or order of disqualification; (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or</p> <p>(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."</p>
Amendment of <b>Section 168</b> (Resignation of Director)	In section 168 of the principal Act, in <b>sub-section (1)</b> , in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

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

Relevant sections	Amendment	Date of enforcement
<b>Amendment of section 157.</b>	<p>In section 157 of the principal Act, for <b>sub-section (2)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five</p>	<b>2<sup>nd</sup> November, 2018</b>

	<p>thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”</p>	
<p><b>Substitution of new section for section 159.</b></p>	<p>For section 159 of the principal Act, the following <b>Substitution of section</b> shall be substituted, namely:  <b>Penalty for default of certain provisions.</b>          “159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”</p>	<p><b>2<sup>nd</sup> November, 2018</b></p>
<p><b>Amendment of section 164.</b></p>	<p>In section 164 of the principal Act, in <b>sub-section (1)</b>, after clause (h), the following clause shall be inserted, namely:—          “(i) he has not complied with the provisions of sub-section (1) of section 165.”</p>	<p><b>2<sup>nd</sup> November, 2018</b></p>

<b>Amendment of section 165.</b>	In section 165 of the principal Act, in <b>sub-section (6)</b> , for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.	<b>2<sup>nd</sup> November, 2018</b>
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**7. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 via G.S.R. 528(E) dated 25th July, 2019**

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

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

- (i) for the words “who has been allotted”, the words “who holds” shall be substituted;
- (ii) for the words, letters and figures “submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year”, the words, letters and figures “submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year” shall be substituted;
- (iii) after the proviso, the following provisos shall be inserted, namely:-

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

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

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

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

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

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

**(1) Every individual –**

- (a)** who has been appointed as an independent director in a company, **on the date of commencement** of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or
- (b)** who intends to get appointed as an independent director in a company **after such commencement**, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company.

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

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

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

- (3)** Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.
- (4)** Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

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

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

Explanation: For the purposes of this rule, -

- (a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;
- (b) an individual who has obtained a score of not less than sixty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;
- (c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test."

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

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

<sup>1</sup>In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6:

- (i) in sub-rule (1), in clause (a), for the words "**three months**", the words "**five months**" shall be substituted,
- (ii) in sub-rule (4),- For the first Proviso, following proviso shall be substituted-  
 "Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-  
 (a) listed public company; or  
 (b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

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

- (c) body corporate listed on a recognized stock exchange.”
- (iii) in sub-rule (4),- in the second proviso, for the word “companies”, the words “companies or bodies corporate” shall be substituted.

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

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

In rule 6 in sub-rule (1), in clause (a), for the words “**five months**”, the words “**seven months**” shall be substituted.

### CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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

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

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

- (i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:
- (a) for the heading ‘application to the Central Government’ the heading ‘Parameters for consideration of remuneration’ shall be substituted.
- (b) the words ‘Central Government’ shall be omitted.
- (ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted

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

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

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

Relevant Sections	Amendment
Amendment of section <b>196</b>	In section 196 of the principal Act,—

(Appointment of MD, WTD, Manager)	<p>(a) in <b>sub-section (3)</b>, in clause (a), after the proviso, the following proviso shall be inserted, namely:—          "Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.";</p> <p>(b) in <b>sub-section (4)</b>, for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.</p>
Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	<p>In section 197 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>,—</p> <p>(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</p> <p>(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;</p> <p>(iii) after the second proviso, the following proviso shall be inserted, namely:—          "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";</p> <p>(b) in <b>sub-section (3)</b>, the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;</p> <p>(c) for <b>sub-section (9)</b>, the following sub-section shall be substituted, namely:—          "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust</p>

		<p>for the company.";</p> <p>(d) in <b>sub-section (10)</b>,—</p> <p>(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;</p> <p>(ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";</p> <p>(e) in <b>sub-section (11)</b>, the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;</p> <p>(f) after <b>sub-section (15)</b>, the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."</p>
Amendment Section (Calculations Profits)	of <b>198</b> of	<p>In section 198 of the principal Act,—</p> <p>(i) in <b>sub-section (3)</b>,—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in</p>

	<p>clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause (f) shall be inserted, namely:—</p> <p>“(f) any amount representing unrealised gains, notional gains or revaluation of assets.”;</p> <p>(ii) in <b>sub-section (4)</b>, in clause (I), the words "which begins at or after the commencement of this Act" shall be omitted.</p>
Amendment of section <b>200</b> (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section <b>201</b> (Forms of, and procedure in relation to, certain applications).	<p>In section 201 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>, for the words "this Chapter", the word and figures "section 196" shall be substituted;</p> <p>(b) in <b>sub-section (2)</b>, in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.</p>

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

Relevant sections	Amendment	Date of enforcement
<b>Amendment of section 197.</b>	<p>In section 197 of the principal Act</p> <p>(a) <b>sub-section (7)</b> shall be omitted;</p> <p>(b) for <b>sub-section (15)</b>, the following sub-section shall be substituted, namely:—</p> <p>“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.</p>	<b>2<sup>nd</sup> November, 2018</b>

<b>Amendment of section 203.</b>	In section 203 of the principal Act, <b>for sub-section (5)</b> , the following sub-section shall be substituted, namely:— “(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.	<b>2<sup>nd</sup> November, 2018</b>
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**5. The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020**

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

<b>Sl. No.</b>	<b>Amended law</b>
1.	For <b>rule 8A</b> , the following shall be substituted as under:- “8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.”
2.	in <b>rule 9, in sub-rule (1)</b> , (i) after clause (b), at the end, the word “or” shall be inserted. (ii) after clause (b), the following clause (c) shall be inserted, namely:- “(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.”. (iii) following Explanation inserted, namely:- “Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.”

**CHAPTER 5: MEETING OF BOARD AND ITS POWERS****1. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2018 vide Notification G.S.R. 429 (E) dated 7th May, 2018**

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

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

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

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

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

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

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

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

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

Relevant sections	Amendment
Amendment of section 173 (Meetings of Board)	In section 173 of the principal Act, in <b>sub-section (2)</b> , after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177 (Audit Committee).	In section 177 of the principal Act,— (i) in <b>sub-section (1)</b> , for the words "every listed company", the words "every listed public company" shall be substituted;

	<p>(ii) in <b>sub-section (4)</b>, in clause (iv), after the proviso, the following provisos shall be inserted, namely:—</p> <p>"Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:</p> <p>Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:</p> <p>Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."</p>
Amendment of Section 178 (Nomination and Remuneration Committee and stake holders Relationship committee)	<p>In section 178 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in <b>sub-section (2)</b>, for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted;</p> <p>(iii) in <b>sub-section (4)</b>, in clause (c), for the proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";</p> <p>(iv) in <b>sub-section (8)</b>, in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.</p>

<p>Substitution of new section for section 185. (Loan to Directors)</p>	<p>For <b>section 185</b> of the principal Act, the following section shall be substituted, namely:—</p> <p>'185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—</p> <ul style="list-style-type: none"> <li>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</li> <li>(b) any firm in which any such director or relative is a partner.</li> </ul> <p>(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—</p> <ul style="list-style-type: none"> <li>(a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and</li> <li>(b) the loans are utilised by the borrowing company for its principal business activities.</li> </ul> <p><i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <ul style="list-style-type: none"> <li>(a) any private company of which any such director is a director or member;</li> <li>(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or</li> <li>(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the</li> </ul>
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	<p>Board, or of any director or directors, of the lending company.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or</p> <p>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or</p> <p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:</p> <p>Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.</p> <p>(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—</p> <p>(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and</p> <p>(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided</p>
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	<p>in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'</p>
Amendment of section <b>186</b> (Loan and investment by company).	<p>In section 186 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following Explanation shall be inserted, namely:—</p> <p><i>'Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company';</i></p> <p>(ii) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p> <p>'(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:</p> <p>Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply:</p> <p>Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4)."</p> <p>(iii) for <b>sub-section (11)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(11) Nothing contained in this section, except sub-section (1), shall apply—</p> <p>(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;</p>

	<p>(b) to any investment—</p> <p>(i) made by an investment company;</p> <p>(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;</p> <p>(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";</p> <p>(iv) <b>in the <i>Explanation</i>, in clause (a)</b>, after the words "other securities" the following shall be inserted, namely:—</p> <p>"and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."</p>
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### 3. Amendments through the Companies (Amendment) Act, 2019

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

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

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

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

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

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

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

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

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

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

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

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

Sl. No.	Amended law
1.	Chapter XII, <b>first and second proviso to sub-section (1) of section 188</b> , Shall not apply to – <ul style="list-style-type: none"> <li>(a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;</li> <li>(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.”.</li> </ul>

## CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

### Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment in law	Date of Enforcement
<b>Amendment of Section 212</b>	<ul style="list-style-type: none"> <li>(a) in <b>sub-section (8)</b>, for the words “<b>If the Director, Additional Director or Assistant Director</b>” the words “<b>If any officer not below the rank of Assistant Director</b>” shall be substituted;</li> <li>(b) in <b>sub-section (9)</b>, for the portion beginning with the words “<b>The Director</b>” and ending with the word, brackets and figure “<b>sub-section (8)</b>”, the words, brackets and figure “<b>The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section</b>” shall be substituted;</li> <li>(c) in <b>sub-section (10)</b>,—               <ul style="list-style-type: none"> <li>(i) for the words “<b>Judicial Magistrate</b>”, the words “<b>Special Court or Judicial Magistrate</b>” shall be substituted;</li> <li>(ii) in the proviso, for the words “<b>Magistrate’s court</b>”, “<b>Special Court or Magistrate’s court</b>” shall be substituted;</li> </ul> </li> <li>(d) <b>New sub-section 14A inserted</b> after sub-section 14, namely:—  <b>“(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key</b> </li> </ul>	<b>15<sup>th</sup> August, 2019</b>

	managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."	
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## CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

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

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

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

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

- The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.
- The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).
- Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.
- The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the

scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

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

#### CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT

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

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

In National Company Law Tribunal Rules, 2016,

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

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

- (i) (a) at least five per cent. of the total number of members of the company; or  
(b) one hundred members of the company,  
whichever is less; or
- (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;  
(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

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

- (i) (a) at least five per cent. of the total number of depositors of the company;  
or  
(b) one hundred depositors of the company,  
whichever is less; or
- (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.”

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

Relevant Section	Amendment	Date of Enforcement
Amendment of Section 241	<p>(a) <b>in sub-section (2)</b>, the following proviso is inserted, namely:— “Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;</p> <p>(b) New insertion of sub-sections (3), (4) &amp; (5) after <b>sub-section (2)</b>, namely:— “(3) Where in the opinion of the Central Government there exist circumstances suggesting that—</p> <p>(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;</p> <p>(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;</p> <p>(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or</p> <p>(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,</p> <p>the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other</p>	15 <sup>th</sup> August, 2019

	<p>office connected with the conduct and management of any company.</p> <p><b>(4)</b> The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.</p> <p><b>(5)</b> Every application under sub-section (3)—</p> <p>(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and</p> <p>(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”.</p>	
Amendment of Section 242	<p>New insertion <b>sub-section 4A</b> After sub-section (4), , namely:—</p> <p>“(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.”.</p>	15 <sup>th</sup> August, 2019
Amendment of Section 243	<p>(a) new insertion of <b>sub-section 1A &amp; 1B</b> after sub-section (1), shall be inserted, :—</p> <p>“(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:</p> <p>Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.</p> <p><b>(1B)</b> Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of</p>	15 <sup>th</sup> August, 2019

	the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”;	
	(b) in <b>sub-section (2)</b> , after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “ <b>or sub-section (1A)</b> ” shall be inserted.	

**CHAPTER 10: WINDING UP****Amendments through the Companies (Amendment) Act, 2019**

Relevant sections	Amendment	Date of Enforcement
<b>Amendment of Section 272</b>	In <b>sub-section (3)</b> , for the words, brackets and letter “ <b>or clause (e) of that sub-section</b> ”, the words “ <b>of that section</b> ” shall be substituted.	<b>15<sup>th</sup> August, 2019</b>

**CHAPTER 16: SPECIAL COURTS****1. Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section <b>435</b> . (Establishment of Special Courts)	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.”.
Amendment of section <b>438</b> (Application of Code to proceedings before Special court)	In section 438 of the principal Act, for the words “deemed to be a Court of Session”, the words “deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial

	Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section <b>439</b> (Offences to be non-cognizable).	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section <b>440</b> (Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

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

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

## CHAPTER 17: MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

- (i) in **rule 11** i.e., related to **Transitional Arrangement**, for the figures, letters and word “30<sup>th</sup> September, 2018” occurring at both the places, the figures, letters and word “31<sup>st</sup> January, 2019” shall be substituted.
- (ii) In the said rules, in **rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words “one year”, the words “two years” shall be substituted.

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

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

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

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

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

“Short title, commencement and application”;

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

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

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

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

- (a) in clause (a), the word “not” shall be omitted;
- (b) in clause (c), after the brackets and letter “(e)”, the brackets and letter “(f),” shall be inserted.

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

- (a) in clause (c), the words, brackets and letters “and having qualification mentioned at clause (a) or (b)” shall be omitted;
- (b) in Explanation II, the words “and examination or training” shall be omitted;
- (c) after Explanation II, the following Explanation shall be inserted, namely :-

**“Explanation III.—** For the purposes of this rule and Annexure IV, ‘equivalent’ shall mean professional and technical qualifications which are recognised by the Ministry

of Human Resources and Development as equivalent to professional and technical degree.”

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

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

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

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

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

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

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

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

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

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

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical

appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

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

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

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

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

- (a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);
- (b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

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

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

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

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

- (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
- (b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass

an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

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

- (a) size of the company;
- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default;
- (e) repetition of the default;
- (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

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

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

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

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

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

Relevant sections	Amendment	Date of Enforcement
<b>Amendment of section 248</b>	In section 248 of the principal Act, in sub-section (1),— (i) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” shall be substituted; (ii) after clause (c) and before the long line, the following clauses shall be inserted, namely:— “(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the	<b>2<sup>nd</sup> November, 2018</b>

	<p>time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or</p> <p>(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”.</p>	
<b>Amendment of section 447.</b>	In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.	<b>2<sup>nd</sup> November, 2018</b>
Amendment of section <b>454</b>	<p>In section 454 of the principal Act, —</p> <p>(i) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely: —</p> <p>“(3) The adjudicating officer may, by an order</p> <p>(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and</p> <p>(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;</p> <p>(ii) in <b>sub-section (4)</b>, for the words “such company and the officer who is in default”, the words “such company, the officer who is in</p>	<b>2<sup>nd</sup> November, 2018</b>

	<p>default or any other person” shall be substituted;</p> <p>(iii) in <b>sub-section (8)</b>,—</p> <p>(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;</p> <p>(b) in clause (ii)—</p> <p>(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;</p> <p>(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.</p>	
<b>Insertion of new section 454A.</b>	<p>After section 454 of the principal Act, the following section shall be inserted, namely:</p> <p><b>Penalty for repeated default.</b></p> <p>“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional</p>	<b>2<sup>nd</sup> November, 2018</b>

	Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”.	
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6. **Amendment in Section 406:** Section 406 has been substituted by the Companies (Amendment) Act, 2017, with effect from **15<sup>th</sup> August, 2019**

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

- (2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—
- shall not apply to any Nidhi or Mutual Benefit Society; or
  - shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.
- (3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
- (4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.
- (5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

7. **Enforcement of the Nidhi (Amendment) Rules, 2019 via G.S.R. 467(E) dated 15<sup>th</sup> August, 2019**

The Central Government makes the Nidhi (Amendment) Rules, 2019 to amend Nidhi Rules, 2014. In the Nidhi rules, 2014 (hereinafter referred to as “said rules”):

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	In rule 2, after clause (c)	Insertion of clause (d), namely:- “(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act”.

2.	In rule 3, after clause (d)	Following clause (da) is inserted:- '(da) " <i>Nidhi</i> " means a company which has been incorporated as a <i>Nidhi</i> with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.'
3.	After rule 3	New rule 3A is inserted:- "3A. Declaration of Nidhis.— The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette: Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:- (a) one year from the date of its incorporation; or (b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5: Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein: Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment)."
4.	In rule 4	(i) in sub-rule (1), the words, " <b>to be incorporated under the Act</b> " shall be omitted; (ii) in sub-rule (5), the words " <b>Company incorporated as a</b> " shall be omitted.
5.	In rule 5 (i) in sub-rule (1), for the words " <b>from the</b>	(i) the words " <b>from the date of its incorporation</b> " shall be substituted;

	<p><b>commencement of these rules”,</b></p> <p>(ii) in sub-rule (3), <b>before the Explanation,</b></p> <p>(iii) in sub-rule (4), after the words, brackets and figure <b>“contained in sub-rule (1)”</b>,</p>	<p>(ii) the following <b>proviso</b> shall be inserted, namely:- “Provided that the Regional Director may extend the period upto one year from the date of receipt of application.”.</p> <p>(iii) the words, brackets and figures “and gets itself declared under sub-section (1) of section 406” shall be inserted.</p>
6.	In <b>rule 7</b> , in sub-rule (1), after the words <b>“shall issue”</b>	the words <b>“fully paid up”</b> shall be inserted.
7.	<p>In <b>rule 12</b></p> <p>(i) in sub-rule (1) after clause (b)</p> <p>(ii) in sub-rule (2), in clause (a), for the words <b>“Registrar of Companies”</b>,</p>	<p>(i) the following <b>clause (ba)</b> shall be inserted namely:- “(ba) The date of declaration or notification as Nidhi”;</p> <p>(ii) the words <b>“Bench of the National Company Law Tribunal”</b> shall be substituted.</p>
8.	<p>In the said rules, in <b>rule 23</b>, in sub-rule (2),-</p> <p>(i) for the words <b>“concerned Regional Director”</b>,</p> <p>(ii) for the words <b>“such Regional Director”</b>,</p> <p>(iii) in the proviso, for the words <b>“Regional Director”</b>,</p>	<p>(i) the words, <b>“Central Government”</b> shall be substituted;</p> <p>(ii) the words, <b>“Central Government”</b> shall be substituted;</p> <p>(iii) the words, <b>“Central Government”</b> shall be substituted.</p>
9.	<b>After rule 23</b>	<p>Following rules 23A &amp; 23B shall be inserted, namely:-</p> <p><b>23A. Compliance with rule 3A by certain Nidhis:-</b> Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself</p>

		<p>declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later:</p> <p>Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p> <p><b>23B. Companies declared as Nidhis under previous company law to file Form NDH-4:-</b> Every company referred in clause (a) of rule 2 shall file Form NDH-4 along with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:</p> <p>Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019:</p> <p>Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).</p>
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#### 8. The Nidhi (Second Amendment) Rules, 2020

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

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	in rule 23A, for the words “ <b>six months</b> ”	the words “ <b>nine months</b> ” shall be substituted.

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

W.r.t. to the notification <sup>2</sup>G.S.R. 114(E) of the Government of India, dated the 14th February, 2020, for “**rule 23A**” read “**rule 23A and first proviso to rule 23B**”.

<sup>2</sup> Given above in Point no. 8

**CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016****(I) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018**

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

**Following are the relevant amendments:**

- (1)** In **section 3(12)**, in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.
- (2)** In **section 5** of the principal Act,
  - (i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—  
'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'
  - (ii) in **clause (8)** prescribing the term "**Financial Debt**" in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—  
'Explanation.—For the purposes of this sub-clause,—
    - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
    - (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
  - (iii) in **clause (12)** i.e., as to the "**Insolvency commencement date**", the following proviso shall be inserted, namely:—  
"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";
  - (iv) **after clause (24)**, the following clause shall be inserted, namely:—  
'**(24A) "related party"**, in relation to an individual, means—
    - (a) a person who is a relative of the individual or a relative of the spouse of the individual;
    - (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
  - (i) members of a Hindu Undivided Family,
  - (ii) husband,
  - (iii) wife,
  - (iv) father,
  - (v) mother,
  - (vi) son,
  - (vii) daughter,
  - (viii) son's daughter and son,
  - (ix) daughter's daughter and son,
  - (x) grandson's daughter and son,
  - (xi) granddaughter's daughter and son,
  - (xii) brother,
  - (xiii) sister,

- (xiv) brother's son and daughter,
  - (xv) sister's son and daughter,
  - (xvi) father's father and mother,
  - (xvii) mother's father and mother,
  - (xviii) father's brother and sister,
  - (xix) mother's brother and sister, and
  - (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
- (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
- (i) in **clause (a)**, for the words "if any, and", the words "if any, or" shall be substituted;
  - (ii) in **clause (b)**, for the word "repayment", the word "payment" shall be substituted; In the Explanation, for the word "repayment", the word "payment" shall be substituted.
- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in **clause (c)**, for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
  - (ii) for **clause (d)**, the following clauses shall be substituted, namely:—
    - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
    - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in **clause (i), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted;

- (b) in **clause (ii), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following—
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
  - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
  - (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
- (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;
  - (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted—
- "12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
- "(3) The provisions of **sub-section (1)** shall not apply to—
- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
  - (b) a surety in a contract of guarantee to a corporate debtor."

- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,
- "(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."
- (16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —
- (i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor," shall be substituted;
- (ii) after this proviso under sub-section (2), the following **proviso is inserted-**
- "Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";
- (iii) **Insertion of new sub-section 6(A) & 6(B)** after sub-section (6)-
- "(6A) Where a financial debt—
- (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;
- (b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution

professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

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

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

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

- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
- (ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.";

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

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

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

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

- (17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;
- (18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-  
"Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."
- (19) In **section 24(3)** of the principal Act, in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;
- (20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

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

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

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

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

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

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

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

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

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

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

(i) **in clause (c),—**

- (a) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;
- (b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;
- (c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

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

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

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

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

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any other law for the time being in force:

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

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

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

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

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

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

**(v) in clause (h), —**

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

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

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

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

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

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

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

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the

terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.<sup>1</sup>.

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

- (i) in **sub-section (1)**, after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;
- (ii) in **sub-section (2),—**
  - (a) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;
  - (b) after clause (f), the following *Explanation* shall be inserted, namely:—  
*"Explanation.—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."*
- (iii) in **sub-section (4),—**
  - (a) for the word "seventy-five", the word "sixty-six" shall be substituted;
  - (b) after the third proviso, the following proviso shall be inserted,  
namely:—  
*"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."*

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

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

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

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

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

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

26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.
27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—
  - a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
  - b. in **sub-section (4)**,—
    - i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
    - ii. after clause (b), the following clause shall be inserted, namely:—  
 "(c) the resolution professional fails to submit written consent under sub-section (1).";
  - c. in **sub-section (5)**, for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
  - d. in **sub-section (6)**, after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

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

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

- (i) a guardian;
- (ii) an executor or administrator of an estate of a financial creditor;
- (iii) a trustee (including a debenture trustee); and
- (v) a person duly authorised by the Board of Directors of a Company.

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

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

Following are the relevant amendments:

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

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

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

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

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

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

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second

proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019”.

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

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

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

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

- (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—
  - (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
  - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

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

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

**Explanation 2.**—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”
- (vi) **In section 31(1)** of the Code, after the words “members, creditors,” the following words shall be inserted:
- “including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,”.
- (vii) **In section 33(2)**, following explanation shall be added:
- “Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”

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

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

Following are the relevant amendments:

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

Sl. No.	Amended Law
1.	in <b>clause (12)</b> , the given proviso- <sup>3</sup> “Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority” shall be omitted.
2.	in <b>clause (15)</b> , after the words “during the insolvency resolution process period ”occurring at the end the words “and such other debt as may be notified” shall be inserted.
3.	In <b>section 7</b> of the principal Act, in sub-section (1), before the <i>Explanation</i> , the following provisos inserted— “Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate

<sup>3</sup> Proviso was Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018)

	<p>insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:</p> <p>Provided further that for financial creditors who are allottees under real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:</p> <p>Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."</p>
4.	<p>In <b>section 11</b> of the principal Act, the <i>Explanation</i> shall be numbered as <i>Explanation I</i> and after <i>Explanation I</i> as so numbered, the following <i>Explanation</i> shall be inserted, namely:—</p> <p>"<i>Explanation II</i>—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debt or referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor."</p>
5.	<p>In <b>section 14</b> of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>, the following <i>Explanation</i> inserted, namely:—</p> <p>"<i>Explanation</i>.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"</p> <p>(b) after <b>sub-section (2)</b>, the following sub-section 2A shall be inserted, namely:—</p> <p>"(2A) Where the interim resolution professional or resolution professional,</p>

	<p>as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";</p> <p>(c) in <b>sub-section (3)</b>, for clause (a), namely-  “(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;”  the following clause shall be substituted, namely:—  “(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;”</p>
6.	In <b>section 16 in sub-section(1)</b> , for the words "within fourteen days from the insolvency commencement date" The words "on the insolvency commencement date" shall be substituted.
7.	In <b>section 21, in sub-section (2)</b> , in the second proviso, after the words "convertible into equity shares" the words "or completion of such transactions as may be prescribed," shall be inserted.
8.	<p>In <b>section 29A</b> of the principal Act-</p> <p>(i) in clause (c), in the second proviso, in Explanation I, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted;</p> <p>(ii) in clause (j), in Explanation I, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.</p>
9.	<p>After <b>section 32</b> of the principal Act, the following section 32A shall be inserted, namely:—</p> <p>"32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—</p> <p>(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or</p>

	<p>(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:</p> <p><b>Provided that</b> if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:</p> <p><b>Provided further</b> that every person who was a "designated partner" as defined in clause(j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debt or for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.</p> <p><b>(2)</b> No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—</p> <p>(i) A promoter or in the management or control of the corporate debtor or a related party of such a person; or</p> <p>(ii) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.</p> <p><b>Explanation.</b>—For the purposes of this sub-section, it is hereby clarified that,—</p> <p>(i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;</p>
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	<p>(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.</p> <p>(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."</p>
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- V. **Enhancement in the limit of amount of default:** Ministry of Corporate Affairs vide notification S.O. 1205(E) dated 24th March, 2020, in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.
- VI. Ministry of Corporate Affairs Vide Notification S.O. 4126(E) dated **15th November, 2019**, in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the **1st day of December, 2019** as the date on which clause (e) of section 2 of the Code in so far as they relate to personal guarantors to corporate debtors, shall come into force.

## PART II: ALLIED LAWS

### CHAPTER 20: SEBI ACT, 1992

#### 1. Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

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

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

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

of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

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

## 2. Amendments through Finance Act, 2018 w.e.f. 8.3.2019

1. In the Securities and Exchange Board of India Act, 1992 (hereafter in this Part referred to as the principal Act), **in section 11** which deals with the Functions of Board,—
  - (i) **after sub-section (4)**, the following sub-section shall be inserted, namely:—
 

“(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”;
  - (ii) **in sub-section (5)**, after the words and figures “the Depositories Act, 1996”, the words, figures, letters and brackets shall be inserted, namely:—
 

“or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996,”.
2. **In section 11B**, of the principal Act,—
  - (a) in the marginal heading, after the word “directions”, the words “and levy penalty” shall be inserted;
  - (b) **section 11B** shall be numbered as sub-section (1) thereof and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:—
 

“(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”.
3. In the principal Act, in **section 15A** which deals with the Penalty for failure to furnish information, return, etc.,—
  - (i) **in clause (a)**, after the words “fails to furnish the same”, the words “or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents” shall be inserted;

- (ii) **in clause (b)**, after the words “furnish the same within the time specified therefor in the regulations”, the words “or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents” shall be inserted.
4. In the principal Act, **after section 15E**, the following sections shall be inserted, namely:—
- “15EA.** Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.
- 15EB.** Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”.
5. In the principal Act, in **section 15F** which deals with the Penalty for default in case of stock brokers, in **clause (b)**, for the words “he sponsors or carries on any such collective investment scheme including mutual funds”, the words “such failure continues” shall be substituted.
6. In the principal Act, in **section 15-I** which deals with the Power to adjudicate, in sub-section (1),—
- (i) after the figures and letter “15E,”, the figures and letters “15EA, 15EB,” shall be inserted;
- (ii) for the word “shall” the word “may” shall be substituted.
7. In the principal Act, in **section 15J**,—
- (a) for the marginal heading, the following marginal heading shall be substituted, namely:— “Factors to be taken into account while adjudging quantum of penalty.”;
- (b) after the words, figures and letter “section 15-I, the adjudicating officer”, the figures, letters and words “15-I or section 11 or section 11B, the Board or the adjudicating officer” shall be substituted;
- (c) in the Explanation, the words “of an adjudicating officer” shall be omitted.

8. In the principal Act, in **section 15JB** which deals with the Settlement of administrative and civil proceedings, after sub-section (4), the following subsection shall be inserted, namely:—
- “(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.”.
9. In the principal Act, in **section 24** which states about the Offences,—
- (i) after the words “adjudicating officer” at both the places where they occur, the words “or the Board” shall be inserted;
  - (ii) in sub-section (2), the words “of his” shall be omitted.
10. In the principal Act, in **section 27** which deals with the Contravention by companies,—
- (i) for the marginal heading, the following marginal heading shall be substituted, namely:— “Contravention by companies.”;
  - (ii) in sub-section (1), for the words “an offence under this Act,”, the words “a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder” shall be substituted;
  - (iii) for the word “offence”, wherever it occurs, the word “contravention” shall be substituted.
11. In the principal Act, **after section 28A** which deals with recovery of money, the following section shall be inserted, namely:—
- ‘**28B.** (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.
- (2) For the purposes of sub-section (1),—
- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;
  - (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived,

may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

- (3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.
- (4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.  
Explanation.—For the purposes of this section “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.’.

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

- (i) In **section 15C** of the principal Act, which deals with the Penalty for failure to redress investors’ grievances after the words “after having been called upon by the Board in writing”, the words “including by any means of electronic communication” shall be inserted.
- (ii) In **section 15F** of the principal Act, which deals with the Penalty for default in case of stock brokers in sub-clause (a), after the words “one lakh rupees but which may extend to”, the words “one crore rupees” shall be inserted.
- (iii) After **section 15HA** of the principal Act, the following section shall be inserted, namely:—

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

Any person, who—

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

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

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

- (b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;
- (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;
- (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;
- (e) without authorisation disrupts the functioning of system database;
- (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or
- (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

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

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

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

- (i) In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Part referred to as the principal Act), **section 12A** shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-  
 "(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner."
- (ii) In **section 23** of the principal Act, in sub-section (1), in the long line, after the words "Adjudicating officer", the words "or the Securities and Exchange Board of India" shall be inserted.
- (iii) In **section 23A** of the principal Act, in sub-clause (a), after the words "bye-laws of the recognised stock exchange", the words "or who furnishes false, incorrect or incomplete information, document, books, return or report" shall be inserted.
- (iv) In **section 23E** of the principal Act, after the words "mutual fund", the words "or real estate investment trust or infrastructure investment trust or alternative investment fund", shall be inserted.

- (v) In **section 23G** of the principal Act, after the words "periodical returns", the words "or furnishes false, incorrect or incomplete periodical returns" shall be inserted.
- (vi) After **section 23G** of the principal Act, the following section shall be inserted, namely:-  
"23GA. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher."
- (vii) In **section 23-I** of the principal Act, in sub-section (1), for the word "shall", the word "may" shall be substituted.
- (viii) In **section 23J** of the principal Act,-
  - (a) for the marginal heading, the following marginal heading shall be substituted, namely:- "Factors to be taken into account while adjudging quantum of penalty.";
  - (b) for the word, figures and letter "section 23-I" the words, figures and letters "section 12A or section 23-I" shall be substituted.
  - (c) for the words "the adjudicating officer", the words "the Securities and Exchange Board of India or the adjudicating officer" shall be substituted.
- (ix) In **section 23JA** of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:-  
"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India."
- (x) In **section 23JB** of the principal Act, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.
- (xi) After **section 23JB** of the principal Act, the following section shall be inserted, namely:-  
**'23JC.** (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.  
(2) For the purposes of sub-section (1),- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly; (b) any proceeding for

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

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

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

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

- (1) after the words "adjudicating officer" at both the places where they occur, the words "or the Securities and Exchange Board of India" shall be inserted;
- (2) in sub-section (2), for the words, "any of his direction or orders" the words "the direction or order" shall be substituted.

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

- (a) for the marginal heading, the following marginal heading shall be substituted:-  
"Contravention by companies;"
- (b) in sub-section (1), for the words "an offence", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;
- (c) in sub-section (2), for the words "an offence under this Act", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;
- (d) for the word "offence", wherever it occurs, the word "contravention" shall be substituted.

## **CHAPTER 22: The Foreign Exchange Management Act, 1999**

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

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of **the Foreign Exchange**

**Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019 w.e.f. 26-2-2019.** Following are the relevant amendments -

- (i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:  
**“(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables.”**
- (ii) **In schedule I** (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:  
**“(k) Undertake derivative contracts”**
- (iii) **In the schedule II** (classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:  
**“(h) Undertake derivative contracts”**

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

- (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- (2) The Reserve Bank may, in consultation with the Central Government, specify—
  - (a) any class or classes of capital account transactions, involving debt instruments, which are permissible;
  - (b) the limit up to which foreign exchange shall be admissible for such transactions;
  - (c) any conditions which may be placed on such transactions:

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.
- (2A) The Central Government may, in consultation with the Reserve Bank, prescribe—
  - (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;
  - (b) the limit up to which foreign exchange shall be admissible for such transactions; and
  - (c) any conditions which may be placed on such transactions.
- (3) [\*\*\*]
- (4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency,

security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

- (5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.
- (6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.
- (7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

### 3. Amendments in External Commercial Borrowings

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

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

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

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

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments);

		years; FCCBs; FCEBs and Financial Lease.	Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, (a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; (b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and (c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).	
		Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	
V	Minimum Average Maturity Period (MAMP)	MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:	

		Sr. No.	Category	MAMP
		(a)	ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
		(b)	ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
		<sup>4</sup> (c)	ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 years
		(d)	ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
		(e)	ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 years
		for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.		
vi	All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.		
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.		

<sup>4</sup>Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

Viii	End-uses (Negative list)	<p>The negative list, for which the ECB proceeds cannot be utilised, would include the following:</p> <p>(a) Real estate activities.</p> <p>(b) Investment in capital market.</p> <p>(c) Equity investment.</p> <p>(d) <sup>5</sup>Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above.</p> <p>(e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above.</p> <p>(f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above.</p> <p>(g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.</p>	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.
x	Hedging provision	<p>The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.</p> <p>Infrastructure space companies shall have a</p>	Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign

<sup>5</sup> Substituted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019. Prior to substitution it read as below:

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

	<p>Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured:</p> <p><b>a. Coverage:</b> The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).</p> <p><b>b. Tenor and rollover:</b> A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.</p> <p><b>Natural Hedge:</b> Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching</p>	banks with Indian presence on a back to back basis.
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		currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting. Any other arrangements/structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

**Note:** The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. <sup>6</sup>Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

- 2.2. Limit and leverage:** Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.
- 3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions:** Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

<sup>6</sup> Inserted vide [A.P. \(DIR Series\) Circular No. 17 dated January 16, 2019](#).

4. **Parking of ECB proceeds:** ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:
  - 4.1 **Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.
  - 4.2 **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.
5. **Procedure of raising ECB:** All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.
6. **Reporting Requirements:** Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework.
  - 6.1 **Loan Registration Number (LRN):** Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.
  - 6.2 **Changes in terms and conditions of ECB:** Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the

lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

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

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

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

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

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

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

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

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

- (a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;
- (b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;
- ii. **Action:** The followings actions are to be undertaken in respect of 'untraceable entities':
  - (a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
  - (b) No fresh ECB application by the entity should be examined/processed by the AD bank;
  - (c) Directorate of Enforcement should be informed whenever any entity is designated;
  - (d) 'UNTRACEABLE ENTITY'; and
  - (e) No inward remittance or debt servicing will be permitted under auto route.
- 7. **Powers delegated to AD Category I banks to deal with ECB cases:** The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:
  - 7.1 **Change of the AD Category I bank:** AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.
  - 7.2 **Cancellation of LRN:** The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.
  - 7.3 **Refinancing of existing ECB:** Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted

subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporate (AAA) and for Maharatna/ Navratna public sector undertakings.

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

- (i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
- (ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;
- (iii) Applicable pricing guidelines for shares are complied with; In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
  - (a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
  - (b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
  - (c) For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- (iv) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;
- (v) Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower.
- (vi) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

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

- i. the underlying ECB is in compliance with the extant ECB guidelines,
- ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

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

- iv **Creation of Charge on Immovable Assets:** The arrangement shall be subject to the following:
  - (a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.
  - (b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
  - (c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.
- v **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.
- vi **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:
  - (a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
  - (b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter,

can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.

- (c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.
- vii **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:
  - (a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
  - (b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
  - (c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
  - (d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

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

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

## **8. Special Dispensations under the ECB framework:**

**8.1 ECB facility for Oil Marketing Companies:** Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging

and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

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

- i. **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- ii. **Maturity:** Minimum average maturity period will be 3 years.
- iii. **Recognised lender:** Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- iv. **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- v. **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the nonresident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
- vi. **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- vii. **All-in-cost:** Shall be mutually agreed between the borrower and the lender.
- viii. **End uses:** For any expenditure in connection with the business of the borrower.
- ix. **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
- x. **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

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

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

- xii **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
- xiii **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.

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

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

- 10.1 An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.
- 10.2 <sup>7</sup>Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement

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<sup>7</sup> Inserted vide [A.P.\(DIR Series\) Circular No. 04 dated July 30, 2019](#).

with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

- 10.3** Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.
- 11. Dissemination of information:** For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.
- 12. Compliance with the guidelines:** The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.
- 4. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2019**

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

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

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

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

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

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

### CHAPTER 23: THE COMPETITION ACT, 2002

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

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

- (1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 w.e.f. **15<sup>th</sup> day of August, 2019**.
- (2) In **regulation 5** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the following regulation shall be inserted, namely:-

#### **“5A. Notice for approval of combinations under Green Channel.-**

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

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

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

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

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

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

“(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.”;

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

## CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002

### 1. Amendment in section 8 vide Finance Act, 2019, w.r.e.f. 20-3-2019.

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

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

- (a) continue during investigation for a period not **exceeding three hundred and sixty-five days** or the pendency of the proceedings relating to any offence under this Act

before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

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

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

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

**Verification of identity by reporting entity.**

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

- (a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or
- (b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or
- (c) use of passport issued under section 4 of the Passports Act, 1967; or
- (d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

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

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

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

- (3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.
- (4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.
- (5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

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

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

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

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

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

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

**PART – II : QUESTIONS AND ANSWERS****QUESTIONS****DIVISION A: INTEGRATED CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS****Integrated Case scenario 1**

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

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

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

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

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

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

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

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

**[Question 1-5]**

1. If the Central Government is of the opinion to order the investigation into affairs of a company on receipt of a report of the Registrar under section 208 of the Companies Act, state the correct statement as to the initiation of order of the investigation into affairs of a company-
  - (a) It cannot order investigation by inspectors under the provisions of section 210 of the Companies Act.
  - (b) It can order investigation by inspectors under the provisions of section 210 of the Companies Act.

- (c) It cannot order investigation by SFIO under the provisions of section 212 of the Companies Act.
  - (d) It can order investigation by inspectors under section 210 or by SFIO under section 212 of the companies Act.
2. Is Director, SFIO is a competent authority to arrest the directors of DEF Limited, an unlisted public company?
- (a) Yes, Director, SFIO is competent authority to arrest the directors of the unlisted public company.
  - (b) Yes, Director, SFIO is competent authority subject to approval of Central Government.
  - (c) No, Director, SFIO cannot arrest the directors of the unlisted public company.
  - (d) Yes, Director, SFIO is competent authority subject to approval of special court to arrest the directors of the unlisted public company.
3. Is it the duty of the director, SFIO to inform the arrestee the grounds of arrest?
- (a) Yes, it is the duty of the director, SFIO to inform the grounds of arrest and as well as right of arrestee to know the grounds of his arrest.
  - (b) No, it is not necessary to inform the grounds of arrest.
  - (c) No, the ground of arrest may be informed, if asked for.
  - (d) No, it is prerogative of the authority to arrest the accused, there is no need to inform the grounds of arrest.
4. Within how much time are the arrested directors of DEF Limited required to be produced before jurisdictional judicial magistrate by the director, SFIO after arrest?
- (a) Within 24 hours of such arrest.
  - (b) Within 48 hours of such arrest.
  - (c) Within 72 hours of such arrest.
  - (d) Within 60 hours of such arrest.
5. When do the directors of DEF Limited vacate the office of director in the company?
- (a) On the date when the directors were arrested by the SFIO.
  - (b) On the date when the charge sheet was submitted in the court by the SFIO.
  - (c) On the date when the directors were arrested and produced before jurisdictional Judicial Magistrate.
  - (d) On the date when the directors were convicted by the Special Court.

**Integrated Case Scenario 2**

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

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

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

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

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

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

X-One financial Company	200,000 rupees	4%
Mr. Mohan Shah	1,250,000 rupees	25%
Radhey Finance Company	200,000 rupees	4%
Soham Company	700,000 rupees	14%

Onex National bank	1,000,000 rupees	20%
DXY National bank	1,650,000 rupees	33%

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

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

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

**[Questions 6-10]**

6. With reference to the provisions of the Companies Act, 2013, which value of the requisite majority will be considered to approve the scheme?
  - (a) 3/4th of the total value of shares held by 650 members.
  - (b) 3/4th of the total value of shares held by 800 members.
  - (c) 3/4th of the total value of shares held by 1000 members.
  - (d) 3/4th majority of 1000 shares holders present and voting.
7. According to the provision of the Companies Act, 2013, X-One financial company objected to the compromise held on the scheme in between the company and its shareholders? According to their respective percentage in debt owed to the company, choose the correct option?
  - (a) X-One Finance Company can raise the objection as aggregate loan amount needs to be more than 2% of debt.
  - (b) X-One Finance Company jointly with Radhey Finance company can raise the objection as the aggregate amount needs to be not less than 5%.
  - (c) Only X-One Finance Company along with Soham Finance company can jointly raise the objection as the aggregate amounts needs not to be less than 15%.
  - (d) Only X-One Finance Company jointly with Soham Finance company and Radhey Finance company can raise the objection the aggregate amounts needs not to be less than 20%.
8. Evaluate the representation made by SEBI, after 45 days of receiving the notice and all the documents, is tenable or not?
  - (a) Not tenable. It is required to be made within 10 days
  - (b) Not tenable. It is required to be made within 15 days.
  - (c) Not tenable. It is required to be made within 30 days.

- (d) Not tenable. It is required to be made within 45 days
- 9. While finally approving the scheme of compromise and arrangements between the company and its members, which of the below mentioned certificate is necessary to be filed with the Tribunal?
  - (a) Certificate from the Central Government
  - (b) Certificate from the Registrar.
  - (c) Certificate from the audit and accounts committee of the company
  - (d) Certificate from the company's auditor.
- 10. According to the above mentioned facts under the directorship of Mr. Raj Purohit, Trinity Infrastructure Limited, defaulted in filing statements and paying the interest due on the loans. How the default of Trinity Infrastructure Limited going to affect the directorship of Mr. Raj Purohit, in all the three companies?
  - (a) Mr. Raj has to immediately vacate his office as a director in all the three companies.
  - (b) Mr. Raj needs to vacate his office as a director in (HPDL).
  - (c) Mr. Raj needs to vacate his office as a director only in (HPDL) and in Max International Limited.
  - (d) Mr. Raj need not resign in any of the company, as the default makes him only ineligible for re-appointment.

**INDEPENDENT MCQS [Questions 11-15]**

- 11. The Board of Directors of Jip Rise Pharmaceuticals Limited are contemplating to declare interim dividend in the last week of July, 2018 but the company has incurred loss during the current financial year up to the end of June, 2018. However, it is noted that during the previous five financial years i.e., 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.
  - (a) Maximum at the rate of 10%.
  - (b) Maximum at the rate of 11%.
  - (c) Maximum at the rate of 10.5%.
  - (d) Maximum at the rate of 11.5%.
- 12. Mr. Kamal is accused of an offence as mentioned in Part B of Schedule to the PMLA, 2002. What must be the minimum amount of the offence for which Mr. Kamal is accused of?
  - (a) INR 25 Lakhs
  - (b) INR 50 Lakhs

- (c) INR 100 Lakhs
  - (d) INR 75 Lakhs
13. Financial statements shall be signed by -
- (a) CFO
  - (b) Director/MD/CEO
  - (c) Company secretary
  - (d) All of the above
14. Mr. Z was appointed as representative of ABC Company for a corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a kidney transplant done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.
- (a) USD 1,25,000
  - (b) USD 2,25,000
  - (c) USD 2,50,000
  - (d) As estimated by a medical institute offering treatment
15. MX Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under section 7 of the Insolvency and Bankruptcy Code (Code). The Resolution Professional (RP) of the MX Limited (Corporate Debtor) conducted the Committee of Creditors (CoC) meeting but the same was adjourned due to lack of quorum. Accordingly, in the adjourned meeting, a resolution was passed by the CoC members present, representing 51% of the voting rights for liquidation of the Corporate Debtor before the expiry of the Corporate Insolvency Resolution Process (CIRP). You as a qualified Chartered Accountant in the team of RP and is required to advise RP whether the resolution of liquidation passed is valid in law considering the provisions of the Insolvency and Bankruptcy Code.
- (a) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 90% of the voting shares of the financial creditors.
  - (b) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 66% of the voting shares of the financial creditors.
  - (c) The resolution passed for liquidation is not valid in law as it cannot be passed before the expiry of the CIRP.
  - (d) The resolution passed for liquidation is valid in law as it has been passed by 51% of the voting shares of the financial creditors.

**Descriptive Questions [Questions 16-24]**

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

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

- (a) Number of directors for which a person can be appointed as an alternate director.
  - (b) Where an alternate director is appointed in place of a director whose term is indefinite, then, what will be the tenure of such alternate director?
  - (c) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?
17. International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:
- (i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.
  - (ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of `50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

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

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

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

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

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

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

20. The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.
21. Mr. Kunal used his car for smuggling cash and for other illegal activities. On trial before the Special Court, it was found that an offence of money laundering was committed by Mr. 'Kunal'. Also found that the car was under hypothecation to a Bank for the car loan obtained. Referring to provisions of the PMLA, 2002, examine whether the car can be confiscated in the light of the given situation?
22. Quality Rubber Limited, a supplier of raw materials filed a petition before the NCLT for the recovery of ` 10,00,000 against Smart Latex Limited. Smart Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ` 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

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

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

23. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:
- (i) M requires U.S. \$ 5,000 for remittance towards hire charges of transponders.
  - (ii) P requires U.S. \$ 2,000 for payment related to call back services of telephones.
24. Mr. Ramesh Kulkarni conducts private tuition classes from his residence. It was alleged by the Enforcement Directorate that Mr. Kulkarni has under reported his income and collected income in tax and used the proceeds to purchase a house property in Marol, Mumbai. The ED officers through written orders provisionally attached the properties on suspicion of it being derived from the proceeds of crime. Comment on the validity of the provisional attachment on the order issued by the ED officers.

### SUGGESTED ANSWERS/HINTS

#### Answers to ICS/Multiple Choice Questions

- 1. (d)
- 2. (a)
- 3. (a)
- 4. (a)
- 5. (d)
- 6. (a)
- 7. (b)
- 8. (c)
- 9. (d)
- 10. (c)
- 11. (b)
- 12. (c)
- 13. (d)
- 14. (d)
- 15. (b)

**Answers to Descriptive Questions**

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

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

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

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

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

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

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

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

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

- (i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal: Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not

exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

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

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

- (A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;  
(B) 3% of the net profits in any other case.

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

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

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

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

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

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

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

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

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

20. As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

the relevant earlier accounts were prepared in a fraudulent manner; or

the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

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

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

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

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

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

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

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

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

23. Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are free transactions and some others are prohibited transactions. Accordingly,
- (i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
  - (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P will not succeed in acquiring US \$ 2,000 for the said purpose.
24. As per Section 5(5) of the Prevention of Money Laundering Act, 2002, the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

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

**Applicability of Standards/Guidance Notes/Legislative Amendments etc.  
for November, 2020 – Final (Old) Examination**

**Paper 1: Financial Reporting**

**I. Framework for the Preparation and Presentation of Financial Statements.**

**II. Accounting Standards**

<i>AS No.</i>	<i>AS Title</i>
1	Disclosure of Accounting Policies
2	Valuation of Inventories
3	Cash Flow Statements
4	Contingencies and Events Occurring after the Balance Sheet Date
5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies
7	Construction Contracts
9	Revenue Recognition
10	Property, Plant and Equipment
11	The Effects of Changes in Foreign Exchange Rates
12	Accounting for Government Grants
13	Accounting for Investments
14	Accounting for Amalgamations
15	Employee Benefits
16	Borrowing Costs
17	Segment Reporting
18	Related Party Disclosures
19	Leases
20	Earnings Per Share
21	Consolidated Financial Statements
22	Accounting for Taxes on Income
23	Accounting for Investment in Associates in Consolidated Financial Statements
24	Discontinuing Operations
25	Interim Financial Reporting

26	Intangible Assets
27	Financial Reporting of Interests in Joint Ventures
28	Impairment of Assets
29	Provisions, Contingent Liabilities and Contingent Assets

### III. Guidance Notes on Accounting Aspects

1. Guidance Note on Accrual Basis of Accounting.
2. Guidance Note on Terms Used in Financial Statements.
3. Guidance Note on Accounting for Corporate Dividend Tax.
4. Guidance Note on Accounting for Employee Share-based Payments.
5. Guidance Note on Accounting for Credit Available in respect of Minimum Alternate Tax under the Income Tax Act, 1961.
6. Guidance Note on Measurement of Income Tax for Interim Financial Reporting in the context of AS 25.
7. Guidance Note on Applicability of AS 25 to Interim Financial Results.
8. Guidance Note on Turnover in case of Contractors.
9. Guidance Note on Division I to Schedule III to the Companies Act, 2013.
10. Guidance Note on Accounting for Expenditure on Corporate Social Responsibility Activities.
11. Guidance Note on Accounting for Derivative Contracts.

### IV. Applicability of the Companies Act, 2013 and other Legislative Amendments

The relevant notified Sections of the Companies Act, 2013 and legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 30<sup>th</sup> April, 2020 will be applicable for November, 2020 Examination. **Accordingly, the Companies (Indian Accounting Standards) Amendment Rules, 2019 notified by MCA on 30.3.2019 wherein it has notified Ind AS 116 (by replacing Ind AS 17) is applicable for November, 2020 examination. Therefore, students are supposed to refer the overview of Ind AS 116 as given in the RTP for November, 2020 alongwith the differences in Ind AS 116 vis-à-vis AS 19.**

### V. Applicability of Indian Accounting Standard (Ind AS)

The students are expected to have an overall knowledge of the contents covered in the topic of "Introduction of Indian Accounting Standards (Ind AS); Comparative study of ASs vis-a-vis Ind ASs; Carve outs/in in Ind ASs vis-à-vis International Financial Reporting Standards (IFRSs)" which is Chapter 2 of the Study Material.

However, considering the extensive coverage of the contents covered in this topic, small simple problems involving conceptual issues may be asked in the examination.

It may be noted that Accounting Standards will continue to be applicable for November, 2020 examination for all chapters except Chapter 2 as mentioned above and Chapter 6 on 'Accounting and Reporting of Financial Instruments' which would be based on Ind AS 32, 107 and 109.

Further, for November, 2020, Ind AS 115 and Ind AS 116 is applicable and **not** Ind AS 11, Ind AS 18 and Ind AS 17.

### Paper 3: Advanced Auditing and Professional Ethics

#### A. List of topic-wise inclusion in the syllabus

##### I. List of applicable Statements and Standards for November, 2020 Examination:

1. Statement on Reporting under Section 227(1A) of the Companies Act, 1956 (Section 143(1) of the Companies Act, 2013).
2. Framework for Assurance Engagements.

##### II. List of applicable Engagements and Quality Control Standards on Auditing for November, 2020 Examination

S.No.	SA	Title of Standard on Auditing
1	SQC 1	Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements
2	SA 200	Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing
3	SA 210	Agreeing the Terms of Audit Engagements
4	SA 220	Quality Control for Audit of Financial Statements
5	SA 230	Audit Documentation
6	SA 240	The Auditor's responsibilities Relating to Fraud in an Audit of Financial Statements
7	SA 250	Consideration of Laws and Regulations in An Audit of Financial Statements
8	SA 260	Communication with Those Charged with Governance <b>(Revised)</b>
9	SA 265	Communicating Deficiencies in Internal Control to Those Charged with Governance and Management
10	SA 299	Joint Audit of Financial Statements <b>(Revised)</b>

11	SA 300	Planning an Audit of Financial Statements
12	SA 315	Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment
13	SA 320	Materiality in Planning and Performing an Audit
14	SA 330	The Auditor's Responses to Assessed Risks
15	SA 402	Audit Considerations Relating to an Entity Using a Service Organization
16	SA 450	Evaluation of Misstatements Identified during the Audits
17	SA 500	Audit Evidence
18	SA 501	Audit Evidence - Specific Considerations for Selected Items
19	SA 505	External Confirmations
20	SA 510	Initial Audit Engagements-Opening Balances
21	SA 520	Analytical Procedures
22	SA 530	Audit Sampling
23	SA 540	Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures
24	SA 550	Related Parties
25	SA 560	Subsequent Events
26	SA 570	Going Concern <b>(Revised)</b>
27	SA 580	Written Representations
28	SA 600	Using the Work of Another Auditor
29	SA 610	Using the Work of Internal Auditors <b>(Revised)</b>
30	SA 620	Using the Work of an Auditor's Expert
31	SA 700	Forming an Opinion and Reporting on Financial Statements <b>(Revised)</b>
32	SA 701	Communicating Key Audit Matters in the Independent Auditor's Report <b>(New)</b>
33	SA 705	Modifications to the Opinion in the Independent Auditor's Report <b>(Revised)</b>
34	SA 706	Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report <b>(Revised)</b>
35	SA 710	Comparative Information – Corresponding Figures and Comparative Financial Statements
36	SA 720	The Auditor's Responsibility in Relation to Other Information <b>(Revised)</b>

**III. List of applicable Guidance Notes and other publications for November, 2020 Examination:**

1. Guidance Note on Audit under Section 44AB of the Income-tax Act.
2. Guidance Note on Audit of Banks.
3. Guidance Note on Audit of Internal Financial Controls over Financial Reporting.
4. Guidance Note on the Companies (Auditor's Report) Order, 2016.

**IV Applicability of the Companies Act, 2013 and other Legislative Amendments for November, 2020 Examination**

- (i) Students are expected to be updated with the notifications, circulars and other legislative amendments made up to 6 months prior to the examination. Accordingly, the relevant notified Sections of the Companies Act, 2013 and legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 30<sup>th</sup> April, 2020 will be applicable for **November, 2020** Examination. It may be noted that the significant notifications and circulars issued which are not covered in the Study Material, would be given as Academic Update in the Revision Test Paper for **November, 2020** Examination.
- (ii) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Companies (Auditor's Report) Order, 2016 are applicable for **November, 2020** Examination.
- (iii) Audit provision under GST Laws are applicable for **November, 2020** Examination.

**B. List of topic-wise exclusions from the syllabus :**

- I. Chapter 17 : Special Audit Assignment topic has been **excluded**.
- II. **Following Engagement and Quality Control Standards excluded:**

(1)	(2)	(3)
S. No	Topics of the syllabus	Exclusions
1	SA 800	Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Framework
2	SA 805	Special Considerations-Audits of Single Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement

3	SA 810	Engagements to Report on Summary Financial Statements
4	SRE 2400	Engagements to Review Historical Financial Statements <b>(Revised)</b>
5	SRE 2410	Review of Interim Financial Information Performed by the Independent Auditor of the Entity
6	SAE 3400	The Examination of Prospective Financial Information
7	SAE 3402	Assurance Reports on Controls At a Service Organisation
8	SAE 3420	Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus <b>(New)</b>
9	SRS 4400	Engagements to Perform Agreed Upon Procedures Regarding Financial Information
10	SRS 4410	Compilations Engagements <b>(Revised)</b>

**III. Following Guidance Notes and other publications are excluded:**

1. Code of Ethics publication is excluded whereas **Chapter 22 on Professional Ethics is in syllabus**
2. Guidance Note on Independence of Auditors.
3. Guidance Note on Audit of Inventories.
4. Guidance Note on Audit of Debtors, Loans and Advances.
5. Guidance Note on Audit of Investments.
6. Guidance Note on Audit of Cash and Bank Balances.
7. Guidance Note on Audit of Liabilities.
8. Guidance Note on Audit of Revenue.
9. Guidance Note on Audit of Expenses.
10. Guidance Note on Computer Assisted Audit Techniques (CAATs).
11. Guidance Note on Audit of Payment of Dividend.
12. Guidance Note on Audit of Capital and Reserves.
13. Guidance Note on Reporting under section 143(3)(f) and (h) of the Companies Act, 2013
14. Guidance Note on Reporting on Fraud under section 143(12) of the Companies Act, 2013.

<b>Paper 4 : Corporate and Allied Laws</b>
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**Applicability of the following Amendments/Circulars/Notifications:**

The provisions of Companies Act, 2013 along with significant Rules/ Notifications/ Circulars/ Clarification/ Orders issued by the Ministry of Corporate Affairs and the laws covered under the Allied laws, as amended by concerned authority, including significant notifications and circulars issued up to 30<sup>th</sup> April, 2020, are applicable for November 2020 examination.

**Applicability of Insolvency and Bankruptcy Code, 2016**

“Overview of the Insolvency and Bankruptcy Code, 2016” for 10 Marks have been made applicable covering Knowledge and application of the following -

- (1) Important Definitions
- (2) Corporate Insolvency Resolution Process, and
- (3) Liquidation Process

**With the inclusion of the Insolvency and Bankruptcy Code, 2016, marks allocation will be as under:**

Company Law- 60 Marks

Insolvency and Bankruptcy Code, 2016- 10 Marks

Allied Laws- 30 Marks

<b>Inclusions /Exclusions from the syllabus</b>
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(1)	(2)	(3)	(4)
S. No. in the syllabus	Chapters/ Topics of the syllabus	Inclusions (Provisions which are included from the corresponding chapter of the syllabus)	Exclusions (Provisions which are excluded from the corresponding chapter of the syllabus)
Section A- Company Law [60 Marks]	Chapter 1: Declaration and payment of Dividend	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.

Section A- Company Law [60 Marks]	Chapter 2: Accounts and audit	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 3: Appointment and Qualifications of Directors	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 4: Appointment and remuneration of Managerial Personnel	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 5: Meetings of Board and its powers	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.

		be relevant for the said examinations.	
Section A- Company Law [60 Marks]	Chapter 6: Inspection, Inquiry and Investigation	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 7: Compromises, Arrangements and Amalgamations	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in November for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 8: Prevention of Oppression and Mismanagement	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 10: Winding up	Sections related to winding up by Tribunal (from sections 271-303); and Sections applicable to every mode of winding up (from sections 324-336	Remaining provisions other than given in column (3), are excluded.

		and 344-347 and 352-358)	
Section A- Company Law [60 Marks]	Chapter 11: Producer Companies	-	Entire topic is excluded
Section A- Company Law [60 Marks]	Chapter 12: Companies Incorporated outside India	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 13: Offences and Penalties	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law [60 Marks]	Chapter 14: E- Governance	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.
Section A- Company Law	Chapter 15: National	The entire content included in the Revised	1. Provisions dealing with constitution of

[60 Marks]	Company Law and Tribunal Appellate Tribunal	June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	<p>NCLT/NCLAT and qualification of chairman and NCLT/NCLAT members, their salary, allowances etc. (i.e. section 408-419) are excluded.</p> <p>2. Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.</p>
Section A- Company Law [60 Marks]	Chapter 16: Special Courts	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	<p>1. Compounding of offences i.e. section 441 is excluded.</p> <p>2. Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.</p>
Section A- Company Law [60 Marks]	Chapter 17: Miscellaneous Provisions	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	<p>1. Sections 366 to 378, 396 to 404, 405, 448, 449, 451-454, 456-470 are excluded.</p> <p>2. Except the Relevant rules covered in the Revised June 2018 edition of the Study Material and given in RTP for November 2020, all other Rules of the Companies Act, 2013 are excluded.</p>

Section A- Company Law [60 Marks]	Chapter 18: Corporate Secretarial Practice– Drafting of Resolution, Minutes, Notices and Reports	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	-
Section A- Overview on the Insolvency and Bankruptcy Code, 2016 [10 Marks]	Chapter 19: Insolvency and Bankruptcy Code covering important Definitions, Corporate Insolvency Resolution process and Liquidation Process	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Following Provisions are excluded and shall not be applicable for November 2020 Examination- Sections 3(14), 3(22), 3(24)- 3(26), 3(28), 3(29), 3(32), 3(36), 3(37), 5(2), 5(3), 5(13), 5(19) and section 60 onwards.  Respective Rules of the Code are excluded from the study material.
Section B- Allied Laws [30 Marks]	Chapter 20: SEBI Act, 1992 and the SEBI (ICDR) Regulations, 2009	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	1. Following provisions of the SEBI Act, are entirely excluded – Sections 2(1)(b), 2(1)(c), 2(1)(d), 2(1)(da), 2(1)(f), 2(1)(fa), 2(1)(g), 9, 10, 19, 21, 28B, 33, 35 2. <b>SEBI (ICDR) Regulations is excluded</b>
Section B- Allied Laws [30 Marks]	Chapter 21: Securities Contracts (Regulation) Act, 1956	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for	The Securities Contracts (Regulation) Rules, 1957 are entirely excluded.

		November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	
Section B- Allied Laws [30 Marks]	Chapter 22: The Foreign Exchange Management Act, 1999 and the significant FEM Regulations	<p>The FEMA, 1999 along with the following Rules/Regulations-</p> <ul style="list-style-type: none"> <li>• Fem (Permissible Capital Account Transactions) Regulations, 2000</li> <li>• Fem (Current Account Transactions) Rules, 2000</li> <li>• FEM (Export of Goods &amp; Services) Regulations, 2015</li> <li>• Overseas Direct Investment</li> <li>• Import of Goods and Services</li> <li>• External Commercial Borrowing Policy</li> </ul>	All other FEM (Regulations)/ Rules are entirely excluded.
Section B- Allied Laws [30 Marks]	Chapter 23: The Competition Act, 2002	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	Following Sections 23, 24, 25, 34, 37, 40 are excluded.
Section B- Allied Laws [30 Marks]	Chapter 24: Overview of Banking Regulations Act,	Content of the chapter of the Study Material is covering an overview of the Act with the broad	

	<p>1949, Insurance Act, 1938, IRDA, 1999 and the SARFAESI Act, 2002</p>	<p>coverage (not in entirety) of the following sections-</p> <p><b>Under the Banking Regulation Act, 1949:</b> Sections 6, 8, 9, 17, 20, 29, 30, 35, 35A, 35B, 35AA, 35AB, 36, 36AA, 36AB, 36AE, 36AF, 36AG, 36AH, 36AI, 36AJ.</p> <p><b>Insurance Act, 1938:</b> Sections 2(1), 2(1A), 2(2), 2(4A)2(5B), 2(6), 2(6B), 2(6C), 2(7), 2(7A), 2(9), 2(10), 2(10A), 2(11), 2(16B), 2(CB), 6, 6A, 13, 14, 15, 27, 29, 30, 32D, 33, 40, 42, 42A, 45, 48A, 52, 64, 64UM, 64V, 64VA.</p> <p><b>IRDA, 1999:</b> Sections 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 2(g), 3-12, 13, 14, 15-17, 18-32.</p> <p><b>SARFAESI Act, 2002:</b> Relevant definitions covered in the Study Material Management of asset by the bank and the financial institutions</p> <p>The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only</p>	<p><b>Under the Banking Regulation Act, 1949</b> All other provisions except given in column (3) are excluded</p> <p><b>Insurance Act, 1938</b> All other provisions except given in column (3) are excluded</p> <p><b>IRDA, 1999</b> All other provisions except given in column (3) are excluded</p> <p><b>SARFAESI Act, 2002</b> Remaining provisions i.e. section 20 and onwards are excluded</p>
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		be relevant for the said examinations.	
Section B- Allied Laws [30 Marks]	Chapter 25: The Prevention of Money Laundering Act, 2002	The entire content included in the Revised June 2018 edition of the Study Material and the Legislative amendments given in the RTP for November 2020 (to be hosted on the website) examinations, shall only be relevant for the said examinations.	<p>Following are the provisions that are excluded:</p> <p>Section related to definitions under 2(1)(a), (b)(c), (d), (da), (f), (g), (h), (i), (ia), (ib), (j), (ja), (k), (m), (o), (q), (r), (rc), (s), (sa), (sb), (sc), (t), (va), (z), (zb) &amp; (2).</p> <p>Sections 6(3) - 6(14)- Adjudicating authorities, composition, powers, etc.</p> <p>Section 7- Staff of Adjudicating Authorities</p> <p>Sections 10- 11 Management of properties confiscated under this Chapter &amp; Power regarding summons, production of documents and evidence, etc.</p> <p>Sections 16- 24- Powers related to search, and seizure etc.</p> <p>35(3)- 35(5)- Powers of the Appellant Tribunal</p> <p>Sections 37- Power of Chairman to transfer cases</p> <p>Sections 39- 40- Right of appellant to take assistance of authorized representative and of Government to appoint presenting officers &amp; Members, etc., to be public servants.</p> <p>Sections 46(2)- (3) - Application of Code of Criminal Procedure, 1973 to</p>

			<p>proceedings before Special Court.</p> <p>Sections 49 to 54- Provisions related to the Powers of appointment of authorities and other officers, jurisdiction, inquiry etc.</p> <p>Sections 58A- Special Court to release the property</p> <p>Section 59 –Reciprocal arrangements</p> <p>Section 67-68- Bar of suits and notice</p> <p>Sections 73- 75- Powers related to making of rules and to remove difficulties</p>
Section B- Allied Laws [30 Marks]	Chapter 26: Interpretation of statutes, deeds and documents	Content of this chapter of the Study Material covers the significant rules and principles of interpretation in a broad manner. Thus, the content of the chapter as included in the study material may be taken into consideration.	-

**Notes:**

- (1) In the above table of Inclusion/exclusion, in respect of the Chapters of the syllabus specified in column (2) the related exclusion is given in column (4). Where an exclusion has been so specified in any topic of the syllabus, the provisions corresponding to such exclusions, covered in other topic(s) forming part of the syllabus, shall also be excluded.
- (2) June 2018 edition of the Study Material is relevant for November 2020 examinations. The amendments - made after the issuance of this Study Material –to the extent covered in RTP for November 2020 examinations, alone shall be relevant for the said examinations. The Legislative amendments will be made available through RTP hosted on the BoS Knowledge Portal.
- (3) Except the exclusions mentioned in the column (4) of the table, the entire content of the syllabus included in the June 2018 edition of the Study Material and the Legislative amendments for November 2020 examinations shall be relevant for the said examinations.