PAPER –1: FINANCIAL REPORTING

PART I

RELEVANT AMENDMENTS, NOTIFICATIONS AND ANNOUNCEMENTS

A. Applicable for May, 2020 Examination

1. The Companies (Indian Accounting Standards) Second Amendments Rules, 2019 notified on 30th March, 2019

Headings	Details
Appendix C, Uncertainty over Income Tax *Treatments,* to Ind AS 12	MCA has inserted a new Appendix C to Ind AS 12, *Uncertainty over Income Tax Treatments.* 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: ➢ 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; ➢ 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; ➢ 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; ➢ 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 ➢ that the judgements and estimates made must be reassessed whenever circumstances have changed or there is new information that affects the judgements.
Amendments to Ind AS 12 – Income tax consequences of payments on financial	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

instruments classified as equity	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	The amendments to Ind AS 19 clarify the accounting for defined benefit plan amendments, curtailments and settlements. They confirm that entities must: ➢ 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; ➢ 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 ➢ separately recognise any changes in the asset ceiling through other comprehensive income.
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 long term interests are not accounted for in accordance with Ind AS 28, instead they are governed by the principles of Ind AS 109. 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.

	Para 38 of Ind AS 38 further states that the losses that exceed he 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. 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: **Step 1: Apply Ind AS 109 independently** 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.) **Step 2: True-up past allocations** 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. **Step 3: Book current year equity share** 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.
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 – Prepayment Features with Negative Compensation	Some prepayment options could result in other party being forced to accept negative compensation – e.g. the lender receives an amount less than the unpaid amounts of principal and interest if the borrower chooses to prepay. 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,

	the negative compensation must be 'reasonable compensation for early termination of the contract' and the asset must be held within a 'held to collect' business model. To be eligible for the exception, the fair value of the prepayment feature would have to be **insignificant on initial recognition** 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.
Amendment to Ind AS 111 – Joint control over a joint operation achieved in stages	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.

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 an d 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 20th 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 28th 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.

- <u>Amendment to Ind AS 40, Investment Property</u> 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.

- <u>Amendments to Ind AS 12, Income Taxes</u> 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.

- <u>Amendment to Ind AS 28, Investments in Associates and Joint Ventures and Ind AS 112, Disclosure of Interests in Other Entities</u> 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.
- <u>Consequential amendments</u> 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:

  - <u>Ind AS 115:</u> 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 30th 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	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.

	a Contract with Customer:		
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, excluding amounts collected on behalf of third parties.	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 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.

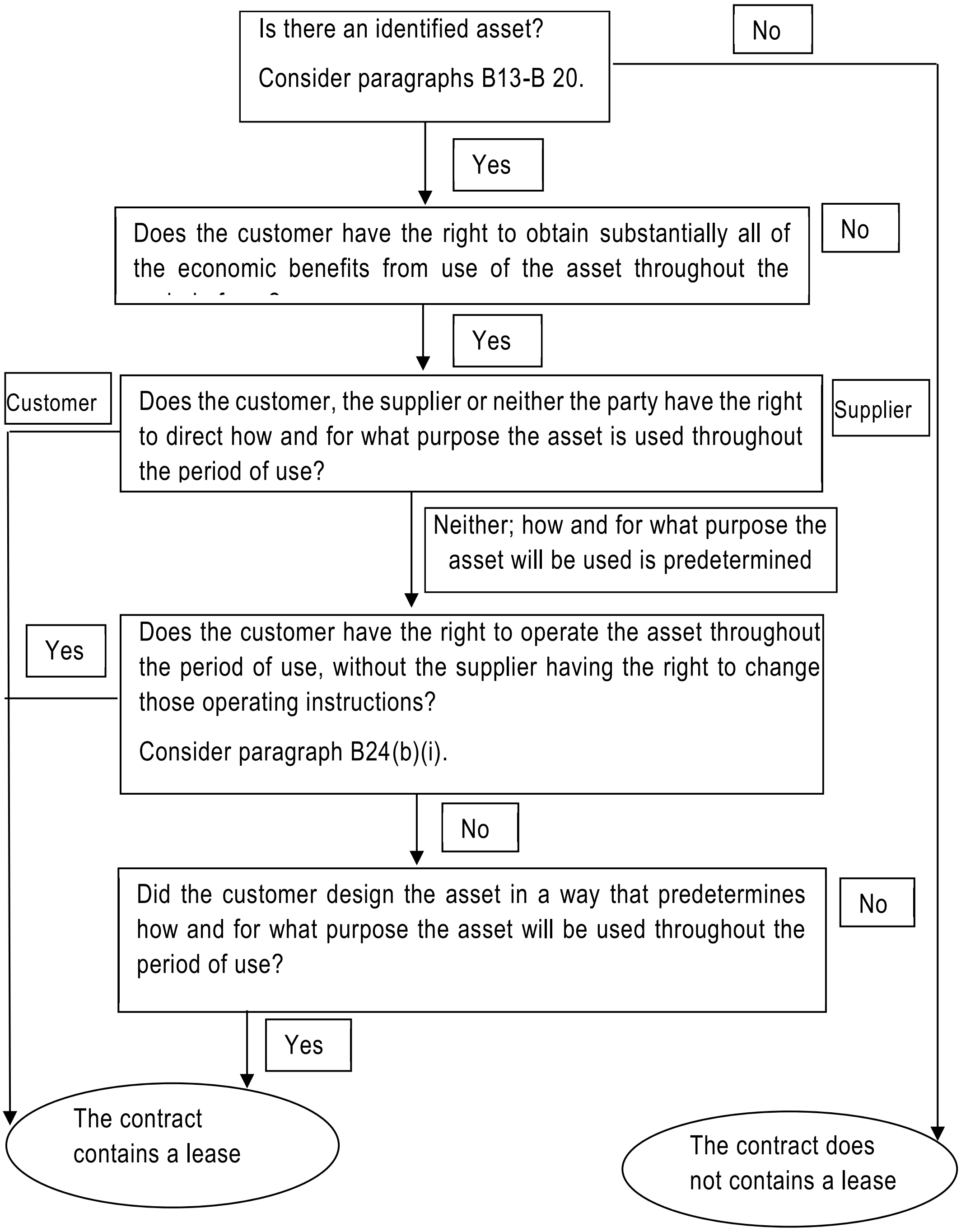
If a lessee subleases an asset, or expects to sublease an asset, the head lease does not qualify as a lease of a low-value asset. Examples of low-value underlying assets can include tablet and personal computers, small items of office furniture and telephones.

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

Determine whether transfer of asset is a sale of that asset

transfer of asset is a sale	transfer of asset is a not a sale
Transaction will be accounted for as a sale and a lease by both the lessee and the lessor.	Transaction will be accounted for as a financing arrangement by both the seller-lessee and the buyer-lessor
<u>Seller-lessee</u> • Measure right-of-use asset at proportion of previous carrying amount of asset relating to right of-use asset retained by selle rlessee. • Recognise only amount of gain or loss relating to rights transferred to buyer-lessor. <u>Buyer-lessor</u> • Account for purchase of asset applying applicable standards. • Account for lease applying lessor accounting requirements under Ind AS 116.	<u>Seller-lessee</u> • Continue to recognise transferred asset. • Recognise financial liability equal to transfer proceeds applying Ind AS 109. <u>Buyer-lessor</u> • Not recognise transferred asset. • Recognise financial asset equal to transfer proceeds applying Ind AS 109.

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.	**Lease definition**	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.	**Modifications**	Ind AS 116 brings in comprehensive prescription on accounting of modifications in lease contracts.	No such guidance given therein
3.	**Scope:**	Ind AS 116 has no such scope exclusion.	AS 19 excludes leases of land from its scope.
4.	**Inception of lease and commencement of lease**	Ind AS 116 makes a distinction between 'inception of lease' and 'commencement of lease'	No such distinction is there
5	**Classification**	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	**Sale & Leaseback transactions**	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.	**Interest rate implicit in the lease'**	Definition of the term 'interest rate implicit in the lease' has been modified	Different definition given
9.	**Presentation**	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.	**Disclosure**	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 2

1. (a) Kirti Ltd. is in the business of manufacturing computers. During the year ended 31st March, 20X1, the company manufactured 550 computers. It has the policy of valuing finished stock of goods at a standard cost of ₹ 1.8 lakh per computer. The details of the costs are as under:

	(₹ in lakh)
Raw material consumed	400
Direct Labour	250
Variable production overheads	150
Fixed production overheads (including interest of ₹ 100 lakh)	290

Compute the value of cost per computer for the purpose of closing stock and also comment on the policy of valuation of inventory adopted by Kirti Ltd.

AS 3

(b) Purse Ltd., a non financial company has the following entries in its Bank Account. It has sought your advice on the treatment of the same for preparing Cash Flow Statement.

(i) Loans and Advances given to the following and interest earned on them:

(1) to suppliers

(2) to employees

(3) to its subsidiaries companies

(ii) Investment made in subsidiary Wallet Ltd. and dividend received

(iii) Dividend paid for the year

(iv) TDS on interest income earned on investments made

(v) TDS on interest earned on advance given to suppliers

(vi) Insurance claim received against loss of property, plant and equipment by fire.

Discuss in the context of AS 3 'Cash Flow Statement'.

AS 4

2. (a) For seven companies whose financial year ended on 31st March, 20X1, the financial statements were approved by their approving authority on 15th June, 20X1.

During 20X1-20X2, the following material events took place:

a. A Ltd. sold a major property which was included in the balance sheet at ₹ 1,00,000 and for which contracts had been exchanged on 15th March, 20X1. The sale was completed on 15th May, 20X1 at a price of ₹ 2,50,000.

b. On 30th April, 20X1, a 100% subsidiary of B Ltd. declared a dividend of ₹ 3,00,000 in respect of its own shares for the year ended on 31st March, 20X1.

c. On 31st May, 20X1, the mail order activities of C Ltd. (a retail trading group) were shut down with closure costs amounting to ₹ 2.5 million.

d. On 1st July, 20X1 the discovery of sand under D Ltd.'s major civil engineering contract site causes the cost of the contract to increase by 25% for which there would be no corresponding recovery from the customer.

e. A fire, on 2nd April, 20X1, completely destroyed a manufacturing plant of E Ltd. It was expected that the loss of ₹ 10 million would be fully covered by the insurance company.

f. A claim for damage amounting to ₹ 8 million for breach of patent had been received by F Ltd. prior to the year-end. It is the director's opinion, backed by legal advice that the claim will ultimately prove to be baseless. But it is still estimated that it would involve a considerable expenditure on legal fees.

g. The change in foreign exchange rate of 8% between 1st April, 20X1 and 1st June, 20X1 has resulted in G Ltd.'s foreign assets being reduced by ₹ 1.3 million.

You are required to state with reasons, how each of the above items numbered (a) to (g) should be dealt with in the financial statement of the various companies for the year ended 31st March, 20X1.

AS 5

(b) Explain whether the following will constitute a change in accounting policy or not as per AS 5:

(i) Introduction of a formal retirement gratuity scheme by an employer in place of ad hoc ex-gratia payments to employees on retirement.

(ii) Management decided to pay pension to those employees who have retired after completing 5 years of service in the organistaion. Such employees will get pension of ₹ 20,000 per month. Earlier there was no such scheme of pension in the organization.

AS 7

3. (a) Vatika Ltd. has undertaken bridge construction contract wherein, bridge will be constructed in 3 years. The details of the contracts are as follows:

(i) Initial contract revenue ₹ 900 crore

(ii) Initial contract cost ₹ 800 crore

	Years		
	I	II	III
	₹ in crore	₹ in crore	₹ in crore
Estimated contract cost	805		
Increase in contract revenue	-	20	
Estimated additional increase cost	-	15	
Contract cost incurred upto	161	584	820

At the end of year II, cost incurred includes ₹ 10 crore, for material stored at the sites to be used in year III to complete the project.

State the amount of revenue, expenses and profit to be recognized in the Statement of Profit and Loss in these three years.

AS 9

(b) When will the revenue be recognized in the case of inter divisional transfers?

(c) New Era Publications publishes a monthly magazine on 15th of every month. It sells advertising space in the magazine to advertisers on the terms of 80% sale value payable in advance and the balance within 30 days of the release of the publication. The sale of space for the March 20X1 issue was made in February 20X1. The magazine was published on its scheduled date. It received ₹ 2,40,000 on 10.3.20X1 and ₹ 60,000 on 10.4.20X1 for the March 20X1 issue.

Discuss in the context of AS 9 the amount of revenue to be recognized and the treatment of the amount received from advertisers for the year ending 31.3.20X1. What will be the treatment if the publication is delayed till 2.4.20X1?

AS 11

4. (a) Path Ltd. purchased an item of property, plant and equipment for US $ 50 lakh on 01.04.20X1 and the same was fully financed by the foreign currency loan [i.e. US $] repayment in five equal instalments annually. (Exchange rate at the time of purchase was 1 US $ = ₹ 60]. As on 31.03.20X2 the first instalment was paid when 1 US $ fetched ₹ 62.00. The entire loss on exchange was included in cost of goods sold. Path Ltd. normally provides depreciation on an item of property, plant and equipment at 20% on WDV basis and exercised the option to adjust the cost of asset for exchange difference arising out of loan restatement and payment. Calculate the amount of exchange loss and its treatment and depreciation.

AS 12

(b) Energy Ltd. has acquired a generator on 1.4.20X1 for ₹ 100 lakh. On 2.4.20X1, it applied to Indian Renewal Energy Development Authority (IREDA) for a subsidy. The subsidy was granted in June, 20X2 after the accounts for 20X1-20X2 were finalized. The company has not accounted for the subsidy for the year ended 31.3.20X2.

State

(i) Is this a prior period item?

(ii) How should the subsidy be accounted in the accounting year 20X2-20X3?

(iii) Would your opinion differ, if the sanction letter for subsidy was received in June 20X2 before the accounts for 20X1-20X2 were approved by the Board of Directors?

(iv) Would your opinion differ had the company made many similar applications in the past and on all occasions, it has received the subsidy applied for?

AS 13

5. (a) A company is engaged in the business of refining, transportation and marketing of petroleum products. During the financial year ended 31st March, 20X1, the company acquired controlling interest from Government of India in another public sector undertaking @ ₹ 1,551 per share as against the book value of ₹ 192.58 per share and market value of ₹ 876 per share as on 18th February, 20X1.

Thus, the strategic premium of ₹ 675 per share has been paid considering various tangible and intangible factors.

The above investment in the shares of the acquired company has been considered as long term strategic investment and, therefore, has been accounted for at cost, i.e. at ₹ 1,551 per share in the financial statements. No provision for diminution in value has been made in the books of account.

As per the requirement of Schedule III to the Companies Act, 2013, the aggregate market value of the quoted shares has been properly reflected in the financial statements.

On 28th March, 20X1, the acquired shares were quoted at ₹ 880 per share on BSE and the current market price as on 18th July was around ₹ 300.

Considering the tangible and intangible benefits the Management is of the view that there is no permanent diminution in the value of the strategic investment in the acquired company, as the same has been considered as a long-term investment. Therefore, there is no need for provision for diminution in the value of the shares of the acquired company.

Required:

(i) Whether the accounting treatment 'at cost' under the head 'Long Term Investments' without providing for any diminution in value is correct and in accordance with the provisions of AS 13.

(ii) If not, what should have been the accounting treatment in such a situation particularly considering the fact that there is no material change in circumstances and strength of the acquired company which further supported the expected benefits from such synergy? Whether the reduction in market value should be considered in isolation for ascertaining the value of such investment or not? What methodology should be adopted for ascertaining the provision for diminution in the value of investment, if any?

(iii) If any provision for diminution in the value is to be made, whether such provision should be charged to the profit and loss account or whether same can be considered as deferred expenditure and amortised over a period of 5 years. Whether it is open for the company to charge off such diminution in the value in the books of account instead of creating provision.

(iv) Whether the premium paid for strategic benefits for investment described in facts of the case, can be accounted for separately in the books of account keeping in view that AS 13 specifies that long term investments should be recorded at cost and there is no specific provision in the standard in respect of accounting for premium paid for strategic benefits.

AS 16

(b) Arohi Ltd. has undertaken a project for expansion of capacity as per the following details:

	Plan (₹)	Actual (₹)
October, 20X1	5,00,000	4,00,000
November, 20X1	6,50,000	7,95,000
December, 20X1	20,00,000	-
January, 20X2	2,00,000	50,000
February, 20X2	9,00,000	2,00,000
March, 20X2	10,00,000	12,00,000

The company pays to its bank interest at a rate of 15% p.a., which is debited on a monthly basis. During the half year, company had ₹ 20 lakh overdraft up to 31st December, surplus cash in January and again overdraft of ₹ 14 lakh from 1.2.20X2 and ₹ 30 lakh from 1.3.20X2. The company had a strike during December and hence could not continue the work during said period. However, the substantial administrative work related to the project was continued. Onsite work was again commenced on 1st January and all the work were completed on 31st March. Assume that expenditure was incurred on 1st day of each month.

Calculate interest to be capitalized giving reason wherever necessary. Assume overdraft will be less, if there is no capital expenditure.

AS 17

6. (a) Whether interest expense relating to overdrafts and other operating liabilities identified to a particular segment should be included in the segment expense or not?

In case interest is included as a part of the cost of inventories where it is so required as per AS 16, read with AS 2 and those inventories are part of segment assets of a particular segment, state whether such interest would be considered as a segment expense.

AS 20

(b) The following information is available in respect of High-end Ltd. for the accounting year 20X1-20X2 and 20X2-20X3:

Net profit for		₹
Year	20X1-20X2	22,00,000
Year	20X2-20X3	30,00,000

Number of shares outstanding prior to right issue 10,00,000 shares.

Right issue: One new share for each five shares outstanding i.e. 2,00,000 shares.

: Right issue price ₹ 25

: Last date to exercise right 31st July, 20X2.

Fair value of one equity share immediately prior to exercise of rights on 31.07.20X2 is ₹ 32.

You are required to compute, as per AS 20:

(i) Basic earnings per share for the year 20X1-20X2.

(ii) Restated basic earnings per share for the year 20X1-20X2 for right issue.

(iii) Basic earnings per share for the year 20X2-20X3.

AS 23

7. (a) A Ltd. has a share capital of 50,000 shares @ ₹ 100 per share. H Ltd. acquired 15% shares in A Ltd. on 1.4.20X1. It also acquired all the 5,000, 12% convertible debentures of ₹ 100 each of A Ltd. These debentures will be converted at par into equity shares of A Ltd. after 3 years. State whether, as per AS 23, A Ltd. is an Associate of H Ltd. or not with reasons?

AS 24

(b) Arzoo Ltd. is in the business of manufacture of Passenger cars and commercial vehicles. The company is working on a strategic plan to shift from the Passenger car segment over the coming 5 years. However, no specific plans have been drawn up for sale of neither the division nor its assets. As part of its plan it will reduce the production of passenger cars by 20% annually. It also plans to commence another new factory for the manufacture of commercial vehicles plus transfer of employees in a phased manner.

(i) You are required to comment if mere gradual phasing out in itself can be considered as a 'Discontinuing Operation' within the meaning of AS 24.

(ii) If the company passes a resolution to sell some of the assets in the passenger car division and also to transfer few other assets of the passenger car division to the new factory, does this trigger the application of AS 24?

(iii) Would your answer to the above be different if the company resolves to sell the assets of the Passenger Car Division in a phased but time bound manner?

AS 28

8. (a) A publisher owns 150 magazine titles of which 70 were purchased and 80 were self-created. The price paid for a purchased magazine title is recognised as an intangible asset. The costs of creating magazine titles and maintaining the existing titles are recognised as an expense when incurred. Cash inflows from direct sales and advertising are identifiable for each magazine title. Titles are managed by customer segments. The level of advertising income for a magazine title depends on the range of titles in the customer segment to which the magazine title relates. Management has a policy to abandon old titles before the end of their economic lives and replace them immediately with new titles for the same customer segment.

What is the cash-generating unit as per AS 28?

AS 29

(b) A company incorporated under Section 8 of the Companies Act, 2013, have main objective to promote the trade by organizing trade fairs / exhibitions. When company was organizing the trade fair and exhibitions it decided to charge 5% contingency charges for the participants/outside agencies on the income received from them by the company, while in the case of fairs organized by outside agencies, 5% contingency charges are levied separately in the invoice, the contingency charges in respect of fairs organized by the company itself are inbuilt in the space rent charged from the participants. Both are credited to Income and Expenditure Account of the company.

The intention of levying these charges is to meet any unforeseen liability, which may arise in future. The instances of such unforeseen liabilities could be on account of injury/loss of life to visitors/ exhibitors, etc., due to fire, terrorist attack, stampede, natural calamities and other public and third party liability. The chances of occurrence of these events are high because of large crowds visiting the fair.

The decision to levy 5% contingency charges was based on assessment only as actual liability on this account cannot be estimated.

The following accounting treatment and disclosure was made by the company in its financial statements:

1. 5% contingency charges are treated as income and matching provision for the same is also being made in accounts.
2. A suitable disclosure to this effect is also made in the notes forming part of accounts.

Required:

(i) Whether creation of provision for contingencies under the facts and circumstances of the case is in conformity with AS 29.

(ii) If the answer of (i) is "No" then what should be the treatment of the provision which is already created in the balance sheet.

Indian Accounting Standards

9. (a) State the carve out in Ind AS 32 "Financial Instruments: Presentation" from IAS 32 "Financial Instruments: Presentation" alongwith the reason.

(b) Explain the differences between Ind AS 37 "Provisions, Contingent Liabilities and Contingent Assets" and AS 29 "Provisions, Contingent Liabilities and Contingent Assets".

Corporate Financial Reporting

10. (a) On the basis of available information, show how these items will appear in the Balance Sheet of a Corporate Entity by preparing appropriate notes to accounts which comply with the requirements of the Schedule III to the Companies Act, 2013:

Loan Fund	Schedule No.	As at 31st March 20X1 (₹)
(a) Secured Loans	1	15,11,220
(b) Unsecured loans - Short term loan from Bank		1,24,190
		16,35,410
Schedule 1: Secured Loans		
Term loans from		
Bank		7,45,120
Others		7,66,100
		15,11,220

Other Information:		
Current maturities of long-term loan from bank		1,15,000
Current maturities of long-term loan from other parties		80,940

Note: There was no interest accrued/due as at the end of the year.

(b) Arush Ltd. provides following information:

Raw Material stock holding period : 3.5 months

Work-in-progress holding period : 1 month

Finished goods holding period : 4.5 months

Debtors collection period : 6 months

You are required to compute the operating cycle of Arush Ltd. What would happen if the trade payables of the company are paid in 14 months. Whether such trade payables are classified as current or non-current liability?

(c) The management of Kshitij Ltd. contends that the work in progress is not valued because it is difficult to ascertain the same in view of the multiple processes involved. They opine that the value of opening and closing work in progress would be more or less the same. Accordingly, the management had not separately disclosed the work in progress in its financial statements. Comment in line with the Schedule III to the Companies Act, 2013.

Accounting for Corporate Restructuring

11. As part of its expansion strategy A Ltd. has decided to amalgamate its business with that of B Ltd. and new company AB Ltd. being incorporated on the 1st December, 20X1 having an authorized equity capital of 2 crore shares of ₹ 10 each. AB Ltd. shall in turn acquire the entire ownership of A Ltd. and B Ltd. in consideration for issuing its equity at 25% premium on 1st January, 20X2. It is also agreed that the consideration shall be based on the product of the profits available to equity shareholders of each entity, times it PE multiple. The preference shareholders & debenture holders are to be satisfied by the issue of similar instruments in AB Ltd. on 1st January, 20X2 in lieu of their existing holdings. Accordingly, the relevant information is supplied to you as under:

	A Ltd.	*B Ltd.*
Paid up Equity shares of ₹ 10 class (Nos.)	3 Lakh	1.2 Lakh
8% Preference Shares ₹ 10 paid (Nos.)		1 Lakh
5% Redeemable Debentures 20X7-20X8 of ₹ 10 each (Nos.)		0.8 Lakh
Profits before Interest & Taxation (₹)	6,00,000	4,40,000
Price to Earnings Multiple	15	10

To augment the cash retention level of AB Ltd. it is decided that on 1st January, 20X2 AB Ltd. shall collect full share application money from the issue of 20,00,000 equity shares @ 40% premium under Private Placement. The allotment of the shares will be made on 31st March, 20X2 and such shares shall qualify for dividend from 20X2-20X3 only.

AB Ltd. shall also avail a 12.50% TOD of 15 lakh to meet its preliminary expenses and cost of working which amount to ₹ 12 lakh and ₹ 2 lakh respectively. The TOD will be availed on 1st February, 20X2 and closed on 31st March, 20X2. Preliminary expenditure is tax deductible @ 20% each year.

Due to an accounting omission the opening inventory of B Ltd. of 5 lakh (actual value) & the closing stock of A Ltd. of 2.20 lakh was understated & overstated by 5% and 10% respectively.

The dividend schedule proposed is that all companies would pay interim dividend for equity, for the period from 1st January, 20X2 to 31st March, 20X2. The rates of dividend being A Ltd. @ 5%, B Ltd. @ 2% and AB Ltd. @ 3.5%. The preference shareholders & debentureholders dues for the post take over period are discharged on 31st March, 20X2.

It is proposed that in the period January-March 20X2, AB Ltd. would carry out trade in futures that would generate an absolute post tax return of 18% by using the funds generated from the Private Placement. The trades would be squared off on 31st March, 20X2. Proceeds from such transactions are not liable to withholding taxes.

You are required to prepare a projected Profit & Loss A/c for the period ended 31st March, 20X2 and a Balance Sheet on that date for AB Ltd.

The corporate tax rate for the company is 40%.

Consolidated Financial Statements

12. P Ltd. owns 80% of S and 40% of J and 40% of A. J is jointly controlled entity and A is an associate. Summarised Balance Sheets of four companies as on 31.03.20X2 are:

				(₹ in lakh)
	P Ltd.	S	J	A
Investment in S	800	-	-	-
Investment in J	600	-	-	-
Investment in A	600	-	-	-
Property, Plant and Equipment	1000	800	1400	1000
Current assets	2200	3300	3250	3650
Total	5200	4100	4650	4650

Liabilities:				
Share capital ₹ 1				
Equity share	1000	400	800	800
Retained earnings	4000	3400	3600	3600
Trade payables	200	300	250	250
Total	5200	4100	4650	4650

P Ltd. acquired shares in 'S' many years ago when 'S' retained earnings were ₹ 520 lakh. P Ltd. acquired its shares in 'J' at the beginning of the year when 'J' retained earnings were

₹ 400 lakh. P Ltd. acquired its shares in 'A' on 01.04.20X1 when 'A' retained earnings were ₹ 400 lakh.

The balance of goodwill relating to S had been written off three years ago. The value of goodwill in 'J' remains unchanged.

Prepare the Consolidated Balance Sheet of P Ltd. as on 31.03.20X2 as per AS 21, 23, and 27.

Financial Instruments

13. On 1st April, 20X1, S Ltd. issued 5,000, 8% convertible debentures with a face value of ₹ 100 each maturing on 31st March, 20X7. The debentures are convertible into equity shares of S Ltd. at a conversion price of ₹ 105 per share. Interest is payable annually in cash. At the date of issue, S Ltd. could have issued non-convertible debt with a 5 year term bearing a coupon interest rate of 12%. On 1st April, 20X4 the convertible debentures have a fair value of ₹ 5,25,000. S Ltd. makes a tender offer to debenture holders to repurchase the debentures for ₹ 5,25,000, which the holders accepted. At the date of repurchase, S Ltd. could have issued non-convertible debt with a 2 year term bearing a coupon interest rate of 9%.

    Show accounting entries in the books of S Ltd. for recording of equity and liability component:

    (i) At the time of initial recognition and

    (ii) At the time of repurchase of the convertible debentures.

    The following present values of ₹ 1 at 8%, 9% & 12% are supplied to you:

Interest Rate	Year 1	Year 2	Year 3	Year 4	Year 5
8%	0.926	0.857	0.794	0.735	0.681
9%	0.917	0.842	0.772	0.708	0.650
12%	0.893	0.797	0.712	0.636	0.567

Share Based Payments

14. At the beginning of year 1, an enterprise grants 100 stock options to each of its 500 employees. The grant is conditional upon the employee remaining in service over the next three years. The enterprise estimates that the fair value of each option is ₹ 15. The enterprise estimates that 100 employees will leave during the three-year period and therefore forfeit their rights to the stock options.

    40 employees left during year 1. By the end of year 1, the share price of the enterprise has dropped, and the enterprise reprices its stock options in the year 2 and that the repriced stock options will vest at the end of year 3. The enterprise estimates that further 70 employees will leave during years 2 and 3.

    During year 2, further 35 employees left, and the enterprise estimates that further 30 employees will leave during year 3. During year 3, 28 employees left. The stock options vested at the end of year 3 to the remaining employees.

    The enterprise estimates that, at the date of repricing, the fair value of each of the original stock options granted (i.e., before taking into account the repricing) is ₹ 5 and that the fair value of each repriced stock option is ₹ 8.

    Calculate the amount to be recognised towards employees services received in years 1-3.

Mutual Fund

15. Calculate the NAV of a Mutual Fund Scheme from the information given below:

    At the beginning of the year:

Number of units outstanding	1 Crore units of ₹ 10 each
Investment at cost	₹ 10 crore (Market Value ₹ 16 crore)
Outstanding Liabilities	₹ 5 crore

    Other Information:

    (1) Additional 20 lakh units were sold during the year at ₹ 24.

    (2) No additional investments were made during the year and as at the year end, 50% of the investment at year beginning were quoted at 80% of the book value.

    (3) 10% of the investments had witnessed a permanent fall of 10% below cost.

    (4) The balance investments were quoted at ₹ 13.60 crore.

    (5) Outstanding liabilities towards custodian charges, salaries and commission etc. applicable to the scheme were 1 crore.

Non Banking Financial Companies

16. R Limited is a non-banking finance company. It accepts public deposit and also deals in

hire purchase business. It provides you with the following information regarding major hire purchase deals as on 31.3.20X1. Few machines were sold on hire purchase basis. The hire purchase price was set as ₹ 100 lakh as against the cash price of ₹ 80 lakh. The amount was payable as ₹ 20 lakh down payment and balance in 5 equal instalments. The hire vendor collected first instalment as on 31.3.20X2, but could not collect the second instalment which was due on 31.3.20X3. The company was finalising accounts for the year ending 31.3.20X3. Till 15.5.20X3, the date on which the Board of Directors signed the accounts, the second instalment was not collected. Presume IRR to be 10.42%.

Required:

(i) What should be the principal outstanding on 1.4.20X2? Should the company recognize finance charge for the year 20X2-20X3 as income?

(ii) What should be the net book value of assets as on 31.3.20X3 so far R Ltd. is concerned as per NBFC prudential norms requirement for provisioning?

(iii) What should be the amount of provision to be made as per prudential norms for NBFC laid down by the RBI?

Valuation of Shares

17. Following is the Balance Sheet of Hoorey Ltd. as on 31st March, 20X6:

Liabilities	₹	*Assets*	₹
50,000 equity shares of ₹ 10 each	5,00,000	Building	3,50,000
2,500, 12% Preference shares of ₹ 100 each	2,50,000	Plant and Machinery	4,30,000
Profit & Loss A/c	2,20,000	Patents	80,000
15% Debentures	1,20,000	Trade Receivables	2,00,000
General Reserve	1,80,000	Stock in trade	2,90,000
Trade Payables	1,50,000	Cash at Bank	70,000
	14,20,000		14,20,000

Buildings & Plant and Machinery were acquired many years ago and should be considered as worth of ₹ 5,00,000 and ₹ 6,30,000 respectively.

The Profits for the last five years were as follows:

Year	*Profit (before tax)* ₹
20X1-20X2	1,80,000
20X2-20X3	2,50,000
20X3-20X4	60,000

20X4-20X5	3,00,000
20X5-20X6	3,50,000

The company paid a remuneration of ₹ 50,000 p.a. to the managerial personnel, but in future it will be paying ₹ 75,000, the increase having been sanctioned by the Government. During 20X3-20X4, there was a prolonged strike, resulting in low profits. There has been no substantial change in the capital employed. The company has paid a dividend of 12 percent on equity shares consistently and proposes to stick to this rate in the foreseeable future. In the class of business to which the company belongs, the dividend rates have been fluctuating and the asset backing of an equity share is about 2 times. Equity shares with an average dividend of 15% sell at par. The company is anxious to provide funds for replacement of assets when due, for which it is proposed to make 20% provision on PAT. Assume future tax rate to be 40%. Calculate the value of an equity share of Hoorey Ltd. on yield basis.

Value Added Statement

18. Hindusthan Corporation Limited (HCL) has been consistently preparing Value Added Statement (VAS) as part of Financial Reporting. The Human Resource department of the Company has come up with a new scheme to link employee incentive with 'Value Added' as per VAS. As per the scheme an Annual Index of Employee cost to Value Added annually (% of employee cost to Value Added rounded off to nearest whole number) shall be prepared for the last 5 years and the best index out of results of the last 5 years shall be selected as the 'Target Index'. The Target Index percentage shall be applied to the figure of 'Value Added' for a given year to ascertain the target employee cost. Any saving in the actual employee cost for the given year compared to the target employee cost will be rewarded as 'Variable incentive' to the extent of 70% of the savings. From the given data, you are requested to ascertain the eligibility of 'Variable Incentive' for the year 20X6-20X7 for the employees of the HCL.

Value added statement of HCL for last 5 years (₹ in lakh)

Year	20X1-X2	20X2-X3	20X3-X4	20X4-X5	20X5-X6
Sales	3,200	3,250	2,900	3,800	4,900
Less: Bought out goods and services	2,100	2,080	1,940	2,510	3,200
Value added	1,100	1,170	960	1,290	1,700

Application of Value Added

Year	20X1-X2	20X2-X3	20X3-X4	20X4-X5	20X5-X6
To Pay Employees	520	480	450	600	750
To Providers of Capital	160	170	120	190	210

To Government Tax	210	190	220	300	250
For Maintenance and expansion	210	330	170	200	490

Summarized Profit and Loss Account of the HCL for 20X6-20X7 (₹ in lakh)

Sales		5,970
Less: Material consumed	1,950	
Wages	400	
Production salaries	130	
Production expenses	500	
Production depreciation	150	
Administrative salaries	150	
Administrative expenses	200	
Administrative depreciation	100	
Interest	150	
Selling and distribution salaries	120	
Selling expenses	350	
Selling depreciation	120	4,320
Profit		1,650

Economic Value Added

19. Life Industries Ltd (LIL) furnishes the following information from which you are required to calculate the prevailing Economic Value Added of the company and also explain the reason for the difference, if any, between the EVA as calculated by you and the MVA (Market Value Added) of LIL amounting to ₹ 14005 crore.

Common shares of ₹ 1,000 face value	1,58,200 units
12% Debentures ₹ 10 face value	50,00,000 units
Current tax rate	30%
Financial Leverage	1.1 times
Securities Premium Account (Rupees in lakh)	155
Free Reserves (Rupees in lakh)	154
Capital Reserve (Rupees in lakh)	109

It is a prevailing practice for companies in the industry to which LIL belongs to pay at least a dividend of 15% p.a. to its common shareholders.

Human Resource Accounting

20. A company has a capital base of ₹ 1 crore and has earned profits to the tune of ₹ 11 lakh. The Return on Investment (ROI) of the particular industry to which the company belongs is 12.5%. If the services of a particular executive are acquired by the company, it is expected that the profits will increase by ₹ 2.5 lakh over and above the target profit.

    Determine the amount of maximum bid price for that particular executive and the maximum salary that could be offered to him.

ANSWERS

1. (a) As per para 9 of AS 2 'Valuation of Inventories', for inclusion in the cost of inventory, allocation of fixed production overheads is based on the normal capacity of the production facilities.

In this, case finished stock has been valued at a standard cost of ₹ 1.8 lakh per computer which incidentally synchronizes with the value computed on the basis of absorption costing as under:

		(₹ in lakh)
Materials		400
Direct Labour		250
Variable production overheads		150
Fixed production overheads	290	
Less: Interest	(100)	190
Total cost		990

Number of computers produced = 550 computers (Assumed to be normal production)

Cost per computer ₹ 990 lakh / 550 computers = ₹ 1.80 lakh

Policy of the company to value closing stock on the basis of standard costing is not as per AS 2. As per para 18 of AS 2, the techniques of standard cost method may be used for convenience if the result approximates to the actual cost. However, standard cost should be regularly reviewed, if necessary, and be revised in the light of the current conditions. In the instant case, the cost of inventory can be conveniently calculated as per absorption costing. Therefore, there is no reason to adopt standard costing method.

(b) Treatment as per AS 3 'Cash Flow Statement'

(i) Loans and advances given and interest earned

(1) to suppliers — Cash flows from operating activities

(2) to employees — Cash flows from operating activities

(3) to its subsidiary companies — Cash flows from investing activities

(ii) Investment made in subsidiary company and dividend received

Cash flows from investing activities

(iii) Dividend paid for the year

Cash flows from financing activities

(iv) TDS on interest income earned on investments made

Cash flows from investing activities

(v) TDS on interest earned on advance given to suppliers

Cash flows from operating activities

(vi) Insurance claim received against loss of property, plant and equipment by fire.

Extraordinary item to be shown under a separate heading as 'Cash inflow from operating activities'.

2. (a) Treatment as per AS 4 'Contingencies and Events Occurring After the Balance Sheet Date'

(a)	A Ltd.	The sale of property should be treated as an adjusting event since contracts had been exchanged prior to the year-end. The effect of the sale would be reflected in the financial statements ended on 31.3.20X1 and the profit on sale of property ₹ 1,50,000 would be treated as an extraordinary item.
(b)	B Ltd.	The declaration of dividend on 30th April, 20X1 of ₹ 3,00,000 would be treated as a non-adjusting event in the financial statements of 20X0-20X1. This is because, the dividend has been declared after the balance sheet date and no conditions existed on the balance sheet date for such declaration of dividend. Further as per AS 9, right to receive dividend is established when it is declared and not before that.
(c)	C Ltd.	A closure not anticipated at the year-end would be treated as a non-adjusting event. Memorandum disclosure would be required for closure of mail order activities since non disclosure would affect user's understanding of the financial statements.
(d)	D Ltd.	The event took place after the financial statements were approved by the approving authority and is thus outside the purview of AS 4. However, in view of its significance of the transaction, the directors may consider publishing a separate

		financial statement/additional statement for the attention of the members in general meeting.
(e)	E Ltd.	The event is a non-adjusting event since it occurred after the year-end and does not relate to the conditions existing at the year-end. However, it is necessary to consider the validity of the going concern assumption having regard to the extent of insurance cover. Also, since it is said that the loss would be fully recovered by the insurance company, the fact should be disclosed by way of a note to the financial statements.
(f)	F Ltd.	On the basis of evidence provided, the claim against the company will not succeed. Thus, ₹ 8 million should not be provided in the account, but should be disclosed by means of a contingent liability with full details of the facts as per AS 9. Provision should be made for legal fee expected to be incurred to the extent that they are not expected to be recovered.
(g)	G Ltd.	The change in exchange rates is a non adjusting event since it does not relate to the conditions existing at the balance sheet date. However, they may be of such significance that they may require a disclosure in the report of the approving authority to enable users of financial statements to make proper evaluations and decisions.

(b) As per para 31 of AS 5 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies', the adoption of an accounting policy for events or transactions that differ in substance from previously occurring events or transactions, will not be considered as a change in accounting policy.

(i) Accordingly, introduction of a formal retirement gratuity scheme by an employer in place of ad hoc ex-gratia payments to employees on retirement is not a change in an accounting policy.

(ii) Similarly, the adoption of a new accounting policy of paying pension to retired employees is a policy for events or transactions which did not occur previously. Hence, it will not be treated as a change in an accounting policy.

3. (a) Statement showing analysis of the contract details

				(₹ in crore)
		Year I	*Year II*	*Year III*
(a)	Initial revenue agreed	900	900	900
(b)	Increase in contract revenue	-	20	20
(c)	Total Contract Value	900	920	920

(d)	Contract cost incurred upto the date of reporting	161	574 (excluding ₹ 10 crore of material stored)	820
(e)	Estimated cost to complete	644	246	-
(f)	Total estimated contract	805	820	820
(g)	Stage of Completion [(d/f) x 100)]	20% (161/805x100)	70% (574/820x100)	100% (820/820x100)

Statement showing amount of revenue, expenses and profit to be recognized in the Statement of Profit and Loss in three years (₹ in crore)

	Upto reporting date	*Recognised in the prior year*	*Recognized in the current year*
Year I			
Revenue (900 x 20/100)	180	-	180
Expenses	161	-	161
Profit	19	-	19
Year II			
Revenue (920 x 70/100)	644	180	464
Expenses (820 x 70/100)	574	161	413
Profit	70	19	51
Year III			
Revenue	920	644	276
Expenses	820	574	246
Profit	100	70	30

(b) The Accounting Standard Board of ICAI has come up with an announcement in the earlier years wherein it clarified that the inter-divisional transfers / sales are not revenue as per AS 9 "Revenue Recognition". According to it, in case of inter-divisional transfers, risks and rewards remain within the enterprise and also there is no consideration from the point of view of the enterprise as a whole. Therefore, the recognition criteria for revenue recognition are also not fulfilled in respect of inter-divisional transfers. Hence, no revenue is recognized in the case of inter-divisional transfers.

(c) As per AS 9 'Revenue Recognition', in a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method as the service is performed, whichever relates the revenue to the work accomplished.

In the given case, income accrues when the related advertisement appears before public. The advertisement service would be considered as performed on the day the advertisement is published and hence revenue is recognized on that date. In this case, 15.03.20X1 is the date of publication of the magazine.

Hence, ₹ 3,00,000 (₹ 2,40,000 + ₹ 60,000) is recognized as income in March, 20X1. The terms of payment are not relevant for considering the date on which revenue is to be recognized. Since, the revenue of ₹ 3,00,000 will be recognised in the March, 20X1, ₹ 60,000 will be treated as amount due from advertisers as on 31.03.20X1 and ₹ 2,40,000 will be treated as payment received against the sale.

However, if the publication is delayed till 02.04.20X1 revenue recognition will also be delayed till the advertisements get published in the magazine. In that case revenue of ₹ 3,00,000 will be recognized in the year ended 31.03.20X2 after the magazine is published on 02.04.20X1. The amount received from sale of advertising space on 10.03.20X1 of ₹ 2,40,000 will be considered as an advance from advertisers as on 31.03.20X1.

4. (a) Exchange differences arising on restatement or repayment of liabilities incurred for the purpose of acquiring an item of property, plant and equipment should be adjusted in the carrying amount of the respective item of property, plant and equipment as Path Ltd. has exercised the option and it is long term foreign currency monetary item.

Thus, the entire exchange loss due to variation of ₹ 20 lakh on 31.03.20X2 on payment of US $ 10 lakh, should be added to the carrying amount of an item of property, plant and equipment and not to the cost of goods sold. Further, depreciation on the unamortized depreciable amount should also be provided.

Calculation of Exchange loss:

Foreign currency loan (in ₹) = (50 lakh $ x ₹ 60) = ₹ 3,000 lakh

Exchange loss on outstanding loan on 31.03.20X2 = ₹ 40 lakh US $ x (62.00-60.00) = ₹ 80 lakh.

So, ₹ 80 lakh should also be added to cost of an item of property, plant and equipment with corresponding credit to outstanding loan in addition to ₹ 20 lakh on account of exchange loss on payment of instalment. The total cost of an item of property, plant and equipment to be increased by ₹ 100 lakh.

Total depreciation to be provided for the year 20X1 - 20X2 = 20% of (₹ 3,000 lakh + 100 lakh) = ₹ 620 lakh.

(b) (i) Whether a subsidy applied is to be classified as prior period item as per AS 5, depends upon whether the company has committed an error in 20X1-20X2 by not recognising the subsidy?

The answer is in para 13 of AS 12 "Accounting for Government Grants" which permits recognition of grant only when there is reasonable assurance that

(i) the enterprise will comply with the conditions attached to them and

(ii) the subsidy will be received.

Mere making of an application does not provide the reasonable assurance that the subsidy will be received. Letter of sanction from IREDA is required to provide this assurance. Since, the subsidy was granted in June, 20X2 after approval of accounts, non-recognition of grant in 20X1-20X2 will not be considered as an error. Hence, this is not a prior period item. Therefore, the company was right in not recognizing the grant.

Further, AS 4 requires adjustment of events occurring after the balance sheet date only upto the date of approval of accounts by the Board of Directors. In view of this, the company is correct in not adjusting the same in the accounts in the year 20X1-20X2.

(ii) The subsidy should be deducted from the cost of the generator. The revised unamortised amount of generator should be written off over the remaining useful life.

Alternatively, the same may be treated as 'deferred income' and allocated over the remaining useful life in the proportion in which depreciation is charged.

(iii) Here in this case, the opinion given in (i) and (ii) above would change. AS 4 requires the value of assets and liabilities to be adjusted for events occurring after the balance sheet date which occur upto the date of approval of accounts by the Board of Directors if they confirm the conditions existing at the balance sheet date. Since, in this case books of account have not been approved, grant of subsidy will be considered as an adjusting event. Hence, the accounts should be adjusted for the subsidy in 20X1-20X2. The subsidy should be credited to the cost of the generator.

Alternatively, the subsidy may be treated as deferred income to be written off over the useful life in proportion in which depreciation is written off.

(iv) As per the past experience of the company wherein similar applications were made and subsidy was granted on all occasion, one can conclude that the reasonable assurance that subsidy will be received, as envisaged in Para 13, is there in the form of past records. If there are no changes in the subsidy scheme and the application is submitted in the same manner as in the past, then subsidy should have been accounted in 20X1-20X2 itself. The opinion in

(i) and (ii) would change. The opinion in (iii) above will hold good in this case also.

5. (a) (i) The accounting treatment 'at cost' under the head 'Long Term Investment' in the separate financial statements of the company without providing for any diminution in value is correct and is in accordance with the provisions of AS 13 provided that there is no decline, other than temporary, in the value of investment.

(ii) If the decline in the value of investment is not other than temporary compared to the time when the shares were purchased, no provision is required to be made. The reduction in market value should not be considered in isolation to determine the decline, other than temporary. The amount of the provision for diminution in the value of investment may be ascertained considering the factors indicated in paragraph 17 of AS 13.

(iii) The provision for diminution in the value of investment should be a charge to the profit and loss statement. As per the requirements of AS 13, the diminution in the value of investment can neither be accounted for as deferred revenue expenditure nor it can be written off in the statement of profit and loss.

(iv) The long-term investments should be carried at cost as per the requirements of AS 13. The amount paid over and above the market price should be treated as cost and cannot be accounted for separately.

(b) **Arohi Ltd.**

Month	*Actual Expenditure (₹)*	*Interest capitalized (₹)*	*Cumulative amount (₹)*
October, 20X1	4,00,000	5,000	4,05,000
November, 20X1	7,95,000	15,000	12,15,000
December, 20X1	-	15,188	12,30,188
January, 20X2	50,000	-	12,80,188
February, 20X2	2,00,000	17,500	14,97,688
March, 20X2	12,00,000	33,721	27,31,409
	26,45,000	86,409	

Note:

1. As per para 18 of AS 16, 'Borrowing Cost', capitalisation of borrowing costs is not normally suspended during a period when substantial technical and administrative work is being carried out. Therefore, the interest for that period i.e. for the month of December has also been capitalized.
2. During January, the company did not incur any interest as there was surplus cash in January. Therefore, no amount should be capitalized during January as per para 14(b) of AS 16.

3. During February, actual overdraft (borrowings) was ₹ 14 lakh only. Hence, interest of ₹ 17,500 on ₹ 14,00,000 has been calculated even though actual expenditure on project exceed ₹ 14 lakh.

6. (a) The interest expense relating to overdrafts and other operating liabilities identified to a particular segment should not be included as a part of the segment expense unless the operations of the segment are primarily of a financial nature or unless the interest is included as a part of the cost of inventories.

In case interest is included as part of the cost of inventories where it is so required as per AS 16 "Borrowing Costs", read with AS 2 "Valuation of Inventories", and those inventories are part of segment assets of a particular segment, such interest should be considered as a segment expense.

In this case, the amount of such interest and the fact that the segment result has been arrived at after considering such interest should be disclosed by way of a note to the segment result.

(b) Computation of basic earnings per share

	20X1-20X2 (₹)	*20X2-20X3 (₹)*
EPS for the year 20X1-20X2 as originally reported = Net profit for the year attributable to equity shareholders / weighted average number of equity shares outstanding during the year = ₹ 22,00,000 / 10,00,000 shares	2.20	
EPS for the year 20X1-20X2 restated for the right issue = ₹ 22,00,000 / (10,00,000 x 1.04)	2.12	
EPS for the year 20X2-20X3 (including effect of right issue) = ₹ 30,00,000 / {(10,00,000 x 1.04 x 4/12) + (12,00,000 x 8/12)}		2.62

Working Notes:

1. Computation of theoretical ex-rights fair value per share = (fair value of all outstanding shares immediately prior to exercise of rights + Total value received from exercise of rights) / (number of shares outstanding prior to exercise + number of shares issued on the exercise)

   = (₹ 32 x 10,00,000 + ₹ 25 x 2,00,000) / (10,00,000 + 2,00,000) = ₹ 30.83

2. Computation of adjustment factor

   = Fair value per share prior to exercise of rights / Theoretical ex-right value per share

= ₹ 32/₹ 30.83

= 1.04 (approx.)

7. (a) As per para 3 of AS 23 'Accounting for Investments in Associates in Consolidated Financial Statements', an associate is an enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor.

Standard further explains in para 4 that as regards share ownership, if an investor holds, directly or indirectly through subsidiary (ies), 20% or more of the voting power of the investee, it is presumed that the investor has significant influence, unless it can be clearly demonstrated that this is not the case. Conversely, if the investor holds, directly or indirectly through subsidiary (ies), less than 20% of the voting power of the investee, it is presumed that the investor does not have significant influence, unless such influence can be clearly demonstrated.

Further as per an explanation to para 4 of the standard, for the purpose of classification of associate, the potential equity shares of the investee held by the investor will not be taken into account for determining the voting power of the investor. In other words, the voting power should be determined on the basis of the current outstanding securities with voting rights.

As per the information given in the question, H Ltd. presently holds indirectly 22.7% shares (with and without voting rights) (Refer W.N.) in A Ltd. However, the current outstanding securities with voting rights in A Ltd. is only 15% and the remaining holding is on account of potential equity shares. Since potential equity shares do not have voting rights they will not be taken into consideration while determining the significant influence of H Ltd. on A Ltd. Hence, A Ltd. is not an associate of H Ltd.

Working Note:

Calculation of percentage of holding of shares after conversion

	₹
Current holding is 15% i.e. 7,500 shares of ₹ 100 each	7,50,000
Potential equity shares i.e. 5,000 shares of ₹ 100 each	5,00,000
	12,50,000

Total share capital of A Ltd. after conversion of debentures into equity shares will be = ₹ 50,00,000 + ₹ 5,00,000 = ₹ 55,00,000

Percentage of holding = ₹ (12,50,000/55,00,000) x 100 = 22.7% approx.

(b) Mere gradual phasing out is not considered as discontinuing operation as defined under para 3 of AS 24, 'Discontinuing Operations'.

Examples of activities that do not necessarily satisfy criterion of the definition, but that might do so in combination with other circumstances, include:

(1) Gradual or evolutionary phasing out of a product line or class of service;

(2) Discontinuing, even if relatively abruptly, several products within an ongoing line of business;

(3) Shifting of some production or marketing activities for a particular line of business from one location to another; and

(4) Closing of a facility to achieve productivity improvements or other cost savings.

A Reportable business segment or geographical segment as defined in AS 17, would normally satisfy criteria (b) of the definition.

In view of the above the answers are:

(i) No, the companies' strategic plan has no final approval from the board through a resolution and there is no specific time bound activities like shifting of assets and employees. Above all, the new segment i.e. commercial vehicle production line in a new factory has not started.

(ii) No, the resolution is salient about stoppage of the Car segment in definite time period. Though, sale of some assets and some transfer proposal were passed through a resolution to the new factory, closure road map and new segment starting roadmap are missing. Hence, AS 24 will not be applicable.

(iii) Yes, phased and time bound programme resolved in the board clearly indicates the closure of the passenger car segment in a definite time frame and will constitute a clear roadmap. Hence, this action will attract compliance of AS 24.

8. (a) It is likely that the recoverable amount of an individual magazine title can be assessed. Even though the level of advertising income for a title is influenced, to a certain extent, by the other titles in the customer segment, cash inflows from direct sales and advertising are identifiable for each title. In addition, although titles are managed by customer segments, decisions to abandon titles are made on an individual title basis.

Therefore, it is likely that individual magazine titles generate cash inflows that are largely independent one from another and that each magazine title is a separate cash-generating unit.

(b) (i) Para 14 of AS 29 "Provisions, Contingent Liabilities and Contingent Assets" states that a provision should be recognised when (a) An enterprise has a present obligation as a result of a past event and (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. If these conditions are not met, no provision should be recognised.

From the above, it is clear that in the contingencies considered by the company, neither a present obligation exists as a result of past event, nor a reliable estimate can be made of the amount of the obligation. Accordingly, a provision cannot be recognised for such contingencies under the facts and circumstances of the case.

(ii) "Provision" is the amount retained by the way of providing for any known liability. Since the contingencies stipulated by the company are not known at the balance sheet date, the provision in this regard cannot be created. Therefore, the provision so created by the company shall be treated as a 'Reserve'.

9. (a) Carve Out in Ind AS 32 vis-à-vis IAS 32

As per IFRS: As per accounting treatment prescribed under IAS 32, equity conversion option in case of foreign currency denominated convertible bonds is considered a derivative liability which is embedded in the bond. Gains or losses arising on account of change in fair value of the derivative need to be recognised in the Statement of Profit and Loss as per IAS 32.

Carve out: In Ind AS 32, an exception has been included to the definition of 'financial liability' in paragraph 11 (b) (ii), whereby conversion option in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments is classified as an equity instrument if the exercise price is fixed in any currency.

Reasons: This treatment as per IAS 32 is not appropriate in instruments, such as, Foreign Currency Convertible Bonds (FCCBs) since the number of shares convertible on the exercise of the option remains fixed and the amount at which the option is to be exercised in terms of foreign currency is also fixed; merely the difference in the currency should not affect the nature of derivative, i.e., the option. Further, the fair value of the option is based on the fair value of the share prices of the company. If there is decrease in the share price, the fair value of derivative liability would also decrease which would result in recognition of gain in the statement of profit and loss. This would bring unintended volatility in the statement of profit and loss due to volatility in share prices. This will also not give a true and fair view of the liability as in this situation, when the share prices fall, the option will not be exercised. However, it has been considered that if such option is classified as equity, fair value changes would not be required to be recognised. Accordingly, the exception has been made in definition of financial liability in Ind AS 32.

(b) Significant differences between Ind AS 37 vis a vis AS 29:

(i) ***Constructive obligations and Change in the Definition of Provision and Obligating Event:*** Unlike AS 29, Ind AS 37 requires creation of provisions in respect of constructive obligations also. [However, AS 29 requires creation of provisions arising out of normal business practices, custom and a desire to maintain good business relations or to act in an equitable manner]. This has resulted in some consequential changes also. For example, definitions of provision and obligating event have been revised in Ind AS 37, while the terms 'legal obligation' and 'constructive obligation' have been inserted and defined in Ind AS 37. Similarly, the portion of AS 29 pertaining to restructuring provisions has been revised in Ind AS 37.

(ii) **Discounting Provisions:** AS 29 prohibits discounting the amounts of provisions except in case of decommissioning, restoration and similar liabilities that are recognised as cost of Property, Plant and Equipment. Ind AS 37 requires discounting the amounts of provisions, if effect of the time value of money is material.

(iii) ***Disclosure of Contingent Assets:*** AS 29 notes the practice of disclosure of contingent assets in the report of the approving authority but prohibits disclosure of the same in the financial statements. Ind AS 37 requires disclosure of contingent assets in the financial statements when the inflow of economic benefits is probable. The disclosure, however, should avoid misleading indications of the likelihood of income arising.

(iv) ***Onerous Contracts:*** Ind AS 37 makes it clear that before a separate provision for an onerous contract is established, an entity should recognise any impairment loss that has occurred on assets dedicated to that contract in accordance with Ind AS 36. There is no such specific provision in AS 29.

(v) ***Future Operating Losses:*** AS 29 states that identifiable future operating losses up to the date of restructuring are not included in a provision. Ind AS 37 gives an exception to this principle viz. such losses related to an onerous contract.

(vi) ***Appendix:*** Ind AS 37 gives guidance on:

(a) Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds

(b) Liabilities arising from Participating in a Specific Market — Waste Electrical and Electronic Equipment

(c) Levies (imposed by government).

AS 29 does not give such guidance.

10. (a) Balance Sheet of a Corporate Entity (An Extract) as on 31st March, 20X1

Particulars	*Note No.*	*Amount*
Non-Current Liabilities		
Long term borrowings	1	13,15,280
Current liabilities		
Short term borrowing	2	1,24,190
Other current liabilities	3	1,95,940
		16,35,410

Notes to Accounts

1.	Long term Borrowing	₹
	Term loans – secured	
	- from bank	7,45,120
	- from other parties	7,66,100
		15,11,220
	Less: Shown in current maturities of long-term loans	(1,95,940)
		13,15,280
2.	Short-term borrowings (Unsecured-payable on demand)	1,24,190
	- from bank	
3.	Other current liabilities	
	Current maturities of long-term loans	
	From bank	1,15,000
	From others	80,940
		1,95,940

(b) According to Schedule III to the Companies Act, 2013 "An operating cycle is the time between the acquisition of assets for processing and their realization in cash or cash equivalents".

Accordingly, operating cycle of Arush Ltd. will be computed as:

Raw material stock holding period + Work-in-progress holding period + Finished goods holding period + Debtors collection period

= 3.5 months + 1 month + 4.5 months + 6 months = 15 months

Further, a liability shall be classified as current when it is expected to be settled in the Company's normal operating cycle.

Since the operating cycle of Arush Ltd. is 15 months, trade payables expected to be paid in 14 months should be treated as a current liability.

(c) Schedule III to the Companies Act, 2013 does not require work-in-progress to be disclosed in the Statement of Profit and Loss. Thus, amounts for which work-in-progress have been completed at the beginning and at the end of the accounting period may not be disclosed. Therefore, the non-disclosure in the financial statements by the company may not amount to violation of the Schedule III to the Companies Act, 2013 if the differences between opening and closing WIP are not material.

11. Projected Profit & Loss Account of AB Ltd. for the period ended 31st March, 20X2

Particulars	₹	*Particulars*	₹
To Working capital expenses	2,00,000	By Profits from Futures Trading	84,00,000
To Interest on TOD	31,250	By Dividends received	1,74,000
To Debenture interest	10,000		
To Provision for tax @ 40% on pre-tax profit - ₹ 81,58,750	32,63,500		
To Profit after tax	50,69,250		
	85,74,000		85,74,000
To Dividends (Equity & Preference)	2,06,760	By Profit for the year after tax	50,69,250
To Profit transferred to Balance Sheet	48,62,490		
	50,69,250		50,69,250

Projected Balance Sheet of AB Ltd. as at 31-3-20X2

Liabilities	₹	*Assets*	₹
Authorised share capital		Investments in Subsidiaries	
2 crore Equity shares of ₹ 10 each	20,00,00,000	In Equity shares at cost	66,70,000
Issued, subscribed & paid up		In preference shares at cost	10,00,000
25,33,600 Shares of ₹ 10 each (of the above 5,33,600 shares issued for consideration other than cash)	2,53,36,000	5% Red. Deb 20X7-20X8 of ₹ 10	8,00,000

Preference Shares		Current Assets, Loans & Advances	
1 lakh 8% Preference Shares ₹ 10 paid	10,00,000		
Reserves & Surplus		Bank Balance	3,49,25,990
Securities Premium Account (93,34,000 – 12,00,000)	81,34,000		
Profit & Loss Account	48,62,490		
Secured loan			
5% Red. Debentures 20X7-20X8 of ₹ 10 each	8,00,000		
Current Liabilities & Provisions			
Provision for taxation	32,63,500		
	4,33,95,990		4,33,95,990

Note:

1. Dividend received is exempted income and is not subject to tax in the hands of recipient. It is assumed that rate of dividend given in the question is net of tax.
2. Dividend distributed by AB Ltd. is subject to dividend distribution tax, if not net of tax.
3. As per the Companies Act, 2013, the balance of securities premium account can be used for writing off the preliminary expenses. As the company is having sufficient balance in the securities premium account, the amount of preliminary expenses is adjusted from the balance of securities premium account. As per para 56 of AS 26, when an expenditure is incurred to provide future economic benefits to an enterprise, but no intangible asset or other asset is acquired or created that can be recognized, then such an expenditure is recognized as an expense when it is incurred. However, whenever there is conflict in the treatment of a particular item as per Law / Statue & Accounting Standards then the Law / Statue will prevail. Accordingly, the above question has been solved by setting off the preliminary expenses from Securities Premium A/c. In this case it will be treated as permanent difference. Hence no DTA/DTL will be created.

Working Notes:

1. Calculation of Rectified Profits

	A Ltd. (₹)	*B Ltd. (₹)*
Value of inventory as given	2,20,000 (Overstated)	5,00,000 (Actual)

Adjustment therein due to incorrect valuation will be reduced from profits	2,20,000 x 10/110 = 20,000	5,00,000 x 5/100 = 25,000

2. Computation of Shares to be issued as purchase consideration

	A Ltd. ₹	*B Ltd.* ₹
Profit before interest & tax	6,00,000	4,40,000
Less: Reduction in profit due to incorrect inventory valuation	(20,000)	(25,000)
Less: Debenture interest	____	(40,000)
Profit before tax	5,80,000	3,75,000
Less: Tax @ 40%	(2,32,000)	(1,50,000)
Profit after tax (PAT)	3,48,000	2,25,000
Less: Preference dividend	-	(80,000)
Profit available to equity shareholders [A]	3,48,000	1,45,000
Price Earnings Multiple [B]	15	10
Total Purchase Consideration to be given (A x B)	52,20,000	14,50,000
Equity Share Capital (Purchase Consideration x 100/125)	41,76,000	11,60,000
Securities Premium (25% of the above)	10,44,000	2,90,000

3. Bank Account

Date	Particulars		₹	Date	Particulars	₹
1.1.20X2	To Share Application Money (20,00,000 x ₹ 14)		2,80,00,000	1.1.20X2	By Futures Trading A/c	2,80,00,000
1.2.20X2	To 12.5% TOD		15,00,000	1.2.20X2	By Preliminary Expenses	12,00,000
31.3.20X2	To Future Trading A/c [(2,80,00,000 x (18/100) x (100/60) + 2,80,00,000}		3,64,00,000	31.3.20X2	By Working Capital expenses	2,00,000
31.3.20X2	To Dividend received			31.3.20X2	By Dividends Paid [(41,76,000 + 11,60,000) x 3.5/100]	1,86,760

	A Ltd (3,00,000 x 10 x 5%)	1,50,000		31.3.20X2	By TOD Interest (15,00,000 x 12.5/100 x 2/12)	31,250
	B Ltd. (1,20,000 x 10 x 2 %)	24,000	1,74,000	31.3.20X2	By Debenture Interest (80,000 x ₹ 10 x 5/100 x 3/12)	10,000
				31.3.20X2	By Preference Dividend (1,00,000 x ₹ 10 x 8/100 x 3/12)	20,000
				31.3.20X2	By 12.5% TOD	15,00,000
				31.3.20X2	By Balance c/d	3,49,25,990
			6,60,74,000			6,60,74,000

12. Consolidated Balance Sheet of P Ltd. as on 31.3.20X2

Particulars	*Note No.*	*(₹ in lacs)*
I. Equity and Liabilities		
(1) Shareholder's Funds		
(a) Share Capital		1,000
(b) Reserves and Surplus	1	8,800
(2) Minority Interest (W.N.3)		760
(3) Current Liabilities		
Trade Payables (200+ 300 + 40% of 250)		600
Total		11,160
II. Assets		
(1) Non-current assets		
(a) Property, Plant and Equipment		
[1,000 + 800 + 560 (1400 x 40%)]		2,360
(b) Intangible assets (W.N.1)		120
(c) Investment	2	1,880
(2) Current assets [2,200+3,300+1,300 (3,250x40%)]		6,800
Total		11,160

Notes to Accounts

		₹ *in lacs*
1.	Reserves and Surplus	
	Retained Earnings (W.N.2)	8,800
2.	Non-current investment	
	Investment in Associates (W.N.4)	1,880

Working Notes:

1. Computation of Goodwill

S (subsidiary)

		₹ *in lacs*
Cost of investment		800
Less: Paid up value of shares acquired	320	
Share in pre- acquisition profits of S Ltd. (520 × 80%)	416	(736)
Goodwill		64

J (Jointly Controlled Entity)

		₹ *in lacs*
Cost of Investment		600
Less: Paid up value of shares acquired (40% of 800)	320	
Share in pre-acquisition profits (40% of 400)	160	(480)
Goodwill		120

Note: Jointly controlled entity 'J' to be consolidated on proportionate basis i.e. 40% as per AS 27

Associate A (AS 23)

		₹ *in lacs*
Cost of investment		600
Less: Paid up value of shares acquired (800 x 40%)	₹ 320	
Share in pre-acquisition profits (400 x 40%)	₹ 160	(480)
Goodwill		120

Goodwill shown in the Consolidated Balance Sheet

	₹ in lacs
Goodwill of 'J'	120
Goodwill of 'S'	64
Less: Goodwill written off of 'S'	(64)
Goodwill	120

2. **Consolidated Retained Earnings**

	₹ in lacs
P Ltd.	4,000
Share in post acquisition profits of S - 80% (3,400 – 520)	2,304
Share in post acquisition profits of J - 40% (3,600 – 400)	1,280
Share in post acquisition profits of A - 40% (3,600 – 400)	1,280
Less: Goodwill written off	(64)
	8,800

3. **Minority Interest 'S'**

	₹ in lacs
Share Capital (20% of 400)	80
Share in Retained Earnings (20% of 3,400)	680
	760

4. **Investment in Associates**

	₹ in lakh
Cost of Investments (including goodwill ₹ 120 lakh)	600
Share of post acquisition profits	1,280
Carrying amount of Investment (including goodwill ₹ 120 lakh)	1,880

13. (i) **At the time of initial recognition**

	₹
Liability component	
Present value of 5 yearly interest payments of ₹ 40,000, discounted at 12% annuity (40,000 x 3.605)	1,44,200
Present value of ₹ 5,00,000 due at the end of 5 years, discounted at 12%, compounded yearly (5,00,000 x 0.567)	2,83,500
	4,27,700

Equity component	
(₹ 5,00,000 – ₹ 4,27,700)	72,300
Total proceeds	5,00,000

Note: Since ₹ 105 is the conversion price of debentures into equity shares and not the redemption price, the liability component is calculated @ ₹ 100 each only.

Journal Entry

	₹	₹
Bank Dr.	5,00,000	
To 8% Debentures (Liability component)		4,27,700
To 8% Debentures (Equity component)		72,300
(Being Debentures are initially recorded a fair value)		

(ii) At the time of repurchase of convertible debentures

The repurchase price is allocated as follows:

	Carrying Value @ 12%	*Fair Value @ 9%*	*Difference*
	₹	₹	₹
Liability component			
Present value of 2 remaining yearly interest payments of ₹ 40,000, discounted at 12% and 9%, respectively	67,600	70,360	
Present value of ₹ 5,00,000 due in 2 years, discounted at 12% and 9%, compounded yearly, respectively	3,98,500	4,21,000	
Liability component	4,66,100	4,91,360	(25,260)
Equity component (5,25,000 -4,91,360)	72,300	33,640*	38,660
Total	**5,38,400**	**5,25,000**	**13,400**

*(5,25,000 – 4,91,360) = 33,640

Journal Entries

	₹	₹
8% Debentures (Liability component) Dr.	4,66,100	
Profit and loss A/c (Debt settlement expense) Dr.	25,260	
To Bank A/c		4,91,360
(Being the repurchase of the liability component recognised)		
8% Debentures (Equity component) Dr.	72,300	
To Bank A/c		33,640
To Reserves and Surplus A/c		38,660
(Being the cash paid for the equity component recognised)		

14. The incremental value is ₹ 3 per stock option (₹ 8 – ₹ 5). This amount is recognised over the remaining two years of the vesting period, along with remuneration expense based on the original option value of ₹ 15.

The amount of expenses recognised towards employees services received in years 1- 3 are as follows:

Year	*Calculation*	*Compensation expense for period (₹)*	*Cumulative compensation expense (₹)*
1	(500 – 110) employees ×100 options × ₹ 15 × 1/3	1,95,000	1,95,000
2	(500 – 105) employees × 100 options × (₹ 15 × 2/3 + ₹ 3 × 1/2) – ₹ 1,95,000	2,59,250	4,54,250
3	(500 – 103) employees × 100 options × (₹ 15 + ₹ 3) – ₹ 4,54,250	2,60,350	7,14,600

15. Calculation of NAV of a Mutual Fund Scheme

Units as at the end of the year		*Units in Crore*
Number of units at the beginning of the year		1.00
Add: Units issued during the year		0.20
Units as at end of the year		1.20
Net Asset Value of the scheme		*₹ in crore*
Market value of Investments	(50% of ₹ 10 crore) x 80%	4.00

	10% x ₹ 10 crore - (10% below cost)	0.90
	Balance Investment at Market Price	13.60
Total Market Value		18.50
Less: Mutual fund scheme liabilities		(1.00)
Net asset value of the scheme		17.50
NAV per Unit= B/A=	₹ 17.50 crore/1.2 crore	₹ 14.58

16. (i) Since, the hire-purchaser paid the first instalment due on 31.3.20X2, the notional principal outstanding on 1-4-20X2 was ₹ 50.25 lakh (refer W.N.).

For the year ended 31.03.20X3, the instalment due of ₹ 16 lakh has not been received. However, it was due on 31.3.20X3 i.e. on the balance sheet date, and therefore, it will be classified as standard asset. R Ltd. will recognise ₹ 5.24 lakh as interest income included in that due instalment and it should be treated as finance charge.

(ii) The net book value of the assets as on 31.3.20X3

	₹ in lakh
Overdue instalment	16.00
Instalments not due (₹ 16 lakh x 3)	48.00
	64.00
Less: Finance charge not matured and hence not credited to Profit and loss account (4.11 + 2.88 + 1.52) (W.N.)	(8.51)
	55.49
Less: Provision as per para 9(2)(i) of NBFC prudential norms (Refer point (iii))	(7.49)
Net book value of assets for R Ltd.	48.00

(iii) Amount of Provision

	₹ in lakh
Overdue instalment	16.00
Instalments not due (₹ 16 lakh x 3)	48.00
	64.00
Less: Finance charge not matured and hence not credited to Profit and loss account (4.11 + 2.88 + 1.52) (W.N.)	(8.51)
	55.49

Less: Depreciated value (cash price less depreciation for two years on SLM @ 20%*)	(48.00)
Provision to be created as per para 9(2)(i) of NBFC prudential norms	7.49

Since, the instalment of ₹ 16 lakh not paid, was due on 31.3.20X3 only, the asset is classified as standard asset. Therefore, no additional provision has been made for it.

Working Note:

It is necessary to segregate the instalments into principal outstanding and interest components by using I.R.R. @ 10.42%.

(₹ in lakh)

Time	*Opening outstanding amount (a)*	*Cash flow (b)*	*Interest @ 10.42% (c) = (a x 10.42%)*	*Principal repayment (d) = (b – c)*	*Closing outstanding (e) = (a – d)*
31-3-20X1		(60)	-----	---	60.00
31-3-20X2	60.00	16	6.25	9.75	50.25
31-3-20X3	50.25	16	5.24	10.76	39.49
31-3-20X4	39.49	16	4.11	11.89	27.60
31-3-20X5	27.60	16	2.88	13.12	14.48
31-3-20X6	14.48	16	1.52	14.48	0.00

17. Calculation of value per share on yield basis (Earnings Capitalisation Method)

Particulars	
Earnings available to equity shareholders (W.N.1)	₹ 1,01,040
Normal Rate of Return (W.N.3)	14.25%
Value of business	₹ 7,09,053
Number of equity shares outstanding	50,000
Value per share	**14.18**

* As per NBFC prudential norms laid down by the RBI.

Working Notes:

1. **Computation of FMP available for distribution**

   a. Weighted average profits

Year	*Profit before tax*	*Weight*	*Product*
20X1-20X2	1,80,000	1	1,80,000
20X2-20X3	2,50,000	2	5,00,000
20X4-20X5	3,00,000	3	9,00,000
20X5-20X6	3,50,000	4	14,00,000
		10	**29,80,000**

Note: Profit of the year 20X3-20X4 has not been considered, because it is a year of strike (Abnormal operation).

	₹
Weighted average profit = $\frac{29,80,000}{10}$	2,98,000
Less: Increase in managerial remuneration	(25,000)
PBT	2,73,000
Tax @ 40%	(1,09,200)
PAT	1,63,800
Less: Provision for replacement of Property, plant and Equipment (₹ 1,63,800 x 20%)	(32,760)
	1,31,040
Less: Dividend for preference shares (₹ 2,50,000 x 12%)	(30,000)
Earnings available for distribution	1,01,040

2. **Ascertainment of NRR criteria as applicable to Hoorey Ltd.**

   (A) Asset backing:

Particulars		₹
Total assets as per balance sheet		14,20,000
Add: Increase in the value of building	1,50,000	
Increase in the value of plant & machinery	2,00,000	3,50,000
Total		17,70,000
Less: Outside liabilities and preference share capital		

i. Trade Payables	1,50,000	
ii. 15% debentures	1,20,000	
iii. 12% Preference share capital	2,50,000	(5,20,000)
Assets backing for equity share capital (a-b)		12,50,000
Equity share capital		5,00,000
Asset backing		2.5 times

(B) Dividend Rates:

Dividend rates have been fluctuating in the industry while Hoorey Ltd. has constant dividend rates.

3. Computation of adjusted Normal Rate of Return as applicable to Hoorey Ltd.

Particulars	*Asset backing*	*Dividend rates*
Industry standard	2 times	fluctuating
Hoorey Ltd.	2.5 times	constant
Degree of Variance from standard	+25%	N.A.
Impact on risk & consequent adjustment to NRR	↓	↓
Quantum of Adjustment to NRR (assuming 100% variance=1% change)	-0.25%	-0.50% (say)

Adjusted NRR = 15%-0.25%-0.50% = 14.25%.

18. 1. Calculation of Target index

	(₹ in lakh)				
Year	20X1-X2	20X2-X3	20X3-X4	20X4-X5	20X5-X6
Employees cost	520	480	450	600	750
Value added	1,100	1,170	960	1,290	1,700
Percentage of 'Employee cost' to 'Value added' (to the nearest whole number)	47%	41%	47%	47%	44%

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

2. **Value Added Statement for the year 20X6-20X7**

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

3. **Employee cost for 20X6-20X7**

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

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

5. **Calculation of savings**

Target employee cost	=	₹ 1,217.70 lakh
Less: Actual Cost	=	₹ 800.00 lakh
Saving	=	₹ 417.70 lakh

6. **Calculation of Variable incentive for the year 20X6-20X7:**

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

19. **Computation of Economic Value Added**

	₹ in lakh
Profit after tax	420
Add: Interest net of tax = 60 x $\left(\frac{100-30}{100}\right)$	42
Return to providers of funds	462
Less: Cost of Capital	(342)
Economic Value Added	120

MVA of ₹ 14005 crore:

The MVA of ₹ 14005 crore is the difference between the current Market Value of LIL and the capital contributed by the fund providers. While EVA measures current earning efficiency of the company, MVA takes into consideration the EVA from not only the assets in place but also from the future projects/activities of the company. The difference between MVA over EVA thus represents the value attributed to the future potential of the company & may change from time to time based on market sentiments. In short the MVA is the net present value of all future EVA's.

Working Notes:

1. Calculation of Net Profit after interest and tax

Interest on Debentures = 50,00,000 units x 10 x 12% = ₹ 60,00,000

Therefore, Financial Leverage = $\dfrac{\text{Profit before Interest \& taxes (PBIT)}}{\text{PBIT less Interest}}$

$1.10 = \dfrac{\text{PBIT}}{\text{PBIT - ₹ 60,00,000}}$

1.10 (PBIT – ₹ 60,00,000) = PBIT

1.10 PBIT – ₹ 66,00,000 = PBIT

1.10 PBIT – PBIT = ` 66,00,000

0.10 PBIT = ` 66,00,000

PBIT = ` 6,60,00,000

Profit after *interest but before tax = ₹ 6,60,00,000 – ₹ 60,00,000 = ₹ 6,00,00,000*

Less: Income Tax @ 30%	(₹ 1,80,00,000)
Profit After Interest & Tax	₹ 4,20,00,000

2. Calculation of Weighted Average Cost of Capital (WACC)

	₹ in lakh	*Amount (₹)* *(1)*	*Weight* *(2)*	*Cost%* *(3)*	*WACC%* *(4) =2x3*
Equity Shareholders' fund					
Common Shares	1,582				
Securities Premium	155				
Free Reserves	154				
Capital Reserves	109				
		2,000	0.80	15	12.00

Debentureholders' fund		500	0.20	8.4*	1.68
		2,500	1.00		13.68

Cost of Capital = Capital Employed x WACC%

= ₹ 2,500 lakh x 13.68%

= ₹ 342 lakh

20.

Capital Base	=	₹ 1,00,00,000
Actual Profit	=	₹ 11,00,000
Target Profit @ 12.5%	=	₹ 12,50,000

Expected Profit on employing the particular executive

= ₹ 12,50,000 + ₹ 2,50,000 = ₹ 15,00,000

Additional Profit = Expected Profit – Actual Profit

= ₹ 15,00,000 – ₹ 11,00,000 = ₹ 4,00,000

$$\text{Maximum bid price} = \frac{\text{Additional Profit}}{\text{Rate of Return on Investment}}$$

$$= \frac{4,00,000}{12.5} \times 100 = ₹\ 32,00,000$$

Maximum salary that can be offered = 12.5% of ₹ 32,00,000 i.e., ₹ 4,00,000

Maximum salary can be offered to that particular executive upto the amount of additional profit i.e., ₹ 4,00,000.

* Rate of interest on debentures is taken net of tax of 30%.

PAPER – 2: STRATEGIC FINANCIAL MANAGEMENT

QUESTIONS

Project Planning and Capital Budgeting

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

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

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

(i) The expected NPV of this venture assuming independent probability distribution with 6 per cent risk free rate of interest.

(ii) The possible deviation in the expected value.

(iii) How would standard deviation of the present value distribution help in Capital Budgeting decisions?

Leasing Decisions

2. Agrani Ltd. is in the business of manufacturing bearings. Some more product lines are being planned to be added to the existing system. The machinery required may be bought or may be taken on lease. The cost of machine is ₹ 40,00,000 having a useful life of 5 years with the salvage value of ₹ 8,00,000. The full purchase value of machine can be financed by 20% loan repayable in five equal instalments falling due at the end of each year. Alternatively, the machine can be procured on a 5 years lease, year-end lease rentals being ₹ 12,00,000 per annum. The Company follows the written down value method of depreciation at the rate of 25%. Company's tax rate is 35 per cent and cost of capital is 16 per cent:

(i) Advise the company which option it should choose – lease or borrow.

(ii) Assess the proposal from the lessor's point of view examining whether leasing the machine is financially viable at 14% cost of capital (Detailed working notes should be given. Calculations can be rounded off to ₹ lakhs).

Dividend Decisions

3. X Ltd. is a Shoes manufacturing company. It is all equity financed and has a paid-tip Capital of ₹ 10,00,000 (₹ 10 per share)

   X Ltd. has hired Swastika consultants to analyse the future earnings. The report of Swastika consultants states as follows:

   (i) The earnings and dividend will grow at 25% for the next two years.

   (ii) Earnings are likely to grow at the rate of 10% from 3rd year and onwards.

   (iii) Further, if there is reduction in earnings growth, dividend payout ratio will increase to 50%.

   The other data related to the company are as follows:

Year	EPS (₹)	Net Dividend per share (₹)	Share Price (₹)
2010	6.30	2.52	63.00
2011	7.00	2.80	46.00
2012	7.70	3.08	63.75
2013	8.40	3.36	68.75
2014	9.60	3.84	93.00

   You may assume that the tax rate is 30% (not expected to change in future) and post-tax cost of capital is 15%.

   By using the Dividend Valuation Model, calculate

   (a) Expected Market Price per share

   (b) P/E Ratio.

Indian Capital Market

4. A trader is having in its portfolio shares worth ₹ 85 lakhs at current price and cash ₹ 15 lakhs. The beta of share portfolio is 1.6. After 3 months the price of shares dropped by 3.2%.

   Determine:

   (i) Current portfolio beta

   (ii) Portfolio beta after 3 months if the trader on current date goes for long position on ₹ 100 lakhs Nifty futures.

5. From the following data for certain stock, find the value of a call option:

Price of stock now	=	₹ 80
Exercise price	=	₹ 75
Standard deviation of continuously compounded annual return	=	0.40

Maturity period	=	6 months
Annual interest rate	=	12%

Given

Number of S.D. from Mean, (z)	Area of the left or right (one tail)
0.25	0.4013
0.30	0.3821
0.55	0.2912
0.60	0.2743

$e^{0.12x0.5}$ = 1.062

In 1.0667 = 0.0646

6. A Inc. and B Inc. intend to borrow \$200,000 and \$200,000 in ¥ respectively for a time horizon of one year. The prevalent interest rates are as follows:

Company	¥ Loan	\$ Loan
A Inc	5%	9%
B Inc	8%	10%

The prevalent exchange rate is \$1 = ¥120.

They entered in a currency swap under which it is agreed that B Inc will pay A Inc @ 1% over the ¥ Loan interest rate which the later will have to pay as a result of the agreed currency swap whereas A Inc will reimburse interest to B Inc only to the extent of 9%. Keeping the exchange rate invariant, quantify the opportunity gain or loss component of the ultimate outcome, resulting from the designed currency swap.

Security Analysis and Valuation

7. ABC Ltd. has ₹ 300 million, 12 per cent bonds outstanding with six years remaining to maturity. Since interest rates are falling, ABC Ltd. is contemplating of refunding these bonds with a ₹ 300 million issue of 6 year bonds carrying a coupon rate of 10 per cent. Issue cost of the new bond will be ₹ 6 million and the call premium is 4 per cent. ₹ 9 million being the unamortized portion of issue cost of old bonds can be written off no sooner the old bonds are called off. Marginal tax rate of ABC Ltd. is 30 per cent. You are required to analyze the bond refunding decision.

8. Following Financial data are available for PQR Ltd. for the year 2008:

	(₹ in lakh)
8% debentures	125

10% bonds (2007)	50
Equity shares (₹ 10 each)	100
Reserves and Surplus	300
Total Assets	600
Assets Turnovers ratio	1.1
Effective interest rate	8%
Effective tax rate	40%
Operating margin	10%
Dividend payout ratio	16.67%
Current market Price of Share	₹14
Required rate of return of investors	15%

You are required to:

(i) Draw income statement for the year

(ii) Calculate its sustainable growth rate of earnings

(iii) Calculate the fair price of the Company's share using dividend discount model, and

(iv) What is your opinion on investment in the company's share at current price?

Portfolio Theory

9. Consider the following information on two stocks, A and B :

Year	Return on A (%)	Return on B (%)
2016	10	12
2017	16	18

You are required to determine:

(i) The expected return on a portfolio containing A and B in the proportion of 40% and 60% respectively.

(ii) The Standard Deviation of return from each of the two stocks.

(iii) The covariance of returns from the two stocks.

(iv) Correlation coefficient between the returns of the two stocks.

(v) The risk of a portfolio containing A and B in the proportion of 40% and 60%.

10. XYZ Ltd. has substantial cash flow and until the surplus funds are utilised to meet the future capital expenditure, likely to happen after several months, are invested in a portfolio of short-term equity investments, details for which are given below:

Investment	No. of shares	Beta	Market price per share ₹	Expected dividend yield
I	60,000	1.16	4.29	19.50%
II	80,000	2.28	2.92	24.00%
III	1,00,000	0.90	2.17	17.50%
IV	1,25,000	1.50	3.14	26.00%

The current market return is 19% and the risk free rate is 11%.

Required to:

(i) Calculate the risk of XYZ's short-term investment portfolio relative to that of the market;

(ii) Whether XYZ should change the composition of its portfolio.

Financial Services

11. The credit sales and receivables of M/s M Ltd. at the end of the year are estimated at ₹ 3,74,00,000 and ₹ 46,00,000 respectively.

The average variable overdraft interest rate is 5%. M Ltd. is considering a proposal for factoring its debts on a non-recourse basis at an annual fee of 3% on credit sales. As a result, M Ltd. will save ₹ 1,00,000 per year in administrative cost and ₹ 3,50,000 as bad debts. The factor will maintain a receivables collection period of 30 days and advance 80% of the face value thereof at an annual interest rate of 7%. Evaluate the viability of the proposal.

Note: 365 days are to be taken in a year for the purpose of calculation of receivables.

Mutual Funds

12. Orange purchased 200 units of Oxygen Mutual Fund at ₹ 45 per unit on 31st December, 2009. In 2010, he received ₹ 1.00 as dividend per unit and a capital gains distribution of ₹ 2 per unit.

Required:

(i) Calculate the return for the period of one year assuming that the NAV as on 31st December 2010 was ₹ 48 per unit.

(ii) Calculate the return for the period of one year assuming that the NAV as on 31st December 2010 was ₹ 48 per unit and all dividends and capital gains distributions have been reinvested at an average price of ₹ 46.00 per unit.

Ignore taxation.

13. On 1-4-2012 ABC Mutual Fund issued 20 lakh units at ₹ 10 per unit. Relevant initial expenses involved were ₹ 12 lakhs. It invested the fund so raised in capital market

instruments to build a portfolio of ₹ 185 lakhs. During the month of April 2012 it disposed off some of the instruments costing ₹ 60 lakhs for ₹ 63 lakhs and used the proceeds in purchasing securities for ₹ 56 lakhs. Fund management expenses for the month of April 2012 was ₹ 8 lakhs of which 10% was in arrears. In April 2012 the fund earned dividends amounting to ₹ 2 lakhs and it distributed 80% of the realized earnings. On 30-4-2012 the market value of the portfolio was ₹ 198 lakhs.

Mr. Akash, an investor, subscribed to 100 units on 1-4-2012 and disposed off the same at closing NAV on 30-4-2012. What was his annual rate of earning?

International Financial Management

14. Odessa Limited has proposed to expand its operations for which it requires funds of $ 15 million, net of issue expenses which amount to 2% of the issue size. It proposed to raise the funds though a GDR issue. It considers the following factors in pricing the issue:

    (i) The expected domestic market price of the share is ₹ 300

    (ii) 3 shares underly each GDR

    (iii) Underlying shares are priced at 10% discount to the market price

    (iv) Expected exchange rate is ₹ 60/$

    You are required to compute the number of GDR's to be issued and cost of GDR to Odessa Limited, if 20% dividend is expected to be paid with a growth rate of 20%.

Foreign Exchange exposure and Risk Management

15. You, a foreign exchange dealer of your bank, are informed that your bank has sold a T.T. on Copenhagen for Danish Kroner 10,00,000 at the rate of Danish Kroner 1 = ₹ 6.5150. You are required to cover the transaction either in London or New York market. The rates on that date are as under:

Mumbai-London	₹ 74.3000	₹ 74.3200
Mumbai-New York	₹ 49.2500	₹ 49.2625
London-Copenhagen	DKK 11.4200	DKK 11.4350
New York-Copenhagen	DKK 07.5670	DKK 07.5840

    In which market will you cover the transaction, London or New York, and what will be the exchange profit or loss on the transaction? Ignore brokerages.

16. An importer customer of your bank wishes to book a forward contract with your bank on 3rd September for sale to him of SGD 5,00,000 to be delivered on 30th October.

    The spot rates on 3rd September are USD 49.3700/3800 and USD/SGD 1.7058/68. The swap points are:

USD /₹		USD/SGD	
Spot/September	0300/0400	1st month forward	48/49
Spot/October	1100/1300	2nd month forward	96/97
Spot/November	1900/2200	3rd month forward	138/140
Spot/December	2700/3100		
Spot/January	3500/4000		

Calculate the rate to be quoted to the importer by assuming an exchange margin of 5 paisa.

17. Zaz plc, a UK Company is in the process of negotiating an order amounting €2.8 million with a large German retailer on 6 month's credit. If successful, this will be first time for Zaz has exported goods into the highly competitive German Market. The Zaz is considering following 3 alternatives for managing the transaction risk before the order is finalized.

(a) Mr. Peter the Marketing head has suggested that in order to remove transaction risk completely Zaz should invoice the German firm in Sterling using the current €/£ average spot rate to calculate the invoice amount.

(b) Mr. Wilson, CE is doubtful about Mr. Peter's proposal and suggested an alternative of invoicing the German firm in € and using a forward exchange contract to hedge the transaction risk.

(c) Ms. Karen, CFO is agreed with the proposal of Mr. Wilson to invoice the German first in €, but she is of opinion that Zaz should use sufficient 6 month sterling further contracts (to the nearest whole number) to hedge the transaction risk.

Following data is available

Spot Rate	€ 1.1960 - €1.1970/£
6 months forward points	0.60 – 0.55 Euro Cents.
6 month further contract is currently trading at	€ 1.1943/£
6 month future contract size is	£62,500
After 6 month Spot rate and future rate	€ 1.1873/£

You are required to

(a) Calculate (to the nearest £) the £ receipt for Zaz plc, under each of 3 above proposals.

(b) In your opinion which alternative you consider to be most appropriate.

Mergers, Acquisitions and Reconstructing

18. The following information relating to the acquiring Company Abhiman Ltd. and the target Company Abhishek Ltd. are available. Both the Companies are promoted by Multinational Company, Trident Ltd. The promoter's holding is 50% and 60% respectively in Abhiman Ltd. and Abhishek Ltd.:

	Abhiman Ltd.	Abhishek Ltd.
Share Capital (₹)	200 lakh	100 lakh
Free Reserve and Surplus (₹)	800 lakh	500 lakh
Paid up Value per share (₹)	100	10
Free float Market Capitalisation (₹)	400 lakh	128 lakh
P/E Ratio (times)	10	4

Trident Ltd. is interested to do justice to the shareholders of both the Companies. For the swap ratio weights are assigned to different parameters by the Board of Directors as follows:

Book Value	25%
EPS (Earning per share)	50%
Market Price	25%

(a) What is the swap ratio based on above weights?

(b) What is the Book Value, EPS and expected Market price of Abhiman Ltd. after acquisition of Abhishek Ltd. (assuming P.E. ratio of Abhiman Ltd. remains unchanged and all assets and liabilities of Abhishek Ltd. are taken over at book value).

(c) Calculate:

(i) Promoter's revised holding in the Abhiman Ltd.

(ii) Free float market capitalization.

(iii) Also calculate No. of Shares, Earning per Share (EPS) and Book Value (B.V.), if after acquisition of Abhishek Ltd., Abhiman Ltd. decided to:

(a) Issue Bonus shares in the ratio of 1: 2; and

(b) Split the stock (share) as ₹ 5 each fully paid.

19. A valuation done of an established company by a well-known analyst has estimated a value of ₹ 500 lakhs, based on the expected free cash flow for next year of ₹ 20 lakhs and an expected growth rate of 5%.

While going through the valuation procedure, you found that the analyst has made the mistake of using the book values of debt and equity in his calculation. While you do not know the book value weights he used, you have been provided with the following information:

(i) Company has a cost of equity of 12%,

(ii) After tax cost of debt is 6%,

(iii) The market value of equity is three times the book value of equity, while the market value of debt is equal to the book value of debt.

You are required to estimate the correct value of the company.

20. Write short notes on:

(a) Financial Planning

(b) Contents of a Project Report

(c) Distinction between Capital Market and Money Market

(d) Instruments of International Finance

(e) Factors affecting Economic Analysis

SUGGESTED ANSWERS

1. (i) Expected NPV

(₹ in lakhs)

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

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

(ii) Possible deviation in the expected value

Year I				
$X - \bar{X}$	**$X - \bar{X}$**	**$(X - \bar{X})^2$**	**P_1**	**$(X - \bar{X})^2 P^1$**
14 – 27	-13	169	0.1	16.9
18 – 27	-9	81	0.2	16.2

25 – 27	-2	4	0.4	1.6
40 – 27	13	169	0.3	50.7
				85.4

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

Year II				
X - $\overline{X}$	**X - $\overline{X}$**	**(X - $\overline{X}$)²**	**P_2**	**(X - $\overline{X}$)² ×P_2**
15-29.3	-14.3	204.49	0.1	20.449
20-29.3	-9.3	86.49	0.3	25.947
32-29.3	2.7	7.29	0.4	2.916
45-29.3	15.7	246.49	0.2	49.298
				98.61

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

Year III				
X - $\overline{X}$	**X - $\overline{X}$**	**(X - $\overline{X}$)²**	**P_3**	**(X - $\overline{X}$)² × P_3**
18-27.9	-9.9	98.01	0.2	19.602
25-27.9	-2.9	8.41	0.5	4.205
35-27.9	7.1	50.41	0.2	10.082
48-27.9	20.1	404.01	0.1	40.401
				74.29

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

Standard deviation about the expected value:

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

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

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

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

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

2. (i) P.V. of Cash outflow under lease option

(in ₹)

Year	Lease Rental after tax	PVIFA @ 13%	Total P.V.
1 – 5	12,00,000 (I – T)	20% (I – T)	
	= 7,80,000	3.517	27,43,260

Cash Outflow under borrowing option

5 equal instalments

₹ 40,00,000 ÷ 2.991 (PVIFA 20%) = 13,37,345

Tax Advantage

Year	Loan Instalments	On Interest	On Depreciation	Net Cash Outflow	PVIF 13%	Total PV
1	13,37,345	2,80,000	3,50,000	7,07,345	.885	6,26,000
2	13,37,345	2,48,386	2,62,500	8,26,459	.783	6,47,117
3	13,37,345	1,97,249	1,96,875	9,43,221	.693	6,53,652
4	13,37,345	1,43,085	1,47,656	10,46,604	.613	6,41,568
5	13,37,345	77,635	1,10,742	11,48,968	.543	6,23,890
						31,92,227
Total PV						31,92,227
Less: PV Salvage value adjusted for Tax savings on loss of sale of machinery (₹ 8,00,000 × .543 = ₹ 4,34,400) + (₹ 28,359)						4,62,759
(See Working Note on Depreciation) 9,49,219 – 8,00,000 =						
1,49,219 × .35 × .543 = 28,359						
Total present value of cash outflow						27,29,468

Decision: PV of cash outflow of lease option is greater than borrow option and hence borrow option is recommended.

Working Notes:

(a) Debt and Interest Payments

Year	Loan Instalments	Loan at the beginning of the year	Interest	Principal	Balance at the end of year
1	13,37,345	40,00,000	8,00,000	5,37,345	34,62,655
2	13,37,345	34,62,655	6,92,531	6,44,814	28,17,841
3	13,37,345	28,17,841	5,63,568	7,73,777	20,44,064
4	13,37,345	20,44,064	4,08,813	9,28,532	11,15,532
5	13,37,345	11,15,532	2,21,813*	11,15,532	-

* Balancing Figure

(b) Year		**Depreciation**
1	40,00,000 × .25	10,00,000
2	30,00,000 × .25	7,50,000
3	22,50,000 × .25	5,62,500
4	16,87,500 × .25	4,21,875
5	12,65,625 × .25	3,16,406

B.V. of machine = 12,65,625 – 3,16,406 = 9,49,219.

(ii) Proposal from the View Point of Lessor

Lessor's Cash Flow

	1	2	3	4	5
Lease Rentals	12,00,000	12,00,000	12,00,000	12,00,000	12,00,000
Less: Dep. (A)	10,00,000	7,50,000	5,62,500	4,21,875	Nil
EBT	2,00,000	4,50,000	6,37,500	7,78,125	12,00,000
Less: Tax @ 35%	70,000	1,57,500	2,23,125	2,72,344	4,20,000
EAT (B)	1,30,000	2,92,500	4,14,375	5,05,781	7,80,000
CFAT	11,30,000	10,42,500	9,76,875	9,27,656	7,80,000
PV factor @ 14%	.877	.769	.675	.592	.519
PV	9,91,010	8,01,683	6,59,391	5,49,172	4,04,820

PV of Lease Rent	34,06,076
Add: PV of Salvage Value	4,15,200

Add: PV of Tax Saving on loss of sale of asset	84,581
Total PV of cash inflow	39,05,857
Cost of Machine	40,00,000
NPV	(94,143)

Decision: Lease rate is not financially viable. Hence, not recommended.

3. (a) The formula for the Dividend valuation Model is

$$P_0 = \frac{D_1}{K_e - g}$$

K_e = Cost of Capital

g = Growth rate

D_1= Dividend at the end of year 1

On the basis of the information given, the following projection can be made:

Year	EPS (₹)	DPS (₹)	PVF @15%	PV of DPS (₹)
2015	12.00 (9.60 x 125%)	4.80(3.84 x 125%)	0.870	4.176
2016	15.00(12.00 x 125%)	6.00(4.80 x 125%)	0.756	4.536
2017	16.50(15.00 x 110%)	8.25*(50% of ₹ 16.50)	0.658	5.429
				14.141

*Payout Ratio changed to 50%.

After 2017, the perpetuity value assuming 10% constant annual growth is:

D_1= ₹ 8.25 × 110% = ₹ 9.075

Therefore P_o from the end of 2017

$$\frac{₹\ 9.075}{0.15 - 0.10} = ₹\ 181.50$$

This must be discounted back to the present value, using the 3 year discount factor after 15%.

	₹
Present Value of P_0 (₹ 181.50 × 0.658)	119.43
Add: PV of Dividends 2015 to 2017	14.14
Expected Market Price of Share	133.57

(b) P/E Ratio

$$\text{P/E Ratio} = \frac{\text{Expected Market Price of Share } (P_1)}{\text{EPS}}$$

$$= \frac{₹\,133.57}{₹\,9.60} = ₹\ 13.91$$

4. (i) Current Portfolio Beta

Current Beta for share portfolio = 1.6

Beta for cash = 0

Current portfolio beta = 0.85 x 1.6 + 0 x 0.15 = 1.36

(ii) Portfolio beta after 3 months:

$$\text{Beta for portfolio of shares} = \frac{\text{Change in value of portfolio of share}}{\text{Change in value of market portfolio (Index)}}$$

$$1.6 = \frac{0.032}{\text{Change in value of market portfolio (Index)}}$$

Change in value of market portfolio (Index)	= (0.032 / 1.6) x 100 = 2%
Position taken on 100 lakh Nifty futures: Long	
Value of index after 3 months	= ₹ 100 lakh x (1.00 - 0.02)
	= ₹ 98 lakh
Mark-to-market paid	= ₹ 2 lakh
Cash balance after payment of mark-to-market	= ₹ 13 lakh
Value of portfolio after 3 months	= ₹85 lakh x (1 - 0.032) + ₹13 lakh
	= ₹95.28 lakh
Change in value of portfolio	$= \frac{₹100 \text{ lakh} - ₹95.28 \text{ lakh}}{₹100 \text{ lakh}} = 4.72\%$
Portfolio beta	= 0.0472/0.02 = 2.36

5. Applying the Black Scholes Formula,

Value of the Call option now:

The Formula $C = SN(d_1) - Ke^{(-rt)}\,N(d_2)$

$$d_1 = \frac{\ln(S/K) + (r + \sigma^2/2)t}{\sigma\sqrt{t}}$$

$$d_2 = d_1 - \sigma\sqrt{t}$$

Where,

C = Theoretical call premium

S = Current stock price

t = time until option expiration

K = option striking price

r = risk-free interest rate

N = Cumulative standard normal distribution

e = exponential term

σ = Standard deviation of continuously compounded annual return.

In = natural logarithim

$$d_1 = \frac{\ln(1.0667) + (12\% + 0.08)0.5}{0.40\sqrt{0.5}}$$

$$= \frac{0.0646 + (0.2)0.5}{0.40 \times 0.7071}$$

$$= \frac{0.1646}{0.2828}$$

= 0.5820

d_2 = 0.5820 – 0.2828 = 0.2992

$N(d_1)$ = N (0.5820)

$N(d_2)$ = N (0.2992)

Price = $SN(d_1) - Ke^{(-rt)}N(d_2)$

= 80 x $N(d_1)$ – (75/1.062) x $N(d_2)$

Value of option

$$= 80\ N(d_1) - \frac{75}{1.062} \times N(d_2)$$

$N(d_1)$ = N (0.5820) = 0.7197

$N(d_2) = N(0.2992) = 0.6176$

$$\text{Price} = 80 \times 0.7197 - \frac{75}{1.062} \times 0.6176$$

= 57.57 – 70.62 x 0.6176

= 57.57 – 43.61

= ₹13.96

Teaching Notes:

Students may please note following important point:

Values of $N(d_1)$ and $N(d_2)$ have been computed by interpolating the values of areas under respective numbers of SD from Mean (Z) given in the question.

It may also be possible that in question paper areas under Z may be mentioned otherwise e.g. Cumulative Area or Area under Two tails. In such situation the areas of the respective Zs given in the question will be as follows:

Cumulative Area

Number of S.D. from Mean, (z)	Cumulative Area
0.25	0.5987
0.30	0.6179
0.55	0.7088
0.60	0.7257

Two tail area

Number of S.D. from Mean, (z)	Area of the left and right (two tail)
0.25	0.8026
0.30	0.7642
0.55	0.5823
0.60	0.5485

6.

Opportunity gain of A Inc under currency swap	Receipt	Payment	Net
Interest to be remitted to B. Inc in \$ 2,00,000x9%=\$18,000 Converted into (\$18,000x¥120)		¥21,60,000	
Interest to be received from B. Inc in \$ converted into ¥ (6%x\$2,00,000 x ¥120)	¥14,40,000	-	

Interest payable on ¥ loan	-	¥12,00,000	
	¥14,40,000	¥33,60,000	
Net Payment	¥19,20,000	-	
	¥33,60,000	¥33,60,000	
$ equivalent paid ¥19,20,000 x(1/¥120)			$16,000
Interest payable without swap in $			$18,000
Opportunity gain in $			$ 2,000

Opportunity gain of B inc under currency swap	Receipt	Payment	Net
Interest to be remitted to A. Inc in ($ 2,00,000 x 6%)		$12,000	
Interest to be received from A. Inc in ¥ converted into $ =¥21,60,000/¥120	$18,000		
Interest payable on $ loan@10%	-	$20,000	
	$18,000	$32,000	
Net Payment	$14,000	-	
	$32,000	$32,000	
¥ equivalent paid $14,000 X ¥120			¥16,80,000
Interest payable without swap in ¥ ($2,00,000X¥120X8%)			¥19,20,000
Opportunity gain in ¥			¥ 2,40,000

Alternative Solution

Cash Flows of A Inc

(i) At the time of exchange of principal amount

Transactions		Cash Flows
Borrowings	$2,00,000 x ¥120	+ ¥240,00,000
Swap		- ¥240,00,000
Swap		+$2,00,000
Net Amount		+$2,00,000

(ii) At the time of exchange of interest amount

Transactions		Cash Flows
Interest to the lender	¥240,00,000X5%	¥12,00,000
Interest Receipt from B Inc.	¥2,00,000X120X6%	¥14,40,000
Net Saving (in $)	¥2,40,000/¥120	$2,000

Interest to B Inc.	$2,00,000X9%	-$18,000
Net Interest Cost		-$16,000

A Inc. used $2,00,000 at the net cost of borrowing of $16,000 i.e. 8%. If it had not opted for swap agreement the borrowing cost would have been 9%. Thus there is saving of 1%.

Cash Flows of B Inc

(i) At the time of exchange of principal amount

Transactions		Cash Flows
Borrowings		+ $2,00,000
Swap		- $2,00,000
Swap	$2,00,000X¥120	+¥240,00,000
Net Amount		+¥240,00,000

(ii) At the time of exchange of interest amount

Transactions		Cash Flows
Interest to the lender	$2,00,000X10%	- $20,000
Interest Receipt from A Inc.		+$18,000
Net Saving (in ¥)	-$2,000X¥120	- ¥2,40,000
Interest to A Inc.	$2,00,000X6%X¥120	- ¥14,40,000
Net Interest Cost		- ¥16,80,000

B Inc. used ¥240,00,000 at the net cost of borrowing of ¥16,80,000 i.e. 7%. If it had not opted for swap agreement the borrowing cost would have been 8%. Thus, there is saving of 1%.

7. (i) **Calculation of initial outlay:-**

		₹ (million)
a.	Face value	300
	Add:-Call premium	12
	Cost of calling old bonds	312
b.	Gross proceed of new issue	300
	Less: Issue costs	6
	Net proceeds of new issue	294
c.	Tax savings on call premium and unamortized cost 0.30 (12 + 9)	6.3

∴ Initial outlay = ₹ 312 million – ₹ 294 million – ₹ 6.3 million = ₹ 11.7 million

(ii) Calculation of net present value of refunding the bond:-

	₹ (million)
Saving in annual interest expenses	
[300 x (0.12 – 0.10)]	6.00
Less:- Tax saving on interest and amortization 0.30 x [6 + (9-6)/6]	1.95
Annual net cash saving	4.05
PVIFA (7%, 6 years)	4.766
∴ Present value of net annual cash saving	₹ 19.30 million
Less:- Initial outlay	₹ 11.70 million
Net present value of refunding the bond	₹ 7.60 million

Decision: The bonds should be refunded

8. Workings:

Asset turnover ratio = 1.1

Total Assets = ₹ 600

Turnover ₹ 600 lakhs × 1.1 = ₹ 660 lakhs

Effective interest rate = $\frac{\text{Interest}}{\text{Libilities}} = 8\%$

Liabilities = ₹ 125 lakhs + 50 lakhs = 175 lakh

Interest = ₹ 175 lakhs × 0.08 = ₹ 14 lakh

Operating Margin = 10%

Hence operating cost = (1 - 0.10) ₹ 660 lakhs = ₹ 594 lakh

Dividend Payout = 16.67%

Tax rate = 40%

(i) Income statement

	(₹ Lakhs)
Sale	660
Operating Exp	594
EBIT	66
Interest	14
EBT	52
Tax @ 40%	20.80
EAT	31.20
Dividend @ 16.67%	5.20
Retained Earnings	26.00

(ii) SGR = ROE (1-b)

ROE = $\frac{PAT}{NW}$ and NW = ₹ 100 lakh + ₹ 300 lakh = 400 lakh

ROE = $\frac{₹\ 31.2 \text{ lakhs}}{₹\ 400 \text{ lakhs}}$ x 100 = 7.8%

SGR = 0.078(1 - 0.1667) = 6.5% or $\frac{0.078 \times 0.8333}{1-0.078 \times 0.8333}$ = 6.95%

(iii) Calculation of fair price of share using dividend discount model

$P_o = \frac{D_0(1+g)}{k_e - g}$

Dividends = $\frac{₹\ 5.2 \text{ lakhs}}{₹\ 10 \text{ lakhs}}$ = ₹ 0.52

Growth Rate = 6.5% or 6.95%

Hence P_o = $\frac{₹\ 0.52(1+0.065)}{0.15\text{-}0.065} = \frac{₹\ 0.5538}{0.085}$ = ₹ 6.51 or $\frac{0.52(1+0.0695)}{0.15-0.0695}$

= $\frac{0.5561}{0.0805}$ = ₹ 6.91

(iv) Since the current market price of share is ₹ 14, the share is overvalued. Hence the investor should not invest in the company.

9. (i) Expected return of the portfolio A and B

E (A) = (10 + 16) / 2 = 13%

E (B) = (12 + 18) / 2 = 15%

Rp = $\sum_{i=l}^{N} X_i R_i = 0.4(13) + 0.6(15) = 14.2\%$

(ii) Stock A:

Variance = 0.5 (10 – 13)² + 0.5 (16 – 13) ² = 9

Standard deviation = $\sqrt{9}$ = 3%

Stock B:

Variance = 0.5 (12 – 15) ² + 0.5 (18 – 15) ² = 9

Standard deviation = 3%

(iii) Covariance of stocks A and B

Cov_{AB} = 0.5 (10 – 13) (12 – 15) + 0.5 (16 – 13) (18 – 15) = 9

(iv) Correlation of coefficient

$$r_{AB} = \frac{Cov_{AB}}{\sigma_A \sigma_B} = \frac{9}{3 \times 3} = 1$$

(v) Portfolio Risk

$$\sigma_P = \sqrt{X^2{}_A\sigma^2{}_A + X^2{}_B\sigma^2{}_B + 2X_AX_B(\sigma_A\sigma_B\sigma_{AB})}$$

$$= \sqrt{(0.4)^2(3)^2 + (0.6)^2(3)^2 + 2(0.4)(0.6)(3)(3)(1)}$$

$$= \sqrt{1.44 + 3.24 + 4.32} = 3\%$$

10. (i) Computation of Beta of Portfolio

Investment	No. of shares	Market Price	Market Value	Dividend Yield	Dividend	Composition	β	Weighted β
I	60,000	4.29	2,57,400	19.50%	50,193	0.2339	1.16	0.27
II	80,000	2.92	2,33,600	24.00%	56,064	0.2123	2.28	0.48
III	1,00,000	2.17	2,17,000	17.50%	37,975	0.1972	0.90	0.18
IV	1,25,000	3.14	3,92,500	26.00%	1,02,050	0.3566	1.50	0.53
			11,00,500		2,46,282	1.0000		1.46

Return of the Portfolio $\frac{2,46,282}{11,00,500} = 0.2238$

Beta of Port Folio 1.46

Market Risk implicit

0.2238 = 0.11 + β× (0.19 – 0.11)

Or, 0.08 β + 0.11 = 0.2238

$$\beta = \frac{0.2238 - 0.11}{0.08} = 1.42$$

Market β implicit is 1.42 while the portfolio β is 1.46. Thus, the portfolio is marginally risky compared to the market.

(ii) The decision regarding change of composition may be taken by comparing the dividend yield (given) and the expected return as per CAPM as follows:

Expected return R_s as per CAPM is:

$$R_s = I_{RF} + (R_M - I_{RF})\,\beta$$

For investment I R_s = $I_{RF} + (R_M - I_{RF})\ \beta$
= .11 + (.19 - .11) 1.16
= 20.28%

For investment II, R_s = .11 + (.19 - .11) 2.28 = 29.24%

For investment III, R_s = .11 + (.19 - .11) .90
= 18.20%

For investment IV, R_s = .11 + (.19 - .11) 1.50
= 23%

Comparison of dividend yield with the expected return R_s shows that the dividend yields of investment I, II and III are less than the corresponding R_s,. So, these investments are over-priced and should be sold by the investor. However, in case of investment IV, the dividend yield is more than the corresponding R_s, so, XYZ Ltd. should increase its proportion.

11.

Particulars	**₹**
Estimated Receivables	46,00,000
Estimated Receivables under Factor $\left(3,74,00,000 \times \frac{30}{365}\right)$	30,73,973
Reduction in Receivables (₹ 46,00,000 – ₹ 30,73,973)	15,26,027

Total Savings (A)

Reduction in finance costs ₹ 15,26,027 @ 5%	76,301
Saving of Administration costs	1,00,000
Saving of Bad debts	3,50,000
Total	5,26,301

Total Cost of Factoring (B)

Interest on advances by Factor		
Advances 30,73,973 @ 80%	₹ 24,59,178	
Interest on ₹ 24,59,178 @ 7%	₹ 1,72,142	
Overdraft Interest rate 5%	(₹ 1,22,959)	49,183
Charges payable to Factor (₹ 3,74,00,000 @ 3%)		11,22,000
Total		11,71,183

Net Saving (A) – (B) (6,44,882)

Since, Net Saving is negative the proposal is not viable and cannot be accepted.

12. (i) **Returns for the year**

(All changes on a Per -Unit Basis)

Change in Price:	₹ 48 – ₹45 =	₹ 3.00
Dividends received:		₹ 1.00
Capital gains distribution		₹ 2.00
Total reward		₹ 6.00

Holding period reward: $\frac{₹ 6.00}{₹ 45} \times 100 = 13.33\%$

(ii) When all dividends and capital gains distributions are re-invested into additional units of the fund @ (₹ 46/unit)

Dividend + Capital Gains per unit	= ₹ 1.00 + ₹ 2.00 = ₹ 3.00
Total received from 200 units	= ₹ 3.00 x 200 = ₹ 600/-.
Additional Units Acquired	= ₹ 600/₹ 46 = 13.04 Units.
Total No. of Units	= 200 units + 13.04 units = 213.04 units.
Value of 213.04 units held at the end of the year	= 213.04 units x ₹48 = ₹ 10225.92
Price Paid for 200 Units at the beginning of the year	= 200 units x ₹ 45 = ₹ 9000.00
Holding Period Reward ₹ (10225.92 – 9000.00)	= ₹1225.92
Holding Period Reward	= $\frac{₹1225.92}{₹ 9000} \times 100 = 13.62\%$

13.

	Amount in ₹ lakhs	Amount in ₹lakhs	Amount in ₹ lakhs
Opening Bank (200 - 185 -12)	3.00		
Add: Proceeds from sale of securities	63.00		
Add: Dividend received	2.00	68.00	
Deduct:			
Cost of securities purchased	56.00		
Fund management expenses paid (90% of 8)	7.20		
Capital gains distributed = 80% of (63 – 60)	2.40		

Dividend distributed =80% of 2.00	1.60	67.20	
Closing Bank			0.80
Closing market value of portfolio			198.00
			198.80
Less: Arrears of expenses			0.80
Closing Net Assets			198.00
Number of units (Lakhs)			20
Closing NAV per unit (198.00/20)			9.90

Rate of Earning (Per Unit)

	Amount
Income received (₹ 2.40 + ₹ 1.60)/20	₹ 0.20
Loss: Loss on disposal (₹ 200 - ₹ 198)/20	₹ 0.10
Net earning	₹ 0.10
Initial investment	₹ 10.00
Rate of earning (monthly)	1%
Rate of earning (Annual)	12%

14. Net Issue Size = $15 million

Gross Issue = $\frac{\$15 \text{ million}}{0.98}$ = $15.306 million

Issue Price per GDR in ₹ (300 x 3 x 90%) ₹ 810

Issue Price per GDR in $ (₹ 810/ ₹ 60) $13.50

Dividend Per GDR (D_1) = ₹ 2* x 3 = ₹ 6

* Assumed to be on based on Face Value of ₹ 10 each share.

Net Proceeds Per GDR = ₹ 810 x 0.98 = ₹ 793.80

(a) Number of GDR to be issued $\frac{\$15.306 \text{ million}}{\$13.50}$ = 1.1338 million

(b) Cost of GDR to Odessa Ltd.

$$k_e = \frac{6.00}{793.80} + 0.20 = 20.76\%$$

15. Amount realized on selling Danish Kroner 10,00,000 at ₹ 6.5150 per Kroner = ₹ 65,15,000.

Cover at London:

Bank buys Danish Kroner at London at the market selling rate.

Pound sterling required for the purchase (DKK 10,00,000 ÷ DKK 11.4200)

= GBP 87,565.67

Bank buys locally GBP 87,565.67 for the above purchase at the market selling rate of ₹ 74.3200.

The rupee cost will be	= ₹ 6,50,788
Profit (₹ 65,15,000 - ₹ 65,07,881)	= ₹ 7,119

Cover at New York:

Bank buys Kroners at New York at the market selling rate.

Dollars required for the purchase of Danish Kroner (DKK10,00,000 ÷ 7.5670)

= USD 1,32,152.77

Bank buys locally USD 1,32,152.77 for the above purchase at the market selling rate of ₹ 49.2625.

The rupee cost will be	= ₹ 65,10,176
Profit (₹ 65,15,000 - ₹ 65,10,176)	= ₹ 4,824

The transaction would be covered through London which gets the maximum profit of ₹ 7,119 or lower cover cost at London Market by (₹ 65,10,176 - ₹ 65,07,881) = ₹ 2,295

16.

USD/ ₹ on 3rd September	49.3800
Swap Point for October	0.1300
	49.5100
Add: Exchange Margin	0.0500
	49.5600
USD/ SGD on 3rd September	1.7058
Swap Point for 2nd month Forward	0.0096
	1.7154

Cross Rate for SGD/ ₹ of 30th October

USD/ ₹ selling rate	= ₹ 49.5600
SGD/ ₹ buying rate	= SGD 1.7154

SGD/ ₹ cross rate = ₹ 49.5600 / 1.7154

= ₹ 28.8912

17. (i) Receipt under three proposals

(a) Proposal of Mr. Peter

Invoicing in £ will produce = $\frac{€\,2.8 \text{ million}}{1.1965}$ = £ 2.340 million

(b) Proposal of Mr. Wilson

Forward Rate = €1.1970-0.0055 = 1.1915

Using Forward Market hedge Sterling receipt would be $\frac{€\,2.8 \text{million}}{1.1915}$ = £ 2.35 million

(c) Proposal of Ms. Karen

The equivalent sterling of the order placed based on future price (€1.1943)

= $\frac{€\,2.8 \text{million}}{1.1943}$ = £ 2,344,470 (rounded off)

Number of Contracts = $\frac{£2,344,470}{62,500}$ = 37 Contracts (to the nearest whole number)

Thus, € amount hedged by future contract will be = 37 × £62,500 = £23,12,500

Buy Future at	€1.1943
Sell Future at	€1.1873
	€0.0070

Total loss on Future Contracts = 37 × £62,500 × €0.0070 =€16,188

After 6 months

Amount Received	€28,00,000
Less: Loss on Future Contracts	€ 16,188
	€ 27,83,812

Sterling Receipts

On sale of € at spot = $\frac{€\,27,83,812}{1.1873}$ = £ 2.3446 million

(ii) Proposal of option (b) is preferable because the option (a) & (c) produces least receipts. Further, in case of proposal (a) there must be a doubt as to whether this would be acceptable to German firm as it is described as a competitive market and Zaz is moving into it first time.

18. (a) **Swap Ratio**

	Abhiman Ltd.	**Abhishek Ltd.**
Share Capital	200 Lakh	100 Lakh
Free Reserves	800 Lakh	500 Lakh
Total	1000 Lakh	600 Lakh
No. of Shares	2 Lakh	10 Lakh
Book Value per share	₹ 500	₹ 60
Promoter's holding	50%	60%
Non promoter's holding	50%	40%
Free Float Market Cap. i.e. relating to Public's holding	400 Lakh	128 Lakh
Hence Total market Cap.	800 Lakh	320 Lakh
No. of Shares	2 Lakh	10 Lakh
Market Price	₹ 400	₹ 32
P/E Ratio	10	4
EPS	40	8
Profits (₹ 2 X 40 lakh)	₹ 80 lakh	-
(₹ 8 X 10 lakh)	-	₹ 80 lakh

Calculation of Swap Ratio

Book Value	1 : 0.12 i.e.	0.12 x 25%	0.03
EPS	1 : 0.2	0.20 x 50%	0.10
Market Price	1 : 0.08	0.08 x 25%	0.02
		Total	0.15

Swap ratio is for every one share of Abhishek Ltd., to issue 0.15 shares of Abhiman Ltd. Hence total no. of shares to be issued.

10 Lakh x 0.15 = 1.50 lakh shares

(b) Book Value, EPS & Market Price

Total No of Shares	2 Lakh + 1.5 Lakh = 3.5 Lakh
Total Capital	₹ 200 Lakh + ₹ 150 Lakh = ₹ 350 Lakh
Reserves	₹ 800 Lakh + ₹ 450 Lakh = ₹ 1,250 Lakh
Book Value	$\frac{₹\ 350\ \text{Lakh} + ₹\ 1,250\ \text{Lakh}}{3.5\ \text{Lakh}}$ = ₹ 457.14 per share

EPS $\frac{\text{Total Profit}}{\text{No. of Share}} = \frac{₹\ 80\ \text{Lakh} + ₹\ 80\ \text{Lakh}}{3.5\ \text{Lakh}} = \frac{₹\ 160\ \text{Lakh}}{3.5}$

= ₹ 45.71

Expected Market Price EPS (₹ 45.71) x P/E Ratio (10) = ₹ 457.10

(c) (i) Promoter's holding

Promoter's Revised	Abhiman 50% i.e.	1.00 Lakh shares
Holding	Abhishek 60% i.e.	0.90 Lakh shares
	Total	1.90 Lakh shares

Promoter's % = 1.90/3.50 x 100 = 54.29%

(ii) Free Float Market Capitalisation

Free Float Market Capitalisation = (3.5 Lakh – 1.9 Lakh) x ₹ 457.10
= ₹ 731.36 Lakh

(iii) (a) & (b)

Revised Capital	₹ 350 Lakh + ₹ 175 Lakh = ₹ 525 Lakh
No. of shares before Split (F.V ₹ 100)	5.25 Lakh
No. of Shares after Split (F.V. ₹ 5)	5.25 x 20 = 105 Lakh
EPS	160 Lakh / 105 Lakh = 1.523
Book Value	Cap. ₹ 525 Lakh + ₹ 1075 Lakh
No. of Shares	=105 Lakh = ₹ 15.238 per share

19. Cost of capital by applying Free Cash Flow to Firm (FCFF) Model is as follows:-

Value of Firm = $V_0 = \frac{FCFF_1}{K_c - g_n}$

Where –

$FCFF_1$ = Expected FCFF in the year 1

K_c = Cost of capital

g_n = Growth rate forever

Thus, ₹ 500 lakhs = ₹ 20 lakhs /(K_c-g)

Since g = 5%, then K_c = 9%

Now, let X be the weight of debt and given cost of equity = 12% and cost of debt = 6%, then 12% (1 – X) + 6% X = 9%

Hence, X = 0.50, so book value weight for debt was 50%

∴ Correct weight should be 150% of equity and 50% of debt.

∴ Cost of capital = K_c = 12% (0.75) + 6% (0.25) = 10.50%

And correct firm's value = ₹ 20 lakhs/(0.105 – 0.05) = ₹ 363.64 lakhs.

20. (a) Financial Planning

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

There are 3 major components of financial planning:

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

Financial Planning: FR + FT = FG

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

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

(b) Contents of a Project Report

The following aspects need to be taken into account for a Project Report -

1. **Promoters:** Their experience, past records of performance form the key to their selection for the project under study.
2. **Industry Analysis:** The environment outside and within the country is vital for determining the type of project one should opt for.

3. **Economic Analysis:** The demand and supply position of a particular type of product under consideration, competitor's share of the market along with their marketing strategies, export potential of the product, consumer preferences are matters requiring proper attention in such type of analysis.
4. **Cost of Project:** Cost of land, site development, buildings, plant and machinery, utilities e.g. power, fuel, water, vehicles, technical know how together with working capital margins, preliminary/pre-operative expenses, provision for contingencies determine the total value of the project.
5. **Inputs:** Availability of raw materials within and outside the home country, reliability of suppliers cost escalations, transportation charges, manpower requirements together with effluent disposal mechanisms are points to be noted.
6. **Technical Analysis:** Technical know-how, plant layout, production process, installed and operating capacity of plant and machinery form the core of such analysis.
7. **Financial Analysis:** Estimates of production costs, revenue, tax liabilities profitability and sensitivity of profits to different elements of costs and revenue, financial position and cash flows, working capital requirements, return on investment, promoters contribution together with debt and equity financing are items which need to be looked into for financial viability.
8. **Social Cost Benefit Analysis:** Ecological matters, value additions, technology absorptions, level of import substitution form the basis of such analysis.
9. **SWOT Analysis:** Liquidity/Fund constraints in capital market, limit of resources available with promoters, business/financial risks, micro/macro-economic considerations subject to government restrictions, role of Banks/Financial Institutions in project assistance, cost of equity and debt capital in the financial plan for the project are factors which require careful examinations while carrying out SWOT analysis.
10. **Project Implementation Schedule:** Date of commencement, duration of the project, trial runs, cushion for cost and time over runs and date of completion of the project through Network Analysis have all to be properly adhered to in order to make the project feasible.

(c) Distinction between Capital and Money Market:

(1) In the Capital Market, there is classification between Primary Market and Secondary Market. However, there is no such sub-division in money market, as such. However, slowly a secondary market in greater form is coming up in Money Market also.

(2) Capital Market deals for fund of long term requirement. In contrast, the Money Market generally supply fund for short term requirement.

(3) If the volume of business of Capital Market is considered (both Primary and Secondary Markets), it will lag behind the total value of transaction in Money Market.

(4) While the number of instruments dealt with in the Money Market are many like

(a) Interbank Call Money,

(b) Notice Money upto 14 days

(c) Short-term deposits upto 3 months

(d) 91-days Treasury Bill

(e) 182-days Treasury Bill

(f) Commercial Paper etc.

The number of instruments in Capital Market are limited i.e. Shares and Debentures.

(5) The players in Capital Market are general investors, brokers, Merchant Bankers, Registrar to the issue, underwriters, Corporate Investors, Foreign Financial Institutions (FII) and Bankers. While in money market the participants are Bankers, RBI and Government.

(6) Rate of interest in money market is controlled by RBI or central bank of any country. But capital market's interest and dividend rate depends on demand and supply of securities and stock market's sensex conditions. The regulation of stock market is in the hands of SEBI.

(7) The degree of risk is small in money market. The risk is much greater in capital market. The maturity of one year or less gives little time for a default to occur, so the risk is minimised. Risk varies both in degree and nature throughout the capital market.

(8) The money market is closely and directly linked with central bank of the country. The capital market feels central bank's influence, but mainly indirectly and through the money market.

Distinction between Money Market and Capital Market

Basis	Money Market	Capital Maket
1. Maturity of Instruments	1 year or less	More than 1 year
2. Risks	Less	More and varied
3. Instruments	Treasury bills, CDs, etc	Shares, bonds, etc
4. Finance	Short term	Long term
5. Relation with Central Bank	Direct	Indirect

(d) Instruments of International Finance

The various financial instruments dealt with in the international market are briefly described below :

1. **Euro Bonds:** A *Eurobond* is an international bond that is denominated in a currency not native to the country where it is issued. Also called external bond e.g. A Yen floated in Germany; a yen bond issued in France.
2. **Foreign Bonds:** These are debt instruments denominated in a currency which is foreign to the borrower and is denominated in a currency that is native to the country where it is issued. A British firm placing $ denominated bonds in USA is said to be selling foreign bonds.
3. **Fully Hedged Bonds:** In foreign bonds, the risk of currency fluctuations exists. Fully hedged bonds eliminate that risk by selling in forward markets the entire stream of interest and principal payments.
4. **Floating Rate Notes:** These are debt instruments issued upto 7 years maturity. Interest rates are adjusted to reflect the prevailing exchange rates. They provide cheaper money than fixed rate debt instruments; however, they suffer from inherent interest rate volatility risk..
5. **Euro Commercial Papers:** Euro Commercial Papers (ECPs) are short-term money market instruments. They are for maturities for less than a year. They are usually designated in US dollars.

(e) Factors Affecting Economic Analysis

Some of the economy wide factors are discussed as under:

(i) Growth Rates of National Income and Related Measures*:* For most purposes, what is important is the difference between the nominal growth rate quoted by GDP and the ‘real’ growth after taking inflation into account. The estimated growth rate of the economy would be a pointer to the prospects for the industrial sector, and therefore to the returns investors can expect from investment in shares.

(ii) Growth Rates of Industrial Sector*:* This can be further broken down into growth rates of various industries or groups of industries if required. The growth rates in various industries are estimated based on the estimated demand for its products.

(iii) Inflation*:* Inflation is measured in terms of either wholesale prices (the Wholesale Price Index or WPI) or retail prices (Consumer Price Index or CPI). The demand in some industries, particularly the consumer products industries, is significantly influenced by the inflation rate. Therefore, firms in these industries make continuous assessment about inflation rates likely to prevail in the near future so as to fine-tune their pricing, distribution and promotion policies to the anticipated impact of inflation on demand for their products.

(iv) Monsoon*:* Because of the strong forward and backward linkages, monsoon is of great concern to investors in the stock market too.

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:** 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;

(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 April every year in such form as may be specified by the Central Government.

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.

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 1st 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 per cent. 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.***

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—

(a) 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

(b) 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.

(c) ***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 assesses. The Chief Commissioner/Commissioner of Income Tax has been given powers to determine the period of such disqualification of a person.

Section 288 (4) & (5) of the Income Tax Act, 1961
Sub section 4 of Section 288 of the Income Tax Act: No person- (a) who has been dismissed or removed from Government service after the 1st 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 assesse 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 Commission 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 assesse 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] yeas 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):

Applicability

(a) specified securities listed on main board or SME Exchange or institutional trading platform;
(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
(c) Indian depository receipts;
(d) securitised debt instruments;
(e) security receipts (added w.e.f. September 06, 2018);
(f) units issued by mutual funds;
(g) any other securities as may be specified by the Board.

(2) Role of Audit Committee [Part C (A) of Schedule II]

Inserted point no (21) The role of the Audit Committee shall also include r**eviewing 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:

<u>Sub Section 4:</u> "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 1st 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]

(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: ***(i) Debtors Turnover*** ***(ii) Inventory Turnover*** ***(iii) Interest Coverage Ratio*** ***(iv) Current Ratio*** ***(v) Debt Equity Ratio*** ***(vi) Operating Profit Margin (%)*** ***(vii) Net Profit Margin (%)*** ***or sector-specific equivalent ratios, as applicable***	***(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.***

(10) Stakeholders Relationship Committee [Regulation 20 and Part D of Schedule II]

(i)	The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the - ***various aspects of interest of shareholders***, debenture holders and other security holders.
(ii)	*The chairperson of this Committee shall be a non-executive director.*
(iii)	***At least three directors, with at least one being an independent director, shall be members of the Committee.***
(iv)	***The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.***
(v)	***The stakeholders relationship committee shall meet at least once in a year.***
(iv) ***1)***	***The role of the committee shall inter-alia include the following :*** ***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.***

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:***

a. number of complaints filed during the financial year
b. number of complaints disposed of during the financial year
c. number of complaints pending as on end of the financial year"

(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 18th 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 I 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 I explanation from the company, the auditor shall inform the Audit Committee of the details of information I 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

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/rediscounted 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 (₹)
ASSETS			
(1) Financial Assets (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			
(2) Non-Financial Assets (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)			
Total Assets			
LIABILITES AND EQUITY			
LIABILITIES			
(1) Financial Liabilities (a) Derivative financial instruments (b) Payables (I) 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)			
(2) Non-financial Liabilities (a) Current tax liabilities (net) (b) Provisions (c) Deferred Tax Liabilities (net) (d) Other non-financial liabilities (to be specified)			
(3) Equity (a) Equity share capital (b) Other equity			
Total Liabilities and Equity			

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 (₹)
Revenue from operations (a) Interest Income (b) Dividend income (c) Rental income (d) Fee and commission income (e) Net gain on fair vale 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)			
Total revenue from operations (I)			
Other income (to be specified) (II)			
Total Income (III= I + II)			
Expenses (a) Finance costs (b) Fees and commission expense (c) Net loss on fair vale 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 (₹)
Total Expenses (IV)			
Profit / (loss) before exceptional items and tax (V= III - IV)			
Exceptional items (VI)			
Profit / (loss) before tax (VII= V - VI)			
Tax Expense (VIII): (1) Current tax (2) Deferred tax			
Profit / (loss) for the period from continuing operations (IX= VII - VIII)			
Profit / (loss) for the period from discontinued operations (X)			
Tax Expense of discontinued operations (XI)			
Profit / (loss) for the period from discontinued operations after tax (XII= X - XI)			
Profit / (loss) for the period (XIII = IX + XII)			
Other Comprehensive Income (XIV)			
(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)			
Other Comprehensive Income (A+B)			

Particulars	Notes No.	Figures as at the end of current reporting period (₹)	Figures as at the end of previous reporting period (₹)
Total Comprehensive Income for the period (XV = XIII + XIV) (Comprising Profit (Loss) and other Comprehensive Income for the period)			
Earnings per equity share (for continuing operations) (XVI) Basic (₹) Diluted (₹)			
Earnings per equity share (for discontinued operations) (XVII) Basic (₹) Diluted (₹)			
Earnings per equity share (for continuing and discontinued operations) (XVIII) Basic (₹) Diluted (₹)			

Note : Student may refer iillustrative 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:

(a) 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.

(b) 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.

(c) 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:

"Audit of accounts of certain persons carrying on business or profession".	
Every person -	
(a)	carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds ***one crore*** rupees in any previous year.
(b)	carrying on profession shall, if his gross receipts, in profession exceed ***fifty lakhs*** rupees in any previous year,
(c)	carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year,
(d)	carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA, and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or
(e)	carrying on the business shall, if the provisions of sub-section (4) of section 44AD are

applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

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

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

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

Applicability of Tax Audit Provisions

DB Pvt. Ltd. has total turnover of ₹ 125 lacs for the FY 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 ofthe 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 assessees 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, **32AD,** 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(iia), 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

<u>Audit checklist for practical understanding :</u>

(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) Clasue 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 previou 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 : Applicability of Clause 30C is deferred to March 31, 2020.**

- **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 bankor 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 exercisecare 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 registered under GST Expenditure
		Relating to goods or services exempt from GST	**Relating to entities falling under composition scheme**	**Relating to other registered entities**	**Total payment to registered entitites**	
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**

***Note: Applicability of Clause 44 is deferred till March 31, 2020.**

B. AUDIT PROVISIONS UNDER INDIRECT TAX LAWS

The GST roll out on 1st July 2017 has paved the way for realization of the goal of "one nation-one tax-one market". GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. Itis 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 ade 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.

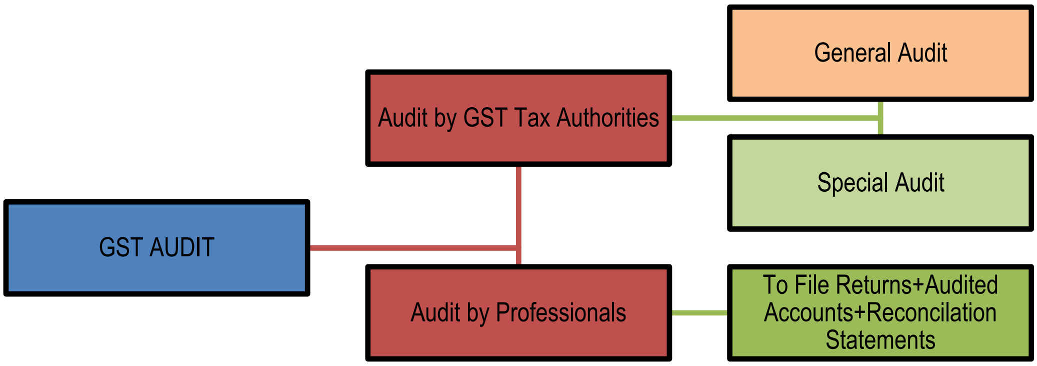
1 Types of Audit under GST

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:

(a) 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;

(b) It is therefore, reasonable to interpret that the word turnover used in Section 35(5) ought to be understood as aggregate turnover.

(c) 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 rescribed 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: ❑ Audited annual accounts

	❑ A Reconciliation Statement, duly certified, in prescribed FORM GSTR-9C.

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

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-today 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 wok, 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
- Understsnding 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.	**Part – I**	Basic details of the taxpayer. This detail will be auto-populated.
2.	**Part – II**	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.	**Part – III**	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.	**Part – IV**	Details of tax paid as declared in returns filed during the FY.
5.	**Part – V**	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	**Part – VI**	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, Unique Identification Number Holders, 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, Unique Identification Number Holders, 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 it is 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 1st 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 exigible 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 a 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

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	

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 zerorated 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	

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, if can be inferred and concluded that the data to be entered under SI.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)	

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	**Reconciliation of rate wise liability and amount payable thereon**					
			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)					
II	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>

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, SGSTM 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 applicable
	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	(+)	

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	**(-)**	

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 SI.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	

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	**Reasons for un-reconciled difference in ITC**	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	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:

- o Ineligible ITC not availed in the return
- o 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	**Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account**			
	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	**Reasons for un - reconciled difference in ITC**	
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	**Auditor's recommendation on additional Liability due to non-reconciliation**					
			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 resolves 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:
  - o cases relating to supplies that are not reported in the annual return;
  - o refunds erroneously taken;
  - o 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 statementin 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 ....

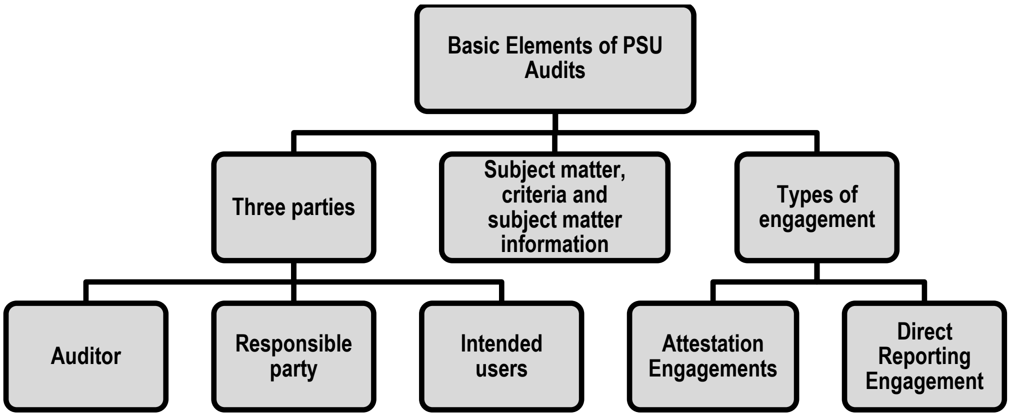
Name ……………………………..

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.

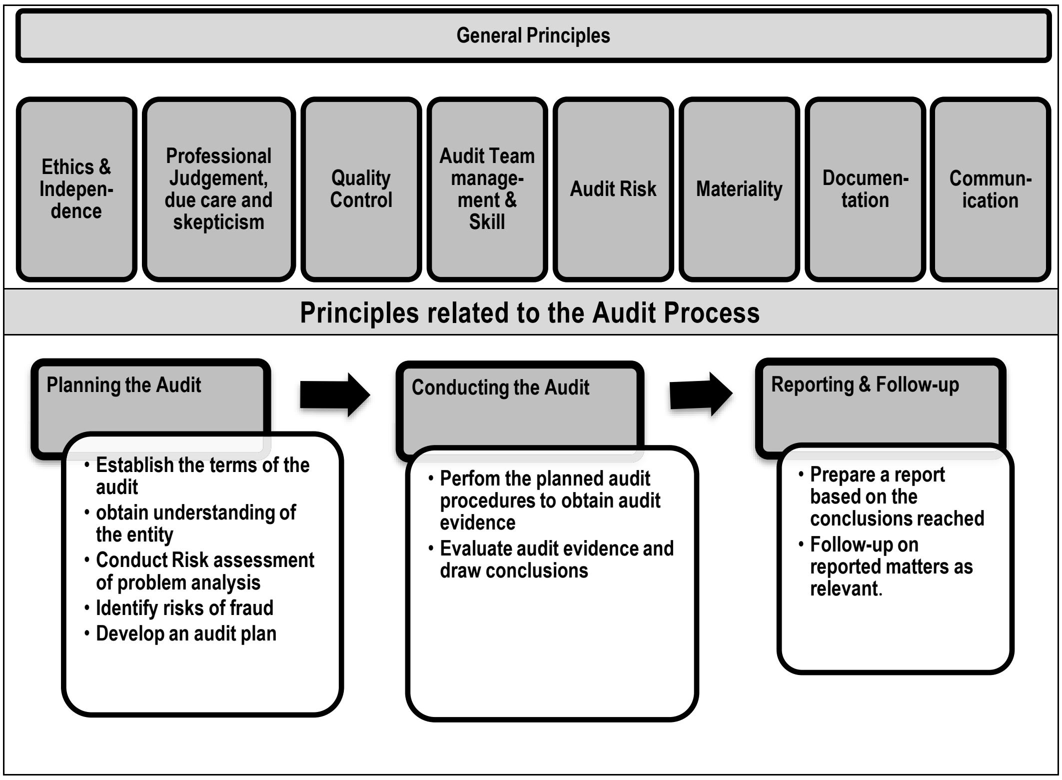
> ***Financial audits*** *are always* ***attestation engagements****, as they are based on financial information presented by the responsible party.*
> ***Performance audits and compliance audits*** *are generally* ***direct reporting engagements****.*

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.

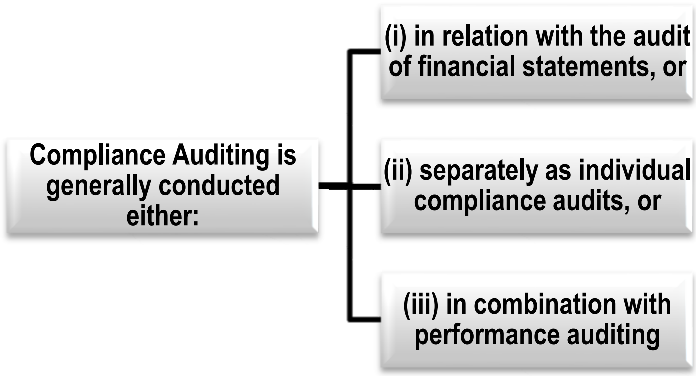
While regularity is emphasized in compliance auditing, propriety is equally pertinent in the public-sector context, in which there are certain expectations concerning financial management and the conduct of officials.

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.



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:

1. Where Client is an Individual/ Proprietor

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

B. Engagement Information
- Type of Engagement

2. Where Client is a Corporate Entity

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

B. Engagement Information
- Type of Engagement

C. Regulatory Information
- Company PAN No.
- Company Identification No.
- Directors' Names & Addresses
- Directors' Identification No.

3. Where Client is a Non-Corporate Entity

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

B. Engagement Information
- Type of Engagement

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

PART A: MULTIPLE CHOICE QUESTIONS

Integrated Case Scenario 1.

PQR Ltd., is one of the leading companies in the cement manufacturing industry. Right from its incorporation, it has been a subsidiary of GDP Ltd. The total shareholding of GDP Ltd includes the following:

- The Government of Puducherry and Government of Delhi each hold 19% of the paid-up share capital,
- The Government Gujarat's share is 13.5%.

On 27th August 2019, Mr. JJ, the auditor of PQR Ltd. had resigned from his post, citing personal reasons. He had forgotten to inform about his resignation to the concerned authorities. The casual vacancy which was created by the outgoing auditor was filled up with the appointment of FDI & Co. Chartered Accountants as statutory auditors of PQR Ltd. However, few shareholders of the company raised certain objections, which was later settled without any problems. As a part of the terms and conditions of appointment as auditors, FDI & Co. agreed to do the following:

- Charge fees at 5% of the paid-up capital plus 0.1% of net profit of the company (however Mr. JJ had agreed to charge only ₹ 45,000/-),
- Select and recruit personnel, conduct training programmes for and on behalf of PQR Ltd.

The company was having an annual turnover of ₹ 200 crores, and hence it was also liable to tax audit under section 44 AB of Income Tax Act, 1961.

During the current financial year 2019-20, PQR Ltd. had changed its method of accounting compared to the previous financial year (2018-19) and had reported a closing stock of raw material amounting to ₹ 2 lakhs only as on 31st March 2020. Also, the company had borrowed a sum of ₹ 10 crores equally from two public sector banks and two Non-Banking Financial Companies. It had also repaid few deposits amounting to ₹ 75 lakhs to the deposit holders.

As far as FDI & Co. Chartered accountants are concerned, Mr. F, who is one of the partners of the firm (*NOTE*- Mr. F does not sign the financials of PQR Ltd.) had borrowed a sum of ₹ 3.89 lakhs from GDP Ltd. He had also purchased goods worth ₹ 1.09 lakhs from the company. Both the sum borrowed and the cost of the goods bought are not yet paid by Mr. F. Another partner of the firm, Mr. I, who is also responsible for signing the financials statements of PQR Ltd. was also engaged in the teaching profession during his free time.

Upon hearing about the efficient services provided by FDI & Co. Chartered accountants, they were approached by XYZ Cooperative Society to act as their statutory auditor for the upcoming financial years. The firm agreed to the offer and had the following options in mind with respect to the fees to be charged from them:

(i) To charge fees as percentage of Net Profits, or

(ii) To charge fees of ₹ 101/-.

Question No.: (1-5)

1. To whom should have Mr. JJ informed about his resignation? What could be the possible consequence for his non-compliance?

   (a) He should have informed the registrar and PQR Ltd. As a consequence of his failure, he is liable to a penalty not exceeding ₹ 5 lakhs.

   (b) He should have informed the registrar alone. As a consequence of his failure, he is liable to a penalty not less than ₹ 50,000/-.

   (c) He should have informed the registrar and FDI & Co. As a consequence of his failure, he is liable to a fine of ₹ 500 per day for each day of failure.

   (d) He should have informed the registrar & comptroller and auditor general. As a consequence of his failure, he is liable to a fine of ₹ 45,000/-.

2. With respect to the acts carried out by Mr. F, the partner of the audit firm, what can you infer about the appointment of FDI & Co. as auditors of PQR Ltd.?

   (a) It is valid since the indebtedness is within prescribed limits.

   (b) It is not valid since the indebtedness exceeds prescribed limit of ₹ 1 lakhs.

   (c) It is valid since Mr. F is not signing the financials of PQR Ltd.

   (d) It is valid since the indebtedness is not with PQR Ltd.

3. Which among the below are permitted as per Chartered Accounts Act, 1949?

   (i) Charge fees at 5% of the paid-up capital plus 0.1% of net profit of the company.

   (ii) Select and recruit personnel, conduct training programmes for and on behalf of PQR Ltd.

   (iii) Mr. I, one of the partners who is responsible to sign the financials of PQR Ltd. was into teaching profession.

      (a) (i) & (ii)

      (b) (iii) only

      (c) (ii) & (iii)

      (d) (i), (ii) & (iii)

4. With respect to the fees to be charged for its new assignment, which option can be opted by FDI & Co.?

   (i) To charge fees as percentage of Net Profits, or

   (ii) To charge fees of ₹ 101/-.

(a) (i) Only.

(b) (ii) Only.

(c) Either (i) or (ii).

(d) Neither (i) nor (ii).

5. Among the below transactions which were undertaken by PQR Ltd., which needs to be reported by the auditors under fiscal laws?

   (i) ₹ 10 crores loan taken, which is exceeding the limit specified u/s 269 SS of Income Tax Act.

   (ii) Changed its method of accounting from the previous financial year.

   (iii) Repayment of deposits of ₹ 75 lakhs, which is exceeding limit specified u/s 269 T of Income Tax Act.

   (iv) Reporting of Closing stock of raw material worth ₹ 2 lakhs only.

   (a) (i), (iii) & (iv).

   (b) (ii) & (iv).

   (c) (i) & (iii).

   (d) (i), (ii), (iii) & (iv).

Integrated Case Scenario 2.

CA & Co. Chartered Accountants have been appointed as the auditors of ZXC company. The company has obtained a license from the Central Government for itself to promote the sport of hockey in the rural areas of India. The company's average annual profit was estimated to be around ₹ 50 lakhs. This profit would not be distributed as dividend to the shareholders, however, it would be applied towards its objective of promoting sports in the country. During the course of audit for the financial year 2019-20, the following observations with respect to the company were made by the auditors:

- The company was not maintaining proper records with respect to the fixed assets maintained by it. The value of fixed assets of the company amounts to ₹ 1.50 crores approximately.
- Physical verification for the same was not carried out at regular intervals. The last physical verification was conducted on 31st July 2018.

As a result of the above observations, the auditors decided to report the same in the Companies (Auditors Report) Order 2016. However, the management of the company was against the decision of the auditors and insisted that the observations need not be reported. After several discussions between the auditors and the management, CA & Co. decided not to report the issues.

CA & Co. Chartered Accountants, were also acting as auditors for another company, LS Ltd. and KD Bank Ltd. During the course of audit of LS Ltd, there was a difference of opinion between the management 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 financial year.

(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

During the audit of KD Bank Ltd., the auditors and the management had a certain difference of opinion as to the amount and the items which needs to be disclosed under the head of contingent liabilities. However, apart from that, the auditors had observed the following:

- 59 agricultural loan accounts (guaranteed by Government of Delhi) amounting to ₹ 29 lakhs were overdue for more than two years.
- 73 (guaranteed by Government of India) agricultural loan accounts amounting to ₹ 25 lakhs were overdue for more than two years.
- 6 corporate loans accounts (guaranteed three each by Government of India and Government of Delhi) amounting to ₹ 25 lakhs for each company were overdue for more than three and a half months.

On hearing about the efficient services provided by CA & Co. Chartered Accountants, they were offered the following new assignments:

- A GST assessing officer approached for conduct of special audit under section 66 of CGST Act for a company named MD Ltd. which was having an annual turnover of ₹ 1 crore. He had requested for the special audit as per the opinion that the company had not availed input tax credit within normal limits.
- Offer to provide incorporation services to RS General Insurance Ltd. which was proposed to be set up with a paid-up share capital of ₹ 113 crores, of which preliminary expenses of ₹ 17 crores were included.

The audit firm after taking into consideration all the facts and figures with respect to its new assignments, decided not to undertake both of them.

Question No: (6-10)

6. Is the decision of CA & Co. of not reporting the issues of ZXC in CARO 2016 justified? If so, under what reason?

(a) No. CARO 2016 is applicable to ZXC and hence the same has to be reported under clause (i) of CARO.

(b) Yes. CARO 2016 is not applicable to ZXC and hence the same need not to be reported.

(c) No. As per SA 240, the auditor has to maintain professional skepticism when it comes to issues in the area of fixed assets and hence the same has to be reported.

(d) Yes. As per SA 320, the auditor after taking into account the materiality of the issue, he may either choose to report or not report about the same.

7. What is the total amount of loans that should be classified as NPA by KD Bank?

(a) ₹ 79 lakhs.

(b) ₹ 100 lakhs.

(c) ₹ 204 lakhs.

(d) ₹ 104 lakhs.

8. Which among the following has to be reported by the auditor as contingent liability of KD Bank Ltd.?

(a) Guarantee given by KD Bank on behalf of constituent located in Myanmar.

(b) A percentage of the total bills purchased by KD Bank.

(c) Claims against the bank acknowledged as debt.

(d) Unpaid salary of ₹ 5 lakhs to five staffs of KD Bank Ltd., who are currently undergoing a court trail.

9. What could be the possible reason for not accepting the special audit under section 66 of CGST Act?

(a) Such audit is applicable only if the turnover of the company exceeds ₹ 2 crores.

(b) Such audits need to be conducted by cost accountants.

(c) Such audit has to be called upon by assistant commissioner.

(d) Such audit has to be called upon by the central government.

10. Whether CA & Co. are justified for not accepting the incorporation services for RS General Insurance Ltd.? If so, as to what is the reason?

(a) Yes. The incorporation services for an insurance company should be done by the auditor appointed by the comptroller and auditor general of India.

(b) Yes. The insurance company should have a minimum paid up share capital of ₹ 100 crores which shall exclude the preliminary expenses.

(c) No. The insurance company should have a minimum paid up share capital of ₹ 100 crores which also includes the preliminary expenses.

(d) Yes. The incorporation services for an insurance company should be done by the auditor appointed by the Insurance Regulatory and Development Authority.

PART B : DESCRIPTIVE QUESTIONS

Standards on Auditing, Statements and Guidance Notes

11. (a) Your firm has been appointed as the statutory auditors of AGM Private Limited for the financial year 2018-19. While verification of company's trade receivables as on 31st March 2019, accountant of AGM Ltd. has requested you, not to send balance confirmations to a particular group of trade receivables since the said balances are under dispute and the matter is pending in the Court. As a Statutory Auditor, how would you deal in this situation?

(b) RIM Private Ltd is engaged in the business of manufacturing of water bottles and is experiencing significant increase in turnover year on year. During the financial year ended 31 March 2019, the company carried out a detailed physical verification of its inventory and property, plant and equipment.

You are the auditor of RIM Private Ltd. The inventory as at the end of the year was ₹ 2.25 crores. Due to unavoidable circumstances, you could not be present at the time of annual physical verification. Under the above circumstances how would you ensure that the physical verification conducted by the management was in order?

(c) Mr. PM, a practising Chartered Accountant, has been appointed as an auditor of Truth Pvt. Ltd. What factors would influence the amount of working papers required to be maintained for the purpose of his audit?

Risk Assessment and Internal Control

12. (a) Navjeevan Hospital is a multi-speciality hospital which has been facing a lot of pilferage and troubles regarding their inventory maintenance and control. On investigation into the matter it was found that the person in charge of inventory inflow and outflow from the store house is also responsible for purchases and maintaining inventory records. According to you, which basis system of control has been violated? Also list down the other general conditions pertaining to such system which needs to be maintained and checked by the management.

(b) During the course of his audit, the auditor noticed material weaknesses in the internal control system and he wishes to communicate the same to the management. You are required to elucidate the important points the auditor should keep in the mind while drafting the letter of weaknesses in internal control system.

The Company Audit & Audit Report

13. (a) The Balance Sheet of G Ltd. as at 31st March, 2019 is as under. Comment on the presentation in terms of Schedule III.

Heading	Note No.	31st March, 19	31st March, 18
Equity & Liabilities			
Share Capital	1	XXX	XXX
Reserves & Surplus	2	0	0
Employee stock option outstanding	3	XXX	XXX
Share application money refundable	4	XXX	XXX
Non-Current Liabilities		XXX	XXX
Deferred tax liability (Arising from Indian Income Tax)	5	XXX	XXX
Current Liabilities			
Trade Payables	6	XXX	XXX
Total		XXXX	XXXX
Assets			
Non-Current Assets			
Fixed Assets-Tangible	7	XXX	XXX
CWIP (including capital advances)	8	XXX	XXX
Current Assets			
Trade Receivables	9	XXX	XXX
Deferred Tax Asset (Arising from Indian Income Tax)	10	XXX	XXX
Debit balance of Statement of Profit and Loss		XXX	XXX
Total		XXXX	XXXX

(b) "When the auditor modifies the audit opinion, the auditor shall use the heading "Qualified Opinion," "Adverse Opinion," or "Disclaimer of Opinion," as appropriate, for the Opinion section." As an expert you are required to brief the special considerations required for expressing:

(i) Qualified Opinion;

(ii) Adverse Opinion and

(iii) Disclaimer of Opinion.

(c) The auditor's inability to obtain sufficient appropriate audit evidence (also referred to as a limitation on the scope of the audit) may arise from:

(i) Circumstances beyond the control of the entity;

(ii) Circumstances relating to the nature or timing of the auditor's work; or

(iii) Limitations imposed by management.

Explain with the help of examples.

Audit of Banks & Insurance Company

14 (a) In course of audit of Good Samaritan Bank as at 31st March, 2019 you observed the following:

(1) In a particular account there was no recovery in the past 18 months. The bank has not applied the NPA norms as well as income recognition norms to this particular account. When queried the bank management replied that this account was guaranteed by the central government and hence these norms were not applicable. The bank has not invoked the guarantee. Please respond. Would your answer be different if the advance is guaranteed by a State Government?

(2) The bank's advance portfolio comprised of significant loans against Life Insurance Policies. Write suitable audit program to verify these advances.

(b) Amrapali & Co., Chartered Accountants are the Auditors of Natural Care General Insurance Company Limited. As on March 31, 2019 the Management made a provision for claims outstanding. Enumerate the steps to be taken by the Auditor while verifying the "Claims Provision".

Audit under Fiscal Laws

15. (a) ABC Printing Press, a proprietary concern, made a turnover of above ₹ 1.03 crore for the year ended 31.03.2019. The Management explained its auditor Mr. Z, that it undertakes different job work orders from various customers. The raw materials required for each job are dissimilar. It purchases the raw materials as per specification/ requirements of each customer and there is hardly any balance of raw materials remaining in the stock except pending work-in-progress at the year end. Because of variety and complexity of materials, it is impossible to maintain a stock-register. Give your comments.

(b) PQR Ltd is a textile company with aggregate turnover exceeding ₹ 2 crores. XYZ & Associates is a Chartered Accountant firm which has been appointed for GST audit of PQR Ltd. Mr Sandhu, Chartered Accountant from XYZ & Associates, observes on 23 July 2019 that PQR Ltd has not filed its GSTR 3B for the month of July & its GSTR-1 return is also not complied with. What should Mr Sandhu advise the client before conducting GST audit of PQR Ltd.

Audit of Public Sector Undertakings

16. (a) XYZ & Co., a CA. firm was appointed by C&AG to conduct comprehensive audit of ABC Public undertaking. C&AG advised to cover areas such as investment decisions,

project formulation, organisational effectiveness, capacity utilisation, management of equipment, plant and machinery, production performance, use of materials, productivity of labour, idle capacity, costs and prices, materials management, sales and credit control, budgetary and internal control systems, etc. Discuss stating the issues examined in comprehensive audit.

(b) A performance audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action." Briefly discuss the issues addressed by Performance Audits conducted in accordance with the guidelines issued by C&AG.

Internal Audit, Management and Operational Audit

17. Mr. Anand is appointed as statutory auditor of XYZ Ltd. XYZ Ltd is required to appoint internal auditor as per statutory provisions given in the Companies Act, 2013 and appointed Mr. Bhola as its internal auditor. The external auditor Mr. Anand asked internal auditor to provide direct assistance to him regarding evaluating significant accounting estimates by the management and assessing the risk of material misstatements.

(a) Discuss whether Mr. Anand, statutory auditor, can ask direct assistance from Mr. Bhola, internal auditor as stated above in view of Standards on Auditing.

(b) Will your answer be different, if Mr. Anand ask direct assistance from Mr. Bhola, internal auditor with respect to external confirmation requests and evaluation of the results of external confirmation procedures?

Due Diligence, Investigation and Forensic Audit

18. ABC nationalised bank received an application from an export company seeking sanction of a term loan to expand the existing sea food processing plant. In this connection, the General Manager, who is in-charge of advances, approaches you to conduct a thorough investigation of this limited company and submit a confidential report based on which he will decide whether to sanction this loan or not.

Decide the points you will cover in your investigation before submitting your report to the General Manager.

Professional Ethics

19. Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

(a) OPAQ & Associates, a firm of Chartered Accountants responded to a tender issued exclusively for Chartered Accountants by an organisation in the area of tax audit. However no minimum fee was prescribed in the tender document.

(b) Agarwal Pvt Ltd. approached CA. Prem, a Chartered Accountant in practice, for debt recovery services. CA Prem accepted the work and insisted for fees to be based on 2% of the debt recovered.

(c) ABZ & Co., a firm of Chartered Accountants, develops a website "abz.com". The colour chosen for the website was a very bright green and the web-site was to run on a "push" technology where the names of the partners of the firm and the major clients were to be displayed on the web-site without any disclosure obligation from any regulator.

(d) Mr. P and Mr. Q are running a firm of Chartered Accountants in the name of PQ & Co. On 23.05.2019, they included the name of Mr. R, a practicing Chartered Accountant, without his knowledge, as a partner while submitting an application for empanelment as auditor for branches of a public sector bank, to the Institute. However, they added Mr. R as a partner to their firm offering a share of 25% of the profits, on 25.05.2019.

20. Write a short note on the following:

(a) Scope of peer review.

(b) "Mandatory Review" areas of the audit committee.

(c) Differences between Division II (Ind- AS- Other than NBFCs) and Division III (Ind- AS- NBFCs) of Schedule III

(d) Special report to registrar of Co-operative Societies by the auditor.

SUGGESTED ANSWERS/HINTS

PART A : ANSWERS TO MULTIPLE QUESTIONS

1. (d)

2. (a)

3. (c)

4. (c)

5. (b)

6. (b)

7. (d)

8. (a)

9. (c)

10. (b)

PART B

11. (a) **SA 505 "External Confirmations"**, establishes standards on the auditor's use of external confirmation as a means of obtaining audit evidence. If the management refuses to allow the auditor to a send a confirmation request, the auditor shall:

(i) Inquire as to Management's reasons for the refusal, and seek audit evidence as to their validity and reasonableness,

(ii) Evaluate the implications of management's refusal on the auditor's assessment of the relevant risks of material misstatement, including the risk of fraud, and on the nature, timing and extent of other audit procedures, and

(iii) Perform alternative audit procedures designed to obtain relevant and reliable audit evidence.

If the auditor concludes that management's refusal to allow the auditor to send a confirmation request is unreasonable or the auditor is unable to obtain relevant and reliable audit evidence from alternative audit procedures, the auditor shall communicate with those in charge of governance and also determine its implication for the audit and his opinion.

(b) As per **SA 501 "Audit Evidence – Additional Considerations for Specific Items",** the auditor should perform audit procedures, designed to obtain sufficient appropriate audit evidence during his attendance at physical inventory counting. SA 501 is additional guidance to that contained in SA 500, "Audit Evidence", with respect to certain specific financial statement amounts and other disclosures.

If the auditor is unable to be present at the physical inventory count on the date planned due to unforeseen circumstances, the auditor should take or observe some physical counts on an alternative date and where necessary, perform alternative audit procedures to assess whether the changes in inventory between the date of physical count and the period end date are correctly recorded. The auditor would also verify the procedure adopted, treatment given for the discrepancies noticed during the physical count. The auditor would also ensure that appropriate cut off procedures were followed by the management. He should also get management's written representation on (a) the completeness of information provided regarding the inventory, and (b) assurance with regard to adherence to laid down procedures for physical inventory count.

By following the above procedure, it will be ensured that the physical verification conducted by the management was in order.

(c) **Factors Influencing the amount of Working Papers:** As per SA 230 "Audit Documentation", which refers to the record of audit procedures performed, relevant audit evidence obtained and conclusions the auditor reached, the amount of audit working papers depend on factors such as-

(i) The size and complexity of the entity.

(ii) The nature of the audit procedures to be performed.

(iii) The identified risks of material misstatement.

(iv) The significance of the audit evidence obtained.

(v) The nature and extent of exceptions identified.

(vi) The need to document a conclusion or the basis for a conclusion not readily determinable from the documentation of the work performed or audit evidence obtained.

(vii) The audit methodology and tools used.

(viii) Timely preparation of Audit Documentation.

12. (a) Basic system of Control: Internal Checks and Internal Audit are important constituents of Accounting Controls. Internal check system implies organization of the overall system of book-keeping and arrangement of Staff duties in such a way that no one person can carry through a transaction and record every aspect thereof.

In the given case of Navjeevan Hospital, the person-in-charge of inventory inflow and outflow from the store house is also responsible for purchases and maintaining inventory records. Thus, one of the basic system of control i.e. internal check which includes segregation of duties or maker and checker has been violated where transaction processing are allocated to different persons in such a manner that no one person can carry through the completion of a transaction from start to finish or the work of one person is made complimentary to the work of another person.

The general condition pertaining to the internal check system may be summarized as under-

(i) No single person should have complete control over any important aspect of the business operation. Every employee's action should come under the review of another person.

(ii) Staff duties should be rotated from time to time so that members do not perform the same function for a considerable length of time.

(iii) Every member of the staff should be encouraged to go on leave at least once a year.

(iv) Persons having physical custody of assets must not be permitted to have access to the books of accounts.

(v) There should exist an accounting control in respect of each class of assets, in addition, there should be periodical inspection so as to establish their physical condition.

(vi) Mechanical devices should be used, where ever practicable to prevent loss or misappropriation of cash.

(vii) Budgetary control should be exercised and wide deviations observed should be reconciled.

(viii) For inventory taking, at the close of the year, trading activities should, if possible be suspended, and it should be done by staff belonging to several sections of the organization.

(ix) The financial and administrative powers should be distributed very judiciously among different officers and the manner in which those are actually exercised should be reviewed periodically.

(x) Procedures should be laid down for periodical verification and testing of different sections of accounting records to ensure that they are accurate.

(b) Important Points to be kept in Mind While Drafting Letter of Weakness: As per SA 265, "Communicating Deficiencies in Internal Control to Those who Charged with Governance and Management", the auditor shall include in the written communication of significant deficiencies in internal control -

(i) A description of the deficiencies and an explanation of their potential effects; and

(ii) Sufficient information to enable those charged with governance and management to understand the context of the communication.

In other words, the auditor should communicate material weaknesses to the management or the audit committee, if any, on a timely basis. This communication should be, preferably, in writing through a letter of weakness or management letter. Important points with regard to such a letter are as follows-

(1) The letter lists down the area of weaknesses in the system and offers suggestions for improvement.

(2) It should clearly indicate that it discusses only weaknesses which have come to the attention of the auditor as a result of his audit and that his examination has not been designed to determine the adequacy of internal control for management.

(3) This letter serves as a valuable reference document for management for the purpose of revising the system and insisting on its strict implementation.

(4) The letter may also serve to minimize legal liability in the event of a major defalcation or other loss resulting from a weakness in internal control.

13. (a) Following Errors are noticed in presentation as per Schedule III:

(i) Share Capital and Reserve & Surplus are to be reflected under the heading "Shareholders' funds", which is not shown while preparing the balance sheet. Although it is a part of Equity and Liabilities, yet it must be shown under head "shareholders' funds". The heading "Shareholders' funds" is missing in the balance sheet given in the question.

(ii) Reserve & Surplus is showing zero balance, which is not correct in the given case. Debit balance of statement of Profit & Loss should be shown as a negative figure under the head 'Surplus'. The balance of 'Reserves and Surplus', after adjusting negative balance of surplus shall be shown under the head 'Reserves and Surplus' even if the resulting figure is in the negative.

(iii) Schedule III requires that Employee Stock Option outstanding should be disclosed under the heading "Reserves and Surplus".

(iv) Share application money refundable shall be shown under the sub-heading "Other Current Liabilities". As this is refundable and not pending for allotment, hence it is not a part of equity.

(v) Deferred Tax Liability has been correctly shown under Non-Current Liabilities. But Deferred tax assets and deferred tax liabilities, both, cannot be shown in balance sheet because only the net balance of Deferred Tax Liability or Asset is to be shown if the enterprise has a legally enforceable right to set off assets against liabilities representing current tax; and it relates to the same governing tax laws.

(vi) Under the main heading of Non-Current Assets, Property, Plant and Equipment are further classified as under:

(a) Tangible assets

(b) Intangible assets

(c) Capital work in Progress

(d) Intangible assets under development.

Keeping in view the above, the CWIP shall be shown under Property, Plant and Equipment as Capital Work in Progress. The amount of Capital advances included in CWIP shall be disclosed under the sub-heading "Long term loans and advances" under the heading Non-Current Assets.

Subsequent to the notification of Ministry of Corporate Affairs dated October 11, 2018 under Section 467(1) of the Companies Act, 2013, the words "Fixed assets" shall be substituted with the words "Property, Plant and Equipment".

(e) Deferred Tax Asset shall be shown under Non-Current Asset. It should be the net balance of Deferred Tax Asset after adjusting the balance of deferred tax liability if the enterprise has a legally enforceable right to set off assets against liabilities representing current tax; and it relates to the same governing tax laws.

(f) Subsequent to the notification of Ministry of Corporate Affairs dated October 11, 2018 under Section 467(1) of the Companies Act, 2013, Trade Payables should be disclosed as follows:-

(A) total outstanding dues of micro enterprises and small enterprises; and

(B) total outstanding dues of creditors other than micro enterprises and small enterprises."

(b) (i) Special consideration required for expressing Qualified Opinion: When the auditor expresses a qualified opinion due to a material misstatement in the financial statements, the auditor shall state that, in the auditor's opinion, except for the effects of the matter(s) described in the Basis for Qualified Opinion section:

(1) When reporting in accordance with a fair presentation framework, the accompanying financial statements present fairly, in all material respects (or give a true and fair view of) […] in accordance with [the applicable financial reporting framework]; or

(2) When reporting in accordance with a compliance framework, the accompanying financial statements have been prepared, in all material respects, in accordance with [the applicable financial reporting framework].

When the modification arises from an inability to obtain sufficient appropriate audit evidence, the auditor shall use the corresponding phrase "except for the possible effects of the matter(s) ..." for the modified opinion.

(ii) Special consideration needed for expressing Adverse Opinion: When the auditor expresses an adverse opinion, the auditor shall state that, in the auditor's opinion, because of the significance of the matter(s) described in the Basis for Adverse Opinion section:

(1) When reporting in accordance with a fair presentation framework, the accompanying financial statements do not present fairly (or give a true and fair view of) […] in accordance with [the applicable financial reporting framework]; or

(2) When reporting in accordance with a compliance framework, the accompanying financial statements have not been prepared, in all material respects, in accordance with [the applicable financial reporting framework].

(iii) Special consideration is required for expressing Disclaimer of Opinion: When the auditor disclaims an opinion due to an inability to obtain sufficient appropriate audit evidence, the auditor shall:

(1) State that the auditor does not express an opinion on the accompanying financial statements;

(2) State that, because of the significance of the matter(s) described in the Basis for Disclaimer of Opinion section, the auditor has not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements; and

(3) Amend the statement required in SA 700 (Revised), which indicates that the financial statements have been audited, to state that the auditor was engaged to audit the financial statements.

Unless required by law or regulation, when the auditor disclaims an opinion on the financial statements, the auditor's report shall not include a Key Audit Matters section in accordance with SA 701.

(c) The auditor's inability to obtain sufficient appropriate audit evidence (also referred to as a limitation on the scope of the audit) may arise from:

(i) Circumstances beyond the control of the entity;

(ii) Circumstances relating to the nature or timing of the auditor's work; or

(iii) Limitations imposed by management.

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

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

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

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

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

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

- Management prevents the auditor from observing the counting of the physical inventory.

- Management prevents the auditor from requesting external confirmation of specific account balances.

14. (a) (1) Government Guaranteed Advance: If a government guaranteed advance becomes NPA, then for the purpose of income recognition, interest on such advance should not be taken to income unless interest is realized. However, for purpose of asset classification, credit facility backed by Central Government Guarantee, though overdue, can be treated as NPA only when the Central Government repudiates its guarantee, when invoked.

Since the bank has not revoked the guarantee, the question of repudiation does not arise. Hence the bank is correct to the extent of not applying the NPA norms for provisioning purpose. But this exemption is not available in respect of income recognition norms. Hence the income to the extent not recovered should be reversed.

The situation would be different if the advance is guaranteed by State Government because this exception is not applicable for State Government Guaranteed advances, where advance is to be considered NPA if it remains overdue for more than 90 days.

In case the bank has not invoked the Central Government Guarantee though the amount is overdue for long, the reasoning for the same should be taken and duly reported in LFAR.

(2) The Audit Programme to Verify Advances against Life Insurance Policies is as under-

(i) The auditor should inspect the policies and see whether they are assigned to the bank and whether such assignment has been registered with the insurer.

(ii) The auditor should also examine whether premium has been paid on the policies and whether they are in force.

(iii) Certificate regarding surrender value obtained from the insurer should be examined.

(iv) The auditor should particularly see that if such surrender value is subject to payment of certain premium, the amount of such premium has been deducted from the surrender value.

(b) Verification of "Claims Provision" in the Case of a General Insurance Company: The outstanding liability at the year-end is determined at the divisions/branches where the liability originates for outstanding claims. Thereafter, based on the total consolidated figure for all the divisions/branches, the Head Office considers a further provision in respect of outstanding claims. The auditor should satisfy himself that the estimated liability provided for by the management is adequate with reference to the relevant claim files/dockets, keeping in view the following:

(i) that provision has been made for all unsettled claims as at the year-end on the basis of claims lodged/communicated by the parties against the company. The date of loss (and not the date of communication thereof) is important for recording/ recognizing the claim as attributable to a particular year.

(ii) that provision has been made for only such claims for which the company is legally liable, considering particularly, (a) that the risk was covered by the policy, if in force, and the claims arose during the currency of the policy; and (b) that claim did not arise during the period the company was not supposed to cover the risk.

(iii) that the provision made is normally not in excess of the amount insured except in some categories of claims where matters may be sub-judice in legal proceedings which will determine the quantum of claim, the amount of provision should also include survey fee and other direct expenses.

(iv) that in determining the amount of provision, events after the balance sheet date have been considered.

(v) that the claims status reports recommended to be prepared by the Divisional Manager on large claims outstanding at the year-end have been reviewed with the contents of relevant files or dockets for determining excess/short provisions.

(vi) that in determining the amount of provision, the 'average clause' has been applied in case of under-insurance by parties.

(vii) that the provision made is net of payments made 'on account' to the parties wherever such payments have been booked to claims.

(viii) that in case of co-insurance arrangements, the company has made provisions only in respect of its own share of anticipated liability.

(ix) that wherever an unduly long time has elapsed after the filing of the claim and there has been no further communication and no litigation or arbitration dispute is involved, the reasons for carrying the provision have been ascertained.

(x) that wherever legal advice has been sought or the claim is under litigation, the provisions is made according to the legal advisor's view and differences, if any, are explained.

(xi) that in the case of amounts purely in the nature of deposits with courts or other authorities, adequate provision is made and deposits are stated separately as assets and provisions are not made net of such deposits.

(xii) that no contingent liability is carried in respect of any claim intimated in respect of policies issued.

(xiii) that the claims are provided for net of estimated salvage, wherever applicable.

(xiv) that intimation of loss is received within a reasonable time and reasons for undue delay in intimation are looked into.

(xv) that provisions have been retained as at the year-end in respect of guarantees given by company to various Courts for claims under litigation.

(xvi) that due provision has been made in respect of claims lodged at any office of the company other than the one from where the policy was taken, e.g., a vehicle insured at Mumbai having met with an accident at Chennai necessitating claim intimation at one of the offices of the company at Chennai.

In cases of material differences in the liability estimated by the management and that which ought to be provided in the opinion of the auditor, the same must be brought out in the auditor's report after obtaining further information or explanation from the management.

15. (a) Non-maintenance of stock register: The explanation of the entity for the use of varieties of raw materials for different jobs undertaken may be valid. But the auditor needs to verify the specified job-orders received and the different raw materials purchased for each job separately. The use of different papers (quality, quantity and size) ink, colour etc. may be examined. If possible, the auditor may also enquire with the other similar printers in the locality to ensure the prevailing custom. At the same time, he has to report and certify under clause 35(b) and clause 11(b) of Form 3CD read with the Rule 6G(2) of the Income-tax Act, 1961, about the details of stock and account books (including stock register) maintained. He must verify the closing stock of raw materials, work-in-progress and finished goods of the concern, at least on the date of its balance sheet. In case the said details are not properly maintained, he has to specifically mention the same with reasons for non-maintenance of stock register by the entity.

(b) The auditor should advise the company to file all the GSTR-3B, GSTR-1 and annual returns before conducting GST audit so that auditor can validate and verify the returns filed by the company, verification of ITC claimed, verification of output GST liability discharged by the company and for collation of return workings and reconciliations. Auditor needs to have a comprehensive picture of -

(i) Understanding of the back-up of monthly returns as well as annual return and understanding of reports generated by the GSTN portal as well as internal records of the company.

(ii) Understanding of the eligibility of Input Tax Credit (ITC) availed i.e. whether ITC availed by the company is creditable or not and understanding of reversal of ITC undertaken or applicable (if any).

(iii) Understanding of the taxability of outward supplies and transactions covered under Reverse Charge Mechanism and other miscellaneous/ specific transactions and understanding of the positions taken on various transactions by the company.

16 (a) **Issues examined in Comprehensive Audit:** Some of the issues examined in comprehensive audit are-

(i) How does the overall capital cost of the project compare with the approved planned costs? Were there any substantial increases and, if so, what are these and whether there is evidence of extravagance or unnecessary expenditure?

(ii) Have the accepted production or operational outputs been achieved? Has there been under utilisation of installed capacity or shortfall in performance and, if so, what has caused it?

(iii) Has the planned rate of return been achieved?

(iv) Are the systems of project formulation and execution sound? Are there inadequacies? What has been the effect on the gestation period and capital cost?

(v) Are cost control measures adequate and are there inefficiencies, wastages in raw materials consumption, etc.?

(vi) Are the purchase policies adequate? Or have they led to piling up of inventory resulting in redundancy in stores and spares?

(vii) Does the enterprise have research and development programmes? What has been the performance in adopting new processes, technologies, improving profits and in reducing costs through technological progress?

(viii) If the enterprise has an adequate system of repairs and maintenance?

(ix) Are procedures effective and economical?

(x) Is there any poor or insufficient or inefficient project planning?

(b) **According to the guidelines issued by the C&AG, Performance Audits usually address the issues of:**

(i) Economy - It is minimising the cost of resources used for an activity, having regard to appropriate quantity, quality and at the best price.

Judging economy implies forming an opinion on the resources (**e.g. human, financial and material)** deployed. This requires assessing whether the given resources have been used economically and acquired in due time, in appropriate quantity and quality at the best price.

(ii) Efficiency - It is the input-output ratio. In the case of public spending, efficiency is achieved when the output is maximised at the minimum of inputs, or input is minimised for any given quantity and quality of output.

Auditing efficiency embraces aspects such as whether:

(a) sound procurement practices are followed;

(b) resources are properly protected and maintained;

(c) human, financial and other resources are efficiently used;

(d) optimum amount of resources (staff, equipment, and facilities) are used in producing or delivering the appropriate quantity and quality of goods or services in a timely manner;

(e) public sector programmes, entities and activities are efficiently managed, regulated, organised and executed;

(f) efficient operating procedures are used; and

(g) the objectives of public sector programmes are met cost-effectively.

(iii) Effectiveness - It is the extent to which objectives are achieved and the relationship between the intended impact and the actual impact of an activity.

In auditing effectiveness, performance audit may, for instance:

(a) assess whether the objectives of and the means provided (legal, financial, etc.) for a new or ongoing public sector programme are proper, consistent, suitable or relevant to the policy;

(b) determine the extent to which a program achieves a desired level of program results;

(c) assess and establish with evidence whether the observed direct or indirect social and economic impacts of a policy are due to the policy or to other causes;

(d) identify factors inhibiting satisfactory performance or goal-fulfilment;

(e) assess whether the programme complements, duplicates, overlaps or counteracts other related programmes;

(f) assess the effectiveness of the program and/or of individual program components;

(g) determine whether management has considered alternatives for carrying out the program that might yield desired results more effectively or at a lower cost;

(h) assess the adequacy of the management control system for measuring, monitoring and reporting a programme's effectiveness;

(i) assess compliance with laws and regulations applicable to the program; and

(j) identify ways of making programmes work more effectively.

17. (a) Direct Assistance from Internal Auditor: As per SA 610 "Using the Work of Internal Auditor", the external auditor shall not use internal auditors to provide direct assistance to perform procedures that Involve making significant judgments in the audit.

Since the external auditor has sole responsibility for the audit opinion expressed, the external auditor needs to make the significant judgments in the audit engagement.

Significant judgments include the following:

- Assessing the risks of material misstatement;
- Evaluating the sufficiency of tests performed;
- Evaluating the appropriateness of management's use of the going concern assumption;
- Evaluating significant accounting estimates; and
- Evaluating the adequacy of disclosures in the financial statements, and other matters affecting the auditor's report.

In view of above, Mr. Anand cannot ask direct assistance from internal auditors regarding evaluating significant accounting estimates and assessing the risk of material misstatements.

(b) **Direct Assistance from Internal Auditor in case of External Confirmation Procedures:** SA 610 "Using the Work of Internal Auditor", provide relevant guidance in determining the nature and extent of work that may be assigned to internal auditors. In determining the nature of work that may be assigned to internal auditors, the external auditor is careful to limit such work to those areas that would be appropriate to be assigned.

Further, in accordance with SA 505, "External Confirmation" the external auditor is required to maintain control over external confirmation requests and evaluate the results of external confirmation procedures, it would not be appropriate to assign these responsibilities to internal auditors. However, internal auditors may assist in assembling information necessary for the external auditor to resolve exceptions in confirmation responses.

18. **Investigation on Behalf of the Bank for Advances:** A bank is primarily interested in knowing the purpose for which a loan is required, the sources from which it would be repaid and the security that would be available to it, if the borrower fails to pay back the loan. On these considerations, the investigating accountant, in the course of his enquiry, should attempt to collect information on the under mentioned points:

(i) The purpose for which the loan is required and the manner in which the borrower proposes to invest the amount of the loan.

(ii) The schedule of repayment of loan submitted by the borrower, particularly the assumptions made therein as regards amounts of profits that will be earned in cash and the amount of cash that would be available for the repayment of loan to confirm that they are reasonable and valid in the circumstances of the case. Institutional lenders now-a-days rely more for payment of loans on the reliability of annual profits and loss on the values of assets mortgaged to them.

(iii) The financial standing and reputation for business integrity enjoyed by directors and officers of the company.

(iv) Whether the company is authorised by the Memorandum or the Articles of Association to borrow money for the purpose for which the loan will be used.

(v) The history of growth and development of the company and its performance during the past 5 years.

(vi) How the economic position of the company would be affected by economic, political and social changes that are likely to take place during the period of loan.

To investigate the profitability of the business for judging the accuracy of the schedule of repayment furnished by the borrower, as well as the value of the security in the form of assets of the business already possessed and those which will be created out of the loan, the investigating accountant should take the under-mentioned steps:

(a) Prepare a condensed income statement from the Statement of Profit and Loss for the previous five years, showing separately therein various items of income and expenses, the amounts of gross and net profits earned and taxes paid annually during each of the five years. The amount of maintainable profits determined on the basis of foregoing statement should be increased by the amount by which these would increase on the investment of borrowed funds.

(b) Compute the under-mentioned ratios separately and then include them in the statement to show the trend as well as changes that have taken place in the financial position of the company:

(i) Sales to Average Inventories held.

(ii) Sales to Fixed Assets.

(iii) Equity to Fixed Assets.

(iv) Current Assets to Current Liabilities.

(v) Quick Assets (the current assets that are readily realisable) to Quick Liabilities.

(vi) Equity to Long Term Loans.

(vii) Sales to Book Debts.

(viii) Return on Capital Employed.

(c) Enter in a separate part of the statement the break-up of annual sales product-wise to show their trend.

Steps involved in the verification of assets and liabilities included in the Balance Sheet of the borrower company which has been furnished to the Bank-

The investigating accountant should prepare schedules of assets and liabilities of the borrower and include in the particulars stated below:

(1) Fixed assets - A full description of each item, its gross value, the rate at which depreciation has been charged and the total depreciation written off. In case the rate at which depreciation has been adjusted is inadequate, the fact should be stated. In case any asset is encumbered, the amount of the charge and its nature should be disclosed. In case an asset has been revalued recently, the amount by which the value of the asset has been decreased or increased on revaluation should be stated along with the date of revaluation. If considered necessary, he may also comment on the revaluation and its basis.

(2) Inventory - The value of different types of inventories held (raw materials, work-in-progress and finished goods) and the basis on which these have been valued.

Details as regards the nature and composition of finished goods should be disclosed. Slow-moving or obsolete items should be separately stated along with the amounts of allowances, if any, made in their valuation. For assessing redundancy, the changes that have occurred in important items of inventory subsequent to the date of the Balance Sheet, either due to conversion into finished goods or sale, should be considered.

If any inventory has been pledged as a security for a loan the amount of loan should be disclosed.

(3) Trade Receivables, including bills receivable - Their composition should be disclosed to indicate the nature of different types of debts that are outstanding for recovery; also whether the debts were being collected within the period of credit as well as the fact whether any debts are considered bad or doubtful and the provision if any, that has been made against them.

Further, the total amount outstanding at the close of the period should be segregated as follows:

(i) debts due in respect of which the period of credit has not expired;

(ii) debts due within six months; and

(iii) debts due but not recovered for over six months.

If any debts are due from directors or other officers or employees of the company, the particulars thereof should be stated. Amounts due from subsidiary and affiliated concerns, as well as those considered abnormal should be disclosed. The recoveries out of various debts subsequent to the date of the Balance sheet should be stated.

(4) Investments - The schedule of investments should be prepared. It should disclose the date of purchase, cost and the nominal and market value of each investment. If any investment is pledged as security for a loan, full particulars of the loan should be given.

(5) **Secured Loans -** Debentures and other loans should be included together in a separate schedule. Against the debentures and each secured loan, the amounts outstanding for payments along with due dates of payment should be shown. In case any debentures have been issued as a collateral security, the fact should be stated. Particulars of assets pledged or those on which a charge has been created for re-payment of a liability should be disclosed.

(6) **Provision of Taxation -** The previous years up to which taxes have been assessed should be ascertained. If provision for taxes not assessed appears in be inadequate, the fact should be stated along with the extent of the shortfall.

(7) **Other Liabilities -** It should be stated whether all the liabilities, actual and contingent, are correctly disclosed. Also, an analysis according to ages of trade payables should be given to show that the company has been meeting its obligations in time and has not been depending on trade credit for its working capital requirements.

(8) **Insurance -** A schedule of insurance policies giving details of risks covered, the date of payment of last premiums and their value should be attached as an annexure to the statements of assets, together with a report as to whether or not the insurance-cover appears to be adequate, having regard to the value of assets.

(9) **Contingent Liabilities -** By making direct enquiries from the borrower company, from members of its staff, perusal of the files of parties to whom any loan has been advanced those of machinery suppliers and the legal adviser, for example, the investigating accountant should ascertain particulars of any contingent liabilities which have not been disclosed. In case, there are any, these should be included in a schedule and attached to the report.

(10) The impact on economic position of the company by economic, political and social changes those are likely to take place during the period of loan.

Finally, the investigating accountant should ascertain whether any application for loan to another bank or any other party has been made. If so, the result thereof should be examined.

19. (a) Responding to Tenders: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 lays down guidelines for responding to tenders, etc. It states that a member may respond to tenders or enquiries issued by various users of professional services or organizations from time to time and secure professional work as a consequence.

However, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for Chartered Accountants, such as audit and attestation services. Though, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

In the instant case, OPAQ & Associates responded to a tender of tax audit which is exclusively reserved for Chartered Accountants even though no minimum fee was prescribed in the tender document.

Therefore, OPAQ & Associates shall be held guilty of professional conduct for responding to such tender in view of above-mentioned guideline.

(b) **Charging of Fees based on Percentage:** Clause (10) of Part I to First Schedule to the Chartered Accountants Act, 1949 prohibits a Chartered Accountant in practice to charge, to offer, to accept or accept fees which are based on a percentage of profits or which are contingent upon the findings or results of such work done by him.

However, this restriction is not applicable where such payment is permitted by the Chartered Accountants Act, 1949. The Council of the Institute has framed Regulation 192 which exempts debt recovery services where fees may be based on a percentage of the debt recovered.

In the given case, CA. Prem has insisted for fees to be based on percentage of the debt recovered (which is exempted under Regulation 192). Hence, CA. Prem will not be held guilty for professional misconduct.

(c) **Posting of Particulars on Website:** The Council of the Institute had approved posting of particulars on website by Chartered Accountants in practice under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 subject to the prescribed guidelines. The relevant guidelines in the context of the website hosted by ABZ & Co. are:

- No restriction on the colours used in the website;
- The websites are run on a "pull" technology and not a "push" technology
- Names of clients and fees charged not to be given.

  However, disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that "This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].

In view of the above, ABZ & Co. would have no restriction on the colours used in the website but failed to satisfy the other two guidelines. Thus, the firm would be liable for professional misconduct since it would amount to soliciting work by advertisement.

(d) Submitting Wrong Information to the Institute: As per Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

In the instant case, Mr. P and Mr. Q, partners of PQ & Co., included the name of Mr. R, another Chartered Accountant, as partner in their firm, without his knowledge, in their application for empanelment as auditor of branches of Public Sector Banks submitted to the Institute. However, such a member was not a partner of the said firm as on the date of application submitted. Here, Mr. P and Mr. Q have submitted wrong information to the Institute.

Therefore, Mr. P and Mr. Q, both, would be held guilty of professional misconduct under Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

20. (a) Scope of Peer Review: The Statement on Peer Review lays down the scope of review to be conducted as under:

The Peer Review process shall apply to all the assurance services provided by a Practice Unit.

1. Once a Practice Unit is selected for Review, its assurance engagement records pertaining to the Peer Review Period shall be subjected to Review.
2. The Review shall cover:
   (i) Compliance with Technical, Professional and Ethical Standards:
   (ii) Quality of reporting.
   (iii) Systems and procedures for carrying out assurance services.
   (iv) Training programmes for staff (including articled and audit assistants) concerned with assurance functions, including availability of appropriate infrastructure.
   (v) Compliance with directions and/or guidelines issued by the Council to the Members, including Fees to be charged, Number of audits undertaken, register for Assurance Engagements conducted during the year and such other related records.
   (vi) Compliance with directions and/or guidelines issued by the Council in

relation to article assistants and/or audit assistants, including attendance register, work diaries, stipend payments, and such other related records.

(b) Mandatory Review Areas of the Audit Committee: The Audit Committee shall mandatorily review the following information as per LODR Regulations-

(i) Management discussion and analysis of financial condition and results of operations;

(ii) Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;

(iii) Management letters / letters of internal control weaknesses issued by the statutory auditors;

(iv) Internal audit reports relating to internal control weaknesses; and

(v) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

(vi) Statement of deviations: (a) quarterly statement of deviations including report of monitoring agency if applicable and (b) annual statement of funds utilized for purposes other than those stated in the offer document/ prospectus/ notice.

(c) 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:

(i) 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.

(ii) 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.

(iii) 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.

(d) **Special Report to the Registrar:** The auditors are required to report on number of matters as prescribed in various states. In addition to the main report, the auditors are also required to submit by way of schedules/audit memorandum information on the working of the company as well. During the course of audit, if the auditor notices that there are some serious irregularities in the working of the society he may report these special matters to the Registrar, drawing his specific attention to the points. The Registrar on receipt of such a special report may take necessary action against the society. In the following cases, for instance a special report may become necessary:

(i) Personal profiteering by members of managing committee in transactions of the society, which are ultimately detrimental to the interest of the society.

(ii) Detection of fraud relating to expenses, purchases, property and stores of the society.

(iii) Specific examples of mis-management. Decisions of management against co-operative principles.

(iv) In the case of urban co-operative banks, disproportionate advances to vested interest groups, such as relatives of management, and deliberate negligence about the recovery thereof. Cases of reckless advancing, where the management is negligent about taking adequate security and proper safeguards for judging the credit worthiness of the party.

PAPER – 4 : CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2020 EXAMINATION

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

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

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

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

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

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

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

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

CHAPTER 2: ACCOUNTS AND AUDIT

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

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

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

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

(a) Explanation shall be omitted.

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

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

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

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

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

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

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

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

In the Companies (Accounts) Rules, 2014,

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

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

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

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

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

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

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

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

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

(b) number of meetings of the Board;

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

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

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

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

(g) the financial summary or highlights;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Constitution of NFRA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS

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

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

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

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

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

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

   (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 5: MEETING OF BOARD AND ITS POWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

Amendments through the Companies (Amendment) Act, 2019

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

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

CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

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

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

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

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

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

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

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

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

CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT

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

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

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

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

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

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

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

In *National Company Law Tribunal Rules, 2016*,

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

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

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

(b) one hundred members of the company,

whichever is less; or

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

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

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

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

(b) one hundred depositors of the company,

whichever is less; or

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

CHAPTER 10: WINDING UP

Amendments through the Companies (Amendment) Act, 2019

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

CHAPTER 16: SPECIAL COURTS

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

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

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

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

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

CHAPTER 17: MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Short title, commencement and application";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) size of the company;

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

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23B. Companies declared as Nidhis under previous company law to file Form NDH-4:- Every company referred in clause (a) of rule 2 shall file Form NDH-4 alongwith fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status:

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

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

CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

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

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

Following are the relevant amendments:

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

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

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

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

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

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

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

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

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

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";

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

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

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

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

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

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

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

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

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

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

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

Explanation.—For the purposes of this clause,—

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

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(6A) Where a financial debt—

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

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

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

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

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

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

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

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

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

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

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

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

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

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

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

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

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

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

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

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

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

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

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

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

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

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

(i) in clause (c),—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) **in clause (h), —**

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

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

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

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

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

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

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

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

(a) a scheduled bank;

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

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

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

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

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

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

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

(ii) in **sub-section (2),—**

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

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

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

(iii) in **sub-section (4),—**

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

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

namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

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

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

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

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

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

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

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

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

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

    b. in **sub-section (4)**,—

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

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

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

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

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

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

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

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

(i) a guardian;

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

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

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

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

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

Following are the relevant amendments:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II: ALLIED LAWS

CHAPTER 20: SEBI ACT, 1992

Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 22: The Foreign Exchange and Management Act, 1999

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

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

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

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

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

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

"(k) Undertake derivative contracts"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) [***]

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

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

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

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

(3) Amendments in External Commercial Borrowings

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

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

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7.3	Refinancing of existing ECB
7.4	Conversion of ECB into equity
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9	Borrowing by Entities under Investigation
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11	Dissemination of information
12	Compliance with the guidelines

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

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

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

<table>
<tr><td></td><td></td><td>entities are also eligible to raise ECB:
i. Port Trusts;
ii. Units in SEZ;
iii. SIDBI; and iv. EXIM Bank of India.</td><td>b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.</td></tr>
<tr><td>iv</td><td>Recognised lenders</td><td colspan="2">The lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities Commission (IOSCO) compliant country, including on transfer of ECB. However,
a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).</td></tr>
<tr><td></td><td></td><td colspan="2">Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.</td></tr>
<tr><td>V</td><td>Minimum Average Maturity Period (MAMP)</td><td colspan="2">MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:
<table>
<tr><th>Sr. No.</th><th>Category</th><th>MAMP</th></tr>
<tr><td>(a)</td><td>ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td><td>1 year</td></tr>
<tr><td>(b)</td><td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans</td><td>5 years</td></tr>
</table></td></tr>
</table>

<table>
<tr><td></td><td></td><td>
<table>
<tr><td>[1](c)</td><td>ECB raised for
(i) working capital purposes or general corporate purposes
(ii) on-lending by NBFCs for working capital purposes or general corporate purposes</td><td>10 years</td></tr>
<tr><td>(d)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>7 years</td></tr>
<tr><td>(e)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for purposes other than capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>10 years</td></tr>
<tr><td colspan="3">for the categories mentioned at (b) to (e) –
(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks
(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</td></tr>
</table>
</td></tr>
<tr><td>vi</td><td>All-in-cost ceiling per annum</td><td>Benchmark rate plus 450 bps spread.</td></tr>
<tr><td>vii</td><td>Other costs</td><td>Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the ted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.</td></tr>
<tr><td>Viii</td><td>End-uses (Negative list)</td><td>The negative list, for which the ECB proceeds cannot be utilised, would include the following:
a) Real estate activities.
b) Investment in capital market.
c) Equity investment.</td></tr>
</table>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) 'UNTRACEABLE ENTITY'; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Special Dispensations under the ECB framework:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 23: THE COMPETITION ACT, 2002

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

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

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

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

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

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

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

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

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

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

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

"(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.";

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

CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002

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

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

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

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

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

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

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

Verification of identity by reporting entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Integrated Multiple Choice Questions/ Multiple Choice Questions

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

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

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

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

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

   Multiple Choice Questions (MCQs)

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

      (a) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is valid because beforehand, a motion authorising their appointment by a single resolution was passed in the meeting and not a single vote was cast against such motion.

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

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

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

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

(a) Five directors

(b) Four directors

(c) Three directors

(d) Two directors

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

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

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

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

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

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

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

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

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

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

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

(a) Six directors

(b) Five directors

(c) Four directors

(d) Two directors

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

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

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

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

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

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

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

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

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

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

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

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

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

Descriptive Questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
    (i) The Board of Directors of Happy Ltd. proposes to declare dividend at the rate of 22% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.
    (ii) Whether a Company can declare dividend for the financial year in which it incurred loss.
18. PQR Ltd. is holding 30% of the paid up equity capital of Cochin Stock Exchange. The company appoints MNL Ltd. as its proxy who is not a member of the Cochin Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Cochin Stock Exchange can restrict the appointment of MNL Ltd. as proxy for PQR Ltd. and further restrict, the voting rights of PQR Ltd. in the Cochin Stock Exchange.
19. Mr. Mediator was proposed to be appointed as a resolution professional for the corporate insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. Mediator for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016.
20. In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were marked against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013.
21. Mr. Jaydev was the Chairperson of the Competition Commission of India and he ceased to hold his office on 31st March, 2019. Recently, he has been offered the post of the Executive Director with an attractive remuneration and perquisites in the following organisations :
    (i) Arnab Limited, a private sector public company, which has been a party to a proceeding before the Competition Commission of India.
    (ii) National Milk Products Limited, a Government Company, as defined under the provisions of the Companies Act, 2013.

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

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

ANSWERS

Answer 1. Integrated Case Scenario

1. (a)

2. (c)

3. (c)

4. (d)

5. (b)

Answer 2. Integrated Case Scenario-2

1. (a)

2. (b)

3. (b)

4. (c)

5. (b)

Answer 3. (b)

Answer 4. (b)

Answer 5. (b)

Answer 6. (c)

Answer 7. (c)

Answer 8. (a)

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

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

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

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

According to the particulars given:

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

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

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

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

10. According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in section 248(1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

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

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

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

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

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

According to the above provisions, following are the answers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Time period for completion of fast track process

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

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

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

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

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

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

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

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

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information, shall be liable to a penalty of minimum ₹ 10 lacs which may extend upto ₹ 25 crore or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. Mehta. The maximum penalty that SEBI can impose is ₹ 25 crores or three times the amount of profits made out of insider trading, whichever is higher.

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

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

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

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

(a) Restriction of voting right to members only.

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

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

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

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

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

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

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

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

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

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

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

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

As per the given facts, Mr. Mediator was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Whereas, Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner.

Since, Mr. R is the partner in insolvency professional entity in which Mr. Mediator is also a partner, so, Mr. Mediator is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor, being a relative of director of BMR Ltd i.e. corporate debtor

20. Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:

1. Every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

21. As per the provisions of Section 12 of the Competition Act, 2002, the Chairman and other Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in or connected with the management or administration of any enterprise, which has been a party to a proceeding before the Commission.

However, these provisions will not apply to any appointment in a Government Company or the Central Government or any State Government or local authority or any Corporation established by or under any Central or State or Provincial Act.

(i) In view of the aforesaid, Mr. Jaydev cannot join Arnab Limited for a period of two years starting from 1st April, 2019.

(ii) However, there is no bar for him to join National Milk Products Limited, since it is a Government Company.

22. Power of Reserve Bank of India (RBI) to inspect Banks (Section 35 of the Banking Regulation Act, 1949): RBI is empowered to conduct inspection of any bank including co-operative banks and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers.

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits and direct the RBI to apply under Section 38 for the winding up of the bank.