

PAPER 4: CORPORATE AND ECONOMIC LAWS
PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2019
EXAMINATION

Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For November 2019 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1st May 2017 to 30th April, 2019 are relevant and applicable for said examinations.

This RTP of November 2019 examination will help the students to know of the significant changes, that are relevant and applicable for November 2019 examination. These amendments are to read with August 2017 edition of the Study material.

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

PART I: CORPORATE LAWS

SECTION A: COMPANY LAW

CHAPTER 1: APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

According to the amendment, section 152(6) & (7) shall not apply to –

- (a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- (b) a subsidiary of a Government company, referred to in (a) above.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5th June 2015 vide Notification G.S.R. 582(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:-

“2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

Section 149(1)(b) & first proviso shall not apply on section 8 companies.

Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015
Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- “2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.

4. Enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Vide Notification G.S.R. 839(E) dated 5th July 2017

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-

“(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.”

5. Exemptions given to certain unlisted public companies under the Companies (Appointment and Qualification of Directors) Rules, 2014 from appointment of Independent Directors Vide notification of circular 09/2017 dated 5th September 2017

Vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

The said amended Rule 4 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.

Through the issue of this circular, it is hereby clarified that a “joint venture”, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

6. Enforcement of the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2018* Vide Notification G.S.R.51(E) dated 22nd January, 2018

The Central Government hereby makes the following rules further to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in rule 9,

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

“Application for allotment of Director Identification Number before appointment in an existing company”;

- (B) for sub-rule (1), the following shall be substituted, namely:-

“(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the *Companies (Registration Offices and Fees) Rules, 2014*.

Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe);

- (C) in sub-rule (3),

- (I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

“(iiia) board resolution proposing his appointment as director in an existing company”;

- (II) for clause (b), the following clause shall be substituted, namely:-

“(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company,”

7. *Companies (Removal of Difficulties) Order, 2018 S.O. 768(E) dated 21st February, 2018*

In the Companies Act, 2013, in section 169, in sub-section (1), –

- (i) before the proviso, the following proviso shall be inserted, namely :-

“Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.”;

- (ii) in the existing proviso, for the words “Provided that”, the words “Provided further that” shall be substituted.

8. 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 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, for the word “shall”, the word “may” shall be substituted.

9. 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, a new form shall be substituted.

10. 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 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 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.

11. 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, 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.

12. 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.

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

Relevant sections	Amendment
Amendment of section 149	<p>In section 149 of the principal Act,—</p> <p>(i) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>“(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:</p> <p>Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.”;</p> <p>(ii) in sub-section (6),—</p> <p>(a) in clause (c), for the words “pecuniary relationship”, the words “pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed,” shall be substituted;</p> <p>(b) for clause (d), the following clause shall be substituted, namely:—</p> <p>“(d) none of whose relatives—</p> <p>(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:</p> <p>Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;</p> <p>(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;</p>

		<p>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or</p> <p>(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);";</p> <p>(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."</p>
Amendment of section 152	of	<p>In section 152 of the principal Act,—</p> <p>(a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted;</p> <p>(b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.</p>
Amendment of section 153	of	<p>In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."</p>
Amendment of Section 157	of	<p>In section 157 of the principal Act,—</p> <p>(i) in sub-section (1), the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(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.</p>

Amendment of section 160.	<p>In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—</p> <p>“Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.”</p>
Amendment of section 161.	<p>In section 161 of the principal Act,—</p> <p>(i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted;</p> <p>(ii) in sub-section (4),—</p> <p>(a) the words "In the case of a public company," shall be omitted;</p> <p>(b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.</p>
Amendment of section 164	<p>In section 164 of the principal Act,—</p> <p>(i) in sub-section (2), the following proviso shall be inserted, namely:—</p> <p>"Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";</p> <p>(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."</p>
Amendment of section 165.	<p>In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—</p> <p>"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."</p>

Amendment of section 167.	<p>In section 167 of the principal Act, in sub-section (1),—</p> <p>(i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.";</p> <p>(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—</p> <p>(i) for thirty days from the date of conviction or order of disqualification;</p> <p>(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or</p> <p>(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."</p>
Amendment of Section 168	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.

14. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 157.	<p>In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>"(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."</p>

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 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.”
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.

CHAPTER 2: 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. 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*.

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

- (i) in rule 6,
 - (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, 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 in Section 2(51)	<p>in clause (51),—</p> <p>(a) in sub-clause (iv), the word "and" shall be omitted;</p> <p>(b) for sub-clause (v), the following sub-clauses shall be substituted, namely:—</p> <p>"(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and</p> <p>(vi) such other officer as may be prescribed;"</p>
Amendment of section 196	<p>In section 196 of the principal Act,—</p> <p>(a) in sub-section (3), in clause (a), after the proviso, the following proviso shall be inserted, namely:—</p> <p>"Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.";</p> <p>(b) in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.</p>
Amendment of Section 197	<p>In section 197 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</p> <p>(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;</p> <p>(iii) after the second proviso, the following proviso shall be inserted, namely:—</p> <p>"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</p>

	<p>financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";</p> <p>(b) in 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;</p> <p>(c) for sub-section (9), the following sub-section shall be substituted, namely:—</p> <p>"(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.";</p> <p>(d) in sub-section (10),—</p> <p>(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;</p> <p>(ii) the following proviso shall be inserted, namely:—</p> <p>"Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";</p> <p>(e) in 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;</p> <p>(f) after sub-section (15), the following sub-sections shall be inserted, namely:—</p> <p>"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the</p>
--	---

	<p>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.</p> <p>(17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."</p>
Amendment of Section 198	<p>In section 198 of the principal Act,—</p> <p>(i) in sub-section (3),—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause shall be inserted, namely:—</p> <p>"(f) any amount representing unrealised gains, notional gains or revaluation of assets.";</p> <p>(ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.</p>
Amendment of section 200.	<p>In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.</p>
Amendment of section 201.	<p>In section 201 of the principal Act,—</p> <p>(a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted;</p> <p>(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.</p>

4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

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

CHAPTER 3: MEETING OF BOARD AND ITS POWERS

1. Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015. Following are the amendments:

- (i) With respect to Section 173(5), the following sub- section shall be substituted:
 - (5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.

(ii) With respect to section 174(3)-

It shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

2. Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015 Vide Notification G.S.R. 583(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar."

3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 466(E), dated 5th June 2015. Following are the amendments:

In section 186(7)- following proviso shall be inserted-

Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."

4. Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5th June 2015 Vide Notification G.S.R. 584(E) Dated 13th June, 2017

In the principal notification, after paragraph 2, the following paragraph shall be inserted, namely:- "2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar."

5. Enforcement of the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 vide Notification G.S.R. 880(E) Dated 13th July 2017

The Central Government hereby makes the following rules further to *amend the Companies (Meetings of Board and its Powers) Rules, 2014*.

Following are the amendments:

(1) In rule 3 for clause (e), the following shall be substituted, -

“(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year: Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”

- (2) In the principal rules, for rule 6, the following rule shall be substituted, namely:-

"6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014* shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.

6. Enforcement of the *Companies (Restriction on number of layers) Rules, 2017* in exercise of the powers conferred under proviso to clause (87) of section 2 Vide notification G.S.R. 1176(E), dated 20th September 2017

Restriction on number of layers for certain classes of holding companies -

- (1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule (2) , shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

- (2) **The provisions of this rule shall not apply to the following classes of companies, namely:—**

- (a) a banking company as defined in the Banking Regulation Act, 1949
- (b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;
- (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999
- (d) a Government company referred to in clause (45) of section 2 of the Companies Act.

- (3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

- (4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –
- (i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;
 - (ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.
- (5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

7. 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, 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, for the words “every listed company”, the words “every listed public company” shall be substituted.
- (iii) In the principal rules, for rule 13, 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.”

8. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 173	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.	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	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;

	<p>(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;</p> <p>(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.";</p> <p>(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.</p>
Amendment of Section 180	In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.
Amendment of Section 184	<p>In section 184 of the principal Act,—</p> <p>(i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted;</p> <p>(ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:— "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."</p>
Substitution of new section for section 185. Loan to Directors	<p>For section 185 of the principal Act, the following section shall be substituted, namely:—</p> <p>'185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a</p>

	<p>book debt to, or give any guarantee or provide any security in connection with any loan taken by,—</p> <p>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</p> <p>(b) any firm in which any such director or relative is a partner.</p> <p>(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—</p> <p>(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</p> <p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p><i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <p>(a) any private company of which any such director is a director or member;</p> <p>(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</p> <p>(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.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p>
--	---

	<p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or</p> <p>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or</p> <p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.</p> <p>Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.</p> <p>(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—</p> <p>(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and</p> <p>(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or</p>
--	--

	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.	<p>In section 186 of the principal Act,—</p> <p>(i) in sub-section (2), the following Explanation shall be inserted, namely:— '<i>Explanation.</i>—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';</p> <p>(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).''</p> <p>(iii) for sub-section (11), the following sub-section shall be substituted, namely:—</p>

	<p>"(11) Nothing contained in this section, except sub-section (1), shall apply—</p> <p>(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;</p> <p>(b) to any investment—</p> <p>(i) made by an investment company;</p> <p>(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;</p> <p>(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";</p> <p>(iv) in the <i>Explanation</i>, in clause (a), after the words "other securities" the following shall be inserted, namely:—</p> <p>"and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."</p>
Amendment of section 188.	<p>In section 188 of the principal Act,—</p> <p>(i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:—</p>

	<p>"Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:"</p> <p>(ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.</p>
Omission of section 194	Section 194 of the principal Act shall be omitted.
Omission of section 195	Section 195 of the principal Act shall be omitted.

9. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 191	<p>In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—</p> <p>“(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.”</p>

CHAPTER 4: INSPECTION, INQUIRY AND INVESTIGATION

1. Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24th of August, 2017

The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24th day of August, 2017.

2. Enforcement of the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 Vide Notification G.S.R. 1062(E) dated 24th of August 2017

In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the *Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017*.

According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

The Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017

- a. **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation

Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

- b. **Competent authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
- c. **In case of Government Company/foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.
- d. **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.
- e. **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.
- f. **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
- g. **Entry in arrest register:** The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
- h. **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years
 - a) from the date of judgment or final order of the Trial Court, in cases where the said

judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.

- i. **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

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

Relevant sections	Amendment
Amendment of section 223.	In section 223 of the principal Act, in sub-section (3), after the words "may be obtained", the words "by members, creditors or any other person whose interest is likely to be affected" shall be inserted.

CHAPTER 5: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.

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

Relevant sections	Amendment
Amendment of section 236.	In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.

3. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
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.

CHAPTER 6: PREVENTION OF OPPRESSION AND MISMANAGEMENT

Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
Amendment of section 248	<p>In section 248 of the principal Act, in sub-section Amendment of (1),—</p> <p>(a) in clause (c), for the word and figures "section 455," the words and figures "section 455; or" shall be substituted;</p> <p>(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—</p> <p>"(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</p> <p>(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12."</p>

CHAPTER 9: COMPANIES INCORPORATED OUTSIDE INDIA

Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 379.	<p>Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:—</p> <p>"(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:</p> <p>Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament."</p>
Amendment of section 384.	<p>In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.</p>

Amendment of section 391.	<p>In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>“(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply <i>mutatis mutandis</i> for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.”</p>
---------------------------	---

CHAPTER 10: MISCELLANEOUS PROVISIONS

1. Notification of Section 247 vide Notification S.O. 3393(E) dated 18th October 2017

The Central Government hereby appoints the 18th October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

Section 247: Valuation by Registered Valuers

- (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed] and appointed by the audit committee or in its absence by the Board of Directors of that company.
- (2) The valuer appointed under sub-section (1) shall,—
 - (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
 - (b) exercise due diligence while performing the functions as valuer;
 - (c) make the valuation in accordance with such rules as may be prescribed; and
 - (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.
- (3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
 However if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
- (4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

- (i) refund the remuneration received by him to the company; and
- (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

2. Notification of the *Companies (Registered Valuers and Valuation) Rules, 2017* vide Notification G.S.R 1316(E) dated 18th October, 2017

In exercise of the powers conferred by section 247, the Central Government hereby enforced the *Companies (Registered Valuers and Valuation) Rules, 2017*.

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

2. Definitions

- (1) In these rules, unless the context otherwise requires -
 - "authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;
 - "asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;
 - "certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;
 - "certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;
 - "registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;
 - "valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

3. Eligibility for registered valuers

- (1) A person shall be eligible to be a registered valuer if he-
 - (a) Is a valuer member of a registered valuers organisation;

Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;
 - (b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;
 - (c) Has passed the valuation examination under rule 5 within three years

preceding the date of making an application for registration under rule 6;

- (d) Possesses the qualifications and experience as specified in rule 4;
- (e) Is not a minor;
- (f) Has not been declared to be of unsound mind;
- (g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- (h) Is a person resident in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

- (i) Has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

- (j) Has not been levied a penalty under section 271J of Income-tax Act, 1961 (43 of 1961) and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and
- (k) Is a fit and proper person:

Explanation.- For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) Integrity, reputation and character,
- (ii) Absence of convictions and restraint orders, and
- (iii) Competence and financial solvency.

- (2) No partnership entity or company shall be eligible to be a registered valuer if-
 - (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
 - (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;

- (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);
- (d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
- (e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- (b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or
- (c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership and having qualification mentioned at clause (a) or (b).

Explanation-I- For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Explanation-II- Qualifying education and experience and examination or training for various asset classes, is given in an indicative manner in **Annexure-IV** of these rules.

6. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-A of Annexure-II along with a non-refundable application fee of five thousand rupees in favour of the authority.
- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.

- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- (8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
 - (a) accept the application and grant the certificate of registration; or
 - (b) reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

7. Conditions of Registration

The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

8. Conduct of Valuation

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:
 Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
 - (a) internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which

case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

- (3) The valuer shall, in his report, state the following:-
- (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;
 - (k) conclusion; and
 - (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

9. Temporary surrender

- (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- (3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

10. Functions of a Valuer

A valuer shall conduct valuation required under the Act as per these rules and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority.

12. Eligibility for registered valuers organisations

(1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -

- (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;
- (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).

(2) The organisation referred to in sub-rule (1) shall be recognised if it –

- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
- (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
- (c) conducts training for the individual members before a certificate of practice is issued to them;
- (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
- (e) provides for continuing education of individuals who are its members;
- (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and

- (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure-III**, within one year from the date of commencement of these rules.

14. Conditions of Recognition

The recognition granted under rule 13 shall be subject to the conditions that the registered valuers organisation shall-

- (a) at all times continue to satisfy the eligibility requirements specified under rule 12;
- (b) maintain a register of members who are registered valuers, which shall be publicly available;
- (c) admits only individuals who possess the educational qualifications and experience requirements, in accordance with rule 4 and as specified in its recognition certificate, as members;
- (d) make such reports to the authority as may be required by it;
- (e) comply with any directions, including with regard to course to be conducted by valuation organisation under clause (a) of sub-rule (2) of rule 12, issued by the authority;
- (f) be converted or registered as company under section 8 of the Act, with governance structure and bye laws specified in **Annexure-III**, within a period of one year from the date of commencement of these rules if it is an organisation referred to in proviso to sub-rule (1) of rule 12;
- (g) shall have the governance structure and incorporate in its bye laws the requirements specified in **Annexure-III** within one year of commencement of these rules if it is an organisation referred to in clause (i) of sub-rule (1) of rule 12 and existing on the date of commencement of these rules;
- (h) display on its website, the status and specified details of every registered valuer being its valuer members including action under rule 17 being taken against him; and
- (i) comply with such other conditions as may be specified by authority.

15. Cancellation or suspension of certificate of registration or recognition

The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition, as the case may be in the manner specified in rule 17.

16. Complaint against a registered valuer or registered valuers organisation

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

18. Valuation Standards

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

20. Punishment for contravention

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

21. Punishment for false statement

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. Enforcement of the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* vide Notification No. G.S.R. 155 (E) dated 9th February, 2018

In exercise of the powers conferred by section 247 read with section 469 of the Companies Act, 2013, the Central Government makes the *Companies (Registered Valuers and Valuation) Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*, namely:-

In the *Companies (Registered Valuers and Valuation) Rules, 2017*, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

4. 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, 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.”.

5. 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, 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, in clause (f), for the words “one year”, the words “two years” shall be substituted.

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

Relevant sections	Amendment
Amendment of Section 247	In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him" shall be substituted.
Amendment of section 447.	In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does

	not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."
--	---

7. 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, -

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

"Short title, commencement and application";

(ii) 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."

(iii) 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.

(iv) 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."

- (v) 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.
- (vi) 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.

8. Enforcement of section 465 of the Companies Act, 2013

The Central Government vide Notification No. **S.O. 560(E)** appoints the 30th January, 2019 as the date on which the provisions of section 465 of the said Act in so far as they relate to the repeal of the Companies Act, 1956 [that in except in so far as they relate to the repeal of the Registration of Companies (Sikkim) Act, 1961] shall come into force.

9. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
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.

CHAPTER 11: COMPOUNDING OF OFFENCES, ADJUDICATION, 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.	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.	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.	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.
Insertion of new section 446A. Factors for determining level of punishment. Lesser penalties for One Person Companies or small companies.	<p>After section 446 of the principal Act, the following sections shall be inserted, namely:—</p> <p>"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—</p> <ul style="list-style-type: none"> (a) size of the company; (b) nature of business carried on by the company; (c) injury to public interest; (d) nature of the default; and (e) repetition of the default. <p>446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."</p>

2. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2nd November, 2018

Relevant sections	Amendment
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.
Amendment of section 454	<p>In section 454 of the principal Act, —</p> <p>(i) for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>"(3) The adjudicating officer may, by an order</p> <p>(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and</p> <p>(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.";</p> <p>(ii) in 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;</p> <p>(iii) in sub-section (8),—</p> <p>(a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted;</p> <p>(b) in clause (ii)—</p> <p>(i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted;</p> <p>(ii) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.</p>
Insertion of new section 454A.	<p>After section 454 of the principal Act, the following section shall be inserted, namely:</p> <p>Penalty for repeated default.</p> <p>"454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional 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."</p>

3. 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.

CHAPTER 12: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29th June, 2017

In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),-

- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:-
"Provided also that-";
- (b) after the third proviso, the following proviso shall be inserted, namely:-
"Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959."

SECTION B: SECURITIES LAWS

CHAPTER 1: The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulation) Rules, 1957

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) or the word "offence", wherever it occurs, the word "contravention" shall be substituted.

CHAPTER 2: The Securities Exchange Board of India Act, 1992 & SEBI (LODR) REGULATIONS, 2015

1. 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.

2. Enforcement of the SEBI (LODR) (Third Amendment) Regulations, 2018

In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956, the SEBI hereby makes the SEBI (LODR) (Third Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/21 w.e.f. 1st June, 2018.

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

- (i) in **regulation 24**, in sub-regulation (5), after the word, "court/Tribunal" and before the symbol ".", the following words shall be added, namely,-

" , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

- (ii) in **regulation 24**, in sub-regulation (6), after the word, "court/Tribunal" and before the symbol ".", the following words shall be added, namely,-

" , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

3. Enforcement of the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018

In exercise of the powers conferred by section 11, sub-section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956, the Board makes the SEBI (LODR) (Fifth Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/30 w.e.f. 6th September 2018.

In the SEBI (LODR) Regulations, 2015, in **regulation 2**, in sub-regulation (1), in clause (h), after the words and symbols "Securitized debt instruments," and before the word "units", the following words and symbols shall be inserted, namely,-

"security receipts,"

4. Enforcement of the SEBI (LODR) (Amendment) Regulations, 2018

In exercise of the powers conferred by section 11, sub section (2) of section 11A and section 30 of the SEBI Act, 1992 read with section 31 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the SEBI hereby makes the SEBI (LODR) (Amendment) Regulations, 2018 to further amend the SEBI (LODR) Regulations, 2015 vide Notification No. SEBI/LAD-NRO/GN/2018/10 w.e.f. 1st April, 2019.

In the SEBI (LODR) Regulations, 2015:

(i) in regulation 19,

- (a) after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely,-

"(2A) 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."

- (b) after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-

"(3A) The nomination and remuneration committee shall meet at least once in a year."

(ii) in regulation 20, -

- (a) in sub-regulation (1), for the words “the mechanism of redressal of grievances” the words “various aspects of interest” shall be substituted.
- (b) after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -

“(2A) At least three directors, with at least one being an independent director, shall be members of the Committee.”
- (c) sub-regulation (3) shall be substituted with the following, -

“(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.”
- (d) after sub-regulation 3, the following new sub-regulation shall be inserted, namely-

“(3A) The stakeholders relationship committee shall meet at least once in a year.”

(iii) in regulation 21,

- (a) after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-

“(3A) The risk management committee shall meet at least once in a year.”
- (b) in sub-regulation (4), after the words “as it may deem fit” and before the symbol “.”, the words “such function shall specifically cover cyber security” shall be inserted.
- (c) in sub-regulation (5), the figure “100” shall be substituted with the figure “500”.

(iv) in regulation 24, -

the existing sub-regulation (1) shall be substituted with the following, namely-

“(1) 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.”

(v) in regulation 34, -

the existing sub-regulation (1) shall be substituted with the following new subregulation, namely, -

“(1) The listed entity shall submit to the stock exchange and publish on its website-

- (A) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;
- (B) in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.”

(vi) In Regulation 36-

In sub-regulation (1), in clause (a), the words “for the purpose” shall be omitted and the words “either with the listed entity or with any depository” shall be inserted.

PART II: ECONOMIC LAWS**CHAPTER 1: The Foreign Exchange and Management Act, 1999****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”

CHAPTER 3: PREVENTION OF MONEY LAUNDERING ACT, 2002**Amendments to the prevention of Money-Laundering Act, 2002 through the Finance Act, 2018 w.e.f. 19.04.2018**

In the Prevention of Money-laundering Act, 2002,—

- (a) in section 2, in sub-section (1), in clause (u), after the words “within the country”, the words “or abroad” shall be inserted;
- (b) in section 5,—
 - (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— “Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;
 - (ii) in sub-section (3), for the word, brackets and figure “sub-section (2)”, the word, brackets and figure “sub-section (3)” shall be substituted;
- (c) in section 8,—
 - (i) in sub-section (3), in clause (a), after the words “continue during”, the words “investigation for a period not exceeding ninety days or” shall be inserted;
 - (ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:— “Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”;
- (d) in section 19, in sub-section (3),— (i) after the words “be taken to a”, the words “Special Court or” shall be inserted; (ii) in the proviso, after the words “from the place of arrest to the”, the words “Special Court or” shall be inserted;
- (e) in section 45, in sub-section (1), —
 - (i) for the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule”, the words “under this Act” shall be substituted;
 - (ii) in the proviso, after the words “sick and infirm,”, the words “or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees” shall be inserted;
- (f) in section 50, in sub-section (5), in the proviso, in clause (b), for the word “Director”, the words “Joint Director” shall be substituted;
- (g) section 66 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the

time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”;

In “**Paragraph 29 -Offence Under the Companies Act, 2013**

Section 447 i.e., punishment for fraud has been inserted.

CHAPTER 4: FOREIGN CONTRIBUTION REGULATION ACT, 2010

1. Enforcement of the Foreign Contribution (Regulation) Amendment Rules, 2019 vide NOTIFICATION NO.G.S.R. 199(E) dated 7th March, 2019

In exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010, the Central Government makes the Foreign Contribution (Regulation) Amendment Rules, 2019 to amend the Foreign Contribution (Regulation) Rules, 2011.

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

- (i) **in rule 7**, in sub-rule (1), after the word "apply", the following words shall be inserted, namely:—

“electronically online”;

- (ii) **in rule 12,—**

in sub-rule (2), for the words, letters and figures "to the Central Government in Form FC-3", the words, letters and figures "to the Central Government electronically online in Form FC-3C" shall be substituted;

in sub-rule (4), for the letters, figures, brackets and words "₹ 500/- (Five Hundred only)", the letters, figures, brackets and words "₹ 1500/- (One Thousand Five Hundred rupees only)" shall be substituted;

in sub-rule (8),-

after the words "requisite fee", the letters, figures, brackets and words "and with late fee of ₹ 5000/- (Five Thousand rupees only)" shall be inserted;

for the words "four months" the words "one year" shall be substituted.

CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) Enforcement of clause (a) to clause (d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15th May , 2017

The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

(2) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14th June 2017

The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.

(3) Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code vide Notification S.O.1911(E) dated 14th June 2017

In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :-

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
- (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or
- (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

(4) Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25th October 2017

Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 & 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.

Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

(5) Insolvency and Bankruptcy Code (Amendment) Act, 2018

Ministry of Law and Justice, amended the Insolvency and Bankruptcy Code, 2016 (Principal Act) through the enforcement of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018. This Act came into enforcement on 23rd day of November 2017.

Significant relevant changes are as follows:

(i) Amendment in section 2 of the Principal Act

- a. in clause (d), the word "and" shall be omitted;
- b. for clause (e), the following clauses shall be substituted, namely:—
 "(e) personal guarantors to corporate debtors;
- c. partnership firms and proprietorship firms; and
- d. individuals, other than persons referred to in clause (e),".

(ii) Amendment in section 5 of the Principal Act

in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

(iii) In section 30 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code Ord. 7 of (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under 2017. section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section."

(6) 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 shall be inserted, namely:—
'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'
 - (ii) in **clause (8)** prescribing the term "Financial Debt" in the Code, in sub-clause (f), the **following Explanation shall be inserted**, namely:—
 'Explanation.—For the purposes of this sub-clause,—
 - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
 - (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
 - (iii) in **clause (12)** i.e., as to the "Insolvency commencement date", the following proviso shall be inserted, namely:—
 "Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;"
 - (iv) **after clause (24)**, the following clause shall be inserted, namely:—
'(24A) "related party", in relation to an individual, means—
 - (a) a person who is a relative of the individual or a relative of the spouse of the individual;
 - (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
 - (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
 - (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
 - (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,
 - (xviii) father's brother and sister,
 - (xix) mother's brother and sister, and

- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
- (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
- (i) in clause (a), for the words "if any, and", the words "if any, or" shall be substituted;
 - (ii) in clause (b), for the word "repayment", the word "payment" shall be substituted;
- In the Explanation, for the word "repayment", the word "payment" shall be substituted.
- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in clause (c), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
 - (ii) for clause (d), the following clauses shall be substituted, namely:—
 - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
 - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in clause (i), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted;
 - (b) in clause (ii), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
 - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

- (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
 - (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;
 - (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted-
"12A. Withdrawal of application admitted under section 7, 9, or 10: The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
 "(3) The provisions of sub-section (1) shall not apply to—
 (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
 (b) a surety in a contract of guarantee to a corporate debtor.".
- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,

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

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

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

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

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

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

"(6A) Where a financial debt—

- (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;
- (b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;
- (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,
and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

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

- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
- (ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.";

- (iii) 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.

- (2) **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.

- (3) **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.

- (4) **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.

Important Note: With respect to amendments as covered above under Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, only those amendments may be taken into consideration which are pertaining to the provisions covered in the study material. Also, the newly inserted sections i.e. 24A, 12A, 21 (6)(A), 21(6)(B) and 25A of the said amendment are also applicable.

7. Amendment in Regulation – 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Eligibility for resolution professional.

3.(1) 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 (18 of 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; 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.

(1A) Where the committee decides to appoint the interim resolution professional as resolution professional or replace the interim resolution professional under section 22 or replace the resolution professional under section 27, it shall obtain the written consent of the proposed resolution professional in Form AA of the Schedule.

(2) A resolution professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

(3) A resolution professional, who is a director or a partner of an insolvency professional entity, shall not continue as a resolution professional in a corporate insolvency resolution process if the insolvency professional entity or any other partner or director of such insolvency professional entity represents any of the other stakeholders in the same corporate insolvency resolution process.

8. 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.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Multiple Choice Questions

1. Mr. Ram gave two of his friends' cash amount of ₹ two lakh each for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months' time for which he issued bills to adjust the amount in his account books.
Does this payment system through credit card and online transfer mode are covered under Money Laundering Act?
 - (a) No, because payment are made through credit cards & being an online transfers, it's a genuine transaction.
 - (b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Laundering Act
 - (c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.
 - (d) No, because the transactions are not done with shell companies.
2. Mr. A, Mr. B and Mr. C are partners in XYZ partnership firm. The firm made an agreement in writing to refer a dispute between them in business to an arbitrator. In spite of this agreement Mr. B files a suit against Mr. A and Mr. C relating to the dispute in a court. Examine on the admission of the suit filed by Mr. B in the court in the light of the Arbitration and Conciliation Act, 1996.
 - (a) Yes it can be admitted by the court, as the said court has jurisdiction over the matter and it overpowers arbitration agreement
 - (b) Yes it can be admitted by the court, only in the case of challenge to the arbitral award in appeal
 - (c) Yes, it can be admitted by the court, if Mr. A and Mr. C mutually agrees.
 - (d) No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement
3. Mr. Satya, file a petition for default of non –payment of the debt against Mr. X. The amount in default claimed by petitioner was ₹ 30 lakh. Mr. X (Respondent) pleaded before the adjudicating authority that the amount of claim was not belonging to the applicant/petitioner. Mr. Satya, asserted that he himself with his son owns ₹ 26 Lakh to the respondent. Though nowhere in the petition and the supportive documents, he admitted that he himself with his Son owns ₹ 26 Lakh to the respondent. Considering the above

facts in the light of the Insolvency and Bankruptcy Code, state the action that will be taken by the Adjudicating Authority-

- (a) NCLT will admit the application of Mr. Satya, as he jointly with his son owned the debt to the Mr. X, so he is a valid petitioner.
 - (b) NCLT will admit the application filed by Mr. Satya on behalf of his son.
 - (c) NCLT will reject the application considering that no default has occurred against Mr. Satya, and his stand as a financial creditor is not proved in the petition.
 - (d) NCLT will dismiss the application on the ground of non- existence of dispute against Mr. Satya.
4. How many times Corporate Insolvency Resolution Process period can be extended?
- (a) shall not be granted more than once
 - (b) shall be granted more than once
 - (c) shall be granted more than twice on the reasonable cause
 - (c) cannot be granted at all
5. Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.
- (1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019
 - (2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019
 - (3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019-2020
- (a) Both the statement (1) & (3) are correct
 - (b) Both the statement (2) & (3) are correct
 - (c) Only statement (1) is correct
 - (d) Only statement (2) is correct
6. Beauti Fashion Garments Limited has three independent directors besides eight others of its own. Due to the urgency of transacting certain important business, a Board Meeting was called by giving a shorter notice than the legally required. However, none of the independent directors was present at the Meeting to deliberate upon the motion related to that business. Despite absence of all the independent directors, a board resolution was passed for operationalizing the business by the directors personally present at that Meeting

who were much more than the required quorum. Advise, whether the resolution passed at the Board Meeting called at a shorter notice was valid.

- (a) The resolution so passed is valid, for it was passed at the Board Meeting where the required quorum was present.
 - (b) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by all the three independent directors.
 - (c) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least two independent directors.
 - (d) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least one independent director.
7. Sunila Interior Decorators and Furnishers Limited which has not accessed the primary market so far, is required to appoint whole-time Key Managerial Personnel (KMPs) in view of the fact that it has surpassed the threshold limit which necessitates such appointment. Out of the three whole-time KMPs which it is obligated to keep on roll, it has already appointed a Managing Director (MD) and a Company Secretary. From the given options, choose the third KMP which needs to be appointed by the company under the given circumstances.
- (a) Chief Executive Officer (CEO)
 - (b) Chief Financial Officer (CFO)
 - (c) Whole-time Director (WTD)
 - (d) Chief Manager (CM)
8. X Ltd. amalgamated with Y Ltd. The transferee company decided to dispose of the books and papers of the X Ltd. in order to come up with maintenance of revised book and papers under the name of the transferee company to bring all the financial details of the amalgamated company also in the records. State the correct statement as to decision of the transferee company on the disposal of the Books and papers of the X Ltd.
- (a) Decision of Transferee Company is invalid, as books and papers of the amalgamated company shall be maintained for atleast three years.
 - (b) Decision of Transferee Company is invalid, as books and papers of amalgamated company shall be maintained for at least eight years.
 - (c) Decision of Transferee Company will be valid only on the sanction of the prior permission of the Central Government.
 - (d) Decision of Transferee Company will be valid only after seeking prior permission of the requisite number of the creditors/shareholders of the amalgamated company.

Descriptive Questions

9. Draft a Specimen Board Resolution passed in the meeting of the Board of Directors of a recently incorporated BLM Limited for obtaining Goods and Service Tax (GST) Registration in the GST System Portal.
10. Dragon Copper Limited was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non-replacement of old plant and machinery. On the verge of liquidation, the Management proposes one last arrangement between creditors and the company, whereby the creditors have to forego 50% of their dues to the company. This has evoked strong protest from some of the creditors who may block the arrangement. Examine the arrangement in the light of the Companies Act, 2013 and advise the course of action/procedure to be adopted by the company to implement the same.

11. Clarks Limited, has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company as per the above ground under Section 272 of the Companies Act, 2013.

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013?

12. Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

13. Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:

- (i) Payment to be made for securing health insurance from a company abroad.
- (ii) Payment of commission on exports under Rupee State Credit Route.

Advise whether he can get foreign exchange and if so, under what condition?

14. Creative India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. R – to the extent of ₹ 1,40,000 and Mr. M - to the extent of ₹ 1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for

initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

15. A foreign company, Max Ltd. was established by few Indians in Singapore. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. Enumerate in the given situation in the light of the Foreign Contribution and Regulation Act, 2010 whether the donation so made by Max Ltd. is a foreign contribution? Is the acceptance of such donation by the Religious trust is valid?
16. Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position by him, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.
17. On 1st day of April, 2018, Almond Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of the Arbitration and Conciliation Act, 1996, discuss:
 - (i) The type of arbitration agreement made between them.
 - (ii) Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2019.
18. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities.
19. Neeraj was given an offer by a company vendor to disclose him the lowest bid quoted by other vendors. Neeraj accessed the computer of his Executive Director and passed on the lowest quotation to the vendor and thus helped him in quoting the lowest among all the bids. Examine and analyse the situation and conclude how Neeraj will be held liable under Prevention of Money Laundering Act?
20. Broadway Infrastructure Limited entered into a contract with Royal forgings, in which wife of Mr. Patrick, a director of the company is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Broadway Infrastructure Limited before entering into contract with Royal forgings.

What would be your answer in case Royal forgings is a private Limited company in which wife of Mr. Patrick is holding shares?

SUGGESTED ANSWERS/HINTS**Multiple Choice Answer**

1. (b)
2. (d)
3. (c)
4. (a)
5. (b)
6. (d)
7. (b)
8. (c)

Descriptive Answers

9. Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ----- on -----, 2019 at ----- AM.

RESOLVED THAT the Board do hereby appoint Mr. ----- Director of the company as Authorized Signatory for enrolment of the Company on the Goods and Service Tax (GST) System Portal and to sign (physically or digitally as and when required) and submit various documents electronically and/or physically and to make applications, communications, representations, modifications or alterations and to give explanations on behalf of the Company before the Central GST and/or the concerned State GST authorities as and when required.

FURTHER RESOLVED THAT Mr. -----, Director of the company be and is hereby authorized to represent the Company and to take necessary actions on all issues related to goods and service tax including but not limited to presenting documents/records etc. on behalf of the Company representing for registration of the Company and also to make any alterations, additions, corrections, to the documents, papers, forms, etc., filed with tax authorities and to provide explanations as and when required.

FURTHER RESOLVED THAT Mr. -----, Director of the company be and is hereby authorized on behalf of the company to sign the returns, documents, letters, correspondences etc. physically/digitally and to represent on behalf of the company, for assessments, appeals or otherwise before the goods and service tax authorities as and when required.

10. **Scheme of Compromise or arrangement (Section 230 of the Companies Act, 2013):**
The scheme provides for sacrifice on the part of creditors as they have to forego 50% of their dues to the company. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of Section 230(a) of the Companies

Act, 2013. The proposed scheme involves as a compromise or arrangement with creditors and it attracts section 230.

While the company or any creditor or member can make application to the Tribunal under section 230 (6)(1), it is usual for the company to make an application. On such application, the Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the Tribunal.

Company must arrange to send notice of meeting to every creditor containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [Section 230(1)(a). Advertisement issued by the company must comply with the requirements of section 230(2). At the meetings convened, as per directions of the Tribunal, majority in number representing at least ninety percent in value of creditors present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.

Thereafter the company must present a petition to the Tribunal for confirmation of the compromise or arrangement. The notice of application made by the company will be served on the Central Government and the Tribunal will take into consideration representation, if any made by the Central Government. The Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditors report on accounts of the company, pendency of investigation of company, etc.

Copy of Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect. Copy of Tribunal order must be annexed to every Memorandum of Association issued thereafter.

If the Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting. (Case Law: *S. K. Gupta Vs. K. P. Jain*, AIR 1979 SC 374)

11. **Validity of RoC's action:** According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

12. **Sub-section (4) of section 13 of SARFAESI Act, 2002,** provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

13. Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
- (ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

14. Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ₹ 1,00,000 or more. Assignee of financial debt is also financial creditor as per section 5 (7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.
15. As per the definition of Foreign Contribution given in section 2(1)(h) of FCRA 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,-
- (i) of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
 - (ii) of any currency, whether Indian or foreign; security and includes any foreign security under the Foreign Exchange Management Act, 1999

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security so referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But where if the Religious trust is registered under the FCRA [section 11 of FCRA 2010], it may accept the foreign contribution within the limit without seeking prior permission.

16. Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.

17. There are the basic types of arbitration agreement:

- (i) **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
- (ii) **Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2019. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Almond Food Processors Limited shall be submitted to arbitration". The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

18. According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:-

- (1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground/s as may be prescribed under this Act.

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard,

- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting

the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply as far as may be, to such appeals.

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

19. In the given instance, Neeraj is liable for the commission of scheduled offence specified under Part A Para 22 of the PMLA, 2002. He is liable for an offence committed under section 72 of the Information Technology Act, 2000. It provides for the offence for breach of confidentiality and privacy without consent of the person concerned.

Here as per the stated facts, Neeraj acted without consent of the concerned person i.e. his executive director and accessed the electronic records and passed on the official information to the vendor, thus leading to the breach of confidentiality & privacy of the company. This sharing of confidential information can produce large profits & ill gotten gains to Mr. Neeraj. Thus his involvement is connected with the obtaining of profits from proceeds of crime. Therefore, he is liable under sections 3 and 4 of the PMLA, 2002 which provides rigorous imprisonment for a term which shall not be less than 3 years, but which may extend to 7 years and shall be liable to fine.

20. The contract for supply of components entered into between Broadway Infrastructure Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184, 188 and 189 of the Companies Act, 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorized by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act, consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it. As the directors wife (i.e Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of Broadway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.