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THE ULTIMATE SOLUTION

By CA Shubham Singhal
(AIR-4)

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Message from Author

Haanji Doston, kya haal hai :)

Glad you decided to rely on this book for your preparation of LAW. I can assure you that I have given my 100% energy, time, heart and soul to make this book useful for you.

This book is named "The Ultimate Solution" for a reason. I believe (and it has been proven in the past, time and again) that this book is all you need to nail your exam.

Thank you Amisha Banga and Manisha Agiwal for helping me design this book.

Trust me when I say that this book is a result of lot of hard work and dedication to bring out the best book ever. And, I am aware that there is always a scope for improvement, and hence, I promise you that with time, it will only get better.

Meanwhile, use this and ace your exams

with Love!
Shubham

-The Ranker's way!

Index and Last Day Revision Plan

S.No.	Name of Chapters	Pages	No. of MCQs
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Best Part of Summary Notes - Appendix!

S.No.	Appendix	Pages
1	Summary of Forms under Companies Act, 2013	A1
2	Matters requiring Ordinary Resolution	A2
3	Matters requiring Special Resolution of the Shareholders	A2
4	Matters requiring - No vote cast against the resolution	A3
5	Resolutions that have to be passed by Postal Ballot	A3
6	Important Limits for applicability of various sections	A3-A4
7	Important Penalties in the chapter of Directors [Sec 149 to 205]	A4-A5

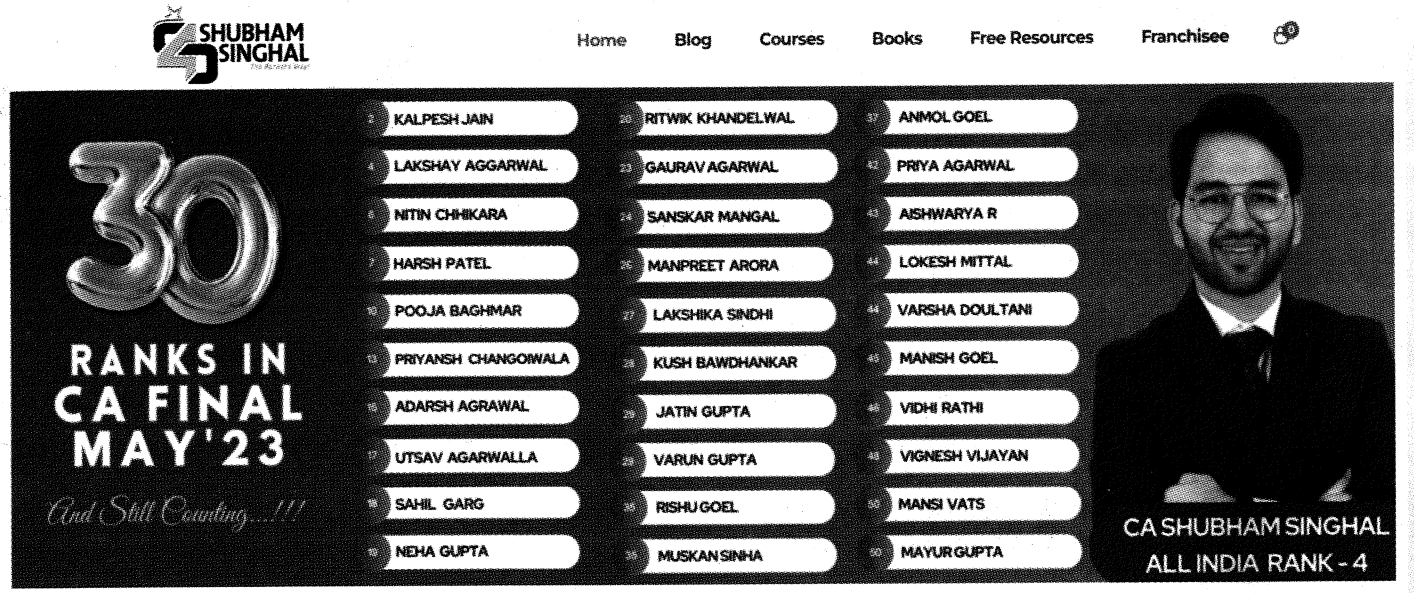
In order to be able to revise using this book on the last day, you will need to make this book yours!

1. First of all, do sample checks from ICAI module to make yourself comfortable that 100% content is covered in this material. You should not have any second thoughts on the day before exam.
2. You need to do at least 1 revision from this book before you pick this up on the day before exam.
3. Take a yellow or orange highlighter and while reading, highlight the key words (not too many)
4. If you could come up with better and funnier acronyms to by heart something, let me know:P

COMMONLY USED SHORTFORMS:

Note – These shortforms are merely for reference. You don't need to byheart any of it. Gradually, as you get a hold of the book, you won't even need to refer these shortforms.

AA	Adjudicating Authority	MD	Managing Director
AC	Audit Committee	MOA	Memorandum of Association
ACM	Audit Committee Meeting	MP	Managerial Person
AOA	Article Of Association	MR	Managerial Remuneration
AOI	Association of Individuals	NED	Non-Executive Directors
B&P	Books and Papers	O/S	Outstanding (or) Outside
BC	Body Corporate	OCOB	Ordinary Course of Business
BIFR	Board for Industrial and Financial Reconstruction	OG	Official Gazette
Biz	Business	OID	Officer in default
BM	Board Meeting	OOBH	Opportunity of Being Heard
BOD	Board of Director	P/D	Partners/Directors
BR	Board resolution	PC	Political Contributions
C/A	Contract or Arrangement	PONJ	Principal of Natural Justice
CASH	Co., Associate, Subsy &Holding	PP	Political Party
CFLO	Compensation for Loss of Office	PUESC	Paid up Equity Share Capital
CG	Central Government	RBC	Resolution by circulation
COI	Certificate of Incorporation	RD	Regional Director
CP	Chairperson	RGTB	Reasonable Grounds to Believe
DH	Debenture Holder	RO	Registered Office
DP	Designated Partner	ROBH	Reasonable Opportunity of Being Heard
ES	Explanatory Statement	ROI	Resident of India
ESG	Environmental, Social and Governance	RP	Related Party
FC	Foreign Contribution	RPT	Related Party Transactions
FR	Free Reserve	SC	Secured Creditor
FS	Financial Statement	SR	Special Resolution
GM	General meeting	Subsy	Subsidiary
HOP	House of Parliament	T&C	Terms and conditions
ID	Independent Director	VP	Voting Power
JS	Joint Secretary	W.R.T.	With Respect To
KMP	Key Managerial Person	W/o	Without
M&A	Merger and Amalgamation	WTD	Whole time Director



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Chapter 1 Appointment and Qualification of Board of Directors

Never count the number of pages when the chapter is as important as director!

Board or "Board of Directors" [Sec 2(10)] means the collective body of the directors of the company.

Why do we need Board of Directors (BOD)?

1. Company is an artificial person having separate legal existence but no body or mind of its own.
2. Huge numbers of shareholders (especially in case of listed companies)
3. Requirement of Sec 149

Directors are both agent as well as trustee of the company.

1. Agent - They bind co. as their principal as soon as they enter into various transactions on its behalf
2. Trustee – They are required to take care of properties, moneys, trade secrets, etc. of company

Sec 149- Company to have BOD

1. Company to have BOD:
   - Consists of individuals
   - Minimum – Public (3), Private (2) and OPC (1)
   - Max - 15 directors (To appoint > 15 directors - Pass SR)

   [N.A. to Govt co and Sec 8 companies provided compliance with Sec 92 (AR) and 137(F.S.)]

   AOA may provide for a lower limit of maximum directors.

   Companies as may be prescribed shall have at least one woman director.

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014

1. Provision of Woman Directors applies to following companies:
   - Listed company, or
   - Any other public company
     - PUSC > = Rs. 100 crores OR
     - Turnover (T/O) > = Rs. 300 crores

     PUSC and T/O as per last date of latest audited F.S.
2. Intermittent vacancy – 3m or immediately next BOD meeting – Whichever is Later
3. Newly incorporated co. – Comply within 6 months

Example – Women Director - Death on 17th March 2022. Next BOD meeting – 25th June 2022. Company is required to fill vacancy by 25th June or 16th June 2022 WI Later i.e., 25th June.

Concept clarity check:

Is it mandatory for a woman director to be independent? – No. there is no such provision

2. Transition provision

3. Resident Director – At least 1 (stay in India for > = 182 days during FY)
   Take proportionate to 182 days in case of newly incorporated co.

4. Independent Director (ID) (N.A. to Private companies)
   Listed Public Company - At least 1/3rd of total no. of directors to be independent [Fractions = 1]
   Unlisted Public Company - As may be prescribed - At least 2 ID

Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 -
Following unlisted public co. to have at least 2 ID:

PUSC >= Rs. 10 crores	Turnover >= Rs. 100 crores	Outstanding Loan, Debentures and Deposits (in aggregate) > Rs. 50 crores (If = Rs. 50 crores, then N.A.)

PUSC, Turnover and O/S LDD as per last date of latest audited Financial Statements.

Above provision shall not apply to - (a) Joint Ventures (b) WoS and (c) Dormant co. u/s 455

Section 149 vs 177:
If higher no. of ID required due to composition of Audit Committee (Sec 177), such higher no. of ID applicable under this section.
[Ex. In an unlisted public co. having PUSC of Rs. 100 crores, if A.C. has 7 directors, 4 of them have to be ID (sec 177). So, as per Sec 149, the minimum no. of ID shall be 4 (and not 2)]

Intermittent vacancy - 3m or immediately next BOD meeting - WI Later

Not required to appoint ID if ceases to fulfil conditions (PUSC, T/O, O/S) for 3 consecutive years

Definition of Listed Company: [Sec 2(52)]
Listed company means a co. which has any of its securities listed in Recognized Stock Exchange (RSE).

The following classes of companies shall NOT be considered as listed companies, namely:

i. Public companies (equity not listed) having listed their following securities issues on Private placement basis as per SEBI regulations:
   - Non-convertible debt securities, or
   - Non-convertible redeemable preference shares
   - Both categories of (i) and (ii) above.

ii. Private companies which have listed their non-convertible debt securities on private placement basis on a RSE as per SEBI Regulations;

5. Transition provision

6. Who can become an ID? (IMP DOGS FVNK)
   Director other than a MD, WTD or a nominee director fulfilling all the following criteria:
   a. Integrity and has relevant expertise and experience in opinion of Board (or Ministry of CG/SG administratively in charge of the company)
   b. i. Not is/was Promotor of CASH (Director of CASH not restricted)
      ii. Not related to promotor or director of CASH

c. Has no pecuniary (Monetary) relationship with CASH or their P/D during last 2 FY + CY (N.A. to Govt. co provided 92 and 137)
Following will not be considered pecuniary relationship:
1. Remuneration as such director,
2. Transaction < = 10% of his total income or
3. Transaction in Arm's Length price in the Ordinary Course of Business (OCOB)

d. None of whose relatives:
- Holds any Security or interest in CASH during last 2 FY + CY
(Note: May hold in co. of face value not exceeding 50 lakhs or PUSC upto 2% of CASH)
- Indebted to CASH or P/D in excess of such amt as may be pres. (Rs. 50 lakhs) - 2 FY + CY
- Given Guarantee or provided security for indebtedness of any third person to CASH or P/D of such holding company for Rs. 50 lakhs - 2 FY + CY
- Any other pecuniary relationship with CASH >= 2% of its Gross turnover or Total income [in aggregate] (P/D not covered)

e. Neither himself nor relative:
- Is/was KMP or employee of CASH - Last 3 FY
(Exception: Relative can be an employee in past 3 yrs)
- Employee/Proprietor/Partner in CY + Last 3 FY
  - Firm of auditors or CS in practice or Cost auditors of CASH
  - Legal/Consulting Firm having transaction with CASH of >=10% of Gross turnover
- Holds (with relative) >= 2% of Voting power of Company (Not CASH)
- Is the CEO/Director of NPO that
  - Receives >= 25% of its receipt from CASH or P/D or
  - Holds Voting Power >=2% of company

f. Possesses such other qualification as may be prescribed
(Rule 5 - ID shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management etc.)

Concept Clarity Check:
Can Mr. A be appointed as ID in a company be appointed as ID in subsidiary company?
Yes, no such restriction u/s 149(6)

7. ID to declare that he meets criteria of independence:

First BOD Meeting in which he participates as director	First BOD Meeting of every FY	when there is any change in circumstance which may affect his status as ID

8. ID to abide by provisions of Schedule IV

9. ID shall not be entitled to Stock Option. ID may receive remuneration by way of:

Fees u/s 197 (5)	Reimbursement of expenses for participation in meetings	Profit related commissions - as may be approved by Members

In case of no profits or inadequate profits, ID may receive remuneration, excluding fees u/s 197(5), in accordance with the provisions of Schedule V

10. Term of ID - Upto 5 consecutive years (a term of <5 years is possible)
Reappointment - Eligible on passing SR + Disclosure of same in BOD Report

11. No ID to hold office for more than 2 consecutive terms
Cooling period - 3 years (shall not be associated with co in any capacity, directly or indirectly)

12. ID and NED (not being KMP/promoter of co.) shall be held liable only in respect of those acts of omission or commission by a co. which had:

occurred with his knowledge	attributable to board process	occurred with his consent or where he has not acted diligently

13. Sec 152 (6) and (7) N.A. to ID

Sec 150- Manner of Selection of ID and Maintenance of Databank of ID

- ID may be selected from a databank containing details (name, address, educational and professional qualification) of person ELIGIBLE and WILLING to act as ID.
- CG may notify body, institution or association having expertise in creation and maintenance of such databank (CG has notified - Indian Institute of Corporate Affairs - IICA at Manesar)
- Responsibility to exercise due diligence - Lies with such company
- Appointment of ID - To be approved in GM (ES annexed to notice of GM to include justification)

Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014

- Make online appln (within 13m of commencement) to IICA for inclusion of name in databank if:
  - Existing ID (needs to renew till he continues to be ID in any company)
  - Aspiring ID - He intends to get appointed as an ID
- Individual not having DIN can also apply
- Specify in application the period - 1 year, 5 years or Lifetime
- Renewal application within 30 days of expiry else name removed (N.A if lifetime fees paid)
- Declaration by ID of compliance of this Rule - Along with declaration u/s 149 (7)

Online Proficiency Self-Assessment Test (OPSAT) -

- Within 2 years of inclusion of name. Else his name shall stand removed.
- No limit on number of attempts. Score 50% to pass the test
- Test N.A for person who has served for > = 3 years (If more than 1 co., count once) as:

a) who is director or KMP in:

Listed Public Company	Unlisted Public co. PUSC >= Rs. 10 cr.	B.C. listed in RSE	B.C. incorp. o/s India - PUSC >= $2Million	Stat. corp (Ex. LIC)

b) Pay scale of Director or equivalent or above in any Ministry or Department of CG/SG having experience in handling:
   (i) matters relating to commerce, corp. affairs, finance, industry or public enterprises; or
   (ii) affairs related to Govt. companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities. [Amendment]

c) Pay scale of Chief General Manager or above in SEBI, RBI, IRDA, PFRDA and having experience in handling matters related to corporate/securities/economic laws

Provided also that the following individuals, who are or have been, for at least 10 years:

an advocate of court | CA in Practice | Cost Accountant in Practice | CS in Practice

shall not be required to pass the OPSAT [Amendment]

Restoration of Name [Amendment]:

Indv. whose name has been removed for not being able to clear OPSAT within 2 years may apply for restoration of his name on payment Rs. 1,000 & IICA shall allow such restoration subject to:

(i) his name shall be shown in a separate restored category for 1 year from such restoration within which, he shall be required to pass OPSAT & thereafter his name shall be included, only, if he passes OPSAT and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and

(ii) in case he fails to pass OPSAT within 1 year from date of restoration, his name shall be removed from data bank, and he shall be required to apply afresh for inclusion of his name

Sec 151 - Appointment of Director Elected by Small Shareholders (SSH)

[Read with Rule 7 of the Companies (Appointment and Qualification of Directors), Rules, 2014]

Applicability	Listed Company MAY have 1 director elected by SSH (Nominal Value <= Rs. 20,000)
Process	Suo motu or Notice of Intention by SSH (not < lower of 1,000 SSH or 1/10th SSH)
Time limit	Notice of intention to be given at least 14 days before meeting
Content of notice	- Name, address., no. of shares held (if any) & folio no. (if any) of proposed SSD & - Name, address, no. of shares held and folio no. all the SHs proposing such appt.
Statement	By proposed SSD stating - DIN, not disqualified u/s 164, his consent to act as dir.
SSD = ID?	SSD considered as ID if eligible u/s 149 (6) and gives declaration u/s 149 (7)
Rotation?	Not liable to retire by rotation
Tenure	3 consecutive years. Not eligible for reappointment.
Cooling off	3 years
Vacate if:	Disqualified u/s 164, Vacation as per 167 or ceases to meet sec 149 (6)
Restriction	Not hold the position of SSD in > 2 companies at the same time. 2nd co. not in competing or conflicting business.

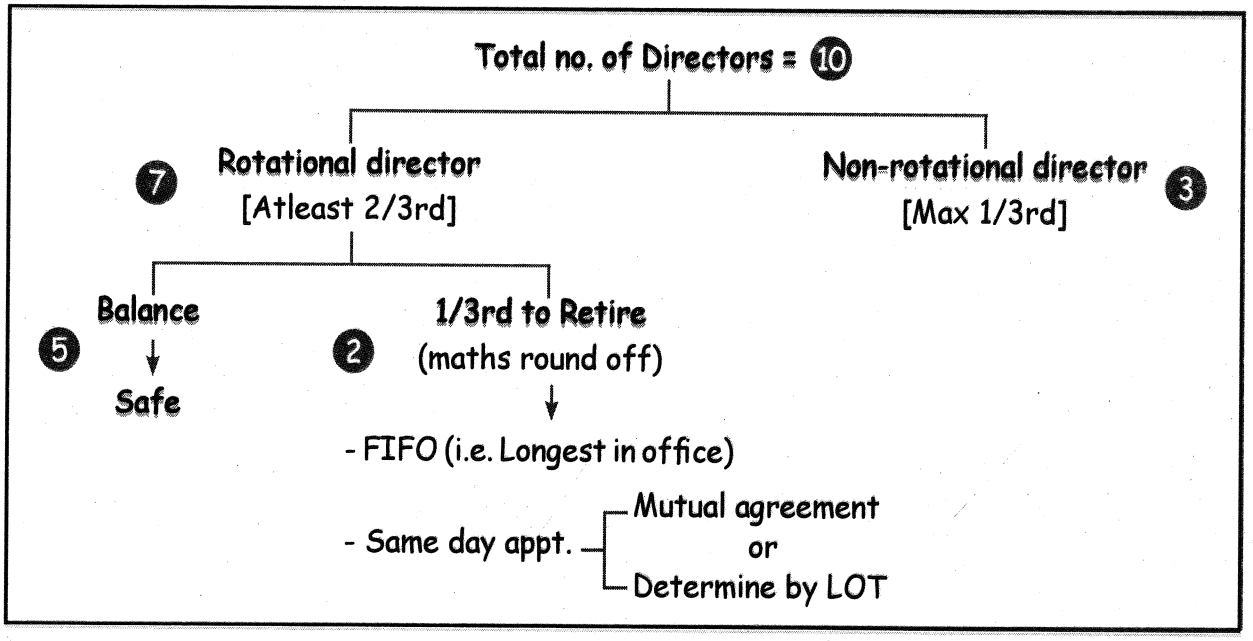
Sec 152- Appointment of Directors

1. First director -
   - Appointed as per provisions of AOA. Otherwise, subscribers to MOA (individuals) - Deemed
   - Tenure - Till directors duly appointed as per provision of this Act
   - OPC - Individual member deemed
2. Every director shall be appointed by the company in the GM (unless otherwise specified)
3. No person to be appointed as director unless allotted DIN. (Minor cannot obtain DIN)
4. Every Dir. (incl Sec 161) to furnish DIN and Declaration that he is not disqualified before appt.
5. Furnish consent to act as a director - On or before his appt. - DIR-2 (Director to co.)
   Company to file such consent with ROC within 30 days of such appt. in Form DIR-12 + Fees.

   In case of a person who is a national of a country that shares land border with India, necessary security clearance from MHA to be attached along with such consent. [Amendment]

   Proviso (N.A to Section 8 Company) - For appointment of ID, Explanatory Statement to include a statement of BOD that he fulfils condition specified in the act

6. Retirement by Rotation (RBR):
   In case of public co., unless AOA specifically provides for RBR of all directors, at every AGM:
   - At least 2/3rd of total number of directors - Period of office liable to determination by RBR and appointment by company in GM
   - 1/3rd of the above 2/3rd shall retire by rotation
     [If fraction is not multiple of 3, no. nearest to 1/3rd (i.e., maths round off)]
   - Who retires? -Those who have been longest in the office since their last appointment.
   - If became directors on same day - Longest in office to be determined by lot
   - Company may fill up the vacancy in office as per sub-section (7)



Notes:

a) Following directors shall NOT be included in total number of directors:
   - Independent director and
   - Nominee director appointed by a financial inst. set up under Act of parliament (E.g. SBI)
   - Nominee directors appointed pursuant to LIC Act (this is as per LIC Act)
   - Alternate director

b) Following directors shall be included in total number of directors:
   - Nominee dir. appt. by an institution (not being financial inst. set up under Act of Parliament)
   - Director appointed by BOD u/s 161 (However, these will be non-rotational directors)

c) Only those directors who are appointed in GM can retire in GM

d) Directors appointed by board u/s 161(4) shall be considered non-rotational as they are appointed by BOD (irrespective of whether subsequently approved in GM). But, include in total no. of dirs.

e) MD and KMP may be R/NR depending on terms. But will be counted in total number of directors

7. <u>Adjournment of meeting:</u>

On retirement of a director as per Sec 152 (6), the company has to either:

Reappoint the retiring director **or** Appoint a new director **or** Expressly resolve to not fill the vacancy

If vacancy is not filled in the AGM and the meeting has not resolved to not fill – Meeting adjourned (Next week, same time and place) (If national holiday – Next succeeding day which is not a holiday)

If in adjourned meeting also - Vacancy not filled + not resolved – Retiring directors deemed reappointed (automatic reappointment)

Exception – No deemed / automatic reappointment if [LWR 164 162]:

Resolution put and Lost	Expressed his unwillingness in writing	Disqualified u/s 164	OR / SR required as per this Act	Sec 162 is applicable to the case (1 dir = 1 resoln)

If AGM is not held up to last due date – "Dir. liable to retire" shall vacate office on last due date

Concept clarity check:

1. What if AGM is extended u/s 96? - If any default is made in holding the AGM of a co. u/s 96, the Tribunal may, on the appln. of any member of the co., call, or direct the calling of an AGM of the co. Such GM shall be deemed to be an AGM of the co.

2. Sec 152 (6) and (7) N.A. to: Unlisted Govt co. (>=51% held by CG/SG) and Subsy. thereof.

Sec 153- Application for DIN

- Indv. intending to be appt. as dir. - Make appln. for DIN /other ID number as may be prescribed
- Application to the CG (Manner and fees – as may be prescribed) - Electronically – DIR-3
- LLP Act requires DPIN (DIN can be used as DPIN and vice-versa)

Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014:

- DIR-3 to be filed by person willing to be appointed as director (Photograph, Identity proof, residence proof, mandatory DSC and certified by full time CS, MD, Directors, CEO or CFO)
- INC-32 (SPICe) to be filed by company being incorporated to get DIN for proposed first director (max 3 directors at once)

Sec 154- Allotment of DIN

- CG shall allot DIN within 1 month of receipt of application

Submit DIR-3 online and make requisite payment	Application number is generated	CG shall decide on the approval or rejection of application	Communicate decision + DIN (in case of approval) by way of letter (post/e-mode) within 1 month of receipt of application

Note - No Application number shall be generated in case of a person who is a national of a country that shares land border with India, unless necessary security clearance from Ministry of Home Affairs has been attached along with DIR-3. [Amendment]

- If CG finds any defect/incompleteness in application - Intimate applicant - Website and by email.
- Applicant to rectify and resubmit within 15 days of such placing on the website/email.
- On receipt of above rectification order:

Case where defects are:	CG's order
Rectified to the satisfaction of CG	CG to Allot DIN and communicate to applicant
Not removed within given time	Treat & label such appln. as invalid in e- record
Rectified partially, or info given is still defective	Reject the application and ask applicant to file fresh appln. with correct and complete info

Concept clarity check:

"Put Under Resubmission" means that an application is NOT rejected. Applicant is just required to file additional documents for the application to be processed

Sec 155 to 159

Section	Provision
155	Prohibition to obtain more than 1 DIN
156	Every existing director to intimate (Form DIR-3B) DIN to company(s) wherein he is a director within 1 month of receipt
157	• Company to intimate (Form DIR-3C) DIN of its directors to ROC within 15 days of receipt of intimation u/s 156 • If defaulted, then company and each OID - Fine Rs. 25,000 + Rs. 100 per day up to max Rs. 1 lakh
158	Obligation to indicate DIN in all returns, info or particulars by director or company
159	In case of contravention of Sec 152, 155 & 156- Fine up to Rs. 50,000 + Up to Rs. 500/day

Other points:

- DIN may be cancelled or deactivated by CG (Regional director) if:

DIN is duplicated	Obtained in a wrongful or fraudulent manner	death	unsound mind
adjudicated insolvent	application to surrender (DIR-5) made by DIN holder along with declaration that said DIN has never been used for filing any document.		

- Intimation of changes in particulars of DIR-3 (Rule 12):
  - Intimate such change to CG within 30 days in Form DIR-6
  - CG to verify such changes and incorporate such changes.
  - Once changes are incorporated, CG to intimate - Applicant + Concerned ROC
  - Director also to intimate above changes in DIN to co. within 15 days of such change.

Sec 160- Right of person other than retiring director to stand for directorship

A person shall be eligible for appointment as director if:

- He himself or any member intending to propose him as director
- sends a notice in writing at least 14 days before meeting at the registered office of company
- along with deposit of Rs. 1 lakh or such other sum prescribed

Deposit:

- Refunded if proposed candidate gets elected or > 25% votes of total valid votes casted
- Deposit not required in case of:

Appointment of an ID	Director recommended by NRC	Director recommended by BOD, in case co. is not required to constitute NRC.

Company to inform candidature to members:

- At least 7 days before GM
- Inform by way of - Serving individual notices (email or in writing) AND place notice on website
- It shall not be necessary to serve individual notices where it advertises such candidature at least 7 days before meeting in newspaper. Language - Vernacular + English

Modifications:

- Nidhi companies - Deposit of Rs. 10,000 instead of Rs. 1 lakh
- In case of Section 8 companies, BOD has to decide whether deposit made by person failing to secure 25% votes is to be forfeited or refunded (discretion of BOD)
  [i.e., BOD of Sec 8 companies can refund the money even if proposed candidate got <=25% votes]

Exemptions:

The provision of this section shall not apply to (subject to 92+137):

Private company	Section 8 companies whose AOA provides for election by ballot	100% Government company and subsidiary thereof.

Sec 161- Appointment of Additional Director, Alternate Director and Nominee Director

1. Additional Director:
   - Articles may confer the power to BOD for appointment of additional directors at its discretion
   - This director can be any person other than who fails to get appointed as director in GM
   - Tenure – Next AGM or Last due date of AGM whichever is earlier
   - Appointed by passing a resolution in BM or Resolution by Circulation.

Concept Clarity Check:

1. Can the members pass OR/SR authorizing BOD to appoint additional director?
   No. The power can only be conferred by AOA.
2. What will be tenure of additional director if AGM is extended by ROC beyond due date u/s 96 of Companies Act? - Additional director to vacate his office on extended last due date on which AGM should have been held.
3. Can an Additional director be MD/WTD? – Yes.
4. After the end of Additional director's tenure, if co. intends to appoint him as a normal director, is compliance of Sec 160 needed? – Yes.
5. Can same person be appointed as Additional director again and again? – Yes (no such restriction)
6. Additional directors are directors appointed by Board and hence non-rotational. However, they shall be included while calculating total no. of directors.
7. A co. has 7 dirs. Can a co. appoint 4 more additional director in BOD meeting? – No, max limit of non-rotational director is 1/3rd.

2. Alternate Director:
   - Appointed by BOD only if authorized by – Articles or Resolution passed in GM
   - To act in place of Original Director (OD) - absence of OD from India for > = 3 months.
   - A person cannot be appointed as Alt. Dir if:
     - He is holding any Alt. Dir for any other director in the company or
     - Holding directorship in the same co.
   - Alternate for ID has to be independent as per 149(6)
   - Tenure: Original term of OD or OD returns to India - whichever is earlier
   - Automatic reappointment – Only OD. Not Alt. Dir

Note: Alt. Dir is not a proxy to OD. He is a dir. in his own capacity and considered as normal dir.

Concept Clarity Check:

1. Can the Alt. Dir be appointed by OD? – No
2. Can BOD appoint Alt. Dir on behalf of regular director going out for less than 3 months? – No.
3. Can Alt. Dir be appointed for MD/WTD also? - YES
4. Alt. Dir shall NOT be included in total number of director Only OD shall be included

3. Nominee Director:
   - Subject to the AOA, the BOD may appoint
   - any person as a director nominated by any institution
   - in pursuance of – (1) law or (2) agreement or (3) CG/SG by virtue of shareholding in a Govt. co.

4. Casual Vacancy:
   - If office of a director appointed by the company in GM is vacated before expiry of term in normal course, it results in casual vacancy
   - Such Casual Vacancy shall be filed by the BOD at the board meeting (no RBC)
   - Needs to be subsequently approved by members in immediately next GM
   - Tenure - Date up to which dir. in whose place he is appt. would have held office if not vacated.

Concept Clarity Check:

1. Can vacancy in office of director appointed u/s 161 (4) be again filled u/s Sec 161(4)? No [Casual Vacancy in office of dir. appointed by co. in GM can only be filled u/s 161(4)]
2. If a dir. declined to assume office after appointment u/s 160, will it be casual vacancy? - No
3. Is dir. appointed under this Section a rotational dir. u/s 152(6)? - No (not appointed in GM)

SUMMARY TABLE FOR SECTION 161

Criteria	(1) Additional	(2) Alternate	(3) Nominee	(4) Casual Vacancy
Appointed by	Board	Board	Board	Board
Ratification by SH?	Not required	Not required	Not required	Yes. In immediately next GM
Power conferred by	AOA/~~OR~~	AOA/OR at GM	AOA	Law
Tenure	Next AGM/last date for AGM	Earlier of - Tenure of OD or OD returns to India	As per law/ agreement	Tenure of dir whose office vacated.
Resolution passed at	BOD meeting/ RBC	BOD meeting/RBC	BOD meeting/ RBC	Only Board meeting
Who cannot be appt?	Person who failed to be appt. as director in GM	a. Acting as Alt. dir. for any other dir. in the co. b. Person holding directorship in same co.	No such provision	No such provision
Additional points	-	AD of ID to comply with sec 149(6) AD cannot be automatically reappointed	--	--
Included in Total no. of dir. [152(6)]	✓	×	× Fin. Inst & LIC ✓ Others	✓
Non-Rotational?	✓	-	-	✓

Sec 162- Appointment of Directors to be Voted Individually

1. At a General Meeting, a motion for appt. of > = 2 persons as directors by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
2. Resolution moved in contravention of above shall be void, whether/not any objection was taken when it was moved

Concept Clarity Check:

In a BOD meeting, can 2 or more additional director be appointed by a single resolution of BOD?
Yes, this provision is applicable only to appointments made in GM and not BOD meeting.

Sec 163- Option to Adopt Principle of Proportional Representation for Appt. of Dirs.

- Notwithstanding anything contained in this Act,
- AOA may provide for Appointment of not less than 2/3rd of total directors of company
- by way of Proportional Representation (whether by a single transferable vote or by a system of cumulative voting or otherwise)
- Such appointments may be made once in 3 years
- In case of proportional representation, casual vacancy to be filled as per Sec 161(4)

Sec 164- Disqualifications for Appointment of Director

1. A person shall not be eligible for appointment as a director of a company, if:
   a. declared to be of unsound mind by competent court
   b. undischarged insolvent
   c. application to be adjudicated as insolvent is pending
   d. convicted by court of an offence (involving moral turpitude or otherwise) + Sentenced to imprisonment for >=6 months and 5 years has not lapsed from expiry of the sentence
      If imprisonment for >= 7 years, then not eligible for appointment. (forever disqualified)
   e. order of disqualification passed by court/tribunal + order is in force
   f. not paid any calls in respect of any shares of the co. held by him (whether alone/jointly) + 6 months have lapsed from last day fixed for payment
   g. convicted of offences dealing with RPT u/s 188 at any time during last preceding 5 years
   h. Not complied with Sec 152(3) [DIN]
   i. Not complied with Sec 165(1) [Maximum number of directorship]

   Provided that disqualification under clause (d), (e) and (g) shall continue even if appeal is filed.

2. A person who is/has been dir. of a company shall NOT be eligible to be re-appointed as dir. of that co. or appointed in any other co. for a period of 5 years, if the co. in which he is a dir., has:
   a. Not filed financial statement or Annual Returns for continuous period of 3 Financial Years.
   b. Failed to repay deposits + Interest (or) redeem debentures on due date + intt. (or) pay declared dividend AND such failure continues for 1 year or more

   Provided that where a person is appointed as a dir. of a co. which is in default under this sub-section, he shall not incur the disqualification for a period of 6m from the date of his appointment.

3. AOA of Private company may provide additional grounds for disqualification. (Public co. cannot)

Additional points:

- What if default is made good by the company later on? - Doesn't matter. 5 years cooling period.
- If new directors are appointed to the company which have already made the default, does the new dir. also get disqualified? No, as per proviso, the newly appt. dir. shall not be disqualified for 6 m

- Default in repayment of loan from any PFI will not attract disqualification as Sec 164(2) only covered debentures, deposits and dividend.
- Directors to inform company whether or not disqualified u/s 164(2) - Form DIR-8
- Whenever co. defaults u/s 164 (2), it shall within 30 days of the date of default intimate registrar in DIR-9 details of directors during relevant FY.

Sec 165- Number of Directorship [N.A. to Section 8 Company]

1. No person shall hold office of director (incl. alternate) in more than 20 companies at the same time.

   Provided that, max no. of public co. in which a person can be director shall not exceed 10.

   For reckoning limit of 10 public cos. - Pvt. co. that are holding/subsy of public co. shall be included.
   For reckoning limit of 20 companies, directorship in dormant company shall NOT be included.

2. The members of company may by a SR, specify a lesser number of companies in which a director of the company may act as a director [they cannot specify higher number]

3. If a person accepts appt. as a dir. in violation of this sec, penalty - Rs. 2,000/day up to Rs. 2 lakhs

Sec 166- Duties of Directors

1. Act in accordance with AOA
2. Act in good faith to promote objects of the company for the benefit of all the stakeholders
3. Exercise duties with due and reasonable care
4. Not involve in situations which may possibly conflict with the interest of the company
5. Not attempt to achieve undue gain or advantage - If found guilty, liable to pay such amt. to co.
6. Not assign his office - If assigned, void.

Contravention of duties - Fine Rs. 1 lakh to Rs. 5 lakhs.

Sec 167- Vacation of office of Directors

1. The office of director shall be vacated in following cases:
   a) incurs disqualification u/s 164
      Provided that, if disqualification u/s 164(2), vacate office in all cos other than defaulting co.
   b) absents from BOD meetings held during 12 months with or without leave of absence
   c) acts in contravention of Sec 184 relating to entering into contracts/arrangement in which he is directly interested
   d) fails to disclose interest in contravention of sec 184
   e) disqualified by an order of court or tribunal
   f) convicted by court of an offence (involving moral turpitude or otherwise) + Sentenced to imprisonment for >=6 months
   g) removed under any provision of this Act
   h) he, having been appointed a director by virtue of his holding any office or other employment in the ASH company, ceases to hold such office or other employment in that company.

Provided that, office shall not be vacated in case of orders referred in (e) and (f) above:
- for 30 days from the date of order
- if appeal/petition is preferred against the order within the aforesaid 30 days, until expiry of 7 days from date on which appeal/petition is disposed of.
- if further appeal/petition preferred within 7 days - Until such further appeal is disposed of.

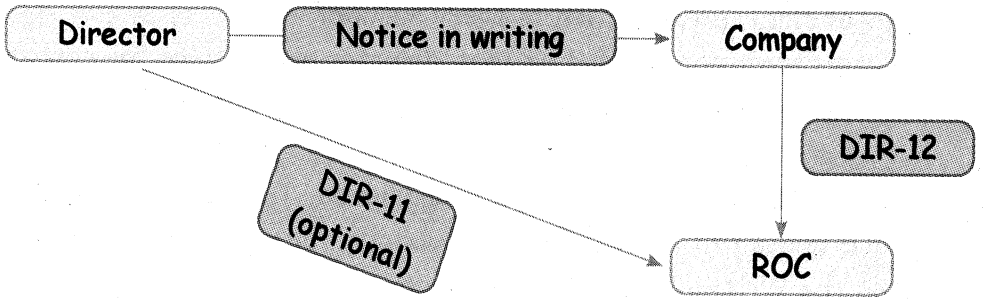
2. In case if dir. continues to function even when office is vacated, fine – Rs. 1 lakh to Rs. 5 lakhs.

3. Where all the directors vacate their office, the promotor/CG shall appoint required number of directors who shall hold office till directors appointed by company in GM

4. AOA of private company may provide for additional grounds of vacation. (Public co. cannot)

Additional points:
- No opportunity of being heard (OOBH) in case of vacation u/s 167
- Automatic vacation happens u/s 167 i.e., no board resolution required
- Board cannot waive any grounds of vacation

Sec 168- Resignation of Director



- A director may resign – by giving notice in writing to company
- Director may also forward copy of resignation along with detailed reason therefor to the ROC within 30 days from the date of resignation in Form DIR-11.
  In case of a foreign dir., if co. has already filed DIR-12, the foreign director may authorize (in writing) CA/CS or cost accountant or any other resident dir. to sign Form DIR-11 on his behalf.
- On receipt of such resignation notice:
  - Board to take note of the same.
  - Company to intimate ROC in Form DIR-12 within 30 days
  - Company to post the information on the website
  - Company to place the fact of such resignation in BOD report in immediately following GM
- Resignation to be effective from – date on which notice is received by company or date specified in notice (if any) whichever is LATER.
- Director to remain liable for offences which occurred during his tenure despite the resignation
- If all directors resigned, promotor/CG to appoint directors till dirs. duly appointed in GM
  Note: Resignation will take effect without any need for its acceptance by BOD or co. in GM. Even if Board doesn't accept or co. fails to intimate ROC (Form DIR-12), the resignation shall still be effective.

Sec 169- Removal of Director

- Company may remove a director before expiry of his tenure by passing OR + Giving him OOBH.
- ID re-appointed for second term u/s 149 (10) can be removed only by passing SR + OOBH
- A special notice of a resolution to remove the director or appoint someone in place of a director so removed is required.
  [As per Sec – 115 - Special notice is to be given at least 14 days before meeting (but not earlier than 3 months) by members holding lower of 1% of VP or PUSC of Rs. 5 lakhs]
- On receipt of the special notice, the co. shall forthwith send a copy to director concerned.
- The director shall be entitled to be:

heard on the resolution at the meeting	make representations in writing to the company	request the co. to notify the representation to the members

- The company shall, if time permits,
  - in the notice given to members, state the fact the representation has been made
  - send a copy of the representation to every member
  - if copy of representation couldn't be sent, director may require the representation to be read out at the meeting (without prejudice to his right to oral representation)
- If on an application either by co. or person aggrieved, Tribunal is satisfied that right to make representation is abused to secure needless publicity for a defamatory matter, it may order:
  - Not to send the Written Representation to members
  - Not to read out the Written Representation
  - Cost incurred of making such application to tribunal be paid by director concerned.
- Vacancy created on removal of the director to be filled at the meeting provided special notice of intended appointment is given.
  If not so filled, it can be filled u/s 161(4) (provided the dir. so removed is not reappointed by BOD)
- Dir. so appt. shall hold office till the date predecessor would have held if he had not been removed.
- Removal under this section shall not deprive a person of CFLO, if eligible, as per his terms of appt.
- Directors that cannot be removed u/s 169:

Sec 242 - Appointed by tribunal	Sec 163 - Appointed by way of proportional representation	Sec 161 (3) - Nominee Dir. (by a special Act & such special act restrains such removal)

Note: Grounds for removal/reason for proposing a resolution to remove the director is not mandatory to be stated in the special notice [LIC vs Escorts Ltd]

Sec 170- Register of directors and KMP and their shareholding

- Register to contain details of securities held by each of directors & KMP in CASH and Co-subsidiary
- Register to be kept at registered office.
- Company to file with ROC a return containing such particulars within 30 days of appointment of every director or KMP and any change taking place.

Sec 171- Members' right to inspect the register maintained u/s 170

- Open for inspection during Business hours and kept open at AGM
- Right to take extract/copies:
  If application made by member, company to provide within 30 days – Free of cost

Sec 172- Punishment

If default under provision for which no specific penalty is provided, the company and every OID shall be liable to fine Rs. 50,000 and in case of continuing failure – Rs 500 /day subject to maximum of Rs. 3 lakhs (for company) and Rs. 1 lakh (for OID)

The End

Multiple Choice Questions

Question:1 [Section:161(4)]

The Board of Directors of Pristine Pharmaceuticals Limited, which was incorporated under the Companies Act, 2013, consists of 7 directors. It so happened that one of the directors Mr. Avinash who was appointed in the immediately previous Annual General Meeting (AGM) met with a serious accident which ultimately resulted in his untimely death after a couple of days of this mis-happening. Consequently, a casual vacancy in the office of director arose which needs to be filled up. The Board of Directors of Pristine Pharmaceuticals Limited is contemplating to appoint Mr. Rakesh in place of Mr. Avinash to fill the casual vacancy so originated. From the given options which one you would have chosen as a CA if you were to advise the Board of Directors regarding the time limit within which Mr. Rakesh could be appointed to fill such casual vacancy in the light of applicable provisions of the Companies Act, 2013:

a) The casual vacancy created due to the untimely death of Mr. Avinash needs to be filled by the Board of Directors of Pristine Pharmaceuticals Limited within 3 months from the date of creation of such vacancy.
b) The casual vacancy created due to the untimely death of Mr. Avinash needs to be filled by the Board of Directors of Pristine Pharmaceuticals Limited by passing a board resolution at its meeting and such appointment of Mr. Rakesh shall be subsequently approved by the members in the immediate next general meeting.
c) The casual vacancy created due to the untimely death of Mr. Avinash needs to be filled by the Board of Directors of Pristine Pharmaceuticals Limited within 1 month from the date of creation of such vacancy.
d) The casual vacancy created due to the untimely death of Mr. Avinash needs to be filled by the Board of Directors of Pristine Pharmaceuticals Limited within 2 months from the date of creation of such vacancy.

Question:2 [Section:165]

Prince is holding directorships in 20 companies of which 7 are public companies and out of 7, 3 have been categorized as dormant companies. Further, in 2 of these 7 public companies, he is holding alternate directorships. He has been offered directorships in 8 more public companies. Choose the correct alternative from the following options whether he can legally hold directorships in all these newly offered 8 public companies:

a) Along with existing 20 directorships he can be director in all the 8 new companies which have offered him directorship.
b) Being already director in 20 companies, he cannot accept further directorship in any other company.
c) Along with existing 20 directorships he can be director only in 6 new companies.
d) Along with existing 20 directorships he can be director only in 3 new companies.

Answers:	1.	(b)	2.	(d)

Question:3 [Section:168(1) + Rule 15]

Ritika Hospitality Services Limited, having its registered office in Bhikaji Cama Place, New Delhi, is providing various kind of services, major components of which are tours and travels, both in India and abroad. In addition to six directors, Andrezj, a resident of Warsaw, Poland also held directorship in the company as foreign director. However, due to his extremely busy schedule at Warsaw, he resigned and requested the company to relieve him from the directorship w.e.f. 23rd July, 2021. With a view to intimate the ROC regarding resignation of Andrezj, the company filed DIR-12 on 26th July, 2021. In respect of signing and filing of DIR-11, which of the following persons in India can be authorised by Andrezj in addition to a practising Chartered Accountant, a Cost Accountant in practice and a CS in practice who can sign and file the said Form DIR-11 on his behalf:

a) His professional friend Shailja, an advocate practising in Delhi High Court.
b) His cousin Bartek residing in India and holding directorship in an unlisted company, namely, Mithila Dairy Products Limited.
c) His earlier co-director Kritika, a resident director of Ritika Hospitality Services Limited who filed DIR-12 on behalf of the company intimating the ROC regarding resignation of Andrezj.
d) His close friend Devansh, Managing Director of Sunshine Travels Limited which is a listed company

Question:4 [Section:167]

Mr. A, Mr. B, Mrs. C, Mr. D and Mr. E are 5 Directors of the Elite Transporters Ltd. The Board of Directors of Elite Transporters Ltd. conducted 5 Board Meetings in the FY 2020-21 which were attended by Mr. A, Mrs. C and Mr. D in full whereas Mr. B attended only 4 meetings. However, it was noticed that Mr. E failed to attend any of the Board Meetings and therefore, was liable to vacate the office of directorship but he did not vacate the office despite attracting the disqualification. You are required to choose the correct option from the following 4 which indicates the quantum of punishment that is applicable in case of Mr. E for attracting the disqualification but not vacating the office of directorship as a consequence thereof:

a) Mr. E shall be punishable with fine which shall not be less than Rs 1,00,000 but which may extend to Rs 5,00,000.
b) Mr. E shall be punishable with fine which shall not be less than Rs 50,000 but which may extend to Rs 5,00,000
c) Mr. E shall be punishable with fine which shall not be less than Rs 1,00,000 but which may extend to Rs 3,00,000.
d) Mr. E shall be punishable with fine which shall not be less than Rs 1,50,000 but which may extend to Rs 3,00,000.

Answers:	3.	(c)	4.	(a)

Question:5 [Section:151]

Amar Ltd. is a listed company engaged in the production of furniture and fittings at its factory located in Pune. There are 50,000 small shareholders of which some want to elect a small shareholders' Director so that due representation to the small shareholders is accorded by the company and the issues relating to them are resolved during the Board Meetings at the earliest. Accordingly, 750 small shareholders served a notice on the company for the appointment of Vishal, a small shareholder, who, if elected, shall hold the office of Director on behalf of the small shareholders. From the following four options, choose the one which is applicable in the given situation:

a) Notice served by 750 small shareholders is valid and therefore, Amar Ltd. shall appoint Vishal as a small shareholders' Director.
b) Notice served by 750 small shareholders is not valid and therefore, Amar Ltd. shall appoint Vishal as a small shareholders Director only on the requisition of 1000 small shareholders
c) Notice served by 750 small shareholders is not valid and therefore, Amar Ltd. shall appoint Vishal as a small shareholders Director only on the requisition of 5000 small shareholders.
d) Notice served by 750 small shareholders is not valid and therefore, Amar Ltd. shall appoint Vishal as a small shareholders Director only on the requisition of 7500 small shareholders.

Question:6 [Section:149(6)]

H Ltd., a company listed with the Bombay Stock Exchange, was incorporated on January 20, 2002. The Directors of the co. want to appoint Mr. S who is a Managing Partner of S and Associates LLP, firm of Lawyers, as an Independent Director of the company at the forthcoming (AGM) to be held on September 24, 2021. Mr. S is acting as a legal advisor to Genesis Laboratory Ltd., Associate Company of H Ltd. It is to be noted Adv. S charged consultation fees as given below:

Year	Fees (in Rs.)	Gross turnover of S and Associates (in Rs.)
2018-19	2,00,00,000	40,00,00,000
2019-20	10,00,00,000	50,00,00,000
2020-21	0	45,00,00,000

You are required to identify the correct statement from those given below:

a) H Ltd. can appoint Mr. S as an Independent Director irrespective of the fact that he is Legal Advisor to Genesis Laboratory Ltd. which is its Associate Company.
b) H Ltd. cannot appoint Mr. S as an Independent Director as he is Managing Partner of the firm which is legal advisor to Genesis Laboratory Ltd., its Associate Company, irrespective of the amount of fees charged by Mr. S from its Associate Company.
c) H Ltd. cannot appoint Mr. S as an Independent Director as he is Managing Partner of the firm which is Legal Advisor to Genesis Laboratory Ltd., its Associate Company, and the fees charged by Mr. S exceeds the percentage as specified in the Companies Act, 2013, during one year out of the three immediately preceding FYs.
d) H Ltd. can appoint Mr. S as an Independent Director even though he is the Managing Partner of the firm which is Legal Advisor to Genesis Laboratory Ltd., its Associate Company, as Mr. S did not charge any fee during the immediately preceding FY.

Answers:	5.	(b)	6.	(c)

Question:7 [Section:149(1)]

National Software Limited, a government company with 14 Directors, is desirous of appointing 2 more Directors to enable good governance and to manage its affairs more efficiently and effectively. However, Mr. X, the Managing Director of National Software Limited, is of the view that the company can validly appoint only 1 more director and therefore, appointment of 2 more Directors would be a violation of the statutory provisions. Out of the following four options, choose the one which is applicable in the given situation:

a) The contention of Mr. X, the Managing Director of National Software Limited, that the appointment of appointment of 2 more Directors in the company, thus raising the number of directors to more than 15 , is valid since such action shall violate the statutory provisions.
b) Appointment of more than 15 Directors can be validly made by National Software Limited by passing an ordinary resolution in the general meeting.
c) Appointment of more than 15 Directors can be validly made by National Software Limited by passing a special resolution in the general meeting.
d) In view of the fact that government companies are exempt from the provision which limits the maximum number of Directors in a company, National Software Limited can appoint 2 more directors, thus raising the total number of directors to 16 from the present 14.

Question:8 [Section:149(1), Rule3]

In compliance with the Companies Act, 2013, at least one woman director shall be on the Board of the prescribed class or classes of companies. Ms. Riya is keen to seek the office of woman director in a company. Which of the following companies is mandatorily required to appoint a woman director where Ms. Riya can hold such office:

a) PQR Limited, an unlisted company, whose paid-up share capital is not exceeding 150 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.
b) ABC Limited, a listed company, whose turnover is 250 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.
c) XYZ Limited, an unlisted company, whose turnover is not more than 300 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.
d) BCZ Limited, an unlisted company, whose paid-up share capital is not exceeding 100 crore and turnover is less than 300 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.

Answers:	7.	(d)	8.	(b)

Question:9 [Section:152]

Kutumb Agro Limited (KAL), a newly incorporated company, has not mentioned the names of the first Directors in its Articles of Association. There are 8 subscribers to the Memorandum of Association including Parivaar Agro Private Limited. From the following four options, choose the one which indicates as to who shall be deemed to be the first Directors of KAL when nothing is mentioned in the Articles?

a) All the 8 subscribers to the Memorandum of Association of KAL shall be deemed to be the first Directors.
b) Except Parivaar Agro Private Limited, all other subscribers to the Memorandum of Association of KAL shall be deemed to be the first Directors.
c) The shareholders shall appoint the first Directors in the General Meeting of KAL
d) Out of the 8 subscribers to the Memorandum of Association, the first Directors being three individuals shall be nominated by Sriniwas, the CA who has signed the Memorandum as witness and they shall be deemed to be the first Directors of KAL.

Question:10 [Section: 149(1),Rule3]

The turnover of XYZ Components Limited as on the last date of latest audited financial statements is 400 crore rupees. An intermittent vacancy of a woman Director arose on June 15, 2021 due to the resignation of Ms. Swati. The immediate Board Meeting after the resignation of Ms. Swati was held on October 10, 2021. From the following options, choose the one which indicates the date by which the vacancy of the woman Director must be filled by XYZ Components Limited.

a) July 14, 2021.
b) August 14, 2021.
c) September 14, 2021.
d) October 10, 2021.

Question:11 [Section:161(2)]

Mr. Q, a Director of PQR Limited, is proceeding on a foreign tour covering entire Europe for four months. He proposes to appoint Mr. Y as an alternate Director to act on his behalf during his absence. The Articles of Association of PQR Limited provide for the appointment of alternate Directors. Mr. Q claims that he has a right to appoint alternate Director of his choice. Which of the following options is applicable in the given situation:

a) Claim made by Mr. Q to appoint Mr. Y as alternate Director is valid as the Articles of Association of PQR Limited provide for such appointment.
b) Claim made by Mr. Q to appoint Mr. Y as alternate Director is not valid as the authority to appoint alternate Director has been vested in the Board of Directors only and that too subject to empowerment by the Articles of Association.
c) Mr. Y cannot be appointed as an alternate Director in place of Mr. Q since Mr. Q is proceeding on a foreign tour covering entire Europe for four months only which is less than the required absence of minimum six months.
d) Mr. Y cannot be appointed as an alternate Director in place of Mr. Q since Mr. Q is proceeding on a foreign tour covering entire Europe for four months only which is less than the required absence of minimum nine months.

Answers:	9.	(b)	10.	(d)	11.	(b)

Question:12 [Section:168]

Mr. Nagarjuna, one of the directors of MGT Mechanics Limited, due to his own business interests, decided to resign as director and accordingly, sent his resignation letter dated 12th June, 2021 to the company stating that he intends to resign w.e.f. 15th June, 2021. Since no communication in relation to his resignation was received from MGT Mechanics Limited, he sent an e-mail on 17th June, 2021 enquiring about the receipt of his resignation letter by the company but there was no response. However, MGT Mechanics Limited received his resignation letter on 18th June, 2021. Out of the following four options, choose the one which indicates the correct date from which his resignation will be effective:

a) 12th June, 2021.
b) 15th June, 2021.
c) 17th June, 2021.
d) 18th June, 2021.

Question :13 [Section:161(1)]

The Board of Directors of MNO Pharma Limited is willing to appoint Mr. R, a qualified Cost Accountant having fifteen years of rich industrial experience, as Additional Director but the Articles of Association are silent about such appointment. Mr. M, the Managing Director of MNO Pharma Limited, is of the view that the Board does not have the power to appoint an Additional Director and therefore, if any such appointment is made, it shall be invalid. From the following four options, choose the one which is applicable in the given situation:

a) An ordinary resolution in general meeting needs to be passed by MNO Pharma Limited for appointment of Mr. R as Additional Director.
b) A special resolution in general meeting needs to be passed by MNO Pharma Limited for appointment of Mr. R as Additional Director.
c) An enabling provision in the Articles of Association is needed which confers requisite power on the Board of Directors of MNO Pharma Limited for appointment of Additional Director.
d) The Board of Directors of MNO Pharma Limited has the power to appoint Mr. R as an Additional Director irrespective of whether any clause finds place in the Articles of Association for such appointment or not.

Answers:	12.	(d)	13.	(c)

Question:14 [Section:165]

Mr. Z is proposed to be appointed as the Director in R Ltd.. It is noteworthy that Mr. Z already holds directorship in 1 dormant co., 2 Section 8 cos, 8 public limited cos and 9 Private Ltd. cos. However, out of nine private limited cos, two are subsidiaries of public limited cos. In the given circumstances, is it possible for Mr. Z to accept another directorship in R Ltd. without attracting any invalidity:

a) It is not possible for Mr. Z to accept another directorship in R Ltd. since he is already holding directorships in 20 companies.
b) It is not possible for Mr. Z to accept another directorship in R Ltd. since he is already holding directorships in 8 public limited companies and 2 such private limited companies which are subsidiaries of public limited companies.
c) It is possible for Mr. Z to accept another directorship in R Ltd. since Section 8 companies and dormant companies are excluded while calculating the limit of 20 companies.
d) It is possible for Mr. Z to accept another directorship in R Ltd. since there is no limit on holding any number of directorships.

Question :15 [Section:149(3)]

T Ltd, having Registered Office in New Delhi, has three dirs, namely, A, B and C, who often visit foreign countries in order to develop and secure business opportunities for the co. on sustainable basis. One of the legal requirements for an Indian co is that at least one of its dirs must stay in India for a specified period. To reckon as 'resident dir' for FY 2021-22, advise the co. by selecting correct option as to which period spent in India by any one of its dirs shall count towards statutory period.

a) Period spent in India during the previous FY 2020- 21.
b) Total of 50% of the period spent in India during the FY 2019-20 and another 50% of the period spent in India during the FY 2020-21.
c) Total of 50% of the period spent in India during the FY 2020-21 and another 50% of the period spent in India during the FY 2021-22.
d) Period spent in India during the FY 2021-22

Question:16 [Section:149(1),Rule3]

As per the audited FS of immediately preceding FY 2020-21, the paid-up capital of Aastha Limited was Rs. 75 crs (much below the threshold limit) which did not require appointing a woman dir. However, the t/o during the same period was Rs. 334 crs i.e., above the threshold limit which required appointing a woman dir. Choose the correct option from those given below as to whether Aastha Limited is required to bring on the Board a woman dir. or not.

a) The company is not required to appoint a woman director since only one of the parameters and not both have crossed the threshold limit.
b) The company is required to appoint a woman director since any one parameter out of the two exceeding the threshold limit shall necessitate such appointment.
c) The requirement of appointing a woman director arises only when paid up capital exceeds the threshold limit and therefore, the company is not required to appoint a woman director.
d) In a situation where one parameter is below and the other is above the threshold limit, the company, as per its discretion, may or may not appoint a woman director.

Answers:	14.	(b)	15.	(d)	16.	(b)

Question:17 [Section 165]

Mr. D holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2022. One of the above Private Company is a dormant Company. Further on 30.06.2022 a Private Company has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide the validity of holding directorship of Mr.D with reference to number of directorship as on 31.05.2022 and as on 30.06.2022.

a) Holding of directorship of Mr. D as on 31.05.2022 is invalid whereas holding of directorship of Mr. D as on 30.06.2022 is valid
b) Holding of directorship of Mr. D as on 31.05.2022 is valid whereas holding of directorship of Mr. D as on 30.06.2022 is not valid
c) Holding of directorship of Mr. D as on 31.05.2022 is valid whereas holding of directorship of Mr. D as on 30.06.2022 is also valid
d) Holding of directorship of Mr. D as on 31.05.2022 is invalid whereas holding of directorship of Mr. D as on 30.06.2022 is also invalid.

Question:18 [Section 167]

Ruby is a woman director in ABC Ltd. The Company held four meetings of the Board in the financial year 2022-23, but Ruby remained absent in all such meetings. However, she sought leave of absence in all such meetings and mentioned the person reasons. Based on these facts, which among the following statement is correct:

a) Ruby's office as a director shall become vacant.
b) Since Ruby is a woman director, she can ask for leave of absence.
c) Ruby is close to the promoter of the company, hence if the promoter wish, she may continue to hold the office of director.
d) If Ruby joins the immediate next meeting, she can continue to hold the directorship

Answers:	17.	(b)	18.	(a)

The End

A technically sound chapter which will make you realize that you are studying CA Final!

Sec 173 - Meeting of Board

SECTION [173(1) AND 173(5)]:

Type of company	Provision relating to board meeting
General Rule for all companies	➢ First BOD meeting – within 30 days of date of incorp. ➢ Subsequent BOD meeting - Minimum 4 meeting in each calendar year (as per SS-1); Maximum gap between 2 meeting = 120 days [Sec 173(1)]
Sec 8 (subject to Sec 92 & 137)	At least 1 meeting in every 6 calendar months
• OPC (>1 dir.) • Small company • Dormant company • Pvt co. (startup and 92 + 137)	At least 1 meeting in each half of calendar year and gap is NOT LESS THAN 90 days [Sec 173(5)]
OPC (=1 director)	No board meeting required. Provision of Sec 173(5) & 174 – N.A.

Concept clarity check:

➢ Is it mandatory for a director to attend all the Board meetings? - No. However, as per sec. 167, a dir. shall have to vacate his office if he absents himself with or without obtaining leave of absence from the board, from all the BOD meetings held within a period of 12 months.

➢ If a co. is incorporated on 1st Jan , 2022 – As per Law. How many minimum meetings would be required in Calendar Year 2022? – 5 meetings (1 within 30 days + More 4 in the CY)

COVID Relaxation – Gap may be extended to 180 days instead of 120 days (till 30/09/20)

Sec 173(2): Participation in BOD meeting:

A director may attend BOD meeting:

1. in person; or
2. through video conferencing (VC), or
3. through other audio-visual (AV) means, as may be prescribed

An audio-visual means should be capable of-

1. Recording and recognizing the participation of the directors; and
2. Recording and storing the proceedings of such meetings along with date and time.

Rule 3 of the Company (MBP) Rules, 2014 – Meeting of BOD through VC or other AV means:

1. Company to make necessary arrangements to avoid failure of VC or AV connection. (No exceptions to this. Every company, whether private or public, shall make such arrangements)
2. CP and the CS, if any, shall take due and reasonable care to [IFRS DHS]-
   a) safeguard the integrity of meeting by ensuring sufficient security and identification procedures;

b) ensure availability of proper VC or other AV equipment or facilities for providing transmission of the communications for effective participation of directors and other authorized participants;
c) record proceedings and prepare the minutes of the meeting;
d) store for safekeeping and marking the tape recording(s) or other e-recording mechanism as part of the records at least before completion of audit of that particular year.
e) ensure that no person other than concerned dir. is attending/has access to the proceedings of the meeting through VC mode or other AV means; [differently abled person may request for a companion]
f) ensure that participants attending the meeting through AV means are able to hear and see the other participants clearly during the course of the meeting.

3. Notice of meeting to be sent as per Sec 173(3)

4. Roll call - To be taken at commencement of meeting by the CP (not CS). Every director attending via VC or AV to state -

Name	Location from where he is participating	Agenda & relevant material of meeting recd.	That no one other than him is attending/has access to this meeting.

5. Quorum - After roll call, CP/CS to state names of person other than directors attending such meeting and confirm that required quorum is present

   Note - For quorum, director participating through VC/AV shall be included.

6. Venue of meeting - As mentioned in notice convening the meeting

7. Statutory registers shall be deemed to be signed by director (through VC) if consent provided + Recorded in minutes.

8. For the record, participants to identify himself before speaking

9. If a motion is objected & needed to be put to vote, CP to call roll + Note vote of each dir.

10. No person shall access the place where any director is attending the BOD meeting

11. At the end of each agenda item, CP (not CS) to announce summary of decision made along with name of dissenting directors.

12. Minutes of the meeting:
    - The minutes shall disclose particulars of dir. who attended the meeting via VC/AV means
    - Draft minutes shall be preserved till their confirmation
    - It shall be circulated among all dir. within 15 days of meeting either in writing/e-mode .

- On receipt, every director who attended meeting (personally or via VC/AV) shall within 7 days of receipt (or such reasonable time prescribed by BOD), confirm or give comments in writing, about accuracy of draft minutes failing which his approval shall be presumed
- Minutes shall be entered in the minute book signed by the CP (not CS).

Sec 173(3): Notice of BOD meeting

- Notice to be given in writing at least 7 days before the meeting
- To ALL directors at his address registered with the co (India/Abroad)
- Send by – (a) hand delivery or (b) post or (c) electronic means.
- BOD meeting may be called on a shorter notice (i.e., <7 days) provided:
  - Such meeting is to transact urgent business
  - At least 1 ID, if any, shall be present in the meeting.
    If no ID attends such meeting, decision taken in such meeting shall be – (a) circulated to ALL directors, and (b) ratified by at least 1 ID
  - If company has not appointed ID, shorter notice is valid if such meeting is to transaction urgent business (no need of ratification by ID)
- Notice to include following points related to VC/AV means:
  - A statement informing directors regarding option to participate via VC/AV means
  - Director intending to participate via VC/AV means to communicate his intention to the CP/CS and give prior intimation to company to enable the company to make suitable arrangements.
  - Director intending to participate via VC/AV - Intimate about such participation at beginning of each Calendar Year. Such declaration shall be valid for 1 year. Such declaration not to debar him from attending in person if he intimates sufficiently in advance.

Sec 173(4): Penalty for failing to send notices:

Officer whose duty is to give notices and fails – Penalty of Rs. 25,000

Additional points :

1. Who sends the notice of BOD meeting? – CS or any person authorised by BOD
2. Can notice for BOD meeting be sent via email? – Yes, of course.
3. Is it necessary to mention the agenda of the BOD meeting in notice? – Unless mandated by AOA, it is not mandatory. However, as a good secretarial practice, one should include agenda.
4. What if notice is not sent to few directors? [Parmeshwari Prasad Gupta v Union of India]
   If concerned person fails to send notice to one or more director, then the meeting MAY be considered void, and all resolution passed may be declared invalid. (unless ratified by such director to whom notice wasn't sent)
5. Notice for adjourned meeting – Adj. meeting is merely a continuation of original meeting and therefore fresh notice is not needed for adj. meeting unless: (a) AOA provides for fresh notice or (b) meeting is adjourned sine die (for indefinite period)
6. Notice is to be sent to directors even if they have waived off their rights to receive notices.
7. In case of alternate director, notice is to be served to both AD and OD.
8. Similarly, notices need to be sent to all the interested director as well.
9. Is it required to have BOD meetings each quarter? – No such requirement.
10. Can a BOD meeting be held o/s India – Yes. No such restriction.
11. Can a BOD meeting be held through audio mode (without video facility?) – No. Video is must

Sec 174: Quorum [N.A. to OPC having only 1 director]

1. Quorum of BOD meeting = Higher of – (a) 1/3rd of total strength of directors or (b) 2 directors
   In case of Sec -8 co. (92+137) – Quorum shall be lesser of: (a) 8 members or (b) 25% its strength

   Note:
   - Any fractions shall be rounded off as 1
   - Articles of company may provide for a higher number of quorum
   - Directors participating through VC/AV shall be counted for purpose of Quorum
   - Quorum to be present throughout the meeting (not just start).
   - Total strength of directors not to include those whose office are vacated.

2. If the number of continuing directors is reduced below the quorum fixed by the Act for BOD meeting, the continuing director(s) may act only for the purpose of (and for no other purpose):
   a. Increase the number of directors to that fixed for quorum, or
   b. Summoning a General Meeting of the company

3. Where interested director > = 2/3rd of total strength of directors, quorum shall be higher of:
   a. Number of non-interested director present at such meeting
   b. 2 directors
   Interested director – As per Sec 184(2)

   Exception – In case of a private company(92+137), the interested director may participate in such meeting and shall also be counted in quorum subject to disclosure of interest u/s 184

4. If meeting could not be held for want of quorum – Automatic adjournment to next week, same day, time and place. [If national holiday – Next succeeding day which is not national holiday]

Additional points:

1. Can the BOD meeting be initially scheduled on a national holiday? – Yes. The provision of national holiday applies only to automatically adjourned meeting. The original meeting can be held on a national holiday. In fact, meetings voluntarily adjourned by BOD may be held on a national holiday.
2. Sunday is not a national holiday. We wish it was. But it isn't.
3. Would Alternate director be included in quorum? – Yes, because he holds the office of OD.
4. In a VC board meeting, assume a scenario where original director (OD) and alternate director both are present, in such case, the presence of OD shall be counted for the purpose of quorum and voting. However, Alternate director shall continue to hold office.
5. Can the AOA provide cap of maximum number of directors for Quorum? – No.

Sec 175: Passing of Resolution by Circulation (RBC)

1. RBC shall be deemed to have passed if:
   - Circulated in draft together with necessary papers to all directors/members of the committee
   - at their address registered with company IN INDIA
   - by hand delivery, post or by courier or prescribed e-mode (Email / Fax)
   - approved by majority of directors who are entitled to vote on the resolution (i.e., interested director's vote not to be considered).

Provided that if > = 1/3rd of ~~entitled~~ total directors require that this resolution must be decided at a meeting (and not by RBC), Chairperson shall put up such resolution in the meeting.

2. RBC shall be noted at a subsequent meeting as a part of the minutes.

Certain sections in Act specify that resolution can be passed only at meeting (i.e., RBC not allowed).

Example: 161(4) - Casual Vacancy; 179 (Power of Board); 182 (Political contribution); 186 (LGS and Investment); 188 (RPT)

Concept clarity check:

Can committee of directors (say, Audit Committee) pass RBC? - Yes, absolutely.

Sec 176: Defects in appointment of director not to invalidate actions taken

Acts of dir. shall not be deemed invalid merely on the grounds that it was subsequently noticed that:

i. his appointment was invalid by reason of any "defect" or "disqualification" or
ii. had terminated by virtue of any provision contained in this Act or in the Articles of the company

Provided that - If company had noticed that such appointment has become invalid - Act not Valid.

Sec 177: Audit Committee [Read with Rule 6/6A of Co. (MBP) Rule, 2014]

1. Following companies are required to constitute audit committee (AC):
   - Listed Public Companies
   - Unlisted public company having:
     - Paid up share capital >= Rs. 10 crores
     - Turnover >= Rs. 100 crores
     - Outstanding loan, debentures, and deposits (in aggregate) > Rs. 50 crores

   Note:
   1. Exemptions - Joint Venture/Wholly owned subsidiary/Dormant company
   2. If ceases to fulfil conditions for 3 consecutive years - Provision not applicable
   3. Limits to be checked as existing on last date of latest audited financial statement.

2. Composition:
   - Minimum 3 directors
   - Majority ID (N.A. to Section 8 provided section 92+137 are complied with)
   - Majority including CP - Ability to read and understand FS.

3. Transition provision

4. AC to act as per "term of reference" specified by BOD which shall include [A3 SAFE RPT]:
   a) Auditor - Recommend for appointment, remuneration & terms of appointment
      [In case of Govt co (92+137), AC to only recommend remuneration & not terms of appointment]
   b) Auditor - Review and monitor independence and performance & effectiveness of audit process.
   c) Auditor's Report - Examination of financial statement and auditor's report thereon

d) RPT – Approval & subsequent modification thereof [provided AC may provide omnibus approval]
Provided that, for transactions other than RPTs u/s 188, if AC doesn't approve it, it shall recommend it to BOD.

Provided also that, in case if any transaction (not just RPT u/s 188) < = Rs. 1 crore is entered into by director/officer of company without approval of AC - May be ratified by AC within 3 months. If not ratified within 3 months, it shall be voidable at option of AC.

If such transaction is with RP to any dir. or authorized by any dir., he shall indemnify company

Provided also that this prov. shall not apply to trans. (other than 188) b/w Holding and WOS.

e) Scrutiny of inter corporate loans and investments
f) Valuation of the company's Asset/undertaking
g) Evaluation of Internal Financial Control and risk management system
h) Funds– Monitoring end use of fund raised through public offers or related matter.

Omnibus approval (OA) for RPTs:

- All RPTs shall require approval of AC.
- AC may provide OA for RPTs subject to following conditions:
  - AC shall, after approval of BOD, specify the criteria for making omnibus approval including:

Max. value of transaction (in agg.)	Max value per transaction	Extent & manner of disclosure for OA	Review RPTs made under this approval (at interval as AC deems fit)	Trans. which can't be subject to OA

- AC shall consider following factors while specifying the above criteria:
  - Repetitiveness of transactions
  - Justification of need for omnibus approval

- AC shall satisfy itself on need of OA for transaction of repetitive nature and that such OA is in interest of the company

- OA shall indicate the following:

Name of RPs	Nature & duration of transaction	Max amount of transaction	Indicative based price or current contracted price	Other relevant info.

Provided that, where the need for OA cannot be foreseen and aforesaid detail is not available, omnibus approval may be made for transactions not > Rs. 1 crore per transaction.

- Validity of OA – Not > 1 FY. Require fresh approval each expiry of such FY
- No OA shall be made in respect of selling or disposing of undertaking of the company

5. Rights of AC:
   - Call for comments of auditor about internal control system, scope of audit, observations,
   - Review FS before submission to board
   - Discuss related issue with internal and statutory auditors & management of company

6. Audit Committee may investigate matter referred to it by BOD and may obtain professional assistance for the same.

7. Auditors & KMPs have right to be heard in meetings of Audit committee when it considers Auditor's report but no right to vote.

8. BOD report shall disclose:
   a. composition of Audit Committee and
   b. where BOD had not accepted any recommendation of Audit Committee, the same shall be disclosed along with reason therefor.

9. Vigil Mechanism –
   Who is required to set up?

Listed co.	Co. having deposits from public	Co. having borr. from Banks/PFI > Rs. 50 crores

   Purpose - For directors and employees to report genuine concerns.

   Oversight- AC. In case if AC is not required, BOD to nominate director for oversight.
   Vigil mechanism to provide for adequate safeguards against victimization of person who use of such mechanism & make provision for direct access to CP of AC in appropriate/exceptional cases.

   In case of repeated frivolous complaints being filed by director/employee, the AC or nominated director may take suitable action including reprimand.
   Details of Vigil Mechanism to be disclosed in – (a) Website and (b) Board Report

10. Sec 178(8) - Contravention of Sec 177 - Penalty - Co. - Rs. 5 lakh & OID - Rs. 1 lakh [Amendment]

Concept clarity check:
Can Audit Committee be constituted voluntarily even if limit not breached? - Yes

Sec 178 - Nomination Remuneration Committee & Stakeholder Relationship Committee

[N.A. Section - 8 companies provided section 92 + 137 complied with]

Nomination Remuneration Committee (NRC):

1. Who is required to constitute NRC? – Same as AC and Section 149(4)
2. Composition –
   - 3 or more Non Executive Directors
   - Not less than $\frac{1}{2}$ ID (not majority)
   - CP of company (executive or NED) can be appointed as member of NRC but cannot chair NRC

3. Function of NRC:
   - Identify person for appointment as director/senior management or for removal
     Senior management - Management people one level below executive directors incl. dept heads
   - Evaluate performance of BOD, individual director and its committees
   - Formulate criteria for determining performance, independence, etc. of directors
   - Recommend board a policy relating to remuneration of directors, KMPs, other employees

- Place the policy in its website and disclose salient features in board report.

In case of Govt co. (92+137), NRC shall apply only to senior mgmt./employees and not for directors

Stakeholder Relationship Committee (SRC):

1. Who is required to constitute SRC?
   Company having > 1,000 shareholders, debenture holders, deposit - holders, AND any other security holder at any time during a FY (Bole toh, 1,000 se jyada investors)

2. Composition:
   - Chairperson - Non Executive Directors
   - Other members - As may be decided by Board

3. Purpose - Consider and resolve grievances of security holders of company

Common points:

1. CP/Person authorized by CP of NRC and SRC to attend General Meeting.
2. Penalty for contravention of Sec 177/178 - Company - Rs. 5 lakhs and OID - Rs. 1 lakh.
3. Inability to resolve grievances by SRC in good faith shall not be considered contravention.

Sec 179 - Power of Board

1. BOD is entitled to exercise all such powers and do all such acts/things as the company is authorised to exercise/do. Subject to the provision of this Act, AOA, MOA and other regulations.
   The BOD shall not exercise such power which as per Act/MOA/AOA is to be exercised by the company in the GM.

2. No regulation made by co. in GM shall invalidate any prior act of BOD which would have been valid if regulation had not been made (i.e., changes in regulation cannot be implemented retrospectively)

3. Following power of the board to be exercised on at BOD meeting (and not by RBC):

Cash inflow	Cash outflow	FS	Badi Baatein	Others (Rule 8)
• Calls on SH for unpaid money • Issue securities incl. debt in India/outside • Borrow monies [Clause (d)]	• Buyback u/s 68 (upto 10% of PUESC + FR) • Invest funds of co. [Clause (e)] • Grant loans / give guarantee or sec. [Clause (f)]	• Approve F.S and BOD report	• Diversify business • Approve M&A, reconstruction • Take over of co. or acquire controlling stake	• to make political contribution • to appoint or remove KMP • appoint ~~or remove~~ internal & secreterial auditors.

*Sec 8 co. (92+137) can exercise power to borrow money, invest fund and grant loans via RBC.

Provided that, BOD may, by a resolution passed at a meeting (not RBC), delegate the powers specified in clauses (d), (e) and (f) above to:

any committee of directors	the MD or manager	any other Principal Officer of company	Principal Officer of branch office, if any

In case of banking co., following shall not be considered as borrowing monies or granting loans:

Accepting of deposit from public in OCOB	Placing of deposit by a banking co. with another banking co.	Borrowing by one banking co. from another banking co. / RBI,SBI, etc.

4. SH may, by passing resolution at GM, impose restriction on powers of board (prospectively)

Additional Notes:

1. Sec 179(3)(d) – Borrow monies shall mean arrangement made with bankers for OD/CC or otherwise and not actual day to day operation of such OD/CC accounts

2. Generally, shareholders are not allowed to interfere in the way the BOD operates. But in the following 3 cases, shareholders are empowered to exercise power of BOD:

BOD has been actiing malafide	All directors are interested in particular transaction	Deadlock in management

3. Certain other power of BOD that needs to be exercised only in a meeting (not RBC):

188 - Approval of RPTs	186 - Giving loans/making investment	203 - Appointing a person as MD in one more company

Sec 180 – Restriction on power of Board [N.A. to Private Company]

Board can exercise the following power only with the consent of company by way of SR: [SALE]

a. Sell, lease or otherwise dispose of whole or substantially the whole of undertaking of the co.

Note:

- Undertaking – In which investment of company >20% of its net worth or generates >= 20% of total income of company (both during previous FY)
- Substantially means >=20% of such undertaking
- SR not required if such sale/lease is in OCOB
- Right of buyer/lessee not affected if purchased in good faith and exercised due care/diligence

b. Invest the compensation received from any merger/Amalgamation
SR not required if such money is being invested into Trust securities as per Indian Trust Act.

c. Borrow money if money to be borrowed + Already borrowed > PUSC + FR + SP (Loan)

Note:

- SR to specify amt. up to which BOD can borrow. Else SR void. (i.e., can't grant unlimited power)
- If BOD borrow in excess of limits specified, SH may ratify.
- Borrowing in contravention of this section shall not be valid unless lender proves that it was made in good faith and w/o knowledge that limit is exceeded.
- PUSC to include both – Equity as well as preference
- SR not applicable in case of temporary loans (payable on demand/within 6m) obtained from bankers of the company in OCOB.
- Temporary loan does not include loan raised to finance capex
- Banking company accepting public deposit shall not be considered borrowing for this provision

d. Remit, or give time for repayment of any debt due from director (Extension)

Concept clarity check:

1. Can AOA provide BOD with power to do any of the above 4 activities without SR? – No. No such exception is given u/s 180.
2. Is SR enough or BOD resolution also required for above 4 activities? – BR + SR is also required
3. Free reserve shall not incl. Debenture Redemption Reserve (as it is not avl. for dividend)

Sec 181 – Company to contribute to bonafide and charitable funds, etc.

- Applicable to both public and private company
- Can contribute any sum to charitable fund.
- Prior permission of company in General meeting (by passing OR) - For contribution in a FY of sum > 5% of Average Net Profit of 3 immediately preceding FY.

Concept clarity check:

- It is not needed for the co. to have profit in the current year to make such contribution. What needs to be considered is the net profit for last 3 FY.
- An amt. spent in relation to biz. of co./welfare of employee is not charitable contribution
- Is Board Resolution required if contribution < 5% limit? – Yes

Sec 182 – Prohibitions and Restrictions Regarding Political Contributions (PC)

- Company is allowed to contribute any amount, directly/indirectly towards PC (no limits) Resolution authorizing PC has to be approved in the BOD meeting (RBC not allowed)

- Company prohibited from PC – (a) Govt. Company and (b) Company in existence <3 FY

- Deemed political contribution:
  a. donation/payment to a person carrying on activity likely to affect public support of a PP
  b. Advertisement in any publication (souvenir, brochure, pamphlet) of PP

- Disclosure in P/L – Total amount contributed under this section to any PP

- Contribution to Electoral trust company – Need not disclose as per Sec 182. It would suffice if the Accounts of the Company disclose the amount released to an Electoral Trust Company
- Mode – A/C Payee cheque or bank draft or through ECS
- Penalty for contravention of this section – Company (Up to 5x the contribution) and OID (Jail up to 6m AND fine up to 5x the contribution)

For this section - Political party = party registered u/s 29A of Representation of People Act, 1951.

Important Note on Financial Year – FY can never be less than 3 months or more than 15 months.

E.g. - : If a co. is incorporated on 1st Jan 2001, then first FY shall end on 31/03/2002 (and not 2001)

Sec 183 – Power of BOD & Other Persons to contribute to National Defence Fund (NDF)

- Notwithstanding anything contained in any provision of this Act/MOA/AOA or any other instrument of company
- BOD or person exercising power of BOD or power of the company in GM may
- Contribute such amount to NDF or other fund approved by CG for national defence

Disclosure – In P/L – Total amount contributed to these funds.

SUMMARY TABLE FOR SECTION 181, 182 & 183

Concept	181	182	183
Over-riding Provision	None	Entire Companies Act	Entire Cos. Act, MOA and AOA of the Company
Approving Authority	BOD (when amt. within limit) Beyond limit – SHs to approve by OR	Only BOD	i. BOD, ii. Person exercising power of BOD, iii. person exercising power of company in GM
BOD limit	5% of Avg. net profit of past 3 FYs	Unlimited	Unlimited
Exception	Contribution > 5% of Avg. net profit requires OR	i. Government Company ii. Less than 3 FY since incorporation	None
Mode of payment	Not specified	A/C payee cheque, A/C payee bank draft and ECS or other pres. instruments	Not specified
Disclosure	None	In P&L – Total amt. paid during FY	In P&L – Total amt. paid during FY
Penalty	None	Co. – 5x Amt. contributed. OID – Jail 6 months + 5x amt. contributed	None
RBC	Allowed	Not allowed	Allowed

Sec 184 - Disclosure of interest by director [Read with Rule 9]

1. General disclosure -

Every director shall disclose his concern or interest (including shareholding interest) in company/ BC/AOI or firms by way of written notice in Form MBP-1

When to disclose? - First BOD meeting:

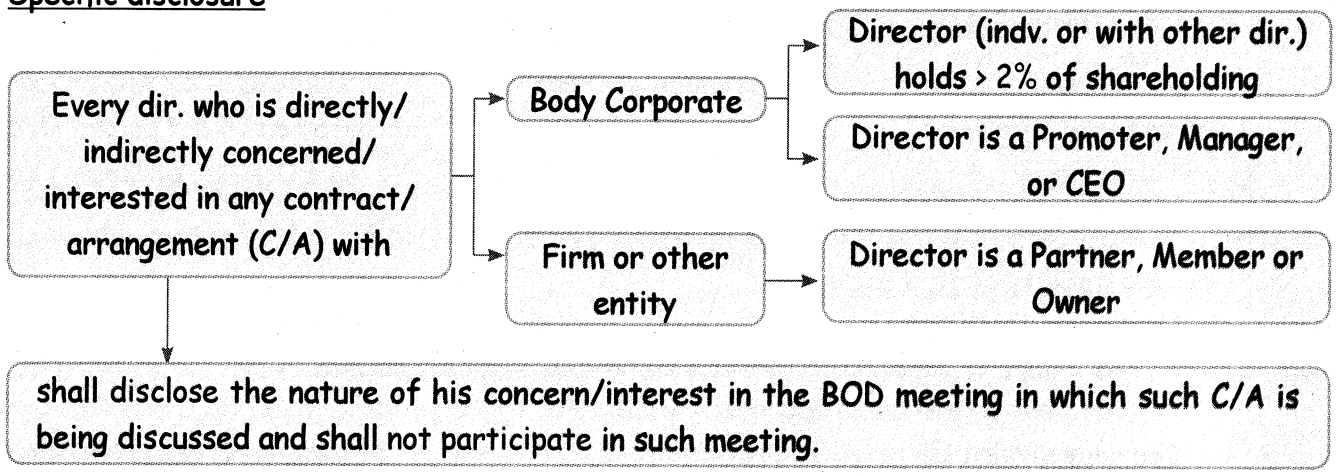
In which he participates | Every FY | Where there is a change in disclosures already made

It shall be duty of director to ensure that such notice of interest is disclosed at meeting of BOD

Notice of interest - To be kept at registered office of the company in custody of CS/person authorised by BOD for 8 years from end of FY to which it relates.

Every Dir./KMP shall, within 30 days of his appt., or relinquishment of office - Disclose particulars specified in 184(1) relating to his concern/interest in other associations which are reqd. to be incl. in register under Form MBP -1 or such other info. as may be prescribed. [Sec 189(2)]

2. Specific disclosure -



If a director is not concerned or interest in a C/A at the time of entering into it but later becomes interested - Disclose at first BOD meeting held immediately after he becomes concerned/intt.

3. C/A entered into in contravention of Sub section (2) shall be voidable at the option of the company

4. If director contravenes provision of this section, penalty of Rs. 1 lakh

Exceptions: Sec 184(2) shall:

1. Apply to Sec-8 companies (92+137) only if C/A is with Related Party for an amount > Rs. 1 lakh
2. Apply to Pvt. company (92+137) with exception that interested dir. may participate after disclosure.
3. Not apply to any C/A entered into or to be entered into between two companies where any of the Directors of 1 co. or 2 or more of them together hold(s) not > 2% of PUSC in the other co. or BC

Concept clarity check:

- Will interested director be counted for quorum? – No, (except in case of a private co.)
- Can an intt dir. vote in GM in the capacity of SH? – Yes, Sec 184 does not apply to GM

Sec 185 – Loan to directors, etc.

1. **Prohibition:**
   - No company shall (directly/indirectly)
   - (LGS) - Advance loan (incl. book debt) to/give guarantee/provide security w.r.t loan taken by:

Director of co./holding co. (such directors)	Partner/Relative of such directors	Firm in which such directors/ relative is a partner

2. **Restriction:**
   Co. may provide LGS to any person in whom director of co./~~holding~~ is interested provided that:
   - SR is passed at General Meeting
     ES to notice of General Meeting to include particulars of such loan and purpose for which such loan is proposed to be utilized.
   - Loans are utilized by borrowing company for principal business activity

Person in whom director of the company is interested bole toh?

Pvt co. in which such director is director/ member	BC - in which dir./two or more such dir. holds >=25% VP	BC - whose BOD, MD or mgr. is accustomed to act as per direction of BOD/dir. of lending co.

3. **Non applicability of this section:**
   a. Loan given to MD/WTD
      - As a part of condition of service extended to all Employees
      - Pursuant to a scheme approved by SR
   b. Company giving LGS in OCOB provided rate of interest is not less than rate prevailing on Govt. security of tenor closer to that of loan (1 year, 3 years, 5 years, 10 years)
   c. LGS given by holding company to WOS
   d. ~~Loan~~/G/S given in respect of loan given by Bank/PFI to its subsidiary company (not WOS)

   Provided, Loan in point (c) & (d) above is utilized by subsidiary/WOS for Principal Business Activity.

4. **Penalty for Contravention:**

	Company	Officer in Default	Person to whom LGS is given
Fine	Rs. 5 lakhs to 25 lakhs	Rs. 5 lakhs to 25 lakhs	Rs. 5 lakhs to 25 lakhs
Imprisonment	N.A	Up to 6 months	Up to 6 months

Exemptions - Provisions of Sec 185 N.A. to:

- Govt company (92+137) provided approval of concerned Ministry of CG/SG obtained.
- Private company (92+137) subject to following condition:
  - No other BC has invested in its share capital
  - Borrowings from bank/PFI/BC is < Lower of [(2xPUSC) or Rs. 50 crores]

- No default in repayment of such borrowing is subsisting

➢ Nidhi co. – Provided loan is given to dir./relative in capacity as members + disclosed in annual accts.

Additional notes:

1. When a loan is made by company to a person not covered in this sec, but later, such person becomes a person specified in this section, provisions shall not apply retrospectively.
2. Advances made to directors for expenses in OCOB is not covered.
3. Whether security deposit for residential accommodation taken on lease by company for the director amount to loan? - No.
4. Whether contravention of section 185 leads to vacation of office of director u/s 167? – No.
5. Can a company give loan to the dirs of its subsy.? – Yes. Directors of only holding co. is prohibited.
6. Can a company give loan to firm in which director's partner is a partner but the director himself is not a partner? Yes. Sec 185 only covers firm in which relative of director or the director himself is a partner. It does not cover partner of director.
7. Would sec 185 be applicable if loan is given by co. to its subsy. co? – Yes. Sec 185 would still apply as Sec 185(3) only excludes guarantee and security on behalf of subsy and not loan given to subsy.
8. Would part payment of a sale of flat made by company to its director (at arm's length) and balance payment to be done in EMIs amount to loan u/s 185?- No. Loan is advance of money upon an understanding that it shall be returned back

Sec 186 – Loan and investment by company

1. <u>Max 2 layers of investment company (IC):</u>
   Unless otherwise prescribed, a co. shall make investment through not more than 2 layers of IC

   IC means a co. whose principal business is acquisition of securities/debentures/other sec. (SDO).

   A company shall be deemed to be IC if:
   - ➢ Assets in form of investment in SDO > = 50% of total assets, or
   - ➢ Income from such investments > = 50% of Gross total income

   Provided that, this provision shall not affect:
   a. a co. acquiring a co. incorp. o/s India having beyond 2 layers of IC as per law of such country
   b. Subsidiary company from having investment subsy. for meeting requirement of law.

2. <u>Limit on amount of loan/guarantee/security/investment (LGS/I) that can be made:</u>
   No company shall, directly/indirectly:
   a. Give Loan or give Guarantee/Security in connection with loan of any person*/BC
   b. Acquire by way of subscription or purchase, securities of any BC

   In excess of - Higher of
   - 60% of (PUSC+FR+SP)
   - 100% of (~~PUSC~~+FR+SP)

   * "Person" does not include individual who is in employment of the company

3. Where LGS/investment already made + LGS/investment proposed to be made exceed above limit, SR is to be passed prior to making such LGS/investment

SR not required if - LGS is given to WOS/JV or investment is made in WOS~~/JV~~ (However, these LGS/I shall be included for calculating the aggregate of LGS/I already made to determine limits)

4. Company shall disclose - (a) Full particulars of LGS/I and (b) purpose of utilization.

5. No LGS/I (irrespective of the limit) shall be made unless:
   a. Resolution sanctioning it is passed at BOD meeting with consent of all the directors present at the meeting (unanimous resolution)
   b. Prior approval of PFI concerned where any term loan is subsisting
   Provided that, prior approval of PFI shall not be required if LGI/S existing + proposed is within limit of this section and there is no default in repayment of loan installment.

Concept Clarity Check:

- Can BR by passed by way of RBC? - No. It is mandatory to be passed at BOD meeting.
- Can such discussion be taken up via VC? - Yes. All items can now be taken up via VC.
- Is it necessary for notice of meeting to state about this business? - No. Giving agenda is not mandated by Law
- Is approval of PFI required in case if loan agreement with PFI doesn't mention any such approval? - Yes. This is requirement of law
- A company has total 7 directors. Out of such directors, 5 are present in the board meeting. In a resolution to invest the funds of company, 3 directors votes in favor and 2 directors abstained from voting. Is unanimous resolution passed? - No, all the directors present must vote in favour for unanimous resolution u/s 186. i.e., all 5 directors must vote in favor

6. Company registered u/s 12 of SEBI Act shall NOT take inter corporate loans/deposits exceeding prescribed limits and furnish details in financial statement

7. No loan shall be given under this section at rate of interest < prevailing yield of Govt. sec closest to tenor of such loan (1/3/5/10 years)

   Provided that, this subsection N.A. in case of S-8 co., where >=26% of PUSC is held by CG/ SG/ both & loan is provided for funding industrial R&D projects in furtherance of objects as per MOA.

   Note - No violation of this sub-section if effective yield on tax free bonds is greater than the prevailing yield of such Govt. security

8. No company which is in default of repayment of deposit or interest thereon shall give an LGS/I till such default subsists

9. Company making LGS/I shall maintain register as may be prescribed

10. Above mentioned register shall be kept at registered office of company and open for inspection. It shall be made available to members on payment of prescribed fees.

Rule 12 of Companies (MBP) Rules, 2014:

- Particulars of LGS/I to be maintained in Form MBP - 2
- Entry to be made in register chronologically within 7 days of making LGS/I.
- Entries to be authenticated by CS/person auth. by BOD
- Kept at RO in custody of CS/person authorised by BOD
- To be preserved permanently
- Furnish to member on payment of fees as per AOA not > Rs. 10 per page.

11. Section N.A. to:
    a. LGS/I made in OCOB by:

Banking co.	Insurance Co.	Housing Finance Co.	Co. engaged in business of financing industrial enterprises and providing infrastructural facilities

    b. Investment:

Made by an IC	Made in pursuance of shares allotted u/s 62(1)(a)	Made by NBFC whose principal business is acquisition of securities

12. Penalty for contravention:

	Company	Officer in Default
Fine	Rs. 25,000 to Rs. 5 lakhs	Rs. 25,000 to Rs. 1 lakh
Imprisonment	Not applicable	May extend to a term of 2 years

Exemption:

- Government company engaged in defense production
- Unlisted Govt company (92+137) provided approval of concerned Ministry of CG/SG obtained.

Concept clarity check:

Can the power of investment be delegated to MD? - No! (Refer Section 179 vs 186)

Sec 187 - Investment of company to be held in its own name

1. All inv. made/held in property, securities & other assets shall be made/held in its own name. Co. may hold inv. in subsy in name of nominees to ensure no. of mem. in subsy co. meets the stat. limit

2. Exceptions to 187(1):
   Nothing above shall be deemed to prevent the company from:
   a. depositing shares/sec. with bankers of company for collection of div/interest
   b. depositing/trf. /holding shares/security in the name of bankers (SBI/Scheduled bank) for trnsfer thereof (If transfer not made within 6m, get it back in the name of company)
   c. depositing/transferring any share/sec. with/to any person as a security for repayment of loan/performance of obligation
   d. holding investment in name of depository where company is the beneficial owner.

3. Company to maintain register for investment made by company not held in own name - Open for inspection w/o charge.

Rule 14 of Companies (MBP) Rules, 2014:

- Form MBP - 3
- Entry of investment not held in own name to be made in register chronologically along with the reason for not holding in its own name and relation/contract under which investment is held in name of other person.
- Entries to be authenticated by CS/person authorised by BOD
- Kept at registered office in custody of CS/person authorised by BOD
- To be preserved permanently

4. Penalty for contravention - Company - Rs. 5 lakh ; OID - Rs. 50,000

Sec 188 - Related Party Transaction:

Sec 2(76) - Related Party (RP)

Person	Firm	Private Company	Public Company
Director and Relatives Director and Relatives	Director, Manager or relative is a partner	Director, Manager or Relative is - Member or Director	Such dir. or manager or Relative is - a dir. AND holds along with relatives >2% of PUSC

Body Corporate (N.A to Private Company)	Any person	Other person
BOD / MD / Manager is accustomed to act as per advice or instruction of director or manager ~~and relative~~ holding, subsidiary, co-subsidiary or associate of such company Investing company or venturer of the company (such investment leads to the company becoming associate)	on whose advice or instruction of director or manager and relative is accustomed to act	As may be prescribed Director (other than I.D), KMP of the holding co. or relatives of such directors or KMP

Sec 2(77) - Relative: Anyone who is related to another and covers the following:

a) they are members of a HUF (Hindu Undivided Family);
b) they are husband and wife; or
c) one person is related to the other in the prescribed manner as under:

Father (including step-father);	Mother (including step-mother);	Son (including step-son);	Son's wife;
Daughter ~~(including step-daughter)~~;	Daughter's husband;	Brother (including the step-brother);	Sister (including the step-sister).

- Following C/A with Related parties shall be considered as RPT & provision of this section to apply:
  a. Sale/purchase/supply of goods or material
  b. Selling/disposing/buying property of any kind
  c. Leasing property of any kind
  d. Availing or rendering of services
  e. Appointment of agent for purchase/sale of goods materials, services or property;
  f. such RP's appointment to any *office or place of profit in the co., subsy., ~~holding~~ or associate;
  g. and underwriting the subscription of any securities or derivatives thereof of the company;

  *Office/place of profit means -
  a. where such office is held by director and receives remuneration in excess of entitled rem.
  b. where such office is held by person (individual/firm/Pvt. co/BC) other than director and receives anything from company as remuneration, salary, fee or commission

- RPT can be done only after obtaining:
  - consent of BOD by way of resolution at BOD meeting and
  - Approval of shareholders where the amount of RPT exceeds prescribed limits (by way of OR)
  - and subject to other prescribed conditions.

Rule 15 of Companies (Meeting of Board and its power) Rule, 2014:

1. The agenda of the meeting shall disclose the following matters:

Name of RPs and nature of relation	Nature/duration of the C/A	Material terms of C/A including value	Advance paid/ received for the C/A
Manner of determining pricing and other commercial term	Whether or not all relevant factors have been considered	Other relevant info.	

2. Interested director not to be present during such discussion in the Board Meeting

3. Prior approval of company (OR) shall be required where the RPT exceeds below specified limit:

Where the transactions during the FY relating to:	Limit
Sale/purchase/supply of goods/materials, directly or via agent	> = 10% of T/O
Selling/disposing/buying property of any kind, directly or via agent	> = 10% of NW
Leasing of property of any kind	> = 10% of T/O
Availing/rendering of any services, directly or via agent	> = 10% of T/O
C/A relating to appointment to any office or place of profit in the company, its subsidiary company or associate company	Rem. p.m. > Rs. 2.5 lakh
C/A relating to underwriting the subscription of any securities or derivatives of the company	> 1% of NW

- Approval of shareholders for RPT shall NOT be required in following cases:
  - Trans. b/w holding and WOS whose accnt. is consolidated with such holding co. & placed in GM
  - Govt company in respect of C/A with other Govt company or CG/SG
  - Unlisted Govt company (92+137) provided approval of concerned Ministry of CG/SG obtained.

- Explanatory Statement annexed to notice calling for GM shall include following details:

Name of RPs	Name of Director/ KMP who is related	Nature of relationship	Nature, material terms and value of C/A	Other relevant information

- A member of company who is a related party w.r.t. C/A shall not vote on such resolution.
  Provided that - This provision shall NOT apply to a company in which >= 90% of the members, in number, are relatives of promoters or are related parties

  Exception to the above restriction: That is, every member can vote even if he is related party:
  - Private company (92+137)
  - Govt company in respect of C/A with other Govt company or CG/SG
  - Unlisted Govt company (92+137) provided approval of concerned Ministry of CG/SG obtained.

- Where a C/A which is a RPT is entered into by a director/employee without approval of BOD/ Shareholders as the case may be (no limit of Rs. 1 crores as in case of Sec 177):
  - It can be ratified by the BOD/SH within 3 months of entering into such C/A
  - If not ratified, it shall be voidable at the option of BOD/SH
  - If such C/A is with a related party to a director, the director concerned to indemnify company
  - Co. may proceed against the dir./employee who entered in such C/A for recovery of loss if any.

- Disclosure: All RPTs to be disclosed in board report + justification for entering into such C/A

- Non applicability - This section is N.A. to those RPTs entered in OCOB at Arm's Length Price
  The expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

- Punishment for contravention: Director/employee of company who authorized such C/A shall be liable to a fine of:
  In case of listed company - Rs. 25 lakhs
  In case of other company - Rs. 5 lakhs

Concept clarity check:
Is approval of AC required if RPT is in OCOB at Arm's Length Price - Yes, Sec 177 only exempts trans. b/w Holding and WOS from it purview. Rest all RPT require approval of AC

Sec 189 - Register of Contracts or Arrangements in which directors are interested

1. Register containing particulars of all C/A u/s 184(2) and 188 to be maintained in the prescribed manner. Such registers shall be placed in the next meeting of Board and signed by all dirs. present.

Rule 16 of Companies (MBP) Rule, 2014:
- Register to be maintained in Form MBP - 4
- Include particulars of:
  - C/A entered into with BC or other entities as mentioned u/s 184(2) or with RP u/s 188

- Companies/BC/Firms/AOI in which director has interest/concern as mentioned u/s 184(1), Note - Provided that the particulars of BC in which director himself (+ any other director) holds <=2% of PUSC would not be required to be entered in the register;

- Entry to be made in register chronologically whenever there is a cause to make entry.
- Entries to be authenticated by CS/person authorised by BOD
- Kept at regt. Office in custody of CS/person authorised by BOD
- To be preserved permanently
- Furnish to member within 7 days of req. on payment of fees as per AOA not > Rs. 10 per page

2. Every director / KMP shall within 30 days of appointment/relinquishment of office, disclose his interest u/s 184(1) which needs to be included in the register u/s 184(1) [i.e., Form MBP -1]

3. Register to be kept at RO of the company and open for inspection during business hours. Extracts may be provided to members in manner prescribed.

4. Register to be produced at every AGM and remain open and accessible to person who has right to attend such meeting.

5. Nothing in this section shall apply to following C/A:
   a. Sale/purchase/supply of goods/materials/services if amt <= Rs. 5 lakhs in aggregate in a year
   b. Banking company for collection of bills in OCOB

6. Penalty for contravention - Director - Rs. 25,000

Note: For Sec-8 companies, this section shall apply in case the transaction u/s 188 exceeds Rs. 1 lakh.

Additional notes:

Form MBP-1 vs MBP - 4 : While Form MBP-1 captures details of the interest or concern of each directors, Form MBP - 4 only captures particulars of companies/BC in which such director is interested.

Sec 190 - Contract of Employment with Managing or Whole-Time Directors [N.A. to Pvt. co.]

1. Company to keep at registered office:
   a. Where a contract of service with MD/WTD is in writing - Copy thereof
   b. If no contract in writing, written memorandum (WM) setting out its terms
2. Copies of contract/WM - open for inspection to member without any fees
3. Penalty for contravention - For each default - Company - Rs. 25,000 and OID - Rs. 5,000

Sec 191 - Payment to Director for Loss of Office, etc., in Connection with transfer of Undertaking, Property or Shares

General Rule - No CFLO can be paid to a director unless it is approved by Shareholders by OR in GM.

1. Events in which CFLO becomes payable under this section:
   - transfer of whole/part of undertaking/property of the company
   - transfer to any person all or any shares of company resulting from:

- offer made by general body of share holder
- offer made by a BC with a view of making the company its subsidiary or subsy of its holding
- offer made by individual with a view to obtain control or exercise > = 1/3rd of VP at GM
- any other offer which is conditional on acceptance

2. Who pays such compensation? CFLO/Consideration for retirement from office may be paid by:

Such company	Transferee of such undertaking/property	Transferee of such shares	From any other person not being such company

3. Condition for payment of such CFLO to directors - Disclosure and approval of compensation:
Payment under this section can be made only after it is disclosed to members and approved by resolution at GM. (If such GM is adjourned for want of quorum, no deemed approval)

Disclosure:

Name of director	Amt. proposed to be paid	Event due to which compensation becomes payable	date of Board meeting recommending such payment;

basis for the amount determined;	reason/ justification for payment;	manner of payment (cash or otherwise) and how;	sources of payment; and	Other relevant information

4. Prohibition on payment of compensation:
In case of MD/WTD/Mgrs, the amount of CFLO shall not exceed the limit prescribed u/s 202.

No CFLO to MD/WTD/manager of company (except 'notice pay' and 'statutory payments'), in the following cases where the company has defaulted in payment/repayment of:

a) public deposits or payment of interest thereon;
b) debentures or payment of interest thereon;
c) any liability, secured or unsecured, payable to any bank, PFI, etc.
d) any dues towards income tax, service tax or any other tax or duty, payable to CG/SG, statutory authority or local authority unless company has disputed such liability.
e) outstanding statutory dues to the employees or workmen of the company which have not been paid by the company unless company has disputed such liability and
f) dividend on preference shares or not redeemed preference shares on due date.

5. Payment made in contravention of this section - Dir. deemed to have recd. it in trust for the co.
6. Penalty on directors for contravention - Rs. 1 lakh.

Sec 192: Restriction on Non-cash Transactions involving Directors

1. No company shall enter into an arrangement by which:
   a. director of CASH or person associated with him acquires assets from company for consideration other than cash
   b. Company acquires asset from such person for consideration other than cash,

   Unless prior approval by way of resolution at GM.

If the director/connected person is a director of holding company, then resolution is to be passed at GM of holding company as well.

2. Notice of general meeting of company/holding company for above resolution to include particulars of arrangement along with value of such assets involved duly calculated by a registered valuer.

3. Arrangement in contravention of this section - Voidable by the company (shareholders), unless:
   a. restitution of any money/other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any person for any loss/damage caused to it; or
   b. any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Sec 193: Contract by One Person Company

1. Where a contract is entered into b/w OPC (limited by shares/guarantee) with its sole member who is also director, such contract has to be in writing.
   If not in writing, the term of contract has to be recorded in a memorandum or in the minutes of the first BOD meeting after entering into such contract, unless such contract is in OCOB
2. In case where such terms are recorded in the minutes of BOD meeting, company shall inform ROC about such contract within 15 days of approval by BOD.

COMPARISON OF REGISTERS

Form No.	MBP-1	MBP-2	MBP-3	MBP-4
Section	184(1)	186	187	189[188+184(2)]
Place	Registered Office.			
Custody of	Company Secretary/Person Authorised.			
How to record?	-	Chronologically (in 7 Days)	Chronologically (On occurrence of Event)	
Authenticated by	-	Company Secretary/Person Authorised.		
Preserve	for 8 Years	Permanently		
Access to Members	"No"	Yes		
Fees for members	NA	Fees - As per AOA ,Max Rs10/page.	No Fees	Fees - As per AOA, Max Rs10/page.
Disclosure in Forms.	General Disclosure of Interested Dir.	Details of Loan/G/S & Acquisition Made by Company.	Details of Inv. not in its name.	Details of C/A u/s 184(2) & RPT u/s 188
Special Point				Exemption a. Transaction <= 5Lakh P.A. b. Banking Co. - OCOB - Collection of Bills. Penalty - Rs 25,000

The End

Multiple Choice Questions

Question:1 [Section:188]

In case of a company where minimum ---------- per cent members (in number) are relatives of promoters or are related parties, they are not precluded from voting on a resolution for approving any related party transaction.

a) 80 b) 85
c) 90 d) 95

Question :2 [Section:186]

Out of the total strength of six Directors of SQ Transformers Limited, five are attending a Board Meeting to consider the investment of funds of the company. The resolution relating to investment shall be taken as passed in which of the following cases:

a) When all the five Directors of SQ Transformers Limited attending the meeting consent to such investment of funds.
b) When any four Directors of SQ Transformers Limited out of five attending the meeting consent to such investment of funds.
c) When any three Directors of SQ Transformers Limited out of five attending the meeting consent to such investment of funds.
d) Investment proposal must be consented to by the total strength of six Directors of SQ Transformers Limited.

Question:3 [Section:173(3)]

Rachit, Sanchit, Devshikha, Niharika, Vaishnavi, Mohit and Somesh are the directors of Vrinda Plants Limited. Sanchit was appointed as an alternate director on 25th August, 2021, in place of Mohit who had gone out of India for five months and also on the same date Somesh was appointed as an additional director. It is to be noted that whenever a board meeting is held after the above date it shall be the first meeting to be attended by both Sanchit and Somesh. Devshikha was an interested director who was required to disclose her interest at the immediate Board Meeting to be held any time after 25th August, 2021 though her presence would not be counted when a discussion takes place on the proposal in which she was interested. Rachit expressed his inability to attend any Board meeting if it was to be held within two months from 25th August, 2021. A Board meeting is scheduled to be held on 20th September, 2021. Legally speaking, which of the directors need not be served a notice of this Board meeting.

a) Mohit need not be served a notice of the board meeting to be held on 20th September, 2021.
b) Rachit need not be served a notice of the board meeting to be held on 20th September, 2021.
c) Devshikha need not be served a notice of the board meeting to be held on 20th September, 2021.
d) None of the above.

Answers:	1.	(c)	2.	(a)	3.	(d)

Question:4 [Section:184]

Roopali is one of the directors in Superfast Vehicles Limited. She gave a written notice dated 10th June, 2021 in the specified Form disclosing her shareholding interest in Vixen Traders (Pvt.) Limited and caused its disclosure at the Board Meeting held immediately thereafter on 17th June, 2021. From which of the given dates, 8 years are to be counted for preserving her 'notice of disclosure of interest':

a) From the date of notice i.e., 10th June, 2021.
b) From the end of the FY 2021-22.
c) From the date of the Board Meeting (i.e., 17th June, 2021) in which the interest was disclosed.
d) From the date of the forthcoming AGM to be held on 27th September, 2021.

Question:5 [Rule 3]

In case of a Board Meeting which is conducted through the means of video conferencing, the draft minutes shall be circulated among all the Directors within ____ days of the meeting either in writing or in the electronic mode as may be decided by the Board of Directors of the company.

a) 5 b) 10
c) 15 d) 20

Question:6 [Section:177]

Audit Committee may make omnibus approval for:

a) Making of investment in other companies.
b) Related party transactions proposed to be entered into by the company.
c) Transferring of non-functional undertaking.
d) All of the above.

Question:7 [Section: 177(8)]

Ruby Diamonds Limited is required to establish 'Vigil Mechanism' though it is neither a listed company nor a company which has accepted deposits from the public. Name the third criterion because of which it is necessitated that the company needs to create 'Vigil Mechanism'.

a) As per the last audited financial statements, Ruby Diamonds Limited has borrowed money from banks and public financial institutions in excess of Rs.50 crores.
b) As per the last audited financial statements, the subscribed capital of Ruby Diamonds Limited is in excess of Rs.50 crores.
c) As per the last audited financial statements, the paid-up capital of Ruby Diamonds Limited is in excess of Rs.50 crores.
d) As per the last audited financial statements, the turnover of Ruby Diamonds Limited is in excess of Rs.50 crores.

Answers:	4.	(b)	5.	(c)	6.	(b)	7.	(a)

Question:8 [Section: 173(2)]

Three directors, namely Samiksha, Santosh and Samta intimated PlutoPlastic & Mechanical Toys Limited about their participation in the Board Meetings through video conferencing at the appropriate time of the year. However, after attending the first Board Meeting held in the FY 2021-22 by means of video conferencing, Santosh wants to participate in the next Meeting to be held at a future date in person. Is it possible for him to do so when consent given for participation in meetings through video conferencing remains valid for full one year? Choose the correct A Answer from the options stated below:

a) Santosh cannot attend future Board Meetings in person even if the company is intimated of such intention sufficiently in advance.
b) Santosh can attend future Board Meetings in person if he intimates the company of his intention sufficiently in advance.
c) Santosh can attend future Board Meetings in person only if all the remaining directors consent to such request.
d) Santosh can attend future Board Meetings in person but at least seventy five percent of the remaining directors (rounded off to next higher figure in case of a fraction) consent to such request.

Question:9 [Section:180]

In order to make Robotics Toys Private Limited as its subsidiary, Golden Rays Robots Limited raised its investment in Robotics Toys from 40% to 60% of its paid-up capital. From the options given below, choose the one which correctly indicates as to when the Robotics Toys shall be considered the undertaking of Golden Rays Robots Limited.

a) In order that Robotics Toys is considered as one of its undertaking, Golden Rays is required to invest more than 10% of its 'net worth' calculated as per the audited balance sheet of the preceding year or the Robotics Toys must have contributed in generation of 10% of the total income of Golden Rays during the previous Financial Year.
b) In order that Robotics Toys is considered as one of its undertaking, Golden Rays is required to invest more than 20% of its 'net worth' calculated as per the audited balance sheet of the preceding year or the Robotics Toys must have contributed in generation of 20% of the total income of Golden Rays during the previous Financial Year.
c) In order that Robotics Toys is considered as one of its undertaking, Golden Rays is required to invest more than 25% of its 'net worth' calculated as per the audited balance sheet of the preceding year or the Robotics Toys must have contributed in generation of 25% of the total income of Golden Rays during the previous Financial Year.
d) In order that Robotics Toys is considered as one of its undertaking, Golden Rays is required to invest more than 30% of its 'net worth' calculated as per the audited balance sheet of the preceding year or the Robotics Toys must have contributed in generation of 30% of the total income of Golden Rays during the previous Financial Year.

Answers:	8.	(b)	9.	(b)

Question:10 [Section:182]

Chetan Motorboats Limited, incorporated on 25th June, 2019 is desirous of making donations to a reputed political party. Out of the following options, choose the one which correctly depicts as to when Chetan Motorboats Limited shall be eligible to make such donations to a political party:

a) Chetan Motorboats Limited shall be eligible to make donations to a political party after 1 year from the date of its incorporation.
b) Chetan Motorboats Limited shall be eligible to make donations to a political party after 2 years from the date of its incorporation.
c) Chetan Motorboats Limited shall be eligible to make donations to a political party after 3 years from the date of its incorporation.
d) Chetan Motorboats Limited shall be eligible to make donations to a political party after 5 years from the date of its incorporation.

Question:11 [Section 174(3)]

Where at any time the number of interested Directors exceeds or is equal to ---------- of the total strength of the Board of Directors of a company, the quorum shall be the number of non-interested Directors who are present at the meeting and not less than two.

(a) 1/2 (b) 2/3
(c) 1/3 (d) None of the above

Question:12 [Section:173(1)]

Seafood Marketing Limited, incorporated on 1st April, 2019, conducted four Board Meetings during the FY 2019-20 i.e., on 6th April, 2019, 28th August, 2019, 30thSeptember, 2019 and 30th March, 2020. Select the correct option from those given below as to whether there is contravention of provisions or not regarding frequency of holding the Board Meetings by Seafood Marketing Limited:

a) There is no contravention of the provisions relating to holding of Board Meetings because four Board Meetings have been held by Seafood Marketing Limited during the FY 2019-20.
b) There is no contravention of the provisions relating to holding of Board Meetings by Seafood Marketing Limited because the first Board Meeting was held within 30 days of the incorporation of the company.
c) There is contravention of provisions in respect of conduct of the Board Meetings by Seafood Marketing Limited because gap between initial two consecutive Board Meetings (held on 6th April, 2019 and 28th August, 2019) is 143 days and further, gap between next two consecutive Board Meetings (held on 30th September, 2019 and 12th March, 2020) is 163 days.
d) There is contravention of provisions in respect of conduct of the Board Meetings by Seafood Marketing Limited because gap between initial two consecutive Board Meetings (held on 6th April, 2019 and 28th August, 2019) is 123 days and further, gap between next two consecutive Board Meetings (held on 30th September, 2019 and 12th March, 2020) is 143 days.

Answers:	10.	(c)	11.	(b)	12.	(c)

Question:13 [Section:181]

The Board of Directors of Shanta Hospitality Services Limited is desirous of contributing certain amount to Ashirwad Dharmarth Sansthan, a bona fide charitable organization operating in the National Capital Region, during the FY 2021-2022. The profits and losses of the earlier five FYs are as under:

Year	Profit/ (Loss)
2020-2021	(30,00,000)
2019-2020	1,80,00,000
2018-2019	2,10,00,000
2017-2018	1,85,00,000
2016-2017	1,40,00,000

From the following four options, select the appropriate one which indicates the amount that the Board of Dirs. of Shanta Hospitality Services Limited can contribute to Ashirwad Dharmarth Sansthan:

a) The Board of Directors of Shanta Hospitality Services Limited cannot contribute any amount to Ashirwad Dharmarth Sansthan in the FY 2021-2022 since it suffered losses of Rs. 30,00,000 in the immediate previous FY 2020-2021.
b) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 9,00,000 to Ashirwad Dharmarth Sansthan in the FY 2021-2022.
c) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 6,00,000 to Ashirwad Dharmarth Sansthan in the FY 2021-2022.
d) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 3,00,000 to Ashirwad Dharmarth Sansthan in the FY 2021-2022.

Question:14 [Section:174]

A 7 days' notice of the Board Meeting was served on all the 10 directors of Goodluck Publishers Limited by sending it on their registered postal addresses. However, before the holding of scheduled Board Meeting, some unavoidable happenings took place. Mr. M was hospitalised because of serious stomach pain just two days before the Meeting. Mr. Y proceeded to London since his son met with an accident and the incidence required his immediate presence. As scheduled earlier, Mr. X and Mr. B went to Australia for attending a technical seminar that would help improving the existing publishing techniques. Mr. A, extremely busy in finalizing the arrangements relating to his daughter's marriage, was also unable to attend the impending board meeting. A day before the board meeting, Mr. E's grand-mother got hospitalised and therefore, he was involved in taking care of her but he assured to attend the meeting through video conferencing. Mr. P were scheduled to arrive for the meeting by 2 p.m. on the same day of the meeting but his flight got delayed by eight hours. Mr. D, Mr. G and Mr. H were in the town and were available for the Board Meeting. Could the Board Meeting be held as per the scheduled time?

a) The Board Meeting cannot be held because minimum 60% directors (i.e., 6 out of 10) must attend it at the scheduled time to complete the quorum.
b) The Board Meeting cannot be held because minimum 50% directors (i.e., 5 out of 10) must attend it at the scheduled time to complete the quorum.
c) Since the quorum is complete, the available directors can hold the Board Meeting as per the schedule.
d) The Board Meeting cannot be held because minimum 70% directors (i.e., 7 out of 10) must attend it at the scheduled time to complete the quorum.

Answers:	13.	(c)	14.	(c)

Question:15 [Section:173(5)]

In the F.Y. 2021-22, Roshni Electricals Private Limited for the first time is treated as a 'small company' according to the prescribed norms. It held its first Board Meeting on 15th June, 2021 and another one on 9th July, 2021. As two board meetings have already been held in Ist half and IInd half of the calendar year, 2021, the directors do not intend to hold any other Board Meeting during rest of the year 2021-22. Select the correct statement from those given below as to whether the directors Roshni Electricals Private Limited are at fault or not.

a) A 'small company' needs to hold only two Board Meetings in a calendar year and therefore, the directors of Roshni Electricals Private Limited are absolutely not at fault.
b) As the gap between two Board Meetings should be 'not less than 60 days', the directors of Roshni Electricals Private Limited need to hold another Board Meeting on a date which must be after 60 days from 15th June 2021, so that no fault is committed.
c) As the gap between two Board Meetings should be 'not less than 90 days', the directors of Roshni Electricals Private Limited need to hold another Board Meeting on a date which must be after 90 days from 15th June 2021, so that no fault is committed.
d) There is no need to observe gap of more than 60 or 90 days if the directors of Roshni Electricals Private Limited hold another board meeting in the month of July, 2021 itself, totalling number of meetings to three.

Question:16 [Section:182]

Jupiter Shopping Mall Limited was incorporated on 3rd December, 2019. As on 31st March 2021, it had free reserves of Rs 50.00 lacs and its Securities Premium Account showed a balance of Rs 7.50 lacs. One of its Directors Raha has a leaning towards a particular political party in which his other family members are actively involved. Raha convinced the other two Directors of the company i.e. Promila and Rana to contribute a sum of Rs. 10.00 lacs to this political party. Accordingly, the Board of Directors held a meeting on 16th December, 2021 and passed a resolution to contribute the decided amount. Out of the following four options, select the appropriate one, which indicates the amount that Jupiter Shopping Mall Limited can contribute to a political party in the FY 2021-22.

a) According to the above-stated facts, Jupiter Shopping Mall Limited cannot contribute any amount to a political party in the FY 2021-22.
b) According to the above-stated facts, Jupiter Shopping Mall Limited can contribute maximum Rs 2.50 lacs to a political party in the FY 2021-22.
c) According to the above-stated facts, Jupiter Shopping Mall Limited can contribute maximum Rs.3.75 lacs to a political party in the FY 2021-22.
d) According to the above-stated facts, Jupiter Shopping Mall Limited can contribute maximum Rs.5.00 lacs to a political party in the FY 2021-22.

Answers:	15.	(c)	16.	(a)

Question:17 [Section 184]

Neelima was an interested director when her company Sagar Suppliers Limited entered into a supply contract worth Rs. 20,00,000 with Sriniwas Tubes and Pipes Limited under which the latter company would supply requisite items for full one year to the former company. However, Neelima did not disclose her interest at the time when Board Meeting of Sagar Suppliers Limited where the issue of supply contract was discussed and even participated in the discussion. Which of the following options is applicable in the given situation:

a) Since Neelima did not disclose her interest, the contract is voidable at the option of Sriniwas Tubes and Pipes Limited
b) Since Neelima did not disclose her interest, the contract is voidable at the option of Sagar Suppliers Limited
c) Since Neelima did not disclose her interest, the contract can be enforced only upto 50% of its value i.e. maximum upto Rs. 10,00,000
d) Since Neelima did not disclose her interest, the whole contract is void and cannot be enforced

Question:18 [Section 184]

Supriya holds shares worth ₹13,50,000 in the capacity as one of the directors of Paridhi Tours and Travels Limited (PTTL) whose paid-up share capital is ₹4,50,00,000. Swikriti Bus Suppliers Limited (SBSL) with paid-up capital of ₹2,00,00,000 is in the business of supplying tourist buses. Being in need of adding three more tourist buses in its existing fleet of ten buses, PTTL through Supriya approached SBSL for the purpose of purchasing the required buses knowing fully well that Supriya holds certain amount of shares in SBSL making her an interested director. Out of the following four options, which one is applicable in the given situation

a) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹1,00,000 but not exceeding 1,50,000
b) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹1,50,000 but not exceeding 2,00,000
c) Supriya, as interested director, holds shares of SBSL of the value exceeding ₹2,00,000 but not exceeding 3,00,000
d) Supriya is not an interested director as in order to be considered as an interested director Supriya was required to have holding of shares exceeding ₹4,00,000 in SBSL.

Answers:	17.	(b)	18.	(d)

The End

STUDENT'S NOTES:

Appointment and Remuneration of Managerial Personnel

Certain Key Definitions:

1. Key Managerial Personnel (KMP) [Sec 2(51)] in relation to a company means:

CEO/MD/ Manager	CS	WTD	CFO	Officers in whole time employement, not > 1 level below dirs., designated as KMP	Officers as may be pres

Note - Only MD and WTD are considered as KMP. No other director is KMP.

2. Manager [Sec 2(53)] - Individual, who subject to superintendence, control and direction of BOD, has the management of whole or substantially the whole of the affairs of company

3. Managing Director (MD) [Sec 2(54)] - Director who is entrusted with substantial ~~the whole~~ power of management of affairs of the company by virtue of:

AOA	Agreement with co.	Resolution passed at GM	Resolution passed at BM

Explanation - Power to do administrative acts of a routine nature shall not be deemed to be included in substantial power of management. For example:

Power to affix common seal to any doc.,	draw/endorse any cheque or NI of co.,	sign a share certificate or	direct registration of transfer of shares

4. Whole-Time Director (WTD) [Sec 2(94)] - Director in whole time employment of company

5. Remuneration [Sec 2(78)] - Money/Equivalent given or passed to any person for service and includes perquisites as per Income Tax Act, 1961

Concept clarity check:

- Can a non-director be appointed as MD? - No
- Can an additional director be appointed as MD/WTD? - Yes
- Can a MD/WTD be rotational director? - Yes, depends on the terms of appointment
- Kaun bada? - MD or BOD? - BOD.

Sec 196 - Appointment of MD/WTD or Manager

1. No company shall employ or appoint a MD and a Manager at the same time.

2. No company shall appoint/reappoint MD/WTD or Manager for a term > 5 years at a time
Provided that, reappointment shall not be made earlier than 1 year before expiry of term

3. No company shall appoint/continue with a MD/WTD/Manager who is:

Age:	Insolvent:	Creditors:	Convicted:
Below 21 or Attained 70	Undischarged insolvent Adjudged insolvent	suspended payment to crs., makes/made composition	convicted by a court, and sentenced for > 6m

To appoint person of age > 70 years:

- Pass SR and ES annexed to notice to include justification.
- If no SR could be passed but votes cast in favor > against (i.e. OR) and CG, on application, is satisfied that such appointment is beneficial to company, appointment can be made.

Part I of Schedule V:

Additional Eligibility Conditions for MD/WTD/Manager (without seeking approval of CG):

a) Not sentenced to imprisonment for any period or to fine > Rs. 1,000 for conviction of any offence under 19 Acts.
(Excise, Companies Act, SEBI,SCRA, Income Tax, Custom, FEMA, PMLA,IBC, GST, etc.)

b) Not been detained for any period under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPSA)

If approval of CG is sought once to appoint a person disqualified under (a) or (b), no further approval will be required to appoint such person unless convicted/detained again

c) Completed age of 21 and not attained 70
(If SR passed to appoint person who has attained 70, then no CG approval required)

d) Resident in India [N.A. to companies in SEZ]
Resident in India includes person staying in India for a continuous period of > 12m immediately preceding date of such appointment and who has come to stay in India:
(i) for taking up employment in India; or
(ii) for carrying on a business or vocation in India.

4. Subject to Sec 197 and Schedule V, the T&C of appointment and remuneration payable to MD/WTD/Manager shall be approved by:
   a. BOD at a meeting
   b. SH at the next GM (E.g., Eicher Motors)
   c. CG - only if terms vary from Part I of Sch V (Form MR-2 within 90 days of appointment)

Notice for such BM/GM to include such T&C, remuneration payable and other relevant info.

A return in Form MR-1 to be filed with ROC within 60 days of such appointment

5. Where appointment of MD/WTD/Manager is not approved by SH in GM, acts done by then before approval shall be deemed valid (i.e. it will not be void)

Non Applicability	196(1)	196(2)	196(3)	196(4)	196(5)
Private company (92+137)	Applicable	Applicable	Applicable	N/A	N/A
Govt company (92+137)	Applicable	N/A	Applicable	N/A	N/A

Concept clarity check:

1. Can a company have MD and WTD at the same time? - Yes
2. Can a company have two MDs at the same time? - YES! MDs can have substantial powers but need not be whole power and hence multiple MDs can be appointed.
3. Can a company have two managers at the same time? - No. (This answer is correct, don't worry!)
4. A Ltd. has Mr. A appointed as MD in the company After 6m, A Ltd wants to appoint Mr. B as Manager to head the finance department. Is it valid u/s 196(1) of the Act? - Yes. Cause, head of one dept cannot be considered as Manager as per Sec 2(53) and therefore 196(1) not attracted
5. Can a person be appointed as MD for life? - No. A term can be of max 5 years.
6. Can a person of age < 21 be appointed as director (Not MD)? - Yes. But less than 18 - No.
7. Can a person who is an undischarged insolvent be appointed as Manager with approval of CG? - No, approval of CG works only in case of variance with Sch V Part I. CG cannot approve variance from Sec 196
8. Can a person disqualified u/s 164 be appointed as MD? - No, MD should be qualified u/s 164
9. Can a person of age < 21 be appointed by SR? - No, it is applicable only for age > 70

Sec 197 - Overall Maximum Managerial Rem and Managerial Rem in Case of Absence or Inadequacy of Profits [N.A. to Private co and Govt. co]

This sec. talks about rem. to all dir. including MD/WTD and Manager (managerial person) and IDs also.

1. Total managerial remuneration payable by a public company to all directors shall be < = 11% of Net Profit (as per Sec 198 without deducting director's remuneration from Gross Profit)

   For payment exceeding 11%, approval of SH (OR) in GM required and subject to Schedule V

   Except with prior approval in GM by SR,
   a. Remuneration to any one MD/WTD/Manager shall not be > 5% of NP AND if there is more than one such director, remuneration shall not be > 10% of NP (in aggregate)
   b. Remuneration to directors other than MD/WTD shall not exceed:
      i. 1% of NP if there is a MD/WTD/Manager
      ii. 3% of NP in other case

   In case of a Nidhi co, rem. to dir. (other than MD/WTD/Mgr) for performing special services to the Nidhi as per AOA may be paid by way of monthly payment sub. to approval in GM and Sec 197.

   No approval in GM required where:
   a. Nidhi does not have MD/WTD/Manager
   b. Rem .to all directors < 10% of NP or Rs. 15 lakhs, WEL and such rem. is approved by SR.

   Where the company has defaulted in payment of dues to any:

   Bank/PFI | Non-convertible debenture holder (DH) | Secured creditor (SC)

   Approval of concerned Bank/PFI/DH/SC shall be needed prior to approval of SH in GM

SUMMARY OF SUMMARY!

Remuneration Payable to:	Limit:	Above Limit?
All the directors + Manager	11% of Net Profit	➢ OR and ➢ Subj. to Sch V ➢ PFI approval
One MD/WTD/Manager	5% of Net Profit	SR and PFI approval
More than 1 MD/WTD/Mgr.	10% of Net Profit	
Dir. other than MD/WTD: ➢ In case there is a MD/WTD/Manager ➢ In case there is no MD/WTD/Manager	 1% of Net Profit 3% of Net Profit	

2. Above % shall be exclusive of fees u/s 197(5)

3. Subject to Sch V, if in any FY, the company has no profit or inadequate profits, the company shall not pay its directors (including MD/WTD/Manager/NED/ID) any remuneration except fees u/s 197(5) except in accordance with Sch V

4. Remuneration payable to dir. shall be determined, in accordance with prov. of this section, by:

AOA	OR passed at GM	If AOA so requires, SR passed at GM

Note - The Board has no power to fix remuneration.

Remuneration so determined above shall be inclusive of remuneration payable to director in any other capacity. However, remuneration provided in other capacity shall not be so included if:
a. Services rendered are of professional nature, AND
b. In opinion of NRC (if no NRC, BOD) - Dir. possesses requisite qualn. for practice of profession.

5. Sitting fees: Dir. may rec. rem. by way of fees for attending meetings of BOD/committees thereof.

This fees shall be such sum as decided by BOD ≤ Rs. 1 lakh per meeting of BOD/Committees

Provided that for ID and WD, sitting fees shall not be less than that of other directors.

Additional Notes:
- Sitting fees is payable even if director attends via VC/AV means.
- Where a Board Meeting (BM) is adjourned (for quorum or otherwise), the director who were present to attend such Board meeting shall be entitled to receive the sitting fees.
  An adjourned meeting is a continuation of original meeting. Therefore, where a BM is held and is adjourned to a later date, the sitting fees cannot be paid twice, since it is counted as one BM only.
- Is sitting fees payable to manager? - No!

6. Manner of payment of Remuneration:

Monthly	Specified % of NP, or	Partly one way and partly another

7. Omitted

8. Net profit for this section = Net profit as per Sec 198

9. What if director draws/receives rem. in excess of limit or without necessary approvals?
   - He shall refund such excess sums to company within 2 years or lesser period as allowed by co.
   - Until such sum is refunded, hold it in trust for the company

10. Can company waive off the sum refundable under above subsection? – Cannot waive off unless:
    - Approved by company by SR within 2 years from the date it becomes refundable
    - Approval of banks/PFI/DH/SC where company has defaulted in payment of dues has been obtained prior to approval of company

    Note – Recall Sec 180. Remittance or extension of any debt due from directors requires SR. And hence, such waiver would mandatorily require a SR.

Case Law : Bell vs Lever Bros:

Facts of the case – Mr. Bell was MD in one of the companies of Lever Bros Ltd. Mr. Bell traded some personal profit during his tenure. Without knowledge of this, Lever Bros terminated his contracted for some other reason and paid him huge sum as CFLO. Later on, when Lever Bros came to know about this fraud. They argued that this concealment & misconduct was breach of his duty that was detailed in his employment contract and the compensation should be refunded.

Held that – a director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him and hence compensation cannot be refunded.

11. Schedule V overrides MOA, AOA or agreement or any resolution passed at GM or BM.
    In case of no profit or inadequate profit, the amt. of remuneration shall be as per prov. of Sch V.

12. Disclosure for listed company in Board Report
    a. Ratio of rem. of each director to the median rem. of employees of the company for the FY;
    b. the % increase in rem. of each director, CFO, CEO, CS or manager, if any, in the FY;
    c. the % increase in the median rem. of employees in the FY;
    d. the number of permanent employees on the rolls of company;
    e. Avg. percentiles increase in salaries of employees other than managerial personnel in last FY and its comparison with percentile increase in managerial rem. and justification of difference.
    f. Affirmation that the remuneration is as per the remuneration policy of the company.

    Report shall include a statement showing name of top 10 employee in term of remuneration drawn and name of employee who:
    a. If employed throughout the FY, remuneration > = Rs. 1.02 crores
    b. If employed for part of FY, remuneration per month > = Rs. 8.50 lakhs
    c. Receives remuneration > Remuneration drawn by MD/WTD/Manager and holds (himself + spouse + dependent children) > = 2% of Equity shares of company

For the above statement, include following details of employee:

remuneration received	nature of employement	qualification and experience	date of commencement of employment	age

last employment held by such employee before joining co.,	% of eq. shares held by the employee in co.	whether any such employee is relative of any dir./mgr. of co. and if so, name such dir./mgr.

13. Insurance premium not to be included in calculating remuneration:
    - Where any insurance is taken by a company
    - on behalf of its managerial person, CEO, CFO or CS,
    - for indemnifying any of them
    - against any liability w.r.t., any negligence, default, misfeasance, breach of duty/trust
    - for which they may be guilty in relation to the company,
    - premium paid on insurance shall not be treated as part of the rem. payable to such personnel.

    Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

14. If any director is receiving any commission from co, he shall not be disqualified from receiving remuneration/commission from Holding/subsy company subject to disclosure in Board Report

15. Contravention of this section – Person – Rs. 1 lakh and Company – Rs. 5 lakhs.

16. Auditor's Report u/s 143 to make a statement whether remuneration paid to directors is in accordance with this section and whether excess remuneration is paid to any directors.

Schedule V – Part II – Remuneration [Amended w.e.f. 18th March 2021 to include NED and ID]

This schedule is divided into 5 sections.

Sec I: Rem. payable by co. having profit	Sec II: Rem. payable by co. having no profit or inadequate profit	Sec III: Rem. payable by co. having no profit or inadequate profit in special circumstances	Sec IV: Perqs not includes in Managerial Rem.	Sec V – Rem. payable to KMPs in 2 cos.

Section I: Company having profits in FY may pay rem. to Managerial persons (MPs) or other director within limits u/s 197

Section II: Where in any FY, the co. has no profit or inadequate profit, it may pay rem. to MP or other dirs. not exceeding the limits under (A) and (B) given below subject to approvals as mentioned below:

Limit under (A):

Where the Effective Capital (EC) is:	Limit of yearly remuneration payable shall not exceed (in any FY)	
	In case of Mgr Person (MP)	In case of other directors
Negative or < Rs. 5 crores	Rs. 60 lakhs	Rs. 12 lakhs
Rs.5 cr. & above but < Rs. 100 cr.	Rs. 84 lakhs	Rs. 17 lakhs
Rs.100 cr. & above but < Rs.250 cr.	Rs. 120 lakhs	Rs. 24 lakhs
Rs. 250 cr. & above	Rs. 120 lakhs + [0.01% * (EC - 250 cr.)]	Rs. 24 lakhs + [0.01% * (EC - 250 cr.)]

If period < 1 year, pro-rata managerial remuneration

Remuneration in excess of above limit may be paid if SR is passed by shareholders.

Calculation of Effective Capital:

Add

1. PUSC (excluding share application money/advances against share)
2. Credit of share premium account
3. R&S (excl. revaluation reserve)
4. Long term loans and deposits repayable after 1 year (excluding short term arrangement such as bank OD, guarantees, etc.)

Deduct

1. Accumulated losses & preliminary expenses not w/off.
2. Sum of any investments (except investment by Investment co.)

Note -

1. Where appointment of MP is made in the year in which company has been incorporated, EC shall be calculated as on date of such appointment
2. In any other case – As on last date of FY in which appointment of MP is made.

Limit under (B):

In case a MP/Dir. is acting in professional capacity, rem. as per Limit (A) may be paid if MP/Dir. has:

1. No interest in capital* of CSH, and
2. No interest, directly or indirectly or related to director or promotor of CSH during last 2 years before or on or after the date of appointment
3. Possess graduate level qualifn with expertise & specialized knowledge in field which co. operates

* Employee holding shares of company upto 0.5% of PUSC under any scheme such as ESOP shall be deemed to be a person NOT interested in capital of company

In case of no profit /inadequate profit, remuneration can be paid as per limits under (A) & (B) only if:

i. Approved by BOD + NRC (if applicable)
ii. No default in repayment of dues to Banks/PFI/DH/SC. If defaulted – Obtain approval prior to Shareholders approval
iii. OR/SR as the case may be for payment as per (A) & SR in case of (B) at GM for not > 3 yrs

iv. Notice calling for GM contains statement containing relevant info such as:
- General information of the company – Nature of industry, financial performance, etc.
- Info. about appointee – Background, past remuneration and proposed remuneration, etc.
- Other information – Reason for loss or inadequate profits, steps for improvement, etc.
- Disclosures that shall be made in the board's report.

Section III: In following circumstances, a company may pay rem. in excess of amt specified in Sec II:

i. Where such rem. in excess of Sec I or II is paid by any "other company" and such other co. is:
   a. either a foreign company, or
   b. has taken approval of SH for making such payments, and

   treats such payment as MR u/s 197 and total MR paid by such company including this payment is within limit u/s 197.

ii. The following company may pay any amount of rem. to its MP/other directors for following period:
   a. Newly incorporated company for 7 years
   b. Sick company for whom scheme of revival ordered by BIFR for 5 years from date of sanction of scheme
   c. Co. for which Resolution Plan is approved by NCLT under IBC for 5 years from date of approval.
   d. Where remuneration exceeds limit u/s II but remuneration fixed by BIFR or NCLT

Provided that remuneration under this section may be given subject to meeting the following condition in addition to conditions specified under Section II:

a. Except as under point (i) above, MP~~/other director~~ is not receiving rem. from any other company
b. Auditor/CS of Company/ CS in whole time practice certifies that all secured creditors and term lenders have stated in writing that they have no objection, and such certificate is filed along with the return u/s 196(4)
c. Auditor/CS of company/ CS in whole time practice certifies that there is no default on payment to any crs. or deposit holders

Section IV: Perquisites not included in Managerial Remuneration

a. Contribution to PF, Super AF, AF (to extent not taxable under Income tax)
b. Gratuity Payable (not > ½ a month salary for each completed year)
c. Leave encashment

In addition to above, the following perquisites to an expatriate MP shall not be included in rem:

Children Education Allowance (max Rs. 12k p.m. per child for 2 children)	Holiday Passage	Leave Travel Concession

Section V: Subject to provisions of Sec I to IV, a MP shall draw remuneration from one or both companies, provided that total remuneration drawn from the companies < Higher max limit admissible from any 1 of the companies of which he is a MP.

Note: Section V is also applicable in case of remuneration paid as per Section I.

Concept clarity check:

1. Does provisions of Sec 197 and Sch V apply to CEO, CFO and CS? – No, N.A. to all KMPs.
2. Does Guarantee comm. paid by co. to NED for guaranteeing a term loan taken by co. amt. to rem. u/s 197? No, it is a service not in capacity of dir. This will not be included in rem.

Part III – Schedule V

1. Appt. and rem. under Part I and II shall be subject to approval of SH in GM
2. The auditor/CS of company / CS in WTP shall certify that the requirement of this Schedule have been complied with and such company to file such certificate with ROC along with filings u/s 196(4)

Part IV – Schedule V – CG may exempt companies from requirement of this Schedule

Sec 198- Calculation of Net Profits (NP)

Following adjustments need to be made to arrive at NP

a. Credit shall be given (i.e., include in NP) for bounties/subsidies received from Govt. or public authorities unless otherwise directed by Govt

b. Credit shall not be given for following:

- Premium on shares/debentures of company (unless it is an IC)
- Profit on sales of forfeited shares
- Profit of capital nature – Such as profit on sales of undertaking
- Profit on sale of immovable property or fixed asset of capital nature unless in OCOB
  If sale value > WDV, include profits upto original cost – WDV in net profit
- Change in carrying value of Asset or Liab. for measuring at Fair Value
- Amt. representing unrealized gain, notional gain, or revaluation of assets

Post above adjustments, following adjustments shall be made:

Following shall be deducted

- all the usual working charges
- directors remuneration
- bonus or commission paid or payable
- any tax notified by the CG as being taxes on abnormal profits
- any tax on business profits imposed for special reasons
- interest on debentures issued by the company
- interest on mortgages executed by the co.
- interest on loans and advances secured by a charge on assets
- interest on unsecured loans and advances
- payments incl. of contributions made u/s 181
- expenses on repairs (not of a capital nature)
- depn. to the extent specified in sec 123
- the excess of expenditure over income in any previous year
- any compensation/damages to be paid in virtue of any legal liability including breach of contract
- any sum paid by way of insurance (premium)
- debts considered bad and written off

Following shall not be deducted

- income-tax and super-tax payable under the Income-tax Act, 1961 (other than those allowed specifically) [PBT lena, PAT nahin]
- any compensation, damages or payments made voluntarily (not bound legally)
- loss of a capital nature including loss on sale of undertaking (except upto WDV - sales proceed)
- any change in carrying amount of an asset or of a liability on account of fair valuation.

Sec 199- Recovery of Remuneration in Certain Cases

- Where a company is required to re-state its financial statement
- due to fraud or non-compliance with the prov. of this Act,
- Company shall recover from past/present MD/WTD/Manager or CEO (not NED/ID) who, during such period for which financial statement is re-stated, received remuneration,
- in excess of what would have been payable to him as per re-stated financial statement.

Sec 200- Company to fix limit with regard to remuneration

- A company may, while according to its approval u/s 196 or 197 (no profit or inadequate profit),
- fix the remuneration at such amount or % of profit of company as it may deem fit
- And while fixing such remuneration shall have regard to:

Financial position of co | Rem. drawn by indv. in other capacity | Rem. drawn from other cos. | Prof. qualification and experience | Other prescribed matters

Sec 201- Forms of, and Procedure in Relation to, Certain Applications

1. Application made to CG u/s 196 shall be in Form MR-2 and shall be made within 90 days of such appointment
2. Before making any such application to CG:
   - Issue a general notice to members indicating the nature of application proposed to be made.
   - Publish notice in newspaper - one in principal language and one in English.
   - Copies of the notice shall be attached to the application.

Sec 202- Compensation for Loss of Office of Managing or Whole-time Dir. or Manager

1. Company can make payment to MP, but not to any other director as:
   - Compensation for Loss of Office (CFLO)
   - Consideration for Retirement from Office (CFRO)
   - In connection with such loss or retirement

2. No payment under this section in following case [R2VGWI]:
   a. Director Resigns as a result of reconstruction or amalgamation and is appointed as MP/other officer in reconstructed/amalgamated company
   b. Director Resign from office otherwise than on reconstruction or amalgamation
   c. Office Vacated u/s 167

d. Where company is wound up, provided that WUP was due to negligence/default of director
e. Director is Guilty of fraud/breach of trust or gross negligence or management in conduct of affairs of CASH
f. Where the dir. has Instigated, or has taken part in bringing about, the termination of his office.

3. Payment not to exceed what he would have earned if he had been in the office for remainder period or 3 years whichever is shorter.

Payment = *Average rem. (X) Period (balance period of office or 3 years whichever is shorter)

*Avg. rem. of last 3 years or shorter period if held office for < 3 years

Provided that, no payment if WUP commenced before or within 12 months after he ceases to hold office and assets is not sufficient to repay the share capital

4. Nothing in this section prohibits directors from receiving remuneration under this Act.

Sec 203- Appointment of Key Managerial Personnel

1. Listed co. AND Public co. having PUSC > = Rs. 10 crores shall have Whole time KMP*

*Whole time KMP

MD/Manager/CEO or in their absence WTD	CS, and	CFO

Moreover, every private company having PUSC > = Rs. 10 crores shall have a whole time CS.

An Indv. shall not be appt. as Chairperson of co. as well as MD/CEO of the co. at same time unless:
a. AOA provides otherwise, or
b. Co. does not carry multiple business (if co. has single business, then CP can be MD/CEO too)

Above proviso (i.e., Chairman and MD/CEO cannot be same person) is N.A to public companies:
- Having PUSC > = Rs. 100 crores, and Annual T/o > = Rs. 1,000 crores (as per latest audited FS)
- Engaged in multiple business and
- Appointed one or more CEO for each such business.

2. Whole time KMP to be appointed by resolution of Board containing T&C of such appointment.

3. A whole time KMP shall not hold office in more than one co. at the same time except in subsy co.

Nothing in this section shall disentitle a ~~whole time~~ KMP from becoming a director in any company with the permission of Board.

Can a person be MD in two companies at the same time?
If a person is MD/manager in one other company, it is permissible for a company to appoint him as its MD. The following conditions needs to be satisfied:
a. Such person should be MD/Manager of one , and of not more than one, other company.
b. Approved by resolution passed at BM with the consent of all the directors present ~~and voting.~~

c. Specific notice of such meeting, and of the resolution to be moved thereat has been given to all the directors then in India (i.e., agenda required)

Additional Notes:

- Approval of all dirs. present in meeting is required. If dirs. abstain from voting, this resolution cannot be passed.
  For e.g., If company has 8 dirs. and 6 dirs. are attending the meeting, all 6 should vote in favor.
- Prior to this section, Sec 188 had mandated for the agenda of the meeting to be sent to BOD.

4. Vacancy in office of whole time KMP, to be filled by BOD within 6m of vacancy
5. Penalty – Co. – Rs. 5 lakhs, Director/KMP in default – Rs. 50K + Rs. 1,000 per day, Max. Rs. 5 lakhs

Note:
In case of a Government co, this section shall not apply to MD/Manager/CEO or in their absence WTD
For e.g., vacancy in the office of MD/etc. need not be filled within 6m.

Concept clarity check:
Can a person who is already a CFO in A Ltd. be appointed as CS as well in A Ltd? – No!
Three individuals required to fill three positions of whole time KMP

Sec 204- Secretarial Audit for Bigger Companies

1. Following cos. to annex Secretarial Audit Report (by CS in practice) to the BOD Report u/s 134(3):
   - Listed company
   - Public company having PUSC >= Rs. 50 crores
   - Public company having T/O >= Rs. 250 crores
   - Every company having o/s loan or borrowings from bank/PFI > = Rs. 100 crores

   Secretarial Audit Report – Form MR-3
2. Duty of company to give assistance and facility to CS in P for auditing such records
3. BOD Report to explain in full any observation or qualification made in secretarial audit report
4. Penalty for Contravention – Company/OID/CS – Rs. 2 lakhs

Sec 205- Function of CS

1. Function of CS includes following: [C2 AGM RAO]
   - Report to BOD about Compliance with Act/Rules/Other law
   - Ensure company Complies with applicable secreterial standards
   - Discharge prescribed duties
     - Provide Guidance to director of company w.r.t. duties and power
     - Facilitate convening of Meeting, attend BOD/committee or GM & maintain minutes thereof
     - Obtain Approvals of BOD/Shareholders/Government as per this Act
     - Represent before various regulator and other authority under this Act
     - Assist BOD in conduct of Affairs
     - Other duties as may be assigned time to time.

2. Provision of Sec 204 and 205 not to affect duties and functions of BOD, CP, MD or WTD.

The End

Multiple Choice Questions

Question:1 [Section:2(54)]

The Board of Directors of Capable Hospitality Services Limited has entrusted Mr. Vikas, the newly appointed Managing Director (MD) of the company, with some powers. However, Mr. Vikas is not interested in discharging administrative functions as authorised by the Board of Directors, since he is of the view that he should have been entrusted with substantial powers of the management. Out of the following four options, which one is correctly applicable in relation to the functions which Mr. Vikas, the MD of Capable Hospitality Services Limited, can undertake:

a) To draw and endorse any cheque on the account of Capable Hospitality Services Limited maintained with National Commercial Bank Limited, the main banker of the company.
b) To sign the financial statements of Capable Hospitality Services Limited.
c) To draw and endorse any bill of exchange when it exceeds Rs 1,00,000.
d) To draw and endorse any bill of exchange when it exceeds Rs 5,00,000.

Question:2 [Section: 196 and 203]

Murlidhar Masala Enterprises Limited, incorporated under the Companies Act, 2013, is into the business of trading of different kinds of spices used in the cooking of daily food items. Mr. Vinayak was appointed as the Chief Financial Officer (CFO) of the company on July 2, 2018 by the Board of Directors for a period of five years. In the Board Meeting held on July 30, 2021, Mr. Rinkesh aged 55 years was appointed as Managing Director of the company. In this meeting itself, the Board of Directors also made re-appointment of Mr. Vinayak as the Chief Financial Officer (CFO) for another term of 3 years and it was resolved that the new term of 3 years will start after the completion of the first term of five years. Further, in the Annual General Meeting of the company held on September 29, 2021, the appointment of Mr. Rinkesh as Managing Director was approved by the company and the members also noted the re-appointment of Mr. Vinayak as Chief Financial Officer (CFO) for another term of 3 years which would start after completion of the first term of five years. You are required to choose the correct option from the following four whether the re- appointment of Mr. Vinayak is valid or not:

a) The re-appointment of Mr. Vinayak as Chief Financial Officer (CFO) for another term of 3 years is valid since the Board of Directors may appoint him for any term as it may think fit.
b) The re-appointment of Mr. Vinayak as Chief Financial Officer (CFO) for another term of 3 years is not valid since no Key Managerial Personnel (KMP) shall be re-appointed earlier than one year before the expiry of his term.
c) The re-appointment of Mr. Vinayak as Chief Financial Officer (CFO) for another term of 3 years is not valid since his re- appointment has not been subsequently approved by the company in the Annual General Meeting held on September 29, 2021.
d) Both (b) and (c) above.

Answers:	1.	(b)	2.	(a)

Question:3 [Section:199]

Due to non-compliance of certain requirements under the Companies Act, 2013 not amounting to fraud, Shikha Super-Market Limited was required to re-state its financial statements for the FY 2017-18 during the current year. After the financial statements were re- stated, it was found that Mr. Kumar, the Managing Director (MD) of that period, who is now retired, was paid excess remuneration to the extent of Rs. 5,00,000.

In the given situation, choose the correct option out of those given below, which indicates whether such excess remuneration paid to ex-MD Mr. Kumar is recoverable or not.

a) Excess remuneration of Rs 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, cannot be recovered since such recovery after retirement is invalid.
b) Excess remuneration of Rs 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, shall be recovered irrespective of his retirement from the company.
c) Only Rs 2,50,000, being 50% of excess remuneration of Rs 5,00,000, paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.
d) Only Rs 1,25,000, being 25% of excess remuneration of Rs 5,00,000, paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.

Question:4 [Section: 203]

Go Dairy Products Limited, incorporated under the Companies Act, 2013, is into the business of selling dairy products through online mode. Mr. Dhaval was holding the office of the Whole-time Director in the Company. However, by the end of the FY 2020-21, Mr. Dhaval had to vacate the office of Whole-time Director after attracting one of the disqualifications prescribed under Section 164 of the Companies Act, 2013. You are required to select the correct option from those given below as to the time period within which the Board of Directors are required to fill the vacancy of Whole-time Director created by the resignation of Mr. Dhaval considering the applicable provisions of the Companies Act, 2013:

a) The vacancy of Whole-time Director created by the resignation of Mr. Dhaval shall be filled by the Board of Directors at a meeting of the Board within a period of three months from the date of creation of such vacancy.
b) The vacancy of Whole-time Director created by the resignation of Mr. Dhaval shall be filled by the Board of Directors at a meeting of the Board within a period of six months from the date of creation of such vacancy.
c) The vacancy of Whole-time Director created by the resignation of Mr. Dhaval shall be filled by the Board of Directors at a meeting of the Board within a period of two months from the date of creation of such vacancy.
d) The vacancy of Whole-time Director created by the resignation of Mr. Dhaval shall be filled by the Board of Directors at a meeting of the Board within a period of one month from the date of creation of such vacancy.

Answers:	3.	(b)	4.	(b)

Question:5 [Section:196(3)]

Mr. Joseph Daniel, holding the office of Whole-time Director (WTD) in Tasty Choco-Chips Limited, is desirous of appointing Mr. Vanilla Sequera, who has attained the age of 72 years, as the Managing Director (MD) of the company. However, the Board of Directors is of the opinion that no company shall appoint or continue the employment of any person as Managing Director, Whole-time Director or Manager who is below the age of twenty-one years or has attained the age of seventy years. From the following four options, select the one which is applicable in relation to the validity or invalidity of appointing Mr. Vanilla Sequera as the Managing Director (MD) of Tasty Choco-Chips Limited:

a) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director by the Board of Directors of Tasty Choco-Chips Limited when the recommendation has been made by Mr. Joseph Daniel, the Whole-time Director.
b) Since Mr. Vanilla Sequera has attained the age of 72 years, he cannot be validly appointed as Managing Director of Tasty Choco-Chips Limited.
c) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director by the shareholders of Tasty Choco-Chips Limited through passing a Special Resolution in general meeting.
d) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director of Tasty Choco-Chips Limited if an application is made to the jurisdictional NCLT and its permission is received for such appointment.

Question:6 [Section:196(2)]

On June, 20, 2019, Mr. Anil Mehra was appointed as Manager of PQR Music Systems Limited for a period of five years. Considering his performance and dedication towards the company, the management of PQR Music Systems Limited decided to re-appoint him as Manager before the completion of his tenure. Out of the following four options, choose the one which indicates the date on which his re-appointment will be considered valid?

(a) June 24, 2023. (b) February 1, 2023.
(c) March 12, 2022. (d) September 10, 2022.

Question:7 [Section:197]

Lockworth Safety Gears Limited which pays remuneration to its directors on yearly basis, has Harsha as Whole-time Director (WTD). Recently, the company appointed Mr. Raviyansh as Managing Director (MD). While paying remuneration, Lockworth Safety Gears Limited needs to keep in view that the overall remuneration payable to the Directors including Managing Director, Whole-time Director and Manager shall not exceed maximum limit prescribed under the relevant provisions. After the appointment of Mr. Raviyansh as Managing Director, since the company has both Whole-time Director as well as Managing Director, select the appropriate option from those given below which indicates the maximum remuneration that is allowed in a FY:

a) 3% of net profits. b) 5% of net profits.
c) 10% of net profits. d) 11% of net profits.

Answers:	5.	(c)	6.	(a)	7.	(c)

Question:8 [Section:203]

M&N Limited whose more than 51% of the paid-up share capital is held by F&I Limited. After considering the applicable provisions, you are required to choose the correct option from the following four which indicates whether Mr. Abhishek can validly proceed or not with the offer of Whole-time Director extended by M&N Limited while also continuing as Chief Financial Officer (CFO) of F&I Limited:

a) Mr. Abhishek can validly proceed with the offer of Whole-time Director at M&N Limited while also continuing as Chief Financial Officer (CFO) because being a Key Managerial Personnel he shall not be disentitled from accepting the offer of Whole-time Director in any other company after obtaining the permission of Board of Directors of his parent company i.e., F&I Limited.
b) Mr. Abhishek will not be able to proceed with the offer of Whole-time Director at M&N Limited since a whole time Key Managerial Personnel cannot hold office in more than one company at the same time.
c) Mr. Abhishek can proceed with the offer of Whole-time Director at M&N Limited while also continuing as Chief Financial Officer (CFO) since M&N Limited is a subsidiary of F&I Limited.
d) Mr. Abhishek will not be able to proceed with the offer of Whole-time Director at M&N Limited since a whole time Key Managerial Personnel cannot hold office in more than one company at the same time including its subsidiary company.

Question:9 [Section:196]

Hasmukh Entertainment Limited, incorporated under the Companies Act, 2013, appointed Mr. Ram Kishore, a well-qualified and experienced person, as Whole-time Director (WTD) for a period of five years in the Annual General Meeting (AGM) held on August 28, 2019. In order that Mr. Ram Kishore continues with the company as Whole- time Director (WTD), he was re-appointed in advance as Whole-time Director (WTD) for another term of five years in the Annual General Meeting which was held on September 28, 2021. The second term of five years will start after the expiry of first term in August, 2024. From the following alternatives, choose the one which indicates the validity or otherwise of re-appointment of Mr. Ram Kishore for the second term of five years by the company:

a) The re-appointment of Mr. Ram Kishore in advance as Whole- time Director (WTD) for another term of five years is valid because re-appointment can be made for a period not exceeding 5 years at any time provided the Articles of Association of the company provide for such re-appointment before one year from the completion of his 'yet-to-expire' term.
b) The re-appointment of Mr. Ram Kishore in advance as Whole- time Director (WTD) for another term of five years is invalid because his re-appointment as Whole-time Director (WTD) cannot be made earlier than one year before the expiry of his first term.
c) The re-appointment of Mr. Ram Kishore in advance as Whole- time Director (WTD) for another term of five years is valid provided the resolution for such re-appointment had earlier been passed with the consent of all the Directors present at the Board Meeting and thereafter, such re-appointment was taken up at the Annual General Meeting for approval.
d) The re-appointment of Mr. Ram Kishore in advance as Whole- time Director (WTD) for another term of five years is invalid because no special resolution for his re-appointment was passed at the Annual General Meeting for approval.

Answers:	8.	(c)	9.	(b)

Question:10 [Part II Schedule V]

Mr. X, a Director of a company, was appointed as Managing Director on 1st April 2021. One of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31st March 2023, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid 100 lakhs for the year. The effective capital of the company is 150 crore. Referring to the provisions of the Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to Mr. X.

a) Payment of 100 lakhs being made to Mr. X is within the prescribed limit and can be validly made to him.
b) Payment of 100 lakhs being made to Mr. X is not within the prescribed limit and cannot be validly made to him.
c) Payment of 100 lakhs being made to Mr. X is less than the prescribed limit and so cannot be validly made to him.
d) Payment of 100 lakhs being made to Mr. X is not the prescribed limit and can be validly made to him.

Answers:	10.	(a)

The End

STUDENT'S NOTES:

Sec 206- Power to call for information, inspect Books and Conduct Inquiries

1. On the basis of
   - Scrutiny of any document filed by a company
   - Any information received by ROC

   ROC is of opinion that further - Documents / Explanations / Information

   It may by written notice require the company
   - Furnish in writing such info./explanation
   - Produce such documents

   within such reasonable time as may be specified in notice.

2. On receipt of such notice - Duty of (i) Company and (ii) its officer concerned to:
   a. Furnish info/explanation to best of knowledge and power
   b. Produce such documents.

   Provided that, where information/explanation/~~document~~ relates to past period:

   The officer who was employee in such past period shall also furnish information/explanation to the best of their knowledge (only if called upon by the ROC by way of a notice served in writing)

3. Where
   - No info/expl. Furnished within time specified
   - Info/expl. Is inadequate
   - On scrutiny of documents furnished → ROC is satisfied that
     - Unsatisfactory state of affairs &
     - Does not disclose fair statement

   ROC may, by another written notice, call company to produce BOA, B&P, at such time/place (record reason)

4. ROC is satisfied → Basis
   - Info. Available with or furnished to him
   - Representation made by a person

   a) Business of the company is being carried on:
      - Fraudulent or unlawful purpose, as:
      - Not in compliance with this Act

   b) Grievances of investor remain unaddressed

   ROC
   - Inform co. of the allegation by way of written order
   - Require furnishing of such info/expl. written in order (time specified)
   - Call for such inquiry as it may seem fit (Reasonable O.O.B.H)

Provided that CG may, if it is satisfied that circumstances so warrant, direct ROC or inspector to carry out the inquiry.

Provided that – In case of fraud, OID shall be liable U/S 447

5. CG → If satisfied that circumstance so warrant → Direct inspection of books and papers → By inspector appointed

6. CG may → General order / Specific order → Authorise statutory authority to carry such inspection

7. Punishment - Company and OID - Rs.1 lakh + additional fine Rs.500/day after the first.

Sec 207- Conduct of Inspection and Inquiry

Duty of co, director, officer & other employees

- To produce such documents.
- Furnish information/explanation
- Render such assistance to

→ ROC / Inspector

Power of ROC or inspector

- Make copies
- Place identification marks as token of inspection

→ All powers as vested in civil court by Code of Civil Procedure (CCP), 1908

Powers vested in Civil Court by CCP, 1908: [PAOI]

- Discovery and production of BOA and other documents at specified place & time;
- summoning and enforcing the attendance of persons and
- examining them on oath; and
- inspection of any books, registers and other documents of company at any place.

Penalty for contravention:

1. Director/Other officers of company - Imprisonment upto 1 year AND fine Rs. 25,000 to Rs. 1 lakh
2. Director convicted of offence under this section shall be deemed to have vacated office and shall be disqualified from holding office in any company

Sec 208- Report on Inspection Made

ROC/Inspector shall, after inspection/inquiry u/s 206 or 207 send a report in writing to CG along with relevant docs. In the report, it may recommend further investigation along with reasons.

Sec 209- Search and Seizure

If based on information in possession/otherwise, the ROC/inspector has RGTB that B&P of:

Company, or | KMP/Director | Auditor | CS in Practice

are likely to be - [DAMFS]

Destroyed | Altered | Mutilated | Falsified | Secreted

the inspector may after obtaining the approval of special court :

a. Enter (with assistance) and search the place where such books are kept
b. Seize such books and papers as he may consider necessary after allowing company to take copies.

Custody of seized B&P:

- Period not later than 180 days from the date of seizure and thereafter return it.
- B&P may be called for a further period of 180 days by way of order in writing if needed again.
- Before returning, inspector may take copies/extract or place identification marks

Sec 210- Investigation into Affairs of Company

1. Where CG is of opinion that it is necessary to investigate affairs of co, based on:
   a. Report u/s 208
   b. Intimation of SR passed by a company that affairs ought to be investigated
   c. in public interest

   it may order such investigation (invg.)

2. Where order of invg. is passed by Court/Tribunal, CG shall pass an order of invg.
3. On passing such orders, CG shall appoint inspector for the invg. and reporting to CG

Note - The power of CG to order investigation is discretionary and not mandatory.

Sec 211- Establishment of Serious Fraud Investigation Office (SFIO)

1. CG to establish SFIO to investigate frauds relating to company
2. SFIO to be headed by "Director" appointed by CG (Officer >= Joint Secretary to GoI)
3. SFIO to consist of experts from various fields appointed by CG.
   Fields such as Audit (Forensic), Banking, Corp. Affairs, Capital Market, Tax, Info tech, law, etc.

Sec 212- Investigation into affairs of company by SFIO

1. Where CG is of opinion that affairs ought to be investigated by SFIO based on:

   Report u/s 208 | Intimation of SR passed by company that affairs ought to be investigated | in public interest | on request of dept. of CG/SG

   CG may be order, assign such invg. to SFIO and Director, SFIO to designate inspectors for invg.

2. Where case is assigned to SFIO - No other investigating agency (CBI,IB) to initiate invg. for offence under this Act.
   If invg. had already been initiated - Not be proceeded with & transfer all relevant docs to SFIO.

3. SFIO to do investigation as per this chapter and submit report to CG within stipulated period.
   Note: Reference to stipulated time period is directory in nature and not mandatory.

4. Director, SFIO shall appoint investigating officer (IO) having power of inspector (Sec 217)

5. Company/Officers and employees responsible to provide info/explanation/docs to IO.

6. Offence covered within Sec 447 of this act shall be - "Cognizable and Non-bailable"
   No person accused u/s 447 shall be released on bail or on his own bond unless:
   a. Public Prosecutor (PP) has been given an opportunity to oppose the appln. for release and
   b. Where PP opposes such appln., court is satisfied that RGTB that he is not guilty of such offence and that he is not likely to commit offence while on bail

   Provided that, following person may be released on bail if Special court so directs -
   Age < 16; Woman, Sick/Infirm person

   Special court shall take cognizance of above offence only upon complaint in writing by
   a. Director, SFIO
   b. Officer of CG authorised by CG

7. Above limitation on bail is in addition to limitation as per Code of Criminal Procedure, 1973

8. Subsection (8) to (10) - Arrest of a person by SFIO:
   Where on the basis of material in his possession ~~or otherwise~~, officer >= Asst. Director of SFIO has reason to believe that person is guilty of offence u/s 447, he may arrest such person and:
   1. Inform the person being arrested of the grounds for such arrest
   2. Forward copy of arrest order + material in his possession to SFIO in sealed envelope
   3. Within 24 hrs, take the arrested person to Special Court or Magistrate (Judicial/Metropolitan)
      24 hours not to include time taken for journey from place of arrest to court/magistrate

11. SFIO shall submit interim report to CG if so directed.

12. SFIO to submit investigation report to CG on completion of invg.

13. Person may obtain copy of this report - By application in the court

14. On receipt of above report, CG may, after examination of reports, direct SFIO to initiate prosecution against company/officers/employees

    If report states fraud has taken place in company and due to such fraud, any director/KMP/other officer has taken undue benefit (in form of property, asset, cash or others), CG may apply to NCLT for orders w.r.t:
    a. Disgorgement of such property/asset/cash and
    b. Holding such director/KMP/officer personally liable without any limitation of liability

Sharing is caring: In case SFIO is invg. under this Act, any other invg. agency, SG, police, Income Tax auth. having info/documents related to such offence shall provide it to SFIO and Vice-versa

Sec 213- Investigation into Company's Affairs in Other Cases

Tribunal may order investigation in following cases:

On an application (supported by evidence showing reasons for invg.) made by:

1. Company having share capital - Not less than 100 members or 1/10th of VP
2. Company not having share capital - Not less than 1/5th of persons on register of members

On an appln made by any person, NCLT is satisfied that:

1. Business is being conducted:
   a. With intent to defraud crs/members/others
   b. For a fraudulent/unlawful purpose (FUP)
   c. Manner oppressive to members of company
2. Company formed for fraudulent and unlawful purpose
3. Person concerned with formation/mgt. of company is guilty of fraud, misfeasance or other misconduct
4. Members not given all info. (incl. commission to KMP)

Additional points:

- Prior to such order, ROBH to be given to company
- Where such order is passed by Tribunal, CG shall appoint inspectors to carry invg. and report.
- If after investigation, it is proved that business/company/person concerned are involved in fraud (points in the right box), OID and concerned person liable u/s 447

Sec 214- Security for Payment of Costs and Expenses of Investigation

Before appointing inspector for investigation u/s 210 (only SR case) or 213, CG may require the applicant to give the below security for payment towards cost and expenses of investigation.

Turnover as per previous year balance sheet (Rs.)	Amount of security
Upto 50 crores	Rs. 10,000
50 - 200 crores	Rs. 15,000
Above 200 crores	Rs. 25,000

Above security shall be refunded to the applicant if the investigation results in prosecution.

Note - Sec. deposit is not required if invg. ordered u/s 210 based on report u/s 208 or in public intt.

Sec 215- No firm, body corporate or other association shall be appointed as an inspector

Sec 216- Investigation of Ownership of Company

Where CG has a reason to do so, it may appoint inspector to investigate and report on matters relating to company and its members to determine the true person:

Financially interested in success/failure of company	Who controls/materially influences the policies of co.	Has beneficial interest in share or is beneficial owner of company

If instead of CG, Tribunal orders invg. of ownership of co., CG shall appt. inspectors to carry such invg.

While appointing inspector, CG shall define scope of investigation w.r.t:

a. matter/period to which it extends
b. Limit matters to particular shares/debentures

Subject to T&C of appt. of an inspector, his powers shall extend to invg. of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his invg.

Sec 217- Procedure, Powers, etc., of Inspectors

Duty of company and its officer/ employee/agents	1. To preserve and produce books and paper (B&P) 2. Give inspector assistance in connection with such invg.
BC other than BC under investigation may be required to furnish info.	Inspector may require BC other than BC under invg. to furnish such info or produce such docs which may be relevant or necessary for invg. (No approval of CG required)
Period of custody	Not more than 180 days. Return on or before 180th day Call again by way of order in writing for further 180 days
Examine on oath	1. Any officer/employee/agents of company being invg. (without CG approval) 2. Any other person – With prior approval of CG (or Director, SFIO where investigation is done u/s 212) For such examination, inspector may require them to appear before him personally. Notes of such examination to be in writing, read over and signed by the person examined and can be used as evidence in court.
Inspector shall have all power vested in CCP, 1908 [PAIO]	➢ Discovery and production of BoA & other docs at specified place & time; ➢ summoning and enforcing the attendance of persons and ➢ examining them on oath; and ➢ inspection of any books, registers and other docs. of company at any place.
If director/officer disobeys directions of ROC or inspector	1. Director/officers – Imprisonment upto 1 year AND fine Rs. 25,000 to 1L 2. Director convicted of offence under this section shall be deemed to have vacated office and shall be disqualified from holding office in any company
If person fails without reasonable cause or refused to:	➢ Produce B&P ➢ Furnish information ➢ Appear personally for examination ➢ Sign the notes of examination } Imprisonment upto 6m AND Fine – 25k to 1 lakh Further fine – Rs. 2,000/day
Officer of CG/SG/ Police to provide assistance	Where the inspector may require, with the prior approval of CG [E.g., Inspector may enter premises with such assistance]

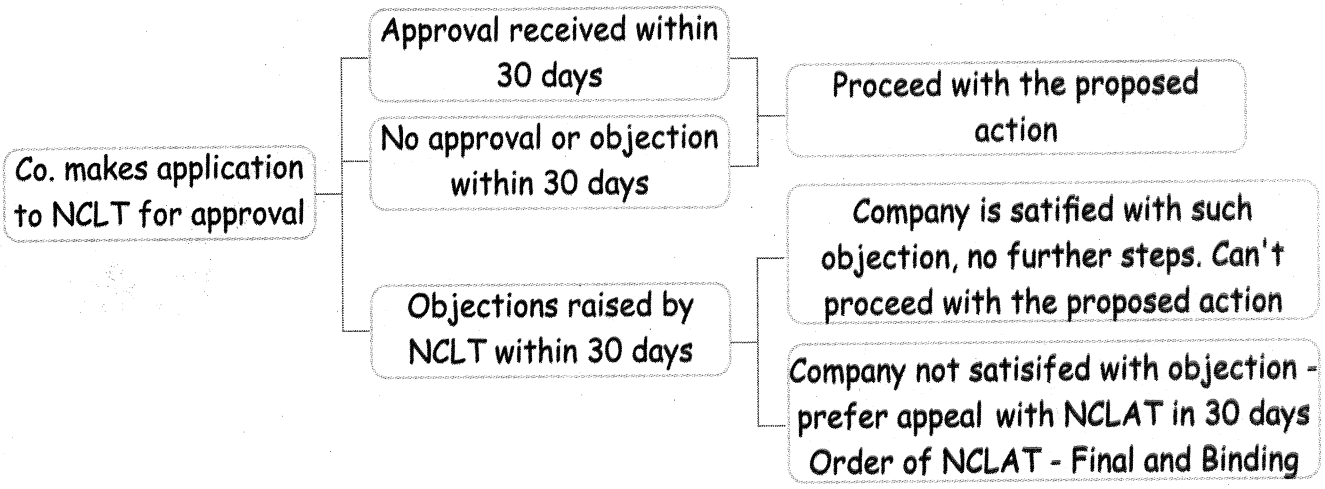
Reciprocal Arrangements (RA)	➢ CG may enter into agreement with Govt of foreign state for RA ➢ to assist in Inspection, Inquiry And Investigation under this Act or corresponding law of that foreign state Procedure for seeking help from country o/s India: ➢ Application to be made by inspector to competent court in India stating evidence in relation to an invg. may be available in a country o/s India. ➢ Such court may issue a letter of request (LOR) to competent auth. in such country to: • Examine any person, • Record his statement, • Require such person to produce docs, • Forward above statements and docs to competent court in India (which shall be deemed to be evidence collected during investigation) Procedure for helping a country o/s India: ➢ Upon receipt of LOR from competent authority o/s India ➢ for examination of any person or production of any document ➢ in relation to affairs of company under investigation in that country, ➢ CG shall forward such letter to competent court in India which shall: • Summon the person • Record his statement • Require production of docs • Send that LoR to inspector for investigation and submission of report (within 30 days or period specified by court) ➢ Evidence so collected shall be - Forwarded to CG for transmission to person who sent LoR

Sec 218- Protection of Employees During Investigation

1. If during the course of
   a. Investigation u/s 210,212,213,216 or 219 or
   b. Pendency of proceeding under Chapter XVI (Prevention of Oppression and Mismanagement)

   Such co., other BC or person (being invg. or against whom proceedings are conducted), proposes:
   a. to discharge or suspend any employee; or
   b. to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
   c. to change the terms of employment to his disadvantage,

   Company/BC/Other person shall obtain approval of Tribunal of the action proposed. Tribunal may raise objection by way of notice.



Note: The above provision is applicable during the course of investigation/proceedings. Where the invg./proceedings are concluded, this action can be taken w/o approval of Tribunal.

Sec 219- Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc.

If the inspector appt. for invg. u/s 210,212,213, ~~216~~, considers it necessary for the purpose of invg. to investigate affairs of following person, it may do so with the prior approval of ~~Special Court~~ CG:

a. Other BC which is or has been company's Subsy, Holding or Subsy. of its Holding company
b. Other BC which is or has been managed by a MD/Manager who is or was MD/Manager of company
c. Other BC whose BOD consists of Nominee Director of company
d. Other BC whose BOD is accustomed to act as per direction or instructions of co. or its dir.
e. Any person who is/was MD/Manager/Employee of the company

Sec 220- Seizure of Documents by Inspector

During course of investigation, the inspector has Reasonable Ground to Believe (RGTB) that B&P of:

Company, or | MD | Manager | Other body corporate

are likely to be - [DAMFS]

Destroyed | Mutilated | Altered | Falsified | Secreted

the inspector may ~~after the approval of special court~~ :

c. Enter (with assistance) and search the place where such B&P are kept
d. Seize B&P as he may consider necessary after allowing company to take copies.

Custody of seized B&P:

- Period not later than conclusion of investigation and thereafter return it.
- Before returning, inspector may take copies/extract or place identification marks

Note - There is no provision related to calling such B&P for any further period

Sec 221- Freezing of Assets of Company on Inquiry and Investigation

1. Where it appears to the Tribunal:

On a reference made by CG	or on inquiry or invg. under this Chapter	on complaint made by such numbers of members as specified u/s 244(1)	on complaint made by crs having > Rs. 1 lakh outstanding	on complaint made by person having RGTB

that:

- Removal, disposal or transfer of
- Funds, assets or properties of company is likely to take place
- in a manner prejudicial to interest of - Company, Shareholders, Creditors or to Public interest

the Tribunal may order that:

- such trf. shall not take place during such period not > 3 yrs as may be specified in the order or
- such transfer may take place subject to such T&C as the Tribunal may deem fit.

2. Penalty for contravention: Co. - Rs. 1 L to Rs. 25 L; OID - Fine - Rs. 50,000 to Rs. 5 L or Jail upto 3 yrs or Both.

Sec 222- Imposition of Restrictions Upon Securities

[E.g., Amazon vs Future Group vs Reliance]

1. - In connection with investigation u/s 216 (ownership) or
   - on complaint made by any person (E.g., Amazon),
   - Where it appears to the Tribunal that:
     a. there is good reason to find out relevant facts about securities issued by the company, and
     b. such facts cannot be found out unless restrictions are imposed,
   - Tribunal may by order - Impose restrictions on such securities for period not > 3 years.

2. If securities are transferred in contravention of such restriction, penalty:
   Company - Rs. 1 lakh to Rs. 25 lakhs; OID - Jail upto 6m or Fine - Rs. 25,000 to Rs. 5 lakhs or both.

Sec 223- Inspector's Report [N.A. to investigation by SFIO u/s 212]

1. Inspector to submit interim report, if directed by CG and final report on concln. of invg. to CG
2. Report to be in writing / printed.
3. Copy of report may be obtained by members/crs/person likely affected by making appln. to CG

   Note: SFIO report can be obtained by anyone on application to Court (not CG)

4. Report of inspector to be authenticated by:
   a. Either the seal of company being investigated or
   b. By a certificate of public officer having the custody of report

Sec 224- Actions to be Taken in Pursuance of Inspector's Report

	Scenario 1	Scenario 2	Scenario 3
Based on the report u/s 223, if it appears to the CG that:	Any person in relation to co/BC being investigated is guilty of offence for which he is criminally liable	If any co/BC is liable to be wound up under this Act or IBC and it is expedient to do so,	In public interest, proceedings ought to be brought by the co/BC investigated for recovery of: a. Damages in respect of fraud, misfeasance w.r.t. formation/management of affairs of co/BC b. Property of co/BC which has been misapplied or wrongfully retained
Following action may be taken	CG may prosecute such person and it shall be duty of officers of Co/BC to give necessary assistance	CG may cause to present to the tribunal: a. A petition for WUP on grounds that it is just & equitable, or b. Application u/s 241 c. Both	CG may itself bring proceedings for WUP in the name of Co/BC CG to be indemnified by the company/BC in respect of cost for bringing such proceedings.

If the report states fraud has taken place in co and due to such fraud, any director., /KMP or other officer has taken undue advantage/benefit, whether (in form of property, asset, cash or others) ,- CG may file an application before Tribunal for orders w.r.t:

a. Disgorgement of such property/asset/cash and
b. Holding such director/KMP/officer personally liable without any limitation of liability

Sec 225- Expenses of Investigation

Cases	Who pays the expenses?	To what extent?
Where person is convicted on a prosecution instituted u/s 224	Such convicted person or such person who is ordered to pay damages or restore properties	The extent such person is ordered to pay
	The co/BC in whose name proceedings are brought (scenario 3 of Sec 224)	The extent of amount recovered by it
If no prosecution is instituted u/s 224	➢ Any Company/BC/MD/Manager dealt with in the report of inspector and ➢ Applicants of the investigation	As CG may direct

Sec 226- Voluntary Winding up of Company, etc., Not to Stop Investigation Proceedings

The investigation under this chapter shall in no way be impacted because of the following:

Application is made u/s 241 | Company has passed SR for WUP | Other WUP proceeding- Pending before Tribunal

If WUP order is passed by NCLT, inspector to inform the NCLT about pendency of such investigation

Sec 227- Legal Advisers and Bankers Not to Disclose Certain Information

Nothing in this Chapter shall require disclosure to Tribunal/CG/ROC/Inspector by:

(a) legal adviser, of any privileged communication made to him in that capacity (except name and address); or

(b) bankers of any company/BC/other person, of any information as to affairs of any customers (other than such company or body corporate)

Sec 228 The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

Sec 229- Penalty for Furnishing False Statement, Mutilation, Destruction of Documents

Such offence shall be considered as offence u/s 447 (fraud)

The End

Multiple Choice Questions

Question:1 [Section:219]

Mr. Raman, an Inspector appointed under Section 212 of the Companies Act, 2013, started investigations into the affairs of C-Tech Innovative Solutions Ltd. During the process of investigation, Mr. Raman noticed certain unusual facts and information regarding the transactions made by C-Tech Innovative Solutions Ltd. with its subsidiary company Shyamala InfoTech Solutions Ltd. Based on the information so collected from the investigation, Mr. Raman wanted to investigate the affairs of Shyamala InfoTech Solutions Ltd. also. Out of the following options, which one correctly indicates whether Mr. Raman can proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. or not in the light of the applicable provisions of the Companies Act, 2013.

a) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the Director, Serious Fraud Investigation Office (SFIO).
b) Mr. Raman shall not be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. since it is not within his powers to undertake investigation of any other entity.
c) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the NCLT in whose jurisdiction the registered office of the subsidiary company is located.
d) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the CG.

Question:2 [Section:222]

Sanchita TechMart Limited is in the grip of serious apprehensions that its shares might be cornered by a group of unscrupulous persons and if it happens, it would certainly result in change in the Board of Directors which might be prejudicial to the public interest. With a view to impose restrictions, Ramneek, one of the directors of Sanchita TechMart Limited, seeks your advice as to how the company can impose restrictions on the transfer of shares of the company. Choose the correct option from those given below:

a) Sanchita TechMart Limited can make an application to the NCLT under Section 222 for imposition of restrictions on securities.
b) Sanchita TechMart Limited can make an application to the CG under Section 222 for imposition of restrictions on securities.
c) Sanchita TechMart Limited can make an application to the NCLT under Section 216 for investigation into the ownership of company.
d) Sanchita TechMart Limited can make an application to the CG under Section 216 for investigation into the ownership of the company.

Answers:	1.	(d)	2.	(a)

Question:3 [Section:223]

After perusal of the inspector's report made under Section 223 of the Companies Act, 2013, it appears to the CG that some action is required to be taken against a company, it may cause to be presented to the Tribunal:

a) A petition for the winding up of the company on the ground that it is just and equitable that it should be wound up.
b) An application under Section 241 of the Companies Act, 2013.
c) Both (a) and (b).
d) A petition for the merger of the company on the ground that itis just and equitable that it should be merged.

Question:4 [Section:209]

Some of the creditors of Alpha Tyres Limited made a complaint to the jurisdictional ROC pleading that the management of the company is indulged in destruction and falsification of the accounting records. The complainants request the ROC to take immediate steps to stop the management to tamper with the records. The complaint was received in the morning on 1st January, 2022 and the ROC entered the premises of Alpha Tyres Limited, the same day when the complaint from the creditors was received for the search. From the options given below, choose the one that correctly indicates the course of action that the ROC may take in such a situation:

a) The ROC may enter the premises of Alpha Tyres Limited and search the place where such books or papers are kept and seize them.
b) The ROC may enter the premises of Alpha Tyres Limited and search the place where such books or papers are kept and seize them only after obtaining an order from the Special Court.
c) ROC may enter the premises of Alpha Tyres Limited and search the place where such books or papers are kept only after obtaining the order to this effect from the NCLT.
d) ROC may enter the premises of Alpha Tyres Limited, search the place where such books or papers are kept and give an opportunity to the company to represent why such documents may not be seized.

Answers:	3.	(c)	4.	(b)

Question:5 [Section:218]

The CG appointed Mr. Rishikesh as an inspector to conduct investigation into the affairs of Oriental Threads Ltd. in accordance with relevant provisions of the Companies Act, 2013. During the course of investigation of Oriental Threads Ltd., Mr. Rishikesh found that company had reduced the position of Mr. Gopal Prasad (who was a senior employee) from Joint Manager to Assistant Manager within a few days after the commencement of investigation. No permission, whatsoever, was obtained from any authority but it was a sole decision of the company based on the recommendation of the Recruitment Committee to demote Mr. Gopal Prasad. Select the appropriate option from those given below as to whether Oriental Threads Ltd. is within its rights to reduce the rank of Mr. Gopal Prasad from Joint Manager to Assistant Manager during investigation:

a) It being an internal matter of the company, Oriental Threads Ltd. is very much within its rights to reduce the rank of Mr. Gopal Prasad from Joint Manager to Assistant Manager during investigation and no authority, whatsoever, can interfere in the matter.
b) Irrespective of whether there is investigation or not, if a company finds that an employee is not suitable for the position he is holding, then it can demote such employee.
c) Oriental Threads Ltd. cannot reduce the rank of Mr. Gopal Prasad from Joint Manager to Assistant Manager during the period when investigation is continuing without seeking approval of the NCLT for which an appln. needs to be made which shall be disposed of within next 30 days.
d) Oriental Threads Ltd. cannot reduce the rank of Mr. Gopal Prasad from Joint Manager to Assistant Manager during the period when investigation is continuing without seeking approval of the CG for which an application needs to be made which shall be disposed of within next 30 days.

Question:6 [Section: 223]

While conducting an inspection of JupiterRise Portraits Ltd. under Section 207 of the Companies Act, 2013, the inspector, Mr. Suneet Prabhu noticed various irregularities which were committed while handling business affairs of the company. Mr. Suneet Prabhu sought necessary explanations from the Directors of JupiterRise Portraits Ltd. regarding those irregularities who furnished necessary explanations. Thereafter, Mr. Suneet Prabhu prepared the Inspection Report under Section 208 for onwards submission. You are required to choose the correct option from those given below as to whom the inspection report shall be submitted and whether Mr. Suneet Prabhu, as inspector has the right to make recommendations for further investigation?

a) The Inspection Report as prepared by Mr. Suneet Prabhu shall be submitted to the NCLT and he, as Inspector, has a right to make recommendations for further investigation provided he has given his reasons in support for such recommendations.
b) The Inspection Report as prepared by Mr. Suneet Prabhu shall be submitted to the ROC and he, as Inspector, has a right to make recommendation for further investigation provided he has given his reasons in support for such recommendations.
c) The Inspection Report as prepared by Mr. Suneet Prabhu shall be submitted to the CG and he, as Inspector, has a right to make recommendations for further investigation provided he has given his reasons in support for such recommendation.
d) The Inspection Report as prepared by Mr. Suneet Prabhu shall be submitted to the Serious Fraud Investigation Office (SFIO) and he, as Inspector, has a right to make recommendations for further investigation provided he has given his reasons in support for such recommendation.

Answers:	5.	(c)	6.	(c)

Question:7 [Section:206]

Sunder Cosmetics Limited was served a notice by the jurisdictional ROC to produce at his office for inspection of certain more books of accounts, other books, papers and explanations, etc. at 11 A.M. on January 5, 2022. Choose the applicable option from those given below that indicates the reason for such inspection by the concerned ROC of Companies:

a) Since no information or explanation was furnished by Sunder Cosmetics Limited to the ROC within the time specified in the earlier notice issued by him.
b) Since ROC of Companies, on an examination of the documents furnished by Sunder Cosmetics Limited, was of the opinion that the information or explanation furnished by the company was inadequate.
c) Since ROC was satisfied on a scrutiny of the documents furnished by Sunder Cosmetics Limited, that an unsatisfactory state of affairs existed in the company and the information or documents so furnished did not disclose a full and fair statement of the information required.
d) All of the above.

Question:8 [Section:210]

At an Extra-ordinary General Meeting of Ravi Share-brokers Limited, held at its Registered Office situated at Rajendra Place, New Delhi, the shareholders passed a special resolution to the effect that the affairs of the company ought to be investigated. Ravi Share-brokers Limited, thereafter, submitted the special resolution so passed to the CG for further action. Under the given situation, you are required to select the appropriate option from those given below:

a) Power of the CG to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is discretionary and therefore, it may or may not order an investigation.
b) Power of the CG to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is mandatory and therefore, it shall order an investigation.
c) CG is not empowered to pass order of investigation in case of non-government companies and therefore, no order of investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company shall be ordered.
d) Power of the CG to order an investigation into the affairs of Ravi Share-brokers Limited can be initiated just on request of the company.

Answers:	7.	(d)	8.	(a)

Question:9 [Section:206]

Prakash, the Production Manager of Saharanpur based Garima Sugar Mills Limited, a company incorporated in the year 2001, proceeded on superannuation on October 30, 2019, handing over charge of his department to Aniket, the newly appointed Production Manager. It so happened that after his retirement Prakash received a notice from the jurisdictional ROC requiring him to furnish certain information and explanation regarding production of sugar pertaining to the FYs 2017-18 and 2018-19. However, Prakash did not furnish any information to the ROC since he was no more an employee of Garima Sugar Mills Limited. Choose the appropriate option from the four givens below:

a) Since the information required by the ROC relates to the FYs 2017-18 and 2018-19 when Prakash was serving Garima Sugar Mills Limited as Production Manager, he is liable to furnish the requisite information.
b) Though the information required by the ROC relates to the FYs 2017-18 and 2018-19 but at the time of seeking information, Prakash is not serving Garima Sugar Mills Limited as Production Manager and therefore, he is not liable to furnish the requisite information.
c) Though the information required by the ROC relates to the FYs 2017-18 and 2018-19 but at the time of seeking information, Prakash is not serving Garima Sugar Mills Limited as Production Manager and therefore, Aniket, the current Production Manager, is liable to furnish the requisite information.
d) Though the information required by the ROC relates to the FYs 2017-18 and 2018-19 but at the time of seeking information, Prakash is not serving Garima Sugar Mills Limited as Production Manager and therefore, Vignesh who worked as foreman under Prakash and is still in employment, is liable to furnish the requisite information instead of Aniket, the newly appointed Production Manager.

Question:10 [Section:212]

Under the garb of cement business, some of the directors of Royal Cement Limited, a company incorporated in the year 2001 and having its factories at Rohtak and Bhiwani, were involved in several illegal activities. In such a situation, on receipt of a report of the ROC or inspector under Section 208 or in the public interest or on request from any Department of the CG or a State Government, the CG may, by order, assign the investigation into the affairs of Royal Cement Limited to the Serious Fraud Investigation Office (SFIO). In addition to the above bases, there is one more basis which may prompt the CG to assign the investigation to the Serious Fraud Investigation Office (SFIO). From the following 4 options, choose such appropriate basis for assigning the investigation to the SFIO.

a) On intimation through an Ordinary Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.
b) On intimation through a Special Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.
c) On an intimation received from certain senior employees of Royal Cement Limited that the affairs of the company are required to be investigated.
d) On an intimation received from certain ex-directors of Royal Cement Limited that the affairs of the company are required to be investigated.

Answers:	9.	(a)	10.	(b)

Question:11 [Section:206]

Mr. Dinesh, Finance Manager of Sarvottam Steel Limited got retired on May 30, 2019. After examination of the financial statements of Sarvottam Steel Limited for the year ended 31st March 2019, the jurisdictional ROC observed certain serious irregularities in writing off huge amounts of bad debts and no satisfactory explanation was provided for such write-off by the company. In such a situation, the ROC seeks some explanation from the company as well as Mr. Dinesh, ex-Finance Manager and therefore, respective notices were served in this respect. Can the ROC seek explanation from Mr. Dinesh after his retirement?

a) Since Mr. Dinesh is no more in the employment of Sarvottam Steel Limited, he cannot be called upon by the ROC to furnish the requisite explanation.
b) Though Mr. Dinesh is no more in the employment of Sarvottam Steel Limited, yet he can be called upon by the ROC to furnish the requisite explanation through a written notice served on him, but only within a period of one year from the date of his retirement.
c) Though Mr. Dinesh is no more in the employment of Sarvottam Steel Limited, yet he can be called upon by the ROC to furnish the requisite explanation through a written notice served on him, but only within a period of 180 days from the date of his retirement.
d) Though Mr. Dinesh is no more in the employment of Sarvottam Steel Limited, yet he can be called upon by the ROC to furnish the requisite explanation through a written notice served on him without any limit as to the time period.

Question:12 [Section:210]

Utility Transporting Services Ltd., having its registered office at Connaught Place, New Delhi, was incorporated on 15th July 2020. Recently, some of the shareholders of Utility Transporting Services Ltd. came to know that certain transactions entered into by the co. were not in accordance with the provisions of the Cos Act, 2013 and were also prejudicial to the interest of co. and its members. Accordingly, they decided to make an application to the CG to conduct investigation into affairs of the company by appointing an Inspector under the provisions of the Cos Act, 2013. Will the application of these shareholders, if made, be acceptable under the relevant provisions of Cos Act, 2013

a) The shareholders of a company do not have any right to make an application to the CG for conducting an investigation into the affairs of company u/s 210 of Companies Act, 2013.
b) The shareholders of a company, after passing a special resolution at the General Meeting, have a right to make an application to the CG for conducting an investigation into the affairs of the company under Section 210 of the Companies Act, 2013.
c) The shareholders of a company, even without passing a special resolution, have a right to make an application to the CG for conducting an investigation into the affairs of the company under Section 210 of the Companies Act, 2013, when it is suspected that the affairs of the company are not managed in the interest of the company as well as the shareholders.
d) The shareholders of a company, even after passing a special resolution in the General Meeting, have no right to make an application to the CG for conducting an investigation into the affairs of the company under Section 210 of the Companies Act, 2013.

Answers:	11.	(d)	12.	(b)

The End

STUDENT'S NOTES:

Definitions

Compromise: Peaceful and Willful settlement of a dispute by mutual adjustment and concession
Existence of dispute is a key for making compromise.
Arrangement: There is no dispute, but arrangement modifies rights.

Sec 230- Power to compromise or make arrangement with Crs. & Mem.

1. Where a Scheme of Compromise and Arrangement ("Scheme") is proposed between:

   Co. and its creditor, or | Co. and its members

   The Tribunal may on an application by:

   Company | Creditors | Members | In case co. is wound up - Liquidator

   Order a meeting of the creditors or members to be - Called, Held and Conducted
   Note- Arrangement includes Reorganization of share capital (E.g., Consolidation/ Division)

2. Applicant above shall disclose the following to the Tribunal:
   - Material Facts related to company:

     Latest financial Position | Latest Auditor's Report | Pendency of any investigation.

   - Reduction in share capital if any, included in the scheme
   - Any scheme of Corporate Debt Restructuring (CDR) consented by > = 75% of Secured Creditor in value including [VSCAR]:
     - Creditor Responsibility Statement in Form CAA-1
     - Safeguards for protection of other Secured Creditors and Unsecured creditors.
     - Auditor's report that funds required after CDR shall confirm to liquidity test.
     - A statement that company proposed to adopt CDR guidelines specified by RBI
     - Valuation report of ALL assets by Registered Valuer

3. Where meeting of creditors/members is to be called, the notice of such meeting shall be:
   - All the creditors and members and debenture holders
   - Individually at address registered with company.
   - Accompanied with:
     - a statement disclosing details of the Scheme
     - copy of valuation report and their effect on creditors, members (promotor/otherwise), debenture holders and KMPs
     - effect of Scheme on material interest of directors or debenture trustees

   - At least 30 days prior to meeting, such notice + other documents to be
     - Placed on Website of company, and
     - If listed company, SEBI and Stock Exchange's website, and
     - Published in Newspaper (English and Vernacular)

4.

Notice shall provide for voting either:	Objections to Scheme can be only by:
i. at the meeting in person or proxy or ii. postal ballot (within 1 month) for adoption of Scheme	i. Members having > = 10% of PUSC or ii. Creditors having debts outstanding >= 5% of total debts

5. Notice + Documents to be sent to:

• CG • Income Tax Auth • RBI	• SEBI • Recognized Stock Exc • Official Liquidator	• ROC • Competition Commission of India • Other likely to be affected

Require them to make representation within 30 days of receipt of notice. Failing which, presume no representation.

6. At the meeting: Majority of person representing 3/4th in value agree to the Scheme [Present and voting] + Tribunal by order sanctions such scheme = Scheme shall be binding on: Creditors, Member, Company, Liquidator and Contributories

Note - Where the scheme is required to be approved by members, Pref. SH also to be considered

7. Order of Tribunal shall provide for the following:

Where Scheme includes coversion of PS in ES, option to PSH to obtain arrears of dividend in cash/equivalent ES	Protection of any class of creditors	If Scheme results in variation of rights, effect u/s 48	If Scheme is agreed by Crs., proceedings before BIFR shall abate	Other matters incl. exit offers to dissenting SH

No Scheme shall be sanctioned by Tribunal unless certificate from company's auditor that proposes accounting treatment for Scheme is in conformity with AS u/s 133 is filed with Tribunal

8. Order of Tribunal - File with ROC within 30 days
9. Tribunal may dispense with calling of meeting of Crs. ~~and members~~ if > = 90% of Crs in value agree and confirm to the Scheme by affidavit.
10. No Scheme in respect of buy back of sec. shall be sanctioned unless in compliance with Sec 68.
11. Scheme may include takeover offer. In case of listed company- Comply with SEBI regulations
12. Aggrieved party - Make an application to Tribunal (not NCLAT)

Note: Sec 66 - N.A. to reduction in SC if such reduction is in pursuance of Tribunal's order

Sec 231- Power of Tribunal to enforce compromise or arrangement.

1. Where tribunal sanctions Scheme u/s 230, it shall have power to:
   i. Supervise the implementation of such Scheme
   ii. Give such direction or make such modification as may be necessary for proper implementation

2. Where NCLT is satisfied that the Scheme cannot be implemented with or without modification + Company unable to pay debt as per Scheme = Tribunal shall order WUP of co. (deemed to be order u/s 273)

Sec 232- Merger and Amalgamation of Companies

1. Where an application u/s 230 is made to Tribunal and it is shown that such application is:
   i. in connection with scheme of reconstruction involving merger/amalgamation, and
   ii. involves transfer of whole or part of undertaking, property or liabilities (U/P/L) of any company (TOR company) to another company (TEE company) or divided among two or more companies,

   Tribunal shall order for meeting of Creditors/Members to be called, held and conducted and provision of Sec 230(3) to (6) shall apply mutatis mutandis.

2. Merging cos (TOR) to circulate the following for meeting of Crs/Mem. (in addn. to 230(3)) [TEVAR]
   a. Draft of proposed Terms drawn up and adopted by BOD
   b. Confirmation that draft is filed with ROC
   c. Report (adopted by BOD)
      - explaining Effect of Scheme on shareholders (Promoters/otherwise) or KMP
      - laying out share exchange ratio and specify valuation difficulties
   d. Expert's report regarding Valuation
   e. Supplementary A/C statement if last annual accounts relates to FY ending 6m before the first meeting summoned for approving this Scheme

3. Tribunal may, by order, sanction Scheme & make prov. for following matters [DIL DENA LOD R]:

Gist	Detail
Date of Transfer	Transfer of whole or part of U/P/L to TEE company on date as determined by parties unless Tribunal decides otherwise (reason in writing)
Instruments	Allotment by TEE co. of shares/debentures or other instrument as per scheme Provided that, TEE co. shall not, as a result of Scheme, hold any shares in its own name or in the name of any trust and any such shares shall be cancelled;
Legal proceeding	Contn. by/against TEE co. of legal proceeding pending by/against TOR co.
Dissolution	Dissolution without WUP of TOR company
Dissenting	Provisions to be made for person dissenting from such Scheme
Non Resident SH	Where Share is held by NR as per FDI norms as per law, allotment of shares of TEE to such SH shall be in the manner specified in order
Employees	Transfer of the employees of TOR to TEE company
Listed	Where TOR is listed and TEE is unlisted: 1. TEE shall remain unlisted unless it gets listed 2. If SH of listed company decides to opt out, provision for payment of value of shares as per pre-determined price formula Provided that payment under this clause should not be < As specified under SEBI Regulation
Authorised SC	Fees paid by TOR on its ASC shall be available for set off by TEE company
Other	Such incidental, consequential and supplemental matters

No Scheme shall be sanctioned by Tribunal unless certificate from company's auditor that proposed accounting treatment for Scheme is in conformity with AS u/s 133

4. If Scheme provides for transfer of property free from any charge, such property shall be transferred free of charge.

5. Certified copy of order – ROC – Within 30 days
Failure to file with ROC – Co. & OID – Penalty of Rs. 20,000 + Rs. 1,000/day upto Rs. 3L [232(8)]

6. Scheme to clearly indicate an appointed date for the Scheme to be become effective and such Scheme shall be deemed to be effective from such date.

7. Company to file statement with ROC → Every year until completion of scheme → Certified by CA/ Cost Accountant/CS showing compliance with the order of tribunal

Explanation - Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

Section 234: Merger or Amalgamation of Company with Foreign Company

Unless otherwise specified in any other law, the prov. of this chap shall mutatis mutandis apply to

Co. incorporated under this Act + Co. incorporated in countries as may be notified by CG

Provided that CG + RBI may make Rules in connection with M&A under this section

A foreign co. may merge with a co. registered under this Act or vice versa subject to following:
1. Prior approval of RBI
2. T&C of Scheme to provide for payment of considn. to SH in Cash/Depository rect. or partly both

Note – For this section, foreign company doesn't mean the foreign company as per 2(42). It means any company/ BC incorporated outside India whether having a place of business in India or not.

Sec 233- Merger or Amalgamation of Certain Cos. [Fast track mode of M&A of certain cos.]

1. Notwithstanding provision u/s 230 and 232, scheme of M&A between:
   - Two or more small companies
   - Holding company and its Wholly own subsidiary company
   - Such other class of cos. as may be prescribed

Rule 25 of Companies (Compromise, Arrangement and Amalgamation) Rules, 2014):
M&A between the following companies can be done u/s 233:
1. Two or more start-up companies
2. One or more start up companies with one or more small companies [Amendment]

may be entered into, subject to all the following condition:
i) Notice inviting obj./suggestion within 30 days to proposed Scheme is issued by TOR+TEE cos
   a. to ROC and Official Liquidator (OL)
   b. to Person affected by such scheme

ii) Objections/Suggestions received are to be considered in General Meeting of respective companies and scheme is approved by members at General Meeting holding > = 90% of total no. of shares

iii) Each of the company involved in merger files "Declaration of Solvency" with concerned ROC

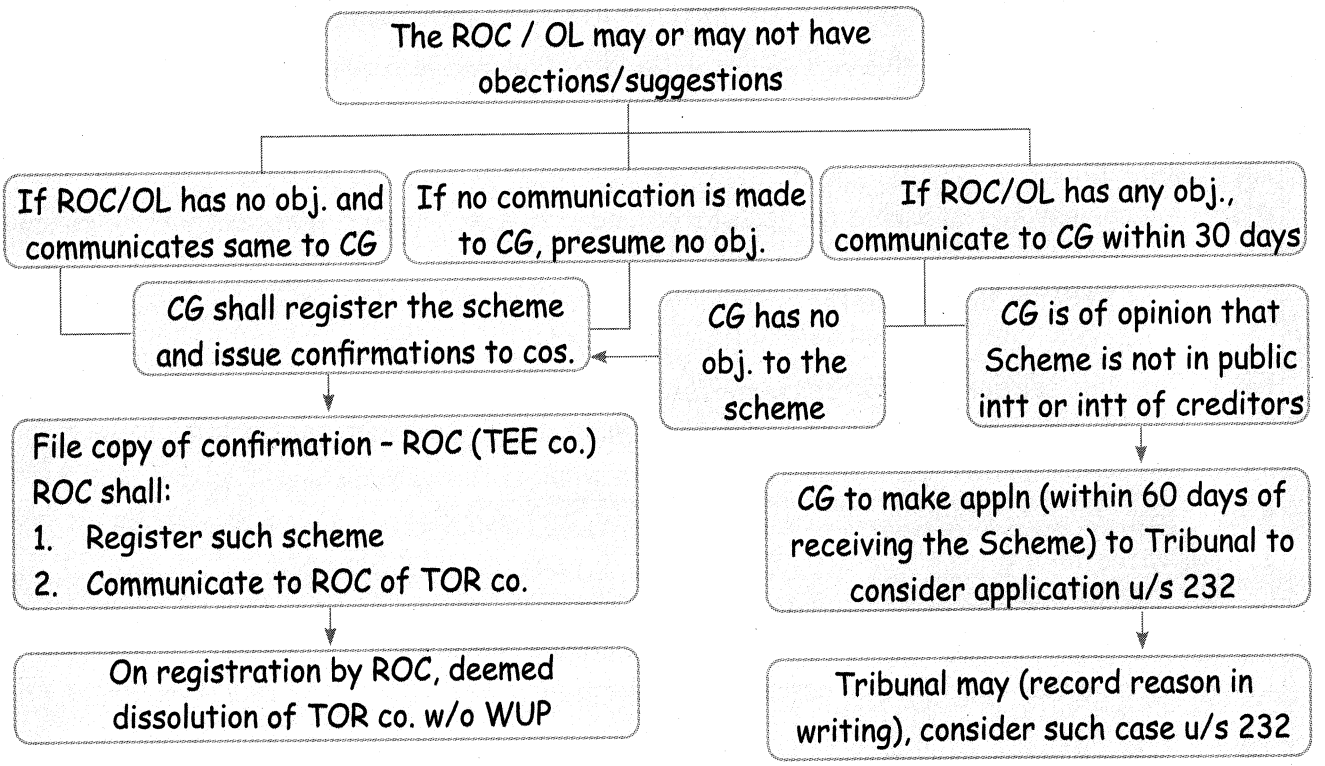
iv) Scheme approved by Creditors – Majority representing 9/10th in value of respective companies
Approval of creditors can be:
   a. Either in a meeting (by giving notice of 21 days along with scheme)
   b. Or approval in writing

Note – Above steps have to be complied by all companies involved independently. After the above steps, necessary steps have to be taken only by TEE company

2. TEE company – File a copy of approved scheme with

CG	ROC	OL

3. On receipt of the above copy of scheme:



4. Effects of registration of scheme by ROC:
   a. Transfer of properties or liabilities of TOR company to TEE company
   b. Charges on the property of TOR company applicable and enforceable on TEE Company (Tribunal not involved so can't free up property from charges as u/s 232)
   c. Legal proceeding by/against TOR company to be continued by/against TEE company
   d. Unpaid amount to dissenting SH or creditors shall become liability of TEE company

TEE company shall not, as a result of scheme, hold any shares in its own name or in the name of any trust and any such shares shall be cancelled;

5. TEE company shall file an application with ROC + scheme registered alongwith Revised Authorised Share Capital (ASC) and pay fees due on revised capital.
   Provided that Fees paid by TOR company on its ASC shall be available for set off by TEE company

A co. covered under this sec may use the prov. of sec 232 for the approval of any scheme for M&A.

Note - Fast track merger is optional in nature and not a compulsion to the company If a company covered under this section wants to make application for merger as per section 232, it can do so.

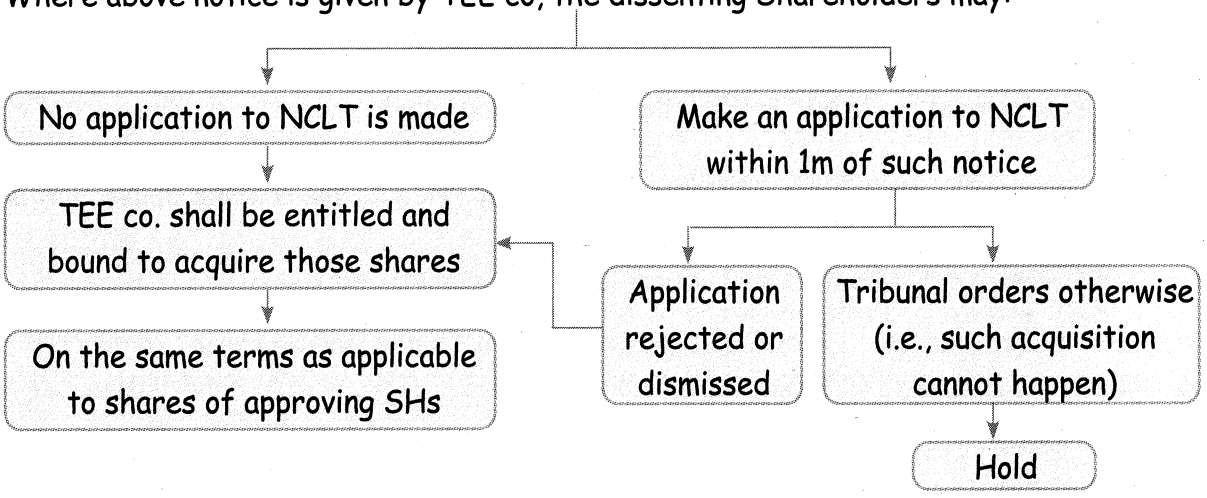
Sec 235- Power to Acquire Shares of SHs Dissenting from Scheme or Contract App. by Majority

[Imagine TOR company to be Vodafone and TEE company to be Jio i.e., Jio wants to take over Vodafone]

1. Offer to dissenting Shareholders
   - Where a scheme/contract involving transfer of shares in TOR company to TEE company
   - has been approved by shareholders* > = 9/10th of value within 4m of offer by TEE Company
   - TEE. co. may, within 2m after expiry of said 4m
   - Give NOTICE to dissenting SH that it desires to acquire his shares [Form No. CAA 14].

   *Shareholders other than shares held by nominee of TEE company/subsy company

2. Where above notice is given by TEE co, the dissenting Shareholders may:



3. Manner of acquisition of shares of dissenting Shareholders:
   TEE company shall send to TOR company:
   a. Copy of the notice (sent to dissenting Shareholders)
   b. Instrument of trf. to be executed by person appointed by TOR co. on behalf of dissenting SH & Pay/trf. the amt, to TOR co., representing price payable by the TEE co. to dissenting SHs.

   On receipt of above, the TOR company shall:
   a. Register TEE company as holder of those shares and
   b. Within 1m of regn., inform dissenting SH of such regn. & of receipt of consideration

4. Sum received by the TOR company shall be:

Paid into a separate bank account	Held by the company in trust of dissenting SHs	Disbursed to entitled SH within 60 days

Now please go and read Sec 238 and then come back to Sec 236!

Sec 236- Purchase of minority shareholding

(For this section, TOR company means Company whose shares are being transferred)

1. In the event of:

   An acquirer becoming holder of > = 90% of Issued ESC, or

   Any person becoming 90% majority or holding > = 90% of Issued ESC, by virtue of amalgamation, share exchange, conversion, etc.

   Such acquirer/person shall notify the co. (not minority) of their intention to buy remaining ES

2. The acquirer/person shall offer the minority shareholders for buying their ES at a price determined on valuation by RV as per the Rules (there was no requirement of RV u/s 235)

3. Suo moto offer by minority SHs - Without prejudice to above provisions, minority SHs may offer to the majority SHs to purchase the minority ESH of the co. at price determined as per Rules.

4. The majority SHs shall deposit an amount = Value of shares to be acquired:
   - In a separate bank account
   - Operated by TOR Company for at least 1 year for payment to minority shareholders
   - Amount to be disbursed to entitled Shareholders within 60 days

     Provided that – Such disbursement shall continue for 1 year if:
     - For some reason, disbursement had not been made within 60 days, or
     - Disbursement made but SH fails to receive/claim such amount (E.g., Cheque not encashed)

5. TOR co. to act as "Transfer Agent" (i.e., Receive & Pay Price ; Take & Make delivery of shares)

6. If physical shares not delivered to TOR co. within time specified:

   such share certificates deemed to be cancelled

   Co. shall be authorized to issue shares in lieu thereof

   and make payment to minority on such cancellation

7. Where any of the minority shareholder is dead or ceases to exist and their heir, successors or assignees have not been brought on record - The right of such shareholders to make offer for sale shall continue to be available for 3 years from date of minority acquisiton by majority.

8. Where shares of minority Shareholders have been acquired and as on or prior to date of trf. following such acquisition, the Shareholders holding > = 75% minority ESH negotiate on a higher price for any trf. of shares held by them without disclosing the fact or likelihood of trf. taking place on basis of such negotiation, majority Shareholders (majority of minority) shall share such additional compensation with such minority Shareholders on a pro rata basis

9. When a SH or the majority equity SH fails to acquire full purchase of the minority equity SHs, then, provisions of this section shall continue to apply to residual minority equity SHs

Sec 237- Power of CG to Provide for Amalgamation of Companies in Public Interest

1. Amalgamation order by CG:
   - Where CG is satisfied that, it is essential in public interest, to amalgamate two or more cos.

- It may be notification in Official Gazette
- Order for amalgamation of such companies into single company and specify rights & liabilities of such single company

2. Such order may provide for:
   - Continuation by/against TEE co. of any legal proceedings by/against TOR co.
   - Such other provision as may be necessary to give effect to amalgamation

3. Every mem/creditors (including Debenture Holder) of TOR co. to have same interest/rights in TEE Company In case if the interest/rights in TEE co. is less than interest/rights in TOR co., he shall be entitled to compensation (to be assessed by prescribed authority + Published in Official Gazette) and such compensation shall be paid to concerned creditors/members by TEE co.

4. Person aggrieved by above assessment of compensation may make an appeal to Tribunal within 30 days of publication thereof in OG. Thereupon, Tribunal shall make assessment of compensation.

5. No order for amalgamation shall be made unless:
   a. Copy of draft orders sent to each concerned company
      [Concerned Company to file objections or suggestion within period specified by CG (not < 2m)
   b. Time for preferring appeal u/ss 4 has expired or where appeal is pref., such appeal is disposed
   c. CG has considered & made modn. to draft order (discretion of CG) as per obj/ sugg by concerned co.

6. Copies of every order under this section to be laid before each House of parliament

Sec 238: Registration of Offer of Schemes Involving Transfer of Shares

In relation to every offer of "Scheme involving transferred of shares u/s 235", every circular containing such offer and recommendation by directors of TOR co. to accept such offer shall be:

a. Accompanied by prescribed information
b. Contain a Statement showing necessary steps that TEE co. has taken to ensure necessary cash shall be available.
c. Registered with ROC prior to issuing it.

ROC may (reason record in writing) refuse to register such circulars if information is missing or gives false impression. If ROC refuses to register – Appeal may be filed with Tribunal

If circular issued without such registration – Director shall be punishable with fine of Rs. 1 lakh

Sec 239: Preservation of Books and Papers of Amalgamated Companies

The B&P of amalgamated co. (dissolved co.) shall not be disposed of w/o prior permission of CG

Before granting permission, CG shall appoint a person to examine B&P to ascertain whether they contain evidence of commission of offence in connection with:

- Promotion/formation or management of affairs of company
- Amalgamation or acquisition of shares

Sec 240: Liability of Officers in Respect of Offences Committed Prior to M&A etc.

Officer shall continue to be liable after such merger/amalgamation

The End

Multiple Choice Questions

Question:1 [Section:230]

It is imperative that the Scheme of Compromise or Arrangement needs to be approved by the members or class of members or creditors or class of creditors. From the given options, select the one which correctly indicates the minimum requirement for such approval:

a) The Scheme of Compromise or Arrangement shall be approved by more than 50% majority in number of members or class of members or creditors or class of creditors, as the case may be, who are present and voting at the meeting.
b) The Scheme of Compromise or Arrangement shall be approved by more than 75% majority in value of members or class of members or creditors or class of creditors, as the case may be, who are present and voting at the meeting.
c) The Scheme of Compromise or Arrangement shall be approved by more than 75% majority in number of members or class of members or creditors or class of creditors, as the case may be, who are present and voting at the meeting.
d) Both (a) and (b) together.

Question:2 [Section:233]

Orange Communications Limited is planning to merge with itself its Wholly-owned Subsidiary (WOS) Vaartalaap Tech Limited under the scheme of fast-track merger. After due approval of the Merger Scheme, the same was filed with the CG (CG) for its approval. However, the CG is of the opinion that the said Merger Scheme is not in the public interest. In case such an opinion is formed, then with which authority the CG can file an application stating its objections?

a) The CG cannot file an application in this respect except to decide the matter on its own.
b) The CG can file an application before the NCLT stating its objections.
c) The CG can file an application before the Delhi High Court stating its objections.
d) The CG can file a 'Special Leave Petition' before the Supreme Court stating its objections.

Question:3 [Section:239]

Choose the correct statement from those given below as regards the preservation of books and papers of an amalgamated company:

a) Books and papers of an amalgamated company can be disposed of any time after one year with the permission of Board of Directors of transferee company.
b) Books and papers of an amalgamated company can be disposed of with the permission of CG after five years.
c) Books and papers of an amalgamated company cannot be disposed of without obtaining prior permission of the CG.
d) Books and papers of an amalgamated company cannot be disposed of.

Answers:	1.	(d)	2.	(b)	3.	(c)

Question:4 [Section: 235(4)]

Mr. Aman is a registered holder of 15,000 equity shares of Kanha Textiles Limited whose issued capital is Rs. 1,00,00,000 divided into 10,00,000 equity shares of Rs 10 each. He was offered a price, as determined by the registered valuer, for purchase of his shares by the majority shareholders. Since he has agreed to the proposal of selling his shares at the offered price, you are required to select the correct option from those given below that indicates the period within which such amount shall be disbursed to him:

a) Maximum within 15 days, such offered amount shall be disbursed to him.
b) Maximum within 30 days, such offered amount shall be disbursed to him.
c) Maximum within 60 days, such offered amount shall be disbursed to him.
d) Maximum within 90 days, such offered amount shall be disbursed to him.

Question:5 [Section:233]

Abhik Trading and Marketing Company Limited is wholly owned subsidiary (WOS) of Eternal Cosmetics Limited. Keeping in view the expansion plans, Swapna and Shilpa, the two Directors of latter company are contemplating to make an application before the appropriate forum for merger of the subsidiary company Abhik Trading and Marketing Company Limited with holding company Eternal Cosmetics Limited under Section 232 of the Companies Act, 2013. However, Vibha Kumar, the Company Secretary of Eternal Cosmetics Limited is of the opinion that the merger between a holding and subsidiary company should have been undertaken as per the provisions of Section 233 which states procedure for fast-track merger and not under Section 232. Which statement, out of the four given below, is applicable in the above stated situation:

a) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, holds ground since merger between a holding and subsidiary company should have been undertaken as per the provisions of Sec 233 of Co. Act, 2013 which states procedure for fast-track merger.
b) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since merger between a holdi ng and subsidiary company is validly possible only as per Section 232 of the Companies Act, 2013.
c) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since the provisions given for fast-track merger under Section 233 of the Companies Act, 2013 are of the optional nature.
d) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since the provisions given for fast-track merger under Section 233 of the Companies Act, 2013 can be applied for merging only small companies.

Answers:	4.	(c)	5.	(c)

Question:6 [Section:232]

NCLT has passed an order on January 25, 2021 approving the merger of two companies, namely, RGL Engineers Private Limited and RVGL Machines Limited. The merger order of the NCLT, which shall become effective from March 2, 2021, has been received by RGL Engineers Private Limited on January 27, 2021. Out of the following four options which one is the most appropriate as regards filing of the certified copy of the order by RGL Engineers Private Limited with the jurisdictional ROC of Companies?

a) RGL Engineers Private Limited shall file the certified copy of the order with the jurisdictional ROC latest by February 24, 2021, being one month from the date of passing of order by the NCLT.
b) RGL Engineers Private Limited shall file the certified copy of the order with the jurisdictional ROC latest by February 26, 2021, being thirty days from the date of receipt of the order passed by the NCLT.
c) RGL Engineers Private Limited shall file the certified copy of the order with the jurisdictional ROC latest by April 1, 2021, being thirty days from March 1, 2021, i.e. the date from which the order of the NCLT shall be effective.
d) RGL Engineers Private Limited shall file the certified copy of the order with the jurisdictional ROC by April 26, 2021, being three months from the date of receipt of order passed by the NCLT.

Question:7 [Section:239]

State which statement is correct as regards the preservation of books & papers of amalgamated co:

a) It can be disposed any time after 1 year with permission of Board of Dirs. of Transferee Company.
b) It can be disposed with permission of Central Government after 5 years
c) Not be disposed of without prior permission of the Central Government
d) It cannot be disposed.

Question:8 [Section:233]

Kiara Limited holds 77% of the shares of Sunny Limited. Kiara Limited makes an application for merger of Holding and Subsidiary Company under section 233 - Fast Track Merger of the Companies Act, 2013. The legal counsel of Kiara Limited states that company cannot apply for merger under section 233 of the said Act. He further stated that company shall have to apply for merger as per section 232 of the Act i.e. Merger and Amalgamation of Companies. State the correct statement in terms of the validity of the difference in the opinion of the legal counsel.

a) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between only small companies.
b) Opinion of the legal counsel of Kiara Limited is invalid as merger shall be possible only as per section 233 between Holding and Subsidiary Company.
c) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between Holding and wholly owned subsidiary.
d) Opinion of the legal counsel of Kiara Limited is invalid as merger of Holding and Subsidiary company is possible under both section 232 and section 233.

Answers:	6.	(b)	7.	(c)	8.	(c)

Question:9 [Section:230]

Navneet Textiles Limited, with a view to save itself from the looming liquidation, proposed a scheme of compromise to its creditors which valued Rs. 75,00,000. In the process, the company filed the said Scheme with the jurisdictional NCLT. From the following options, select the one which correctly depicts the minimum strength of creditors in value that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors:

a) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 70%.
b) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 80%.
c) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 90%.
d) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 95%.

Question:10 [Section: 230]

Sectoral Regulators shall be able to make representation, if any, within _____ from the date of receipt of Notice of the Meeting to be called, held and conducted by the NCLT in respect of a scheme of compromise or arrangement.

a) 45 days. b) 30 days.
c) 60 days. d) 90 days.

Question:11 [Section:230]

In respect of a scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT, a meeting of the shareholders was held on the specified date and time and at the designated place. The company had 1200 shareholders holding equity shares of Rs. 1,20,00,000 (12,00,000 equity shares of Rs.10 each) who all voted using the prescribed modes. However, 100 shareholders holding Rs.36,00,000 worth of shares voted against the approval of the scheme of compromise. Choose the correct option from those stated below as to whether the scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT is to be considered as approved or not:

a) The scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT is to be considered as approved since shareholders holding more than one-half worth of shares in value voted in favour of the scheme.
b) The scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT is to be considered as approved since shareholders holding more than fifty-five percent worth of shares in value voted in favour of the scheme.
c) The scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT is to be considered as approved since shareholders holding more than sixty percent worth of shares in value voted in favour of the scheme.
d) The scheme of compromise submitted by Neon ColorPrints Limited to the jurisdictional NCLT is not to be considered as approved by the shareholders.

Answers:	9.	(c)	10.	(b)	11.	(d)

Question:12 [Section: 230]

PentoCure Laboratories Limited, a service provider of diagnostic tests and having paid-up capital of Rs 3,00,00,000 (30,00,000 shares of Rs 10 each), filed a scheme of arrangement with the NCLT. After considering the scheme, NCLT passed an order directing PentoCure Laboratories Limited to conduct a meeting of the shareholders of the company. A notice of meeting was sent to all the 1000 shareholders holding total paid-up capital of Rs 3,00,00,000 i.e., 30,00,000 lakh shares of Rs 10 each. On the date of meeting which was held at the Registered Office of the company, only 580 shareholders holding 21 lakh shares (paid-up value Rs 2,10,00,000) attended the meeting. Out of 580 shareholders, 400 shareholders holding 16 lakh shares (paid-up value Rs 1,60,00,000) voted in favour of the scheme of arrangement as proposed by PentoCure Laboratories Limited and remaining 180 shareholders holding 5 lakh shares (paid-up value Rs 50,00,000) voted against the said scheme. From the following 4 options which one correctly indicates whether the scheme of arrangement gets the required approval of the shareholders of PentoCure Laboratories Limited or not:

a) The scheme of arrangement gets valid approval of the shareholders with requisite majority.
b) The scheme of arrangement does not get valid approval of the shareholders since minimum 60% of shareholders (i.e., minimum 600 shareholders out of total 1000) did not attend the meeting for approving the scheme.
c) The scheme of arrangement does not get valid approval of the shareholders since minimum 70% of shareholders (i.e., minimum 700 shareholders out of total 1000) did not attend the meeting for approving the scheme.
d) The scheme of arrangement does not get valid approval of the shareholders since minimum 80% of shareholders (i.e. minimum 800 shareholders out of total 1000) did not attend the meeting for approving the scheme.

Question:13 [Section: 232]

Vinayak Pharmaceuticals Limited decided to amalgamate Super Medicines Limited and accordingly, an application for amalgamation was submitted to the jurisdictional National Company Law Tribunal (NCLT). If the Tribunal is satisfied that the specified procedure has been complied with, it may, by order, sanction the scheme of arrangement leading to amalgamation and may make provision for various matters. From the following options, choose the one which may find place in the order of arrangement leading to amalgamation made by the Tribunal:

a) Vinayak Pharmaceuticals Limited shall discontinue its legal proceedings pending against Super Medicines Limited after amalgamation
b) Super Medicines Limited shall be dissolved, without winding up
c) On dissolution of Super Medicines Limited, the fee paid by it on its authorised capital shall not be set off against any fees payable by Vinayak Pharmaceuticals Limited on its authorised capital subsequent to the amalgamation
d) Super Medicines Limited shall be dissolved, after winding up

Answers:	12.	(a)	13.	(b)

The End

STUDENT'S NOTES:

Prevention of Oppression and Mismanagement

Introduction: In this chapter, we are going to talk about two things:
(a) Prevention of Oppression and (b) Prevention of Mismanagement

SUMMARY OF CASE LAWS:

Name of the case law	Summary of decision
Foss V. Harbottle	Two principals were established based on this judgement: 1. Proper Plaintiff Rule - Co. and shareholders are two separate identity and individual shareholder cannot sue for wrong doings against the co. 2. Majority Rule which laid down that if the alleged wrong can be confirmed or ratified by a simple majority of members in GM, then in those cases the court will not interfere.
Elder v. Elder & Watson Ltd	Oppression should, at the lowest, involve visible departure from the standards of fair dealing, on which every shareholder who entrust his money to the company is entitled to rely.
Rao (V.M) v. Rajeshwari Ramakrishna	Oppression complained of must affect a person in his capacity as a member. Harsh or unfair treatment in other capacity, (a director or creditor is o/s purview of this chapter)
Ashok Betelnut Pvt Ltd vs. M K Chandrakanth	Continuous losses by company is not oppression against members
Thoman Veddon v. Kuttanad Robber Ltd.	Failure to declare dividend does not amount to oppression
Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R	Consent to be given by a SH is reckoned at the beginning of proceedings. Withdrawal of consent during course of proceeding shall not affect the maintainability of petition
Worldwide Agencies Pvt. Ltd. and another vs. Margaret T. Desor and others	The legal heir of a deceased member is entitled to file a petition under Section 241 of the Act for relief against oppression and mismanagement, even though the name of the deceased member is still recorded in the register of members
Sudha M Singh vs Eagle Cones Pvt ltd	Decision relating to operation of company's bank A/c is a part of managerial power of director & mere fact that director is not being associated with operation of a company bank a/cs does not constitute oppression
Lalita Rajya Lakshmi vs Indian Motor co	Mere Denial of inspection of documents/ books of accounts - whether during the pendency of petition or before it, does not amount to oppression

Sec 241 - Application to Tribunal for Relief in Cases of Oppression, etc.

1. Any member (not director) of company who complains that either:

Affairs of company have been/are being conducted in manner prejudicial to:
1. Public interest
2. Member himself or other members
3. Interest of company, or

Material change (not in interest of Crs/DH or members) in the mgt/control of company has taken place by alteration of:
a. BOD/Manager
b. Ownership of company's share
c. Membership (if no share capital)
and as a result of such change - Affairs are likely to be prejudicial to interest of members.

Such member may apply to Tribunal for order under this chapter subject to Section 244

2. CG may apply to Tribunal if opinion-Affairs of co. is conducted in manner prejudicial to public intt.

3. Where in opinion of CG: [Boring GIF]
   a. Person concerned with management of affairs of company is guilty of fraud, misfeasance or breach of trust
   b. Business of the company is NOT conducted by such person with sound business principle & prudent commerce practices
   c. Company is managed by such person in manner likely to cause serious injury to interests of trade/ industry/business
   d. Business is conducted (by such person):

With intent to defraud creditors/ members/other person	For fraudulent or unlawful purpose	In manner prejudicial to public interest

   CG may initiate a case against such person and refer such to Tribunal.

   Tribunal to then inquire and decide whether such person is fit and proper to hold office of director/ other office connected with management of affairs of company

4. Such person u/ss (3) shall be "respondent" to the application

5. Application u/ss (3) shall:
   a. Include concise statement of circumstance and relevant materials for inquiry as per CG
   b. Be signed and verified as per Code of Civil Procedure, 1908

Concept Clarity Check :

1. Can application be made for oppression that had happened in the past? - Yes.
2. A dir. cannot make application under this section. But in his capacity as shareholders, he can.
3. Shareholder cannot claim that 1 director being paid < the other dir. is an oppression on them.
4. Matter of selection and appt. of dealers of cos. product is not within ambit of Sec 241
5. Oppression does not include mere domestic disputes between dir. and members.
6. Where a person w/o being so appointed, was acting as MD & discharging functions with or w/o knowledge of members, can member file appln. to Tribunal claiming as act of Oppression? - No!
7. Mere Lack of confidence among members themselves resulting in certain acts of irregularities or illegalities can't be held to be oppressive.
8. Writing off bad debts is commercial decision - does not require judicial interference.
9. Power to issue shares should be exercised bonafide in the interest of the company and not benefiting the directors/ any other group. If exercised solely for personal benefits- Tribunal may interfere and prevent directors from doing so. Issue of further shares by the directors for purpose of converting a majority to minority is grave act of oppression

Now go and read Sec 244, then come back to Sec 242!

Sec 242- Power of Tribunals

1. If on receipt of application under section 241, Tribunal is of opinion that:

Affairs is conducted in manner prejudicial to:
1. Public interest
2. Member himself or other members
3. Interest of company

And

Facts would justify passing of WUP order under the grounds that it is Just & Equitable (J&E) to WUP but WUP would unfairly prejudice such members

Tribunal may - With a view to bring end to matters complained off - Pass order as it may deem fit.

2. Without prejudice to generality of above, order may provide for :
   a. Purchase of shares of members by other members or company
   b. In case of purchase of shares by company - Reduction in share capital thereof
   c. Restriction on transfer/allotment of shares of company
   d.

- Termination
- Modification
- Setting Aside

→ Agreement between Co. and MD/other dir./Mgr.
→ Agreement between Co. and any other person*

→ Upon T&C that is J&E in opinion of Tribunal

   *No termination, modification or setting aside of agreement with other person shall be made except after due notice and obtaining consent of parties concerned
   e. Setting aside any action of transfer, delivery, payment etc. relating to a property made within 3 months before date of application u/s 241 which would, if done in case of insolvency, would be deemed fraudulent preference
   f. Removal of MD/manager/other director of the company
   g. Manner of appointment of MD/manager/~~other director~~ in place of removed MD/Mgr.
   h. Manner of appointment of such no. of directors as Tribunal directs to report to Tribunal
   i. Recovery of undue gains made by MD/manager/other dir. during their tenure and manner of utilization of such recovery include transferred to IEPF or repayment to identifiable victims
   j. Regulation of conduct of affairs of company in future
   k. Imposition of cost as it may deem fit
   l. Other matter as may be J&E

Memory technique for above points

Shares (a), (b) (c) | Agreements (d) (e) | MD/Mgr (f) (g) (h) | General(j) (k) (l)

3. Company to file certified copy of NCLT order with ROC within 30 days of order

4. On appln. by any party to proceeding, NCLT may make interim order to regulate conduct of affairs.

On conclusion of hearing of case u/s 241(3), NCLT shall record its decision as to whether the respondent is a fit and proper person to hold office of director or any other office connected with conduct & management of any company. [Section 242(4A)]

5. Where order of NCLT makes alteration to MOA, AOA of company:
   Notwithstanding any other prov. of this Act, the co. shall not have power to make any alteration to MOA/AOA which is inconsistent with order of NCLT except with the leave of Tribunal

   Contravention → Co - Fine - Rs. 1 lakh to Rs. 25 lakhs and OID - Fine - Rs. 25,000 to Rs. 1 lakh

6. Alteration made to MOA/AOA by such order shall have same effect as if duly made as per provision of this Act

7. Certified copy of order altering or giving leave to alter MOA/AOA to be filed with ROC by Company within 30 days*. After such filing, ROC shall register the same.

*Author's Note:
ICAI's interpretation with respect to timelines for filing with ROC seems to be incorrect.
As per Sec 242(7) in Bare Act - A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the ROC who shall register the same

As per ICAI - A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall be filed by the company with the ROC who shall register the same within 30 days after the making thereof.

Note - Director appointed u/s 242 by the Tribunal cannot be removed u/s 169.

Sec 243- Consequence of termination or modification of certain agreements

1. Where order u/s 242 terminates, modifies or sets aside an agreement:
   a. Such order shall not give rise to any claims by any person for damages/CFLO
   b. MD/manager/other director whose agreement is so terminated/set aside shall be disqualified to be appointed as MD/mgr./director for 5 years, except with the leave of Tribunal

      Tribunal shall not grant leave unless notice of intention to apply for such leave is served to CG and CG has been given reasonable OOBH

   Where a person is ordered to be not fit and proper u/s 242(4A), such person shall not hold office of director or other office of management for 5 years. Provided that - CG may, with leave of tribunal, permit such person to hold such office before expiry of 5 years

   Notwithstanding anything, person removed by such order shall not be eligible for CFLO

2. If removed person knowingly continues to act as MD/Manager/Director - Such person and director who is party to such act - Fine upto Rs. 5 lakhs [Amendment]

Sec 244- Rights to apply u/s 241

1. Following members shall have right to apply u/s 241:

Company having share capital – Not less than:	Company not having share capital – Not less than 1/5th of persons on register of members
1. Lower of 100 mem. or 1/10th of total no. of mem. 2. Such members holding 1/10th of issued share capital of company (provided all calls are paid)	

Note:

1. Tribunal may, on appln. on this behalf – Waive off above req. to enable member to apply u/s 241
2. Joint shareholders = One member

2. If members entitled u/ss (1), any one or more may obtain consent (writing) of rest of them and make application on behalf and for benefit of all.

Concept Clarity Check :

1. ABC Ltd. has 8 SHs. Can a member holding < 1/10th of issued SC apply? – Yes (1/10th of mem. = 1)
2. A Ltd has Issued SC of Rs. 5 cr (5L shares of Rs. 100 each) held by 500 mem. 80 mem. applied for such order u/s 244 but 40 mem. later withdrew their application. Will the application be tenable?
   The consent to be given by a shareholder is reckoned at the beginning of the proceedings.
   The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R]
3. Can majority shareholders make application u/s 241? – Yes

Sec 245- Class Action

[N.A. to Banking Companies]

1. Where members/depositors (M/D) are of the opinion that affairs of company are being conducted in manner prejudicial to interest of co, its mem/depositor ~~or public int.~~,
   such (M/D) may file appln [subject to limit u/ss (3)] with Tribunal seeking following order [Restraining Order]:

Restrain company from act which is (a) Ultra vires to MOA/ AOA (b) Breach of provision of MOA/AOA (c) Contrary to prov. of this Act or other law (d) Contrary to any resoln passed by co.	Where a resolution altering MOA/ AOA of company is passed: • Declare void if passed by suppression of material facts / mis-statement • Restrain co./dir. from acting on it	To claim compensation/other suitable action for any fraudulent, unlawful and wrongful act from: • Company and its directors • Auditor incl. audit firm of company (for incorrect/ misleading statement in Audit Report) [Liability shall be of firm as well as each partner involved] • Expert or advisor (for incorrect/ misleading statement to co.)	Seek other remedy as NCLT may deem fit.

2. The Requisite number of (M/D) shall be as follows:

Members	Depositors:
Company having share capital – Not less than: a. Lower of 100 mem. or 5% of total no. of mem. b. Mem. holding such % of issued SC [Unlisted co – 5% ; Listed co. – 2%] (provided all calls are paid) Company not having SC – Not less than 1/5th of persons on register of members	Not less than: a. Lower of 100 dep. or 5% of total no. of dep. b. Such dep. to whom company owes 5% of total deposit

3. While considering application u/ss (1), Tribunal to consider following: [FIVOR]
   a. Whether M/D is acting in good Faith in making such application
   b. Any evidence w.r.t., Involvement of any person other than director/officers of company
   c. Whether cause of action can be pursued by M/D in his Own right rather than class action
   d. Views of M/D who have no personal interest in matter being proceeded hereunder
   e. Where cause of action is an act or omission that is:

Likely to occur:	Already occurred
Whether such act would be: i. Authorized by co. before it occurs ii. Ratified after it occurs	Whether such act is likely to be ratified by company

4. Where application u/s 245 is admitted, Tribunal shall have regard to following:
   a. Serve public notice to all (M/D)
   b. Similar appln in any jurisdiction to be consolidated into single appln. and (M/D) shall choose lead applicant. If M/D unable to come to consensus – NCLT to appoint lead applicant
   c. 2 class action application for same cause not allowed
   d. Cost of exp. of class action – Defrayed by co. or other person responsible for oppressive act

5. Order of NCLT binding on: (a) Co. (b) (M/D) (c) Auditor/Audit firm (d) Expert/Advisors

6. Failure to comply with NCLT order –
   Company – Fine Rs. 5L to Rs. 25L ; OID – Jail upto 3 years and fine – Rs. 25,000 to Rs. 1L

7. In case of frivolous or vexatious application, NCLT may reject application and direct applicant to pay opposition party such cost (not > Rs. 1 lakh)

Sec 246- Application of certain provisions to proceedings under section 241 or section 245

Provisions of sec 337 to 341 (both inclusive) – Apply mutatis mutandis, in relation to application u/s 241 or section 245.

The End

Multiple Choice Questions

Question:1 [Section:241]

The shareholders of Viable Plastic Industries Limited passed a special resolution at the Extra-ordinary General (EGM) of the company to alter the Articles of Association and empower Board of Directors to transfer the shares of any shareholder who competes with the business of the company. Mr. Akshat, one of the minority shareholders of Viable Plastic Industries Limited who was carrying on a competing business of manufacturing plastic bottles and containers as well as marketing them, challenged the validity of the alteration to be made in the Articles of Association and claimed such action as oppression against minority. Which of the option from the following four is applicable in the given situation?

a) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered after following the due process of law.
b) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered in the interest of the company.
c) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is valid since the act complained of is oppressive and prejudicial to the interest of the company.
d) Both (a) and (b)

Question:2 [Section: 244]

Mr. Derek Jonathan, a majority shareholder, represented himself to be the Managing Director of Floyd Ceramics Ltd., and also discharged the functions in the capacity as Managing Director. However, he was not formally appointed as Managing Director of Floyd Ceramics Ltd. A group of 6 members, holding 1/12th of the issued share capital, which amounted to 1/10th of paid-up share capital of the company filed an application with the NCLT claiming that such an act of Mr. Derek Jonathan constituted oppression. The total number of members of Floyd Ceramics Ltd. are 72. Which of the following statements is the most appropriate one in the above-mentioned situation?

a) The group of 6 members cannot file an application with NCLT as the strength of members is less than 1/10th of total number of members of Floyd Ceramics Ltd. However, after filing the application with NCLT, it is within the discretion of NCLT to allow the application to be filed even with fewer number of members.
b) The group of 6 members cannot file an application with NCLT since the members hold less than 1/10th of the issued share capital of the company.
c) The group of 6 members cannot file an application with the NCLT since the given fact pattern does not constitute oppression.
d) Since the group of six members holds 1/10th of the paid-up share capital of the company, they can file an application with the NCLT.

Answers:	1.	(d)	2.	(c)

Question:3 [Section 243]

The members of H Limited apply to the NCLT under section 241 of the Companies Act, 2013 on grounds of oppression and mismanagement by the Board of Directors. The NCLT passed an order removing the Managing Director of the Company, Mr. M. One year later, Mr. M is now a changed man and the Board of Directors want Mr. M back, as Manager of the company. The Board of Directors seek your expert opinion as to what they should do to get Mr. M appointed as the Manager of the Company. State your opinion, in light of the relevant provisions of the Companies Act, 2013.

a) Mr. M cannot be appointed as the Manager of the company for a period of 5 years from the date of order of the NCLT and the only solution available in this regard to the Board is to wait for 4 more years.
b) Mr. M can be appointed as Manager if the special approval of the Central Government is obtained.
c) Mr. M can be appointed by way of making an application to the NCLT.
d) None of the above.

Question:4 [Section: 244]

Meenu Automotive Private Limited, whose issued and paid-up share capital is Rs 1,00,00,000 consisting of 1,00,000 lakh equity shares of Rs 100 each, has 150 shareholders as per its Register of Members. Some of the shareholders are contemplating to file an application before the NCLT alleging various acts of fraud and mismanagement. Which of the following options correctly indicates as to who can apply to the NCLT for relief against oppression and mismanagement happening in a company having share capital:

a) Minimum 125 or not less than 1/5th of the total number of members, whichever is more, or any member or members holding at least 1/5th of the issued share capital on which all the calls have been paid.
b) Minimum 50 or not less than 1/10th of the total number of members, whichever is more, or any member or members holding at least 1/15th of the issued share capital on which all the calls have been paid.
c) Minimum 75 or not less than 1/5th of the total number of members, whichever is less, or any member or members holding at least 1/20th of the issued share capital on which all the calls have been paid.
d) Minimum 100 or not less than 1/10th of the total number of members, whichever is less, or any member or members holding at least 1/10th of the issued share capital on which all the calls have been paid.

Answers:	3.	(d)	4.	(d)

Question:5 [Section: 241+ Worldwide Agencies Pvt Ltd]

For the past 5 years Mr. Rohtash was the holder 5,500 shares of Delta Software Solutions Ltd. which has issued share capital of Rs. 5,00,000 divided into 50,000 shares of Rs. 10 each. Mr. Rohtash was in the knowledge of some material changes that had taken place in Delta Software Solutions Ltd. and according to him they were prejudicial to the interest of members as well as the company. To contain the directors from continuing with unjustified changes, he wanted to make an application to the jurisdictional NCLT under Section 241 of the Companies Act, 2013. However, before Mr. Rohtash could proceed further and file the application with NCLT, he expired within one hour because of severe heart attack. Immediately thereafter, his only son Umang, a child specialist working in the Government Hospital, inherited his 5,500 shares. Is it possible for Umang to file an application with the jurisdictional NCLT highlighting the conduct of the affairs of the company in a manner which is prejudicial to the interest of members as well as the company Choose the correct option from those given below whether Umang can proceed further:

a) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional NCLT but his son Umang cannot file the application because he has not yet completed six months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
b) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional NCLT but his son Umang cannot file the application because he has not yet completed four months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
c) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional NCLT but his son Umang cannot file the application because he has not yet completed three months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
d) Since Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional NCLT, his son Umang can also file the application because he has inherited the 5,500 shares after the death of his father Mr. Rohtash.

Question:6 [Section: 245]

The requisite members of Shukla Stationers Limited filed a class action suit to restrain the company from taking action contrary to a resolution passed by the company in the Extra-ordinary General Meeting (EGM). After following the due process of law, the NCLT passed an order restraining the company from taking action contrary to the resolution. Instead of complying with such order of NCLT, Shukla Stationers Limited took action which was contrary to the said resolution. From the following options, choose the one which indicates the fine that can be levied on Shukla Stationers Limited:

a) Fine which shall not be less than Rs. 5 lakh but which may extend to Rs. 25 lakh.
b) Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh.
c) Fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5 lakh.
d) Fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 lakh

Answers:	5.	(d)	6.	(a)

Question:7 [Case Law: Thomas Veddon Vs Kuttanad Rubber Ltd]

Due to the impending recession, the profits of Super Star Car Manufacturers Limited nosedived considerably for the FY 2020-2021 and therefore, its Board of Directors did not recommend any dividend for the year. At the Annual General Meeting of Super Star Car Manufacturers Limited, a group of shareholders objected to the Board's decision of not recommending any dividend and coerced the directors to reverse such decision. On refusal by the Board, the disappointed members felt oppressed and filed a complaint with the NCLT against the action of the Board. In the given scenario, which option out of the four mentioned below, is the most appropriate:

a) The contention of the shareholders shall be tenable.
b) The action of the Board of Directors, not to recommend any dividend shall amount to oppression and mismanagement.
c) The action of the Board of Directors who acted in the interest of the company by not recommending any dividend shall not amount to oppression and mismanagement.
d) Both (a) and (b).

Question:8 [Section:244]

The issued and paid-up equity share capital of Golden Kalash Clothes Private Limited is Rs 1,00,00,000 (10,00,000 equity shares of Rs. 10 each) which is held by 10 shareholders. Jasmine holds 80,000 equity shares worth Rs 8,00,000. Sensing oppression and mismanagement in the company, she is contemplating to apply to the NCLT for relief. Out of the following 4 options which one is applicable in the given situation:

Jasmine being a single member cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 60% of total shareholders must apply for such relief i.e., at least 6 shareholders in the present case.

a) Jasmine being a single member, cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 60% of total shareholders must apply for such relief i.e., at least 6 shareholders in the present case.
b) Jasmine cannot apply to the NCLT for relief against oppression and mismanagement since she is holding 80,000 equity shares worth Rs.8,00,000 which is less than one-tenth of the issued and paid-up equity share capital of Golden Kalash Clothes Private Limited.
c) Jasmine, being one-tenth of the total number of shareholders, can apply to the NCLT for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited.
d) Jasmine, being a single member, cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 50% of total shareholders must apply for such relief i.e., at least 5 shareholders in the present case.

Answers:	7.	(c)	8.	(c)

The End

Section 2(94A) Winding Up (WUP) means:

- Winding up as per this Act, or
- Liquidation as per IBC

This chapter is divided into 4 parts:

Part I	Part II	Part III	Part IV
WUP by Tribunal [270-303]	Voluntary WUP [Omitted]	Common provision to all WUPs [324 - 358]	Official Liquidator [359 - 365]

Part I: Winding Up by the Tribunal

Sec 270 - Provisions of Part I shall apply to WUP by Tribunal

Sec 271- Circumstances in which company may be wound up by Tribunal

A company, may on petition u/s 272, be wound up by Tribunal if: [FIR DJ]

a. Company has resolved so by Special Resolution

b. Company has acted against:

Interest of Sovereignity and Integrity of India | Friendly relations with Foreign States | Security of the state | Public Order | Decency or Morality

c. On application made by ROC/Person Auth. by CG, Tribunal is of opinion that:

- Affairs of company - Fraudulent
- Company formed - Fraudulent/unlawful purpose
- Person concerned in formation/management are guilty of fraud/misconduct

+ It is Proper that company be wound up

d. Company has made Default in filing FS or A/R for last 5 consecutive financial years

e. Tribunal is of opinion that it is Just and equitable (J&E) that company be WUP

Sec 272- Petition for Winding Up

Petition to the Tribunal for WUP may be filed by:

1. Company (accompanies by statement of affairs)
2. Contributories - Notwithstanding that:
   a. He may be holder of fully paid up shares or
   b. Company has no asset at all or
   c. Company may have no surplus assets for Shareholders

   Provided that, application only when the share(s) in respect of which he is a contributory was:

   Originally alloted to him | Held and registered in his name for 6m in last 18m before WUP, or | Devolved to him on death of formal holder

3. ROC - Except on ground u/s 271(a) [i.e., SR by company]
4. Person authorised by CG
5. CG/SG in case of Sec 271(b) i.e., Interest of state, etc.

In any case, copy of petition to be submitted to ROC. ROC shall (in 60 days) submit its view to NCLT.

Sec 273- Power of Tribunal

On receipt of petition u/s 272, Tribunal may, within 90 days:

Dismiss it, with or without cost	Make an interim order	Appoint a Provisional Liquidator till order of WUP (Give notice to Co. + Grant reasonable OOBH)	Order WUP, with or without cost	Other order as it may deem fit.

Where petition is on ground that it is just and equitable that company be WUP, NCLT may refuse order of WUP if opinion that:
(a) Other remedy is available and (b) Applicant is acting unreasonable by seeking WUP

Sec 274- Direction for filing statement of affairs

1. On receipt of petition, if Tribunal is satisfied that it is prima facie case of WUP, it may:
   a. Direct company to file - Objection & Statement of Affairs (SOA) - Within 30 days (+30 days in special circumstances)
   b. Direct petitioner to make security deposit (for cost of WUP)
2. If co. fails to file SOA - Right to oppose petition stands forfeited & Dirs/off. punishable u/ss 4
3. Where order is passed u/s 273(1)(d) - Co. to submit BOA audited upto date of order within 30 days of order
4. Directors/officers punishable for non-compliance of this section:
   Jail upto 6 months and/or Fine Rs. 25,000 to Rs. 5 lakhs
5. Complaint for non-compliance may be filed with Special Court - By ROC, Provisional Liquidator (PL), Company Liquidator(CL) or person authorised by NCLT

Sec 275- Company Liquidator and their Appointment

1. For the purpose of WUP, the Tribunal shall at the time of passing order for WUP:
   Appoint - Official Liquidator (OL) or Insolvency Profession (IP) - To act as a CL
2. PL to have same power as CL unless Tribunal restricts power via order.
3. Terms & conditions of appointment and fees payable to PL and CL decided based on:

Task to be performed	Size of a company	Liquidator experience and qualification

4. Within 7 days of appointment, PL/CL to file declaration disclosing:
   a. Conflict of interest, or
   b. Lack of independence
5. Tribunal may appoint PL as CL while passing WUP order

Sec 276- Removal or Replacement of Liquidator

1. Tribunal may, for reason recorded in writing, remove PL/CL on grounds of [CFA ID]:

Mis-Couduct	Fraud/ Misfeasance	Prof. incompetence/ failure to exercise DD	Inability to Act as PL/CL	Conflict of Interest/ lack of independence during his term

2. In the event of death, resignation or removal of CL, transfer work to another CL

3. Where Tribunal is of opinion that Liquidator is responsible for causing loss/damage to Company → Tribunal may recover such loss/damage from Liquidator

4. Before order in this section - Reasonable OOBH to Liquidator.

Sec 277- Intimation to PL/CL and ROC and Effect of order (WUC)

1. When NCLT makes order for appointment of PL or WUP of company → Intimate to PL/CL and ROC within 7 days
2. On receipt of above order, the ROC shall:

   Make an endorsement in its records | Notify in OG | If listed co. - Intimate stock exchange

3. Order of WUP = Deemed notice of discharge to Officers, Employees & Workmen unless business is continued
4. Within 3 weeks of passing WUP order:

   CL → Tribunal

   Application for constitution of WUP committee (WUC)
   - To assist and monitor the liquation proceeding
   - Comprising of:
     (a) OL attached to Tribunal
     (b) Nominee of Secured Creditors
     (c) Professional nominated by NCLT

5. CL shall be convenor the meetings of WUC. WUC shall assist and monitor in following:

   - Taking over assets
   - Sales of asset
   - Recovery of cash, property or other asset
   - Examination of SOA
   - Review of accounts and audit reports
   - Payment of dividends
   - Finalization of list of Creditors and contributories
   - Claims - Compromise, Abandonment & Settlement
   - Other functions as per Tribunal
   - Other likely to be affected by SCA

6. CL to place before Tribunal minutes of meetings on monthly basis duly signed by members present → Till submission of final report for dissolution of company
7. CL to submit draft final report for consideration and approval of WUC
8. Final Report approved by WUC - Submit to NCLT for dissolution order

Sec 278- Effect of WUP Order

Order of WUP shall operate in favor of ALL Crs & contributories, as if made out of joint petition

Sec 279- Stay of Suits, etc. on WUP Order:

1. Where an order of WUP or Appointment of PL has been passed:
   a. No suits or legal proceedings shall be initiated
   b. If pending shall not be proceeded with

   Provided that any application to NCLT seeking leave shall be disposed of within 60 days.

2. Above provision not applicable to Appeal pending in SC/HC

Sec 280- Jurisdiction of Tribunal

The Tribunal shall have jurisdiction to entertain/dispose of:

a. Any suits or proceeding by/against the company
b. Any claims made by/against the company (including its branches in India)
c. Application under section 233
d. Question of priorities/law/fact including those related to asset, business, rights, obligation, etc.

irrespective of whether before or after the order of WUP

Sec 281- Submission of Report by CL

[similar to Information Memorandum]

1. Within 60 days of order WUP and Appt. of CL, he shall furnish a report to Tribunal containing:
   a. Nature & details of assets of company including location and value (by a Reg. valuer) including cash balance (in hand) and bank and details of Negotiable Instruments (if any)
   b. Amount of capital issued, subscribed and paid up
   c. Existing and contingent liability of company (including details of secured & unsecured creditors and details of security given to them)
   d. Debts due to the company (along with details)
   e. Guarantee, if any, by the company
   f. List of contributories and dues if payable by them and details of unpaid calls
   g. Details of trademark and intellectual property owned by company
   h. Details of subsisting contracts, Joint Venture, etc.
   i. Details of holding and subsidiary company
   j. Legal cases by/against the company
   k. Other information directed by tribunal

TECHNIQUE TO LEARN ABOVE POINTS:

Asset	Liability	Equity	Others
Assets, cash, Negotiable Instruments	Existing secured and unsecured creditors	Capital - Issued, Subscribed and Paid Up	Subsisting contracts & Joint Venture
Debt due to company	Contingent	List of contributories	Holding & Subsidiary co.
Trademark and Intellectual properties	Guarantee	Details of unpaid calls	Legal cases and other

2. CL shall include in report:
   - Manner in which company promoted and formed
   - Opinion on whether fraud committed by person in promotion/formation

3. CL shall also make report on
   - Viability of the business
   - Steps necessary for maximizing value of asset

4. Creditors/Contributories entitled to inspection of above report (fees as prescribed)

Sec 282- Direction of Tribunal on Reports of CL

1. Tribunal shall, based on report of CL, fix time limit to complete entire proceedings & dissolve co.

   On examination of report of CL and after hearing the CL/Creditors/Contributories, Tribunal may revise time limit if opinion that → It is advantageous and economical to continue proceeding

2. On examination of report of CL and after hearing the CL/ Creditors/Contributories, Tribunal may order sale of company or its assets or part thereof as going concern [NCLT may form sale committee to assist]

3. Where a report is recd. from CL/CG/any person stating that fraud is committed w.r.t, company, Tribunal may order investigation u/s 210 (without prejudice to WUP order)

   Based on investigation report → Tribunal to issue direction u/s 339 to 342 or direct CL to file criminal complaint against person involved

4. Other directions, including orders to protect preserve or enhance value of assets of company.

Sec 283- Custody of Company Properties

1. CL/PL shall take custody of → Property, Effects, Actionable and Claims to which co. is entitled.
2. All Properties & effects of company shall be deemed to be in custody of Tribunal from date of order of WUP
3. Tribunal may require any:

   Contributories | Banker | Trustee Receiver | Agent | Officer | Other Employee of Co.

   to pay, deliver, surrender and transfer any money, property, B&P in his custody/control to which company appears be entitled.

Sec 284- Promotors, Directors, etc. to co-operate with CL

1. Promoters, Dirs, Officers, Emp. to extend full support to CL in discharge of his duties and powers
2. If anyone does not co-operate, CL to make an application to NCLT.
   NCLT shall then pass necessary order asking co-operation.

Sec 285- Settlement of list of Contributories and Application of Asset

1. After passing the WUP order, the tribunal shall:
   a. Settle the list of cont. (Need not settle if not necessary to make calls or adjust rights)
   b. Cause rectification of Register of members (if required)
   c. Cause assets of company to be applied for discharge of liabilities

2. In setting list of cont., distinguish cont. in own rights and cont. as representative of others

3. While setting list of contributories, Tribunal shall include any person who is/has been member and liable to contribute to assets of company for:
   (a) payment of debts/liabilities and cost of WUP and
   (b) for adjustment of right of cont. among themselves
   subject to following condition:

a. A person who has been a member (i.e., Ex-member) shall not be liable to contribute:
   - If ceases to be a member for > = 1 year preceding WUP
   - In respect of debts + liabilities contracted after he ceased to be a member

b. No ex-member shall be liable to contribute unless present members unable to satisfy required contributories

c. Company limited by Shares – Liable for unpaid amount on shares held

d. Co. limited by Guarantee – Liable for amount undertaken to be contributed in event of WUP

If a company limited by guarantee has share capital, treat it as a company limited by shares

Section 2(26) "Contributory" - means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation: A person holding fully paid-up shares in company shall be considered as contributories but shall have no liabilities of a contributories under the Act whilst retaining rights of such a contributories

Sec 286- Obligation of Directors and Managers

In case of a limited company, any director/manager with unlimited liability, shall contribute in course of winding up as if he were member of an unlimited company

Provided that, director or manager shall not be liable:

1. Ceased to hold office 1 year or more prior to commencement of winding up
2. Debt / Liability was contracted after he ceased to hold office
3. Unless Tribunal deems necessary to satisfy debt or liability of company or cost of winding up

Sec 287- Advisory Committee

1. While passing WUP order, Tribunal may direct to form Advisory Committee(AC) –
   a. To advise CL, and
   b. Report to NCLT

2. Constitution → < = 12 members → Contributories/creditors/other person as NCLT made a direct

3. Within 30 days of WUP order – CL shall convene meeting of creditors/contributories (as per books of accounts) to enable Tribunal to determine member of AC

4. AC have a right to inspect books of accounts, other documents, asset in property of company

5. Meeting of AC to be chaired by CL

Sec 288- Submission of Periodical Reports to NCLT

CL to make periodical report including quarterly report on progress of WUP to NCLT

Sec 290- Powers and Duties of CL (Similar to that of IRP & RP)

CL to exercise following powers subject to overall control of the Tribunal:

a. To carry on the business of the company for beneficial WUP;

b. To do all acts & execute deeds, receipts, other docs, and for that purpose, to use, the cos. seal;

c. To sell immovable property and actionable claims of the co. by public auction or private contract;
d. To sell the whole of the undertaking of the company as a going concern;
e. To raise any money required on the security of the assets of the company;
f. To institute or defend any suit, prosecution or other legal proceeding;
g. To invite & settle claim of crs, emp or other claimant & distribute sale proceeds as per this Act;
h. To inspect the records and returns of the company;
i. To prove rank and claim in the insolvency of any contribution for any balance against his estate;
j. To draw, accept, make and endorse any negotiable instrument including cheque, bill of exchange, hundi or promissory note;
k. To obtain any professional assistance from any person in discharge of his duties, obligations and responsibilities and for protection of the assets of the company;
l. To take all such actions as may be necessary
   - For WUP of the company;
   - For distribution of assets;
   - In discharge of his duties and obligations and functions as CL ; and
m. To apply to the Tribunal for such other orders as may be necessary for WUP.

Sec 291- Professional Assistance to CL

1. CL may, with sanction of Tribunal, appoint one or more - CA, CS, CMA, Legal practitioner, others to assist him in performance of duties
2. Appointed person shall forthwith disclose conflict of interest or lack of independence to NCLT.

Sec 292- Exercise and Control of CL's Power:

1. CL shall, in administration of assets & distribution thereof → Have regard to directions by:
   a. Resolution of creditors & contributories at any General Meeting or
   b. Advisory committee [in case of conflict → Creditors/contributoties to override AC]

2. <u>Summoning meetings of creditors & contributories</u>
   CL may summon meetings:
   a. suo-moto to ascertain wishes or
   b. shall summon if directed by resolution or requested in writing by 1/10th in value of crs/cont.

3. Person aggrieved by act of CL may apply to Tribunal → Tribunal may confirm, modify, reverse.

Sec 293- Books to be kept by CL

1. CL shall keep proper book which includes Minutes of Meetings
2. Books open to inspection by company/creditors

Sec 294- Audit of CL's Account:

1. CL shall maintain proper BOA including details of receipts & payments (R&P)
2. CL shall present accounts of R&P to Tribunal at times but not < twice each year during tenure
3. Tribunal shall cause audit of BOA maint. by CL who shall provide necessary info. for such audit.
4. Once accounts are audited → Copy to be sent to Tribunal/ROC (open for inspection by creditors/ contributories/ interested persons)

   If Government company - Copy also to be sent to CG or SG or Both (only if members)

Sec 295-Payment of debt by Contributory and Set Off

1. Tribunal may after passing WUP order, direct any cont. on the list, to pay any money due to co. from him or from estate of person he represents excl. of money payable by virtue of any call.

2. In making such order above, the Tribunal may
   a. In case of an unlimited company → Allow the contributory, by way of set off, any money due to him from company for independent dealing / contract but not as member of company
   b. In case of limited company → Allow any director/ mgr., with unlimited liability, such set-off.

3. In case of Ltd co. - when all crs. are paid in full such set-off may be allowed on subsequent calls.

Sec 296- Power of Tribunal to make Calls

Tribunal may any time after passing WUP order, before or after ascertaining sufficiency of assets:

1. Make calls on cont.(in the list) → For payment of money to the extent of liabilities to:
   a. satisfy debts/ liabilities of companies & cost of WUP and
   b. adjustment of rights of cont. amongst themselves

2. Make an order for payment of call so made.

Sec 297- The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto

Sec 298- In event of assets of a co. being insufficient to satisfy its liabilities, the Tribunal may make an order for payment of costs of WUP, in such order of priority as it thinks just and proper.

Sec 299- Power to Summon persons suspected to have Property of Company

1. Tribunal may, any time after order of WUP or Appointment of PL, summon any officer/person:
   a. known / suspected to have property / B&P of company or to be indebted to company
   b. capable for giving information about company

   For examination on oath:

   by word of mouth or (reduce to writing & make him sign) | Written interrogation | Affidavit

2. Tribunal may require the person summoned to produce books of accounts in his custody.
   In claims of lien → Production without prejudice to Lien

3. Tribunal may require CL to file report on property in possession of others

4. Tribunal may require:

   person indebted to pay (fully or partly) | person in possession of property - To deliver to PL/CL

Sec 300- Power to order Examination of Promotors, Directors, etc. in case of Fraud

1. Where CL in his report states that in his opinion, fraud has been committed in promotion, formation or conduct of affairs of company → Tribunal may direct such persons to attend before it for examination on oath

2. CL shall take part in such examination & may employ legal assistance (if sanctioned by NCLT)

3. A person examined under this section:
   - shall be furnished CL'S report (at his cost)
   - may employee CA/CS/CMA/Legal practitioner, etc. as representative

4. If such person applies to NCLT to be exculpated from charges

Duty of CL to attend the hearing & call the attention of NCLT to relevant matter.

Sec 301- Arrest of Person absconding India

Any time either before or after passing WUP order, if NCLT is satisfied that:
- A contributory, or
- A person having property, B&P of company in his possession

+

is about to:
- leave India or
- otherwise abscond, or
- remove or conceal any of his property,

for evading payment of calls

The Tribunal may cause:
- Contributory to be detained until such time as Tribunal orders, and
- His B&P and movable prop. to be seized and safely kept as Tribunal may order.

Sec 302- Dissolution of company by Tribunal

1. When the affairs of the company have been completely wound up, CL shall make an application to NCLT for dissolution of company
2. On receipt of application if NCLT find it just and reasonable → Order the dissolution of company and company stands dissolved from date of order
3. Copy of order within 30 days to ROC and CL

Part III - Provision applicable to all types of Winding up

Sec 324 - Debts of all descriptions to be admitted to proof

In every WUP (subject to IBC),
a. all debts payable on a contingency, and
b. all claims against the company, present/future, certain /contingent, ascertained or sounding only in damages,

shall be admissible to proof against the company.
A just estimate being made of the value of such debts or claims may not bear a certain value.

Sec 326 - Overriding preferential payments

In case of WUP, following debts shall be paid, in priority to all other debts in following sequence:
1. workmen's dues (excluding payment for death/disability and PF/Gratuity etc.) payable for 2 years preceding the WUP shall be paid within 30 days of sale of assets;
2. The following shall be paid pari passu:

a. Workmen's compensation other than (a) and
b. where a secured creditor has realised a secured asset, lower of:
   i). such debts due to such secured creditor as could not be realised by him or
   ii) the amount of the workmen's portion in his security (if payable under the law)

Example: The value of security of a secured cr. of a co. is Rs.1,00,000. The total amt of the workmen's dues is Rs.1,00,000. The amt of the debts due from co. to its secured crs. is Rs.3,00,000. The agg. of amt of workmen's dues and amt of debts due to secured crs. is Rs.4,00,000. The workmen's portion of security is, therefore, 1/4th of value of security, i.e. Rs. 25,000.

Additional Notes

Any cost incurred by liquidator towards cost for preserving the security of secured creditor shall be borne by Workmen and Secured Creditors in the ratio of their debt.
Example: CL incurred Rs. 10,000 to preserve the secured asset in above example. The cost shall be borne as follow - Workmen (Rs. 2,500) and Secured Creditors (Rs. 7,500)

Definition:

"Workmen's dues" means agg. of the following sums due from the co. to its workmen, namely:
(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to co. and any compensation payable to any workman under any of the prov. of the Industrial Disputes Act, 1947;
(ii) all accrued holiday remuneration becoming payable to any workman;
(iii) all amt. due in respect of any comp. under the said Act w.r.t, the death or disablement;
(iv) all sums due to any workman from the PF, the pension fund, the gratuity fund, etc.

Sec 327 - Preferential payments

"Relevant date (RD)" means date of appointment of PL or date of WUP order, as the case may be.

1. In a WUP, subj. to sec. 326 and subj. to retention of such sums as may be necessary for the cost and expenses of WUP, following shall be paid in priority to all other debts, equally ranked:
   a) all revenues, taxes, cesses and rates due to the CG or a SG or to a local authority at the RD, and having become due and payable within the 12m immediately before;
   b) all wages or salary due for a period not exceeding 4m within the 12m immediately before the RD including wages payable for time or piece work and salary earned by way of commission of any employee; [Example - An employee can get max. of 4 months' salary in one go here]
   c) all accrued holiday remuneration becoming payable to any employee;
   d) amt. due w.r.t cont. payable in 12m immediately before RD by co. under ESI Act, 1948
   e) all amt due in respect of compensation for death or disablement of any employee of the co.
   f) all sums due to any emp. from PF & GF or other fund maintained for welfare of the emp.; and
   g) the expenses of any investigation u/s 213 & 216, in so far as they are payable by company.

2. Where any payment has been made to any employee out of money advanced by some person (Haan Bank Ltd.) for that purpose, Haan Bank Ltd. shall, in a winding up, have the same right of priority as the employee would have been entitled to had the payment not been made.

3. The debts enumerated in this section shall have priority over the claims of debentures holders under any floating charge created by the company and be paid accordingly out of any property subject to that charge.

4. In the event of a landlord or other person distraining(seize) any goods or effects of the co. within 3m immediately before the date of a WUP order, the priority debts as per this section shall be a first charge on goods/effects so distrained on or the proceeds of the sale thereof;

   Provided that, in respect of any money paid under any such charge, the landlord/other person shall have the same rights of priority as the person to whom the payment is made.

5. Any holiday remuneration on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

6. Sections 326 and 327 shall be N.A. in the event of liquidation under the IBC, 2016

Explanation: For the purposes of this section, the expression employee does not include a workman.

WINDING UP VS. IBC, 2016

Sequence of Payment as per Winding up	Sequence of Payment as per IBC
1. Workmen's due (2 years) Other workmen dues + Unpaid Realised Sec.Crs.	1. IRP and Liquidation Cost
2. Cost and expenses of winding up	2. Workmen dues (24m) + Relinquished Sec.Crs.
3. Equally ranked: • CG/SG dues (12m) • Salary (due <4m in last 12m) • Accrued holiday remuneration • Contributions under ESI (12m) • Compensation for death/disablement • PF/GF/Other fund to employees • Investigation expense u/s 213,216	4. Financial Debts – Unsecured 5. CG/SG dues (2 yrs) and Unpaid Realised Sec.Crs. 6. Remaining debts and dues 7. Preference Shareholders 8. Equity
4. Creditors/Debenture holders having floating charge	
5. Unsecured Creditors	

Sec 328 - Fraudulent Preference

1. **Where a company has given** preference **to a creditors/surety/ guarantor (CSG) of the company, and does anything which has the effect of putting that person into a** position **which, in the event of liquidation, will be better than the position he would have been in if that thing had not been done** prior to 6m of WUP **application (i.e. within 6m preceding the date of making the petition for WUP and not order of WUP by Tribunal), Tribunal may order for** restoring the position **to what it would have been if company had not given that preference.**

2. If the Tribunal is satisfied that there is a preference:

transfer of property, movable or immovable, or	any delivery of goods,	execuion made, taken or done by/against co.	payments

within 6m before WUP appln., it may declare such transaction invalid & restore position.

Note- A transaction shall amount to fraudulent preference only if there is any element of dishonesty i.e., there is a malafide intention to give undue advantage to the creditors over others.

Example - Preference given to bank to increase the loan limit few months prior to WUP appln. may not be a Fraudulent Preference as the intention was to give advantage to the co. and not the cr.

Sec 329- Transfer not done in good faith to be void

Any transfer of:
- property, movable or immovable, or
- any delivery of goods,

made by a company:
- not in the OCOB or
- not in favour of a purchaser or encumbrance in good faith and for valuable consideration,

if made within 1 year before petition u/s 272 shall be void against the CL.

Sec 330-

Any trf by a co. of all its prop./assets to trustees for benefit of all its crs. shall be void.

Sec 331 - Liabilities and rights of certain persons fraudulently preferred

1. In the event of WUP of a co., where a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt (Mr. Secured Creditor) is made, then, the person preferred (Mr. Jugaadu) shall be subject to the same rights and liabilities as if he had undertaken to be personally liable as a surety for the debt, to the extent which is lower of:
   a. the charge on the property or
   b. the value of his interest (as on date of preference as if it were free of all encumbrances).

2. On an application made to the Tribunal w.r.t any payment being a fraudulent preference of a surety or guarantor (S/G), the Tribunal shall have jurisdiction to:
   - determine any ques. w.r.t the payment arising b/w person to whom payment was made & S/G
   - and to grant relief in respect thereof and
   - for that purpose, may give leave to bring in the S/G as a 3rd party for recovery of the sum paid.

Sec 332 - Effects of floating charge

- Where a company is being wound up,
- a floating charge on undertaking/property of company created within 12m immediately preceding commencement of WUP,
- shall be invalid,
- unless it is proved that the company immediately after the creation of the charge was solvent

Concept clarity check:

What will not be invalid? The amount of any cash paid to the company in consideration for the charge together with interest on that amount at the rate of 5% p.a. or such other rate (CG)

For example- If you gave loan to company against a floating charge on the receivables of the company, the charge shall be invalid except to the extent of money you paid shall be valid and shall be paid back to you along with interest @5% p.a.

Sec 333 - Disclaimer of onerous property

1. Where any part of the property of a company consists of-

land of any tenure, burdened with onerous covenants	shares or stocks in companies	any other property - not saleable/readily saleable cause the possessor thereof is bound either to performance of any onerous act or to payment of any money	Unprofitable contracts

the CL may, with the leave of the Tribunal, by writing signed by him, at any time within 12m after the commencement of WUP, disclaim the property, notwithstanding that he has:

endeavored to sell **or** taken possession of the property **or** exercised any act of ownership

If CL was unaware of existence of such property within 1m from commencement of WUP, he can disclaim within 12 months from the date he became aware.

2. Such disclaimer of prop. shall not affect the rights, interest or liabilities of any other person.

3. The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such T&C of granting leave as it considers just and proper.

4. The CL shall not be entitled to disclaim any property in any case where:
   a. an application in writing has been made to him by any person interested in property requiring him to decide whether he will or will not disclaim and
   b. the CL has not, within 28 days after the receipt of the application, given a notice to applicant that he intends to apply to the Tribunal for leave to disclaim, and
   c. in case the property is under a contract (unprofitable contract), if the CL after such an application does not within the said period disclaim the contract,
   d. he shall be deemed to have adopted it.

5. On appln. of any person who is entitled to the benefit or subject to the burden of a contract, Tribunal may make an order rescinding the contract on such terms as to payment of damages for non-performance of contract, or otherwise as it may deem just and proper, and any damages payable under the order to any such person may be proved by him as a debt in the WUP.

6. The Tribunal may, on an application by any person who:
   - ➢ either claims any interest in any disclaimed property or
   - ➢ has undischarged liability under this Act in respect of any disclaimed property,
   - ➢ make an order for vesting of prop. on such terms as Tribunal considers just and proper in
     - any person entitled thereto or
     - to whom it may seem just that prop. should be delivered as compensation for such liab.,

   Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the co., whether as under-lessee (sub-tenant) or as mortgagee or holder of a charge by way of demise, except upon the terms of:
   a. making that person subject to same liabilities & obligations as those to which company was subject under lease;
   b. if Tribunal thinks fit, making the person subject only to same liabilities and obligations as if the lease had been assigned to that person at that date,

   and in either event as if the lease had comprised only property comprised in the vesting order

7. Any person affected by disclaimer under this section shall be deemed to be a creditor of the company to the amount of compensation/damages payable w.r.t, such effect, and may accordingly prove amount as a debt in WUP.

Sec 334 - Transfers, etc., after commencement of winding up to be void

In the case of a WUP,
- ➢ any disposition of property including actionable claims of the company and
- ➢ any transfer of shares in the company or
- ➢ alteration in the status of its members,

made after the commencement of the WUP shall be void, unless the Tribunal otherwise orders.

Sec 335 - Certain attachments, executions, etc., in winding up by Tribunal to be void

1. Where any company is being wound up by the Tribunal, after the commencement of WUP:
   a) any attachment, distress or execution put in force against the estate or effects of the Co.;
   b) or any sale of any of the properties or effects of the company

   without the leave of Tribunal, shall be void.
2. Section N/A to any proceedings for the recovery of any tax or any dues payable to Government.

Sec 336 - Offences by officer of companies in Liquidation

1. If an officer of a co. which is being wound up or which is subsequently ordered to be wound up:
   a) does not fully and truly disclose all the property (movable/immovable), of the company and details of disposal of any part thereof, except where disposed in OCOB;
   b) does not deliver all such part of the property (movable/immovable) and B&P of the company as is in his custody or control;
   c) within 12m immediately before commencement of the WUP or at any time thereafter:
      i. conceals any part of property (>=value of Rs. 1,000), or any debt due to/from co.;
      ii. fraudulently removes any part of property (>=value of Rs. 1,000);
      iii. conceals, destroys, mutilates or falsifies, or is privy to the same of, any books and papers affecting or relating to, the property or affairs of the company;

iv. makes any false entry in any B&P affecting or relating to, the prop. /affairs of co.;
v. fraudulently alters/makes any omission in any B&P affecting/relating to prop./affairs of co.;
vi. by any false representation or pretence that the company is carrying on its business or any other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;
vii. pawns, pledges, or disposes of any property which has been obtained on credit and has not been paid for, unless in OCOB

d) makes any material omission in any statement of affairs of the company;
e) knowing that a false debt has been proved by any person under the WUP, fails for 1 month to inform the CL;
f) prevents production of any B&P affecting or relating to the prop. or affairs of the co.;
g) 12 months before commencement of WUP or after commencement, attempts to account for any part of the property of the company by fictitious losses or expenses; or
h) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors, to an agreement with reference to affairs of the company or to the WUP,

he shall be punishable with imprisonment 3-5 years and with fine of Rs. 1 lakh to Rs. 3 lakhs

Provided that it shall be a good defense if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

2. Where any person pawns, pledges or disposes of any property as mentioned above, every person who takes in pawn or pledge or otherwise receives the property, knowingly, shall be punishable with imprisonment 3-5 years and with fine of Rs. 3 lakhs to Rs. 5 lakhs

Sec 337 to Sec 343 - Excluded - Thanks, ICAI

Sec 344 - Statement that company is in liquidation

Where a company is being wound up, every invoice, order for goods or business letter being a document on or in which the name of the company appears, issued by or on behalf of:

the company or a CL, or a receiver or manager of the property of the company,

shall contain a statement that the company is being wound up.

Penalty for Contravention: Fine Rs. 50,000 - Rs. 3 lakhs

Sec 345 - B&P of company to be evidence

Where a company is being wound up, all B&P of the company and of the CL shall be prima facie evidence of the truth of all matters purporting to be recorded therein.

Sec 346 - Inspection of Books and papers by Creditors/Contributories

a. After commencement of WUP, any Creditors/Contributories of the company may inspect the B&P only in accordance prescribed rules.
b. Nothing in this section shall exclude or restrict any rights conferred by any law:
   a) on the CG/SG;
   b) on any authority or officer thereof; or
   c) on any person acting under the authority of aforementioned person

Sec 347 - Disposal of B&P of company

1. When affairs of a company is completely wound up and it is about to be dissolved, the B&P of such company and CL may be disposed of in such manner as the Tribunal directs.

2. After the expiry of 5 years from the dissolution of the company, no responsibility shall devolve on the company, the CL, or any person to whom the custody of the B&P has been entrusted, by reason of any B&P not being forthcoming to any person claiming to be interested therein.

3. The CG may, by rules,:
   a) prevent for such period as it thinks proper the destruction of B&P of co. and CL; and
   b) enable any Creditors/Contributories to make representations to the CG in respect of the above matters and to appeal to the Tribunal from any order made by the CG.

4. Penalty for Contravention - Fine up to Rs. 50,000 (No imprisonment)

Sec 352 - Liquidation Dividend and Undistributed Assets Account

1. Where any co. is being wound up and the liquidator has any money representing:

   a) div. payable to any creditor unpaid for 6m after the date on which they were declared

   or

   b) assets refundable to any contributory undistributed for 6m after date on which they become refundable

   → liquidator shall forthwith deposit said money → separate special a/c (maintained in a scheduled bank) → "Co. Liquidation Dividend & Undistributed Assets A/c (CLDAUAA)"

2. The liquidator → on dissolution of co. → pay into CLDAUAA → money representing unpaid dividends/ undistributed assets in his hands at the date of dissolution.

3. When making payment to CLDAUAA → liquidator shall furnish to ROC → a statement in the prescribed form, setting forth:
   - the nature,
   - the names and addresses,
   - the amount,
   - such other particulars as may be prescribed

   → in respect of all sums incl. in such payment

4. The liquidator shall be entitled to receipt from sch. bank for any money paid into CLDAUAA & such receipt shall be an effectual discharge of CL in respect thereof.

5. In case of voluntary WUP - when filing a statement u/s 348(1) → CL shall
   - indicate the sum of money payable to CLDAUAA during 6 months preceding the date on which said statement is prepared, and
   - within 14 days of date of filing the said statement, pay that sum into CLDAUAA.

6. Any person claiming to be entitled to any money paid into the CLDAUAA may apply to ROC for payment thereof, and ROC, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due.

Provided ROC shall settle the claim of such person within period of 60 days from date of receipt of such claim, failing which ROC shall make report to RD giving reasons.

7. Any money paid into CLDAUAA, which remains unclaimed thereafter for a period of 15 yrs→ to be trf. to general revenue a/c of CG, but a claim to any money so trf. may be preferred & shall be dealt with as if such trf. had not been made & the order, if any, for payment on the claim will be treated as an order for refund of revenue.

8. Any liquidator retaining any money which should have been paid by him into CLDAUAA shall:

a) pay intt. on retained amt @12% p.a. + penalty as determined by ROC
↓
Provided that CG may in any proper case remit amt of intt. payable under this clause

b) be liable to pay any expenses occasioned by reason of his default

c) where WUP is by Tribunal
↓
be liable to have all or such part of his remuneration
↓
as Tribunal may consider just & proper, to be disallowed + to be removed from his office by it

Sec 353 - Liquidator to make returns, etc.

1. If CL who has made any default in filing, delivering or making any return, account or other doc., or in giving any notice which he is by law reqd. to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, Tribunal may, on an appn. made to it by any creditors/contributories of the co. or by ROC, make an order directing CL to make good the default within such time as may be specified in the order.

2. Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the CL.

Sec 354 - Meetings to ascertain wishes of creditors or contributories

1. In all matters relating to the WUP, the Tribunal may:
   a. have regard to the wishes of creditors/contributories of the company, as proved to it by any sufficient evidence;
   b. if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors/ contributories to be called, held and conducted in such manner as it may direct;
   c. and, appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.
2. While ascertaining wishes of creditors above, regard shall be had to the value of each debt of the creditor.
3. While ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

Sec 355 - Court, tribunal, or person, etc., before whom affidavit may be sworn

1. Any affidavit required to be sworn for the purposes of this Chapter may be sworn:
   a. in India before any court, tribunal, judge, or person lawfully authorised to take and receive affidavits; and
   b. in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.

2. All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.

Sec 356 - Power of Tribunal to declare dissolution of company void

1. Where a company has been dissolved, the Tribunal may at any time within 2 years of the date of the dissolution, on application by CL or by any other person who appears to Tribunal to be interested, make an order declaring the dissolution to be void, and thereupon such proceedings may be taken as if company had not been dissolved.
2. The Tribunal shall:
   a. forward a copy of the order, within 30 days to ROC who shall record the same; and
   b. direct the CL or the person on whose application the order was made, to file a certified copy, within 30 days, with the ROC who shall record the same.

Sec 357 - Commencement of winding up by Tribunal

The WUP of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the WUP.

Sec 358 - Exclusion of certain time in computing period of limitation

Notwithstanding anything in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a co. which is being wound up by Tribunal, the period from the date of commencement of the WUP of co. to a period of 1 yr immediately following the date of WUP order shall be excluded.

The End

Multiple Choice Questions

Question 1: [Section 271]

All the 4 directors of Rinkoo Toys Limited are not on the same pace in running the business operations of the company; rather they are more concerned in enhancing their own business interests. Due to this unhealthy phenomenon, the company has defaulted in filing with the jurisdictional ROC its FS or annual returns. For how many consecutive years if the company defaults in filing its FS or annual returns that the Tribunal may order its winding up on a petition filed by the ROC:

a) If the company defaults in filing its FS or annual returns for immediately preceding three consecutive FYs, the Tribunal may order its winding up on a petition filed by the ROC.
b) If the company defaults in filing its FS or annual returns for immediately preceding five consecutive FYs, the Tribunal may order its winding up on a petition filed by the ROC.
c) If the company defaults in filing its FS or annual returns for immediately preceding six consecutive FYs, the Tribunal may order its winding up on a petition filed by the ROC.
d) If the company defaults in filing its FS or annual returns for immediately preceding seven consecutive FYs, the Tribunal may order its winding up on a petition filed by the ROC.

Question 2: [Section 288]

What is the periodicity of submission of report by company liquidator with respect to the progress of winding up of the company to the Tribunal:

a) Monthly
b) Bi-monthly
c) Quarterly
d) Half yearly

Question 3: [Section 281]

A petition of winding up was filed against Raman Technologies Ltd under Sec 272 of the Companies Act 2013. The Tribunal appointed a company liquidator and passed a winding up order on 20th of January 2023. As per the requirement of the Companies Act, 2013, state the correct statement with respect to submission of the Liquidator's report to the Tribunal:

a) Liquidator shall submit its report to Tribunal within 30 days of its appointment by Tribunal.
b) Liquidator shall submit its report to Tribunal within 45 days from winding up order.
c) Liquidator shall submit its report to Tribunal within 60 days from winding up order.
d) Liquidator shall submit its report to Tribunal within 90 days of its appointment by Tribunal.

Answers:	1.	(b)	2.	(c)	3.	(c)

Question 4: [Section 278]

The order for the winding up of a company shall operate in favour of:

a) All contributories of the company
b) All the creditors of the company
c) All the contributories and the creditors of the company
d) The Central/State Government

Question 5: [Section 275]

Mr. Raghav was appointed as Provisional Liquidator for X Ltd. against which an application for winding up was filed before the Tribunal. It is noteworthy that Mr. Raghav was having a shareholding in the same company. Enumerate the legal position of Mr. Raghav in the said condition in the light of the provisions related to its appointment in X Ltd. as per the Companies Act, 2013:

a) Mr. Raghav cannot be appointed in X Ltd. because of having a shareholding in the same company.
b) Mr. Raghav can be appointed in X Ltd. irrespective of his interest in the company because of his prior shareholding in the company before appointment.
c) Mr. Raghav can be appointed in X Ltd. with the prior intimation to the Tribunal.
d) Mr. Raghav can be appointed in X Ltd. by disclosing his shareholding by filing of declaration within 7 days from the date of his appointment by the Tribunal

Question 6. [Section 276]

State, which amongst the following grounds, is incorrect for removal of the Provisional Liquidator or the Company Liquidator, as liquidator of the company:

a) Independent working having no conflict of interest.
b) Professional incompetence or failure to exercise due care and diligence in performance of the powers and functions
c) Misconduct
d) Fraud or misfeasance

Question 7. [Section 288]

The Periodical reports made by the Company Liquidator to the Tribunal with respect to the progress of the winding up, to be submitted at the end of each ....., may be reviewed by ..... on an application by .....

a) Quarter, Tribunal, Central Government
b) Half Year, Tribunal, Company Liquidator
c) Financial Year, Advisory Committee, Tribunal
d) Quarter, Tribunal, Company Liquidator

Answers:	4.	(c)	5.	(d)	6.	(a)	7.	(d)

Question 8: [Section 283]

Where a winding up order has been made all the property and effects of the company shall be deemed to be in the custody of _____ from the date of the order for the winding up of the company

a) Company Liquidator
b) The Tribunal
c) The Resolution Professional
d) The Insolvency Professional

Question 9: [Section 302]

Saurabh, after winding up the affairs of Shobhna Plastics Limited in the capacity as company liquidator, made an application to the jurisdictional National Company Law Tribunal (NCLT), for its dissolution. Taking note of the dissolution application, NCLT proceeded to make an order that Shobhna Plastics Limited be dissolved from the date of the order. From the given options, choose the one that shall be applicable in the given situation

a) Within a period of fifteen days from the date of the order, NCLT shall forward a copy of the order to the Registrar and to Saurabh
b) Within a period of thirty days from the date of the order, NCLT shall forward a copy of the order to the Registrar and also direct Saurabh to forward a copy of the order to the Registrar.
c) Within a period of forty-five days from the date of the order, NCLT shall forward a copy of the order to the Registrar or direct Saurabh to forward a copy of the order to the Registrar.
d) Within a period of thirty days from the date of the order, Saurabh shall forward a copy of the order to the Registrar.

Answers:	8.	(b)	9.	(b)

The End

STUDENT'S NOTES:

In this chapter, we are going to cover following provisions:

1. Registered Valuer
2. Removal of name from Register of Companies
3. Government Companies
4. Nidhi Companies
5. Punishment for Fraud
6. Dormant Company

REGISTERED VALUER

Sec 247- Registered Valuer (RV) [Read with Companies (RV and Valuation) Rules, 2017]

1. Where valuation is required to be made w.r.t:

Property	Stock, Shares	Debentures	Securities	Goodwill	Other assets	Net worth of company	Liabilities

Such valuation shall be done by person:

- Having such qualification and experience as may be prescribed
- Is a RV and is a member of Registered Valuer Organization (RVO), and
- Appointed by Audit committee or BOD (in absence of Audit Committee)

Note- Cases where RV is required to do valuation - Sec 192, 230, 232 and 236

2. Role of RV: [FDI Rules]
   - Make impartial, True & Fair valuation
   - Exercise Due Diligence
   - Make valuation as per prescribed Rules
   - Not undertake valuation of asset if Interested (direct/indirectly) - During 3 years prior to appointment and 3 years after valuation is conducted.

3. Contravention by Valuer:
   No intention to defraud - Fine - Rs. 50,000
   Intention to defraud company/members - Jail upto 1 year and Fine of Rs. 1 lakh to Rs. 5 lakhs

4. Where RV is convicted under sub-section (3):
   a. Refund remuneration received by him and
   b. Pay for damages arising to co./others for his incorrect/misleading statement

Companies (RV and Valuation) Rules, 2017

Asset class: Means distinct group of assets displaying similar characteristics that can be classified and requires separate set of valuers for valuation

Asset Class 1: Securities and financial assets	Asset Class 2: Plant and Machinery	Asset Class 3: Land and Buidling

Authority - Insolvency and Bankruptcy Board of India (IBBI)

Eligibility for RV:

1. Person shall be eligible to become RV if he
   a. Valued Member of RVO
   b. Recommended by RVO for registration as a RV
   c. Passed the valuation Examination (within 3 years before application for registration)
   d. Possess prescribed Qualification and Experience
   e. Not a Minor
   f. Not declared to be of unsound Mind
   g. Not an undischarged Bankrupt or not applied to be adjudged as bankrupt
   h. Is a person Resident in India (same as sec 2(v) of FEMA)
   i. Not convicted of offence (jail > 6m) or offence involving moral turpitude and period of 5 years not lapsed. Provided - If convicted for > = 7 years - Forever disqualified
   j. Not levied penalty u/s 271J of IT Act, 1961 [False report by professional] & 5 yrs not lapsed
   k. Is a Fit and proper person [Integrity, no conviction order, financial solvency]

2. Partnership entity or company shall NOT be eligible if:
   a. Set up for objects other than rendering professional service, financial or valuation services or if such co./~~firm~~ is a subsidiary, Joint Venture or associate of another company/BC
   b. Is undergoing insolvency resolution process or undischarged bankrupt
   c. All Partners/Directors are not eligible above [except (a) and (b)]
   d. Lower of 3 or all partners/directors are not RV
   e. None of its Partners/Directors is RV for Asset Class for which it seeks to be RV.
   f. It is not a member of RVO.

   Provided that - It shall not be member of more than 1 RVO at a given point of time
   Transition provisions to comply with this point - within 6 months

Rule 4: Qualification and Experience (to be eligible to be a RV):

Degree	From?	AND Experience (at least)
PG Degree/ Diploma	From university or institute incorp. by Law in India in Specified discipline	3 years
Bachelor's degree		5 years
Membership of prof. institute - Established under act of Parliament		3 years

Rule 5: Valuation Examination ("Exams"):

(1) IBBI to conduct exams on its own or through designated agency for one or more asset class.

Who can appear for such exams? - An individual, having qualification and experience as per Rule 4 and having completed their education course as member of RVO.

Note - IBBI may recognise an examination conducted as part of master's or post graduate degree to be equivalent to valuation examination.

(2) IBBI shall determine syllabus for such exams based on recommendation of experts.
(3) IBBI to publish syllabus, frequency and format of exams and qualifying marks on its website.
(4) Individual who passes exams - Receives acknowledgment thereof.
(5) No limits on number of attempts. (Like CA :P)

Rule 6: Application for certificate of registration (COR):

Application shall be made to IBBI in the following manner:

Class of person	Form	Non-refundable Fees
Individual	Form A of Annexure II	Rs. 5,000
Partnership entity or company	Form B of Annexure II	Rs. 10,000

Powers of IBBI on receipt of application:

- IBBI to examine application and grant 21 days to remove deficiencies, if any.
- IBBI may require applicant to submit additional documents within 21 days.
- IBBI may require applicant to be present in person or through AR for necessary explanation.

Where IBBI is satisfied on scrutiny, it may grant COR within 60 days of receipt of application in Form C of Annexure II. Such period of 60 days shall exclude time given by IBBI to applicant to submit additional documents or appear in person, etc.

In case of denial of registration -

- IBBI to communicate reasons for such denial to applicant within 45 days of application and seek opinion from applicant.
- Applicant to submit expln., as to why his/its application should be accepted, within 15 days of receipt of such communication, in order to enable the authority to form a final opinion
- IBBI to make final decision within 30 days of receipt of such expln. and comm. the same.

Rule 7: Condition of Registration:

On an appln. made by eligible indv./entity to IBBI, Registn. may be granted subject to following:

- Possess relevant Qualification and experience at all times
- Comply with applicable Law
- Not conduct valuation for Class other than for which registration is granted
- Prior permission of authority before Shifting membership of RVO
- Comply with RVO's Code of conduct
- Take adequate steps to address Grievances
- Maintain Records of assignment for 3 years from completion
- If RV is a Partnership firm/Company:
  - Allow only Partners/Directors who is RV to sign and act on its behalf
  - Disclose to co. concerned - Capital contributed to firm/co. by signing Partners/Directors
  - Immediately inform IBBI on removal of Partners/Directors who is RV along with reasons
- If RV is a Partnership firm - All Partners - jointly and severally Liable
- If RV is a company - Company Liable along with signing director

Rule 7A: Intimation of changes in personal details by RV to Authority: [Amendment]

RV shall intimate the Authority for change in:

- personal details, or
- any modification in composition of partners or directors, or
- any modification in any clause of partnership agreement or MOA,

which may affect registration of RV, after paying fee as per the Table -I in Annexure V.

Conduct of Valuation:

1. RV to conduct valuation as per standard to be notified [Valuation Standards (VS)]
   Unless notified, valuation as per:

   Internationally accepted VS | VS adopted by RVO

2. In case of inputs/valuation by other RV (Mr. B) - RV (Mr. A) to disclose details in his report. Liability remains of first RV (Mr. A).

3. RV shall state the following in his report:
   - Identity of valuer and other experts
   - Date of appt., valuation date and date of report
   - Disclosure of interest and conflict, if any
   - Background information of asset being valued
   - Purpose of valuation
   - Investigation/inspection undertaken
   - Nature and source of information.
   - Procedures adopted
   - Major Factors considered
   - Conclusion
   - Caveats, limitations, and disclaimers to explain the limitations faced and not for limiting responsibility

Temporary Surrender of COR:

1. RV may surrender COR as per RVO's regln. & inform Authority for taking such info. on record
2. RVO shall also inform Auth. within 7 days of approval of such appln. [for surrender/revival]
3. RVO to place on website details of such surrender/revival

Registered Valuer Organisation (RVO):

1. An organisation may be recognised as RVO for valuation of specific Asset Class if:
   a. Registered u/s 8 of Companies Act, 2013 with sole object of dealing with matters related to regulation of Valuers
   b. It is a prof. institute estb. by parliament enacted for purpose of Regulation of profession

2. Organisation under sub-rule (1) shall be recognized only if:
   a. Conducts educational courses in valuation
   b. Grants membership or Certificate of Practice (COP)

c. Conducts training before COP
d. Lays down and enforces Code of Conduct
e. Provides continuous education to members
f. Monitors and reviews Quality of Service
g. Has mechanism of disciplinary proceedings

Complaint against RVO/RV:

1. Complaint may be filed by any person with Authority with Rs. 1,000 non-refundable fees.
2. On receipt of such complaint, Authority shall examine and take necessary steps
3. If complaint is against an RV who is Partner/Director, Authority to refer such complaint to concerned RVO for handling.

Valuation Standard:

- To be notified by CG
- To be recommended by committee [Committee to advise on valuation matters]
- Composition of committee: [Tenure = Max. 2 tenures of 3 years each]

Chair Person	1 MCA	1 IBBI	1 Legislative Dept	Upto 4 - By CG representing authorities which allow valuation by RV
Upto 4 - By CG representing RVO	Upto 2 - By CG representing Industry	President of ICAI/CS/Cost as ex-officio members		

Penalty for contravention- Liable u/s 469(3) [upto Rs. 5,000 + upto Rs. 500 per day]

REMOVAL OF NAME OF CO. FROM REGISTER OF COS. [SEC 248-252]

Sec 248- Power of ROC to Remove Name

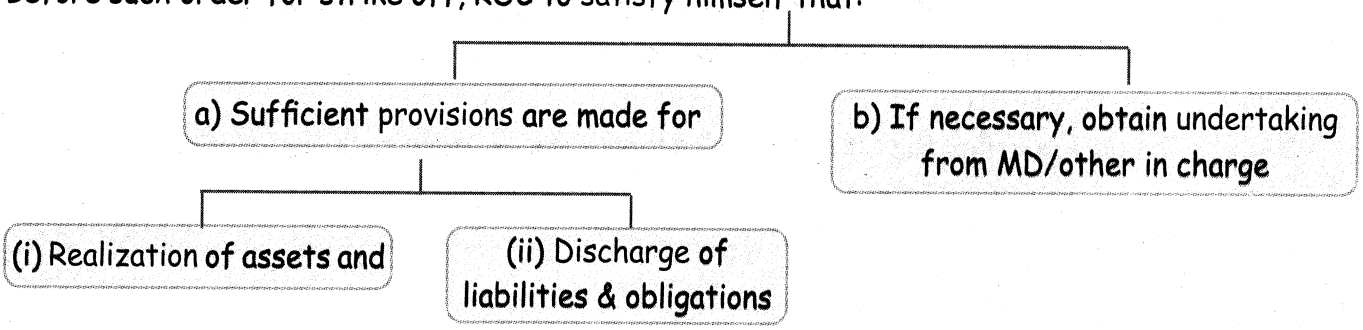
1. Removal of name (suo motu)- Where ROC has RGTB that:
   a. Company has failed to commence business within 1 year of incorporation
   b. Company has not been carrying business - Preceding 2 FY and has not filed application u/s 455
   c. Subscribers to MOA have not paid subscription (undertaken to pay) and declaration to this effect not filed within 180 days of incorporation [Sec 10A(1)]
   d. Company is not carrying business/operations as revealed after physical verification u/s 12(9)

   ROC to send Notice of intention to remove name to Company + All directors and require representation within 30 days

2. Application by company for removal of name:
   A company may file an application to ROC for removal of name after:
   a. Extinguishing all liability, and
   b. By SR or obtaining consent of 75% members in PUSC (other than in GM)
   c. If co. is regulated under Special Act (E.g., IRDA) - Approval of such regulatory body required
   On receipt of such application, ROC to issue public notice.

3. On expiry of time mentioned in notice u/ss (1), unless contrary is shown by company, ROC shall:
   a. Strike off the name, and
   b. Publish notice thereof in Official Gazette. On such publication - Company stands dissolved.

4. Before such order for strike off, ROC to satisfy himself that:



5. Nothing in this section shall affect power of NCLT to wind up a company

Sec 249- Restriction of making application u/s 248

Application u/s 248 shall not be made if at any time during last 3 months, the co. has [PAT and NW]:

a. Changed Name or Shifted RO
b. Has disposed (for value) of any rights/Property held by it
c. Has engaged in Activity other than one necessary for:
   - Application u/s 248
   - Concluding affairs of company
   - Complying with statutory requirements
d. Made an appln. to Tribunal for sanction of CAA and such matter is not concluded
e. Being Wound up under Companies Act, 2013 or IBC

Penalty for Contravention - Fine upto Rs. 1 lakh

Sec 250- Effect of company notified as dissolved:

Cease to operate as company and Certificate of incorporation(COI) deemed cancelled

No effect on: - (a) Liabilities of person involved (b) Realisation of assets (c) Discharge of liabilities

Sec 251- Fraudulent application for removal of Name:

If application u/s 248 is made with objective of:

a. Evading liabilities of company
b. Intent to deceive creditors
c. Defraud any other person

} Person in charge of management of company shall be: (a) Jointly and severally liable to person who incurred loss/damage, and (b) Punishable u/s 447

ROC may also recommend prosecution against person making such application.

Sec 252- Restoration of name of Company:

[only NCLT can do]

1. Person aggrieved by order of ROC notifying a company dissolved - Appeal to NCLT within 3 years of date of order. On such appeal, if Tribunal is satisfied that removal of name not justified in view of absence of grounds, Tribunal may:
   a. Order to restore name after giving reasonable OOBH to company/person involved
   b. Company to file copy of order – ROC within 30 days for restoration and issue fresh COI

2. If ROC satisfied that name is struck inadvertently or on the basis of incorrect information and believes that restoration is required, Apply to Tribunal within 3 years – Seeking restoration.

3. Aggrieved person such as company/member/creditors or workmen may apply to Tribunal – Within 20 years of publication in Official Gazette

   If Tribunal satisfied that it is just to restore name – Order such restoration.

GOVERNMENT COMPANY

Sec 2(45)- Government Company

"Government company" means any comapny in which:

a. >= 51% of PUSC is held by CG or SG (s) or partly by CG and partly by one or more SG, and

b. includes a company which is a subsidiary company of such Government company

Note:

1. PUSC means aggregate of Equity and Preference shares
2. In case where shares with differential voting rights are issued, PUSC = Total voting power

Concept clarity check:

Decide whether A Ltd is a Government company, if:

1. CG holds 20%, SG of Maharashtra holds 20% and ONGC (Government Company) holds 20% - It is neither falling in case (a), nor in case (b). Hence, not a Government company
2. A Ltd. is a subsy of Government company but not WOS - Yes, A Ltd. becomes a Govt. co.

Sec 394- Annual Report of Government company

Where CG is a member of Government company:

CG shall, within 3m of AGM, cause Annual Report on working and affair of company to be prepared

Lay before both Houses of Parliament (HOP):

a. Copy of Annual Report

b. Copy of Audit Report

c. Comments upon audit report made by CAG

Where SG is a member in addition to CG:

SG shall cause a copy of Annual Report to be laid before House or both Houses of State Legislature along with Audit report and comment of CAG thereupon

Sec 395- Annual reports where one or more SG are members of companies (no CG)

Where CG is not a member of Government company, every SG which is a member shall:

a. cause Annual Report on working and affair of company to be prepared within 3 months of AGM,

b. Lay before House or both the houses of State Legislature:
   - Copy of Annual Report
   - Copy of Audit Report
   - Comments upon audit report made by CAG

Provision of Section 394 and 395 shall apply to Government company in liquidation as well.

NIDHI COMPANY

Sec 406- Power to Modify Act in its Application to Nidhi Companies

1. Nidhi company or Mutual Benefit Society (MBS) means a company which CG by notification in Official Gazette declares as Nidhi.
2. CG may, by notification in Official Gazette, direct any provision of this Act shall not apply or apply with such Exception, Modification or Adaption to Nidhi Companies or MBS
3. Copy of such proposed notification shall be laid before both HOP for total 30 days while it is in session. Notification not to be issued if disapproved by both HOP
4. In reckoning 30 days, exclude period when House is adjourned for > 4 consecutive days
5. Copies of notification issued (final) to be laid before each HOP

Nidhi Rules, 2014 [Amended as per Nidhi (Amendment) Rules, 2022 w.e.f. 19th April 2022]

1. Nidhi company means a company incorporated with the object of:
   a. Cultivating the habit of thrift and savings amongst its members
   b. Receiving deposits from and lending to its member only for their mutual benefit

2. Applicability - Every company incorporated or declared as Nidhi u/s 406 of Cos. Act, 2013.

3. Relevant definitions:
   - Net Owned Fund (NOF) - Paid up Equity SH + FR - Acc. Losses - Intangible Asset
   - NPA - Borrowal account w.r.t., interest income or principal amount unrealized > 12 months
   - Doubtful asset - Borrowal account which is NPA > 2 years but < 3 years
   - Loss asset - Borrowal account which is NPA > 3 years

4. Incorporation:
   - Public company with minimum PUESC of ~~Rs. 5 lakhs~~ Rs. 10 Lakhs
     Provided that - Every Nidhi company existing on the date of commencement of this Rule shall comply with this requirement within 18 months of such commencement. [Amendment]
   - No Nidhi company shall issue preference shares.
   - Object of Nidhi company - No object other than those defined (habit of thrift, deposit).
   - Nidhi company shall have "Nidhi Ltd" as last words in its name

5. Minimum number of members and NOF:
   - Every Nidhi company shall, within 1 year (FY) of date of incorporation, ensure that it has:

(a) Not < 200 members	(b) NOF of >= Rs. 10L	(c) Unencumbered term deposit of > = 10% of the outstanding deposit &	(d) NOF to Deposit of not > 1:20

   Note - The limit of NOF in Rule 5 has not been changed. It is only changed in Rule 9.
   - In case of non-compliance with (a) or (d) above,
     - Nidhi company shall within 30 days of close of first FY
     - Apply to RD in Form NDH -2 + Prescribed fees for extension of time (upto 1 year), and
     - RD may consider such application and pass extension order within 30 days of application.

- Return of Statutory Compliances (Form NDH - 1)
  - Within 90 days from close of first FY after incorporation or where applicable, 2nd FY,
  - Nidhi shall file return of statutory compliances in Form NDH -1 + Fees to the ROC
  - Duly certified by CA/CS/CMA in practice
- If Nidhi company fails to comply with this Rule beyond second FY, stop accepting further deposits till compliance made and get itself declared u/s 406 (again).
- Rule 5(5) - The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022

Additional points :

On and after commencement of Nidhi (Amendment) Rules, 2022, public company desirous to be declared as a Nidhi shall apply, in Form NDH-4, within 120 days of its incorporation for declaration as Nidhi, if it fulfils the following conditions, namely:

a. it has not less than 200 members; and
b. it has NOF of Rs. 20 lakhs or more.

6. Prohibitions: No Nidhi Company shall:
   a. Carry on business of:

Chit fund	hire purchase Finance	leasing Finance	Insurance	acquisition of securities issued by any BCs

   b. Issue preference shares, debentures or other debt Instruments
   c. Opening current account with members
   d. acquire or purchase sec. of any other co. or control composition of BOD of any other co. in any manner whatsoever or enter into any arrangement for change of its mgt. (not even with SR or approval of RD)
   e. carry on any Business other than business of borrowing or lending in its own name.
   f. Accept Deposits from/lending to any person other than members
   g. take Deposits from/lend money to BC;
   h. pledge any of the assets lodged by its members as security
   i. enter into any partnership arrangement in its borrowing or lending activities;
   j. issue any advertisement to solicit deposit
      Note - Private circulation of FD scheme amongst members carrying words "For Pvt. circulation to members only" not considered as advertisement
   k. pay brokerage/incentives for mobilizing deposit
   l. raise loans from banks/FIs or any other source for the purpose of advancing loans to mem.

      Nidhi company which has adhered to all provisions of these rules may provide locker facilities on rent to its members subject to Rental income from such facilities not > 20% of gross income (not net profit) at any point of time during a FY.

7. Share Capital and Allotment:
   - Nidhi Co. shall issue fully paid up equity shares of nominal value not less than Rs. 10 each
   - No service charge levied on issue of shares

- Nidhi company to allot each deposit holder lower of:
  - At least 10 shares or
  - Shares equivalent to Rs. 100
- Savings A/C holder and recurring deposit A/C holder to hold at least 1 share of Rs. 10 each

8. Membership:
   - BC or trust - cannot be members
   - Number of members not to be reduced below 200 at any time
   - No minor shall be member.
     Proviso - Deposit may be accepted in name of minor if made by legal guardian who is a member of Nidhi Company
   - A member shall not transfer > 50% of his shareholding (as on date of availing of loan or making of deposit) during subsistence of such loan or deposit, as the case may be.
     Provided that member shall retain minimum number of shares as per Rule 7 at all times

9. Net Owned Fund: Every Nidhi Company shall maintain NOF of >= ~~Rs. 10 lakhs~~ Rs. 20 lakhs or higher amount as CG may specify

   Note - Existing Nidhi co. to comply with this rule within 18m of commencement of this Rule.

10. Branches:
    a. Nidhi company may open branches, only if it has earned net Profit After Tax continuously during preceding 3 FYs.
    b. If a Nidhi company proposes to open > 3 branches within a district or any branch outside the district, it shall:
       - Obtain prior permission of RD and
       - Intimate to ROC about opening of every branch within 30 days of such opening.

11. Acceptance of Deposits by Nidhi company:
    Nidhi co. shall not accept deposits > 20 times of its NOF as per last audited Financial Statement.

12. N.A.

13. Deposits
    - Fixed Deposits - Minimum 6 months and Maximum - 60 months
    - Recurring Deposits - Minimum 12 months and Maximum - 60 months
    - Maximum interest rate on FD/RD = Maximum rate prescribed by RBI that NBFCs can pay on their public deposit
    - In case of recurring deposits relating to mortgage loans, maximum period of deposit = Repayment period of such loan
    - Maximum balance in savings A/C qualifying for interest = Rs. 1 lakh and Interest Rate not > Interest on such account by nationalized bank + 2%

- Foreclosure of FD/RD account:
  - Nidhi company shall not repay any deposit within 3 months of its acceptance
  - On req. of dep., if Nidhi co. agrees to repay after 3m, no intt. upto 6m from deposit
  - On request, if Nidhi company agrees to repay before expiry - Rate of interest shall be reduced by 2% from rate which Nidhi company would have ordinarily paid for the period for which deposit ran

  In case of death of depositor – Repay with interest at rate which Nidhi company would have ordinarily paid for the period for which deposit had run.

14. Un-encumbered Term Deposit:
    - Every Nidhi company shall
    - Invest and continue to keep invested
    - In unencumbered TD with
      - Scheduled Commercial bank (except Cooperative bank or Regional Rural bank)
      - Post office
    - Amt >= 10% of deposit o/s at the close of business on the LWD of 2nd preceding month.

    RD may give exception (temporary withdrawal) subject to ensuring restoration of amount.

    Application to RD to be made in Form NDH-2 along with prescribed fees.

15. Loans - Only to members subject to following limits:

Where total amount of deposit from all its members	Loan to each member
< Rs. 2 crores	Rs. 2 lakhs
Rs. 2 crores – Rs. 20 crores	Rs. 7.5 lakhs
Rs. 20 crores – Rs. 50 crores	Rs. 12 lakhs
> Rs. 50 crores	Rs. 15 lakhs

- Where Nidhi company has no profit in any of last 3 FY, above limit to be reduced to 50%
- If any member has defaulted in payment of loan – He shall not be eligible for further loan
- Loan can be given to members only against following security:
  - Gold, Silver or Jewelry [provided repayment period does not exceed 1 year]
  - Immovable property(IP)

    Provided that:

    - Repayment <= 7 years
    - Loan <= 50% of value of such IP
    - Total loan against IP <= 50% of overall outstanding loan as on date of BOD approval
  - FDRs, NSCs or other Government securities or insurance policies

    Provided that - Such securities are duly pledged with Nidhi and maturity date do not fall beyond loan period or 1 year whichever is earlier.

    Note: In case of loan against FDs, period of loan shall not > unexpired period of FD.
- In case of Joint ishareholders, the loan shall be provided to the member whose name appears first in the Register of members

16. Rate of interest (ROI):
    - ROI on loan by Nidhi company - Not > (Highest ROI offered on deposit by Nidhi company + 7.5%) on Reducing Balance Method
    - Nidhi company shall charge same ROI on borrowers w.r.t, same class of loans and ROI of all classes shall be prominently displayed on the notice board at the RO and each branch office.

17. Directors
    - Shall be a member of Nidhi company [Deposit u/s 160? - Yes]
    - Term - Upto 10 consecutive years
    - Re-appointment only after expiry of 2 years from ceasing to be a director
    - Provisions of section 152(4) [Declaration] and section 164 shall apply.

18. Dividends: Not declare dividend > 25% [Amendment]

19. Auditor:
    - No Nidhi co. shall appoint/re-appoint an indv. as auditor for > 1 term of 5 consecutive yrs.
    - No Nidhi co. shall appoint/re-appoint an audit firm as auditor for > 2 term of 5 consec. yrs.
    - Reappointment (individual/audit firm) - After expiry of 2 years from completion of term

20. N.A.

21. Nidhi company shall file half yearly (calendar year) return in Form NDH -3 + Fees within 30 days of conclusion of each half year duly certified by CA/CS/Cost accountant in practice

22. Auditor's Certificate
    - Auditor to furnish certificate every year that co. has complied with all provn. of this Rules
    - Such certificate to be annexed to audit report
    - In case of non-compliance - Specify the rules which have not been complied with

23. N.A.

24. Penalty for contravention - Nidhi co. & OID - Fine upto Rs. 5,000 and further fine of Rs. 500/ day

PUNISHMENT/PENALTY [SECTION 447,448 AND 450]

Sec 447- Punishment for Fraud

Without prejudice to any liability including repayment of any debt under this Act or any other law in force, any person guilty of fraud shall be liable as follows:

Amount involved in the fraud	Atleast lower of: a. Rs. 10 lakhs b. 1% of Turnover	Atleast lower of: a. Rs. 10 lakhs b. 1% of Turnover	Less than lower of: a. Rs. 10 lakhs b. 1% of Turnover
Fraud involves public intt.	No	Yes	No
Jail	6 months - 10 years	3 years - 10 years	Upto 5 years
And/or	AND	AND	OR
Fine	Up to 3x amt involved	Up to 3x amt involved	Upto Rs. 50L or both

Fraud bole toh?

Act | Ommission | Concealment of Fact | Abuse of position

Committed with intent:

to decieve | to gain undue advantage | to injure interests of co./SH/crs/others

Whether or not there is a wrongful gain/loss

Sec 448- Punishment for False Statement

If in any of the following:

Return | Report | Certificate | Financial Statements | Prospectus | Other docs

Any person makes any statement which:

1. is false in any material particulars, knowing it to be false or
2. omits any material fact, knowing it be material

Such person shall be liable under section 447

Sec 450- Punishment where no specific penalty or punishment is provided:

If a company/officer of company/any other person contravenes any provisions of this Act/rules and for which no penalty or punishment is provided elsewhere, then:

	Company	OID or any other person
Fine	Rs. 10,000	Rs. 10,000
Further penalty	Rs. 1,000/day	Rs. 1,000/day
Maximum penalty	Rs. 2 lakhs	Rs. 50,000

DORMANT COMPANY [SECTION 455]

Who can apply to become Dormant Company ("DC")?

Co. formed and registered under this Act for:
1. Future projects, or
2. To hold an asset/Intellectual property.

AND

has no significant accounting transactions ("SAT")

Inactive co. i.e., a co. which has:
1. not been carrying on business/ operations, ~~or~~ and
2. not made SAT - Last 2 FY
3. not filed FS/AR - Last 2 FY

Make application to ROC (in Form MSC-1 + Fees) to obtain status of DC.
Prior to such application:
- Pass SR at General Meeting, or
- Issue notice to all shareholders of co. & obtain consent of at least 3/4th shareholders (in value)

SAT means any transaction other than:
a. payment of fees by company to ROC;
b. payments made to fulfil requirements of this Act or any other law; } Compliance
c. allotment of shares to fulfil the requirements of this Act; and
d. payments for maintenance of its office and records. → Maintenance

Additional conditions to be eligible to apply for status of DC:
[IPL mein Deposit ko leke Dispute hua Govt aur Workmen ke beech. Stock girne lage]

1. No Inspection, Inquiry or Investigation (I,I,I) has been ordered/taken up
2. No Prosecution - initiated & pending
3. No o/s public Deposit and no default in payment
4. No o/s Loan (secured/unsecured)
   Exception - If o/s unseured loan, co. may apply to lenders for approval to obtain status of DC
5. No Dispute in management/ ownership of co.
6. No o/s dues to CG/SG/Local authority
7. No default in Workmen dues
8. Securities - Not Listed in stock exchange (India/Abroad)

- After considering the appln., ROC may allow status of DC and issue certificate in Form MSC - 2
- File "Return of DC" annually including financial position (in Form MSC -3) audited by a chartered accountant within 30 days of end of FY. Rotation of auditors shall not apply to DC.
- ROC to maintain register of DCs.
- If a co. fails to file AR/FS for 2 cons. FY, ROC to issue notice & enter its name in register of DC
- Minimum directors in DC - 3 (Public company), 2(Private company) and 1 (One Person company)

Application for seeking status of Active company: (Back to normal)
1. Apply to ROC in Form MSC - 4 (along with return in Form MSC -3)
2. ROC to consider application and issue certificate of active company in Form MSC - 5
3. Where a company does an act affecting its status of DC, directors to file an application with ROC to obtain status of active company within 7 days

ROC to strike off name of such company from Register of DC- If DC fails to comply with Sec 455

ROC to initiate process of strike off name from Register of dormant companies, if company remains DC for 5 years consecutively.

The End

Multiple Choice Questions

Question 1 [Section: 455]

Aakaar Solar Energy Private Limited was allowed the status of a 'dormant company' after a certificate to this effect was issued on 1st July 2021 by the ROC of Companies, Delhi and Haryana. From the four options stated below, select the one which correctly indicates the latest date after which the ROC is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company.

a) The latest date after which the ROC is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company shall be 30th June, 2022.
b) The latest date after which the ROC is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company shall be 30th June, 2023.
c) The latest date after which the ROC is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company shall be 30th June, 2024.
d) The latest date after which the ROC is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company shall be 30th June, 2026.

Question 2 [Section:455]

Nanny Marcons Private Limited was incorporated on 9th June, 2019. For the FY 2019-2020, it did not file its financial statements and annual returns. For the time being the company desires to be treated as 'inactive company' since it does not intend to carry on any business permitted by its Memorandum. Which of the following options correctly indicates as to when the ROC can issue certificate of status of dormant company to Nanny Marcons Private Limited on the basis of non-submission of financial statements if the company makes an application to the ROC in this respect?

a) The ROC can issue certificate of status of dormant company to Nanny Marcons Private Limited after non- submission of financial statements for the two FYs i.e., 2020-21 and 2021-22, if the company makes an application to the ROC in this respect.
b) The ROC can issue certificate of status of dormant company to Nanny Marcons Private Limited after non- submission of financial statements for the next FY i.e., 2020-21, if the company makes an application to the ROC in this respect.
c) The ROC can issue certificate of status of dormant company to Nanny Marcons Private Limited after non- submission of financial statements for the three FYs i.e., 2020-21, 2021-22 and 2022-23, if the company makes an application to the ROC in this respect.
d) The ROC can issue certificate of status of dormant company to Nanny Marcons Private Limited after non- submission of financial statements for the four FYs i.e. 2020-21, 2021-22, 2022-23 and 2023-24, if the company makes an application to the ROC in this respect

Answers:	1.	(d)	2.	(b)

Question:3 [Nidhi Rules]

Best Nidhi Limited has been incorporated on 01/04/2020 as a Nidhi Company under section 406 of the Companies Act, 2013 with 250 members. Its main object is to accept deposits from members and lend loans to members for the mutual benefit of the members. It also provides locker facilities to members. For FY 2020-2021, the income of the company (before deducting any expense) was Rs. 40,00,000. Expenses incurred during the year amounted to Rs.10,00,000. Calculate the maximum amount of rental income that could have been earned during the FY 2020-2021 by the company.

a) Rs. 10,00,000
b) Rs. 7,50,000
c) Rs. 8,00,000
d) Rs. 6,00,000

Question: 4 [Section: 247]

A valuer in a company will be appointed by the ---------- or in its absence, by the ----------of that company.

a) Board of directors, Shareholders
b) Board of Directors, Audit committee
c) Shareholders, Audit committee
d) Audit Committee, Board of Directors

Question:5 [Section:406 Nidhi Company]

Pankaj Nidhi Limited, incorporated under section 406 of the Companies Act, 2013. Pankaj Nidhi Limited wants to enter into an agreement for acquiring another company by purchase of its securities. Now the management of the Pankaj Nidhi Limited is in dilemma with respect to the requirement of entering into such an agreement. Pankaj Nidhi Limited approached you to provide with the best course of action considering the provisions of the Companies Act, 2013 read with Nidhi Rules.

a) Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.
b) Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.
c) Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and have obtained the previous approval of the ROC of Companies (Roc) having jurisdiction over such Nidhi.
d) Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the ROC of Companies (Roc) having jurisdiction over such Nidhi.

Answers:	3.	(c)	4.	(d)	5.	(b)

Question:6 [Section: 455]

Adheera Limited, a company incorporated under the Companies Act, 2013, has not entered into significant accounting transaction during the last one financial year. Accordingly, the management of the company was thinking to obtain the status of the dormant company under section 455 of the Companies Act, 2013. The ROC on the filings made during the last financial year found some irregularities and ordered inspection of the books of accounts under section 207 of the Companies Act, 2013. Now the management of the Company consults you, to advise on the application to be made to ROC for obtaining the status of the dormant company considering the provisions of the Companies Act, 2013.

1. The company shall be able to obtain the status of the dormant company after passing special resolution to this effect in the general meeting of the company.
2. The company shall not be able to obtain the status of the dormant company as company shall be inactive i.e., not carrying significant accounting transactions during the last 2 financial years.
3. The company shall be able to obtain the status of the dormant company after issuing notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders in value.
4. The company shall not be able to obtain the status of the dormant company as inspection u/s 207 of the Act is going on against the Company.

a) Only (3)
b) Either (2) or (4)
c) Either (1) or (3)
d) Both (2) and (4)

Question:7 [Nidhi Company]

With an Authorised Capital of 45,00,000 (divided into 4,50,000 equity shares of 10 each) and issued and paid-up capital of 25,00,000 (divided into 2,50,000 equity shares of 10 each), Amber Prabhat Nidhi Limited incorporated in 2018 at Balaghat, Madhya Pradesh by Loknath, Premnath and other trusted people, wants to issue a certain number of preference shares to its members. Being the Financial Advisor of Amber Prabhat Nidhi Limited, you are required to advise regarding the quantum of Preference shares which can issued to the members by choosing the correct option from those given below:

a) Amber Prabhat Nidhi Limited can issue Preference Shares equivalent to Authorised Equity Share Capital after carrying out due amendment in the Capital Clause.
b) Amber Prabhat Nidhi Limited cannot issue Preference Shares.
c) Amber Prabhat Nidhi Limited can issue Preference Shares upto 50% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause
d) Amber Prabhat Nidhi Limited can issue Preference Shares upto 75% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause

Answers:	6.	(c)	7.	(b)

Question:8 [Section: 252]

Who amongst the following may file an application for the restoration of the name of the company in the register of company and within the period of:

a) The Co. itself and within 2 years from the date of passing of the order dissolving the company
b) The authorised officials of the company and within 2 years from the date of passing of the order dissolving the company
c) NCLT and within 3 years from the date of passing of the order dissolving the company
d) Any person aggrieved by an order of the ROC and within 3 years from the date of passing of the order dissolving the company

Question:9 [Rule 6 of Companies (Registered Valuer and Valuation) Rules]

Within how many days authority will grant certificate of registration to the applicant to carry on the activities of a registered valuer?

a) within 30 days of the receipt of application, including the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
b) within 45 days of receipt of the application, including the time given by the authority for presenting additional documents, info. or clarification, or appearing in person, as the case may be.
c) within 60 days of receipt of the application, excluding the time given by the authority for presenting additional documents, info. or clarification, or appearing in person, as the case may be.
d) within 90 days of receipt of the application, excluding the time given by the authority for presenting additional documents, info. or clarification, or appearing in person, as the case may be

Question:10 [Section: 252]

A workman aggrieved by the company having its name struck off from the register of companies, applies to Tribunal for after 15 years of the publication of strikeoff of the name of the company in the gazette. Comment on the validity of filing of application by workman in the light of the companies Act, 2013:

a) Workman is not eligible to file an application for restoration of name of the company in the register of companies.
b) Only Company is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.
c) Workman is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.
d) Company, member, creditor or a workman are eligible to file an application for restoration of name of the company in the register of companies but after expiry of 20 years of the notice from the publication in the Official Gazette.

Answers:	8.	(d)	9.	(c)	10.	(c)

Question:11

A Ltd. was amalgamated into AB Ltd. The latter company AB Ltd. had held 100% shares in AC Ltd. Both AB Ltd. and AC Ltd. held 10,000 shares in A Ltd. before the amalgamation took place. A Ltd. had total 1,00,000 issued shares before amalgamation and 70,000 shares therein were held by B Ltd. which also later became shareholder of AB Ltd. under amalgamation. But the shareholders apart from B Ltd. (and excluding AB Ltd. and AC Ltd.) holding 10,000 shares did not become shareholders in the new AB Ltd. Assuming all other conditions for amalgamation in the 'nature of merger' are fulfilled, would this be:

a) Amalgamation in the 'Nature of Merger'.
b) Amalgamation in the 'Nature of Purchase'.
c) Both of these.
d) None of these.

Question:12

B. Real Estate Developers Limited was demerged to B. Reality Constructions and Developers Limited and B. Real Estate Developers Limited. Choose the correct option from those given below as to what type of demerger is this:

a) Total demerger.
b) Partial demerger.
c) Internal reconstruction.
d) Demerger in the 'nature of purchase'.

Question:13

In the case of financing of a financial asset by more than one secured creditors, there secured creditor shall be entitled to exercise any of the rights conferred on him is agreed upon by the secured creditors representing in order to make such an action binding on all the secured creditors.

a) Less 60% in value of the amount outstanding as on a record date
b) Not less than 60% in value of the amount outstanding as on a record date
c) At least 75% in value of the amount outstanding as on a record date
d) Not less than 75% in value of the amount outstanding as on a record date

Question:14

Krishna Kant, Surya Kant and other persons known to them from close quarters formed GM Nidhi Ltd. with a paid-up capital of Rs. 20,00,000 in Gujarat. Choose the correct option from those given below that indicates the nature of activity in which Gopala Money Nidhi Limi ted would be involved in:

a) GM Nidhi Ltd. was formed with the object to deal with savings amongst its members
b) GM Nidhi Ltd. was formed with the object of receiving deposits from its members and others
c) GM Nidhi Ltd. was formed with the object of lending money to its members only
d) GM Nidhi Ltd. was not formed with the object to deal with savings amongst its members but for deposit of money from others

Answers:	11.	(b)	12.	(b)	13.	(b)	14.	(c)

The End

NCLT AND NCLAT

Sec 407- Basic Definitions

1. Chairperson (CP) - Chairperson of NCLAT
2. Member - Judicial & Technical of both NCLT or NCLAT & incl. President/CP as the case may be
3. Judicial Member (JM) - Member of NCLT or NCLAT appointed as such & incl. President or CP
4. Technical Member (TM) - TM of the Tribunal/Appellate Tribunal appointed as such

Sec 420- Order of Tribunal (NCLT)

1. Tribunal to pass orders only after giving reasonable OOBH to parties involved
2. Amendment of order - Within 2 years from order, the Tribunal may, to rectify any mistake apparent from record (identified Suo motu or brought to notice by parties), amend an order. No amendment allowed if appeal preferred.
3. Copy of order - Send to parties concerned.

Sec 421- Appeal against Tribunal Order

1. Person aggrieved by order of NCLT - Prefer an appeal with Appellate Tribunal
2. No appeal shall lie to Appellate Tribunal if order was made with consent of parties
3. Appeal shall be filed within 45 days from date on which a copy of order is made available to person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

   Provided that Appellate Tribunal may entertain an appeal after the expiry of the said 45 days from date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that appellant was prevented by sufficient cause from filing the appeal within that period.

4. On receipt of Appeal, NCLAT shall give reasonable OOBH & confirm/modify/set aside the order
5. Copy of order - To NCLT and parties concerned.

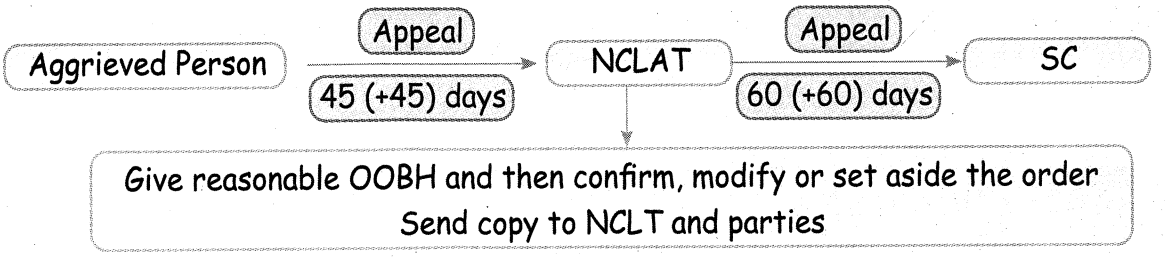
Sec 422- Expeditious disposal by Tribunal and Appellate Tribunal:

1. Tribunal and Appellate Tribunal shall deal with petition/appeal as expeditiously as possible, and every endeavor shall be made to dispose within 3 months
2. If not disposed within 3m, record reasons and President/CP may extend the period upto 90 days

Sec 423- Appeal to Supreme Court (SC)

- Aggrieved person may, within 60 days of rec. of copy of order, file appeal with SC on "Ques. of Law"
- Condonation for delay - 60 days

SUMMARY OF APPEALS:



Sec 424 - Procedure before Tribunal and Appellate Tribunal (T/AT)

1. Not bound by procedure of Code of Civil Procedure, 1908 but guided by Principal of Natural Justice (adequate notice, fair hearing and no bias) and provisions of this Act, Rules and IBC.
2. Powers of T/AT - Same power as vested in Civil Court w.r.t., [PARCER2O (Spanish word for Bro!)]
   - Requiring discovery or Production of documents.
   - Summoning and enforcing Attendance of any person and examination on Oath
   - Requisitioning any public record or doc. or a copy of such record or doc. from any office
   - issuing Commissions for the examination of witnesses or documents;
   - receiving Evidence on Affidavits
   - dismissing a Representation for default or deciding it ex parte;
   - setting aside any order of dismissal of any Representation for default or any order passed by it ex parte; and
   - any Other matter which may be prescribed.
3. Order of T/AT to be enforced as if it were a decree of court. It shall be lawful to send these orders for execution to court within the local limit of whose jurisdiction:
   a. In case of company - where Registered Office is situated
   b. In case of person - where person resides/carries on business or work for gain
4. Proceeding of T/AT = Deemed judicial proceedings and T/AT = Deemed Civil Court

Sec 425 - Power to punish for contempt of court

Same as that of High Court

Sec 426 - Delegation of Power

T/AT may, by general or special order, direct any officer/employee/other authorised person to:

- Inquire into matter relating to petition/appeal and
- Report to it

Sec 427 - President, Members, officers, etc., to be public servants

President/CP/JM/TM - Deemed public servant u/s 21 of Indian Penal Code

Sec 428 - Protection of action taken in good faith

No suits, prosecution or other legal proceeding shall lie against:

- Tribunal, President, Members and other employees
- AT, CP, members and other employees
- Liquidator or any other person authorised by T/AT

w.r.t., loss or damage caused or likely to be caused by an act done in good faith.

Sec 429- Power to seek assistance of Chief Metropolitan Magistrate, etc.

Tribunal may, during WUP or IBC proceedings	In order to take custody of property, BOA, other docs	Request in writing Chief Metropolitan Magistrate(MM) /Judicial Magistrate(JM) or District collector	To take possession of such property, BOA & documents

On such request, authority shall take possession and handover to NCLT

Act of Chief MM/Chief JM/District Collector under this section- Not to be questioned in any court

Sec 430- Civil court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit/ proceeding w.r.t, any matter which T/AT is empowered to determine as per this Act/any other law and

no injunction shall be granted by any court or other authority w.r.t, any action taken by T/AT in pursuant to this Act/Law

SECTION 431 TO SECTION 433

Section	Provision
431	No act of T/AT shall be questioned/invalid on ground of existence of any vacancy/ defect in its constitution.
432	Party to proceedings either appear in person or authorise CA/CS/CMA or legal practitioner to present his case
433	Provisions of Limitation Act, 1963 shall apply to proceedings/appeals before T/AT
434	Transition

COMPOUNDING OF OFFENCE, ADJUDICATION AND SPECIAL COURT

Common terms

1. Offence: Commission of an act i.e., contrary to any law or forbidden by the law & is not confined to commission of crime only. It is punished via penalty.
2. Types of penalties:

Fine only	Imprisonment only	Imprisonment or Fine	Imprisonment or fine or with both	Imprisonment and fine

3. Compoundable offences: Complainant enters into a compromise and agrees to have charges dropped against accused.
4. Non-Compoundable offences: Those which are not compoundable because of grievous nature of offence.
5. Cognizable offence: Police has authority to make an arrest without a warrant and start investigation with or without permission of a court.
6. Non-cognizable offence: Police without any warrant has no authority to arrest.

Sec 435- Establishment of Special Courts

1. CG may, for the purpose of speedy trial of offences under this Act (except u/s 452), establish as many special courts (SpC) as may be necessary.

2. SpC shall consist of:

Where offence under this Act is punishable:	SpC court shall consist of:	Appointed by?
With imprisonment > = 2 years	Single Judge holding office as session judge (SJ) or Additional SJ	CG + Chief Justice of High Court of concerned jurisdiction
Other case	MM or JM of the First Class	

Sec 436- Offence Triable by SpC

1. Notwithstanding provision of Code of Criminal Procedure (CCP), 1973
   a) Which SpC shall try the offence specified u/s 435(1)?
      a. SpC established in the area where registered office of the respective co is located.
      b. If >1 SpC in such area – Concerned HC to specify.

   b) A person accused of/suspected of committing offence under this Act is forwarded to Magistrate. It may order detention in such custody (≤ 15 days if JM & ≤ 7 days if Executive Magistrate). Where Magistrate believes detention not necessary – Forward such person to SpC
2. Power of SpC = That of Magistrate
3. SpC may, upon perusal of police report, take cognizance of offence without accused being committed for trial.
4. SpC may also try an offence under the CCP,1973 against the accuse at the same trial
5. Summary trial
   a) SpC can try a summary trial when any offence under this Act is punishable with ≤ 3 years
   b) Sentence in a summary trial should be limited to ≤ 1 year

c) At commencement or during the summary trial, SpC opines that –
   i. nature of case is such that >1 yr sentence of imprisonment may have to be passed, or
   ii. it is undesirable to try the case summarily

SpC, after hearing the parties, record an order to that effect and proceed to hear or rehear the case in like a regular trial.

Sec 437- Appeal and Revision

High Court may exercise all power conferred by CCP,1973 as if a SpC = Court of Session
Explanation – SpC will be treated as Court of session and like you can file appeal against order of court of session with High Court. Similarly, you can file appeal against SpC order with High Court.

Sec 438- Application of Code to proceedings before SpC

1) CCP, 1973 provisions apply to the proceedings before a SpC
2) SpC = Deemed Court of Session or court of MM/JM and
   Person conducting a prosecution = Deemed Public Prosecutor.

Sec 439- Offences to be Non-Cognizable

1) Every offence under this Act [except u/s 212(6)] shall be deemed to be non-cognizable
2) Court shall take cognizance of any offence
   a) Under Cos. Act: Only on written complaint by ROC, a sh./mem., or person auth. by CG
   b) Issue and transfer of securities and non-payment of dividend - On written complaint by person authorised by SEBI
3) Not applicable to:
   a) Prosecution by a company of any of its officers
   b) Any action taken by the liquidator of a company w.r.t. WUP related provisions. The liquidator of a company shall not be deemed to be an officer of the company.
4) The presence of ROC/ CG authorized person before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial

Sec 442- Mediation and Conciliation Panel

1) A panel of experts maintained by CG having qualifications for mediation between parties during the pendency of any proceedings before authority (CG, tribunal, Appellate tribunal)
2) Any of the parties, at any time may approach the authority or the authority suo moto may refer the matter to the Mediation and Conciliation Panel
3) The panel shall follow such procedure as may be in Rule 11 of the SpC (Companies Mediation and Conciliation) Rules, 2016, and dispose of the matter in < = 3 months from the date of such reference and forward its recommendations to the respective authority
4) Party aggrieved by the recommendation of the Panel may file objections to the resp. authority

Sec 443- Power of Central Government to appoint Company Prosecutors

The CG may appoint one/more persons, as company prosecutors for conduct of prosecutions, generally, or for any case, or in any case, or for any specified class of cases in any local area.

Powers & privileges same as conferred by the Code on Public Prosecutors

Sec 444- Appeal against Acquittal

The Central Government may, in any case arising under this Act, direct any-

1) company prosecutor or
2) authorize any other person either by name or by virtue of his office,

to present appeal from an order of acquittal passed by any court, other than HC, & appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

Sec 445- Compensation for Accusation without reasonable cause

The provisions of section 250 of CCP, 1973 shall apply mutatis mutandis

Sec 446- Application of Fines

The court imposing any fine under this Act may direct that the fines shall be applied towards:

(a) payment of the costs of the proceedings or
(b) reward to the person on whose information the proceedings were instituted.

Sec 446A- Factors for determining level of punishment

SpC while deciding the amount of fine or imprisonment should consider:

size of the company	nature of business carried on by company	injury to public interest	nature of the default	nature of the default

Sec 446B- Lesser Penalties for some Companies

If non-compliance is by OPC/ Small co./Startup co./ Producer co. fails to comply with provisions of this Act, such company and officer in default shall be liable to a penalty not > ½ of penalty specified in such provisions subject to max. of Rs. 2 lakhs (for Co.) and Rs. 1 lakh (for OID) [Amendment]

Sec 454- Adjudication of Penalties

1) CG can, by order in OG, appoint as many CG officers (not below rank of ROC) as Adjudicating Officers (AO)

2) AO may pass an order to:
   a. impose a penalty (after reasonable OOBH) and
   b. require to rectify the default or non-compliance.

   Provided that in case default relates to non-compliance of Sec 92/137 and default is rectified either prior to, or within 30 days of, the issue of notice by AO, no penalty shall be imposed and all proceedings shall be deemed to be concluded.

Rules relating to imposition of Penalty:

- AO to issue written Show Cause Notice (SCN) via email to Company, OID & any other person to Show Cause why penalty should not be imposed.
- Show cause within period specified in notice (not < 15 and not > 30 days). AO may extend by not more than 15 days on sufficient reasons.
- SCN to clearly indicate the nature of non-compliance/default alleged to have been committed & also draw attention to relevant penal provisions of Act & max. penalty which can be imposed.

- If considering reply received above, AO is of opinion that physical appearance is required, he shall issue notice, within 10 working days from receipt of reply, fixing a date for appearance through its Authorised Representative, or officer of such company.
- If recipient can make oral representation and AO to allow it
- The AO shall pass an order:
  a. within 30 days from expiry of time to reply, if physical appearance was not required
  b. within 90 days of the date of issue of SCN if physical appearance was required
- Any delay (by AO) should have the reasons recorded by AO and delay doesn't result in invalidity of the order.
- Order to be duly dated & signed by AO & state reasons for req. physical appearance, if any
- AO to send a copy of order to the Co./OID/ any other person, CG & uploaded on the website.
- The AO shall have the power to:-
  a. Summon and enforce attendance of any person
  b. Order for evidence or to produce any relevant document
- Failure to reply or refuses to appear may result in penalty considering following factors:
  a. Factors u/s 446A (size of company, nature, etc.)
  b. the amount of disproportionate gain/ unfair advantage/loss to investors or creditors, wherever quantifiable, made as a result of the default.
- The penalty has to be paid via MCA portal & is credited to the Consolidated Fund of India.

3) Any person aggrieved by an order made by AO may prefer an appeal to the RD having jurisdiction in the matter within 60 days from the date on which copy of AO order is received.

4) RD may, after giving the parties to the appeal an OOBH, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

5) Where the company fails to comply with the order made by AO/RD within 90 days from the date of receipt of copy of order, the penalty shall be:
   Company - Rs. 25,000 – Rs. 5 lakhs
   OID - Imprisonment upto 6 months or with fine Rs. 25,000 – Rs. 5 lakhs, or with both.

Sec 454A- Penalty for Repeated Default

When a default is committed for the second time within 3 years from the date of order imposing such penalty is passed by AO/RD, he shall be liable for the second or subsequent defaults for an amount equal to twice 2x the amount of penalty provided for such default under the relevant provisions of this Act.

The End

Multiple Choice Questions

Question:1 [Section:439]

Mr. Rudra Sampat, an employee of Rajeev SuperMart Limited, filed a complaint against the company for the illegal issue and transfer of securities before the Special Court. Choose the correct basis from the 4 bases given below on which the said complaint shall be rejected by the Special Court:

a) The above offence of illegal issue and transfer of securities by Rajeev SuperMart Limited is a non-cognizable and therefore, it is out of the jurisdiction of the Special Court.
b) Since the Court is barred to entertain a complaint relating to illegal issue and transfer of securities by Rajeev SuperMart Limited, it is out of the jurisdiction of the Special Court.
c) Mr. Rudra Sampat, being an employee of Rajeev SuperMart Limited, is not a competent person to file a complaint against the company for an offence relating to illegal issue and transfer of securities.
d) In respect of illegal issue and transfer of securities by Rajeev SuperMart Limited, a complaint can be filed before the Court by the ROC of Companies, a shareholder or a member of the company, or a person authorised by the CG in that behalf.

Question:2 [Section:439]

Rhea Marketing and Consultants Limited, incorporated under the Companies Act, 2013, had made political contributions amounting to Rs 1,00,000 to a political party registered under section 29A of the Representation of the People Act, 1951. The statutory auditor of the company, while reviewing the donations made to the said political party, found that no proper board resolution authorizing the donation was made. Since there is contravention of the applicable provisions, it is imperative that the Directors of Rhea Marketing and Consultants Limited would liable to be punished with imprisonment upto six months and with fine up to five times the amount of contribution so made. You are required to choose the correct option which indicates the category under which offence committed by the Directors of the company will fall considering the applicable provisions of the Companies Act, 2013:

a) Compoundable offence.
b) Non-compoundable offence.
c) Compoundable and cognizable offence.
d) Non-compoundable and non-cognizable offence.

Answers:	1.	(c)	2.	(d)

Question:3 [Section:421]

With the consent of the parties involved, the Delhi Bench of NCLT passed an order on September 21, 2021 in respect of an application filed before it. Mr. Rohit, who received the order of NCLT on September 24, 2021, felt aggrieved by the said order and therefore, filed an appeal before the National Company Law Appellate Tribunal (NCLAT) on January 5, 2022 showing sufficient cause of delay for not filling the appeal within 45 days from the date of the order of NCLT or even within the extended period of 45 days. Choose the correct option from those given below as to whether the appeal is admissible before the National Company Law Appellate Tribunal (NCLAT) after showing the cause of delay in filing the appeal:

a) Even after showing sufficient cause of delay in filing the appeal, Mr. Rohit's appeal can be admitted only upto the extended period of next 45 days after the expiry of first 45 days from the receipt of the order and the said extended period of time has already expired.
b) Since NCLT passed the order with the consent of the parties involved, Mr. Rohit's appeal can be admitted by NCLAT within the initial 45 days because extended period of 45 days cannot be granted to him.
c) Since Mr. Rohit has shown sufficient cause of delay for not filing the appeal within the extended period of 45 days after the expiry of first 45 days from the receipt of the order, his appeal can be admitted by NCLAT.
d) Mr. Rohit's appeal cannot be admitted by NCLAT since the order was passed by the NCLT with the consent of the parties who filed the application before it.

Question:4 [Section: 442]

The ROC, Mumbai, moved an application under Section 272 of the Companies Act, 2013 to the NCLT for winding-up of the Isabella Gymnasium Products Limited. During the pendency of the winding-up application, the NCLT, considering the best interest of the parties to the application, suo motu is desirous of referring the matter of the proceedings pending before it to the Mediation and Conciliation Panel formed under Section 442 of the Companies Act, 2013. You are required to select the correct option from the four given below whether NCLT can, suo motu, refer the proceedings pending before it to the Mediation and Conciliation Panel:

a) The NCLT is empowered to refer, suo motu, any matter pertaining to above stated proceedings to the Mediation and Conciliation Panel.
b) The NCLT cannot, suo motu, refer any matter pertaining to above stated proceedings to the Mediation and Conciliation Panel as only CG is empowered to take such action.
c) The NCLT cannot, suo moto, refer any matter pertaining to above stated proceedings to the Mediation and Conciliation Panel without first obtaining the consent of the parties to the proceedings.
d) The NCLT shall refer any matter pertaining to above stated proceedings to the Mediation and Conciliation Panel only after obtaining prior approval of the CG in this behalf.

Answers:	3.	(d)	4.	(a)

Question:5 [Section:420]

Requisite number of shareholders of Vimaan Aerospace Limited, which has been incorporated under the Companies Act, 2013, filed an application with the NCLT under Section 241 highlighting the mismanagement in the conduct of the affairs of the company. Taking cognizance of the application, the NCLT passed an order under Section 420 on November 23, 2021, providing the sought-after relief to the shareholders of Vimaan Aerospace Limited. On finding some mistake in the order, the shareholders brought the same to the notice of NCLT for rectification. You are required to select the correct statement from those given below as to the circumstances under which NCLT would be able to amend its order and the maximum period which the said order can be amended:

a) NCLT can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of six months from the date of such order provided no appeal has been made against the said order.
b) NCLT can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of one year from the date of such order provided no appeal has been made against the said order.
c) NCLT can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of two years from the date of such order provided no appeal has been made against the said order.
d) NCLT can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of three years from the date of such order provided no appeal has been made against the said order.

Question:6 [Section: 442]

Mr. Rashtra, one of the parties to the proceedings applied to the Tribunal, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of ----------

a) two months from the date of such reference
b) three months from the date of such reference
c) three months from the date applied to the Tribunal for reference
d) Six months from the date of applied to Tribunal

Answers:	5.	(c)	6.	(b)

Question:7 [Section: 422]

As per the Companies Act, 2013, every petition filed before the Tribunal shall be disposed of:

(a) within 1 month from the date application is admitted

(b) within 2 months from the date of first hearing

(c) within 3 months from the date of its presentation

(d) within 6 months from its filing

Question:8 [Section: 436]

Trial of an offence under the Companies Act, by special court shall be of such an offence:

(a) which is punishable with imprisonment for a term exceeding one year

(b) which is punishable with imprisonment for a term not exceeding one year

(c) which is punishable with imprisonment for a term exceeding three years

(d) which is punishable with imprisonment for a term not exceeding three years

Question:9 [Section: 421]

Makhija Developers Limited, being unsatisfied with the order given by the NCLT, desires to prefer an appeal against the order of the NCLT. You, as a legal advisor to Makhija Developers Limited, are required to provide them with the best course of action available considering the provisions of the Companies Act, 2013.

(a) Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as Interim Resolution Professional is already appointed.

(b) Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 45 days from the date of order of copy made available to Makhija Developers Limited.

(c) Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as reasonable opportunity of being heard was given to Makhija Developers Limited.

(d) Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 60 days from the date of order of copy made available to Makhija Developers Limited.

Answers:	7.	(c)	8.	(d)	9.	(b)

The End

STUDENT'S NOTES:

Chapter 10 - E-Filing

Author's Note

This chapter is newly added in Self-Paced Online Module. This chapter is too procedural, and it is not practically possible to summarise the same as it adds no value. Hence, students are advised to glance through the topic once from the ICAI module.

Please be informed that, ICAI has released section wise weightage of each topic and in that here's a screenshot of weightage that they have assigned to the chapter e-filing:

10.	E-filing*	-	-

*** Since the question will be based on any of the chapters pertaining to the Companies Act, 2013, so no separate section-wise weightage is assigned to this chapter.**

Hence, keep this chapter as your last priority and refer to the ICAI module only after you are done with all the other chapters.

Still, I have added a few MCQs below which you can refer.

The End

Multiple Choice Questions

Question:1 [Introduction]

The nomenclature MCA21 reflects ----------

(a) that the portal contains 21 e-Forms to be filed electronically by a company during any financial year.

(b) that it is linked with Section 21 of the Companies Act, 2013.

(c) that MCA is capable of fulfilling the aspirations of its stakeholders in the 21 st century.

(d) that it contains 21 standardised features.

Question:2 [Section 400]

Electronic form for the specified purposes shall be:

(a) exclusive, or in the alternative or in addition to the physical form.

(b) inclusive, or in the alternative or in addition to the physical form.

(c) extensible or in the alternative or in addition to the physical form.

(d) inclusive, or in the alternative or complementary to the physical form.

Question:3 [Introduction]

SRN stands for:

(a) Service Request Notice

(b) Service Reporting Number

(c) Signature Request Notice

(d) Service Request Number

Question:4 [XBRL]

Apoorva Medicines Limited shall be required to file financial statements through XBRL:

(a) If it has a paid-up capital of ` 5 crores and above.

(b) If it has a turnover of ` 75 crores and above.

(c) Both (a) and (b).

(d) Neither (a) nor (b).

Question:5 [XBRL]

XBRL stands for:

(a) eXtension Business Reporting Language

(b) eXtensible Business Reporting Language

(c) eXclusive Business Reporting Language

(d) eXtended Business Reporting Language

Answers:	1.	(c)	2.	(a)	3.	(d)	4.	(a)	5.	(b)

The End

The SEBI Act, 1992 and SEBI Regulations

Introduction

- SEBI was established in 1988 and got legal character in 1992
- Prime objectives of the SEBI Act, 1992 are:
  - Protecting interests of investors in securities;
  - Promoting the development of the securities market, and;
  - Regulating the securities market

Sec 3- Establishment

- Body Corporate (Perpetual Succession, Common Seal, Hold Property, Sue or be sued)
- Head Office - Nariman Point, Mumbai

Sec 4- Constitution

General superintendence, direction and management of affairs of Board shall vest in Board members.

- SEBI Board consists of:

Chairperson - Nominated by CG*	2 members - Officers of Ministry	1 member - From RBI	5 members (atleast 3 Whole time) - Nominated by CG*

*CG shall nominate a person of Integrity, Ability & Standing (IAS) who has
- Shown capacity in dealing with problems relating to securities market
- Special knowledge or experience in law, finance, economics, accounts, admin/other discipline

Sec 5- Terms of Office and other Conditions

(1) Term of Office for Chairperson & Whole-time members
- → 5 years
- → Eligible for reappointment

} Not hold office after the age of 65

(2) CG shall have right to terminate - Chairperson and 5 members (Appointed by CG)

↓

Any time before expiry of tenure by:
(a) Notice >= 3months in writing OR
(b) 3 months salary in lieu thereof

(3) Right to Relinquish : Chairman, All Other Members → 3m notice in writing → CG

Sec 6- Removal of Members

CG shall have power to remove any member (after reasonable OOBH) if he [I M OFF ABUSED]:

Adjudicated Insolvent	Declared of Unsound mind	Convicted of offence involving moral turpitude	has in the opinion of CG so abused his position as to render his continuance in office detrimental to the public interest

Sec 7- Meetings

- Number of times / Rules of meeting / Quorum - As may be prescribed.
- If Chairman unable to attend meeting - Choose member (By and Amongst members present) to preside over the meeting.
- Decision by majority. If equal votes - Chairman/Presiding Officer - Second/Casting Vote.

Sec 7A- Members not to participate in the meeting in certain cases

A member who is:

a. a Director of a company, and

b. has any pecuniary interest in a matter coming up for consideration at a meeting of SEBI

shall disclose the nature of interest and not participate in any decision with respect to that matter.

Sec 8- Vacancies not to invalidate proceedings

The following shall not invalidate proceedings of Board:

Vacancy in SEBI	Defect in constitution of SEBI	Defect in appointment of member	Irregularity in procedure not affecting merits of the case

Sec 11(1,2&3)- Powers and Functions of SEBI

Duties of the SEBI:

- Protecting the interest of investors in securities;
- Promoting the development of securities market, and;
- Regulating securities market

Powers of the SEBI:

1. Regulate the business in stock exchange and other securities market
2. Registering & regulating the working of:
   - Person registered u/s 12(1)
   - Venture Capital Fund (VCF)
   - Collective Investment Scheme (CIS) including Mutual Fund
3. Promoting and regulating self-regulatory organisation (AMBI, AMFI)
4. Promoting investors education and training of intermediaries
5. Prohibit fraudulent & unfair trade practices and insider Trading
6. Regulating substantial acquisition of shares and takeover of company
7. Call information, conduct - Inquiry, Inspection, Audit {Recognised Stock Exchange (RSE), Mutual Funds (MF), Intermediary, Associate person}
8. For inquiry/investigation by SEBI, Call info from banks and other CG/SG authority
9. Call information, or provide information for prevention or detection of violation of securities law from SEBI counterparts - In India/ outside India (Prior approval of CG)
10. Powers as per SCRA, 1956
11. Levying Fees and Conducting research for the purpose of this section
12. Other prescribed functions

Power to Inspect Listed company, etc.:

In case of a Listed Company or a Public Company which intends to get its securities listed, where Board has reasonable grounds to believe (RGTB) that such company is indulged in:

- Insider Trading (IT)
- Fraudulent & Unfair trade practices (FUTP)

SEBI may undertake measures for inspection of books, register and other documents.

Powers of Civil Court exercisable by SEBI - Similar to PARCER2O (Refer Chapter 9)

Sec 11(4) - Powers of SEBI during Inspection or Inquiry (I/I)

With an intent to protect the interest of investors or securities market → SEBI may, during pendency of I/I or on Completion of such I/I, pass the following orders [I am S2AD Access Chingaya]:

(a) Suspend trading of any security in RSE

(b) Restrain persons from Accessing securities market, and Prohibit any person associated with securities market to buy/sell/deal in securities

(c) Suspend Office bearer of stock exchange/self-regulatory organisation

(e) Impound & retain - Proceeds of securities from transaction under investigation

(d) Direct any intermediary or associated person → Not to Dispose or alienate an asset forming part of transaction under investigation

(f) Attach (for <90 days) bank accounts or other property (so far as it relates to proceeds actually involved) of any intermediary or any person associated with secuities market and involved in contravention of Act/Rules, etc.*

*Provided that - Within 90 days - Board to obtain confirmation of Special Court [Sec 26A]. On such confirmation - Attachment to continue during pendency of proceedings.

Note: Measures under clause (d), (e), (f) against listed company/public company intend to get listed may be taken only if IT or FUTP involved.

Sec 11(5) - Disgorged Funds

Disgorged funds shall be credited to IPEF (not IEPF) & utilised by Board as per Regulation

Sec 11A - Regulation or prohibition of issue of prospectus, etc.

For the protection of investors, SEBI may:

- Regulate matters related to - issue of capital; transfer of securities & other incidental matters and manner of such disclosure
- Prohibit & restrict co. from - issuing prospectus, offer docs or advertise soliciting public money.

Sec 11AA - Collective Investment Scheme (CIS)

1. CIS means any scheme or arrangement (S&A) under which [P MODI]:
   i. Contribution made by investors are Pooled & utilized for the purpose of S&A
   ii. Contribution is made by investors with a view to receive:
      - Profit
      - Income
      - Produce
      - Property (movable or immovable)
   iii. Property/Contribution/Investment - Managed on behalf of investors
   iv. Investors do not have control or management over Day-to-day operations of S&A
   v. Satisfies such Other condition as may be specified

2. Following S&A shall not be CIS:

Co - operative society	NBFC	Contract of Insurance	Pension Scheme / Insurance Scheme under EPF & Miscellaneous Provision Act, 1952

Deposits under Companies Act, 2013	Deposits accepted by Nidhi companies/MBS	Chit Business	Subscriptions to a Mutual Fund	Other notified by CG

Deemed CIS: Any pooling of funds under any S&A, which is not regd with Board or is not covered in above exception, involving a corpus amt. of > = Rs. 100 crores or more shall be deemed to be CIS.

Sec 11B - Power to issue directions & Levy Penalty

1. SEBI may issue directions, if after making inquiry, if it satisfied that it is necessary in the interest of investors or orderly development of securities market
   a. to prevent affairs of any intermediary or persons u/s 12 from being conducted in manner detrimental to the interest of investors or securities market or
   b. to secure proper management of any such intermediary or persons.

   Directions may be issued to persons u/s 12 or Intermediaries or Person Associated with Securities Market (IPASM) or company in respect of matter u/s 11A.

2. SEBI may levy penalty (reason recorded) u/s 15A - 15H incl. 15EA, 15EB, 15HA, 15HAA, 15HB.

Power to issue direction includes power to order disgorgement of amt of wrongful gains/loss averted.

Sec 11C - Power of SEBI to order investigation

1. Grounds: SEBI may appoint a person to investigate affairs of IPASM if SEBI has RGTB that:
   - Transaction in securities are being dealt with in a manner detrimental to investors/sec. market
   - IPASM has violated provisions of Acts/Rules/Regulation.

2. Duties of Officers of IPASM:

Duty of every: ➢ Manager ➢ MD ➢ Officer/Employee	→ To preserve & produce to Investigating Authority (IA)	→ Books/Register/Docs/ Records of company or IPASM

3. Period of custody - 6 months. May call for it if needed again.

4. Examination on oath: IA may examine on oath, following personnel of IPASM:

Manager	Managing Director	Officer/Employee

   For this purpose, IA may require the person to appear before it personally.

5. Notes of examination :
   - To be taken down in writing
   - Read over to and signed by – person examined
   - May thereafter be used as evidence against him

6. On failure (w/o cause) of any person to:
   - Provide books/records/other info to IA
   - Appear before IA personally or answer any question
   - Sign any notes of examination

   } Jail up to 1 year and/or Fine up to Rs. 1 Crore + 5 lakhs/day

7. Search and Seizure:

While in the course of Investigation, IA has RGTB books, register, etc. of IPASM shall [DAMFS],

Destroyed | Altered | Mutilated | Falsified | Secreted

- IA may make application to Magistrate/Judge of designated court (Mumbai)
- For order of seizure of such records

After considering the application, Judge may authorise the IA to Enter, Search and Seize.

IA may seek assistance of police or officer of CG for such search/seizure.

Such seizure shall NOT be authorised for Listed Company or Public company intending to get securities listed unless such company indulges in insider trading or market manipulation.

8. Custody of impounded or seized documents – Till conclusion of investigation.

Sec 11D – Cease and Desist Proceedings

- If SEBI finds (after Inquiry) that a person has violated/likely to violate – Prov. of Act/Rules/Reg
- it may pass an order requiring such person to cease and desist from committing such violation

Such order shall not be passed for Listed Company or Public company intending to get securities listed unless insider trading or Fraud involved.

Sec 12 – Registration Certificate (COR)

1.
- Stock-Broker
- Sub-Broker
- Share Transfer Agent
- Trustee of trust deed
- Banker to an issue
- Merchant Banker
- Underwriter
- Portfolio manager
- Investment advisor
- Other intermediaries who may be associated with Securities market

Shall buy, sell or deal with securities as per T&Cs mentioned in COR obtained from the Board.

2.
- Depository
- Participant
- Custodian
- Foreign Institutional Investor
- Credit Rating Agencies
- Other intermediaries who may be associated with Securities market

Shall buy, sell or deal with securities as per T&Cs mentioned in COR obtained from the Board.

3. No person shall sponsor or carry on activities of:
   - Venture Capital Fund
   - CIS including MF
   - Alternate Investment Fund
   - Business trust as defined u/s 2(13A) of Income Tax Act, 1961.

   } Unless obtain COR

4. Application for COR → As prescribed.
5. Suspend or Cancel COR → As per regulation after reasonable Opp. of Being Heard (OOBH).

Sec 12A – Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control

No person shall directly/indirectly do the following, in contravention of this Act/ Rules/ Regulations:

a. use any manipulative/deceptive device, in connection with issue/purchase or sale of listed sec.;
b. employ any device to defraud in connection with issue or dealing in listed securities;
c. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in listed securities;
d. engage in insider trading;
e. deal in securities while in possession of material or non-public information or communicate such material or nonpublic information to any other person;
f. acquire control of any co. or securities > % of equity share capital of a listed sec. in contravention

Here, Listed Securities = Securities listed or proposed to be listed on a Recognised Stock Exchange

Sec 13 – Grants by the CG

CG may after due appropriation made by Parliament → Grant such sum to Board as it may think fit.

Sec 14 – Fund

- A fund called "SEBI General Fund" shall be constituted.
- Amount to be credited to SEBI General Fund:
  - All grants/fees/charges received
  - Sums received from other sources
- Utilisation of sums in the fund
  - Salaries/Remuneration of officers, employees, members
  - Expense in discharge of function under section 11
  - Expense towards purpose/object of this Act

Sec 15 – Accounts and Audit

1. Board to prepare annual FS → Manner as prescribed by CG + CAG.
2. Audit → CAG and Expense borne by Board.
3. Certified Accounts + Audit Report → Forwarded annually to CG → Lay before both HOP.

SUMMARY OF PENALTIES FROM 15A TO 15HB:

Section	Kind of Failure	Penalty
15A [Accounts]	a. Fails to furnish any document, return or report to the Board or furnishes or files false, incorrect or incomplete information, return, report, books or other documents. b. Fails to file any return or furnish any info, books or other docs within time specified or who furnishes or files false, incorrect, or incomplete info, return, report, books or other docs. c. Fails to maintain books of account or records.	Rs. 1 lakh + Rs. 1 lakh / day up to Rs. 1 Crore.
15B	If any person regd. u/s 12 is required by the Act to enter into an agreement with his client, fails to enter into such agreement.	
15C	If any listed co. or person registered u/s 12, after having been called upon by the Board, to redress grievances of investors, fails to redress such grievances within time specified by Board.	
15D	If any person, who is: a. required u/s 12 to obtain a COR for sponsoring or carrying on any CIS (including MF) – sponsors or carries on such activity without obtaining such COR b. registered as a CIS u/s 12 but fails to a) comply with the T&C of COR b) to make an application for listing of its schemes as provided for in the regulations governing such listing c) dispatch unit certificates of any scheme as per Regulations d) refund the application monies paid by the investors within the period specified in the regulations e) invest money collected by such CIS as per Regulations	
15E	If any AMC of a MF registered under this Act, fails to comply with any regulations providing for restrictions on activities of AMC,	
15EA	If any person fails to comply with the regulations in respect of, ➢ alternative investment funds, ➢ infrastructure investment trusts, and ➢ real estate investment trusts or or fails to comply with the directions issued by the Board	Rs. 1 lakh + Rs. 1 lakh / day up to Higher of: Rs. 1 Crore or 3x amt of gains made out of such failure
15EB	If investment adviser /research analyst fails to comply with regulation or directions issued by the Board	Rs. 1 lakh + Rs. 1 lakh / day up to Rs. 1 Crore
15F	If any person, who is registered as a stock-broker under this Act: a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member	Rs. 1 lakh ~~+ Rs. 1 lakh / day~~ up to Rs. 1 Crore
	b) fails to deliver any security or fails to make payment of the amount due to the investor as per the regulations	Rs. 1 lakh + Rs. 1 lakh / day up to Rs. 1 Crore

	c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations	Rs. 1 lakh ~~+ Rs. 1 lakh/ day~~ upto 5x amt of brokerage charged in excess of specified brokerage
15G	If any insider who: a. either on his own behalf or on behalf of any other person, deals in securities of a BC listed on any stock exchange on the basis of any unpublished price-sensitive information; or b. communicates any unpublished price-sensitive info. to any person, with or w/o his request for such information except as required in the ordinary course of business or under any law; or c. counsels, or procures for any other person to deal in any sec. of any BC on the basis of unpublished price-sensitive information.	Rs. 10 lakhs up to Higher of: Rs. 25 Crores or 3x amount of profit made
15H	If any person, who is required under this Act/Rules/Reg, fails to: a. disclose the aggregate of his shareholding in the BC before he acquires any shares of that BC; or b. make a public announcement to acquire shares at a min. price; or c. make a public offer by sending letter of offer to shareholders of concerned company; or d. make payment of consideration to the shareholders who sold their shares pursuant to letter of offer	Rs. 10 lakhs up to Higher of: Rs. 25 Crores or 3x amount of profit made
15HA	If any person indulges in fraudulent and unfair trade practices relating to securities	Rs. 5 lakhs up to Higher of: Rs. 25 Crores or 3x amount of profit made
15HAA	Any person, who: a. knowingly DAMFS any info., record, doc. (incl. e-records) reqd to be maintained as per the Act, so as to impede, obstruct, or influence the Inquiry, Inspection, Invg., Audit, or proper administration of any matter within the jurisdiction of Board; b. w/o being auth. to do so, access/tries to access/denies/ modifies access parameters, to regulatory data in the database; c. w/o being auth. to do so, downloads, extracts, copies/ reproduces regulatory data maintained in the system database; d. knowingly introduces any computer virus or other contaminant into the system database and brings out a trading halt; e. without auth. disrupts the functioning of system database; f. knowingly damages, destroys, deletes, alters, diminishes in value/utility, the regulatory data in the system database; or g. knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f)	Rs. 1 lakh ~~+ Rs. 1 lakh / day~~ up to Higher of: Rs. 10 Crores or 3x amount of profit made
15HB	Person fails to comply with any provisions of this Act/Rules/ Regulations/Directions issued by the Board for which no separate penalty has been provided	Rs. 1 lakh~~+ Rs. 1 lakh / day~~ up to Rs. 1 Crore

Sec 15I - Power to Adjudicate

For adjudging a person under section 15A - 15HB (excluding 15HAA):

- Board shall appoint a person for inquiry (>=Division Chief) - Adjudicating Officer (AO).
- AO shall have the power:
  - Summon Attendance
  - Produce Documents
  - Satisfied about non-compliance - Impose penalty
- Board may enhance penalty: If Board considers that order passed by AO is erroneous to the extent it is not in intt. of sec. market, it may, after inquiry, pass an order enhancing quantum of penalty.

  Provided that reasonable OOBH is given.

  Provided further that, no order enhancing penalty can be passed after expiry of:
  a. 3 months from date of order passed by AO or
  b. disposal of appeal under section 15T

  } Earlier

Sec 15J - Factors to be considered while deciding Quantum of Penalty

- Amount of Disproportionate gain/unfair advantage as a result of default
- Amount of loss caused to investors as a result of default
- Repetitive nature of default

Sec 15JA

All penalties to be credited to Consolidated Fund of India.

Sec 15JB - Settlement of Administrative and Civil Proceedings

1. Person, against whom proceeding initiated/may be initiated u/s 11, 11B, 11D, 12(3), 15I, may file application to Board proposing settlement.
2. Board may agree for settlement:
   a. After considering - Nature, Gravity and Impact of Defaults
   b. Agree for settlement on payment of such sum (as per Regulation)
3. No appeal under Section 15T against order in this section
4. Settlement amount
   Less: Disgorged amount
   Less: Legal Cost
   → To be credited to → Consolidated Fund of India

SECURITIES APPELATE TRIBUNAL (SAT)

Sec 15K - Establishment

CG to establish SAT.

Sec 15L - Composition

- Presiding Officer (PO)
  - Judicial Member (JM) (At least 1)
  - Technical Member (TM) (At least 1)

Sit at Mumbai and other places to be notified. PO may transfer JM & TM from one bench to another.

Sec 15M - Qualification

Presiding Officer
- Judge of SC, or
- CJ of HC, or
- Judge of HC > = 7 years

Judicial Member
Judge of HC > = 5 years

→ Appointed by CG in consultation with CJI

Technical Member
- Secretary or Additional Secretary of Ministry/CG dept or equivalent position
- Person of proven IAS having knowledge/ professional exp. >= 15 years in finance sector (Sec. mkt, Insurance, PFs, etc.)

→ Appointed by Search Cum Selection Committee

Composition
- Chairperson → PO of SAT
- 3 members: Secretary, Dept of:
  - Economic Affairs (Convenor)
  - Financial Services
  - Legal Affairs

Sec 15N -Tenure (PO, JM, TM)

- 5 years
- Eligible for reappointment maximum 5 years
- No office after he has obtained age of 70 years

Sec 15MC - Validity of Appointment

1. No appt. of members of SAT invalid due to vacancy/defect in constitution of the committee
2. Person disqualified from becoming member of SAT:
   - Member or part time member of - SEBI or IRDA or PFRDA
   - Person at senior management level equivalent to Executive Director of Board

} Disqualified during such service + 2 years from the date on which ceases to hold

Sec 15O - Salary

As may be prescribed

Sec 15P - Vacancies in the Office of Members

1. Vacancies for reasons other than temporary absence (i.e., in case of permanent vacancy)
   - Filed by CG
   - Proceeding may be continued from the stage where vacancy filed (i.e., not from start)

2. In case of vacancies, in the office of presiding officer only (due to death, resignation or otherwise): Senior most Judicial member → To act as PO until new PO appointed as per this Act.

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Sec 15Q - Resignation and Removal

Resignation:

PO/Any other member → Notice in Writing → Resign from office → Addressed to CG

Unless permitted by CG to relinquish sooner, hold office, until:

- 3 months from the date of receipt of notice
- Duly appointed successor enters office
- Expiry of his term of office

} Earliest

Removal:

CG may (after order by Judge of SC), remove a member if he:

is/was Insolvent	Physically/mentally incapable of acting as a member	Convicted of offence involving MT	Abused position to render continuation detrimental to public interest	Acquired financial interest - Prejudicially affects functions

SECTION 15QA TO 15S

Section	Provision:
15QA	Appt, Qualification, etc of Members to be governed by Sec 184 of Finance Act, 2017.
15R	Orders constituting SAT to be FINAL and not to invalidate its proceedings.
15S	Staffs - CG to provide employees to discharge duty under general supervision of PO.

Sec 15T- Appeals to SAT

Any person aggrieved by order of Board/AO/IRD/PFRA → 45 days (+Ext.) → SAT (6 months) → Question of Law → 60+60 aays (Sec 15Z) → SC

- On receipt of such appln, SAT shall after reasonable OOBH confirm/modify/set aside the order.
- Copy of order to all parties involved.
- Dealt with as expeditiously as possible. Endeavour to dispose within 6 months.

SECTION 15U TO 15Z

Section	Provision:
15U	Procedures and Power of SAT: ➢ Not bound by CCP. Guided by PONJ ➢ Power vested by Civil Court - PARCERO ➢ Difference of opinion - Refer case to PO who may hear himself or refer. Then, decide by majority

15V	Right to Legal Representation (of Appellant)
15W	Limitation Act, 1963 shall be Applicable to Appeal made to SAT
15X	PO, Members, Officers, Employees of SAT to be Public Servant (Sec 21 of IPC)
15Y	Civil Court to have no jurisdiction
15Z	Appeal to SC -Against order of SAT to SC, only if Ques. of Law. Within 60 days (+60 days)

Sec 16- Power of CG to issue direction

1. Board shall be bound by the directions of CG on questions of policy.
2. Board shall be given opportunity to express views before any directions.
3. Decision of CG as on one is a question of policy or not is final.

Sec 17- Power of CG to supersede Board

(Supersede means to take position of others)

If at any time, CG is of the opinion that:

1. On account of grave emergency, Board is unable to discharge duties as per provision of this act.
2. Board has persistently made default in complying with directions issued by CG or discharge of its duties/ functions and as a result of such default financial position of board has deteriorated.
3. Circumstance exists which renders it in public interest to do so.

CG may, by notification, supersede Board for not > 6 months.

Effect of such notification:

Upon publication of such notification superseding the Board:

1. Members - All members shall as on date of suppression vacate their office
2. Power – All power, function & duty of Board to be discharged by person as CG may direct till board is reconstituted.
3. Property – All prop owned/controlled by Board shall vest with CG until board is reconstituted.

On expiry of period of suppression, CG may reconstitute the Board by fresh appointment and any person who vacated their office shall NOT be deemed disqualified during such reappointment.

Notification to be laid before HOP:

CG shall cause a copy of notification issued, full report of action under this section and circumstances leading to such action to be laid before each HOP.

Sec 18- Returns and Reports

1. Board to furnish to CG returns and statements as may be specified.
2. Within 90 days of end of FY – Submit to CG report showing true and full activities during FY.
3. CG to lay such report before HOP.

Sec 20 - Appeals

Person aggrieved by the order of board made before commencement of Securities Law Second Amendment Act, 1999 may file appeal with CG in manner prescribed

Sec 20A - Bar on jurisdiction

Civil court not to have jurisdiction

Sec 22 Mem., Officers, Employee to be Public Servant (as per Section 21 of Indian Penal Code)

Sec 23 - Protection for act done in Good Faith

No suits, prosecutions or other legal proceedings shall lie against:

1. CG or its officers
2. Board or its officers/employer

for anything done/intended to be done in good faith under this Act/Rules/Regulations

Sec 24- Offences

Without prejudice to any award of penalty by board/AO:

Contravention	Imprisonment		Fine
If a person contravenes/attempts to contravene provision of act/rules/regulations	Up to 10 years	And/or	Upto Rs. 25 Cr.
If a person fails to pay penalty imposed by board/ AO or fails to comply with any directions or orders	1 month to 10 years		Upto Rs. 25 Cr.

Sec 24B- Power to grant Immunity

CG may:

1. On recommendation of board AND
2. On being satisfied that alleged person has made true and full disclosure

→ grant immunity to any person from:

1. prosecution of any offence or
2. from imposition of penalty

Provided that no such immunity should be granted if proceedings for prosecution initiated before date of receipt of application for grant of such immunity.

Withdrawal of immunity by CG, if it is satisfied that

1. Such person fails to comply with T&C on which immunity was granted
2. Person had given false evidence

Note - Recommendation of SEBI is reqd. to grant immunity & recommendation is not binding on CG

Sec 24A - Composition of certain Offences

Notwithstanding Code of Criminal Procedure, 1973, any offence punishable under this Act, not being offence punishable with imprisonment only, or with imprisonment & also with fine, may before/after institution of proceeding, be compounded by SAT/court before which such proceedings are pending.

Sec 26- Cognizance of Offence

No court shall take cognizance of any offence punishable under this Act/Rules/Regulations made thereunder, save on a complaint made by the Board

Special Courts (SpC)

Sec 26A- Establishment

1. For purpose of speedy trial of offence under this act, CG may by notification, establish SpC
2. SpC shall consist of single judge appointed by CG + Chief Justice of High Court
3. Qualification of Judge of SpC - At least Session judge or additional Session Judge

Sec 26B- Offence triable by SpC

Notwithstanding anything contained in CCP, 1973, all offences under this Act shall be taken cognizance of and tried by the SpC established for the area in which the offence is committed or where there are more SpC than one for such area, by such one of them as may be specified by High Court concerned.

Sec 26C- Appeal

High Court may exercise power as per CCP, 1973 as if SpC were court of session in his jurisdiction

Sec 26D- Application of CCP, 1973

- SpC deemed to be court of session
- Person conducting prosecution deemed to be public prosecutor
- CCP, 1973 is applicable to proceedings of SpC

Sec 27- Contravention by Companies

1. Where person committing contravention is a company:
   - Every person who, at time of contravn., was responsible to co. for conduct of biz, and
   - Company itself

   Shall be deemed to be guilty and liable to be proceeded against and punished accordingly

   Person shall not be liable to punishment if he proves that contravention took place:
   - W/o his knowledge or
   - that he exercised all due diligence to prevent such contravention.
2. Where it is proved that contravention has taken place with:
   - the consent or connivance of, or
   - is attributable to any neglect on part of

   Dir/Mgr/CS/Other officer

   ↓

   Such Dir/Mgr/CS/Other officer shall also be deemed guilty and liable to be proceeded against and punished

   For the purposes of this section:
   a. Company means any BC and includes a firm/AOI; and
   b. Director, in relation to a firm, means a partner in the firm.

Sec 28A- Recovery of Amount

If a person fails to:

pay penalty under this Act	comply with directions of Board for return of monies or for disgorgement order	Fails to pay any dues to the Board

Recovery officer (officer of Board empowered by order) may draw up a statement specifying the amount and proceed to recover such sum in following manner:

Attachment & sale of person's property (movable/ immovable)	Attachment of person's bank A/C	Arrest of such person & his detention in prison	Appointing a person for management of person's property

and provisions of Income Tax Act, 1961 shall apply

Recovery officer is empowered to seek assistance of local administration for such recovery.

Explanation- For purposes of this sub-section, the person's movable/immovable property/monies held in bank accounts shall include any property/monies held in bank A/Cs on or after the date when the amt specified in certificate had become due, which has been transferred directly/indirectly by the person to his spouse/minor child/son's wife/son's minor child, otherwise than for adequate consideration.

So far as movable/immovable property/monies held in bank A/Cs so transferred to his minor child/ his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child/son's minor child, as the case may be, continue to be included in the person's movable/ immovable property/monies held in bank A/Cs for recovering any amt. due from person under this Act.

Sec 28B- Continuance of Proceedings

1. Where a person dies, his legal representative (LR) 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 LR 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 Recovery Officer, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against LR, & may be continued from the stage at which it stood on date of death of the deceased and all the prov. of this Act shall apply accordingly

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

3. Every LR shall be personally liable for any sum payable by him in his capacity as LR if, while his liability for such sum remains undischarged, he creates a charge on/disposes of/ 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 LR 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 ''LR" 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.

Sec 29 to 34A

Intentionally omitted.

SEBI (LODR), REGULATIONS 2015

(Notified - 2nd sept, 2015 by SEBI)

Objective: To consolidate all norms relating to listing of different segment of Capital Market

Applicability: [Amendment]

To the Listed Entity who has listed any of the following Designated securities on RSE(s):

- specified securities listed on main board or SME Exchange or Innovators Growth Platform;
- non-convertible securities
- Indian Depository Receipts;
- Securitized debt instruments
- security receipts
- units issued by mutual funds;
- any other securities as may be specified by the Board

Provisions of these regulations which become applicable to listed entities on the basis of market capitalization/outstanding listed debt securities criteria shall continue to apply to such entities even if they fall below such thresholds.

Regulation 17: Board of Directors

Composition:

1. Optimum composition of Executive and Non-Executive Directors (NED)
2. NED to be not less than 50% of BOD (i.e. if total directors = 6, NED cannot be less than 3)
3. At least 1 Women Director
4. Number of Independent directors (ID)

If chairperson of BOD is a NED - At least 1/3rd to be ID	If Chairperson is ➢ Not a regular NED or ➢ Is a regular NED but is a Promoter of the entity or *Related to promoter or person occupying management position Then at least $\frac{1}{2}$ of BoD to be ID

*Where promoter is a company, "Related to promoter" would mean directors, nominees and employees. However, where promoter is a listed entity, ID not to be considered as related.

5. Top 2,000 listed entities shall comprise of not < 6 directors
6. Top 1,000 listed entities to have at least 1 independent woman director

Top listed entities to be identified basis market capitalization as at end of last financial year

Age

- All directors → Minimum 21 years
- NED → Maximum 75 years (If > 75 years, Special Resolution and Explanatory statement)

Board Meeting:

- At least 4 times in a year
- Maximum gap of 120 days

- Quorum (for top 2000 listed entities) - 1/3rd of total strength or 3 directors whichever is higher including at least one ID
- Participation by AV means to be considered for quorum

Review of Compliance Report:

Board shall periodically review the compliance report pertaining to all laws applicable to listed entity, prepared by the company and steps taken to rectify instances of non-compliance

Evaluation of ID:

The evaluation of ID shall be done by the entire BOD which shall include:

- performance of the directors; and
- fulfillment of the independence criteria as per this Regulation

Provided that in the above evaluation, the dirs. who are subject to evaluation shall not participate.

Regulation 17A: Max. No. of Directorship - Applicable only to directorship of listed cos.:

Max no. of directorships, including alternate directorships that can be held by them at any time:

1. Director in listed entities - Max 7 (w.e.f. 1st April, 2020, earlier it was 8)
2. ID in listed entities - Max 7
3. If MD/WTD in any Listed entity, then ID in max 3 listed entities

In this section, listed entity shall only mean those entity whose equity is listed on RSE

Regulation 18 Audit Committee : Co. will form a qualified and independent Audit Committee

Regulation 24: Corporate Governance w.r.t. Subsidiary of Listed company

1. At least 1 ID on BOD of listed entity shall be director on board of unlisted *Material Subsidiary, whether incorporated in India or not

   *Material subsidiary means a subsidiary whose income/net worth is > 20% of consolidated income/ net worth of company in immediately preceding accounting year

2. The Audit Committee of listed entity shall review financial statement, in particular, investment made by subsidiary company

3. Minutes of Board meeting of unlisted ~~material~~ subsidiary- placed at BOD meeting of listed entity

4. Management of unlisted subsidiary shall bring to the notice of board of listed entity statement of all *significant transactions and arrangement entered into by Unlisted ~~material~~ subsidiary

   *Explanation- significant transactions/arrangement- any individual transaction/arrangement > 10% of total Rev./Exp./Assets/Liab. of unlisted subsy for immediately preceding accounting year.

5. Listed entity not to dispose of shares in material subsidiary company resulting in reduction of Shareholding to <= 50% or cease the exercise of control over subsidiary without passing special resolution in GM (except scheme approved by court/tribunal or under a resolution plan u/s 31 of IBC, 2016 and Event disclosed to RSE within 1 day of such plan being approved)

6. Selling/disposing/leasing assets amounting > 20% of total asset of material subsy shall require prior approval of shareholders by a SR (except scheme approved by court/tribunal or under a resolution plan u/s 31 of IBC & Event disclosed to RSE within 1 day of such plan being approved)

7. Where a listed entity has a listed subsidiary, which is itself a holding company, the prov. of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

SUMMARY OF SUMMARY!

Material Subsidiary:	Unlisted Subsidiary (either material or not):
1. One ID to be director	1. Board to review Minutes
2. Red. of shareholding < = 50% or lose control (SR)	2. Significant transaction and arrangement
3. Dispose asset > 20% of total (SR)	

Regulation 26: Restriction on number of Memberships (of various committees)

1. Not be mem. in > *10 comm. or act as CP of > *5 comm. across all listed entities in which he is a dir.

   The number of *10/5 above shall be calculated as follows:
   a. Include - Public limited companies, whether listed or not
   b. Exclude - All other companies including Private Limited companies, Foreign companies, high value debt listed entities and Section 8 companies
   c. Include chairpersonship & membership of AC & SRC alone. Exclude other committees.

2. Director to inform listed entity about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.

Types of committees under LODR

1. Audit committee [Regulation 18]:

   Listed entity should have qualified and independent audit committee
   - Minimum 3 directors as members
   - At least 2/3 to be independent (In case of o/s SR equity shares, all directors = ID)
   - All - Financially literate. At least 1 - Accounting or Financial management expertise
   - Chairperson to be independent director and present in AGM to answer questions
   - CS of company to be secretary to Audit Committee
   - Audit Committee may, at its own discretion, invite:
     - Head of finance/finance director
     - Head of Internal audit
     - Representative of statutory auditor

     } To be present in meeting of AC

   Meeting of Audit Committee
   - At least 4 times in a year
   - Maximum gap 120 days

   Quorum - 1/3rd of members or 2 members whichever is higher (At least 2 ID mandatory)

Power of Audit Committee:

Investigate any activity within its term of reference	Seek information from employee	Obtain outside legal/ professional advice	Secure attendance of outsiders with relevant expertise

COMPARISON OF AUDIT COMMITTEE AS PER LODR VS SEC 177 OF COS ACT, 2013

Particulars	As per LODR	As per Sec 177 of Co. Act, 2013
Applicable to	All listed companies	All Listed Companies Unlisted Public Co. with: ➢ Paid up share capital ≥ Rs. 10 crs or ➢ Outstanding loans, debentures, deposits > Rs. 50 crs or ➢ Turnover ≥ Rs. 100 crs *Limit once applicable- to Apply for 3 consecutive years
Min. no. of dirs	3	3
Minimum ID	2/3rd	Majority
Financial Literacy	All (At least 1 expert)	Majority including chairperson
Chairperson	ID + Present at AGM	Ability to read & understand FS
Secretary	CS of co. to be the secretary	No such provisions
Meetings	At least 4 times in a year with a maximum gap of 120 days	
Quorum	2 or 1/3rd, whichever is higher with minimum 2 ID to be present	
Additional requirements	The committee may invite finance executives to the meeting.	

2. Nomination and Remuneration Committee (NRC) [Regulation 19]:

Particulars	SEBI LODR	Companies Act, 2013 (Sec 178)
Constituted by:	Board of Directors	Board of Directors
No. of dirs.	At least 3	3 or more NEDs
ID	At least 2/3rd	Not less than 1/2
Chairperson	Must be an ID	No such provision
Quorum	1/3rd of member or 2 member whichever is higher (At least 1 ID mandatory)	
Meeting	At least 1 in a year	
Common Points:	1. CP to attend AGM to answer SH queries (not necessarily himself) 2. CP of Listed entity (whether ED/NED) may be appointed as member of NRC but shall not chair the NRC	

3. Stakeholder Relationship committee [Regulation 20]

Constituted to look into various aspects of interest of SH, Deb. Holder and other secured holders.

- At least 3 directors
- At least 1 ID
- Chairperson to be NED (not ID) and to be present at AGM
- BOD to decide other members of SRC
- Meets at least 1 in a year

4. Risk management committee (RMC) [Amendment]

[Applicable to top 1,000 listed entities & a high value debt listed entity]

- Constituted by BOD.
- Minimum 3 members + Majority to be member of BOD
- At least 1 ID. In case of outstanding SR Equity shares >= 2/3rd IDs
- CP - To be a director and Senior executives of listed entity may be members
- Meet at least twice in a year
- Quorum - 1/3rd of total or 2 members, whichever is higher (at least 1 director to attend)
- Maximum gap between two consecutive meeting - 180 days
- BOD to define roles and responsibility of RMC
- RMC shall have powers to seek info. from any employee, obtain outside legal or other professional advice & secure attendance of outsiders with relevant expertise, if it considers necessary.

SUMMARY OF ALL COMMITTEES AS PER SEBI LODR:

	Audit Committee	NRC	SRC	RMC
Number of members	Minimum 3	Atleast 3, All NED	Minimum 3 directors	Min 3 members. (Majority - Dir.)
No. of ID	Atleast 2/3rd *	Atleast 2/3rd	Atleast 1	Atleast 1*
Chairperson	ID	ID	NED	Director
Meeting	Atleast 4	Atleast 1 in a year	Atleast 1 in a year	Atleast 2 in a year
	Max gap 120 days	Not mentioned in Regulation	Not mentioned in Regulation	Max gap 180 days
Quorum	Higher of 1/3rd or 2 members	Higher of 1/3rd or 2 members	Not mentioned in Regulation	Higher of 1/3rd or 2 members
	Atleast 2 ID mandatory	Atleast 1 ID		Atleast 1 Dir.
Additional Points	All Members - Financial Literate At least 1 member - Financial Mgt. expertise	Chairperson of co. may be appointed as member but not chair NRC	This committee looks into complaints of the investors	Senior Executives (Non-director) may be a member

* In case of o/s SR eq. sh., AC shall have all directors as ID and RMC shall have minimum 2/3rd IDs

QUARTERLY COMPLIANCES

Within __ days from end of each quarter	Statement / Reports to be filed with RSE by Listed Entity
21 days	Report on Corporate Governance in format specified by BOD
21 days	Statement showing number of investor complaints: 1. Pending at the beginning of the quarter 2. Received during the quarter 3. Disposed of during the quarter 4. Remaining unresolved during the quarter
21 days	Statement showing holding of securities and shareholding pattern separately for each class of securities. (Also, to be disclosed 1 day prior to listing and within 10 days of any capital restructuring scheme of listed entity resulting in change >2% of total PUSC)
45 days (other than last quarter)	Quarterly and Year to Date standalone financial statement
For such period till which the issues proceeds are fully utilized or purpose achieved	Quarterly statement for public issue, right issues, preferential issues, etc. a. indicating deviations in the use of proceeds from the objects stated in offer documents or Explanatory St. to the notice of GM b. indicating variations (category wise such as Capex, Sales and Marketing, working capital, etc.) between projected utilization of fund made in Offer Document vs actual utilization of fund

PRIOR INTIMATIONS TO RSEs:

Intimation to RSE at least ___ days before meeting (excl. date of intimation & date of meeting)	Where following proposal is due to be covered in BOD meeting:
2 working days	➢ Proposal for buyback of securities ➢ Proposal for voluntary delisting ➢ Fund raising by way of Further Public Offer, ADR, GDR, Convertible Bonds, Debt issue, preferential issues, etc. ➢ Declaration / Recommendation to declare dividend ➢ Issuance of convertible securities incl. convertible deb. ➢ Declaration of bonus securities
5 days	Financial Results viz. quarterly, half yearly, or annual
7 working days prior to record date	➢ Notice of Record date and the purpose of record date ➢ Record date could be for - Dividend, Rights or bonus issue, conversion of debenture, etc., corporate actions such as merger, demerger, or other purpose as specified by stock exchange ➢ Listed entity to declare dividend and/or cash bonus at least 5 working days (excl. date of intimation & record date) before record date
11 working days (don't excl. day of intimation and BOD meeting here)	➢ Alteration in form of securities or rights of holder thereof ➢ Alteration in date on which the interest or redeemable amount of debenture will be payable

ANNUAL COMPLIANCES:

Time Limit	Compliance with Stock Exchange
Within 60 days from end of FY	Entity to submitted AUDITED standalone financial results for the FY along with audit report and Statement on Impact of Audit Qualification (applicable for audit report with modified opinion)
Not later than the day of commencement of dispatch to SH	Submit to stock exchange + Publish on website - A copy of annual report sent to shareholders along with notice for AGM
Within 48 hours of AGM	In the event of any changes to Annual Report, revised copy along with detailed explanation for such changes

Role of Compliance Officer

(1) A listed entity shall appoint a qualified CS as the compliance officer.

(2) The compliance officer of the listed entity shall be responsible for-

a. ensuring conformity with the regulatory prov. applicable to listed entity in letter and spirit.
b. co-ordination with & reporting to Board,
c. ensuring that correct procedures have been followed that would result in correctness of information, filed by the listed entity under these regulations.
d. monitoring email address of grievance redressal division

Disclosure Requirements

Disclosure about relationship between directors inter se shall be made in the:

Annual Report	Notice of appointment of direcotr	Prospectus	Letter of offer for issuance	Related filings made to RSE where company is listed

Note: Where there is any change in the content of website of a listed entity, it shall update the same in its website within 2 days (for e.g., - address of the entity)

The following disclosures shall be made in the section on the corporate governance of the annual report:

Stakeholders' relationship committee

(a) name of the non-executive director heading the committee;
(b) name and designation of the compliance officer;
(c) number of shareholders' complaints received during the financial year;
(d) number of complaints not solved to the satisfaction of shareholders;
(e) number of pending complaints.

Risk management committee:

(a) brief description of terms of reference;
(b) composition, name of members and chairperson;
(c) meetings and attendance during the year;

SEBI (ICDR) REGULATIONS, 2018

Acronyms used:

CCS	Compulsorily Convertible Securities	DDC	Due Diligence Certificate
FPO	Further Public Offer	IDR	Indian Depository Receipts
IGP	Innovators' Growth Platform	IPO	Initial Public Offer
LM	Lead Manager(s)	PFI	Public Financial Institution
RHP	Red Herring Prospectus	SA	Stabilising Agent
SE	Stock Exchange	TC	Target Company
UPSI	Unsensitive Price Sensitive Information	VR	Voting Rights
FR	Free Reserves	SPA	Securities Premium Account

Objective

- Regulate and development of Indian Capital Market
- Balance the interests of investors & the issuer companies.

Relevant Definitions (Regulation 2)

1. Book Building - Process to elicit (evoke) demand and to assess the price and for determination of quantum or value or coupon of specified securities or IDR.

2. Convertible debt instrument - An instrument which creates/acknowledges indebtedness and is convertible to equity share at later date, with or without the option of holder, whether or not constituting charge on the assets of the issuer.

3. Green shoe option - Option of allotting equity in excess of equity shares offered in public issue, as a post listing price stabilising mechanism within 30 days from listing to provide price support in case the price goes below the issue price.

4. Offer document means:
   - Public Issue - Red herring prospectus, prospectus or shelf prospectus
   - Rights Issue - Letter of offer

Classifications of Issues:

Public Issue:	(i) IPO - Offer of securities by an unlisted issuer to public for subscription. Includes Offer for Sale (OFS) by existing SHs to public. To qualify as IPO - Issue to be made to public, not to existing holders. (ii) FPO - Subsequent offer by listed issuer to public for subscription & incl. OFS.
Rights Issue	Offer of specified securities + to the existing S/H of the issuers on a record date
Composite Issue	Issue of shares or convertible securities by listed issuer where allotment is both by public issue cum rights issue simultaneously.
Bonus Issue	Issue to existing SHs, w/o any consideration, out of FR or SPA.
Private Placement	Issue of shares or convertible securities to a selected group of persons, not exceeding 200 persons in aggregate in a FY.

Applicability of Regulations (Regulation 3):

These regulations shall apply to following:

IPO	Right issue by listed issuer (aggregate value >= Rs. 50 cr)	Bonus issue	FPO	Preferential issue by a listed issuer
QIP by a listed issuer	IPO or right issue of IDRs	IPO by SME	Listing on innovators growth platform	

INITIAL PUBLIC OFFER

Reference date (Regulation 4)

An issuer making an IPO shall satisfy the condition of this Chapter as on:

(i) Date of filing of draft offer document with Board (SEBI), and

(ii) Also, on date of filing of offer document with ROC.

Entities not eligible to make an initial public offer (Regulation 5)

(1) An issuer shall not be eligible to make IPO if:

(a) issuer, its promotor/dir (P/D) or selling SHs are debarred from accessing cap mkt by SEBI

(b) any P/D of issuer is a P/D of any other co. which is debarred from accessing capital market.

(c) is issuer or its P/D is a wilful defaulter or a fraudulent borrower.

(d) any of its P/D is a fugitive economic offender.

Explanation: (a) & (b) shall not apply to persons/entities who were debarred by Board and period of debarment is completed as on date of filing draft offer document with Board.

(2) An issuer is not eligible if there is an outstanding convertible securities or o/s right issue.

Provided that this shall not apply to:

(a) Outstanding ESOPs

(b) Fully paid-up o/s convertible securities convertible on or before date of filing prospectus.

Eligibility requirements for an initial public offer (Regulation 6)

(1) An issuer shall be eligible to make an initial public offer only if, it has

(a) net tangible assets of at least 3 crore rupees, of which not more than 50% are held in monetary assets. However, if more than 50% are held in monetary assets, then issuer has either utilised or made firm commitments to utilise such excess monetary assets in its business or project. This shall not apply to the IPO is made entirely through an offer for sale.

(b) average operating profit >= 15 crore rupees.

(c) net worth >= 1 crore rupees

The above shall be calculated on a restated and consolidated basis, in each of the preceding 3 full years (of 12 months each)

(d) if it has changed its name within the last one year, at least 50% of the revenue, for the last 1 full year has been earned by it from the activity indicated by its new name.

(2) An issuer not satisfying above condition shall be eligible for IPO, if

c. issue made through the book-building pROCess + b. the issuer undertakes to allot at least 75% of the net offer to QIBs + a. to refund the subscription money if it fails to do so

(3) If issuer has issued SR equity shares to its promoter or director, then issuer is only allowed for IPO of ORDINARY equity shares on Main Board, subject to:

(i) the issuer shall be intensive in the use of Tech or Bio/Nano/Info Tech, Data Analytics, IP to provide products, services or business platforms with substantial value addition;

(ii) the NW of the SR shareholder <= 1,000 crore as determined by a Registered Valuer. While computing NW, investment in other listed cos. to be taken & not of issuer company.

(iii) the SR shares were issued only to the executive promoters/founders in the issuer company;

(iv) Issue of SR equity shares has been authorised by SR at GM of company, where notice incl.

1. Size of issue
2. Ratio of voting rights (SR to Ordinary Sh.)
3. Rights as to differential dividends
4. Sunset provisions - time frame for the validity of SR shares
5. Matters where voting right of SR & Ordinary share would be same

(v) SR equity shares were issued before filing of draft RHP & held for a period of at least 3m prior to the filing of the RHP;

(vi) SR to Ordinary Equity Voting Rights - Minimum 2:1 & Maximum 10:1

(vii) SR Face Value = Ordinary Share Face Value

(viii) Only one class of SR Equity has been issued

(ix) SR Equity shall be same as Ordinary Shares in all other respect, except voting rights.

General Conditions (Regulation 7)

(1) An issuer making an Initial Public Offer shall ensure that:

(a) It has made an application to 1 or more SEs, to seek an in-principle approval for listing and has chosen one of them as designated SE.

(b) Entered into an agreement with a depository for dematerialisation of the security to be issued.

(c) All its securities held by the promoters are in Demat form before filing of the offer document.

(d) All its existing partly paid-up ES have either been 1) fully paid-up or 2) have been forfeited.

(e) It has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

(2) Amount for general corporate purposes shall not exceed 25% of amount raised.

Explanation II - if the issuer had been partnership firm/LLP, then the track record of operating profit of the firm or LLP shall be considered only, if the erstwhile FS conform to and are revised in the format prescribed for companies under the Companies Act and,

a. Adequate disclosures as per Schedule III are made in Financial Statements
b. FS are duly certified by Statutory Auditor stating that -
   i. accounts & disclosure are in accordance in Schedule III
   ii. applicable AS have been followed
   iii. Financial Statements present True & Fair view

Explanation III - if issuer is formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered, if the conditions regarding FS as in Explanation II are satisfied.

(3) The amount for:

a) General Corporate purpose and,
b) Objects where company has not identified acquisition or investment target (max. 25%) shall not exceed 35% of the amount being raised by the issuer.

Above limits shall not apply if, proposed acquisition/investment has been identified and suitable specific disclosure has been in draft offer & offer documents.

Additional conditions for an offer for sale

- Only fully paid-up Equity Shares held by sellers for period of atleast 1 year as on filing of draft offer doc. shall be offered for sale
- In case of fully paid-up compulsorily convertible securities including depository receipts, the holding period = pre-conversion period + post conversion period (combined holding period to be seen on date of draft filing)
  Holding period of 1 year to be complied at time of filing of draft offer document.

When this requirement shall NOT apply (holding period of one year)?

- OFS of following (engaged in infrastructure sector)

a. Govt. Co.	a. Statutory authority/corporation	c. Any SPV set up & controlled by any 1 or more of them

- OFS of equity shares acquired pursuant to scheme approved by HC/Tribunal/CG u/s 230 to 234 of Co. Act,2013 in exchange of business & invested capital existing for a period of more than 1 year prior to approval of scheme.
- OFS under bonus issue of ES held for more than 1 yr prior to filing of draft offer doc. subject to:
  i. bonus is out of free reserves + SP reserve at end of FY preceding the year of filing
  ii. not by using Revaluation reserve & unrealised profits

Additional conditions for an offer for sale for issues under Regulation 6(2) (Regulation 8A)

(a) Shares offered by SH(s) holding more than 20% of pre-issue shareholding shall not exceed 50% of pre-issue shareholding.

(b) Shares offered by SH(s) holding less than 20% of pre-issue shareholding shall not exceed 10% of pre-issue shareholding.

(c) SH(s) holding more than 20% of pre-issue holding. provision of Lock-in as per Regln. 17 shall apply. (The pre-issue holding can be individual or in-concert + post issue holding seen on fully diluted basis)

ISSUE OF CONVERTIBLE DEBT INSTRUMENTS AND WARRANTS

Eligibility requirements for issue of convertible debt instruments (Regulation 9)

- An issuer shall be eligible for IPO of Convertible Debt Instrument w/o making a prior public issue and listing of its Equity shares.
- Provided it is not in default in payment of principal & intt of debt issued to public for more than 6m.

Additional requirements for issue of convertible debt instruments (Regulation 10)

(1) Issuer making an IPO shall satisfy also comply with following:
  (a) Obtained credit rating from atleast 1 Credit Rating Agency
  (b) Appointed atleast 1 Debenture Trustee in accordance with Cos. Act,2013 & SEBI Act, 1992
  (c) Shall create a debenture redemption reserve (DRR)
  (d) If the issuer proposes to create a charge/sec. on its assets for the issue, then it shall ensure:
    (i) Such assets are sufficient to discharge principal amount as ALL times
    (ii) Assets are free from encumbrance
    (iii) If security is created on assets already in favour of existing lender/security trustee or issue is to be secured by creation of charge on LEASEHOLD LAND, then, consent of existing lender/security trustee or lessor to be obtained & submitted to debenture trustee for creation of second or pari-passu charge before issue opening.
    (iv) Asset cover shall be arrived after reducing liabilities having first/prior charge, in case of 2nd or subsequent charge.

(2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

Conversion of optionally convertible debt instruments into equity shares (Regulation 11)

(1) The issuer shall not convert optionally convertible debt instrument,
  (a) Without positive consent of holders sent to issuer
  (b) Non-receipt of reply of any notice sent by issuer shall not be construed as consent.

(2) Where value of convertible portion of listed Convertible debt > Rs. 10 crores, and issuer has not determined the conversion price at time of issue, the holders shall be given an option to not convert into eq. shares. (not reqd. if upper price limit & its justification is disclosed to investor)

(3) If option is given to holders as per (2), & if one or more holders decide not to convert into equity shares at price determined at GM, then the issuer shall redeem that portion within 1 month from last exercise date of option, at price not less than Face Value.

(4) The provision of (3) shall not apply, if such redemption is as per disclosures made in the offer doc.

Issue of convertible debt instruments for financing (Regulation 12)

- An issuer shall not issue convertible debt for financing or providing loan to or for acquiring shares of any person of promoter group/group companies
- Provided that, issuer shall be eligible for above if the period of conversion is less 18 months.

Issue of warrants (Regulation 13)

An issuer will be eligible to issue warrant in an IPO, subject to:

(a) Tenor shall not exceed 18 months
(b) Security may have 1 or more warrants attached to it
(c) Price/formula for exercise price - disclosed in offer doc. & 25% of consideration shall be recd. upfront. (In case of formula for EP, 25% of consideration based on cap price shall be recd.)
(d) If the holder does not exercise the option within 3m from the payment of consideration, then it shall be forfeited.

PROMOTERS' CONTRIBUTION

Minimum promoters' contribution (Regulation 14)

(1) Promoter shall hold atleast 20% of post issue capital holding.
In case of shortfall, then following can contribute to meet shortfall (max. 10% of post-issue cap.),
a) AIFs b) Foreign VCs c) Scheduled Commercial Banks d) PFIs e) Insurance Cos. (IRDA regd.)
This minimum contribution shall not apply if the issuer does not have identifiable promoter.

(2) The minimum promoters' contribution shall be as follows
(a) Promoter shall contribute by way of Equity shares (incl. SR) or convertible securities.
Provided that if conversion price not specified in offer document, then promoter shall subscribe to convertible securities in public issue (no Private placement allowed) and undertake in writing to subscribe to ES on conversion.

(b) If there is issue of convertible securities convertible on different dates and promoter's contribution is by way of equity shares, then price of ES shall not be less than weighted average of ESC arising on conversion.
Note - Conversion price is known in this case.

(c) Subject to (a) & (b), if there is an IPO of convertible sec. w/o prior issue of equity shares, then promoter shall contribute 20% of project cost in form of ES, subj. to 20% of issue size.
If project is implemented in stages, then contribution shall also be proportionate to fund raised in each stage.

(3) Promoter shall satisfy the requirements one day prior to opening of issue.

(4) Promoters contribution shall be kept in an escrow account with Scheduled Commercial Bank, and to be released with issue proceeds.

Provided that, where the promoters cont. has already been utilised, then issuer shall give Cash Flow Statement disclosing the utilisation of contribution.

Where minimum contribution is >100 crores, and IPO is of partly paid shares, then promoter shall contribute atleast 100 crores before issue opening and remaining contribution may be made on pro-rate basis before calls are made to public.

Explanation- Promoters holding shall be seen on post & dilution basis after assuming conversion/ exercise of convertible securities and vested options

LOCK-IN AND RESTRICTIONS ON TRANSFERABILITY

Lock-in of specified securities held by the promoters (Regulation 16)

(1) The securities held by promoter shall not be transferable for the following period:

(a) Minimum Contribution (Regulation 14(1)) shall be locked in for 18 months from allotment date in IPO. Provided that, if majority of proceeds is proposed to be utilized for Capex, then lock-in period shall be for 3 years.

(b) Promoters' holding in excess of minimum contribution shall be locked for 6 months from allotment date. Provided that, if majority of proceeds is proposed to be utilized for Capex, then lock-in period shall be for 1 year.

(2) SR Equity shares shall be locked in till conversion into ES having voting rights same as ordinary shares or for period specified in (1), whichever is later.

Lock-in of specified securities held by persons other than the promoters (Regulation 17)

The pre-issue capital held by other than promoter shall be locked in for 6 months from allotment date.

This shall not apply to equity shares:

(a) Alloted to employees under ESOP	(b) Held by an employee stock option trust (ESOT) or trfd. to the employees by an ESOT	(c) Held by VCF/AIF - Category I or II/Foreign VC investor (however there shall be initial lock-in of 6m from date of purchase for these investors)

For the purpose of (c), period of holding shall include:

For Fully paid-up CCS: Period before conversion	For Bonus Shares: Period of original shares

Lock-in of specified securities lent to stabilising agent under the green shoe option (Regulation 18)

The lock in period prov. shall not apply to securities lent to SA under Green Shoe from date of lending till date of return. Though, it shall apply for remaining period after date they are returned.

Lock-in of Partly-paid securities (Regulation 19)

In case of partly paid securities, where amount called up is less than amount called on public issue, then lock-in shall end after 3 yrs from when the securities become pari-passu to securities issued to public.

Inscription or recording of non-transferability (Regulation 20)

The certificate of securities which are subject to lock-in, shall contain the words "non-transferable" and specify the lock in period. In case of demat, the lock-in shall be recorded by depository.

Pledge of locked-in specified securities (Regulation 21)

Specified securities (except SR Equity) held by promoter & locked-in may be pledged as collateral for a loan granted by Sch. Commercial bank/PFI/SI-NBFC/HFC, subject to, if:

(a) Locked in as per Regln.16(a) - considered that loan granted to issuer co./it's subsidiaries + for financing 1 or more obj. of the issue and pledge of securities is one of the term of loan.
(b) Locked in as per Regln.16(b) - pledge of securities is one of the terms of loan

Provided that, lock in shall continue post invocation of pledge and transferee shall not be eligible to transfer till end of lock-in period.

Transferability of locked -in specified securities (Regulation 22)

Locked in securities (except SR equity) shall be transferred, subject to:

(a) By Promoter - to another promoter/any person of promoter group/new promoter
(b) By others - to any other person holding same locked-in securities

Provided lock-in period shall continue post trf. & transferee shall not be eligible to trf. them till then.

DISCLOSURES IN AND FILING OF OFFER DOCUMENTS

Disclosures in the draft offer document and offer document (Regulation 24)

(1) The offer document (including Draft) shall contain all material disclosure -> true and adequate -> to make informed investment decision.
(2) RHP & prospectus shall contain disclosure specified in (a) Companies Act, 2013 (b) Part A-Sch VI.
(3) The LM shall exercise due diligence & satisfy themselves in all aspects incl. veracity & adequacy of disclosure.
(4) The LM shall call the issuer, its promoter and director, and its selling S/H (in case of OFS) to fulfil their obligations as disclosed in offer document.
(5) The LM shall ensure that information in offer document and restated audited FS are not more than 6 months old from issue opening date.

Filing of the draft offer document and offer document (Regulation 25)

(1) Before IPO, issuer shall file 3 copies of draft offer doc. with Board along with fees, through LM.
(2) The LM shall submit following certifications along with draft offer document to the Board:

Certificate confirming agreement b/w issuer & LM	Due diligence certificate (DDC) as per Form A of Sch.V	DDC from debenture trustee as per Form B, in case of convertible securities

(3) The issuer shall file the draft offer document with stock exchange where securities are proposed to be listed, and submit,
- In case of individual promoter - PAN, Bank A/c no. & Passport Number
- In case of BC promoter - PAN, Bank A/c no., Company Registration No. & Address of its ROC.

(4) The board may specify changes/issue observation within 30 days from later of date of receipt of:

Draft Offer Doc.	Satisfactory reply from LM where Board had sought clarification or additional info.
Clarification/info. from any regulator or agency	Copy of in-principle approval letter, issued by SE

(5) In case of observations/change, the issuer & LM shall carry out the changes & submit an updated document, highlighting the changes.
(6) If change related to matter in Schedule XVI, updated/new draft shall be filed with the Board.
(7) Copy of offer document to be filed with Board & SE, after filing it with ROC.
(8) The offer document (including draft) shall be furnished in soft copy as well to Board.
(9) The LM shall submit the following on issuance of observation or after expiry of time in (4) in case of no observation:

Statement certifying all changes/ observation/suggestions have been incorporated in offer doc.	Due dilligence certificate as per Form C of Sch.V, at time of filing offer doc.	A copy of resolution passed for alloting securities to promoters
Certificate from Stat. Auditor - certifying required promoter contribution has been recd. with name, address of promoter along with amount recd.	DDC as per Form D of Schedule V	

Draft offer document and offer document to be available to the public (Regulation 26)

(1) Draft offer document shall be made public for comments for atleast 21 days from date of filing by hosting it on the website of Board, SE and LMs.

(2) Issuer shall, within 2 days from filing of draft offer, make public announcement in one English, one Hindi & one regional newspaper disclosing the fact of filing & inviting public for comments.

(3) LM shall submit the details of comment from public on draft offer along with consequential changes required to be, if any to the Board.

(4) Issuer & LM shall ensure that offer doc. hosted in website are same as filed with Board/SE/ROC

(5) LM and SE shall provide copies of offer doc. to public on request & may charge a reasonable sum.

PRICING

Price means (1) price of equity share or (2) coupon rate/conversion price in case on convertible security

(1) The issue may mention in the offer doc:
a) Price/price band for fixed price issue
b) Floor price/ price band for book-built issue; and determine the final price later before filing the prospectus with ROC & it shall contain only 1 price/coupon rate while filing prospectus with ROC

(2) The cap (maximum value) of price band/coupon rate <= 120% of floor price/coupon & minimum cap shall be atleast 105% of floor price. (Basically, cap can range b/w 105 to 120% of floor price)

(3) The floor or final price shall not be less than face value.

(4) If issuer opts to not make disclosure of floor price/price band in red-herring prospectus, then it shall announce the same atleast 2 working days before issue opening in newspaper mentioned above.

(5) The announcement in (4) shall contain relevant financial ratios computed for upper and lower end of price band and statement involving section titled "basis for issue price".

(6) The announcement in (4) and ratios in (5) shall be disclosed in the website of SE and shall be included in the pre-filled application forms.

Differential pricing (Regulation 30)

(1) The issuer may offer securities at different prices, subject to:
   (a) Retail individual investors/shareholders or employees entitled to reservation - at a price not lower than by more than 10% of price offered to other categories (excl. anchor investors)
   (b) In case of book-built issue - Price offered to anchor investor shall not be less than price offered to others.
   (c) If issuer opts for alternative method of book building, then issuer may offer to its employees at price not lower by more than 10% of floor price.

(2) Discount, if any shall be expressed in rupee terms.

ISSUANCE CONDITIONS AND PROCEDURE

Opening of the issue (Regulation 44)

(1) A public issue may be opened within 12 months from date of issuance of observation by Board.
(2) An issue shall be opened atleast 3 working days after filing red-herring prospectus/prospectus.

Minimum subscription (Regulation 45)

(1) Minimum subscription shall be atleast 90% of the offer, except for OFS.
(2) On non-receipt of min. sub., monies shall be refunded not later than 14 days from closure of issue.

Period of subscription (Regulation 46)

(1) An IPO shall be kept open for minimum 3 working days & maximum 10 working days.
(2) In case of revision in price band or (3) force majeure/banking strike/similar circumstances, the issuer shall extend the bidding period for atleast 3 working days, subject to max period in (1).

Application and minimum application value (Regulation 47)

(1) Issuer shall stipulate min. Application size in terms of number of securities within the range of minimum application value of Rs. 10,000-Rs. 15,000.
(2) Shall invite application in multiples of minimum Application Value
(3) Minimum price payable shall be atleast 25% of the issue price.
(4) In case of OFS, full price shall be paid at time of application itself.

Manner of calls (Regulation 48)

- If the issuer proposes to receive monies in calls, then it shall ensure o/s monies are called within 12m from date of allotment of issue. (Not necessary, if issuer has appointed a monitoring agency)
- If applicant fails to pay call money within 12m, subscription money already recd. shall be forfeited.

Allotment procedure and basis of allotment (Regulation 49)

(1) Issuer shall not make allotment in a public issue if the no. of prospective allottees is less than 1,000.

(2) Allotment shall not be more than securities specified in offer document, except in case of over-subscription for the purpose of rounding-off to make allotment.
Such allotment shall not be more than 1% of securities offered, to make allotment of minimum lot.

(3) The allotment shall be on proportionate basis within specified investor category. The no. of securities shall be rounded off to nearest integer, subject to min. allotment = minimum application size. (This is not applicable to retail individual investor/non-institutional investor/anchor investors)

Maximum value of securities - 2 lacs for Retail investors & 5 lacs for eligible employees

(4) & (4A) Allotment of securities to Retail/Non-institutional investor shall not be less than minimum bid lot, subject to availability of securities & remaining shares, if any to be alloted on pro-rata basis.

(5) The authorised employees of the SE, along with LM(s) & registrars to the issue, shall ensure that the basis of allotment is finalised in a fair and proper manner.

Allotment, refund and payment of interest (Regulation 50)

(1) Issuer & LM to ensure - securities are alloted or application Monies are refunded or unblocked-within period specified by board.

(2) LM to ensure - allotment & credit of demat securities & refund/unblock of monies to be done electronically.

(3) If securities not allotted/monies not refunded as per (1), issuer shall undertake to pay interest at 15% p.a and within such period disclosed in offer doc. & LM to ensure the same.

Post-issue advertisements (Regulation 51)

(1) LM shall ensure an advertisement giving details relating to:

- Subscription
- Basis of allotment
- Date of completion of dispatch of refund orders
- No., value & % of successful allottees for all appln. Incl. ASBA
- No., value & % of all appn incl. ASBA
- Instructions to self-certified syndicate banks by the registrar
- Date of credit of sec.

released within 10 days of completion of various activities in 1 English, Hindi & Regional language with wide circulation

(2) Details in (1) to be also placed on website of SE.

Release of subscription money (Regulation 53)

(1) LM shall confirm to banker that all formalities of issue has been completed, by issuing copies of listing & trading approval and that banker is free to release money to issuer/refund in case of failure to issue.

(2) If issuer fails to obtain listing & trading approval from SE then, it shall refund entire monies within 4 days from receipt of rejection of approval. If not paid within 4 days, issuer & every director who is OID shall be jointly & severally liable and repay the money with 15% interest p.a.

(3) LM to ensure monies received in respect of issue are released to issuer.

Reporting of transactions of the promoters and promoter group (Regulation 54)

Transaction in securities between promoter & promoter group between date of filing draft offer doc./offer doc. & date of issue closure shall be reported to SE within 24 hours of such transaction.

Post-issue reports (Regulation 54)

LM shall submit Post Issue report in Part A of Schedule XVII along with DDC as per Form F of Schedule V within 7 days from date of issue finalisation or refund of money (in case of failure of issue)

MISCELLANEOUS

Restriction on further capital issues (Regulation 56)

(1) Issuer shall not make FPO of securities in any manner (except by way of emp. stock option scheme) b/w date of filing draft offer doc. and date of listing of securities/refund of appln. monies

(2) Unless full disclosure regarding the total no of securities or amount proposed to be raised from such issue, are made in draft offer/offer document.

Price stabilisation through green shoe option (Regulation 57)

(1) Issuer may provide green shoe option for stabilising post issue price, subject to:

(i) Public issue is authorized by resolution passed in GM to allot excess securities, if required.

(ii) Issuer has appointed a SA - responsible for stabilisation process.

(iii) Before filing draft offer document, issuer & SA have entered into agreement, stating all T&Cs including fees charged & expenses to be incurred to discharge its responsibilities, and

(iv) SA & promoter/pre-issue SHs/both have entered into agreement to borrow securities, specifying max. sec. that can be borrowed for over-allotment purpose, which can max. 15% of the issue size.

(v) LM, in consultation with SA shall determine the amt of securities to be over-allotted, subj. to (d).

(vi) Draft offer/offer doc. shall contain all material disclosure of Green Shoe option (Part A Sch. VI)

(vii) Promoters/Pre-issue SHs (in case of IPO) or Pre-issue SHs holding more than 5% of securities/ promoters (in case of FPO), may lend securities for over-allotment.

(viii) Securities shall be borrowed in demat form & allocation shall be made on pro-rata to applicants.

(2) SA shall determine the relevant aspects including timing, quantity and price of securities to be bought from the market for stabilising process.

(3) Stabilising process shall not be available for period exceeding 30 days from date of trading permission given by SE.

(4) SA shall open a special account (distinct from issue a/c) to credit monies received for over-allotment & special a/c with depository to credit securities bought from market during stabilisation period, out of the monies credited in the special bank account.

(5) The above securities bought in (4) shall be returned to promoters/pre-issue shareholders immediately but not later than 2 working days from end of stabilisation period.

(6) If SA is unable to buy sec. from mkt. to the extent of over-allotment → issuer shall allot sec. at issue price in demat form = shortfall, within 5 days from end of stabilisation period

Such securities shall be returned to the promoters /pre-issue SHs by the SA in lieu of securities borrowed from them & a/c with the depository participant shall be closed thereafter.

(7) Issuer shall make listing application of further securities allotted in (6) to all SE where securities in public issue are listed and Ch. V of these regulation are NA to such further securities allotted.

(8) SA shall remit the monies to issuer for securities allotted as per (6).

(9) Any monies left after remittance to issuer and deduction of expenses shall be trf. to IPEF.

(10) SA shall submit report on daily basis during stabilisation period and final report to Board in format specified in Schedule XV.

(11) SA shall maintain a register for 3 years from end of stabilisation period, containing:
- (a) Name of promoter/pre-issue SHs from whom securities were borrowed incl. no. of securities
- (b) Price, date & time of each transaction in stabilisation process
- (c) Details of allotment made on expiry of stabilisation process

Alteration of rights of holders of specified securities (Regulation 58)

Issuer shall not alter terms of sec. which may adversely affect the intt of holders, except with consent in writing of 3/4th of holders or with sanction of SR passed at meeting of holders, of that class.

Post-listing exit opportunity for dissenting shareholders (Regulation 59)

Promoter/SHs in control of issuer, shall provide an exit offer to dissenting SHs in case of change in objects or variation in terms of contracts relating to object as mentioned in offer doc.

This exit offer shall not be applicable if there is no identifiable promoter/SHs in control of issuer.

FURTHER PUBLIC OFFER

Reference date (Regln. 101) & Entities not eligible to make FPO (Regln. 102) - Same as Regln. 4 & 5(1) respectively

Eligibility requirements for further public offer (Regulation 103)

(1) Issuer shall be eligible for FPO, if it has not changed its name in last 1 year immediately preceding the date of filing offer document.
In such case, issuer shall be eligible only, if atleast 50% of the revenue for the preceding 1 full year has been earned by it from the activity indicated by its new name.

(2) If issuer fails to satisfy the above condition, it shall make FPO only if:

a. issue made through the book-building process + b.the issuer undertakes to allot at least 75% of the net offer to QIBs + c.to refund the subscription money if it fails to do so

General conditions (Regulation 104)

(1) An issuer making an FPO shall ensure that:
(a) It has made an application to 1 or more stock exchanges, to seek an in-principle approval for listing & has chosen one of them as designated SE.
(b) Entered into an agreement with a depository for dematerialisation of the security to be issued.
(c) All its existing partly paid-up ES have either been 1) fully paid-up or 2) have been forfeited.
(d) It has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

(2) Amount for general corporate purposes SHALL NOT exceed 25% of amount raised.

(3) The amount for:
(a) General Corporate purpose and,
(b) Objects where company has not identified acquisition or investment target (subj. to max 25%) shall not exceed 35% of the amount being raised by the issuer.
Above limits shall not apply if, proposed acquisition/investment has been identified and suitable specific disclosure has been in draft offer & offer documents.

Additional conditions for an offer for sale (Regulation 105) - Same as conditions after Regln.7

ISSUE OF CONVERTIBLE DEBT INSTRUMENTS AND WARRANTS

Eligibility of issuer to make FPO of convertible debt instruments

- An issuer shall be eligible for FPO of Convertible Debt Instrument if its ES are already listed.
- Provided it is NOT in default in payment of principal & intt of debt issued to public for > 6 months.

Additional requirements for issue of convertible debt instruments (Regulation 107) - Same as Regln. 10

Roll over of non-convertible portion of partly convertible debt instruments (Regulation 108)

(1) The non-convertible portion of partly convertible debt, the value of which exceed Rs.10 crores may be rolled over, subject to:
   (a) 75% of holders in value, through resolution have approved the rollover through postal ballot.
   (b) Along with notice of resolution, the issuer has sent an auditor's certificate on Cash Flow & comments on liquidity of issuer, to the holders.
   (c) Issuer has undertaken to redeem the non-convertible portion of dissenting holders
   (d) Credit rating from atleast 1 credit agency has been obtained within period of 1 month prior to due date of redemption and has been communicated to holders before roll-over.

(2) Creation of fresh security & execution of fresh trust deed - not mandatory, if existing deed provide for continuance of security till redemption.

Provided that debenture trustee shall decide whether fresh security and deed is required by issuer.

Regulations 109 to 111:

109- Conversion of optionally convertible debt instruments into equity share capital	Same as Regulation 11
110- Issue of convertible debt instruments for financing	Same as Regulation 12
111-Issue of warrants	Same as Regulation 13

PROMOTERS' CONTRIBUTION

Requirement of minimum promoters' contribution not applicable in certain cases (Regulation 112)

(1) The requirement of minimum promoters' contribution shall not apply in case of:
   (a) When issuer does not have an identifiable promoter,
   (b) Where ES of issuer are frequently traded on SE for period of atleast 3 years immediately preceding the reference date, and
   (i) Issuer has redressed atleast 95% of investor complaints till the end of quarter immediately preceding the reference date
   (ii) Issuer has been in compliance with SEBI(LODR) for minimum 3 years immediately preceding the reference date

However, if the issuer has not complied with SEBI(LODR) w.r.t composition of BOD in any quarter in the immediately preceding 3 years from date of filing draft offer/offer document, but is compliant as at date of filing of draft offer/offer doc. and adequate disclosure about non-compliance are made in draft offer/offer document then it shall be deemed as compliance.

Provided further, where promoter proposes to subscribe securities to the extent which is greater than higher of 2 option in Regulation 113(1)(a), such excess subscription shall be at a price determined as per Regulation 164 or issue price, whichever is higher.

Minimum promoters' contribution (Regulation 113)

(1) The promoter shall contribute to the public issue as follows:

(a) Either to the extent of 20% of proposed issue size or to the extent of 20% of post-issue cap.
(b) In case of composite issue, to the extent of 20% of proposed issue size or 20% of post-issue capital excluding the rights issue capital

(2) The minimum promoters' contribution shall be as follows:
(a) Promoter shall contribute 20% either by way of equity shares or convertible securities.
Provided that if, price of ES pursuant to conversion is not pre-determined & not disclosed in offer doc., then promoter shall subscribe to those convertible securities issued in public issue and undertake to subscribe to ES pursuant to conversion.

(b) If there is issue of convertible securities convertible on different dates and promoter's contribution is by way of equity shares, then price of ES shall not be less than weighted average price of equity share capital arising on conversion.

(3) In case of FPO/Composite issue, if promoter proposes to contribute more than min. cont. such excess contn. shall be at a price determined as per Regln. 164 or issue price, whichever is higher.

(4) Promoter shall satisfy the requirements atleast 1 day prior to opening of issue. and the amt. shall be kept in an escrow account with Sch. Commercial Bank, and to be released along with issue proceeds.

Where minimum contribution is >more than Rs. 100 crores, and FPO is of partly paid shares, then promoter shall contribute atleast Rs. 100 crores before issue opening and remaining contribution may be made on pro-rata basis before calls are made to public.

(5) SR eq. shares of promoters, if any, shall be eligible towards computation of min. promoters' contn.

Explanation - Post issue capital shall be computed assuming full conversion of proposed convertible securities and exercise of all vested options o/s at time of FPO.

Securities ineligible for minimum promoters' contribution (Regulation 114)

(1) For computation of minimum contribution, following securities shall not be eligible:
(a) securities acquired during the preceding 3 years, if these are:
(i) acquired for other than cash & revaluation of asset/capitalization of intangible assets, or
(ii) resulting from bonus by utilization of unrealized profits/revaluation reserves or bonus issued against ES which are ineligible for minimum promoter contribution
(b) securities pledged with creditor other than those for borrowings by the issuer/its subsidiaries

(2) Securities referred in (1)(a) shall be eligible, if they are acquired pursuant to scheme approved by HC/Tribunal/CG u/s 230 to 234 of Companies Act, 2013.

LOCK-IN AND RESTRICTIONS ON TRANSFERABILITY

Lock-in of specified securities held by the promoters (Regulation 115) - Same as Regulation 16

Lock-in of specified securities lent to stabilising agent under the green shoe option (Regulation 116) - Same as Regulation 18

Lock-in of Partly-paid securities (Regulation 117)

In case of partly paid securities, where amount called up is less than amount called on public issue, then lock-in shall end after 18m from when the securities become pari-passu to securities issued to public.

Inscription or recording of non-transferability (Regulation 118) - Same as Regulation 20

Pledge of locked-in specified securities (Regulation 119)

Specified securities (except SR Equity) held by promoter & locked-in may be pledged as collateral for a loan by Scheduled Commercial bank/PFI/SI-NBFC/HFC, subject to, if:

(a) Locked in as per Regln.115(a) - considered that loan granted to issuer co./it's subsidiaries + for financing 1 or more obj. of the issue and pledge of securities is one of the term of loan.

(b) Locked in as per Regln.115(b) - pledge of securities is one of the terms of loan

Transferability of locked -in specified securities (Regulation 120)

Locked in sec. (except SR equity) shall be transferred, held by Promoter & locked-in as per Regln.115, to another promoter/any person of promoter group/new promoter/person in control of issuer.

Provided lock-in period shall continue post trf. & transferee shall not be eligble to trf. them till then.

DISCLOSURES IN AND FILING OF OFFER DOCUMENTS

Regulations 122 to 124:

122- Disclosures in the draft offer document and the offer document	Same as Regulation 24
123- Filing of the draft offer document and offer documents	Same as Regulation 25
124- Draft offer document & offer document to be available to the public	Same as Regulation 26

PRICING

Face value of equity shares (Regulation 125)

The disclosure about face value of ES shall be made in draft offer/offer document, advertisement & application form along with price band or issue price in identical font size.

Pricing (Regulation 126)

(1) The issuer may determine, in consultation with LM (or) through book-building process:

In case of equity shares- Price	In case of convertible securities - coupon rate & conversion price

(2) The issuer shall undertake book-building process in manner specified in Schedule XIII.

Price and price band (Regulation 127) - Same as Regulation 29

Differential pricing (Regulation 128)

(1) The issuer may offer securities at different prices, subject to:

(a) Retail individual investors/shareholders or employees entitled to reservation - at a price not lower than by more than 10% of price offered to other categories (excl. anchor investors)

(b) In case of book-built issue - Price offered to anchor investor shall not be less than price offered to others.

(c) In case of composite issue, the price offered in public issue may be different from price offered in rights issue and justification for such diff. shall be given in offer document

(d) If case, issuer opts for alternative method of book building, then issuer may offer to its employees at a price not lower by more than 10% of floor price.

(2) Discount, if any shall be expressed in rupee terms.

ISSUANCE CONDITIONS AND PROCEDURE

Allocation in the net offer (Regulation 129)

(1) In an issue made through book-building process under Regln. 103(1), the allocation in the net offer category shall be as follows:

(a) not less than 35% to retail individual investor	(b) not less than 15% to non-institutional investor	(c) not more than 50% to QIBs, and 5% of which shall be allocated to mutual funds

(2) In an issue made through book-building process under Regln. 103(2), the allocation in the net offer category shall be as follows:

(a) not less than 10% to retail individual investor	(b) not less than 15% to non-institutional investor	(c) not more than 75% to QIBs, and 5% of which shall be allocated to mutual funds

For both (1) & (2), Provided that unsubscribed portion in (a) & (b) may be allotted to applicants in other category.

Provided further, in addition to 5% allocation available in (c), MF shall be eligible for allocation under balance available QIBs.

(3) In an issue through book-building, the issuer may allocate upto 60% of portion available for QIBs (as per (c)) to anchor investors.

(3A) In an issue through book-building, allocation to non-institutional investor shall be as follows:

Sub Clause	Portion Reserved	Application size
(a)	One-third (1/3rd)	More than 2 lacs and upto 10 lacs
(b)	Two-third (2/3rd)	More than 10 lacs

Provided that, unsubscribed portion in either (a) or (b) may be allocated to applicants in the other sub-category of non-institutional investors.

(4) In an issue other than book-building process, allocation in net offer category shall be as follows:

(a) Minimum 50% to retail individual investor

(b) Remaining to: (i) other individual investors (ii) other investor incl. corp. bodies or institutions

Provided that, unsub. portion in either of (a)/(b) may be allocated to applicants in other category.

Explanation - For the purpose of (4), if retail indv. investor category is entitled to more than 50% of issue size on proportionate basis, the retail indv. investor shall be allocated higher percentage.

Reservation on a competitive basis (Regulation 130)

(1) Issuer may make reservations on competitive basis out of issue size excl. promoters' contn. in favour of:
   (a) Employees
   (b) SHs (other than promoter & promoter group) of listed subsidiaries & listed promoter cos.

   However, issue shall not make reservations for,
   - LMs, Registrar or syndicate member(s), or their promoter, director & employees (P,D & E)
   - Group or associate companies of LM, Registrar or syndicate member(s) or their P,D & E

(2) In FPO, other than composite issue, issuer may make reservation on competitive basis out of issue size (excl. Promoter Cont.) for existing retail individual investor of issuer.

(3) Reservation on competitive basis shall be made subject to following conditions:
   (a) Aggregate of employee reservation shall not exceed 5% of post-issue capital & value of allotment shall not exceed 2 lac rupees.
   In case of under-subscription in employee reservation, the unsubscribed portion shall be allotted on proportionate basis, subject to max. allotment of 5 lacs rupees to an employee.

   (b) Reservation for shareholders shall not exceed 10% of the issue size;

   (c) Further application for subscription in net offer cannot be made by person in favour of whom reservation is made.

   (d) Any unsubscribed portion in any reserved category may be added to any other reserved category, and any unsubscribed portion, after inter-se adjustment among reserved category shall be added to net offer category.

(4) An applicant in any reserved category may make an application for any number of specified securities, but not exceeding the reserved portion for that category.

Abridged prospectus (Regulation 131)

(1) Abridged prospectus shall contain the disclosure as per Part E - Schedule VI. It shall not contain anything any matter irrelevant to contents of offer document.

(2) Every application form distributed in relation to issue shall be accompanied by abridged prospectus

Availability of issue material (Regulation 133)

The LM shall ensure availability of offer doc. & other issue mater incl. appln form before issue opening to:

SE | Syndicate Member | Registrar | Registrar & Share Trf. Agent | DP | Underwriter | Bankers | Inv. Associations | Self-Certified Syndicate Bank | Stock Brokers

Prohibition on payment of incentives (Regulation 134)

- Any person connected with issue, shall not offer any incentive (direct/indirect),
- whether in cash or kind or services or otherwise to any person for making an application in IPO
- except for fees or commission for services rendered in the issue.

Security deposit (Regulation 135)

(1) The issuer shall before opening of subscription list, deposit with designated SE, an amount calculated at 1% of the issue size available for public subscription as public deposit.

(2) The above amount shall be refundable in manner specified by SEBI.

Underwriting (Regulation 136)

(1) If issuer making FPO (other than through book-building), desire to have issue underwritten, it shall appoint merchant bankers or stock brokers (regd. under SEBI) to underwrite the issue.

(2) If the issuer makes a public issue through book-building:

(a) Issue shall be underwritten by LMs & Syndicate Members (SM)
Provided that, atleast 75% of net offer to be compulsorily allotted to QIBs in compliance with Regln.103(2) shall not be underwritten.

(b) Prior to filing prospectus, the issuer shall enter into underwriting agreement with LMs & SMs, indicating no. of sec. to be subscribed at pre-determined price in case of under-subscription.

(c) If the SMs fail to fulfil their underwriting obligations, it shall be fulfilled by LMs.

(d) LMs & SMs shall not subscribe to issue in any manner except for fulfilling their u/w obligns.

(e) Where the issue is underwritten, u/w obligns should be atleast to the extent of min. subsn.

Monitoring agency (Regulation 137)

(1) If the issue size excl. OFS by selling SHs, exceeds 100 crores, the issuer shall make arrangements for use of proceeds of issue to be monitored by credit rating agency regd. by SEBI.
Provided that, this shall not apply to issue by bank/PFI/insurance company.

(2) Monitoring agency shall submit its report to issuer on quarterly basis, till 100% of issue proceeds are utilized.

(3) BOD & management shall provide their comments on the findings of the monitoring agency.

(4) Issuer shall, within 45 days from end of each quarter, publicly disseminate the above report by uploading the same on its website and submitting it to stock exchange.

Issue-related advertisements (Regulation 139)

(1) Subject to provisions of Companies Act, 2013 issuer shall, after filing prospectus with ROC, make pre-issue advertisement in 1 English, Hindi & regional language daily newspaper.

(2) Pre-issue advt. shall be in format and shall contain disclosure specified in Part A of Schedule X. Provide that, disclosure w.r.t price band/floor price shall be applicable only in case of Regln. 127(4)

(3) Issuer may release advertisement for issue opening & issue closing, in the format specified in Parts B & C of Schedule X.

(4) During the period, when the issue is open for subscription, no advt. shall be released giving an impression that issue has been fully subscribed or over-subscribed or indicating investors' response.

Opening of the issue (Regulation 140)

(1) A public issue may be opened within 12m from date of issuance of observations by Board u/r 123(4) Provided that, in case of fast-track issue, issue shall open within period specified under Cos. Act

(2) In case of shelf prospectus, the 1st issue may be opened within 3m of issuance of obsvns. by Board.

(3) The issue shall be opened after at 3 working days from date of filing of (with ROC):

Red-herring prospectus – in case of book-built issue | Prospectus in case of fixed price issue

Regulations 141 to 147 (except 143 and 148) :

141- Minimum subscription	Same as Regulation 45
142- Period of subscription	Same as Regulation 46
144- Manner of calls	Same as Regulation 48
145- Allotment procedure and basis of allotment	Same as Regulation 49
146-Allotment, refund and payment of interest	Same as Regulation 50
147- Post-issue Advertisements	Same as Regulation 51
149- Release of subscription money	Same as Regulation 53

Application and minimum application value (Regulation 143)

(1) A person shall not make an application in net offer category for number of securities that exceeds total number of securities offered in the issue.
Provided that, maximum application by non-institutional investor shall not exceeds total number of securities offered in the issue less total number of securities offered in the issue to QIBs

(2) Issuer shall stipulate minimum application size in terms of number of securities within the range of minimum application value of Rs.10,000-Rs.15,000.

(3) Issuer shall invite application in multiples of minimum application Value

(4) Minimum price payable shall be atleast 25% of the issue price. Provided that, in case of OFS, full price of security shall be paid at time of application.

Post-issue responsibilities of the lead manager(s) (Regulation 148)

- LMs shall regularly monitor redressal of investor grievances arising from any issue related issue.
- LM shall continue to be responsible for post-activities till
  - Applicants have received their sec. certificate, credit to their demat, or refund of monies and
  - Listing agreement is entered by issuer with SE and listing or trading permission is obtained.
- LMs shall be responsible & co-ordinate with registars and various intermediaries at regular intervals after closure of issue to monitor the flow of issue, processing of applications (incl. ASBA), & other matters till basis of allotment is finalised, credit of securities to demat, unblocking of ASBA/ refund of monies and listing of securities.
- Any act of omission/commission on the part of any of intermediaries noticed by the LM(s) shall be duly reported by them to the SEBI.
- In case of devolvement of underwriters, LM shall ensure that notice for devolvement containing underwriter's obligation is issued within 10 days from closure of issue.
- In case of undersubscribed issues that are underwritten, LM(s) shall furnish information to SEBI w.r.t underwriters who have failed to meet their underwriting devolvement in the format specified in Schedule XVIII.

Post- issue reports (Regulation 150)

LMs shall submit a final post issue report specified in Part A of Schedule XVII, along with DDC as per Form F of Schedule V, within 7 days of date of finalisation of basis of allotment or refund of money in case of failure of issue.

MISCELLANEOUS

Restriction on further capital issues (Regulation 151)

An issuer shall not make further issue of sec. in any manner except by way of emp. stock option scheme:

(a) In case of fast track issue - b/w date of filing offer document/prospectus with ROC and date of listing of securities or refund of application monies

(b) In case of other issue - b/w date of filing draft offer document and date of listing or refund of application monies, unless full disclosure regarding the total number of securities/amount proposed to be raised from such further issue are made in draft offer/offer document.

Price stabilisation through green shoe option (Regulation 153) - Same as Regulation 5

THE SEBI (SAST) REGULATIONS, 2011

Takeover: When an "acquirer" takes over the control of the "Target Company", it is termed as Takeover.
Substantial Acquisition: When an acquirer acquires "substantial quantity of shares or voting rights" of the Target Company, it results into substantial acquisition of shares.

Applicability:
These regln. shall apply to direct & indirect acq. of shares/voting rights in or control over target co.
Provided that, these regulation shall not apply, if the target company is listed w/o making a public issue, on the Innovators Growth Platform of a recognised stock exchange.

Relevant Terminologies (Regulation 2(1))

(1) Acquirer – means any person,
- who directly or indirectly, acquires or agrees to acquires
- whether by himself, or through or with persons acting concert with him,
- shares or voting rights in or control over the target company

(2) Control – includes the
- Right to appoint majority of the directors or
- Control the mgt. or policy decisions exercisable by a person/persons (individually/in-concert)
- Including by virtue of their S/H/mgt. rights/S/H/voting agreements/any other manner

Provided that, a director/officer of target company shall not be considered to be in control, merely by virtue of holding such position.

(3) Disinvestment – sale of shares/voting rights/control in PSU by CG/SG/Government company

(4) Offer Period – Period between
- Date of entering into agreement to acquire shares/voting rights/exercise control or date of public announcement,
- Date of payment of consideration to shareholders who accepts the offer or date when open offer is withdrawn

(5) Shares-means shares in the ESC of a Target co. carrying voting rights, & incl. any security which entitles the holder thereof to exercise voting rights. For the purpose of this clause shares will include all depository receipts carrying an entitlement to exercise voting rights in the target co.

(6) Target Company (TC) - means a company & incl. a BODy corporate or corporation established under any legislation for the time being in force, whose shares are listed on a stock exchange.

(7) Persons acting in concert (PAC) – means
(a) Persons who co-operate for acquisition of shares/VR/exercise of control over the target company, pursuant to an agreement/understanding, formal or informal, direct or indirect

(b) Persons falling within following categories shall be deemed to be PAC with other persons :

(i) a co., its holding, subsy & any co. under the same mgmt or control
(ii) a co., its dirs., & any person entrusted with mgmt of the co.
(iii) dirs. of co.s referred to in item (i) and (ii) & *associates of such dirs
(iv) promoters & mem. of the promoter group;
(v) immediate relatives
(vi) a MF, its sponsor, trustees, trustee co. & asset mgmt co.
(vii) a collective invt. scheme & its collective invt. mgt. co,, trustees & trustee co.
(viii) a venture capital fund and its sponsor, trustees, trustee co. & asset mgmt co.
(viiia) an alternative investment fund & its sponsor, trustees, trustee co. & manager
(ix) omitted
(x) a merchant banker and its client, who is an acquirer
(xi) a portfolio manager and its client, who is an acquirer;
(xii) banks, financial advisors and stock brokers of the acquirer, or of any co. which is a holding or subsy of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual: Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;
(xiii) an investment co. or fund and any person who has an intt. in such investment co. or fund as a SH or unitholder having >= 10 %of the paid-up cap. of the investment co. or unit cap. of the fund, and any other investment co. or fund in which such person or his *associate holds >= 10% of the paid-up cap. of that investment co. or unit cap. of that fund:
Provided that nothing contained in this sub-clause shall apply to holding of units of MFs registered with the Board.

*associate of a person means

any immediate relative of such person	trusts of which person or his immediate relative is a trustee	partnership firm in which he or his immediate relative is a partner	members of HUF of which such person is a co-parcener

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Substantial acquisition of shares or voting rights (Section 3)

Threshold limits for acquisition of shares/voting rights:

(1) An acquirer shall not acquire any shares/VR in a TC, which taken together with shares/VR already held by him or PAC, entitles them to exercise 25% or more of the VR in the TC, unless a public announcement of an open offer for acquiring shares is made in accordance with these regulations. (if existing + proposed >= 25%, then public announcement to be made for proposed acquisition)

(2) An acquirer, who along with PAC, has acquired & holds 25% or more of shares/VR but less than maximum permissible non-public shareholding in TC, shall not acquire within any FY, additional shares/VR entitling them to exercise more than 5% of the VRs, unless a public announcement of an open offer for acquiring shares of such TC is made.

Provided that, acq. beyond 5% but upto 10% of the VRs shall be permitted for the FY 2020-21 only in respect of acq. by a promoter pursuant to preferential issue of equity shares by the target co.

Provided that, such acquirer shall not be entitled to acquire or enter into agreement to acquire shares or VR that would take the aggregate shareholding (post acq.) above maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to RP approved under IBC, 2016 shall be exempt from the obligation under proviso to Regulation 2(3).

(3) For the purpose of (1) & (2), if acquisition of shares by any person results, that individual shareholding of such person exceeds that stipulated threshold, then the obligation to make an open offer shall be attracted, irrespective whether there is change in aggregate shareholding with PAC.

(4) Nothing contained in this regln. shall apply to acquisition of shares or VR of a co. by the promoters/ SHs in control, in terms of the provisions of Ch-VI-A of SEBI(ICDR) Regulations 2009.

(5) For the purpose of this regulation, any reference to "25%" in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as "49%".

Acquisition of control (Regulation 4)

- No acquirer shall, directly or indirectly, acquire control over such TC, unless the acquirer makes a public announcement of an open offer for acquiring shares of the TC.

- An Open Offer is an offer made by the acquirer to the SHs of the TC inviting them to tender their shares in the TC at a particular price. The primary purpose is to provide an exit option to SHs of the TC on account of change in control/substantial acquisition of shares in the TC.

- A Voluntary Open Offer is an offer made by person himself or through PAC, holding 25% or more shares/VR in TC but less than max. permissible non-public shareholding limit.

- Offer Price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. Acquirer can make an upward revision to the offer price at any time up to 3 working days prior to the opening of the offer.

OBLIGATIONS

Following are the obligations of the Directors, Acquirers and of the Target company:

Directors of the target company (Regulation 24)

(1) During the offer period, no person representing the acquirer or PAC shall be appointed as director on the BOD of the TC, whether as an additional director or casual vacancy.

Provided that, after initial period of 15 days from date of detailed public statement, above appointment may be effected, in the event acquirer deposits the entire consideration payable in cash under open offer in the escrow account.

Provided that, where acquirer has specified conditions to open offer in terms of Regln. 23(1)(c), above appointment shall not be made, unless the acquirer has waived or attained such conditions & complies with depositing cash in an escrow account.

(2) Where the open offer is made conditional upon min. level of acceptance, acquirer/PAC shall not be entitled to appoint any director, representing them on BOD of TC during the offer period.
'Min. level of acceptance' implies min. no. of shares which the acquirer desires under condnl. offer.
If the no. of shares tendered in the conditional offer, are less than the min. level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer.

(3) During the pendency of competing offers by any acquirer/PAC, there shall be no induction of any new director to the BOD of TC.

In the event of death or incapacitation of any director, vacancy arising may be filled by any person subject to approval of such appointment by SHs of the target company by way of a postal ballot.

(4) If acquirer/PAC is already represented by any person on the BOD of TC, then such director shall not participate in any deliberation or vote an any matter relating to open offer.

Obligations of the acquirer (Regulation 25)

(1) Prior to making public announcement for open offer, the acquirer shall ensure firm arrangements have been made for fulfilling the payment obligations under the open offer & is able to implement the open offer.

(2) In the event, the acquirer has not declared in the detailed public statement & letter of offer, the intention to alienate any material assets of TC/any of its subsidiaries by way of sale, lease, encumbrance or otherwise o/s OCOB, acquirer shall be debarred from causing such alienation for 2 years after offer period.

Provided that, if the TC is required to alienate as above despite not having expressed such intentions, such alientation shall require a SR passed by SH of TC by postal ballot and it shall contain reasons to why such alienation is necessary.

(3) The acquirer shall ensure that contents of public announcement, detailed public statement, letter of offer & post-offer advt. are true, fair & adequate in all material aspects & not misleading and are based on reliable source and state the source whevever necessary.

(4) The acquirer & PAC with him shall not sell shares of the TC held by them, during the offer period.

(5) The acquirer & PAC with him shall be jointly & severally responsible for fulfillment of applicable obligations under these regulations.

Obligations of the target company (Regulation 26)

(1) Upon a public announcement of open offer, the BOD of TC shall ensure that the business of TC is conducted in the ordinary course consistent with past practice during the offer period.

(2) During the offer, unless approval of SHs of TC by SR through postal ballot is obtained, BOD of TC/any of its subsidiaries shall not:
(a) Alienate any material asset by sale/lease/encumbrance/otherwise or enter into agreement o/s OCOB

(b) Effect any material borrowings outside OCOB
(c) Issue/allot any authorised but unissued securities entitling holder to voting rights.

Provided that TC or its subsidiaries may issue/allot shares:
(i) upon conversion of convertible securities issued prior to public announcement
(ii) pursuant to public issue where RHP has been filed with ROC before public announcement
(iii) pursuant to rights issue where record date has been announced before public announcement

(d) Implement any buy-back of shares or effect any other change to the capital structure of the TC
(e) Enter/terminate/amend any material contracts o/s OCOB, where the TC/its subsidiary is a party, whether such contract is with related party or any other person
(f) accelerate any contingent vesting of a right of any person to whom the TC/any of its subsidiaries may have an obligation.

(3) In GM of a subsidiary of TC, the TC & its subsidiaries, if any, shall vote in a manner consistent with SR passed by SHs of TC, on matters referred in (2).

(4) TC shall be prohibited from fixing record date for any corporate action on/after 3rd working day prior to commencement of tendering period and until its expiry. (3 days before tendering period)

(5) TC shall furnish to acquirer within 2 working days from identified date, a list of SHs of TC containing names, addresses, shareholding & folio no., in electronic form and list of application of person whose registration of transfer of shares in pending with TC.

Provided that, acquirer shall reimburse reasonable costs payable by TC to external agencies for above information.

(6) Upon receipt of detailed public statement, the BOD of TC shall constitute a committee of independent directors to provide reasoned recommendations on open offer and TC shall publish such recommendations.
Provided that such committee shall be entitled to seek external professional advice at exp. of TC.
Provided further that, while providing reasoned recommendation on open offer, the committee shall disclose the voting pattern of meeting in which open offer was discussed.

(7) Committee of IDs shall provide reasoned recommendations on open offer to SHs of TC & such recommendations may be published atleast 2 working days before commencement of tendering period, in the same newspaper where public offer was made & a copy of the same shall be sent to:

SEBI	SEs where shares of TC are listed	Manager to open offer	where there are competing offer, manager to open offer for every competing offer

(8) BOD of TC shall facilitate the acquirer in verification of shares tendered in open offer.
(9) BOD of TC shall make available any information and provide co-operation to all acquirers making competing offers.
(10) BOD of TC shall w/o any delay register the trf. of shares acquired by acquirer in physical form.

Obligations of the manager to the open offer (Regulation 27)

(1) Prior to public announcement, the manager to the open offer shall ensure, that:
   (a) the acquirer is able to implement the offer, and
   (b) firm arrangements for funds have been made to meet the payment obligations under open offer

(2) The manager shall ensure that contents of public announcement, detailed public statement, letter of offer & post-offer advt. are true, fair & adequate in all material aspects & not misleading and are based on reliable source and state the source whevever necessary.

(3) The manager shall furnish a DDC to SEBI along with draft letter of offer filed under Regln. 16.

(4) The manager shall ensure that mkt. intermediaries engaged for open offer are regd. with SEBI.

(5) The manager shall exercise diligence, care & professional judgment to ensure compliance with reglns.

(6) The manager shall not deal on his own A/C in the shares of the target co. during the offer period.

(7) He shall file a report with SEBI within 15 working days from expiry of tendering period, confirming status of completion of various open offer requirement.

DISCLOSURES OF SHAREHOLDING AND CONTROL

Disclosure-related provisions (Regulation 28)

What all to be included under the disclosures ?

- Aggregate shareholding & voting rights of acquirer/promoter of TC or every PAC with him
- Convertible security shall also be regarded as shares, & disclosures of such holdings shall also be made
- Upon receipt of the disclosures, the SE shall disseminate the information so received.

Disclosure of acquisition and disposal (Regulation 29)

(1) An acquirer together with PAC acquiring shares/VR which aggregates to 5% or more of shares of TC, then they shall disclose their shareholding & VRs in such TC.

   Provided that, if listed entities have listed securities on IGP, then "5% shall be read as 10%"

(2) Any person, along with PAC, entitling them to 5% or more of shares/VRs in TC, they shall disclose the no. of shares/VRs held & change in shareholding/VRs from the last disclosure, even if such change results in holding below 5%, & if such change exceed 2% of shareholding/VR in TC.

   Provided that, if listed entities have listed securities on IGP, then "5% shall be read as 10%" & "2% shall be read as 5%".

(3) Disclosure shall be made within 2 working days of receipt of intimation of allotment or acquisition or disposal of shares/VRs in TC:

   (a) SE where shares of TC are listed b) registered office of TC

(4) **Shares taken by** way of encumbrance **shall be treated as** acquistion **and shares given back** by release of encumbrance **shall be treated as** disposal **& hence, the required disclosure as above shall be made.**

N.A to Scheduled Commercial Bank/PFI/HFC/SI-NBFC, **as a pledgee for securing indebtedness.**

Disclosure of encumbered shares (Regulation 31)

(1) **The promoter of every TC shall** disclose details of shares encumbered **by him along with PAC.**

(2) **The promoter of every TC disclose the** details of any invocation/release **of encumberance of shares.**

(3) **The disclosure as per (1) & (2) shall be** made within 7 working days **from creation/invocation/ release of encumberance to:**

(a) SE where shares of TC are listed **b) registered office of TC**

(4) **The promoter of TC along with PAC shall disclose on** yearly basis, **that they have** not made any other **encumberance, directly/indirectly,** other than those disclosed **during FY.**

(5) **The declaration in (4) shall be** within 7 working days from end of FY **to above persons mentioned in 3(a) & (b)**

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS., 2015

Insider trading involves dealing in a company's securities **on the basis of** confidential information, **which is not** published or not known to the public **(known as 'unpublished price sensitive information' - UPSI), used to** make personal profits or avoid loss.

SEBI (PIT) Regulations puts in place a framework for prohibition of insider trading **in securities.**

Definitions (Regulation 2)

- **Insider - means any person who is (i) a connected person or (ii) in possession of or having access to UPSI**

- **Connected Person - means**
  (i) any person
  - **who is/has during the period of** 6m prior to concerned act been associated with a company
  - **in** any capacity
    - **with its** officer, **or**
    - **by being in** any contractual, fiduciary or employment relationship, **or**
    - **by being a** director, officer or an employee of the company
    - **by holding** any position, incl. a professional/business relationship **(temporary or permenant)**
  - **that allows such person,** access to UPSI or is reasonably expected to allow such access.

  (ii) the persons falling within the following catergories shall be deemed to be connected persons:

(a) an immediate *relative of connected persons specified in clause (i)	(f) member of board of trustees of a MF or a member of the BOD of the AMC of a MF or is an employee
(b) a holding or associate or subsy company	(g) member of the BOD or an employee, of a public financial institution
(c) an intermediary as specified in section 12 of the Act or an employee/dir. thereof;	(h) official or an employee of a self-regulatory organization recognised or authorized by SEBI
(d) an investment co., trustee co., asset management co. or an employee or director	(i) banker of the company
(e) an official of a SE or of clearing house or corporation	(j) a concern, firm, trust, HUF, co. or AOP, wherein a dir. of a co. or his immediate relative or banker of the co., has > 10% of the holding or interest

*Relative - **means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;**

- **Generally available information - info. that is** accessible to public on non-discriminatory basis. **Any info. published on the** website of a SE, **would ordinarily be** considered generally available.

- **UPSI – means** any information **relating to** securities or company, **that is** not generally available, **which upon** becoming generally available, **is** likely to materially effect **the** price of securities & **ordinary** includes but not restricted **to following information:**
  (i) financial results (ii) dividends (iii) change in capital structure (iv) changes in KMP
  (v) mergers, demergers, acquisitions, delistings & expansion of business & such other transaction

- **Trading - means & incl.** subscribing, redeeming, switching, buying, selling, dealing, **or agreeing to subscribe, redeem, switch, buy, sell, deal in any securities, & "trade" shall be construed accordingly.**

RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS

Communication or procurement of unpublished price sensitive information (UPSI) (Regulation 3)

(1) No insider shall communicate, provide or allow access to UPSI, **relating to a** company or securities **(listed or proposed to be listed)** to any other person incl. other insiders, except **where such communication is in**

furtherance of legitimate purposes | **performance of duties** | **discharge of legal obligations**

(2) No person shall procure from or cause the communication **by an insider of UPSI, relating to company or securities (listed or proposed to be listed), except for** above 3 purposes.

(2A) BOD of listed company shall make a policy for determination of "legitimate purposes" **as a part of** "Codes of Fair Disclosure and Conduct" **formulated under Regulation 8.**

Explanation – Legitimate purpose shall incl. sharing of UPSI in OCOB **by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants done** w/o evading or circumventing these regulations.

(2B) Any person in receipt of UPSI pursuant to legitimate purpose **shall be** considered as "insider" and due notice **shall be given to such person** to maintain confidentiality **of such UPSI.**

(3) An UPSI maybe communicated, provided, allowed access to or procured, in a transaction that would:
(a) Entail an obligation to make an open offer under the takeover regulations where BOD of the listed co. is of informed opinion that sharing of such info. is in the best interests of the co.
(b) Not attract an obligation like (a) but where BOD of listed co. is of informed opinion that sharing of such info. is in the best intt. of the co. & the info. that constitute UPSI is disseminated to be made generally avl. at least 2 trading days prior to the proposed transn. being effected.

(4) For communication of UPSI, **BOD shall require the** parties to execute agreements to contract confidentiality and non-disclosure obligation. **Such parties shall keep the information received confidential and shall not trade in the securities of the company during possession of UPSI.**

(5) BOD/Head of org. of every person required to handle UPSI shall ensure a *Structured Digital Database (SDD) is maintained **containing:**

Nature of UPSI | **Name of person who have shared UPSI** | **Name of person who have recd. UPSI with PAN**

Such database shall not be outsourced **&** maintained internally **with adeq.** internal control & checks.

*SDD:

- The requirement to maintain SDD is applicable to Listed Co, & Intermediaries and Fiduciaries who handle UPSI of a Listed co. in the course of business operations.
- They shall record nature of UPSI shared, details of the Sender & Receiver along with their PAN or other unique identifier (in case PAN is not available).
- Databases/servers provided by 3rd party vendors (within/o/s India) will be considered as outsourced
- Records shall be updated in SDD as & when the information gets transmitted (irrespective of the fact that information is shared within or outside the company).

(6) BOD/head of org. required to handle UPSI shall ensure that SDD is preserved for a period of not less than 8 years after completion of relevant transactions & in case of receipt of info. from SEBI regarding investigation/enforcement proceedings, till the completion of such proceedings.

Trading when in possession of UPSI (Regulation 4)

(1) No insider shall trade in sec. that are listed or proposed to be listed, when in possession of UPSI

Explanation - When a person has traded who has in possession of UPSI, his trades would be presumed to have been motivated by knowledge & awareness of such information.

Provided that, insider may prove his innocence by demonstrating the circumstances including transaction that is :

(i) Off-mkt inter-se transfer b/w insiders in possession of same UPSI w/o breach of Regulation 3 and both parties made a conscious & informed trade decision.

Provided that such UPSI was not obtained under Regulation 3(3) of these regulations.

Further, such off-market trades shall be reported by the insiders to the company within 2 working days. Every company shall notify the trades to SE within 2 trading days from reciept of disclosure/ becoming aware of information.

(ii) Carried out through the block deal window mechanism b/w persons in possession of same UPSI w/o breach of Regulation 3 and both parties made a conscious & informed trade decision.

(iii) Carried out pursuant to statutory/regulatory obligation

(iv) Carried out pursuant to the exercise of stock options where exercise price was pre-determined

(v) In case of non-individual insiders:

(a) Individual in possession of UPSI were different from individual taking trading decisions, who were not in possession of UPSI, and

(b) Appropriate & adequate arrangements were in place to ensure regulations are not violated and no evidence that such arrangements having breached.

(vi) pursuant to a trading plan set up in accordance with regulation 5

(2) The onus of establishing that they were not in possession of UPSI would be on:

- In case of connected person - themselves
- In case of others - the Board (SEBI)

(3) SEBI may specify such standards & requirements, necessary for the purpose of these regulations.

Trading Plans (Regulation 5)

(1) An insider shall be entitled to formulate a trading plan and present it to Compliance Officer (CO) for approval and public disclosure pursuant to which trades may be made according to the plan.

This provision intends to give an option to insider in possession of UPSI to trade in securities.

(2) Such trading plan shall :
- (i) not entail commencement of trading on behalf of the insider earlier than 6 months from the public disclosure of the plan.
- (ii) not entail trading b/w 20th trading day prior to last day of any financial period for which results are required to be announced & 2nd trading day after dislosure of such financial results.
- (iii) Entail trading for period of not less than 12 months
- (iv) not entail overlap of any period for which another trading plan is already in existence
- (v) set out either, the value of trades to be effected or no. of securities to be traded, along with the nature of the trade & intervals at, or dates on which such trades shall be effected
- (vi) not entail trading in securities for market abuse

(3) CO shall review the trading plan to assess for potential of any violation of regulations and be entitled to seek undertaking and to approve & monitor the implementation of plan.

Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.

Provided further that trading window norms & restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.

(4) The trading plan once approved shall be irrevocable & mandatorily have to implement the plan, without being entitled to either deviate or execute any trade in the securities outside the scope of the trading plan.
Provided that if UPSI in possession of insider at time of formulation has not become generally avl. at commencement, then commencement shall be deferred till such UPSI becomes generally avl..

(5) Upon approval of the trading plan, co. shall notify the plan to SE on which the securities are listed.

DISCLOSURES OF TRADING BY INSIDERS

General provisions (Regulation 6)

(1) Every public disclosure shall be made in such form as maybe specified.

(2) Disclosures to be made by any person concerned including the immediate relatives & other persons for whom the person concerned takes trading decisions.

(3) Disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives, provided trading in derivative is permitted by any law for time being in force.
The disclosure shall be maintained by company for a minimum period of 5 years.

Disclosures by certain persons (Regulation 7)

(1) Initial Disclosure

Every person on appt. as KMP/director **of company or becoming a** promoter/member of promoter **group shall** disclose his holding of securities **to co. within** 7 days **of such appt/becoming a promoter.**

(2) Continual Disclosure

(a) **Every** promoter/member of promoter group/designated person/director **shall disclose to co. the** no. of sec. acquried/disposed within 2 trading days, **if the** value **of sec. traded, whether in 1 or series of transn. over calendar yr.** exceeds Rs. 10 lakhs **or other value as maybe specified.**

(b) **Every company shall** notify **the particulars of such** trades **to SE within** 2 trading days **of receipt of disclosure/becoming aware of such information**

Explanation- Discl. of each incremental transn. shall be made once the limit of Rs. 10L is crossed. **Basically, if prior trades have crossed Rs.10L, then all further trades shall be disclosed.**

(c) **The above disclosures shall be made in** such form and such manner **as may be specified by SEBI**

- **Upon filing disclosure under regulation 7(2)(b), each incremental transaction shall be disclosed after** breaching Rs. 10 lakhs.
- Market rates of trades **shall be taken for calculating the value of trades & market price shall** not **be** subracted by commission/brokerage **etc.**
- **Disclosure to be filed irrespective of mode of acquisition** except bonus issue/received by way of scheme.

Disclosures by other connected persons

Any company whose securities are listed on SE may at its discretion require any other connected person/class of connected person **to make** disclosure of its holdings & trading in securities **in such form & frequency in order to monitor compliance with this regulation.**

Brief process flow of submission to the SEBI [Regulation 7(B)]

- **An informant shall** submit Original Information **in Voluntary Information Disclosure Form (VIDF) to Office of Informant Protection of SEBI**
- Format & manner – **set out in Schedule D & may be submitted by Legal Representative (LR)**
- **If not submitted through LR, SEBI may require informant to** appear in person to ascertain his/her identity & veracity of information
- **Informant while submitting VIDF shall** remove information **that could reasonably be expected to reveal his identity**
- **If removal of information not possible, informant** may identify such info./doc. **in the VIDF.**

CODES

Code of Fair Disclosure (Regulation 8)

(1) BOD of every listed co. shall formulate & publish in its website, a code of practices & procedures for disclosure of UPSI in order to adhere to principles set out in Schedule A to these regulation.

(2) Every such above code & amendment thereto to be promptly intimated to SE where sec. are listed.

Code of Conduct (Regulation 9)

(1) BOD of every listed co. or BOD/head of org. of every intermediary shall ensure that CEO/MD shall formulate Code of Conduct to regulate, monitor & report trading by its designated persons & their immediate relatives for achieving compliance with these regulations.

(2) BOD/head of org. of every other person who is required to handle UPSI shall formulate, monitor & report trading by their designated persons & immediate relatives for achieving compliance with these regulations.

Every listed co., intermediary & other persons formulating a code of conduct shall identify & designate a compliance officer (CO) to administer the code of conduct & other requirements under these reglns.

BOD, shall in consultation with CO shall specify the designated persons on the basis of their function & role in the organisation which would provide them with UPSI and shall include:

(i) Employees of listed co. or their material subsy., intermediary or fiduciary or designated on the basis of their functional role or access to UPSI in the org. by their BOD or analogous body;

(ii) All promoters of listed co. & individual promoters or inv. co. for intermediaries or fiduciaries

Penalty for insider trading - Refer Section 15G of the SEBI Act, 1992

The End

Multiple Choice Questions

Question:1 [Section:15G (SEBI Act)]

Aayush, Bipin, Caroll & Co., a firm of CAs, was appointed as statutory auditor of Ruchika Flavours Limited, a listed company, for FY 2019-20. Mr. Bipin is the engaging partner of the said audit with a team of 15 members. While conducting audit of the financial statements of Ruchika Flavours Limited, 2 members of Mr. Bipin's team, who are CAs, passed the info. to their friends and relatives disclosing that profits of Ruchika Flavours Limited for this year are up by 25% in comparison to the previous FY. At the time of passing the info., it was not available in the public domain through the company. Certain persons who were in possession of this info., purchased the shares of Ruchika Flavours Limited at a low price. After the audited financials came into public domain, the market price of the shares increased sharply and they made profit by selling those shares. You are required to select the correct option which indicates whether it is a case of insider trading or not and if it is a case of insider trading then the quantum of penalty that can be levied under the SEBI, 1992.

a) It is not a case of insider trading since both the CAs are part of statutory audit team and therefore, are not restricted to use any information relating to Ruchika Flavours Limited.
b) It is not a case of insider trading since the information disclosed by both the CAs of statutory audit team is not a price-sensitive information.
c) It is a case of insider trading and the penalty leviable would be not less than Rs. 10 lacs but may extend to Rs. 25 crores or 3x of profits made out of insider trading, whichever is higher.
d) It is a case of insider trading and therefore, the penalty leviable would be not less than Rs. 25 crores or three times of profits made out of insider trading, whichever is lower.

Question: 2 [Regulation 29 -SEBI (LODR) Reg,2015]

Akshara Builders and Developers Ltd., a company listed on BSE Limited, is contemplating upper revision in the rate of interest of its existing 12% bonds by 1% so as to make them 13% bonds with effect from August 14, 2021. The said proposal is to be laid before the Board of Directors at a Board Meeting to be held on July 14, 2021. From the following options, choose the one which correctly indicates the latest date by which Akshara Builders and Developers Ltd. is required to intimate the BSE Limited about the Board Meeting where increase in rate of interest is being considered, keeping in view the Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by:

a) July 1, 2021
b) July 3, 2021
c) July 5, 2021
d) July 7, 2021.

Answers:	1.	(c)	2.	(b)

Question:3 [Regulation 33(3) -SEBI (LODR) Reg,2015]

W Ltd. made the following compliances for the June 2022 quarter, as required by SEBI(LODR) Regulations, 2015 :-

1) It submitted its unaudited quarterly financial statements to the recognised stock exchange on 31st July, 2022.
2) It submitted its quarterly compliance report on corporate governance on 10th July, 2022.

What shall be the last date of submission of quarterly financial statements to the stock exchange for W Ltd., in case W Ltd. was not able to submit the same on 31st July, 2022, and whether it can be submitted in unaudited form also?

a) 15th August, 2022 and no, it needs to be submitted in audited form.
b) 31st August, 2022 and yes, it can be submitted in unaudited form.
c) 31st July, 2022 and no, it needs to be submitted in audited form.
d) 15th August, 2022 and yes, it can be submitted in unaudited form.

Question:4 [Regulation 17A -SEBI (LODR) Reg,2015]

Mr. Amar is holding the post of directorship in following Listed entities- LE 1, LE 2, LE 3, LE 4, LE 5 LE 6, and LE 7 as on January 2020. He received an offer of directorship from LE 8 in April 2020. Whether Amar can join the LE 8?

a) Yes, as per the SEBI(LODR)Regulation, directorship is restricted to 8 listed entities. Hence Mr. Amar can.
b) Yes, as per the SEBI(LODR)Regulation read with the companies Act, 2013, Mr. Amar can accept directorship in 10 listed companies.
c) No, as per the SEBI(LODR)Regulation, directorship cannot be in more than seven listed entities with effect from April 1, 2020, Mr. Amar cannot.
d) Yes, as no restriction is marked on holding of directorship in the Listed companies.

Question:5 [Section 3 -SEBI (SAST) Reg,2011]

As per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise _____ of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company:

a) Ten percent or more
b) Twenty per cent or more
c) Twenty-five per cent or more
d) Fifty per cent or more

Answers:	3.	(d)	4.	(c)	5.	(c)

Question:6 [SEBI(LODR) regulations, 2015]

X Limited is a listed company which provided the grievance position of the investors' complaints for the financial year 2022-2023.

Referring to the applicable Regulation made under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, state within how many days X Limited is required to file a statement giving the status relating to Quarter 4 of the financial year 2022-2023 as to the investors complaints-

a) It has to file the detailed status as to the investors complaints, by 30th day of April, 2023.
b) It has to file the detailed status as to the investors complaints for the financial year 2022-2023 within 3 months from the end of the financial year.
c) It has to file the detailed status as to the investors complaints relating to the each Quarter of the financial year 2022-2023 within 15th day of the next quarter, hence for quarter 4 by 15th day of April, 2023.
d) It has to file the detailed status as to the investors complaints relating to Quarter 4 of the financial year 2022-2023 within 21st day of April, 2023.

Question:7 [Section 7A]

Raman is a member and director of a pharmaceutical company. The company proposed to raise capital for strengthening its structure and reputation in the market. Such matter came for approval before Board for consideration. Specify the correct statement in the light of the above situation as per the provision under the SEBI Act, 1992

a) Member shall participate in the meeting of the Board to protect its interest in the Company.
b) Member shall not participate in the meeting of the Board being interested party.
c) Member, shall only participate in the meeting of the Board being interested party, after disclosure of his interest
d) Member being a director with pecuniary interest, shall disclose his interest but shall not take any part in any decision of the Board.

Answers:	6.	(d)	7.	(d)

The End

Chapter 12 The Foreign Exchange Management Act, 1999

[Effective from 1st June, 2000]

No one studies this chapter; everyone regrets not studying this chapter!"

Acronyms used:

AD	Authorized Dealer	FTP	Foreign Trade Policy
AIFI	All India Financial Institution [NABARD/EXIM/SIDBI/NHB]	FTZ	Free Trade Zones
AP	Authorized Person	GCP	General Corporate Purpose
BOA	Branch, Offices and Agencies	IC	Indian Currency
BOE	Bills of Exchange	IDERA	Irrevocable Deregistration and Export Request Authorisation
CAT	Capital Account Transaction	IDPMS	Import Data Processing and Monitoring System
CCPS	Compulsorily Convertible Preference Shares	IFSC	International Financial Services Centre
CDF	Currency Declaration Form	IOSCO	International Organization of Securities Commissions
CMP	Custom Manual Ports	LIBOR	London Inter Bank Offered Rate
CUAT	Current Account Transaction	LOC	Letter of Credit
DGCA	Director General of Civil Aviation	LOU	Letter of Undertaking
DGFT	Directorate General of Foreign Trade.	LRS	Liberalised Remittance Scheme
DSIM	Department of Statistics and Information Management	NCD	Non-Convertible Debentures
ECB	External Commercial Borrowing	NOC	No Objection Certificate
EEFC	Exchange Earners' Foreign Currency	ODI	Overseas Direct Investment
EHTPs	Electronic Hardware Technology Parks	PRI	Person Resident In India
FC	Foreign Currency	PROI	Person Resident Outside India
FCCB	Foreign currency convertible bond	RFC	Resident Foreign Currency Account
FCEBs	Foreign Currency Exchangeable Bonds	SEZ	Special Economic Zones
FDIs	Foreign Direct Investment	SOP	Standard Operating Procedure
FEMA	Foreign Exchange Mgt. Act, 1999	STPs	Software Technology Parks
FEV	Full Export Value	TC	Travellers' cheque
Forex	Foreign Exchange	TCA	Trade Control Authority
Forse	Foreign Securities	UE	Untraceable Entities
FPI	Foreign Portfolio Investors	WCP	Working Capital Purpose

Purpose of the Act: An Act to consolidate and amend the law relating to forex with the objective of:

- facilitating external trade and payments and
- for promoting the orderly development and maintenance of forex market in India.

With liberalization of Indian economy in 1991, flow of Forex into India increased thus increasing the Foreign Exchange Reserve (FER) substantially. This act enables management of FER for the country.

Enforcement of the Act - Directorate of Enforcement (ED)

Forex Regulation Act, 1973 vs FEMA 1999:

	FERA	FEMA
Objective of Act	Conserve Forex	Promote and develop the forex
PRI	Based on citizenship	Based on stay in India
Strictness	Forex transaction is prohibited unless permitted	Forex transaction is permitted unless restricted
Mens-rea (guilty mind)	Presumption of existence of Mens-rea	Mens-rea not presumed. Responsibility of prosecution to prove
Compounding of offence	Not allowed	All offences are compoundable

Broad Division of Act:

Preliminary [Sec 1-2]	Reg and Mgt. of Forex [Sec 3-9]	Authorised Person [Sec 10-12]	Contravention and Penalty [Sec 13-15]	Adjudication and Appeal [Sec 16-35]	Directorate of Enforcement [Sec 36-38]	Miscellaneous [Sec 39-49]

Sec 1- Applicability

This Act extends to whole of India. **Also applies to all BOA outside India owned or controlled by PRI.**

Sec 2- Definition

- Authorised Person [Sec 2(c)] means an:

Authorised Dealer (AD)	Money Changer	Off-shore banking unit	Other person authorised u/s 10 to deal in Forex or Forse

- Foreign Currency [Sec 2(m)] means any currency other than Indian Currency.

- Foreign Exchange [Sec 2(n)] means Foreign Currency and includes:

Deposits, credits and bal. payable in any FC	Draft, TC, LOC, BOE drawn in IC but payable in FC	Drafts, TC, LOC, BOE drawn by Banks or Person outside India but payable in IC

- Foreign Security [Sec 2(o)] means:
  - Any security in form of - Stock, shares, bond, debentures or other instruments
  - Denominated in FC,
  - And includes - Sec. denominated in FC but redemption or returns (intt./div.) payable in IC.

- Capital Account Transaction [Sec 2(e)] means a transaction which alters:
  a. Asset or Liabilities (incl. contingent liability) o/s India of PRI
  b. Asset/Liability in India of PROI

- Current Account Transaction [Sec 2(j)] means transaction other than CAT
  Without prejudice to the generality of the definition, CUAT includes:

Payments w.r.t., foreign trade, current business, services, & short-term banking & credit facility in OCOB	Payments w.r.t., interest on loans & as net income from investments	Remittances for living expenses of parents, spouse and children residing abroad	Expense w.r.t. foreign travel, education and medicare of parents, spouse and children

- "Person" [Sec 2(u)] includes:
  i. an individual,
  ii. a HUF,
  iii. a company,
  iv. a firm,
  v. an association of persons or body of individuals, (incorporated or not)
  vi. every artificial juridical person, and
  vii. any agency, office or branch owned or controlled by such person;

- "Person Resident in India" [Sec 2(v)] means:

In case of Individual

A person residing in India for more than 182 days during course of the preceding FY but does not include:

(A) a person who has gone out of India or who stays outside India, in either case:
  a. for or on taking up employment outside India, or
  b. for carrying on o/s India a business or vocation o/s India, or
  c. for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case.
  However, if such person has come to or stays in India for any of the following purpose, he shall be considered as PRI (irrespective of number of days of stay in India in preceding FY):
  a. for or on taking up employment in India, or
  b. for carrying on in India a business or vocation in India, or
  c. for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

Artificial Person

any person or body corporate registered or incorporated in India

any BOA in India owned or controlled by a person resident outside India

a BOA outside India owned or controlled by a person resident in India

- "Person Resident outside India" [Sec 2(w)] means a person who is not Resident in India.

Concept Clarity Check:

1. Citizenship is not relevant for determining PRI or PROI

2. If in FY 2019-20, a person resides in India for 200 days. On 1st June 2020, the person leaves India for employment outside India. Determine whether PRI or PROI? - For the period 1st April 2020 to 1st June 2020, such person shall be PRI and from 2nd June 2020 onwards, he will be a PROI (irrespective of the fact that he resides for more than 182 days in preceding FY).

3. Mr. S comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he is certain that he will not be able to return for an year. He ends up staying with them till 31st July 2020. Is he a PRI in FY 20-21? – No, in FY 20-21, Mr. S will be considered as PROI. Even though he resided in India for more than 182 days in FY 19-20, he has not come for any of the 3 purpose (employment, business or uncertain period) and hence he is not a PRI in FY 20-21.

4. Residential status is not for a year. It is on a particular date. (Unlike Income Tax Act, 1961)

5. Is it mandatory for a person to reside in India for more than 182 days in the previous FY to be considered as PRI? – No. If he resides for <=182 days in preceding FY, but comes to India in the current year for the 3 purpose, he will become PRI in current year.

6. Where a student is leaving India for higher studies, RBI has clarified that they shall be treated as PROI majorly because of their intention to stay outside India for an uncertain period and the fact that they start working there to take care of their expenses.

Sec 3- Dealing in Foreign Exchange, etc.

No person (PRI & PROI) shall:

Deal in or transfer Forex or Forse to any person other than AP	make any payment to/for credit of PROI	Receive any payment from PROI otherwise through an AP*	Enter into Financial Transaction in India as consideration for acquisition of asset o/s India

*Where any such payment is received without corresponding inward remittance, it shall be deemed to be received through person other than AP.

However, the above restricted transactions may be carried on:
i. If otherwise provided in this Act, Rules or Regulations, or
ii. With permission of RBI (general or special)

Note –
1. For this section – Financial transaction means:

payment to/credit of any person or	receiving payment for or on behalf of any person or	to draw/issue/ negotiate any BOE or	trf. security or acknowledge debt

2. Purp. of this sec is to regulate inflow & outflow of Forex in regulated manner & through APs only.

Sec 4- Holding of Forex

Except as provided in this Act, no PRI shall Acquire, Hold, Own, Possess or Transfer [HA! TOP] any Forex, Forse or Immovable Property situated outside India.

Sec 5- Current Account Transactions

Any person may sell or draw Forex to or from an authorised person if such sale or drawal is a CUAT.
CG may, in consultation with RBI, impose reasonable restrictions on CUAT.
Note: RBI cannot, on its own, impose any restriction on CUAT.

Examples of CUAT:

1. Import in India of machinery for installation in factory from a UK vendor by payment in cash
2. Import in India of machinery for installation in factory from a UK vendor on credit for 3 months (this is CUAT because short term banking and credit facilities covered as CUAT)
3. Gift (say $1,000) by a PRI to PROI (Note: Gift is given in FC)
4. Gift (say Rs. 1,000) by a PRI to PROI in India – This will be a CAT and not CUAT as this results in alteration of asset of PROI in India. Although it is a CAT, such gifting is permitted as per Rules.

General Rule: CUAT is freely permitted unless specifically restricted.

Schedules of FEM(CUAT) Rules, 2000

Schedule I – Drawal of forex by any person for following purpose is prohibited:

1. Remittance out of lottery winnings,
2. Remittance of income from Racing/riding etc. or any other hobby,
3. Remittance for purchase of lottery tickets, banned magazines, football pools, sweepstakes etc.,
4. Payment of commission on exports made towards equity invt in JV/WOS abroad of Indian cos.,
5. Remittance of dividend by any co. to which the requirement of dividend balancing is applicable,
6. Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco,
7. Payment related to "Call Back Services" of telephones,
8. Remittance of interest income on funds held in Non-Resident Special Rupee Account Scheme

[If any of the above remittance/payments is to be done by a PRI to a PROI, the PRI cannot go to AP and draw $s because these are prohibited.]

Schedule II – Transactions which require prior approval of GOI for drawal of forex:

Purpose of Remittance	Ministry/Dept. of GOI who approval is reqd
Cultural Tours	Ministry of Human Resources Development, Dept. of Education and Culture (Now known as Ministry of Education)
Advertisement in foreign print media by a SG & its PSUs > $ 10,000 Except where such advertisement is for the purposes of promotion of tourism, foreign investments and international bidding Note: PSUs of CG not covered!	Ministry of Finance, Dept. of Economic Affairs
Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, Chartering Wing
Payment of import (through ocean transport) by a Govt. Department or a PSU on C.I.F. basis (i.e., other than F.O.B and F.A.S. basis)	Ministry of Surface Transport, Chartering Wing
Multi-modal transport Operators making remittance to their agents abroad	Registration Certificate from Director General of Shipping

Remittance of hiring charges of transponders: a. TV Channels b. Internet service providers	Ministry of Information and Broadcasting Ministry of Communication & Information Technology
Remittance of container detention charges > the rate prescribed by Director General of Shipping	Ministry of Surface transport (Director General of Shipping)
Remittance of prize money / sponsorship of sports activity abroad by a person other than International/ National/State Level sports bodies, if the am involved > US$ 100,000	Ministry of HR Development, Dept. of Youth Affairs & Sports (Now - Ministry of Youth Affairs and Sports)
Remittance for membership of P & I Club (protection and indemnity insurance)	Ministry of Finance (Insurance Division)

Schedule III - Transactions which in excess of limits require prior approval of RBI for drawal of forex: [Liberalised Remittance Scheme]

1. Individuals - Avail forex facility for the following purpose within limit of USD 2,50,000 only. Additional remittance beyond limit shall require prior approval of RBI:
   a. Private visits to any country (except Nepal and Bhutan)
   b. Gift or donation
   c. Going abroad for employment
   d. Emigration (permanently settling in a country)
   e. Maintenance of close relatives abroad
   f. Travel for:

business	attending a conference	specialized training	for meeting expense of medical treatment/check up abroad or accompanying a patient

   g. Expenses in connection with medical treatment abroad
   h. Studies abroad
   i. Any other current account transaction

   Provided, for (d), (g) and (h), individual may avail forex facility > $2,50,000 if it so required by country of emigration, medical institute offering treatment or the university, respectively.

   Provided further that, where an individual "Remits" any amount under this scheme in a FY, the applicable limit shall be reduced from $2,50,000 by such amount remitted. (i.e., the limit of $2,50,000 is aggregate in FY)

   Provided also that for a PRI but not permanently resident in India and
   a. is a citizen of a foreign State other than Pakistan; or
   b. is a citizen of India, who is on deputation (to India) to the office or branch of a foreign company or subsidiary or JV in India of such foreign company,

   may make remittance up to his net salary (after deduction of taxes, PF, etc.)

Explanation: For this schedule, a PRI on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which is not > 3 years, is a resident but not permanently resident.

2. Facilities for person other than individuals- Following shall require prior permission of RBI:

Particulars	Purpose	Limit
Donation	Donation for: a. creation of Chairs in reputed educational Inst., b. contribution to funds (not being an investment fund) promoted by educational Inst.; and c. contribution to a technical inst./body in the field of activity of the donor company	> Lower of 1% of Forex Earnings during last 3 FY or $5 Million
Sale of flats/ plots in India	Commission (per transaction) to agent abroad for sale of residential flats or commercial plots in India	> Higher of $25,000 or 5% of Inward Remittance
Consultancy per project	Remittance for any consultancy w.r.t Infrastructure projects and	> $10 Million per project
	For other consultancy procured from outside India	> $1 Million per project
Pre-incorp expense	Remittance as reimbursement of pre-incorporation expense	> Higher of 5% of Investment brought into India or $1,00,000

Note - Limit of $250,000 is irrelevant in case of person other than individuals.

Additional Notes:

1. Procedure for Drawal/remittance of Forex under Sch III shall be same as applicable under LRS.
2. Approval for transaction under Sch II and III shall not be required where remittance is from:
   a) RFC A/C
   b) EEFC A/C (except for remittance for membership of P&I club under Sch II and payment commission/pre-incorporation under Sch III).
3. If a person is on visit abroad, he can incur expenditure stated in Sch III if he incurs it through International Credit Card (to the extent of limit on the card).

Note - If a transaction is not listed in any of the three Schedules, it can be freely undertaken.

Import of Goods and Services (G&S)

- Import of G&S is allowed by virtue of Sec 5 read with FEMA (CUAT) Rules, 2000 and is regulated by Master Direction 17 (issued by RBI).

Master Direction 17 (of RBI) - Regulates the import of G&S

- Import trade is regulated by DGFT (under Ministry of Commerce and Industry).
- AD - 1 should ensure that imports in India is in conformity with - Foreign Trade Policy, FEMA (CUAT) Rules, 2000, Directions issued by RBI.

General Guidelines for imports:

- AD-1 banks should adhere to KYC guidelines issues by RBI.
- AD-1 banks may allow remittance for making payments for imports after ensuring:
  - All requisite details are made available by Importer
  - Remittance is for bona fide trade transaction
- Obligation of Purchaser of Forex:
  1. In terms of section 10(6) – Person acquiring Forex is permitted to use it either for:
     - Purpose declared with AP or
     - Any other purpose for which Forex acquisition is permissible.

  2. Where Forex acquired is utilized for import, AD – 1 banks shall:
     - Ensure that importer furnishes evidence of import viz:

       IDPMS, or | Postal Appraisal Form, or | Custom Assessment certificate

     - Satisfy itself that good worth value of remittance is imported.

  3. Mode of payment for imports:
     PRI may make payment:
     - in forex through an International Card held by him
     - in Rs. through International debit/credit card through the serving bank against a charge slip signed by the importer, or
     - as prescribed by RBI.

     In essence, payment has to be made through banking channels.

  4. PRI can also make payment:
     - In Rs. for expenses of boarding/lodging & travel to/from India for a PROI (on visit to India)
     - By crossed cheque /draft as consideration for purchase of gold/silver (as per law)
     - A Co/PRI may make payment in Rs. to its Non-WTD who is PROI + on visit to India for company work + Entitled to sitting fees/remuneration – Provided compliance with law.

- Time limit for settlement of import payments:

Normal imports –

- Remit within 6m of date of shipment (except where payment held as guarantee for perf.)
  [For COVID – Payment can be done upto 12 months if import made before 31st July, 2020]

- Interest on delayed payments-
  AD-1 banks may permit delayed payments due to financial difficulties /disputes. However, interest on delayed payment shall only be paid upto 3 years from date of shipment.

Deferred Payment Arrangements (DPA)-

- DPA (including suppliers' and buyers' credit) for upto 5 years are treated as trade credits
- For such arrangement, follow - Master circular for ECB and Trade Credits

➢ Extension of time for settlement of import dues:

Power of AD-1 Bank to provide extension:

- Up to 6 months at a time (max 3 years)
- Irrespective of value of invoice
- Reason for extensions could be:

disputes about quantity/quality	non-fulfilment of terms of contract	financial difficulties	importer has filed suit against the seller

AD-1 Bank to ensure following while granting extension:

- Concerned Import transactions are not under investigation by ED/ CBI or others
- While considering extension > 1 year (from date of shipment), total outstanding of importer should be < [Lower of: $1 Mn or 10% of the avg. import remittances during last 2 FY]; and
- Report above extension in IDPMS as per message "Bill of Entry Extension" and mention date in "Extension Date" column.

➢ Import of Forex/INR:

- Except as otherwise provided in Regulation, no person shall, without prior permission of RBI, bring any FC into India
- RBI may allow person to bring INR subject to Terms & Conditions as RBI may stipulate.

Import of Forex into India:

A person may:

- Send into India, without limit, forex in any form (other than currency note, bank notes and TC)
- Bring into India from outside India, without limit, forex (other than unissued notes) provided declaration made to Custom in CDF.

Provided that - No declaration to custom required if aggregate of Forex in form of Currency Notes, Bank notes or TC at one time is < = $10,000 and/or aggregate value of foreign currency notes (cash portion) at one time is < = $5,000 or equivalent.

Import of India Currency & Currency Notes:

1. A PRI who had gone o/s India (except Nepal and Bhutan) on temporary visit may bring Indian currency up to Rs. 25,000.
2. A person may bring from Nepal and Bhutan, Indian currency notes for any amount in denominations upto Rs. 100/-.

➢ Issue of Guarantee by an Authorized Dealer (AD):

Case	AD may give:	On behalf of	Owed to:	Nature	As per:
1	Guarantee	Debt/obligation/ Liability of PRI importer	PROI	For import on deferred payment terms	Approval of RBI for such import
2	Guarantee, Letter of Credit	Debt/obligation/ Liability of a PRI importer	PROI (overseas supplier)	Import of Goods	Foreign trade policy + T&C of RBI
3	Guarantee in OCOB	Resident service importer	NR service provider	Import of Services*	T&C of RBI

*Limit on guarantee in case of import of service:

Where the service importer is:	No guarantee > below amt shall be issued:
Other than Public Sector co./Dept of CG or SG	$5,00,000
Public Sector co. / Dept of CG or SG	$1,00,000 (w/o prior approval of MoF)

AD may permit issue of corporate guarantees:

AD may permit PRI to issue corporate guarantees → in favour of overseas lessor for financing import through operating lease → in confirmity with FTP, FEMA Regulations and directions of RBI → Such permission shall be subject to RBI directions

Sec 6- Capital Account Transactions

Capital Account Transaction [Sec 2(e)]: means a transaction which alters:

a. Asset or Liabilities (including contingent liability) o/s India of PRI
b. Asset/Liability in India of PROI
c. ~~Includes transaction referred u/s 6(3)~~

1. Subject to subsection (2), a person may sell or draw forex to/from AP for CAT.

2. RBI (+CG) specify:

Class of CAT - involving Debt instruments, which is permissible | Limits for such permissible transactions | Conditions placed on such transactions

Provided that, RBI or CG shall not impose restriction on drawal of forex for:

Payment due on account of amortization of loans or repayment of loans | Depreciation of direct investment in OCOB

Subsection (2A): CG (+RBI) specify:

Class of CAT - Not involving debt instruments, which is permissible | Limits for such permissible transactions | Conditions placed on such transactions

3. Omitted
4. PRI may hold, own, transfer or invest in:

Foreign Currency | Foreign Security | Immovable Property Outside India

Provided that it was

- acquired, held or owned by such person when he was PROI, or
- inherited from a PROI

As per RBI Clarification:

The following transaction are covered under section 6(4):

1. FC accounts opened and maintained by PRI when he was PROI.
2. Income from employment/business/vocation when o/s India taken up when he was PROI, or from investment when he was PROI or from gift/inheritance received when he was PROI.
3. Forex held outside India by a PRI acquired by way of inheritance from PROI.
4. PRI may freely utilize eligible assets abroad or income/sales proceed therefrom after their return to India for making payment/fresh investments abroad without approval of RBI.

   Provided that cost of investments is met completely out of eligible assets.

5. PROI may hold, own, transfer or invest in:

Indian Currency	Indian Security	Immovable Property in India

Provided that it was

- acquired, held or owned by such person when he was PRI, or
- inherited from a PRI (not PROI).

6. RBI may impose restrictions on BOA of PROI.

7. Debt instrument means such instrument as determined by CG (+RBI). [Amendment]

CAT is broadly split into following categories as per FEM (Permissible CAT) Regulations 2000:

Permissible Transaction for PRI [Schedule I]	Permissible Transaction for PROI [Schedule II]	Transactions on which restriction cannot be imposed (amortisation and depreciation)	Prohibited CAT

Permissible Transaction for PRI [Schedule I] [SLAP CG in CID style that O2 kamm pad jaye]

Investment by PRI in ForSe	FC Loans raised in India and abroad by a PRI	~~Acq./~~Transfer of IP o/s India by a PRI	Guarantees issued by a PRI in favour of a PROI
Loans and Overdrafts (borrowings) by a PRI from a PROI	Export, import and holding of Currency/ currency notes	Maintenance of FC Accounts in India and o/s India by a PRI	Taking out of Insurance policy by a PRI from an insurance co. o/s India
Loans and Overdrafts by a PRI to a PROI	Remittance outside India of Capital assets of a PRI	Undertake Derivative contracts	

Note - PRI may draw forex not > $2,50,000 per FY or such amt as decided by RBI for CAT in Sch I.

Note - Drawal of forex as per Sch III (Facilities for individual) of FEM(CUAT) Rules, 2000 shall be subsumed within the above limit. (i.e. Sch I + Sch III = Max $2,50,000).

Provided further that no part of the forex of $ 2,50,000 drawn above shall be used for remittance to non-co-operative countries and territories notified by Financial Action Task Force.

Permissible Transaction for PROI [Schedule II] [IPC ke baad GD doge to Achi Co. Degi offer]

Investment in India by a PROI, i.e. a. issue of security by a BC/entity in India and invt therein by PROI b. invt by a PROI to the capital of a firm/ proprietorship concern/AOP in India.	Acquisition and transfer of IP in India by a PROI	EXIM of Currency/currency notes into/from India by a PROI.	Guarantee by a PROI in favour of a PRI

Deposits between a PRI and a PROI.	FC Accounts in India of a PROI	Remittance o/s India of Capital assets in India of a PROI	Undertake Derivative contract

Prohibited CAT [Regulation 4]:

1. No PROI shall make investment in India in any co/partnership firm/proprietary or any entity which is engaged or proposes to engage [CARTN]:

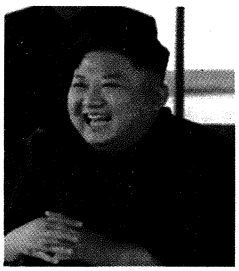
in the business of Chit fund, or	Nidhi Company	agricultural or plantation activities	real estate business	construction of farm houses	trading in TDRs

Explanation:
For the purpose of this regulation, 'real estate business' shall not include:

development of townships	construction of residential/commercial premises, roads or bridges and	registered REITs.

Note - PROIs are restricted from investment in business of Chit Funds but may be eligible to subscribe to such chits provided approval of Registrar of chits or officer of SG concerned is sought and in compliance with terms and conditions of RBI.

2. No PRI shall undertake any CAT with a citizen/ resident/entity of Democratic People's Republic of Korea ("North Korea"), unless approval from CG.



3. Any existing investment transactions with North Korea by a PRI shall be liquidated/settled within 180 days from the date of issue of this Notification, unless there is specific approval from the CG to continue beyond that period.

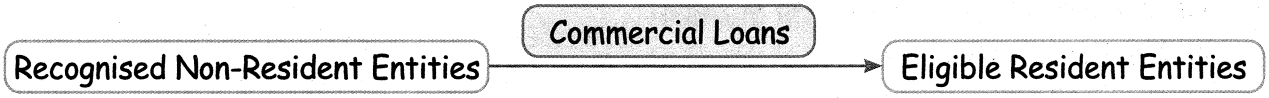
Frameworks for raising loan through External Commercial Borrowings (ECBs):

Definitions:

All-in-Cost: It includes rate of interest, other fees, expenses, charges, guarantee fees, whether paid in foreign currency/INR but will not include:(a) commitment fees; (b) withholding tax payable in INR.

Provisions as per Master Direction of RBI related to ECB:

1. ECB are commercial loans raised by eligible resident entities from recognised NR entities.



2. ECB comes in 2 configuration - Foreign Currency ECB (FCY ECB) & Indian Currency ECB (INR ECB)

The framework is as shown below:

Parameters	FCY denominated ECB	INR denominated ECB
Currency of Borrowing	Any Freely Convertible FC (unlike Brazil Currency)	INR
Forms of ECB	• Loans including bank loan • Floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments) • Trade Credit > 3 years • FCCBs, FCEBs and • Finance Lease *FYI - Conversion is optional in FCCBs	• Loans including bank loan • Floating/ fixed rate notes/ bonds/ debentures / Pref. shares (other than fully and compulsorily convertible instruments) • Trade Credit > 3 years • ~~FCCBs, FCEBs~~ and • Finance Lease • Plain vanilla Rs. Denominated Bonds
Eligible Borrowers (to raise ECBs)	• Entities eligible to receive FDI. • Port Trusts; • Units in SEZ; • SIDBI; and • EXIM Bank of India.	a) Entities eligible to raise FCY ECB (left hand side); and b) Registered entities engaged in micro-finance activities, viz., registered NPO companies, registered societies/trusts/ cooperatives and NGOs.
Recognised lenders	• Resident of FATF or IOSCO compliant countries, or • Multilateral and Regional Financial Inst. where India is a member country (WHO, World Bank, etc.) • Individuals only if they are foreign equity holders (of borrower) or for subscription to bonds/debentures listed abroad • Foreign branches / subsidiaries of Indian banks (only for FCY ECB, except FCCB, FCEBs) i.e., FCY ECB de sakte hai!	

<table>
<tr><td>Minimum Average Maturity Period (MAMP)</td><td colspan="2">
• MAMP of ECB = 3 years
• Call/Put options not to be exercised prior to completion of MAMP
• For specified cases, separate MAMP:
<table>
<tr><th></th><th>ECB raised</th><th>Purpose</th><th>MAMP (in yrs)</th></tr>
<tr><td>(a)</td><td>By manufacturing co.</td><td>of amount <= $50 Mn/FY</td><td>1</td></tr>
<tr><td>*(b)</td><td>From a Foreign Equity holder</td><td>WCP, GCP or Repayment of Rupee loans</td><td>5</td></tr>
<tr><td>*(c)</td><td>For Purpose 1</td><td>(i) WCP or GCP
(ii) on-lending by NBFCs for WCP/ GCP</td><td>10</td></tr>
<tr><td>*(d)</td><td>For Purpose 2</td><td>repayment of Rupee loans availed domestically for capex or on-lending by NBFC for the same</td><td>7</td></tr>
<tr><td>*(e)</td><td>For Purpose 3</td><td>repayment of domestic Re. loans availed for purpose other than capex or on-lending by NBFCs for other than capex</td><td>10</td></tr>
</table>
For *(b) to *(e) above, ECB cannot be raised from foreign branches / subsidiaries of Indian banks
</td></tr>
<tr><td>All-in-cost ceiling per annum</td><td colspan="2">Benchmark rate+500 bps spread. (i.e.,5% spread) [Amendment]
One-time adjustment - AIC revised upwards by 100 bps.</td></tr>
<tr><td>Other costs</td><td colspan="2">Prepayment charge/ Penal interest, if any, for breach of covenants, not > 2 % over and above the contracted rate of interest on the o/s principal amount and will be outside the all-in-cost ceiling.</td></tr>
<tr><td>End-uses (Negative list)</td><td colspan="2">ECB proceeds cannot be utilized for following: [CREW LOG]
a) Real estate activities.
b) Investment in capital market.
c) Equity investment.
d) WCP, except in case of ECB mentioned at *(b) & *(c) above.
e) GCP, except in case of ECB mentioned at *(b) & *(c) above.
f) Repayment of Rupee loans, except as mentioned in *(d) & *(e) above.
g) On-lending to entities for above activities, except as per *(c), *(d) & *(e)</td></tr>
<tr><td>Exchange rate (for change of currency i.e., FCY to INR or vice versa</td><td>Rate prevailing on date of agreement for such change or rate less than the rate prevailing on such date, if consented to by the ECB lender</td><td>For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.</td></tr>
</table>

<table>
<tr><td>Hedging provision</td><td>ECB Borrowers are reqd. to:
• Follow hedging guidelines w.r.t., forex exposure. (Infra Cos to have BoD approved risk mgt. policy)
• Mandatorily hedge 70 % of ECB exposure where MAMP is < 5 years.
• Designated AD-I bank to verify that 70% hedging requirement is complied with & report the position to RBI (Form ECB 2)</td><td>Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD-I banks in India.

The investors can also access the domestic market through:
a) branches/subsidiaries of Indian banks abroad or
b) branches of foreign banks with Indian</td></tr>
<tr><td></td><td colspan="2"><u>Applicable only for FCY ECB Bonds:</u>
Following operational aspects w.r.t, hedging should be ensured:
<u>Coverage:</u> Cover the principal as well as the coupon through financial hedges throughout the period of ECB.

<u>Tenor and rollover:</u>
Min. tenor of 1 year for the financial hedge with periodic rollover

<u>Natural Hedge (in lieu of financial Hedge):</u>
Considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows.

For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year.</td></tr>
<tr><td>Change of currency of borrowing</td><td>Change from one freely convertible FC to any other freely convertible FC as well as to INR is freely permitted.</td><td>Change from INR to any freely convertible foreign currency is not permitted.</td></tr>
<tr><td colspan="3">ECB framework is not applicable w.r.t., investments in NCD in India made by Registered Foreign Portfolio Investor</td></tr>
<tr><td colspan="3"><u>Limit and leverage:</u>
• Eligible borrowers can raise ECB up to $750 Million or equivalent per FY under automatic route.
• In case of FCY ECB raised from direct foreign eq. holder, ECB liability-equity ratio for ECB raised under automatic route cannot exceed 7:1. [Ratio N.A. if o/s ECB (total including proposed) < $5 Million]
• Borrowing entities to be governed by guidelines on debt equity ratio, issued by concerned regulator.</td></tr>
</table>

<u>Note</u> - FCY ECB can be used for repayment of Rupee loans availed domestically. But, Refinancing of INR ECB with FCY ECB is not permitted.

3. Issuance of Guarantee by Indian Banks, AIFI or NBFC w.r.t., ECB is not permitted. Further, Indian banks, AIFI or NBFCs shall not invest in FCCBs or FCEBs.

4. ECB proceeds are permitted to be parked abroad as well as domestically in manner given below:

Parking abroad:	Parking Domestically:
ECB proceeds meant only for FC exp. can be parked abroad pending utilisation in following liquid assets: (a) deposits or other products offered by banks rated > AA (-) by S&P/Fitch IBCA or Aa3 by Moody's; (b) T-bills and other inst. (1 year maturity) having min. rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad	ECB proceeds meant for Re. expenditure should be repatriated immediately to AD-1 bank. Allowed to park in unencumbered term deposits with AD-I banks for max. 12 months cumulatively.

5. Procedure of raising ECB:

Automatic Route:	Approval Route:
All ECB can be raised under the automatic route if they conform to the parameters of this framework. Entities desirous to raise ECB under the automatic route may approach an AD-I bank with their proposal along with duly filled in Form ECB.	The borrowers may approach the RBI with an application in Form ECB for examination through their AD-I bank. RBI to consider keeping in view the overall guidelines, macroeconomic situation & merits of specific proposals. ECB proposals of > certain threshold limit - Place before Empowered Committee(EC) set up by RBI, consider its recommendation and RBI will take a final decision

6. Reporting Requirements:

Loan Registration Number (LRN): Draw down of ECB allowed only after obtaining LRN from RBI.

To obtain the LRN:
(a) submit duly certified Form ECB in duplicate to the designated AD-I bank
(b) AD-1 bank will forward a copy to the Director, RBI (DSIM, ECB Division, BKC)
(c) copies of loan agreement NOT required to be submitted to RBI.

Changes in terms and conditions of ECB: Any changes in T&C of ECB (incl. reduced repayment by mutual agreement) to be reported to DSIM, RBI through revised Form ECB at the earliest (not later than 7 days from the changes effected)

Monthly Reporting of actual transactions: Borrower to report actual ECB transactions in Form ECB 2 Return via AD-I bank on monthly basis so as to reach DSIM in 7 working days from close of month. Changes in ECB parameters to be incorporated in Form ECB 2 Return (in addition to revised Form ECB above)

DSIM in 7 working days from close of month. Changes in ECB parameters to be incorp. in Form ECB 2 Return (in addition to revised Form ECB above)

Late Submission Fee (LSF) for delay in reporting:

Type of Return/Form	Period of delay (from due date)	Applicable LSF
Form ECB 2	Up to 30 days	Rs. 5K
Form ECB 2/Form ECB	Upto 3 yrs from submission/drawdown	Rs.50K per yr
Form ECB 2/Form ECB	Beyond 3 yrs from submission/drawdown	Rs. 1L per yr

LSF to be paid via Demand Draft in favor of RBI

SOP for Untraceable Entities ("UE)":

What is untraceable entity (UE)?

ECB borrower will be treated as UE if entity/auditors/promotors are not reachable/responsive for > 2 Quarters after >= 6 documents communications/reminders and fulfils both the following condition:

a. Entity not found to be operative at the regt. office address as per records avl. with AD Bank, &
b. Entities have not submitted Stat. Auditor's Certificate for last > = 2 years

Action to be undertaken by Designated AD-1 bank w.r.t. UE: [FF AWE]

- File Revised Form ECB, if required, and last Form ECB 2 Return w/o certification from co. with 'UE' written in bold on top. The O/S amount of ECB will be treated as written-off from external debt liability of country but may be retained by lender in books for recovery through judicial, etc. means;
- No fresh ECB appln. by the entity should be examined/processed by AD bank;
- ED should be informed whenever any entity is designated 'UE'; and
- No inward remittance/debt servicing will be permitted under auto route (block incoming funds)

7. Powers delegated to AD-I banks to deal with ECB cases

The designated AD-I banks can approve any requests from borrowers for changes w.r.t, ECB, except for FCCBs/FCEBs, ensuring compliance with extant ECB norms and that changes are with consent of lender(s).

Further, the following can also be undertaken under the automatic route:

- AD-I bank can be changed subj. to obtaining NOC from the existing AD-I bank.

- Cancellation of LRN: Designated AD-I banks may directly approach DSIM for cancelln. provided that no draw down against said LRN has taken place + monthly ECB-2 returns till date w.r.t, allotted LRN have been submitted to DSIM.

- Refinancing of existing ECB by fresh ECB by eligible borrower provided that:
  - Outstanding maturity of the original borrowing (existing ECB) is not reduced and
  - All-In-Cost of fresh ECB < that of existing ECB (= hoga toh nahi chalega)

- Conversion of ECB into equity [ACGRPLE]:

Conversion of ECB, incl. matured but unpaid ECB, into equity is permitted subject to following:

a) Activity of borrowing co. is covered under auto route for FDI or CG approval is received per FDI norms
b) The conversion (with lender's consent & w/o addnl. cost) should not breach sectorial cap;
c) Applicable pricing guidelines for shares are complied with;
d) In case of partial/full conversion of ECB into eq., reporting to RBI will be:

Conversion	Form
Partial	Report converted portion in Form FC-GPR + Monthly Form ECB 2 Return with remarks
Full	Report entire portion in Form FC-GPR + Monthly Form ECB 2 Return with remarks. Subsequent filing of ECB 2 not required
Phases	Report in Form FC-GPR and ECB 2 will also be in phase

e) If ECB Borrower has availed other credit facilities from Indian banking system, incl. foreign branches/subsy of Indian banks, comply with applicable prudential guidelines;
f) Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower.
g) Exchange rate prevailing on the date of the agreement for such conversion, or any lesser rate can be applied with a mutual agreement with the ECB lender.

Note - The fair value of the equity shares to be issued to be worked out w.r.t, date of conversion only.

- Security for raising ECB:

AD-I banks are permitted to allow creation of charge on imm./mov. Assets /Financial sec. & issue guarantees in favour of lender to secure ECB provided that:

a. the underlying ECB is in compliance with the extant ECB guidelines,
b. there exists security clause in Loan Agreement requiring ECB borrower to create/cancel such charge
c. NOC from the existing lenders in India has been obtained

Once the above condn. are met, the AD-I bank may permit creation of charge subj. to following:

1. Creation of Charge on Immovable Assets:
   a. Subject to FEM (Acq. and Trf. of IP in India) Regulations, 2017
   b. Permission not to be construed as permission to acquire IP in India
   c. In the event of enforcement of charge, the IP will have to be sold only to a PRI and sale proceeds shall be repatriated to liquidate outstanding ECB (and not any other borrowings).

2. Creation of Charge on Movable Assets: In case of enforcement of charge, claim of lender will be restricted to outstanding claim against ECB.

Note - Encumbered movable assets may be taken out of country subject to NOC from domestic lenders

3. Creation of Charge over Financial securities: The arrangements may be permitted subject to following:
   a. Pledge of shares of borrower co. (E.g. RIL) held by promoters (E.g. Ambani) or shares of domestic associate cos. (E.g. Jio) of borrower is permitted.
      Pledge on other Financial securities, viz. bonds and debentures, Govt. securities, Govt. Savings Certificates, deposit receipts of securities and units of UTI or of MF, held by borrower/promotor is also permitted.

   b. Security interest over all current and future loan assets and all current assets including CCE, including Rupee accounts of borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in form of escrow arrangement or debt service reserve A/C.

   c. In case of invocation of pledge, transfer Financial Securities as per extant FDI/FII policy.

4. Issue of Corp./Personal Guarantee: Arrangement shall be subj. to obtaining the following:
   a. A copy of Board Resolution. specifying name of officials auth. to execute guarantees.
   b. Specific request from individuals to issue personal guarantee indicating detail of ECB.
   c. ECB can be guaranteed by overseas party only if they fulfil criteria of Recognised lender.

   Such security shall be subj. to prov. contained in the FEM (Guarantees) Regulations, 2000

- Additional Requirements: While approving changes to ECB, AD-I banks should ensure that:
  a. Changes are in conformity with the applicable ceilings/guidelines and in compliance with applicable guidelines.
  b. Changes are reported to DSIM and reflected in Form ECB 2 appropriately.

8. Special Dispensations under the ECB framework
   - ECB Facility for Oil Marketing Companies (OMCs): [E.g. IOCL/BPCL]
     i. Public Sector OMCs can raise ECB for WCP with MAMP of 3 years under auto route w/o mandatory hedging and individual limit requirements.
     ii. Overall ceiling for such ECB shall be $10 billion or equivalent (this is not p.a)
     iii. OMCs should have a Board approved forex mark to market procedure and risk mgmt policy.
     iv. All other provisions under ECB framework will be applicable to such ECB.

- ECB facility for Startups - AD-I banks are permitted to allow Startups to raise ECB under automatic route as per the following framework:

Eligibility	Entity recognized as Startup by the CG as on date of raising ECB
MAMP	3 years
Recognised lender	Resident of a FATF ~~(IOSCO)~~ compliant country. However, Foreign br/ subsy of Indian banks and overseas entity in which Indian entity has made ODI will not be Recognised lender
Forms	Loans/Non-convertible, optionally convertible or partially convertible preference shares
Currency	Any freely conv. Currency/INR/combination thereof. In case of INR ECB, NR lender to mobilise INR through swaps/outright sale undertaken through AD-I bank in India.
Amount	The borrowing per Startup will be limited to $3Million or equivalent per FY (in any currency)
All-in-cost	Mutually agreed between borrower and lender
End uses	Business expense of borrower
Conversion into equity	Freely permitted subject to relevant Regulation
Security	Choice of security is left to the borrowing entity. Compliance with norms is necessary Issuance of guarantee is allowed. NR can issue guarantee only if NR qualifies as recognized lender under ECB for Startups. Issuance of guarantee, LOC, LoU, etc. by Indian bank, AIFO and NBFCs is not permitted.
Hedging	In case of INR ECB, overseas lender will be eligible to hedge its INR exposure through permitted derivative products with AD- I banks. They can also access domestic market through branch /subsidiary of Indian banks abroad/branch of foreign bank with Indian presence Note: Startups raising ECB in FC are exposed to currency risk due to exchange rate movements and are advised to ensure having an appropriate risk management policy
Conversion rate	In case of borrowing in INR, the FC- INR conversion will be at the market rate as on the date of agreement.
Other Provisions	Same as per ECB framework However, provisions on leverage ratio and ECB liability: Equity ratio will be NA Further, the Start-ups can also raise ECB under the general ECB route/ framework.

9. Borrowing by Entities under Investigation:
All entities against which invg. /adjudication/appeal (IAA) by law enforcing agencies for violation of FEMA is pending, may raise ECB, if they are otherwise eligible, notwithstanding the pending invg., etc. w/o prejudice to the outcome of such IAA

Borrowing entity shall inform about pendency of such IAA to AD-I bank/RBI. Accordingly, AD-I Banks/RBI shall, while approving proposal, intimate the agencies concerned by endorsing a copy of the approval letter.

10. ECB by entities under restructuring/ ECB facility for refinancing stressed assets:
An entity which is under a CIRP can raise ECB only if specifically permitted by the resolution plan.

Eligible corporate borrowers (in Mfg./Infra Sector) who have availed Rupee loans domestically for capex and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell such loans (to NR) to eligible ECB lenders.

Foreign branches/ overseas subsy. of Indian banks are not eligible to lend for the above purposes. Eligible borrowers, who are participating in the CIRP under IBC, 2016 as resolution applicants, can raise ECB from all Recognised lenders, except foreign branches /subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route

11. Dissemination of information: For greater transparency, information w.r.t, name of borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on RBI's website monthly, with 1 month lag.

12. Compliance with the guidelines: The primary responsibility is of borrower concerned. Any contravention will invite penal action under the FEMA.

The designated AD-I bank is also expected to ensure compliance with ECB guidelines by their constituents.

Refer Overseas Investment Rules and Regulations at the end of this chapter.

Sec 7 - Export of Goods and Services:

1. Every Exporter of Goods shall:
   a. Furnish to RBI - A declaration containing true and material particulars including the amount representing full export value (FEV).
   Where FEV is not ascertainable at the time of export, the value that the exporter expects to receive on sale of such goods in market outside India.
   b. Furnish such information to RBI as may be required to ensure realization of export.
2. Exporter of service - Furnish to RBI, a declaration containing true particulars w.r.t, payment.

Foreign Exchange Management (Export of Goods & Services) Regulations, 2015

Definitions:

1. 'Export' includes:

taking/sending out of goods	by land, sea or air,	consignment or sale, lease, hire-purchase or any other arrangement	In case of software - includes transmission through any e-media

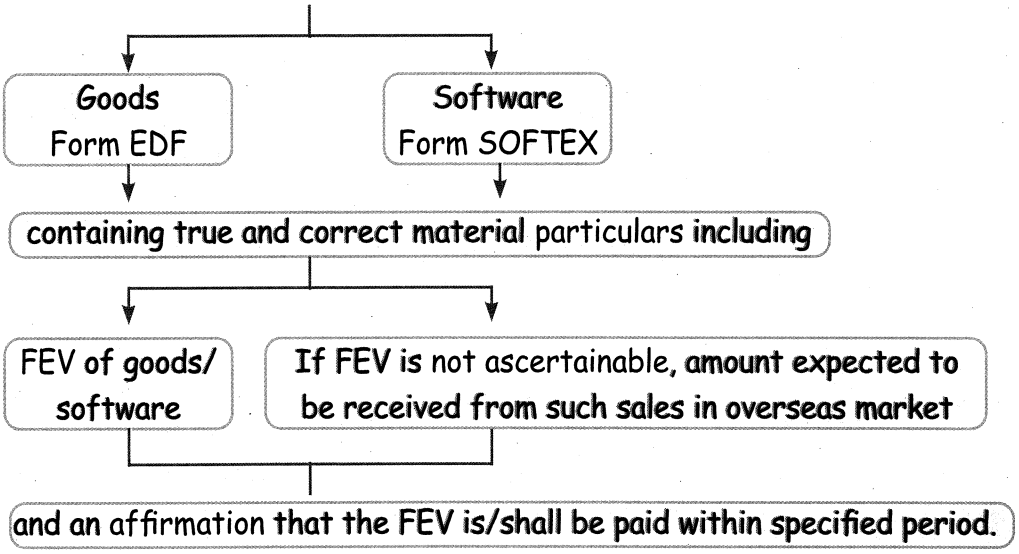
2. 'Export Value' w.r.t, export by way of lease/hire-purchase/similar arrangement, includes the charges payable in respect of such arrangement.

3. 'Software' means any computer programme, database, drawing, design, AV signals, any information by whatever name called in or on any medium other than in or on any physical medium.

4. Forms means Form EDF or Form SOFTEX.

Declaration of Exports to RBI/Prescribed Authority:

- Exports through Customs to any place outside India (except Nepal & Bhutan)



- Export of Services (other than software) – No Declaration required as no Form specified but liable to realize and repatriate the amount to India.

Exemptions for export of goods/software i.e., Export w/o declaration: [DATE GF CSR | RBI | SEZ]

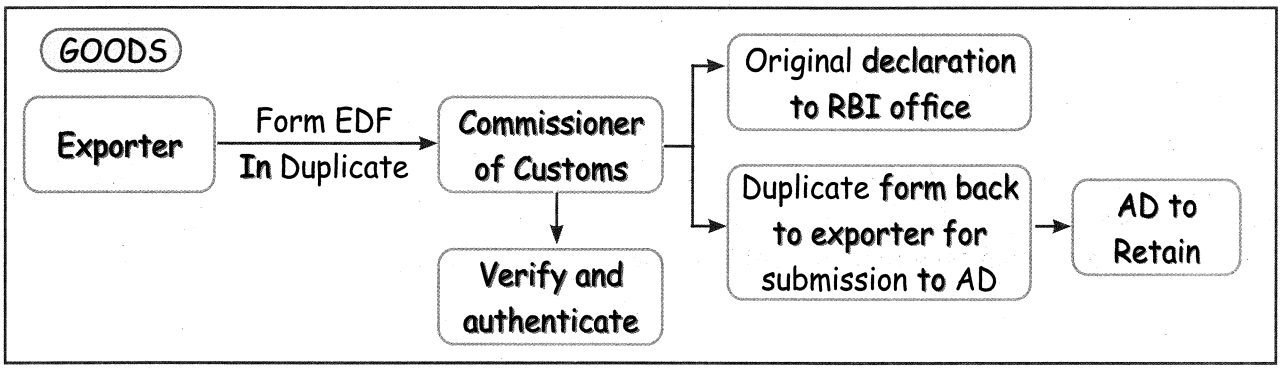
- S - trade samples of goods and publicity material supplied free of payment
- F - goods imported free of cost on re-export basis
- E - personal effects of traveler, whether accompanied or unaccompanied
- C - ship's stores, trans-shipment cargo & goods supplied for military, naval/air force requirement
- Gift of goods accompanied by declaration (general decl.) by exporter that value < = Rs. 5 lakhs
  [If value of goods > Rs. 5 lakhs – Declare in Form EDF, otherwise, general declaration]
- A - Aircrafts/aircraft engines/ spare parts for overhauling and/or repairs abroad subject to their reimport into India within 6m from date of export

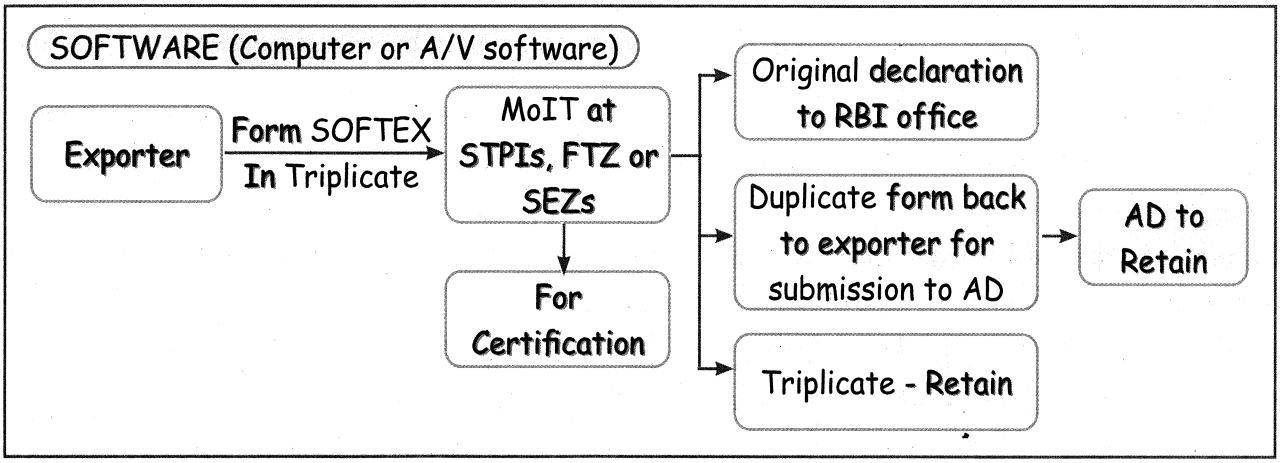
- A - Re-export of leased aircraft/helicopter/engines/APUs re-possessed by overseas lessor and duly de-registered by the DGCA on request of IDERA holder under Cape Town Convention or any cancellation of lease agreement subject to permission of DGCA/MoCA [Amendment]
- R - replacement goods exported free of charge as per FTP
- T - goods sent outside India for testing subject to re-import into India
- D - defective goods sent o/s India for repair and re-import provided accompanied by certificate from AD in India that export is for repair and re-import
- RBI - Exports permitted by RBI, on appln. made to it, subject to T&C stipulated in permission
- SEZ - Re-export of following imported goods permitted by SEZ, EHTP, STP or FTZ:
  - found defective, for replacement by the foreign suppliers; or,
  - from foreign suppliers on loan basis; or
  - from foreign suppliers free of cost, found surplus after production operations.

Indication of Importer-Exporter Code (IEC)

The IEC numbers allotted by DGFT shall be indicated in:

All Declaration by Exporter | All correspondence with RBI/AD





Evidence in support of declaration: [RDV]

Specified authority may require evidence to establish that:

a. Exporter is PRI and has POB in India
b. Destination declared is final destination (i.e., country where goods cleared through customs)
c. Value stated in decl. represents FEV or value expected to receive (if FEV is not ascertainable)

Manner of payment of export value of goods

FEV must be paid through AD as per FEM(Manner of Receipt and Payment) Regulations, 2000

Note - Re-import into India within the realization period shall be deemed realization of FEV.

Period for realization of Export Value:

- General Rule
  - Normal Export (Goods/Service/ Software) → Realise and Repatriate FEV *within 9m from date of export
  - Goods exported to warehouse established o/s India with RBI permission → Realise and pay to AD- FEV *within 15m from date of SHIPMENT.
- Export is made by Units in SEZ/Export Oriented Units/EHTPs/STPs and Bio-Technology Parks as per FTP → Realise and Repatriate FEV *within 9m from date of export

*RBI/AD may for sufficient and reasonable cause extend the period

Note - If software exported in other than physical form, Date of Export = Date of Invoice

Submission of Export Documents:

- Documents (as mentioned in declaration form) pertaining to export to be submitted to AD
- Within 21 days from date of export (goods) or date of certification of SOFTEX form (software)

AD may accept documents after expiry of 21 days, for reasons beyond exporter's control.

Transfer of Documents (Invoice/Bill of Entry):

AD may accept shipping documents including invoices/Bill of Entry from his constituent for negotiation or collection. Provided that, AD may require the constituent to sign declaration.

Payments for Export:

Except with approval of RBI/AD, no person shall do or refrain from doing any action which causes:

a. Payments to be made otherwise than in specified manner [Mode]
b. Payment to be delayed beyond specified period [Delay]
c. Proceeds of sales does not represent FEV [Part payment]

Export that require prior approval :

- Export under Special Arrangement between CG and Government of Foreign state or under Rupee Credits shall be governed by T&C issued by Trade Control Authority and RBI instructions
- Export under Line of Credit extended to foreign Bank/Financial Institution by EXIM bank for financing exports from India shall be governed by RBI via AD

Delay in receipt of payment of FEV:

Where payment for export is not recd. within specified period (9m/15m + Extension), RBI may issue directions **to person who has sold/is entitled to sell such goods/software for purpose of securing:**

a. Payments, **if goods/software is sold and**
b. Sale **of goods and payment thereof if goods/software is not sold, or re-import into India**

Provided that omission of RBI **to give directions shall** not **have the effect of** absolving **the person committing the contravention from the consequences thereof.**

Advance payment against Export:

If exporter receives advance payment **(with or without interest) from a buyer named in export declaration, the exporter shall be obligated to ensure that:**

a. Shipment **of goods is made** within 1 year **of date of receipt of advance payment**
b. **Rate of** interest **on advance payment** < LIBOR **(or other applicable benchmark)** + 100 bps, &
c. Docs **covering shipment are routed through AD through whom advance payment is received.**

If shipment not **made** within 1 year, **no remittance towards refund of advance payment or interest shall be made after expiry of 1 year, without** prior approval of RBI

Note – The export agreement may itself provide for shipment of goods beyond 1 year from receipt of advance payment and such agreement shall be valid.

Directions by RBI

In order to ensure timely realization of FEV, RBI may, by general or special order, direct exporters:

- **To cover payment of exports by an** Irrevocable LOC
- **To take** prior approval of AD **before submission of any declaration to specified authority**
- **Copy of** declaration **to be submitted to such org. to** certify the valuation **of goods/software**

Project Exports:

- **Where an export of goods/services is proposed to be made on:**

  deferred **payment terms or** | **in execution of a** turnkey **project or** | a civil **construction contract**

  the exporter **shall submit** proposal to Approving authority (EXIM bank or AD) **for prior approval.**

- **In case a** guarantee **is required to be given for performance, or for availing credit facilities from bank/Financial Institution o/s India w.r.t, execution of such project, the same may be issued by:**

  AD Bank | **a PRI being an export company**

  provided that **the contract/Letter of Award stipulates such requirements** (of guarantee).

Sec 8- Realisation and Repatriation of Forex

Save as otherwise provided in this Act, where amount of forex is due /has accrued **to any PRI, such person shall take reasonable steps to realise & repatriate to India within period specified by RBI.**

Sec 9- Exemption from realisation and repatriation in certain cases.

Provisions of Sec 4 and 8 shall not apply to holding following forex:

- Possession of FC or Foreign Coins by any person
- FC Account held/operated
- Forex acquired by Gift/inheritence by a PRI
- Forex acquired/received before 1947 and income accruing thereon held o/s India with RBI permission
- Forex acquired from employment, business trade, vocation, gift, honorarium or other legitimate source
- Such other receipts as RBI may specify

Provided that such forex is held within limits specified by RBI in this regard.

Chapter III - Authorised Person

Sec 10 - Authorised Person

1. RBI may, on an application to it, authorise any person to be known as AP to deal in forex/forse, as an AD, money changer or off-shore banking unit or in any other manner as it deems fit.
2. Authorisation to be in writing and subject to Terms & Conditions
3. RBI may revoke authorisation if satisfied that:
   - it is in public interest
   - AP has failed to comply with T&C or contravened FEMA/Rules/Reg.

   Reasonable OOBH to be given prior to revoke authorisation
4. AP to comply with all directions of RBI in their forex/forse dealings.
   For deviation - Seek RBI's permission
5. Before undertaking any forex transaction, AD shall require that person to make declaration that this transaction will not lead to contravention of FEMA.
   If that person fails to make such declaration - AD shall refuse to undertake such transaction in writing and report matter to RBI (if RGTB that contravention is contemplated)
6. If any person has drawn forex but not utilized it for declared purposes or other permitted purpose, he shall be deemed to have contravened the provisions of this Act

An Off-Shore Banking Unit (OBU) shall not undertake any trn. with PRI. It may undertake trn. with any AD in India on Principal-to-Principal basis. OBU are meant to facilitate units in SEZ and may undertake trn. in Forex with unit in SEZ to the extent the latter is eligible to undertake such trn.

Sec 11- RBI powers to issue directions to AP:

To secure compliance with provisions of Act/Rules/Reg/Directions etc., RBI may direct APs

a. w.r.t, making payment/doing or desist from doing any act relating to forex/forse
b. to furnish such information, in such manner, as it deems fit.

Penalty after giving AP reasonable OOBH:

AP contravenes directions of RBI or fails to file returns - Penalty upto Rs. 10,000 + Additional Rs. 2,000 per day (after the first) for every day during which such contravention continues.

Sec 12- Power of Reserve Bank to inspect APs

RBI may, where it appears necessary to do, cause inspection of APs (by officer authorised by RBI) for purpose of:

verifying correctness of return/ information/particulars filed by RBI	Obtain information/particulars which AP has failed to furnish	Securing compliance with Act/Rules/Regulations etc.

On such inspection, every AP (and its directors, partners, officers) is duty-bound
(i) to produce such books, accounts and other documents in his custody/power, and
(ii) to furnish any statement relating to the affairs of such person, company or firm.

SUMMARY OF CONTRAVENTION AND PENALTIES:

Sec No.	Nature of contravention	Quantum of Penalty
11	AP contravenes directions of RBI or fails to file returns	Upto Rs. 10,000 + Additional Rs. 2,000 per day ~~(after the first)~~ for each day
13	Any person contravenes any provision of Act/Rules/Reg/etc. or AP contravenes T&C subject to which authorisation was issued	➢ Upto 3x sum involved if amt. is quantifiable ➢ Upto Rs. 2 L if amount is not quantifiable, ➢ additional Rs. 5000/day, after the first day, during which default continues ➢ AA may order confiscation by CG
13 (1A) and (1C)	Any person acquired Forex, Forse or Immovable Property o/s India of aggregate value > Limit u/s 37A	➢ Upto 3x sum involved and ➢ Confiscation of equivalent in India and ➢ Jail upto 5 years and fine
14	Failure to pay penalty u/s 13 within 90 days from notice and the penalty amount is:	Civil Imprisonment:
	a. More than Rs. 1 crore	Upto 3 years
	b. Other case	Upto 6 months

Sec 14- Enforcement of orders of AA:

1. If a person (defaulter) fails to make payment of penalty within 90 days of issue of notice for such payment - Liable for civil imprisonment.

2. Prior to order for arrest and detention of defaulter:
   a. AA to serve a notice of defaulter calling upon him to appear before AA and show cause why he should not be committed to civil prison and
   b. AA is satisfied that:
      ➢ Defaulter has, after issue of such notice, dishonestly trf. his prop. to avoid such payment,
      ➢ Or, Defaulter has means to make such payment but refuses/neglects such payment

3. AA may issue arrest warrant if:
   a. AA is satisfied that defaulter is likely to abscond, or
   b. Defaulter fails to appear before AA on serving notice

4. Arrested person to be brought before concerned AA as soon as practicable within 24 hrs (excl. time travel for journey)
   Provided that: If defaulter pays amount entered in warrant as due + cost of arrest to arresting officers - Release immediately

5. In case of HUF, Defaulter = Karta

6. Where person appears before AA on receipt of above notice, AA to give defaulter opportunity to Show Cause why not civil prison?

7. Pending concln. of inquiry - AA may order detention of such defaulter & release on furnishing sec.

8. Upon conclusion - AA may order detention in civil prison and arrest him (if not already arrested)

9. To give an opportunity to defaulter to make payment, AA may prior to order of detention in prison, leave defaulter in custody of such officer for not > 15 days

10. Period of detention in civil imprisonment - Upto 3 yrs (if amt > Rs. 1 crore) or upto 6m (otherwise) Shall be released from detention if amount mentioned in warrant for detention is paid.

Sec 14A- Power to recover arrears of penalty:

AA may authorize officer (of ED) > = Asst. Director of ED to recover arrears of penalty and such officer shall exercise power similar to those conferred on IT Auth. in relation to recovery of tax.

(Note: Arrest u/s 14A runs parallelly with recovery u./s 14A)

Sec 15- Power to compound contravention

For contravention u/s 13 - On an appln by person committing contravention - ED or officers of ED/RBI auth. by CG may compound such contravention within 180 days of date of receipt of appln.

Where contravtn. is compounded - No further proc. to be initiated/continued w.r.t. such contravtn.

Process of Adjudication u/s 13:

Order by AA:

- CG to appoint AA (by notification in OG)
- AA to deal with complaint as expeditiously as possible and endeavor to dispose within 1 year from date of receipt of the complaint (else record reason in writing)

Appeals to Special Directors (Appeal) [SD(A)]:

- Appeals against order of AA (Assistant Director or Deputy Director of ED) to be heard by 1 or more SD(A) appointed by CG
- Appeal to be made by aggrieved person within 45 days of receipt order of AA
- SD (A) may entertain appeal beyond 45 days - If satisfied there was sufficient cause

Appeals to Appellate Tribunal (AT):

- AT of FEMA = AT as per Sec 12 of Smugglers and Forex Manipulator Act, 1976

- CG or aggrieved person may prefer appeal to AT against order of:
  - AA (other than Assistant/Deputy Director of ED)
  - SD(A)
- Appeal within 45 days of rec. of order (AT may entertain appeal after 45 days if suff. cause)
- AT to dispose of appeal asap not later than 180 days from date of receipt (else record reason)

Appeals to High Court (HC):
- Appeal against order of AT lies with HC
- Within 60 days of communication of order (+60 days)
- Only where there is a question of law arising out of such order.

Sec 36- Directorate of Enforcement

1. CG to establish ED with a director and officers (called as officers of Enforcement)
2. CG may authorise Director, ED or Additional Director or Special Director or Deputy Director to appoint officers < Rank of Assistant Director
3. Power and duties of ED and officers – As per this Act

Sec 37- Officer > Rank of Assistant Director may take up investigation under section 13

Foreign Exchange Management (Overseas Investment) Rules, 2022

About the Rules:
- Issue by Ministry of Finance w.e.f. 22nd August 2022
- Led to suppression of the following two regulations:
  - FEM (Transfer or Issue of Any Foreign Security) Regulations, 2004
  - FEM (Acquisition & Transfer of Immovable Property O/S India) Regulations, 2015

Important Definitions:

Foreign Entity (FE): Entity incorporated o/s India (including IFSC) with limited liability.
Provided that – Restriction of limited liability shall not apply to entity with core activity in a strategic sector (E.g.- green energy or natural resources).

Overseas Investment (OI) – Financial Commitment & Overseas Portfolio Investment (OPI) by PRI

Financial Commitment: Aggregate amount of investment by PRI by way of:

Overseas Direct Investment	Debts other than OPI	Non-fund based facilities

Overseas Direct Investment (ODIs)
Investment by way of:
- Acquisition of unlisted equity capital of a FE or
- Subscription as a part of MOA of FE, or
- Investment in >= 10% of Paid-up Equity Share Capital or
- Investment with control where investment is <10% of listed FE.

OPI –
- Investment, other than ODI, in foreign securities
- but not in unlisted debt instrument or
- any securities issued by a PRI who is not in an IFSC

Financial service Regulator – RBI, SEBI, IRDA and PFRDA

Indian entity (IE) means:

(i) Company under Companies Act, 2013

(ii) Body corporate incorporated by any law

(iii) LLPs under Limited Liability Partnership Act, 2008

(iv) Partnership firm under Indian Partnership Act, 1932

Strategic Sector includes energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector as deemed necessary by CG.

"Subsidiary" or "step down subsidiary" of a FE means an entity in which the FE has control (not necessarily >50% holding)

"Control" means:

- the right to appoint majority of directors or
- to control management or policy decisions exercisable by a person acting individually or in concert including by virtue of their shareholding or mgt. rights or shareholders' agreements or voting agreements that entitle them to >= 10% of voting rights or in any other manner.

"Net worth" –Same meaning as sec 2(57) of Co.s Act, 2013 (i.e. Securities Premium A/c incl. now)

3. Administration of these Rules:
   - Administered by RBI
   - RBI may issue direction and instructions as it may deem necessary for effective implementation

4. Non applicability:

   These rules and relevant regulations shall not apply to:

   (a) Investment made outside India by a financial institution in an IFSC (e.g. JP Morgan in GIFT City)

   (b) Acquisition or transfer of any investment outside India made:
      a. Out of Resident Foreign Currency (RFC) Account or
      b. Out of FC resources held outside India by a person employed in India for specific duration irrespective of length thereof or for a specific job duration of which is < 3 years.
      c. In accordance with *section 6(4) of this Act

   *Section 6(4) – PRI may hold foreign currency, foreign security/Immovable Property situated outside India provided that it was held by such person when he was PROI/inherited from a PROI

5. Debt instrument and non-debt instrument:

   Following shall be debt and non-debt instruments as determined by CG u/s 6(7):

   (A) Debt instruments (RBI has power to regulate)

Government Bonds	Corporate Bonds	All non-equity tranches of securitization
Borrowing through Loans	Depository receipts with underlying debt securities	

(B) Non-debt instruments:

Investment in equity **of incorporated entities**	**Capital participations in** LLPs	Immovable **property**
Instruments recognised in FDI **policy**	**Equity tranche of** Securitisation Structure	**Contribution to** trust
Depository receipts **against equity**	**Investment in** Mutual Fund **and** Exchange Traded Fund **which invest** >50% **in equity**	
Investment in units of Alternative Investment Funds, Real Estate Investment Trusts **and Infrastrucutre investments trusts**		

6. Continuity of existing investment:
Any investment **or** financial commitment **made o/s India as per FEMA Rules and Regulations & held as on date of publication of this Rule in Official Gazette** – Deemed to be in compliance **of this Rule.**

7. Rights issue and Bonus Shares
   1. **Any** PRI **who has acquired &** continues to hold equity **of** FE **(as per Rules & Reg.) may:**
      - **Invest in equity capital issue by such entity as** rights issue, **or**
      - **May be granted** bonus **subject to T&C of these rules.**
   2. **PRI referred above may** renounce **such rights in favour of PRI or PROI.**

8. Prohibition on investment outside India:
Save as otherwise provided in Act, Rules or Regulation, no PRI **shall make or transfer investment or financial commitments outside India.**

9. Overseas Investment (OI):
   1. **Investment outside India:**
      - **Any investment made outside India by a** PRI
      - **shall be made in a** FE **engaged in bona fide** business activity,
      - directly **or through** step down subsidiary **or** Special Purpose Vehicle
      - **subject to limits and conditions of these rules and regulations**

      Provided that – OI **or** transfer **thereof (including swap) of securities in foreign entities incorporated in** Pakistan **or** other CG notified jurisdiction – **Requires** prior approval **of** CG

   2. **Notwithstanding these Rules and Regulations:**
      i. CG **may, on application made to it through** RBI, permit **financial commitments in** strategic sectors or geographics, above **the** limits **subject to T&Cs.**
      ii. **RBI may, on application made to it through** designated AD Bank, permit **a** PRI **to make or transfer investment or financial commitment outside India subject to T&C.**
      Provided that – OI by PRI **shall** not **be made in FE** located in country **as decided by CG.**

3. RBI may, in consultation with CG:
   - Stipulate ceiling for aggregate outflows in a FY on account of OPI or Financial Commitment;
   - Stipulate ceiling beyond which amount of Financial commitment (not OPI) by a PRI in a FY shall require prior approval of RBI.

10. No objection certificate:
    1. A PRI who:

has an NPA account	classified as wilful defaulter by any bank	under investigation by financial service regulator or Indian investigative agencies - CBI or ED or SFIO

shall, before making any FinCom or undertaking regulations, obtain a NOC from the concerned lender bank or regulatory body or investigative agency by making an application in writing.

Where the concerned bank or agency fails to furnish NOC within 60 days of application - Presume no objection to the proposed transaction.

2. NOC issued by bank, agency, etc. shall be addressed to the designated AD bank with an endorsement to applicant.

Rule 11 to 15 :

Rule	Heading	In the manner and subject to T&C Prescribed in:
11	Manner of ODI by IE	Schedule I
12	Manner of OPI by IE	Schedule II
13	Manner of ODI by Resident Individual	Schedule III
14	OI by PRI other than IE and Resident Individual	Schedule IV
15	OI in IFSC by PRI	Schedule V

16. Pricing Guidelines:
    1. Unless otherwise provided herein, the issue or transfer of equity capital:
       - From PROI or PRI to a PRI who is eligible to make such investment, or
       - From a PRI to a PROI

       shall be subject to a price arrived on Arm's Length basis

    2. In such transaction, AD bank shall ensure compliance with Arm's Length basis taking into consideration the valuation as per internationally accepted method.

17. Transfer or Liquidation:
    1. Unless provided in these rules, PRI holding equity capital as per these rules, may transfer such investments as per the Regulations.
    2. PRI may transfer equity capital by way of sale to a "Eligible PRI" or PROI
    3. In case such transfer is on account of merger, amalgamation or demerger / buyback, such trf. or liquidation shall have approval of competent authority as per laws of India or host country.

4. Where the disinvestment by PRI pertains to ODI:
   i. Transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt from FE (as an investor in equity or debt)
   ii. Transferor must have stayed invested for at least 1 year from date of making ODI

   Provided that, above condition shall be N.A. in case of:
   a. merger, demerger or amalgamation between 2 or more foreign entities that are wholly owned by the Indian entity or
   b. where there is no change or dilution in aggregate holding of IE in the new entity.

5. The holding of any investment or transfer thereof shall not be permitted if initial investment was not permitted under the Act

18. Restructuring:

PRI who made ODI in a FE may permit restructuring of balance sheet by such entity:
- which has been incurring losses for previous 2 yrs as evidenced by last audited Balance Sheet
- subject to compliance with reporting, documentation requirements, and
- subject to diminution in the total value of o/s dues towards such PRI on accounts of investment in equity or debt after such restructuring not > proportionate amount of accumulated losses.

Certification of diminution in value:

In case where the original investment is > USD 10 million or where amount of diminution > 20% of total o/s dues, the diminution in value shall be duly certified on an Arm's Length Basis by:
- RV under Companies Act, 2013, or
- Corresponding valuer registered with regulatory authority in host jurisdiction, or
- Certified Public Accountant in host jurisdiction.

The certificate dated not > 6 months before date of transaction – Submit to designated AD bank

19. Restrictions and prohibition

(1) Unless otherwise provided, no PRI shall make ODI in FE engaged in:

Real estate activity	Gambling in any form	Dealing with financial products linked to INR without specific approval of RBI.

Explanation – Real estate activity means:
- Buying or selling of real estate
- Trading in Transferable Development Rights (TDRs)
- but does not include development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(2) Any ODI in start-ups recognised under laws of host country shall be made by an:
- IE - Only from internal accruals whether from IE or group or associate companies in India
- Resident individuals – From own funds of such individuals

(3) No PRI shall make Fincom in FE that has invested or invests into India, at the time of making it or any time, thereafter, resulting in a structure with > 2 layers of subsy. [Round tripping]

Such restriction shall not apply in case of:

Banking company	Systematically important NBFC as per Sec 45-I of RBI Act, 1934	Insurance company	Government co. u/s 2(45) of Cos. Act

20. Requirements to be specified by RBI:
Mode of payment, deferred payment of consideration, reporting, realisation and other requirement for OI by PRI shall be as per regulations made by RBI.

21. Restriction on acquisition or transfer of immovable property outside India (IPOI)

(1) Save as other provided in the Act, no PRI shall acquire or transfer IPOI without general or special permission of RBI.
Provided that above provision shall not apply to property:
i. Held by PRI who is a national of a foreign state.
ii. Acquired by a PRI on or before 8th July 1947 and continued to be held by such person with permission of RBI
iii. Acquired by PRI on lease not > 5 years.

(2) Notwithstanding above:
i. PRI may acquire Immovable Property outside India (IPOI) by way of:

Inheritance	Gift	Purchase from PRI who acquired such IPOI as per forex provision in force at that time

ii. PRI may acquire IPOI from a PROI by way of:

Inheritance	Purchase out of forex in RFC a/c	purchase out of remittance sent under LRS scheme of RBI*
jointly with a relative who is PROI	out of income or sales proceeds of overseas assets other than ODI	

*Provided that such remittance under LRS may be consolidated in respect of relatives if such relative being PRI comply with T&C of the scheme.
iii. An IE having overseas office may acquire IPOI for the business and residential purpose of staff as per RBI directions.
iv. PRI who has acquired IPOI as per forex provision in force at such time may:
(a) Transfer it by way of gift to eligible PRI or by way of sale
(b) Create charge on such property as per Act, Rules, Regulations or RBI directions.

(3) Holding of invt. in IPOI or trf thereof shall not be permitted if initial invt. was not permitted.

Author's Note - Impact of these rules: Global economic meltdown due to inflation & war, may present good opportunities for Indian parties to acquire strategic assets at an attractive valuation.

Schedule I - Manner of ODI by IE

1. Manner of making ODI:
   (1) Purpose - Undertaking bonafide business activity.
   (2) ODI may be made or held by way of:

Subscription or purchase of equity	Acquisition through bidding or tender	Acquisition by way of right issue or bonus issue	swap of securities
capitalisation of any amt. due to be received, remittance of which is permitted under Act or does not require prior permission of CG/RBI			merger, demerger or amalgamation

2. ODI in financial services activity:
   (1) An IE engaged in financial services activity in India may make ODI in a FE engaged in such activity provided that the IE:
      i. has posted net profits during the last 3 Financial Years
      ii. is registered with financial service regulator in India
      iii. has obtained approval from financial service regulators both in India and host country.

   An IE not engaged in financial services activity in India may make ODI in a FE engaged in such activity, except banking/insurance, provided that IE has posted net profits during last 3 FYs.

   Provided that an IE not engaged in insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an IE.

   (2) If net profit condition above is not met from 2020-2021 to 2021-22 due to COVID, then exclude the financial results of such periods for considering the profitability period of 3 yrs.

3. Limit of financial commitment (FinCom):
   (1) Total FinCom by an IE in all foreign entities taken together shall be <= 400% of Net worth as on date of last audited FS or as directed by RBI + CG
   (2) Total FinCom shall not include capitalisation of retained earnings (e.g., bonus) but include:
      i. Utilisation of the amount raised by issue of ADRs or GDRs or stock swap.
      ii. Utilisation of proceeds from ECBs to the extent the corresponding pledge or creation of charge on asset to raise such borrowings has not already been included in limit.

   Provided that FinCom made by Maharatna or Navratna or Miniratna or subsidiaries of such PSUs in FE o/s India engaged in strategic sectors shall not be subject to above limits.

Schedule II - Manner of OPI by IE:

1. An IE may make OPI <= 50% of net worth as on date of last audited FS
2. Listed Indian company may make OPI including by way of reinvestment
3. Unlisted IE may make OPI only under selective clauses of Sch. I (i.e., unlisted FE cannot do OPI)

Author's Note (Let it go if you didn't understand)
A Listed IE can make total investment of 450% of NW (i.e., 400% in ODI & 50% in OPI)
But for an unlisted IE, the 50% in OPI is subsumed within the limit of 400%, hence max investment of 400% can be done.

Schedule III - Manner of making OI by Resident Individual:

1. Manner of making OI:
   (1) Any resident individual may make ODI or OPI subject to overall ceiling under LRS of RBI.
   (2) Resident individual may make or hold OI by way of:
      i. ODI in an operating FE:
         - not engaged in financial service activity AND
         - where the resident indv. has control, such FE does not have subsy. or step down subsy.
      ii. OPI, including by way of reinvestment.
      iii. ODI or OPI, by way of:

Acquisition by way of right issue or bonus issue	swap of securities due to merger, etc.	Gift	(e) Inheritance	(f) Acquisition of sweat eq. shares
capitalisation of any amt. due to be received, remittance of which is permitted under Act or does not require prior permission of CG/RBI				(h) Acquisition of shares under ESOP scheme
(g) acquisition of minimum qualification share for holding management position				

Provided that - ODI w.r.t. clause (e), (f), (g), (h) shall be made irrespective of whether or not such FE is engaged in financial service activity or has subsidiary or step down subsidiary where resident individual has control.

Provided further that - Acquisition of < 10% of equity without control under clause (f), (g) and (h) shall be treated as OPI.

2. Acquisition of foreign securities by way of Gift or inheritance:
   (1) A resident individual may, without any limit, acquire foreign securities by way of inheritance from PRI is holding such securities as per this Act or from a PROI.
   (2) A resident individual, without any limit, may acquire foreign securities by way of gift from a PRI who is a relative and holding such securities as per this Act.
   (3) A resident individual may acquire foreign securities by way of gift from a PROI as per FCRA Act, 2010 and Regulations made thereunder.

3. Acquisition of shares or interest under ESOP or Sweat Equity shares:
   (1) A resident individual, who is an employee or director of an:
      - office in India or branch of an overseas entity or
      - subsidiary in India of an overseas entity or
      - IE in which the overseas entity has direct or indirect equity holding

may acquire, without limit, shares under ESOPs or sweat equity shares offered by such overseas entity provided that such ESOPs are being issued globally on uniform basis.

(2) Notwithstanding above, a resident individual may acquire ESOPs under any scheme of CG.

Schedule IV - OI by PRI other than IE and resident individual

1. ODI by Registered trust or society

A person being regd. trust, or regd. society engaged in educational sectors, or which has set up hospitals in India may make ODI with prior approval of RBI subject to following condns.[E-SLAP]:

(i) FE is engaged in same Sector as that of the Indian trust or society,
(ii) Trust or society should be in Existence for at least 3 FYs before the year of investment
(iii) Trust deed or MOA or Rules or bye-laws shall Permit proposed ODI
(iv) Such investment has Approval of trustees (trust) and governing body (society)
(v) In case the trust or society requires special Licence either from MHA, CG or local authority, such license has been obtained and submitted to designated AD.

2. ODI by Mutual Funds (MFs), Venture Capital Fund (VCFs) or Alternative Investment Fund (AIFs)

(1) A MF or VCF or AIF may acquire or trf. forse as per SEBI and subject to T&C of RBI.
Provided that - Aggregate limit of such investment - RBI + CG to decide.
Provided further that - Individual limits of such investment shall be as per SEBI.
(2) Every transaction of purchase or sale here shall be routed through designated AD bank
(3) Investments by MF, VCFs and AIF to be treated as OPI.

3. Opening of Demat Accounts by SEBI approved clearing corporations (CCs) of stock exchanges and clearing members (CMs):

Any person, being a CC and its CM, may acquire, hold, and transfer forse, offered as collateral by FPI and subject to guidelines issued by SEBI, shall:

Open and maintain demat account with foreign depositories	Remit the proceeds arising due to such action, if any, and	Liquidate such foreign securities and repatriate the proceeds thereof to India.

4. Acquisition and transfer of forse by domestic depositories:

A domestic depository may acquire, hold and transfer forse of a FE, being the underlying security to issue Indian Depository Receipts (IDRs) as may be authorised by such FE or its overseas custodian bank and the person investing in IDRs may either sell or continue to hold forse as per these regulations upon conversion of such depository receipts.

5. Acquisition and transfer of forse by AD Bank:

An AD bank including its overseas branch may acquire or transfer foreign securities in accordance with the terms of the host country in the normal course of its banking business.

Schedule V - Overseas Investment in IFSC by PRI

1. Subject to these rules and regulations, PRI may make OI in IFSC in India within limit.
2. A PRI may make OI in an IFSC in manner laid down in Schedule I to Schedule IV provided that:
   i. In case of an ODI made in IFSC, approval by concerned financial service regulator shall be decided within 45 days from date of application, failing which – deemed approved.
   ii. An IE not engaged in financial service activity in India, making ODI in FE, except banking and insurance, who does not meet NP condn., may make ODI in IFSC
   iii. PRI may make contribution to an investment fund or vehicle set up in an IFSC as an OPI
   iv. Resident individual may make ODI in FE including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step-down subsidiary outside IFSC where the resident individual has control in the FE.

3. Recognised stock exchange (RSE) in IFSC shall be treated as RSE outside India for these rules.

Foreign Exchange Management (Overseas Investment) Regulations, 2022

1. About the Regulation: Issued by Reserve Bank of India w.e.f. 22nd August, 2022

2. Important Definitions - None

3. FinCom by IE by modes other than equity capital:
   The IE may lend or invest in:
   - any debt instrument issued by a FE or
   - extend non-fund-based commitment to or on behalf of FE including overseas step-down subsidiaries of such IE.

   subject to following conditions:

IE is eligible to make ODI;	IE has made ODI in the FE;	IE has acquired control in such FE at time of making FinCom.

4. FinCom by IE by way of Debt
   IE may lend or invest in any debt instruments issued by FE subject to condition that:
   - Such loans are duly backed by loan agreement and
   - Rate of interest shall be charged on an arm's length basis (unrelated + no conflict of interest)

5. FinCom by IE by way of Guarantee (Non-fund based)
   1. Following guarantees may be issued to or on behalf of a FE or step-down subsidiary in which IE has control through FE:
      i. Corporate guarantee or performance guarantee by such IE
      ii. Corporate guarantee or performance guarantee by group company of such IE in India being holding company (>= 51% stake in IE) or subsidiary company (in which IE holds >=51%) or promotor group company which is a BC
      iii. Personal guarantee by the resident individual promoter of the IE
      iv. Bank guarantee, backed by counter-guarantee or collateral by IE or its group company and issued by bank in India.

2. Where guarantee is extended by group company, it shall be counted towards utilisation of its FinCom limits independently, and

   In case of Resident individual promoter, same shall be counted in FinCom limit of the IE.

   Provided that, where commitment under sub-regulation (1) is extended by group company, any fund-based exposure to or from IE shall be deducted from Net worth of such group company for computing its FinCom limit.

   Provided further that where the guarantee under sub-regulation (1) is extended by a promoter, which is a body corporate or an individual, the IE shall be a part of the promoter group.

3. No guarantee shall be open-ended.

4. The guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based commitment but be considered as lending.

5. Where a guarantee has been extended jointly and severally by two or more IEs, 100% of the amount of such guarantee shall be reckoned towards the individual limits of each of such IEs.

6. In case of perf. guarantee, 50% of amt of guarantee shall be reckoned towards FinCom limit.

7. Roll-over of guarantee shall not be treated as fresh FinCom where the amount on account of such roll-over does not exceed the amount of original guarantee.

6. FinCom by way of pledge or charge

An IE, which has made ODI by way of investment in equity capital in a FE, may:

(a) Pledge such equity in favour of AD bank or PFI in India or an overseas lender, for availing fund-based or non-fund-based facilities for itself or for any FE in which it has ODI or step-down subsidiary thereof or in favour of debenture trustee registered with SEBI for availing fund-based facilities for itself.

(b) Create charge by way of mortgage, pledge, hypothecation, etc. on:

   i. its asset in India (incl. assets of group co., associate co., promoter or director) in favour of AD bank or PFI in India or an overseas lender as security for availing fund-based or non-fund-based facilities ~~for itself or~~ for any FE in which it has ODI or step-down subsidiary ~~thereof or in favor of debenture trustee registered with SEBI for availing fund-based facilities for itself~~.

   ii. the assets outside India of the FE in which it has made ODI or its step-down subsidiary outside India, in favour of AD bank in India or PFI in India ~~or an overseas lender~~ as security for availing fund-based or non-fund based facilities for itself or for any FE in which it has ODI or step-down subsidiary thereof or in favor of debenture trustee registered with SEBI for availing fund-based facilities for itself.

Provided that:

i. Value of pledge or charge or amount of facility - Whichever is LESS, shall be considered as FinCom limits provided such facility has already not been included in FinCom limit and excluding cases where the facility has been availed by the IE for itself;

ii. Overseas lender in whose favour there is such a pledge or charge shall not be from any country or jurisdiction in which FinCom is not permissible under FEMA Rules.

Note - The "negative pledge" or "negative charge" created by an IE, or a bid bond guarantee obtained as per these regulations for participation in a bidding or tender procedure for acquisition of FE shall not be reckoned towards FinCom limit referred to in Regulation 3(1).

7. Acquisition or transfer of equity capital by way of deferred payment:

1. Where a PRI acquires equity capital by subscription or purchase from PROI / Where PROI acquires equity capital by way of purchase from PRI

and where such equity cap. is reckoned as ODI

the payment of amount of consideration may be deferred for such definite period from date of agreement as provided in such agreement subject to following:

(i) Forse equivalent to amount of total consideration shall be transferred or issued upfront by the seller to the buyer.

(ii) Full consideration finally paid shall be compliant with pricing guidelines.

Provided that - Deferred part of consideration in case of acquisition of equity capital of a FE by PRI shall be treated as non-fund based commitment.

2. Buyer may be indemnified by the seller up to such amount and subject to such T&C as may be mutually agreed upon and laid down in the agreement.

Provided that, such agreement is in compliance with provision of the Act, etc.

8. Mode of payment: (for both debt and non-debt instrument)

A PRI making OI may make payment:

- By remittance made through banking channels.
- From funds held in accounts as per this act.
- By swap of securities.
- By using proceeds of ADRs, GDRs, or stock swap of such receipts or ECBs.

9. Obligation of a PRI:

1. A PRI acquiring equity capital in FE which is reckoned as ODI shall submit to AD Bank share certificates or other relevant documents as per law of host country, as evidence of such investment, within 6 months from:

date of effecting remittance **or** date on which the dues to such person are capitalized **or** date on which amount was allowed to be capitalised, as the case may be.

2. PRI, through its designated AD bank, shall obtain a Unique Identification Number (UIN) from RBI for the FE in which ODI is intended to be made before sending outward remittance or acquisition of equity capital, whichever is earlier.

   Note: In case of deferred payment, acquisition is earlier

3. A PRI making ODI shall designate an AD bank and route ALL transactions related to a particular UIN through such AD.

   Provided that – Where >1 PRI makes FinCom in same FE, ALL such person shall route ALL transactions relating to that UIN through AD bank designated for that UIN.

4. PRI having ODI shall realise and repatriate to India:
   - all dues receivable from FE w.r.t. investment in such entity, (e.g., Dividend)
   - the amount of consideration received on transfer or disinvestment of such ODI and
   - the net realisable value of assets due to liquidation as per laws of host country

   within 90 days from date when such receivables fall due or date of such transfer or disinvestment or date of actual distribution of assets made by official liquidator.

5. PRI who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for acquisition of FE.

   Provided that – In case of open-ended bid bond guarantee, it shall be converted to close ended within 3 months from date of award of contract.

10. Reporting requirements for Overseas Investment:

(1) All reporting by a PRI, as specified, shall be made through designated AD bank in manner provided in this regulation and in format provided by RBI.

(2) A PRI who has made ODI or making FinCom or undertaking disinvestment in a FE shall report:
   a. FinCom at the time of sending outward remittance or making a FinCom, whichever is earlier;
   b. disinvestment within 30 days of receipt of disinvestment proceeds;
   c. restructuring within 30 days from the date of such restructuring.

(3) A PRI other than a resident individual making any OPI or transferring such OPI by way of sale shall report such investment or transfer of investment within 60 days from end of the half-year in which such investment or transfer is made as of September or March-end:

   Provided that in case of OPI by way of acquisition of shares or interest under ESOP, the reporting shall be done by the:

   Office in India **or** Branch of an overseas entity **or** Subsidiary in India of an overseas entity or the IE in which the overseas entity has direct or indirect equity holding where resident individual is an employee or dir.

(4) A PRI acquiring equity capital in a FE which is reckoned as ODI, shall submit an Annual Performance Report (APR) with respect to each FE every year by 31st December and where the accounting year of such FE ends on 31st December, the APR shall be submitted by 31st December of the next year:

Provided that no such reporting shall be required where:

i. a PRI is holding <10% of the equity capital without control in the FE and there is no other FinCom other than by way of equity capital; or
ii. a FE is under liquidation.

Explanation: For the purposes of this sub-regulation:

(a) the APR shall be based on the audited Financial Statements of the FE.

Provided that where the PRI does not have control in the FE and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited FS certified as such by statutory auditor of the IE or by a CA where the statutory audit is N.A;

(b) in case more than one PRI have made ODI in same FE, person holding the highest stake in the FE shall be required to submit APR & in case of holdings being equal, APR may be filed jointly;

(c) The PRI shall report the details regarding acquisition or setting up or winding up or transfer of a step-down subsy. or alteration in shareholding pattern in FE during reporting yr in APR.

(5) An IE which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by RBI, to RBI's Department of Statistics & Info. Management

11. Delay in reporting:

(1) A PRI who does not submit the evidence of investment within time specified in Regulation 9(1) or does not make any filing within the time specified under Regulation 10, may make such submission or filing, as the case may be, along with Late Submission Fee within such period as may be advised, and at the rates and in the manner as directed by RBI.
Provided that such facility can be availed within maximum 3 years from due date of such submission or filing, as the case may be.

(2) A PRI responsible for submitting the evidence/any filing relating to OI before date of publn. of these reguln. in the OG and who has not made such submission or filing within the time specified thereunder, may make such submission or filing along with Late Submission Fee and at the rates and in the manner as may be directed by RBI, from time to time.
Provided such facility can be availed within max. 3 yrs from date of publn. of these regln. in OG.

12. Restriction on further financial commitment or transfer:

A PRI who has made a FinCom in a FE as per Act or rules or regulations made thereunder, shall not make any further FinCom, whether fund-based or non-fund-based, directly or indirectly, towards such FE or transfer such investment till any delay in reporting is regularised.

The End

Multiple Choice Questions

Question:1 [FEMA Sch II Limits]

M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000 + USD 11,000) to England keeping in view the relevant provisions of FEMA, 1999:

a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

Question:2 [Section 13 FEMA]

Mr. A is an authorized dealer holding a valid Authorization issued by the Reserve Bank of India under section 10 of the FEMA, 1999. During the course of his business, he violated one of the conditions subject to which the Authorization was granted to him. The Adjudicating Authority imposed a penalty of Rs. 1,50,000 under section 13 (being 3 times the amount involved in the violation, i.e. Rs. 50,000). Mr. A accepted the default. State the time limit before which Mr. A should pay the penalty, assuming he does not prefer an appeal to the Appellate Authority:

a) Within 30 days from the date of the Order imposing the penalty.
b) Within 45 days from the date of the Order imposing the penalty.
c) Within 60 days from the date of the Order imposing the penalty.
d) Within 90 days from the date of the Order imposing the penalty.

Question:3 [ECB]

Z Ltd, a Starup is permitted to raise ECB under the automatic route with the minimum average maturity period of:

a) 1 years b) 3 years c) 5 years d) 10 years

Answers:	1.	(c)	2.	(d)	3.	(b)

Question:4 [FEMA LRS Limits]

Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of FEMA, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = Rs 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of FEMA, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

Question 5: [FEMA Section 3]

Mr. Raman, a non-resident Indian, has a Systematic Investment Plan (SIP) with a prominent Indian mutual fund. Due to some impending financial difficulties, he requested his elder brother Mr. Raghav, a resident Indian currently working as Manager in a multi-national company at Mumbai, to make payment of a few subsequent instalments of SIP on his behalf. Which option, do you think, correctly signifies whether Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non- resident brother considering the applicable provisions of the FEMA, 1999:

a) Mr. Raghav is not permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother since it amounts to payment for the credit of a non- resident person.
b) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother since Mr. Raman is his real brother.
c) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother only if his employer permits.
d) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother only if he obtains prior permission of Reserve Bank of India.

Answers:	4.	(d)	5.	(a)

Question:6 [FEMA Limits]

Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the FEMA, 1999 and regulations made thereunder:

a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 50,000,000.
b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 10,000,000.
c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 5,000,000.
d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US$ 1,000,000.

Question:7 [FEMA - Residential Status]

After 5 years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2019, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of Rs. 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewelry, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the FY 2020-21 after considering the applicable provisions of the FEMA, 1999:

a) For the FY 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.
b) For the FY 2020-21, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.
c) For the FY 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.
d) For the FY 2020-21, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

Answers:	6.	(d)	7.	(c)

Question:8 [FEMA LRS Limit]

In September, 2020, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew forex to the extent of US$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2020 he further, withdrew US$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2021, he sent his ailing mother Mrs. Savita Saha for a specialized treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2021, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2021 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2021, he again withdrew US$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of FEMA, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew forex on various occasions from his banker SBI.

a) In respect of withdrawal of forex on various occasions from his banker State Bank of India and remitting the same outside India during the FY 2020-21, Mr. Purshottam Saha is not required to obtain any prior approval.
b) In respect of withdrawal of US$ 35,000 in the last week of March, 2021, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of forex that can be withdrawn in a FY is US$ 1,75,000.
c) After withdrawing US$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the FY 2020-21, otherwise SBI would not have permitted further withdrawals.
d) After withdrawing US$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the FY 2020-21, otherwise SBI would not have permitted further withdrawals

Question:9

Mr. V, brother of Mr. R, is a resident of Singapore and he owns an immovable property in Chennai which he inherited from his father, who was a resident of India, Can Mr. V continue to hold the prop.?

a) No, he cannot hold transfer or invest In India, since he is resident outside India.
b) Yes, he can continue to hold in India, since he is person of India Origin and the property is located in India
c) Yes, he can continue to hold the property, since this was inherited from a person who was resident in India.
d) Yes, he can continue to hold the property, since his brother (Mr. R) uses the property whenever he travels to Chennai.

Answers:	8.	(a)	9.	(c)

Question:10 [LRS]

Nandeesh, a resident Indian, remitted USD 1,00,000 on 7th June, 2021, to his son Ishaan who is settled in California, USA, since he urgently required funds. On 9th July, 2021, Nandeesh again remitted USD 71,000 to meet expenses to be incurred in respect of his ailing wife, Medhavi who had recently gone to USA to meet his son Ishaan but had developed serious coronary disease. For specialised treatment of Medhavi at a specialised hospital, a sum of USD 79,000 was remitted for the second time on 30th July, 2021 by Nandeesh. Within next 10 days, Medhavi recovered and was allowed to return to her son's residence from the hospital. Choose the correct option from those stated below as to when Nandeesh can send further foreign exchange to his son Ishaan for the purpose of purchasing a house without obtaining the prior approval of Reserve Bank of India:

a) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of April, 2022 or thereafter.
b) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of January, 2022 or thereafter.
c) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of July, 2022 or thereafter.
d) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of November, 2021 or thereafter.

Question:11 [FEMA - Import of Goods Rules]

Mr. X, a resident of India planned a tour of 15 days to visit Paris and to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit?

a) INR 2000 b) INR 5000 c) INR 10,000 d) INR 25,000

Question:12 [ECB]

Minimum Average Maturity Period prescribed for ECB raised for working capital purposes or general corporate purposes under the ECB framework is:

a) 1 year b) 5 year c) 7 year d) 10 year

Question:13 [Overseas Investment Rules]

Overseas Invt. as per the Foreign Exchange Management (Overseas Investment) Rules, 2022 means:

a) Financial Commitment by a PRII
b) Overseas Portfolio Investment ('OPI') by a PROI
c) Financial Commitment or Overseas Portfolio Investment ('OPI') by a PROI
d) Financial Commitment and Overseas Portfolio Investment ('OPI') by a PRII

Answers:	10.	(a)	11.	(d)	12.	(d)	13.	(d)

The End

STUDENT'S NOTES:

Chapter 13 The Foreign Contribution (Regulation) Act, 2010

[Read with Foreign Contribution (Regulation) Rules, 2011]

Acronyms used:

ACS	Articles, Currency, Securities	FH	Foreign Hospitality
BOI	Body of Individuals	FS	Foreign Source
DDT	Donation, Delivery or Transfer	MNC	Multi-National Corporations
FCT	Foreign Country or Territory	PP	Political Party
FC	Foreign Contribution	POB	Place of Business
RPAD	Registered Post with Acknowledgement due		

Bird's Eye View of Act: [54 sections]

Preliminary [Sec 1-2]	Regulation of FC or FH [Sec 3-10]	Registration [Sec 11-16]	Accounts and Audit [Sec 17-22]	Search and Seize [Sec 23-27]	Adjudication and Appeals [Sec 28-32]	Penalties & Miscellaneous [Sec 33-54]

Applicability of Act:

To whole of India and includes:

1. Citizen of India outside India, and
2. Associate, branches or subsidiaries o/s India of company/Body Corporate incorporated in India

Administered by – Ministry of Home Affairs

Important definitions:

Foreign Company means – A company/BC/BOI incorporated outside India and includes:

Foreign company u/s 379 of Co. Act, 2013	Subsidiary of Foreign company	Regt. office or principal POB of Foreign company	*MNCs

*A corporation incorporated in foreign country shall be deemed to be MNC if such corporation:

a. Has subsidiary/branch/POB in >= 2 countries/territories, or
b. Carries on business, or otherwise operates in >= 2 countries / territories

Foreign Contribution means:

- Donation - Delivery - Transfer	made by an Foreign Source	of any of the following: a. Article* b. Currency (INR/FCY) c. Securities (FEMA + SCRA)

*Article given as gift ~~from relative~~ for personal use of mkt value in India <= Rs.1L → Not termed as FC.

Deemed Foreign Contribution:

1. DDT of ACS by any person who has received it from any foreign source
2. Interest accrued on FC deposited in any bank u/s 17(1)
3. Other income derived from FC or interest thereon

Exclusion from definition of FC:

i. Amount charged by Educational Institute in India from Foreign Student
ii. Amount by way of fees (for training, workshop, seminars, etc.)
iii. Amount received by way of COGS or services in OCOB in or outside India (Covered in FEMA)

Person includes – **Individual, HUF, Association and Company**

Foreign Hospitality **means**

- any offer in cash or kind
- by a foreign source
- for providing a person with:
  - the costs of travel to any FCT or
  - with free boarding, lodging,
  - free transport or
  - free medical treatment;

Does not include offer which is purely casual one

Foreign Source **means**

Govt. of FCT or agency of such Govt.	Any international agency Exclude - UN, World Bank, IMF, other notified	Foreign Company	Corp. other than Foreign company incorp. in FCT	MNC	Citizen of Foreign country (Not NRI)
Co. incorp. in India and > 1/2 of Nominal value* of Share Cap is held by either: a. Govt. or Citizens of FCT b. Foreign co. or Corp. incorp. in FCT c. Trust/societies in FCT	Trade union (whether or not regt.) in FCT	Foreign Trust/ Foundation	Trust/ Foundations mainly financed by FCT	Society, Club, Association registered o/s India	

*If investment in share capital is within limits of foreign investment as per FEMA - Don't consider FS

Relative **means as per Companies Act, 2013**

Political Party - **Association/BOI registered as such u/s 29A of Representative of People Act**

Concept clarity check:

1. **Can a co. incorporated in India having operations in more than 4 countries be called MNCs?** – No!
2. **Can foreign contribution be received in INR?** – Yes
3. **Is donation by NRI considered FC?** – No. Foreign Source does not include citizen of India (NRI)
4. **A ltd. is an Indian co. in which a foreign co. has 100% invt. (invt. amt is within limit allowed as per FEMA). Would donation by A Ltd. be considered as FC?** – No. as invt. is within FEMA limits

Sec 3- Prohibition on acceptance of FC

1. **No FC shall be accepted by any:**
   a) candidate **for election;**
   b) **Following people of a Registered** Newspaper:

- Correspondent - Columnist - Cartoonist	- Editor - Owner	- Printer - Publisher

   c) **Association or company engaged in (a)** production **or (b)** broadcast **of:**

Audio News	AV news or	Current Affairs programmes through e-mode/ other mode of mass communication;

d) Following people of above association or company:

- Correspondent - Columnist - Cartoonist	- Editor - Owner	~~- Printer~~ ~~- Publisher~~

e) Government related:

Public Servant (Sec 21 of IPC)	Judge	Government Servant	Employee of any corporation/body controlled/owned by Government

f) Member of any Legislature;
g) Political party or office-bearer thereof;
h) Organisation of a political nature under section 5

2. Following indirect acceptance of FC is also prohibited:

Who is prohibited?	Prohibited from what?	On behalf of/to whom?
PRI and PROI [who is citizen of India]	Accepting FC or Currency from FS	1. PP 2. Any person u/ss (1)
PRI	Deliver any currency (FCY/ INR) accepted from FS	To any person if he has RGTB that such person will deliver it to PP or person u/ss (1)
PROI who is citizen of India	Deliver any currency (FCY/ INR) accepted from FS	1. PP or person u/ss (1) 2. To any person if he has RGTB that such person will deliver it to PP or person u/ss (1)
Any person	Deliver any currency accepted from FS on behalf of person u/s 9	To any person other than for which it was received

Sec 4- Person to whom Sec 3 not applicable:

Person referred to u/s 3 can accept FC where such FC is by way of [Salary/Stipend R2 BAD]:

- Salary, wages or other remuneration due to him OR - Payment in OCOB in India by FS	Payment in course of international trade or OCOB outside India	as an Agent of FS w.r.t, transaction by such FS with CG/SG	Gift/presentation - As a member of Indian Delegation (subject to CG Rules)
from his relative*	Remittance in OCOB through Post office / Authorised Person as per FEMA	scholarship / stipend or payment of like nature	

*Any person receiving FC from relative > Rs. 10 lakhs in FY - Inform CG in Form FC - 1 within 3 m

Sec 5- Procedure to notify an Organisation of Political Nature:

CG, if satisfied than an organisation is of political nature based on its activities or ideology propagated, it may by order in OG, specify such organisation to be of political nature

Sec 6- Restrictions on acceptance of Foreign Hospitality:

The following person shall not accept FH, except with prior approval of CG, on their visit to a FCT:

Member of Legislature	Office bearer of a PP	Judge	Government Servant	Employee of any corporation/body controlled/owned by Government

Exception: No such permission is needed for emergent medical aid on account of sudden illness contracted during a visit outside India.

However, person receiving such FH shall within 1m from date of receipt - Give intimation to CG as to:

a. the receipt of such FH, and
b. the source from which, and the manner in which, such hospitality was received by him
c. Approximate INR value

No need of intimation if emergency medical aid is up to Rs. 1 lakh

As per Rule 7 of FC(R) Rules 2011 :

Procedure for obtaining prior approval of CG to accept FH:

1. Apply in Form FC - 2 - Must reach MHA ordinarily 2 weeks before dep. date
2. Application to be accompanied by:
   a. Invitation letter from host/host country, or
   b. Administrative clearance of concerned ministry in case of sponsored visit
3. In case of emergency medical aid - Intimate CG within 1 month of receipt (only if value > Rs. 1L)

Sec 7- Prohibition to transfer foreign contribution to other person:

No person who:

(a) is registered and granted a certificate or has obtained prior permission under this Act; AND

(b) receives any FC

shall transfer such FC to any other person (irrespective of whether registered or not)

Sec 8- Restriction to utilise foreign contribution for administrative purpose:

FC received as per this act shall be utilized as follows:

1. Primarily utilize for purpose for which it is received
2. Not be used for Speculative Business

Rule 4 of FCR Rules 2011 defines Speculative Business:

any activity/investment - Having an element of risk of appreciation or depreciation of original investment - Linked to market forces, including investment in Mutual Funds / Shares	participation in any scheme that promises high returns like investment in chits/land/ similar assets not directly linked to aims and objectives of organisation

A debt-based secure investment shall not be treated as speculative investment.

3. Not defray sum > 20% of total contribution in FY to meet administrative expenses
   Provided - May defray > 20% after prior approval of CG

What constitutes administrative expense [AW LR SUV]

- Salaries/wages/remuneration or travel expenses of:
  a. Members of executive committee/governing council
  b. Personnel responsible for management of activities (including hiring expense)
- Expenses w.r.t, Consumables/Utilities – Electricity, water, telephone, repair, etc.
- Accounting cost
- Running and maintenance of Vehicle
- Reports – Writing and filing cost
- Legal and professional fees
- Rent and repair

What does not constitute administrative expense

- Salaries/remuneration of personnel engaged in (a) training or (b) collection/analysis of field data of an association primarily engaged in research or training
- Expenses incurred directly in furtherance of stated objectives of welfare-oriented organisation such as salaries to doctors of hospital, salaries to teachers of school etc.

Sec 9- Power of CG to prohibit receipt of FC, etc., in certain cases

CG is empowered to make following orders:

Prohibit person (not covered under section 3) from obtaining FC	Require a person to obtain prior permission for FC / FH	Require a person to furnish information related to FC / FH

Such orders to be passed only if CG satisfied that acceptance of FC/FH likely to prejudice [HI EPF]:

sovereignty and Integrity of India;	or	Public interest;	or	freedom or fairness of Election to any Legislature;	or	Friendly relations with any foreign State;	or	Harmony between religious, racial, social, regional - groups, castes or communities

Sec 10 - Power to prohibit payment of currency received in contravention of the Act

Where CG is satisfied, after making inquiry, that	any person has in his custody/control any ACS accepted in contravention of Act	it may, by order in writing, prohibit such person from	paying, delivering, transferring or otherwise dealing with such ACS

Copy of such order → Serve upon the person so prohibited.

Provision of Section 7 of Unlawful Activities (Prevention) Act, 1967 shall become applicable.

Sec 34: If person who is so prohibited under section 10 – deals with such ACS – Jail upto 3 years or fine or both. Court may also impose additional fine = Market value of such ACS

Rule 8 states manner of serving prohibitory order on such person:

1. Delivering or tendering it to that person or to his duly authorised agent; or
2. Sending by RPAD or Speed Post to last known address of residence or business
3. If cannot be served - Affix on outer door of residence/business premises + Written report witnessed by two persons

Sec 11 - Registration of certain persons with CG

1. Person having a definite [REECS]:

   Cultural | Economic | Educational | Religious | Social

   Programme shall not accept FC unless such person:
   a. Obtains COR from CG [e- form FC-3A + Affidavit executed by each office bearer], or
   b. Obtains prior permission of CG [e- Form FC-3B + Affidavit executed by each office bearer]

2. Based on information available or inquiry, if CG has RGTB that person who has been granted permission has contravened provision or if otherwise any person is found guilty of this section - Unutilized or Unreceived amount shall not be utilized or received without prior approval of CG

3. CG may be notification in Official Gazette specify:
   a. Person who shall obtain prior approval
   b. Areas in which FC can be accepted/utilized
   c. Purpose for which FC can be utilized
   d. Source from which FC can be accepted

   → With prior approval of CG

Additional Rules:

Where prior permission is being obtained for receiving FC > Rs. 1 cr., CG may permit receipts in installment. However, the second and subsequent installment shall be released only after utilisation of 75% of FC in previous installment and after field inquiry of such installment.

Concept Clarity Check:

1. Can Pvt. Ltd. co./partnership firm/HUF/PP get registration? - Yes! There is no such restriction
2. Bodies established under Central Act or State Act requiring to have their accounts audited by CAG are exempted from operation of provision of FCRA.

Sec 12 - Grant of certificate of registration

Procedure for obtaining COR or prior Permission to accept/receive FC:

Step 1: Open a 'FCRA Account' (SBI, New Delhi) [Exclusive account for receiving FC]

→ **Step 2 - File relevant form with CG:** COR -e-Form FC-3A (+ Rs. 10K) prior permission-e-Form FC-3B (+Rs. 5K) [Mention FCRA A/C in application] + Annexure - Affidavit in Proforma AA

→ **Step 3:** Upload the signed application + scanned documents as specified by CG

→ May open 1/more A/cs in any bank(s) for utilizing the FC after receiving in FCRA Account
Intimate MHA within 15 days of opening in Form FC - 6D

Rejection of Application:

If application is not in prescribed form or contain particulars prescribed – Record reason and reject such application – Furnish copy to applicant.

Grant of COR or Permission:

- On receipt of application, and
- After making such inquiry as it may deem fit,
- If CG is opinion that condition u/s 12 (4) is satisfied,
- CG shall within 90 days - Register and grant COR or give prior permission
  If > 90 days – Communicate reason thereof

A person shall not be eligible if COR/prior permission granted earlier is suspended & suspension continues as on date of application.

Sec 12(4) Conditions for grant of CPR/prior permission

1. Applicant is not/has not been [ABC2D PSU]:

Fictitious or Benami	Found guilty of Diversion or misutilisation of its funds	Engage in propagation of Sedition	Contravened any of the provisions of this Act

likely to use FC for personal gains/Undesirable purposes	Prosecuted/Convicted for: Indulging in activity aimed at conversion from 1 religious faith to another for creating communal tension/ disharmony in any part of country	Prohibited from accepting FC

2. Applicant has undertaken reasonable Activity in its chosen field for benefit of society
3. Applicant has prepared a reasonable Project for the benefit of the society
4. If applicant is Individual - Neither convicted under any law nor any prosecn. is pending against him
5. If applicant is other than Individual – None of its directors/officer bearers - Neither convicted under any law nor any prosecution is pending against him
6. Acceptance of FC is not likely to affect prejudicially-Election, Public Interest, S&I of India, etc.
7. Acceptance of FC shall not:
   (i) Lead to incitement of an offence;
   (ii) Endanger the life or physical safety of any person.

Validity-

- COR – 5 years
- Prior Permission – Valid for specific amount or specific purpose proposed

No person shall prefer second application for COR/prior permission within 6 months after submitting an application for COR/prior permission for same project.

Rule 17A: Intimate to CG about various changes:

Changes intimated via Form 6A to 6E to be effective only after approval of CG

Sec 12A - Power of CG to require ID Proof: [Amendment]

CG may require that person:

Seeking prior permission u/s 11	Making application for COR u/s 12	Seeking renewal of COR u/s 16

to provide Aadhaar number of all its office bearers/Directors under The Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016 or copy of Passport or Overseas Citizen of India Card, in case of a foreigner.

Sec 13 - Suspension of COR:

Pending consideration of cancellation of COR u/s 14, if CG is satisfied that it is necessary to suspend such COR, it may by order in writing (reasons recorded) - Suspend COR for 180 days (+180 days)

Consequences of suspension:

- Shall not receive FC during such suspension
  CG, on application, may allow receipt of any FC on specified Terms & Conditions
- Utilise FC in custody only with prior approval of CG

Rule 14: Rules for utilization of FC in case of suspension of COR:

- Upto 25% - With prior approval of CG for declared aims and objects for which FC received
- Bal. 75% shall be utilised only after revocation of suspn. (can't spend with CG permission also)

Sec 14 - Cancellation of COR:

The CG may, by order, cancel the COR if holder of COR has [TAPID]:

made false/Incorrect statement during application/renewal of COR	violated T&C of COR/ renewal thereof	violated provision of Act/Rules	it is necessary in public interest

not been engaged in any reasonable activity in its choosen field for the benefit of society for 2 consectutive years or has become defunct

No order of cancellation unless OOBH given to concerned person.

Cooling period i.e., not eligible for seeking COR/ prior permission for 3 years

Sec 14A - Surrender of COR: [Amendment]

Step 1: Person may make application to CG to surrender COR [in Form FC - 7]
Step 2: CG shall make inquiry to satisfy itself that:

a. no contravention under this Act, and
b. management of FC/asset created out of such FC vests with authority u/s 15

Step 3: If satisfied - CG may permit surrender.

Note: Validity of COR surrendered - Deemed to have expired on date of acceptance of request by CG

Sec 15 - Management of FC of person whose COR is cancelled or surrendered

Vesting:

- Where COR of a person is cancelled or surrender,
- FC or asset created out of such FC in custody of such person
- Shall vest with prescribed banking authority

Role of authority: If necessary, in public interest:

- Manage activities of such person as CG may direct
- Utilise FC/dispose assets if adequate fund not available for such activity

Authority to return FC/Asset if person subsequently registered.

Sec 16 - Renewal of COR

Renew within 6 months before expiry

Rule 12: Procedure for renewal:

Application to	CG
Form	FC-3C + Affidavit
Timeline	Within 6 months before expiry of COR
Fees	Rs. 5,000 (via Payment Gateway)
Condonation for delay	Upto 1 years - With late fees of Rs. 5,000
Consequence of non-application	COR deemed to have ceased to exist w.e.f., 5 years from date of grant of registration
Consequence of ceasure of validity of COR	➢ Cannot receive/utilise FC (not even with permission of CG) ➢ FC and asset related to FC shall vest with prescribed authority ➢ Fresh request for COR may be made out to CG
Post cease	➢ Apply for renewal (if within 1 year) ➢ Apply for fresh COR

Example: COR granted on 1st Jan, 2012 shall be valid till 31st Dec, 2016 & request for renewal of COR shall be submitted in e-form + requisite fee after 30th June, 2016 & within 31st Dec, 2016.

Procedure by CG after receiving application:

- CG shall renew COR ordinarily within 90 days (else communicate reason) from date of rec. of appln.
- CG may make inquiry to ensure compliance with Section 12(4)
- Validity - 5 years

Concept clarity check:

Can CG refuse to renew? - Yes, if person has violated provisions of Act/Rule

Accounts, Intimation, Audit and Disposal of assets, etc.

Sec 17: Foreign contribution through scheduled bank

1. FC shall be received only in account designated as "FCRA Account" by the bank

   FCRA A/c. to be opened for remittance of FC with SBI, New Delhi (Main branch - Sansad Marg)

For the purpose of holding/utilizing such FC received in the FCRA Account with SBI, New Delhi - one more FCRA Account or multiple Normal account can be opened thereafter

2. No funds other than FC shall be received in any such account

3. Reporting:
   - The Bank [SBI New Delhi or Scheduled Bank with which FCRA Account is opened)
   - Shall report to CG within 48 hours
   - Any transaction w.r.t, receipt/utilization of such FC
   - Whether or not - registered/prior permission taken

Note - FC cannot be mixed with local receipts

Sec 18- Intimation

1. Every person granted COR/prior permission and receiving FC shall intimate to CG:

   Amount of each FC received | Source & manner of receipt | Purpose & manner of utilization

Rule 17: Annual Return:

1. Person having COR/prior permn. to submit a signed report (certified by CA) [FC-4] along with:

   Income & expenditure statement | Receipt and payment A/c | Balance Sheet for every FY

   → Within 9 months from close of FY

2. Annual return [FC- 4] to reflect FC recd. in excl. bank A/c & trfd to other A/cs for utilisation

3. If FC relates only to Articles/Securities - Submit Annual Return in Form FC -1 [e-Form FC 4 is only in case of currency]

4. E-Form FC-4 to be duly accompanied by copy of bank a/c statement where the exclusive FC amt is maintained - Duly certified by officer of such bank [preserve such statement for 6 yrs]

5. Nil report to be furnished if no FC recd. [i.e. e- Form FC-4 to be filed independent of rec. of FC]

   In case no FC is received or utilised during FY - No need to attach anything to e-Form FC-4 [Balance Sheet, etc.] and CA declaration also not required.

Rules - Person receiving such FC to put details of such FC received on its website within 15 days of end of quarter in which such FC is received.

Sec 19- Maintenance of Accounts

Every person who has been granted COR/ prior permission u/s 12 shall maintain separate set of accounts and records exclusively for FC received and utilised

Sec 20- Audit of Accounts

Where a person granted COR/prior permission:

Fails to furnish intimation under this Act **or** Furnish intimation not in accordance with law, **or** Furnish intimation but after inspection, CG is of opinion that FCRA is contravened,

CG may, by order, authorise such gazette officer – To audit Books of Accounts of such person

Such officer has right to enter any premise at any reasonable hour - before sunset & after sunrise for such audit.

Sec 21- Intimation by candidate for election

[Read with Rule 18]

- Every candidate for election who received FC within 180 days immediately preceding date of nomination (as such candidate)
- Shall within 45 days of such nomination
- Intimate CG/prescribed authority about such FC [Amount, Source, Purpose] in Form FC -1

Sec 22- Disposal of assets created out of foreign contribution:

- Where a person was permitted to accept FC – (a) Ceases to exist or (b) Becomes defunct
- All assets of such person shall be disposed of as per this Act
- In absence of provision – CG to notify

Adjudication for confiscation

Sec 28- Confiscation of ACS obtained in contravention of the Act

Any ACS which is seized u/s 25 shall be liable to confiscation if such ACS has been adjudged u/s 29 to have been received or obtained in contravention of this Act.

Sec 29- Adjudication of confiscation

(1) Confiscation u/s 28 may be adjudged by:

Where value of article or amount of currency is:	Confiscation can be adjudged by:
Without limit	Court of Session (in jurisdiction of seizure)
Upto Rs. 10 lakhs	Judicial Officer >= Rank of Assistant Session Judge

(2) When an adjudication u/s (1) is concluded, the concerned Judge may make an order for disposal or delivery of seized ACS to any person who claims to be entitled thereto.

Sec 30- No order of confiscation unless OOBH given

No order of adjudication of confiscation shall be made unless a reasonable opportunity of making a representation against such confiscation has been given to person from whom any ACS has been seized.

Appeal and Revision

Sec 31- Person aggrieved u/s 29 may prefer appeal:

Officer >= Assistant Session Judge → Court of Sessions (Appeal within 1 month (+1 month))

Court of session → High Court

Person aggrieved with order of CG u/s 5, 12, 14 – Appeal to High Court within 60 days

Sec 32- Revision of order by CG

1. CG may – on its own motion or application (in e-form only) by person registered under Act:
   - Call for and examine orders of proceedings under this Act
   - Make inquiry
   - And pass such Revision orders as it thinks fit
2. CG shall not, on its own motion, revise order made > 1 year ago
3. Application for revision to be made within 1 year of receipt of order (condonation – yes)
4. Such order shall not be made where appeal against the order lies but has not been made and time limit not expired or rights to appeal not waived.

Rules – Application for Revision to be made to Secretary, MHA + Rs. 3,000 (via payment gateway)

FAQs related to Section 32 are covered at the end of this Chapter [Amendment]

Section 33 to 38:

Section	Offence	Penalty
33	- Person giving false intimation u/s 9 or 18 - Seeks COR/ prior permission by fraud, false representation or concealment	Jail upto 6m or fine (no limit) or both
34	Refer Section 10	--
35	Accepts FC in contravention of this Act	Jail upto 5 years / fine (no limit)
36	A person who does/omits to do an Act making ACS in his possession liable to confiscation, the court trying such person may	Fine < = 5x value of ACS or Rs. 1,000 whichever is higher if ACS not available for confiscation
37	No separate punishment provided	Jail upto 1 year / fine (no limit)
38	Whoever, having been convicted u/s 35/37 is again convicted for such offence	Shall not accept FC for 5 years from date of subsequent conviction

Sec 39- Offence by companies (Same as section 27 of SEBI)

Sec 40

No court shall take cognizance of offence under this Act except with prior approval of CG

Sec 41- Compounding of certain offences

1. Offence punishable under this Act (not with only imprisonment) – Before institution of prosecution – Be compounded by authorities notified by CG
2. Above provision not applicable for offence committed by person within 3 years from date on which similar offence committed by it/him was compounded.

For the purposes of this section, any second or subsequent offence committed after expiry of 3 yrs from date on which offence was previously compounded, shall be deemed to be a first offence

3. Where any offence is compounded before the institn. of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender w.r.t whom offence is so compounded

Rules - Application for Compounding to be made to Secretary, MHA + Rs. 3,000 (via payment gateway)

SUMMARY OF FORMS IN FOREIGN CONTRIBUTION REGULATION ACT, 2010

Form	Purpose
FC-1	Intimation of receipt of FC by way of Gift/Articles/ Securities/ by candidate for Election.
FC-2	Application for seeking prior permission of the CG to accept foreign hospitality
FC-3A	Application for FCRA Registration
FC-3B	Application for FCRA prior Permission
FC-3C	Application for Renewal of FCRA Registration
FC-4	Intimation - Annual Returns
FC-6A	Intimation - Change of name and/ or address of the Association within the State for which COR/ prior permission is granted
FC-6B	Intimation - Change of nature, aims and objects and registration with local/relevant authorities of any association
FC-6C	Intimation - Change of bank/ branch or designated FC A/c number
FC-6D	Intimation - Opening of additional FC utilisation Bank A/c for the purpose of utilisation of FC
FC-6E	Intimation - Change in original office bearers or Key functionaries of the association
FC-7	Application for surrender of COR

FAQS REGARDING ONLINE SUBMISSION OF REVISION APPLICATION U/S 32

Who is eligible?	Person registered under FCRA + Aggrieved by order of CG
How to make such application?	Application to Secretary, MHA, Govt. of India in e-form only.
Can application be sent through physical mode?	W.e.f. 15th Aug 2022, NO.
Procedure	Upload a scanned copy of its application on the FCRA web portal. Go to - "Services under FCRA" >> "Revision Application against Section 32, FCRA 2010"
Is physical copy of revision appln. filed online required to be sent?	Bola na nahin? Samajh nahin aaaraha? :D Nahin chahiye physical copy.
Any specific format for appln.?	No, scanned copy of duly signed appln. on plain paper is acceptable
Is applicant required to submit justification for revision of order?	Yes. It must be submitted along with supporting document, if any
Fee	Rs. 3,000 - Paid through payment gateway as specified by CG
Time limit	Within 1 year from date on which the order in question was communicated or date on which it otherwise came to know of it, whichever is earlier

The End

Multiple Choice Questions

Question:1 [Section 16]

X Ltd. submitted an application on 31st August, 2020 for renewal of certificate to Central Government for acceptance of foreign contribution under FCRA, 2010, shall be renewed latest by:

a) 30th September 2020
b) 29th November 2020
c) 28th February 2021
d) 31st July 2021

Question:2 [Section 18 + Rule 17]

Intimation of receipt of foreign contribution shall be given-

a) Within 9 months of the closure of the financial year
b) Within 6 months of the closure of the financial year
c) Within 9 months of the date of receipt of the amount
d) Within 6 months of the date of receipt of the amount

Question:3 [Definition of FC]

Mr. X receives an antique statue from his best friend (who resides abroad) as a gift on his 50th Birthday of worth Rs. 70,000. State the nature of the gift given to Mr. X in the light of the FCRA:

a) It's not a foreign contribution as it is not in excess of one lakh rupees.
b) It's a foreign contribution being made by other than his relative
c) It's not a foreign contribution, as it is not informed to the Central Government
d) It's a foreign contribution as is within the limit of one lakh rupees.

Question:4 [Definition of FC]

Alexander Philip, a foreign citizen, has made donations in kind to his known resident Indians for their personal use. When shall such donation in kind be excluded from the definition of 'foreign contribution' considering the relevant provisions of Foreign Contribution (Regulation) Act, 2010?

a) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than Rs. 1,00,000 but less than Rs. 5,00,000.
b) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than Rs. 5,00,000 but less than Rs. 10,00,000.
c) Any donation in kind given by a foreign citizen to a resident Indian for personal use is always excluded.
d) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is not more than Rs. 1,00,000.

Answers:	1.	(b)	2.	(a)	3.	(a)	4.	(d)

Question:5 [Section 4]

Mr. Vijay, Sanjay and Ajay are brothers. Mr. Sanjay who is professor reside in India, rest both the brothers settled in abroad. Mr. Sanjay on his 25th wedding anniversary received a gift from his elder brother who is American national currently. Gift includes i-phone and an old chain of their father, with attached emotional memories. I-phone in Indian rupee worth INRs 1 lac 10 thousands, while chain worth INRs 80 thousand.While younger brother of Mr. Sanjay who is British national and investment banker by profession, present him securities worth INRs 2 lacs.

Regarding the intimation of foreign contribution received by Mr. Sanjay, state the correct legal requirement in the light of the FCRA :

(a) Intimation is required to be given to Central Government regarding any of the foreign contribution received by him within three months from the date of receipt of such contribution.
(b) Intimation is required to be given to Central Government regarding the foreign contribution received by him with his brothers being more than limit of 1 Lakh within 30 days from the date of receipt of such contribution.
(c) Intimation is not required to be given to Central Government regarding the foreign contribution received by him with his brothers being less than the threshold limit of 10 Lakh whereas w.r.t. to chain of worth INR 80,000.
(d) No Intimation is required to be given to Central Government regarding the foreign contribution received him as it was for personal use.

Question:6 [Section 4]

Mr Raja, an office-bearer of a political party, receives foreign contribution of Rs. 9 lakh during the financial year 2022-2023 from his sister residing abroad. Mr. Raja is required to inform of such foreign contribution received to the Central Government within how many time period:

(a) With in 30 days from the date of receipt of such foreign contribution
(b) With in 3 months from the date of receipt of such foreign contribution
(c) With in 6 months from the date of receipt of such foreign contribution
(d) No intimation is required for such foreign contribution

Question:7 [Section 11]

Mr. X has been found guilty of violation of the provisions of FCRA, 2010. What shall be the consequences w.r.t. the unutilised amount of foreign contribution?

(a) Such unutilised amount of foreign contribution shall be forfeited.
(b) Such unutilised amount of foreign contribution shall not be utilized, without the prior approval of the C.G
(c) Such unutilised amount of foreign contribution shall not be utilized without the prior approval of the RBI.
(d) Such unutilised amount of foreign contribution

Answers:	5.	(c)	6.	(d)	7.	(b)

Question:8 [Definition of FC]

Mr. Arjun, an Indian citizen, has been residing in the United States for the past five years. He wishes to support an NGO in India that works for environmental conservation. To inquire about the NGO and its donation process, Mr. Arjun contacts his friend Mr. Sanjay, an NRI living in Singapore. Mr. Arjun transfers $1000 to Mr. Sanjay, requesting him to donate the amount to the NGO on his behalf. Mr. Sanjay transfers the specified amount from his personal savings through authorized banking channels to the NGO's account.

Based on the facts, how would the donation made by Mr. Arjun through Mr. Sanjay be classified under the Foreign Contribution regulation?

a) The donation made by Mr. Arjun through Mr. Sanjay is considered a Foreign Contribution, even though the transaction is done through Mr. Sanjay account.
b) The donation made by Mr. Arjun through Mr. Sanjay is not considered a Foreign Contribution, as the transaction is done via NRI account.
c) The donation made by Mr. Arjun through Mr. Sanjay is considered a Foreign Contribution because both are residing outside India.
d) The donation made by Mr. Arjun through Mr. Sanjay is prohibited under the Foreign Contribution regulation.

Answers:	8.	(b)

The End

Acronyms used:

AA	Adjudication Authority	IBBI	Insolvency and Bankruptcy Board of India
ARC	Asset Reconstruction Company	IBC	Insolvency Bankruptcy Code
CA	Corporate Applicant	ICD	Insolvency Commencement Date
CD	Corporate Debtor	IM	Information Memorandum
CIRP	Corporate Insolvency Resolution Process	IP	Insolvency Professional
CIS	Collective Investment Schemes	IRP	Interim Resolution Professional
COC	Committee of Creditors	OC	Operational Creditor
CP	Corporate Persons	OD	Operational Debt
EOI	Expression of Interest	PA	Public Announcement
FC	Financial Creditor	PPE	Partner, Proprietor or Employee
FD	Financial Debt	RA	Resolution Applicant
FSP	Financial Service Provider	RP	Resolution Professional

Introduction to the IBC 2016

Approved by Lok Sabha 5th May, 2016 → Approved by Rajya Sabha 11th May, 2016 → Assent of President 28th May, 2016

Purpose of the code:

- An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals
- in a time-bound manner for maximization of value of assets of such persons,
- to promote entrepreneurship, availability of credit and
- balance interests of all stakeholders incl. alteration in order of priority of payment of Govt. dues &
- to establish an IBBI, and for matters connected therewith or incidental thereto.

Insolvency vs Bankruptcy vs Liquidation:

- Insolvency is a state of not being able to pay off debts due to insufficient cash flow.
- Insolvency can be treated with appropriate resolution mechanism.
- If left untreated, insolvency results into Bankruptcy (for individuals) or liquidation (for company).

Structure of this Code:

Preliminary [Sec 1-3]	CIRP [Sec 4 - 77]	Resoln for Indv/ Firms [Sec 78 - 187]	Regulations of IP, Agencies and IU [Sec 188-223]	Miscellaneous [Sec 224 - 255]

4 Pillars of this code:

Insolvency Professionals and Insolvency Professional Agencies	IBBI	Information Utilities (National E-Governance Services Limited)	Adjudicating Authorities

Sec 2 - Applicability of the Code

Any company incorporated under Cos. Act	Other co. governed by special Act	LLP incorp. under LLP Act 2008	BC as notified by CG	Personal Guarantor to CD	Partner/ Proprietor ship firm	Individual

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

Applicability of this Code to Finance Service Provider ("FSP"):

- As per Section 3(7), CP doesn't include FSP (i.e. banks, FIs, Insurance co., ARC, MFs, CIS).
- However, as per Section 227, CG has power to notify FSP to whom IBC may be applicable.
- CG vide notification notified that IBC shall be applicable to NBFCs (including Housing Finance Companies) with asset size >= Rs. 500 crores as per last audited Balance Sheet

Sec 3 - Definitions

At the end of the Chapter.

Part II - Insolvency Resolution and Liquidation for Corporate Persons

Sec 4- Applicability of this Part

Minimum amount of Default = Rs. 1 lakh or such HIGHER amount as may be prescribed by CG
W.e.f. 24th March, 2020 - Amount of default to initiate this process stands increased to Rs. 1 crore
Provided that - CG may, by notification, specify minimum amount of default of higher value (not > Rs. 1 crore) for matters relating to "PPIRP" of CD under Chapter III-A

Sec 6-

If a CD commits default, CIRP may be initiated by FC, OC or the CD itself.

Sec 7- Initiation of CIRP by a FC

Financial Creditor (Itself or jointly with other FCs/ Person notified by CG) → Application (in prescribed Form) Against CD for initiating CIRP → Adjudication Authority (NCLT)

Following persons are notified by CG and may file an application on behalf of FC:

Guardian	Executor or administrator of an estate of FC	Trustee including debenture trustee	Person duly authorized by BOD of a company

- Applicant shall serve copy of such application to registered office of CD and to Board by registered post, speed post, or hand delivery or e-mode BEFORE filing with AA. [Amendment]
- Default includes a default w.r.t. a FD owed not only to applicant FC but to any other FC of the CD.
- Documents to be enclosed:

Record or evidence of default with IU or others	Name of proposed IRP	Other information as may be specified by Board

- AA to ascertain default within 14 days (otherwise record reason) based on record/evidence.

- Admit application if:

Default has occurred + Application complete + No pending disciplinary proceedings against proposed IRP

- Reject if either of the above conditions not satisfied
- AA shall communicate such order (admission/rejection) to FC within 7 days of order
- However, where AA intends to reject the application on grounds that it is incomplete, give notice to applicant to rectify defects within 7 days of such notice from AA.
- CIRP to commence from date of admission of application by AA – Insolvency Commencement Date

Note (Read after Sec 21):

For FC ref. u/c (a) & (b) of Sec 21(6A), CIRP appln shall be jointly filed by not less than LOWER of:

100 creditors in same class **or** 10% of total creditors in same class

Where FCs are allotees under Real Estate Proj., appln to be filed jointly by not less than LOWER of:

100 such allottees in same Real Estate Proj. **or** 10% of total allottees in same Real Estate Proj.

When application is made by OC u/s 9, AA be like:



Ruko zara! Sabar Karo!

Sec 8 – Insolvency Resolution by OC

- OC to deliver Demand Notice and copy of invoice to CD demanding payment
- CD shall within 10 days, bring to notice of OC:
  - Existence of a dispute (amount, quality, breach) or record of pendency of suit or arbitration filed before receipt of such notice, or
  - Payment of OD by attested copy of electronic trf. or record that OC has encashed a cheque

Sec 9 – Initiation of CIRP by OC

Operational Creditor → (After 10 days, apply / IRP Optional) → Adjudication Authority (NCLT)

- Furnish along with application: [NAI FO]
  - Copy of invoice or demand Notice
  - Copy of certificate from Financial Institution of OC, if available, confirming non payment
  - Affidavit to the effect that no notice of dispute or payment given by CD
  - Copy of record from IU, if available
  - Other proofs confirming non-payment

- AA shall within 14 days admit the application and communicate it to OC and CD if:
  - Invoice or demand notice was delivered to CD
  - No payment of unpaid OD
  - No notice of dispute and no record of payment in IU
  - Application is complete
  - No disciplinary proceeding
- Otherwise reject and communicate to OC. However, give 7 days to rectify
- CIRP to commence on date of admission - Insolvency Commencement Date

Sec 10 -Initiation of CIRP by CD itself

- Where a CD has committed a default, CA to file an application with AA. Furnish along with application:
  - Information relating to BOA and others as may be prescribed
  - Information of Resolution Professional proposed as IRP
  - SR (for co.) or resolution by >= 3/4th of partners (for LLP) of CD approving filing of such appln

- AA shall within 14 days:
  - Admit application if -

    Default has occurred + Application complete + No pending disciplinary proceedings against proposed IRP
  - Reject if either of the above conditions not satisfied. However, give 7 days to rectify application.

- CIRP to commence from date of admission of application by AA - Insolvency Commencement Date

SUMMARY OF SECTION 7,9 AND 10

Particulars	Section 7	Section 9	Section 10
Appln. to be given by	FC	OC	CA
Apply when	Default has occurred	Default + Sec 8 complied	Default has occurred
Propose the name of IRP	Mandatory Obtain consent of IP for appt as IRP	Optional	Mandatory Obtain consent of IP for appt as IRP
AA to ascertain default	Within 14 days of receipt of appln. (and then communicate order in 7 days)		
Annexure to application:	➢ Record of default (IU) ➢ Name of proposed IRP ➢ Other information	➢ Copy of demand notice ➢ Affidavit of no reply from CD ➢ Certificate from FI ➢ Record of IU ➢ Other proofs	➢ BOA or other documents ➢ Proposed IRP ➢ Resolution (SR or 3/4th partners)
Accept Application if → Otherwise reject	Default + Appln complete + No disciplinary proceeding	Demand notice + No payment + No dispute + Appln complete + No disciplinary proceeding	Default + Appln complete + No disciplinary proceeding
Period for rectification	Within 7 days of receipt of notice from AA		
Initiation of CIRP (ICD)	Date of admission of application by AA		

Sec 10A - Suspension of initiation of CIRP

Applicability of Sec 7,9 & 10 suspended w.r.t, default arising on/after 25/03/20 for 1 yr (till 24/3/21)

Note: No appln shall ever be filed for initiation of CIRP of CD for default occurring during said period.

Sec 11 - Person not entitled to make application to initiate CIRP:

CD undergoing CIRP or PPIRP	FC/OC of CD undergoing PPIRP	CD whose Resoln Plan is approved 12m prior to application
CD which completed CIRP 12m prior to application	CD/FC who violated terms of resoln plan approved 12m before application	CD whose liquidation order is made

Explanation - Nothing in this sec shall prevent a CD refd above from initiating CIRP against another CD.

Note - This section restricts an applicant from filing appln. u/s 10. He can still file appln. u/s 7 or 9

Sec 12 - Time Limit for Completion of CIRP

- Within 180 days from the date of admission of application
- Extension:
  - After resoln is passed at COC by vote of >=66% voting share, RP may apply to AA seeking extn.
  - If AA is satisfied that CIRP cannot be completed in 180 days, it may further extend - Not > 90 days but only once.

Note: CIRP to be mandatorily completed within 330 days of ICD incl. extn. and time taken in legal proc.

Sec 12A - Withdrawal of Application admitted u/s 7,9 and 10

On application made with the approval of 90% voting share of COC, AA may permit withdrawal.

SUMMARY OF WITHDRAWAL OF APPLNS. [SEC 12A OF CODE, RULE 8 & REGULN. 30A]

Stage at which appln. is withdrawn	Process
Before admission by AA (AA has to admit or reject in 14 days)	AA may permit such withdrawal on application for withdrawal
Application admitted but COC not formed	AA may permit on application made through IRP. IRP to apply within 3 days of receipt from applicant.
After constitution of COC but before invitation for EOI	Withdrawal of appln. to be first approved by COC by 90% voting shares within 7 days of such withdrawal appln and then IRP/RP to submit appln to AA within 3 days of approval from COC
After invitation of EOI	Same as above with only difference that applicant to state reasons justifying such withdrawal

Sec 13 - Declaration of Moratorium and Public announcement:

Where an application u/s 7,9 or 10 is admitted, AA shall make an order (on ICD) w.r.t:

(a) Appointment of IRP as per section 16

(b) Cause public announcement of initiation of CIRP and call for submission of claims under section 15

(c) Declare moratorium for the purpose referred to in section 14

Sec 14 -Moratorium

On the ICD, AA shall by order declare moratorium prohibiting [RAIES]:

Institution of Suits, Continuation of pending suits against CD, execution of order of any court	Recovery of any property by any owner or lessor which is in possession of CD	Transferring, encumbering or disposing off by CD any Asset	Enforcement of security Interest as per SARFAESI, 2002

Note:

1. A license, permit, regn, quota, concession, clearance, or similar grant/right given by CG, SG, local auth., sectoral regulator, etc., shall not be suspended/terminated on grounds of insolvency, provided no default in payment of current dues arising for use of such license/grant during moratorium. Example: Jet airways slots allocated by DGCA.

2. Supply of essential goods & services not to be terminated, suspended/interrupted (except where dues arising from such supply has not been paid)

Non applicability of moratorium provision:

Provision of section 14(1) shall not apply to:

a. Such trans., agreements as may be notified by CG + Financial Sector Regulator (RBI, SEBI, etc);
b. a surety in a contract of guarantee to CD

Period of Moratorium: Till completion of CIRP. However, it may cease to have effect, if during CIRP:

- AA approves Resolution Plan under section 31
- Passes order of liquidation under section 33

Regulation 29 - RP may sell unencumbered assets of CD during CIRP. However, book value of all asset sold during CIRP shall not exceed 10% of total claims admitted by IRP.

Sec 15- Public announcement of CIRP

[As per FAQs - within 3 days of appointment of IRP]

AA shall cause public announcement of CIRP containing following info [RAPID2]:

Name and Address of CD	Name of authority under which CD is incorp./ Regt.	Details of IRP vested with power of management & responsible for claims	Last date for submission of claims	Penalties for false claims	Last date of CIRP (i.e. 180th day from admission. u/s 7,9,10)

Sec 16 - Appointment and Tenure of IRP

- The AA shall on ICD appoint an IRP (where the name of IRP is proposed in the application)
- Who shall be IRP?
  - Where appln. u/s 7 &10, the proposed IRP to become IRP if no disciplinary proceeding is pending.
  - Appln u/s 9 + IRP proposed - The same shall become IRP provided no disciplinary proceeding.
  - However, in case of appln. u/s 9, if no IRP proposed, IRP shall be appointed by AA on recommendation of Board (Board to recommend within 10 days of receipt of such request)
- Tenure- Till appointment of RP under section 22

Sec 17 - Management of Affairs of CD by IRP

From the date of appointment of IRP :

Management of Affairs of CD vests with IRP	Power of BOD/ Partners - Suspended and exercised by IRP	Officers of CD to report to IRP and provide access to all docs and records as required by IRP.	Financial Institution to act on instruction of IRP & furnish information available with them to IRP

The IRP vested with management of CD shall [DA2LO]:

act and execute all deeds, receipts and documents	authority to access records of CD from IU	authority to access BOA etc. available with Govt authorities, statutory authorities, accountants, etc.	responsible to comply with law on behalf of CD	take such other actions as may be specified by Board

Sec 18- Duties of IRP [O IC2A2I]

collect all information w.r.t., assets, finances and operations of CD for determining the financial position of CD	receive and collate all Claims submitted by creditors, pursuant to public announcement u/s 15	monitor Assets of CD and manage its operations until a RP is appointed

constitute a committee of creditors (COC)	file Information collected with IU, if necessary	take control & custody of any Asset over which CD has ownership rights	to perform such Other duties as may be specified by the Board

Sec 20- Management of operation of CD as going concern

IRP shall make every endeavor to:

a. protect and preserve the value of the property of the CD and
b. manage its operations as a going concern.

For this purpose, IRP shall have authority to [CF IPO]:

appoint accountants, legal or other professionals as may be necessary	enter into contracts or amend/modify contracts already entered into	raise interim finance provided that no security interest shall be created over any encumbered property of CD without prior consent* of creditors whose debt is secured over such property

issue instructions to personnel of the CD as may be necessary	take all other actions as are necessary to keep the CD as a going concern

*No prior consent of such crs. shall be required where value of such property is >= 2x amt of debt.

Manner of submission of proof of claims to IRP? (Regulation)

Claims with proof by:	Submit to:	How to submit?	Regulation of IBBI (IRP of CP)	Others
OC (other than workmen)	IRP	Form B	Regulation 7	Submit proofs (IU, invoice, etc.)
FC		Form C	Regulation 8	
Workmen and Employees		Form D	Regulation 9	

Additional Points:

- Claims to be submitted with proof on or before last date mentioned in PA under 15.
- IRP shall verify claim within 7 days from last date of receipt of claim.
- Within 2 days of such verification – File report to AA certifying constitution of COC.
- A person who fails to file claim can file claim with IRP/RP on/before 90th date from ICD.

Sec 21 – Committee of Creditors

Constitution – 21(1)	COC to be constitute by IRP after: Collation of claims + Determination of financial position
Composition – 21(2)	All Financial Creditors. (If no FC – Board to specify) Provided that - FC who is a related party of CD will not have any right of representation, participation or voting in COC meeting. Provided further that, above proviso shall be N.A to FC regulated by financial sector regulator, if it is a related party of CD solely on account of conversion of debt to equity prior to ICD.
If No FC	If FC do not exist or all FCs are related party, COC shall comprise of 18 largest OCs by Value, 1 representative of all workmen, 1 representative of all employees. If number of OCs < 18 – Include all OCs.
Consortium -21(3)	Each FC shall be part of COC and voting share based on FD owed to them. (Read sec 21(6) after this and come back to 21(4))
Person is FC + OC – 21(4)	Will be considered as both FC and OC and included in COC with voting share proportionate to the FD owed to such creditor
OC assigns OD to FC - 21(5)	Assignee to be considered as OC to the extent of such assignment
Consortium Agreement provides for single trustee - 21(6)	If consortium agreement provides for single trustee/agent for all FC, each FC may: (a) Authorize that agent/trustee to act on his behalf, or (b) Represent himself (c) Appoint an IP (other than RP) at his own cost to represent him (d) Exercise his right to vote with one or more FC jointly or severally

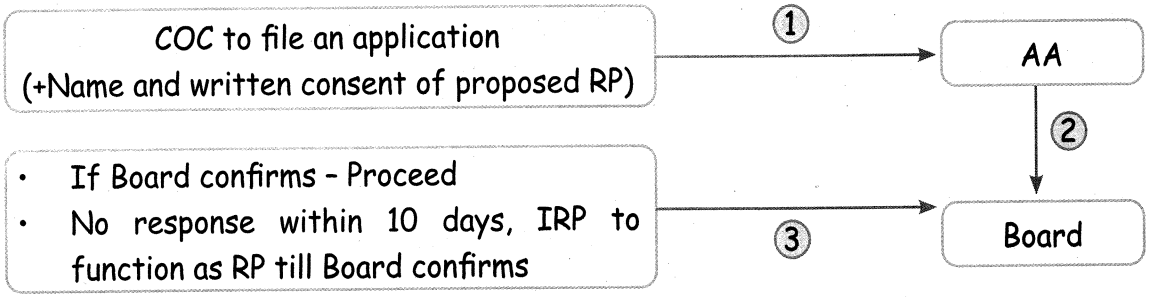
Who can act as Authorised Representative of FC? - 21(6A)	Where a financial debt is: a. In form of securities or deposits and terms of such debt provide for appt of trustees/agents - Such trustees/agents shall act on behalf of FC b. Is owed to a class of creditors exceeding nos. as may be specified - IRP make appln to AA the list of creditors along with the name of IP for the AA to appt** c. Represented by a guardian, executor, etc., such person shall act as authorized representative for financial creditor All such above AR shall attend the meeting of COC and vote on behalf of FC **<u>AR from State/UT having highest number of FCs</u> In case of Sec 21(6A)(b) - IRP shall offer names of 3 IPs to be voted upon by Crs. Such IPs must be from state/UTs having highest number of creditors in class as per records of CD. If State/UTs does not have adequate number of IPs, consider nearby state/UTs.
Decision of COC - 21(8)	Except as otherwise provided in this code, all decisions of COC shall be taken by COC by a vote of not less than 51% of voting share of FC.
RP to furnish information - 21(9) & (10)	COC may require RP to furnish any financial information related to CD any time during CIRP. RP to furnish within 7 days.
Quorum of COC	A meeting of COC shall quorate if members representing >= 33% of the voting rights are present either in person or by video/audio means. If no quorum - Automatic adjournment to same time and same place - <u>Next day</u> The adjourned meeting shall quorate with the mem. of COC attending the meeting.
Rights and Duties of AR of FC [Sec 25A]	<u>Rights of AR</u> - Participate & vote in meetings of COC on behalf of FC he represents as per the prior voting instructions obtained by AR from such crs <u>Duty of AR -</u> ➢ Circulate agenda & minutes of COC meeting to FC that he represents ➢ Act in the intt. of FC he represents & always act as per their prior instructions ➢ If AR represents several FCs, then cast his vote w.r.t, each FC as per instructions received from each FC to the extent of his voting share. ➢ AR to file such voting instructions with COC. ➢ Abstain from voting if no prior instructions from FC.

Sec 22 - Appointment of RP

Step 1 - COC to be constituted by IRP
Step 2 - First COC meeting to be held within 7 days of constitution [Not later than 30 days of ICD]
Step 3 - By majority vote of >=66% of FC resolve to either appoint IRP as RP or to replace IRP.

If COC resolves to appoint IRP as RP - Subject to written consent from IRP, COC to communicate decision to IRP, AA and CD.

If COC resolves to replace IRP-



Where appointment of RP is delayed, IRP to act as RP from 40th day of ICD till RP is appointed u/s 22

Eligibility of IP to become IRP/RP (as per Regulation 3)
IP (not IRP) shall be eligible to be appointed as IRP or RP if he and all other partners and directors (P/D) of the Insolvency Professionals Entity of which he is a P/D are *independent of the CD.

*Independent:
1. Eligible to be appointed as Independent Director of CD under section 149(6)
2. Not a Related Party to CD
3. Not a PPE of firm of auditors/secretarial auditors/cost auditors in practice of the CD in last 3 FY
4. Not a PPE of legal/consulting firm that had any transaction with CD > = 5% of Gross T/O of firm in last 3 FY (the limit was 10% of Gross T/O in Sec 149(6))

Sec 23 - RP to conduct CIRP

- Subject to section 27 (replacement of RP)
- RP to conduct the CIRP and manage operations of CD during CIRP period.
  RP to continue to do so after expiry of CIRP until an order is passed by AA under section 31 or 34
- Powers and duties - As were vested on IRP
- IRP to provide all records, documents and information related to CD in his possession to RP
- Section 5(13) - Fees payable to RP shall be considered as CIRP cost

Sec 24 - Meeting of COC

- Mode of meeting- In person or such e-means as may be specified
- Meetings to be conducted by RP.
- Meeting of COC: [Amendment]
  - RP to convene meeting of COC as and when it considers necessary
  - RP to convene meeting on request by members of COC having at least 33% of voting rights
  - RP may place proposal received from member of COC - If he considers necessary + Such proposal is made by members representing at least 33% of voting rights.

- RP to give notice of each COC meeting to:
  - Members of COC including Authorized Representatives
  - Members of suspended BOD or partners of CD
  - OC if the amount of aggregate dues (towards OD) is >= 10% of total debt
- BOD, partners and 1 representative of OCs may attend the meeting but no right to vote and their absence not to invalidate proceedings of meeting.
- Period of Notice of meeting
  - Not less than 5 days' notice to all participants
  - COC may reduce period of notice to not less than 24 hours (48 hrs in case if there is any AR)
- FC who is a member of COC may at his own cost appoint an IP (other than RP) to represent himself
- Voting shares to be based on financial debt owed to such creditor and shall be determined by RP
- Meeting to be conducted in such manner as specified

Note -Meetings may be convened till the RP is approved u/s 31 or order for liquidation is passed u/s 33 & decide on matters which do not affect the RP submitted before AA.

Sec 25 - Duties of RP - To protect assets and continue business operations of CD

- Preserve and Protect the Assets of CD
- Take Immediate custody of assets
- Represent the CD with third parties
- Raise interim Finances subj. to COC approval
- Appoint accountants, legal and other professionals
- Maintain updated list of claims
- Prepare Information Memorandum u/s 29
- Convene all meetings of COC
- Invite prospective resolution applicants (PRAs) to submit resolution plans
- Present all Resolution Plans to COC
- Such other actions as may be specified by Board

Sec 27- Replacement of RP by COC

- At any time during CIRP, if COC is of the opinion that RP is to be replaced.
- COC may by vote of >=66% of voting shares, make application to AA containing name of proposed RP for appointment
- Written consent of proposed RP required.
- AA to forward the same to Board for confirmation and RP shall be then appointed as per sec 16.
- If any disciplinary proceeding is pending, existing RP to continue till another RP appointed.

Sec 28 - Approval of COC for certain actions (RP can't do w/o approval)

[FIT2S(CCD) MCD T2]

Raise any interim finance in excess of amount decided	Instruction to FI for debit Transaction > Amount decided	Create any security interest over assets	Disposal of shares of any shareholder
Record any change in ownership interest	Change the capital structure	Undertake any Related Party Transaction	Delegate his authorities
Amend any constitutional document	Changes in appointment or terms of contract of such personnel as may be specified	Changes in appointment or terms of contract of statutory/internal auditors	Make any changes in the management of CD

- For taking any of above actions, RP to convene meeting and get it approved by >=66% of COC
- Effect of contravention:
  - Action void
  - COC may report to Board for necessary action under this code.

Sec 29 - Preparation of Information Memorandum

- RP to prepare IM containing "Relevant Info." as specified by Board for formulating Resolution Plan.
- Duty of RP to provide information to Resolution Applicant, provided he undertakes to:
  - Comply with law related to confidentiality and insider trading
  - Protect Intellectual property of the CD
  - Not to share Relevant info. with third parties unless above 2 conditions are complied with.

Relevant info means any info necessary for preparation of resolution plan such as financial position of CD, disputes and such other matter as may be specified by Board.

Sec 29A - Person not eligible to be Resolution Applicant

Resolution Applicant means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under 25.

A person shall not be eligible to submit a resolution plan if such person is [CID AT SEBI 164 Guarantee]:

undischarged Insolvent	wilful Defaulter - As per Guidelines of RBI issued under Banking Regulation Act, 1949	(c) At the time of such submission - Has an Account OR is the promoter or in charge of management or control of a CD who has an account which is classified as NPA & > = 1 year has lapsed from date of such classification till date of ICD*

(e) Disqualified u/s 164	Promoter or in mgt./control of CD in which - preferential / undervalued / fraudulent / extortionate credit Transaction has taken place + Order made by AA under this code.	Had executed Guarantee in favor of a creditor in respect of CD undergoing CIRP and the creditor invoked such guarantee and it remains unpaid in full or part.	Prohibited by SEBI from trading in securities or accessing securities market

(d) Has been Convicted of an offence punishable with imprisonment: (Eligible after completion of 2 years from release from imprisonment) • For >= 2 years under any Act specified in the 12th Schedule • For >= 7 years under any other law for the time being in force	subject to disability in any of above mentioned clauses under any law outside India (Foreign)	Has a connected person not eligible under above clauses

*Can submit if paid all overdue and interest thereon before submission.
*Moreover, this Clause is N.A. if applicant is a Financial entity + Not a Related Party

Connected Person means:
(i) Any person who is Promoter or in Management/Control (PMC) of the resolution applicant

(ii) Any person who shall be the PMC of the business of CD during implementation of resolution plan
(iii) Associate, Subsidiary, Holding company or Related party to above referred persons.

Note - Clause (d) [convicted of offence] and (e) [disqualified] above shall not apply in relation to connected person referred to in Clause (iii) above

Sec 30 - Submission of a Resolution Plan

(1) RA to submit Resolution Plan to RP prep. on basis of IM + affidavit that RA eligible u/s 29A.
(2) RP shall examine to confirm that each resolution plan [COMILO]:

Provides for payment of Insolvency Resolution Process Cost in priority to other debts of CD	Provides for payment to OC such that it is not less than higher of amt. paid in [1] Liquidation u/s 53 or [2] Distribution u/s 53(1)	Provides for Management of Affairs of the CD after approval of resolution plan
Provides for Implementation & supervision of resolution plan	Does not contravene any provision of Law for the time being in force	Conforms to such Other requirement as may be specified by the Board

(3) RP to present to COC for its approval such resolution plan which confirm to Section 30(2).

(4) COC to approve the plan by vote >=66% voting share after considering

feasibility and viability	the manner of distribution proposed	such other requirements as may be specified by the Board.

(5) COC shall not approve the resolution plan submitted by a RA ineligible u/s 29A. However, if RA not eligible under clause (c) of Sec 29A (NPA Account), COC may allow such RA a period not exceeding 30 days to clear dues (This extn. will not impact time limit u/s 12 i.e. complete CIRP in 180 days)

(6) Right of RA to attend COC meeting in which plan is considered. But no right to vote unless RA is FC.
Note : RA can vote on his own plan if he is a FC.

(7) RP to submit approved resolution plan to AA.

Note: Nowhere during the consideration (and even implementation) of the resolution plan is the approval of SH of CD required. Any such approval required for implementation is deemed to be given on approval of plan by AA.

Sec 31 - Approval of Resolution Plan

1. If AA satisfied that resolution plan meets conditions of Section 30(2) and has provision for effective implementation, it shall, by order approve the resolution plan.

Once approved, it shall be binding on the CD, its employees, members, creditors, CG, SG for statutory dues, etc., guarantors and other stakeholders.

2. If not in conformity with Section 30(2), reject the plan

3. Consequences of approval:
   - Moratorium under section 14 ceases to have effect.
   - RP to forward to Board all records related to CIRP & resolution plan to be recorded in database.

4. RA to obtain necessary approval within 1 year of approval of plan by AA (If Competition Commission of India approval needed, obtain prior to approval of AA)

Consequence of non-submission of R. Plan within 180 days or extended period - AA may order Liquidation.

Sec 32 - Appeal

Appeal against order approving Resolution plan shall be as per Sec 61(3) [Can not appeal if plan rejected]

As per Section 61(3), appeal against above order can be made on following grounds: (similar to COMILO)

a) L - the approved Resolution plan is in contravention of the provisions of any law
b) I - there has been material irregularity in exercise of the powers by the RP during the CIRP
c) O - the payment to OD has not been provided for in R. plan in the manner specified by the Board
d) C - IRP costs have not been provided for repayment in priority to all other debts
e) O - Resolution Plan does not comply with any other specified criteria

Sec 32A - Liability for prior offences

Notwithstanding anything, the liability of a CD for an offence committed prior to ICD shall cease, and the CD shall not be prosecuted for such an offence from the date R. Plan approved by the AA u/s 31 provided that the R. Plan results in change in the management or control of the CD to a person who was:

a) not a promoter or in the management or control of the CD or a related party of such a person; or
b) not a person w.r.t whom the relevant investigating authority (IA) has, on the basis of material in its possession, reasons to believe that he had conspired for commission of offence and has submitted report to relevant authority.

Provided that if prosecution had been instituted during CIRP against such CD, it shall stand discharged from the date of approval of the R. plan subject to requirements of this sub-section having fulfilled.

Provided further that Designated Partner (DP) or an OID, or any person was in any manner in-charge of the CD for conduct of its business and who was involved in the commission of such offence as per the report of IA, shall continue to be liable to be prosecuted & punished for such an offence committed.

No action shall be taken against the property of the CD w.r.t an offence committed prior to the ICD, where such property is covered under a Resolution Plan approved u/s 31, which results in the change in control of the CD to a person, or sale of liquidation assets to a person, who was

a) not a promoter or in the management or control of the CD or a related party of such a person; or
b) not a person w.r.t whom the relevant investigating authority (IA) has, on the basis of material in its possession, reasons to believe that he had conspired for commission of offence and has submitted report to relevant authority.

Nothing in this section shall be construed to bar an action against the property of any person, other than CD or a person who has acquired such property through CIRP or liquidation process, against whom such an action may be taken under such law as may be applicable.

Explanation- For the purposes of this sub-section, it is hereby clarified that

a. an action against property of CD in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to CD;
b. Nothing in this sub-section shall be construed to bar an action against the property of any person, other than the CD or a person who has acquired such property through CIRP or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulation')

Reporting of status of ongoing CIRPs through Form CIRP 7 [Amendment]

Regulation 40A - Provides a model timeline for carrying out various activities envisaged in CIRP.

Regulation 40B -

- IRP/RP to file a set of forms (Form CIRP 1 to CIRP 6) within 7 days of completion of specific activities to enable monitoring progress of CIRP. (E.g. Form 1 to be filed within 7 days of Public Announcement)
- Where such specific activities are not completed, such Forms need not be filed and that made making monitoring of the progress difficult.
- Hence, Clause (1A) was added to Regulation 40B.

Regulation 40B (1A) - Where any activity stated in column (2) of table below is not complete by the date specified therein, IRP/RP, as the case may be, shall file Form CIRP 7 within 3 days of said date, and continue to file (only one) Form CIRP 7, every 30 days, until the said activity remains incomplete.

Sl. No.	Activity requiring filing of Form CIRP 7, if not completed by the specified date	Form CIRP 7 - 1st time filing	Subsequent filing of Form CIRP 7
(1)	(2)	(3)	(4)
1	Public announcement is not made by T+3rd day	Date specified in column (2) + 3 days	X+30th day, X+60th day, X+90th day, and so on, till the activity is completed.
2	Appointment of RP is not made by T+30th day		
3	IM is not issued within 92 days from public announcement [Amendment]		
4	Request for R.Plan is not issued within 10 days from the issue of IM to the CoC [Amendment]		
5	CIRP is not completed by T+180th day		

T = Insolvency commencement date, and
X = Date of filing of Form CIRP 7 for the first time under column (3).

This circular is applicable for all the processes ongoing as on the date of this circular.

Some practical updates!

a) Unlike popular perception of financial crs./lending banks triggering the IBC code for taking defaulters to the cleaners, it is operational crs, who have utilised the code for getting money back.
b) Most of the cases under the IBC have ended in liquidation, which means selling the assets of the company as junk. Out of total disposed cases, almost half the cases resulted in liquidation.
c) Real estate & construction is the biggest sector facing bankruptcy proceedings
d) More than 80% the admitted cases have overshot the 270 days deadline for resolution.

CHAPTER III - LIQUIDATION PROCESS

Sec 33 - Initiation of Liquidation

- AA to pass an order to liquidate CD if:
  a. Resolution plan is not received by AA before:
     - Expiry of CIRP period or
     - Maximum period for completion u/s 12, or
     - Fast track CIRP u/s 56
  b. AA rejects the resolution plan u/s 31 for non-compliance.
  c. RP during CIRP communicates to AA the decision of COC (>=66%) to liquidate CD.
  d. Resolution plan approved by AA (u/s 31 or 54L) is contravened by CD and any person whose interests are prejudicially affected makes an application to AA for liquidation order.

- On passing an order for liquidation, AA shall:
  - Issue a public announcement that the CD is in liquidation and
  - Require such order of liquidation to be sent to the authority under which CD is registered.

- Effects of liquidation order:
  - No suits or other legal proceedings shall be instituted by or against CD. (Moratorium Part 2) (However, may be initiated by the liquidator on behalf of CD with prior approval of AA).
  - Order shall be deemed to be notice of discharge to the officers, employees and workmen of the CD (Except where the business of CD is continued during the Liquidation process).

Liquidation commencement date - Date on which proceedings for liquidation commence u/s 33 or 59

SUMMARY OF APPROVAL OF COC FOR DECISION MAKING:

Percentage	Section	Provision
66%	12	Extension of time limit of CIRP beyond 180 days
66%	22	Appointment of IRP as RP or replacing RP
66%	27	Replace RP
66%	28	Approval of COC for certain actions of RP
66%	30	Approval of resolution plan by COC
66%	33	Decision of COC to liquidate the corporate debtor
90%	12A	AA may permit withdrawal of CIRP application if resolution passed by COC
51%	21	All decision of COC to be taken by resolution of such COC

Important Definitions: [Please cover other definitions of IBC from ICAI material as well]

Corporate Person	Company u/s 2(20) Companies Act, 2013, an LLP as per LLP Act, 2008, or any other person incorporated with limited liability under any law but shall not include any FSP.
Corporate Debtor	CP who owes a debt to any person.
Corporate Applicant	➢ CD; or ➢ a member/partner authorized by constitutional document of CD to make application for CIRP/PPIRP ; ➢ an individual who is in charge of managing operations and resources of CD [CEO]; ➢ or a person who has control & supervision over financial affairs of the CD [CFO];
Constitutional Document	Includes AOA, MOA in case of company and incorporation document in case of LLP
Creditor	Any person to whom debt is owed and includes FC, OC and Decree Holder
Financial Creditor	Person to whom a financial debt is owed and includes any person to whom such debt has been legally assigned or transferred
Financial Debt	A debt + interest, if any, disbursed against consideration for time value of money and includes: money borrowed; acceptance credit facility; any note purchase facility; issue of bonds, notes, debentures, loan stock; lease or hire purchase contract; receivables sold/ discounted; derivative transaction; counter-indemnity obligation; Amount raised under forward sale or purcase agreement Note – Amount raised from allottee under a Real Estate Project = Deemed to have commercial effect of borrowing [Amendment]
Financial Service Providers	Person engaged in business of providing financial services in terms of authorisation granted by Financial Service Regulators FSP incl. – ARCs, Mutual Funds, Insurance co., Pension Funds, CIS, Bank/FI, etc.
Initiation Date	Date on which application is made by FC or OC or CA to the AA u/s 7,9 or 10
Insolvency Commencement Date	Date of admission of an application for initiating CIRP by AA u/s 7, 9 or 10
Operational Creditors	Person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred
Operational Debt	a claim w.r.t, provision of goods/services including employment or a debt w.r.t, the payment of dues payable to CG/SG or any local authority
Voting share	the share of voting rights of a single FC in the COC which is based on the proportion of the FD owed to such FC in relation to the FD owed by the CD
Read Definitions of Claim, Financial Product, Financial Service Regulator and Related Party and Relative from ICAI Material.	

The End

Multiple Choice Questions

Question:1 [Section:32]

An application under Section 9 of the IBC, 2016 was filed by the Raheja Portland Cement Limited in the capacity as operational creditor against the corporate debtor Makhija Builders and Developers Limited. The application was admitted by the order of the NCLT - Mumbai (NCLT, Mumbai) after giving a reasonable opportunity of being heard to Makhija Builders and Developers Limited and Mr. Ritesh was appointed as Interim Resolution Professional (IRP). However, Mr. Sanskar and Mr. Satvik, 2 of the directors of Makhija Builders and Developers Limited, were suspicious about the claims filed by Raheja Portland Cement Limited since they were much more than what was due to the company and therefore, they are desirous of making an appeal against the order of the NCLT, Mumbai. You, as a legal advisor, are required to advise them as to the maximum time within which an appeal against the order of the NCLT, Mumbai, can be filed by them with the National Company Law Appellate Tribunal (NCLAT).

a) Appeal against the order passed by NCLT, Mumbai under Section 9 of the IBC, 2016, within a period of 45 days from the date of order.
b) Appeal against the order passed by NCLT, Mumbai under Section 9 of the IBC, 2016, within a period of 30 days from the date of order.
c) Appeal against the order passed by NCLT, Mumbai under Section 9 of the IBC, 2016, within a period of 15 days from the date of order.
d) Appeal against the order passed by NCLT, Mumbai under Section 9 of the IBC, 2016, within a period of 10 days from the date of order.

Question:2 [Section: 38]

Shivdeep submitted his claim as an operational creditor to the liquidator of C Ltd which is under liquidation. After submission of his claim, Shivdeep is desirous of altering it. Out of the following, which one correctly indicates the time period within which he can alter his claim after its submission.

a) Shivdeep can alter his claim within 5 days of its submission to the liquidator of C Ltd.
b) Shivdeep can alter his claim within 10 days of its submission to the liquidator of C Ltd.
c) Shivdeep can alter his claim within 14 days of its submission to the liquidator of C Ltd.
d) Shivdeep can alter his claim within 30 days of its submission to the liquidator of C Ltd.

Answers:	1.	(b)	2.	(c)

Question:3 [Section: 2]

New Era Financial Services Limited of New Delhi, registered with Reserve Bank of India as Non-banking Financial Company (NBFC), has defaulted in the payment of dues to its catering contractor, Samarth Sweets, a partnership concern owned by two real brothers Swarn and Shivi. From the following four options, select the one which indicates whether Samarth Sweets being catering contractor can initiate insolvency resolution process under the IBC, 2016, against the company in the capacity as an operational creditor:

a) The catering contractor Samarth Sweets in the capacity as operational creditor is entitled to initiate insolvency process against New Era Financial Services Limited.
b) The catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited because 'financial service providers' are excluded.
c) The catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited since it is a partnership concern and not a limited company.
d) Since 'catering service provider' is an excluded service, the catering contractor Samarth Sweets in the capacity as operational creditor is not entitled to initiate insolvency process against New Era Financial Services Limited.

Question:4 [IBC]

Aakansha Plastics Limited, having registered office at Bhatinda, Punjab, was formed in the year 2005. On March 31, 2021, its paid-up share capital was Rs. 5 crores; Amount due from Debtors viz. Shilpa Furnitures Private Limited and Shobhna Traders & Co. Rs. 4 crores; Secured loans obtained from Crescent Bank Limited Rs. 6 crores; Amount due to creditors, namely, Sambhav & Sons and Satyadev Suppliers Private Limited Rs. 3 crores. The performance of the company decreased sharply due to stiff competition, wrong planning and mismanagement and it came on the verge of insolvency. Choose from the following alternatives as to who is the corporate debtor:

a) Shilpa Furnitures Private Limited and Shobhna Traders & Co.
b) Aakansha Plastics Limited.
c) Sambhav & Sons and Satyadev Suppliers Private Limited.
d) Crescent Bank Limited.

Answers:	3.	(b)	4.	(b)

Question:5 [Section: 56]

Ruby Petals Limited, a small company, files an application with the NCLT stating that the fast track corporate insolvency resolution process against it cannot be completed within the prescribed period of 90 days. On being satisfied, NCLT orders to extend the period of such process by 30 days. However, Ruby Petals Limited again initiates an application for further extension of time period of insolvency process by another 10 days. From the four options given below which one, do you think, is applicable in such a situation:

a) NCLT can extend the period of fast track CIRP against Ruby Petals Limited by another 10 days since total extension does not exceed 45 days.
b) NCLT can extend the period of fast track CIRP against Ruby Petals Limited by another 10 days if the corporate debtor deposits Rs 50,000 as penalty.
c) NCLT can extend the period of fast track CIRP against Ruby Petals Limited by another 10 days if the corporate debtor deposits Rs 1,00,000 as penalty.
d) NCLT cannot extend the period of fast track CIRP against Ruby Petals Limited by another 10 days since such extension shall not be granted more than once.

Question:6 [Section: 33]

Munikh Hospitality Services Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC. The Resolution Professional (RP) Mr. Somesh, after his appointment, conducted a meeting of Committee of Creditors (COC) but the same was adjourned due to the lack of quorum. At the appointed date and time, when the adjourned meeting was resumed, a resolution was passed by the COC members present, representing 51% of the voting rights, for liquidation of Munikh Hospitality Services Limited, the Corporate Debtor, before the completion of the CIRP. You, as a qualified CA comprising the team of RP, are required to advise whether the resolution of liquidation passed by certain members of COC representing 51% of the voting rights is valid or not considering the applicable provisions of the IBC, 2016.

a) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of COC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 90% of the voting shares of the creditors.
b) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of COC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 66% of the voting shares of the creditors.
c) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of COC representing 51% of the voting rights is not valid since such resolution cannot be passed before the completion of the CIRP.
d) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of COC representing 51% of the voting rights is valid since the same has been passed by the majority of creditors.

Answers:	5.	(d)	6.	(b)

The End

BEST PART OF THE ULTIMATE SOLUTION

Appendix

S.No.	Appendix	Pages
1	Summary of Forms under Companies Act, 2013	A1
2	Matters requiring Ordinary Resolution	A2
3	Matters requiring Special Resolution of the Shareholders	A2
4	Matters requiring - No vote cast against the resolution	A3
5	Resolutions that have to be passed by Postal Ballot	A3
6	Important Limits for applicability of various sections	A3-A4
7	Important Penalties in the chapter of Directors [Sec 149 to 205]	A4-A5

CA Shubham Singhal
THE RANKER'S WAY

SUMMARY OF FORMS UNDER COMPANIES ACT, 2013

Forms	Section	Purpose
DIR 2	152(5)	Consent given by a person to act as director of the company
DIR 3	153	Application for allotment of DIN before being appointed in an existing co.
DIR 3B	156	Intimation of DIN to company/companies in which the person is a director
DIR 3C	157	Intimation by the company to the Registrar on the DIN
DIR 3 KYC		Application for filing KYC of the director
DIR 5	-	Application for surrender of DIN
DIR 6	-	Intimation of changes in particulars specified in DIN application
DIR-8	164(2)	Intimation by a director to a company about his/her disqualification
DIR 9	164(2)	Disqualification of directors to be intimated to the Registrar by the company
DIR 10	164(2)	Application for removal of disqualified directors
DIR 11	168	Notice of resignation by a director to the Registrar
DIR 12	152(5)	Particulars of Directors and KMP appointed and any changes
MBP 1	184(1)	Disclosures by a director of his interest or concern in any other companies
MBP 2	186	Register of loans, security, guarantee, and acquisition made by the company
MBP 3	187	Register of investments that are not held in its own name by a company
MBP 4	189	Register of C/A with Related Party or in which directors are interested
MR 1	196(4)	Return for the appointment of a WTD, MD or Manager
MR 2	Rule 7	Application to CG for approval of appt./reappt./rem. of WTD, MD or Manager
MR 3	204	Format of the Secretarial Audit Report
CAA 1	230	Creditors Responsibility statement
CAA 2	230	Notice of meeting of creditors or members
CAA 10	-	Solvency Declaration
NDH-1	Rule 5	Certified Return of Stat. compliances [Within 90 days of end of 1st /2nd FY]
NDH-2	Rule 5	Application to RD for extension [within 30 days of close 1st FY]
NDH-3	Rule 21	Company to file half yearly return with ROC
MSC - 1	455	Application to ROC for obtaining the status of dormant company
MSC - 2	455	Certificate of the status of dormant company
MSC - 3	455	Return of dormant companies
MSC - 4	455	Application for seeking status of active company
MSC - 5	455	Certificate by ROC allowing an active status for the company

MATTERS REQUIRING ORDINARY RESOLUTION

Forms	Purpose
151	Appointment of SSD shall be subject to Sec 152 (and hence Resolution at GM)
152(2)	General Rule - Every director to be appointed by a resolution in the GM
160	To appoint a person other than retiring director as a director
161(2)	To authorise BOD to appoint alternate directors. (If not authorized by AOA)
169(1)	Removal of director before expiry of his term of office (special notice required)
169(5)	For appointment of a director in place of the director who is removed
181	Contribution to Charitable Trust > 5 % of its Average Net Profit for 3 immediately preceding FY
188 + Rule 15	Approval for entering into related party transactions exceeding the prescribed limits
191	Approval for payment of compensation for loss of office w.r.t, transfer of undertaking, etc
192	Entering into any arrangement involving non-cash consideration
196(4)	Approval of appointment, remuneration and other T&C of MD, WTD or manager.
197(1) 1st Proviso	To authorize payment of remuneration exceeding 11% of net profits of the company to the directors and manager (subject to Schedule V).
197(4)	To approve remuneration payable to directors or manager (if not approved by AOA)

MATTERS REQUIRING SPECIAL RESOLUTION OF THE SHAREHOLDERS

(Learn by-heart which sections needs SR. The balance will be Ordinary Resolution)

Section	Particulars
149(1)	Appointment of > 15 directors
149(10)	Reappointment of Independent Director after first term
165	For specifying any lesser no. of cos. in which a director of company may act as directors
169(1)-1st Proviso	Removal of Independent director re-appointed for second term u/s 149(10)
180	Restrictions on power of the Board.
185	To advance any loan, give guarantee or provide security w.r.t, loan taken by any person in whom any director of the company is interested
186(3)	Loan and Investment by co. > limit u/s 186(2) (Pass SR by postal ballot if Sec 110 applicable)
196 (3)	Appointment of persons aged >= 70 years as MD, WTD or manager.
197(1)- 2nd Proviso	Payment of remuneration in excess of 5% or 10% or 1% or 3%. (but not 11%)
210	CG may order investigation into affairs of co. on receipt of intimation of SR by the company
212	Intimation to CG that affairs of company ought to be investigated by SFIO
248	For making an appln. to ROC for striking off name of the co. (SR or consent of 75% of SH)
271	For resolving winding up of the company by Tribunal.
455	For making an application to ROC for obtaining status of ROC

MATTERS REQUIRING - NO VOTE CAST AGAINST THE RESOLUTION

Section	Particulars
162	Appointment of >1 director by a Single Resolution can be made only if a resolution that the appointment shall be so made, if first passed w/o any vote being cast against it.

RESOLUTIONS THAT HAVE TO BE PASSED BY POSTAL BALLOT (MANDATORY)

[Only where Sec 110 applies to the company]

Section	Particulars
180(1)(a)	Approval for sale of the whole or substantially the whole of undertakings of the co.
186(3)	Giving Loans, Guarantee, Securities in excess of limit u/s 186(3)

IMPORTANT LIMITS FOR APPLICABILITY OF VARIOUS SECTIONS

Section No.	Provision	Limits
149(1)-2nd Proviso	Appointment of Women director	• Listed companies • Unlisted Public co. having PUSC ≥ Rs. 100 crs or T/O ≥ Rs. 300 crs
149(4)	Independent Directors Not Applicable to - JV, WOS, Dormant company u/s 455	Listed public companies - At least 1/3rd of total no. of directors Following Unlisted Public Cos - At least 2 Independent Directors • Paid up capital ≥ Rs. 10 crores, or • Turnover ≥ Rs. 100 crores, or • Aggregate of o/s loans, debentures and deposits > Rs. 50 crs
151	Small SH Director	Listed companies
177/178	AC and NRC	Same as limit u/s 149(4)
177 + Rule 7	Vigil mechanism	• Listed companies • Any company which accepts deposits from the public • Any co. which has borrowed money from banks & PFI > Rs. 50 crs
178	SRC	Co. having > 1,000 SH, DH, deposit-holders and other sec. holders.
203(1) + Rule 8	Mandatory Appointment of KMP	• Listed companies • Public companies having paid-up share capital ≥ Rs. 10 crore.
203	Whole time CS	Every Private Company having a paid-up share capital ≥ Rs. 10 crore.
203(1)-2nd Proviso	Chairman may be appointed as MD/ CEO	Public cos. having PUSC ≥ Rs. 100 crs +T/O ≥ Rs. 1,000 crs + engaged in multiple businesses & appointed CEO for each such biz.
204 + Rule 9	Mandatory Secretarial Audit	• Listed companies • Public companies having paid up capital ≥ Rs. 50 crores • Public companies having turnover ≥ Rs. 250 crores • Every company having o/s loans/borrowing from banks/PFI ≥ Rs. 100 crs
213	Investigation into Company's Affairs in Other Cases	On an appln. (supported by evidence showing reasons for invg.) by: 1. Co. having share cap - Not less than 100 mem or 1/10th of VP 2. Co. not having SC >= 1/5th of persons on register of members

244	Rights to apply u/s 241	Company having share capital - Not less than: 1. Lower of 100 members or 1/10th of total no. of members 2. Mem. >= 1/10th of issued SC of co. (provided all calls are paid) Co. not having SC - Not less than 1/5th of persons on reg. of mem.
245	Class Action:	Members: Company having share capital - Not less than: a. Lower of 100 members or 5% of total no. of members b. Members holding such % of issued SC [Unlisted co.- 5%; Listed co. - 2%] (provided all calls are paid) Company not having SC - >= 1/5th of persons on register of mem. Depositors: Not less than: a. Lower of 100 depositors or 5% of total no. of depositors b. Such depositors to whom company owes 5% of total deposit

IMPORTANT PENALTIES IN THE CHAPTER OF DIRECTORS [SEC 149 TO 205]

Section	Contravention	Person Liable	Jail?	And/ or	Fine
157	Failure of company to intimate DIN to ROC	Company and OID	-	-	Rs. 25k + Rs. 100/day upto Rs. 1L
159	Contravention u/s 152, 155 & 156	OID	-	-	Upto Rs. 50k+ Upto Rs. 500/ day
165	Maximum no. of directorship	Person who holds such directorship	-	-	Rs. 2,000/day up to Rs. 2 lakhs
166	Duties of director	Director	-	-	Rs. 1 lakh to Rs. 5 lakhs
167	Director functioning post vacation	Such director	-	-	Rs. 1 lakh to Rs. 5 lakhs
172	Contravention of Sec 149-172 if no specific penalty given	Company	-	-	Rs.50k + Rs. 500/day upto- Rs.3L
		OID	-	-	Rs.50k + Rs. 500/day upto- Rs.1L
173(4)	Failure to give notice of BOD Meeting	Officer whose duty to send	-	-	Rs. 25,000
178(8)	Contravention of Sec 177 and 178	Co	-	-	Rs. 5 lakhs
		OID	-	-	Rs. 1 lakh
182	Contravention of Sec 182	Company	-	-	Upto 5x amount contributed
		OID	Upto 6m	AND	Upto 5x amount contributed
184(4)	Failure to disclose interest u/s 184	Director concerned	-	-	Rs. 1 lakh

185	Contravention under Sec 185	Company	-	-	Rs. 5 lakhs to Rs. 25 lakhs
		OID	Upto 6m	Or	Rs. 5 lakhs to Rs. 25 lakhs
		Person to whom LGS is given	Upto 6m	Or	Rs. 5 lakhs to Rs. 25 lakhs
186	Contravention u/s 186	Company	-	-	Rs. 25,000 to Rs. 5 lakhs
		OID	Upto 2Yrs	AND	Rs. 25,000 to Rs. 1 lakhs
187	Contravention u/s 187	Company	-	-	Rs. 5 lakhs
		OID	-	-	Rs. 50,000
188	Contravention of sec 188 by entering into RPT	Dir./ employee who entered	-	-	Listed co - Rs. 25 lakhs Unlisted company - Rs. 5 lakhs
189	Failure to maintain register of C/A in which dir. intt.	Directors concerned	-	-	Rs. 25,000
190	Contract of employment with MD/WTD	Company	-	-	Rs. 25,000 for each default
		OID	-	-	Rs. 5,000 for each default
191	Contravention of Sec 191	Director concerned	-	-	Rs. 1 lakh
197	Contravention of Sec 197	Company	-	-	Rs. 5 lakhs
		Person concerned	-	-	Rs. 1 lakh
203	Contravention u/s 203	Company	-	-	Rs. 5 lakhs
		OID	-	-	Rs. 50K+ Rs. 1,000/day upto Rs.5L
204	Contravention u/s 204	Officer of Company/CS in practice	-	-	Rs. 2 lakhs

The End