

**PAPER 4: CORPORATE AND ECONOMIC LAWS**  
**PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2018**  
**EXAMINATION**

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

For November 2018 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1<sup>st</sup> May 2017 to 30<sup>th</sup> April, 2018 are relevant and applicable for said examinations.

This RTP of November 2018 examination will help the students to know of the significant changes, that are relevant and applicable for November 2018 examination.

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

**Part I: Section A: Company Law**

**CHAPTER 1 : APPOINTMENT AND QUALIFICATION OF DIRECTORS**

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

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

- (i) According to the amendment, section 152(6) & (7) , shall not apply to –
  - (a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
  - (b) a subsidiary of a Government company, referred to in (a) above."

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

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

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

**3. Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13<sup>TH</sup> June, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) in sub-rule (3),

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

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

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

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

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

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

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

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

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

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

Relevant sections	Amendment
Amendment of section 152	In section 152 of the principal Act,— (a) in sub-section (3), after the word and figures "section 154", the words and figures "or any other number as may be prescribed under section 153" shall be inserted; (b) in sub-section (4), after the word "Number", the words and figures "or such other number as may be prescribed under section 153" shall be inserted.
Amendment of section 153	In section 153 of the principal Act, the following proviso shall be inserted, namely:— "Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed."
Amendment of section 160.	In section 160 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:— "Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee."
Amendment of section 161.	In section 161 of the principal Act,— (i) in sub-section (2), after the words "alternate directorship for any other director in the company", the words "or holding directorship in the same company" shall be inserted; (ii) in sub-section (4),— (a) the words "In the case of a public company," shall be omitted; (b) after the words "meeting of the Board", the words "which shall be subsequently approved by members in the immediate next general meeting" shall be inserted.
Amendment of section	In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so

165.	numbered, the following Explanation shall be inserted, namely:— "Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included."
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## CHAPTER 2 : APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

### Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment in Section 2(51)	in clause (51), — (a) in sub-clause (iv), the word "and" shall be omitted; (b) for sub-clause (v), the following sub-clauses shall be substituted, namely:— "(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"

## CHAPTER 3 : MEETING OF BOARD AND ITS POWERS

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

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

(i) With respect to Section 173(5), the following sub-section shall be substituted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Following are the amendments:

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

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

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

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

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

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

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

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

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

- (2) **The provisions of this rule shall not apply to the following classes of companies, namely:—**
- (a) a banking company as defined in the Banking Regulation Act, 1949
  - (b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;
  - (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999
  - (d) a Government company referred to in clause (45) of section 2 of the Companies Act.
- (3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.
- (4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –
- (i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;

- (ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.
- (5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

#### 7. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of Section 180	In section 180 of the principal Act, in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves", the words "paid-up share capital, free reserves and securities premium" shall be substituted.
Amendment of Section 184	In section 184 of the principal Act,— (i) in sub-section (4), the words "shall not be less than fifty thousand rupees but which" shall be omitted; (ii) in sub-section (5), for clause (b), the following clause shall be substituted, namely:— "(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."
Amendment of section 188.	In section 188 of the principal Act,— (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— "Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:" (ii) in sub-section (3), for the words "shall be voidable at the option of the Board", the words "shall be voidable at the option of the Board or, as the case may be, of the shareholders" shall be substituted.



Omission of section 194	Section 194 of the principal Act shall be omitted.
Omission of section 195	Section 195 of the principal Act shall be omitted.

#### CHAPTER 4 : INSPECTION, INQUIRY AND INVESTIGATION

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

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

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

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

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

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

- a. **In case of other than government companies/foreign companies:** Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.
- b. **Competent authority:** The Director SFIO shall be the competent authority for all decisions pertaining to arrest.
- c. **In case of Government Company /foreign company:** Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.
- d. **Serving of Arrest order to arrestee:** The Director, Additional Director or Assistant

Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

- e. **Forwarding of copy of arrest order and other documents:** The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.
- f. **Maintenance of arrest order:** An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
- g. **Entry in arrest register:** The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
- h. **Preservation of copy of arrest order:** The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years
  - a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or
  - b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.
- i. **Applicability of provision of Cr.P.C:** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

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

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

## CHAPTER 5 : COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

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

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

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

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

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

## CHAPTER 9 : COMPANIES INCORPORATED OUTSIDE INDIA

### Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 379.	Section 379 of the principal Act shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:— "(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies: Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament."
Amendment of section 384.	In section 384 of the principal Act, in sub-section (2), after the word and figures "section 92", the words and figures "and section 135" shall be inserted.
Amendment of section 391.	In section 391 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— "(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply <i>mutatis mutandis</i> for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed."

**CHAPTER 10 : MISCELLANEOUS PROVISIONS****1. Notification of Section 247 vide Notification S.O. 3393(E) dated 18<sup>th</sup> October 2017**

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

**Section 247: Valuation by Registered Valuers.**

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

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<sup>1</sup> Substituted by the Companies (Removal of Difficulties) Second Order 2017

<sup>2</sup> Amended through the Companies (Amendment) Act, 2017 on 9<sup>th</sup> February, 2018

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

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

**COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017**

**2. Definitions**

(1) In these rules, unless the context otherwise requires -

"authority" means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;

"asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

"certificate of recognition" means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term "recognition" shall be construed accordingly;

"certificate of registration" means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term "registration" shall be construed accordingly;

"registered valuers organisation" means a registered valuers organization recognised under sub-rule (5) of rule 13;

"valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

**3. Eligibility for registered valuers**

(1) A person shall be eligible to be a registered valuer if he-

(a) Is a valuer member of a registered valuers organisation;

*Explanation.-* For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) Is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

(c) Has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

(d) Possesses the qualifications and experience as specified in rule 4;

(e) Is not a minor;

- (f) Has not been declared to be of unsound mind;
- (g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;
- (h) Is a person resident in India;

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

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

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

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

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

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

- (2) No partnership entity or company shall be eligible to be a registered valuer if-
  - (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
  - (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;
  - (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);
  - (d) Three or all the partners or directors, whichever is lower, of the partnership

entity or company, as the case may be, are not registered valuers; or

- (e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

#### 4. Qualifications and experience

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

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

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

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

#### 6. Application for certificate of registration

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

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

#### **7. Conditions of Registration**

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

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;



- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
- (k) in case a company is the registered valuer, be liable alongwith director who signs and acts in respect of a valuation assignment on behalf of the company;
- (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
- (m) comply with such other conditions as may be imposed by the authority.

#### **8. Conduct of Valuation**

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

valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

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

#### **9. Temporary surrender**

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

#### **10. Functions of a Valuer**

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

**12. Eligibility for registered valuers organisations**

- (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if -
- (i) it has been registered under section 25 of the Companies Act, 1956 (1 of 1956) or section 8 of the Companies Act, 2013 (18 of 2013) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;
  - (ii) a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

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

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
  - (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).
- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
  - (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;
  - (c) conducts training for the individual members before a certificate of practice is issued to them;
  - (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
  - (e) provides for continuing education of individuals who are its members;
  - (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
  - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the

Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure- III**, within one year from the date of commencement of these rules.

#### **14. Conditions of Recognition**

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

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

#### **15. Cancellation or suspension of certificate of registration or recognition**

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

#### **16. Complaint against a registered valuer or registered valuers organisation**

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees

of rupees one thousand in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

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

#### 18. Valuation Standards

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

#### 20. Punishment for contravention

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

#### 21. Punishment for false statement

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

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

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

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

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

### 4. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of Section 247	In section 247 of the principal Act, in sub-section (2), in clause (d), for the words "during or after the valuation of assets", the words "during a period of three years prior to his appointment as

	valuer or three years after the valuation of assets was conducted by him" shall be substituted.
Amendment of section 366.	In section 366 of the principal Act, in sub-section (2),— (i) for the words "seven or more members", the words "two or more members" shall be substituted; (ii) in the proviso, after clause (vi), the following clause shall be inserted, namely:— "(vii) a company with less than seven members shall register as a private company."
Amendment of section 374.	In section 374 of the principal Act, after clause (d), the following proviso shall be inserted, namely:— "Provided that upon registration as a company under this Part a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 shall be deemed to have been dissolved under that Act without any further act or deed."
Amendment of section 447.	In section 447 of the principal Act,— (i) after the words "guilty of fraud", the words "involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower" shall be inserted; (ii) after the proviso, the following proviso shall be inserted, namely:— "Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both."
Amendment of section 458	In section 458 of the principal Act, in sub-section (1), the proviso shall be omitted.

## CHAPTER 11: COMPOUNDING OF OFFENCES, ADJUDICATION, SPECIAL COURTS

### Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 441.	In section 441 of the principal Act, in sub-section (1), for the words "with fine only", the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted.

<p>Insertion of new section 446A.</p>	<p>After section 446 of the principal Act, the following sections shall be inserted, namely:—</p>
<p>Factors for determining level of punishment.</p>	<p>"446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—                  (a) size of the company;                  (b) nature of business carried on by the company;                  (c) injury to public interest;                  (d) nature of the default; and                  (e) repetition of the default.</p>
<p>Lesser penalties for One Person Companies or small companies.</p>	<p>446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections."</p>

**CHAPTER 12: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL**

**1. Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29<sup>th</sup> June , 2017**

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

- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";
- (b) after the third proviso, the following proviso shall be inserted, namely:-

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

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

Relevant sections	Amendment
Amendment of section 409	In section 409 of the principal Act, in sub-section (3),—

		<p>(i) in clause (a), for the words "out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service", the words "and has been holding the rank of Secretary or Additional Secretary to the Government of India" shall be substituted;</p> <p>(ii) for clause (e), the following clause shall be substituted, namely:—  "(e) is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."</p>
Amendment section 411.	of	<p>In section 411 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—  "(3) A technical member shall be a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy."</p>
Amendment section 412	of	<p>In section 412 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—  "(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of—  (a) Chief Justice of India or his nominee— Chairperson;  (b) a senior Judge of the Supreme Court or Chief Justice of High Court— Member;  (c) Secretary in the Ministry of Corporate Affairs— Member; and  (d) Secretary in the Ministry of Law and Justice— Member.  (2A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote."</p>



**SECTION B: SECURITIES LAWS****CHAPTER 2: SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018 w.e.f. 12.02.2018**

Vide this amendment regulation, Clause (c) of the Regulation 82 which dealt with the conditions for qualified institutions placement has been omitted. Following was the clause prior to the omission.

“(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;”

**PART II: ECONOMIC LAWS****CHAPTER 1: The Foreign Exchange and Management Act, 1999****Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018**

**As per the Notification dated 26<sup>th</sup> of March, 2018**, the Reserve Bank of India makes the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 with the enforcement from the date of their publication in the Official Gazette i.e., 26<sup>th</sup> of March, 2018.

**2. Relevant Definitions:- In these Regulations, unless the context otherwise requires-**

**‘Non-Resident Indian (NRI)’** means a person resident outside India who is a citizen of India;

**‘Overseas Citizen of India (OCI)’** means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

**‘Repatriation outside India’** means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency;

**3. Acquisition and Transfer of Property in India by a Non-Resident Indian or an Overseas Citizen of India:-**

An NRI or an OCI may-

(a) acquire immovable property in India other than agricultural land/ farm house/ plantation property:

Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any nonresident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

- (b) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI.

**4. Acquisition of Immovable Property for carrying on a permitted activity:-**

A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

- (a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity;

Provided that

- i all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and
  - ii the person files with the Reserve Bank a declaration in the form IPI as prescribed by Reserve Bank from time to time, not later than ninety days from the date of such acquisition.
- (b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).

Provided no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

**5. Purchase/ sale of Immovable Property by Foreign Embassies/ Diplomats/ Consulate Generals:-**

A Foreign Embassy/ Diplomat/ Consulate General may purchase/ sell immovable property in India other than agricultural land/ plantation property/ farm house provided (i) clearance from Government of India, Ministry of External Affairs is obtained for such purchase/ sale, and (ii) the consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

**6. Joint acquisition by the spouse of an NRI or an OCI:-**

A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Provided that

- (i) The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
- (iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;
- (iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

**7. Acquisition by a Long-Term Visa holder:-**

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for carrying out self-employment subject to the following conditions:

- (a) the property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas;
- (b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on LTV;

- (c) the registration documents of the property should mention the nationality and the fact that such person is on LTV;
- (d) the property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities;
- (e) a copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division);
- (f) such person shall be eligible to sell the property only after acquiring Indian citizenship. However, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP/FRO/FRRO concerned.

**8. Repatriation of sale proceeds:-**

- (a) A person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section;
- (b) In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
  - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;
  - (ii) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account;
  - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.
- (c) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan.

**9. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries:-**

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Provided this prohibition shall not apply to an OCI.

Explanation: For the purpose of this regulation the term "citizen" shall include natural persons and legal entities.

**10. Prohibition on transfer of immovable property in India:-**

Save as otherwise provided in the Act or Regulations, no person resident outside India shall transfer any immovable property in India:-

Provided that

- (i) The Reserve Bank may, for sufficient reasons, permit the transfer, subject to such conditions as may be considered necessary.
- (ii) A bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.
- (iii) An Authorized Dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender.

Provided

- (a) the funds shall be used by the borrowing company only for its core business purposes overseas;
  - (b) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- (iv) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided that the resident is not otherwise prohibited from such acquisition.

**11. Miscellaneous:-**

Any transaction involving acquisition or transfer of immovable property under these regulations shall be undertaken:

- (a) through banking channels in India;
- (b) subject to payment of applicable taxes and other duties/ levies in India.

**12. Saving:-**

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these regulations.

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

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

- (a) in section 2, in sub-section (1), in clause (u), after the words “within the country”, the words “or abroad” shall be inserted;
- (b) in section 5,—
  - (i) in sub-section (1), after the second proviso, the following proviso shall be inserted, namely:— “Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”;
  - (ii) in sub-section (3), for the word, brackets and figure “sub-section (2)”, the word, brackets and figure “sub-section (3)” shall be substituted;
- (c) in section 8,—
  - (i) in sub-section (3), in clause (a), after the words “continue during”, the words “investigation for a period not exceeding ninety days or” shall be inserted;
  - (ii) in sub-section (8), after the proviso, the following proviso shall be inserted, namely:— “Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”;
- (d) in section 19, in sub-section (3),— (i) after the words “be taken to a”, the words “Special Court or” shall be inserted; (ii) in the proviso, after the words “from the place of arrest to the”, the words “Special Court or” shall be inserted;
- (e) in section 45, in sub-section (1), —

- (i) for the words “punishable for a term of imprisonment of more than three years under Part A of the Schedule”, the words “under this Act” shall be substituted;
- (ii) in the proviso, after the words “sick and infirm,”, the words “or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees” shall be inserted;
- (f) in section 50, in sub-section (5), in the proviso, in clause (b), for the word “Director”, the words “Joint Director” shall be substituted;
- (g) section 66 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”;

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

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

#### **CHAPTER 6: INSOLVENCY AND BANKRUPTCY CODE, 2016**

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

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

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

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

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

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

- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or
- (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or

(c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

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

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

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

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

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

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

Significant relevant changes are as follows:

**(i) Amendment in section 2 of the Principal Act**

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

**(ii) Amendment in section 5 of the Principal Act**

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



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

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

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

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

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

## PART – II: QUESTIONS AND ANSWERS

### QUESTIONS

#### Part I: Corporate Laws

#### Section A: Company Law

#### Appointment and Qualifications of Directors

1. (i) The Promoters of M/s Frontline Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:
  - (a) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.
  - (b) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?
  - (c) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was

rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received.

- (d) Can the Board of Directors increase the strength of companies' directors to 18 from 11 by appointing additional directors through passing single resolution?
- (ii) M/s. Bosch and Lawrence Limited, an unlisted company has a paid up equity share capital of ₹ 11 crores as on 31<sup>st</sup> March, 2013. Mr. Robert was appointed as an Independent Director at the Annual General Meeting of the company held on 29-09-2015 for a period of one year. Again, he was appointed in the subsequent Annual General Meeting held on 28-09-2016 for a period of two years as his second consecutive term. Examine under the provisions of the Companies Act, 2013 whether he can be again appointed in the Annual General Meeting to be held in September 2018 for another period of 2 years to complete his total term of 5 years?

#### **Appointment and remuneration of Managerial Personnel**

2. (i) The Article of Association of a listed company have fixed payment of sitting fee for each meeting of Directors subject to maximum of ₹ 30,000. In view of the increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.
- (ii) Mr. AMIT is the Managing Director of ANJ Limited, which is a non-government public company. The directors of CHH Limited decided to appoint Mr. AMIT as the Managing Director of the company, even though Mr. AMIT decided not to vacate his place of office of Managing Director of ANJ Limited. A notice for a Board meeting specifying a resolution containing the proposal of appointment of Mr. AMIT was served to all the eligible directors of CHH Limited. Out of eight directors of the company, six directors attended the meeting and out of them four directors gave consent to the resolution, one director voted against the said appointment and another director abstained from voting. The Board of Directors seek your opinion whether Mr. AMIT can be appointed as the Managing Director, of the company in this situation. Referring to the applicable provisions of the Companies Act, 2013, advise them.

#### **Meetings of Board and its powers**

3. (i) M/s. Multiplex Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Delhi. Since it is not possible to convene the Board Meeting immediately, as the directors are at different place in connection with various works, the Managing Director seeks your advice on the following matters:
- (a) Whether the resolution pertaining to the joint venture agreement is required to be passed at the Board Meeting convened for this purpose or whether it can be passed by means of a circular resolution?

- (b) What are the resolutions that are required to be passed only at the meetings of the Board of Directors?
- (c) The steps that are required to be taken to pass the Board resolution by circulation.

Advise the Managing Director in the light of the provisions of the Companies Act, 2013.

- (ii) ASK Housing Finance Limited are prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited subject to the condition that the loans are guaranteed by M/s. NEWS Pharmacy Limited. M/s NEWS Pharmacy Limited is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 2013 by providing the guarantees. Advise the company about this legal requirement under the Companies Act, 2013 to give effect to the above proposal. What would be your advice if the company was required to provide security instead of guarantee?

#### **Inspection, inquiry and Investigation**

- 4. (i) Some creditors of NTY Limited approached you to guide them to apply to the Tribunal for seeking an order for conducting an investigation into the affairs of the company due to the fact that the business of the company is being conducted with intention to defraud its creditors. Referring to the provisions of the Companies Act, 2013, guide them regarding the circumstances under which and how a person, not being a member of the company can apply to the Tribunal to seek an order for conducting an investigation into the affairs of a company.
- (ii) A group of creditors of MBIND Bronze Limited makes a complaint to the Registrar of Companies, Himachal Pradesh alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 am on 6 January, 2018 and the registrar has attempted to enter the premise of the company but has been denied by the company, due to not having order from the special court.

Is the contention of company being valid in terms of Companies Act, 2013? Discuss.

#### **Compromises, Arrangements and Amalgamations**

- 5. Cotton On Yarn Ltd., and Country Cotton Blossom Ltd., are two listed companies engaged in the Business of Textiles. The companies are not making profits and as such their share's market price have gone down. A substantial portion of their share capital is held by Central Government as well as some Public Financial Corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a

single company. Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 2013.

#### **Prevention of Oppression and Mismanagement**

6. A group of depositors in M/s. Bright Limited, a listed company, appointed Mr. Fair, an advocate as a representative to file an application in the National Company Law Tribunal (NCLT) on the behalf of the depositors to bring a Class Action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are being conducted in a manner which is prejudicial to the interest of the depositors being oppressive.

Examine in the given situation, whether the appointment of Mr. Fair is valid as regards to the filling of the application before the Tribunal in the light to the provisions of the Companies Act, 2013?

#### **Winding up**

7. M/s Sagar Retail Mega Mart Ltd. applied for winding up on 1<sup>st</sup> April, 2018 before the Honourable Tribunal by passing a special resolution as per the provision of section 271(1)(a) of the Companies Act, 2013 on account of fall in business and continued losses but not due to inability to pay debts. The company was in the business of ordinary retail trade of multiple branded goods. A few shareholders of the company have alleged before the Honourable Tribunal that the company had failed to maintain proper books of accounts for over a period of more than three years immediately prior to the date of winding up application and the sole reason cited by them in support of their allegation is that no proper statements of all goods sold and purchased by the company have been kept as such every officer in default must be punished as per the provisions of the Companies Act, 2013. Mr. Ravi the CFO and officer in default do not refute the allegation of non-maintenance but is of the opinion that this act as per the provision of the Companies Act, 2013 is not punishable. Decide whether the opinion of the CFO is correct. Would your answer be different had the business of the company be wholesale trade instead of ordinary retail trade?

#### **Producer Companies**

8. Raj shree Producer Co. Ltd. was incorporated on 1<sup>st</sup> April 2010. Its paid up capital is ₹ 10 lacs consists of 1 lac equity shares of ₹ 10 each held by 100 individuals. There are 6 directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:
- (i) What is the quorum for the Annual General Meeting?
  - (ii) What is the quorum for the Board Meeting?
  - (iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether is it permissible?

- (iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2018-19?

**Companies incorporated outside India**

9. Examine and state whether the following Companies can be considered as 'Foreign Company' under the Companies Act, 2013:
- (i) A company which is incorporated outside India employs agents in India but has no place of business in India.
  - (ii) A company incorporated outside India having shareholders who are all Indian citizens.
  - (iii) A company incorporated in India but all the shares are held by foreigners.
  - (iv) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.

**Miscellaneous Provisions**

10. (i) XYZ Ltd. had filed certain documents with Registrar of Companies (RoC). The said documents were authenticated by the RoC and kept on record. In a suit against the company the RoC produced the said documents in the court of law. XYZ Ltd. intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original document as evidence. Advise XYZ Ltd. as per the provisions of the Companies Act, 2013.
- (ii) JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

**Compounding of offences, Adjudication, Special Courts and National Company Law Tribunal and Appellate Tribunal**

11. (i) Mr. PRTJ was appointed as a member of the National Company Law Appellate Tribunal. During the month of April, 2018, he was adjudged as an insolvent by a competent authority. The Central Government after consultation with the Chief Justice of India removed Mr. PRTJ from the membership of the National Company Law Appellate Tribunal. Being aggrieved by the decision of the Central Government, Mr. PRTJ approached you to confirm himself whether the decision of the Central Government was appropriate since, he was not given a reasonable opportunity of being heard as a matter of principle of natural justice. Advise him.

Also state the circumstances in which the Central Government after consultation with the Chief Justice of India can remove any person from the office of President, Chairperson or any Member of the National Company Law Appellate Tribunal.

Your answer should refer to the relevant provisions of the Companies Act, 2013.

11. (ii) What is the object of constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?

**Corporate Secretarial Practice–Drafting of Notices, Resolutions, Minutes and Reports**

12. Draft a resolution proposed to be passed at a General Meeting of M/s. Red Rooster Limited a public company giving consent to the Board of Directors for borrowing upto a specified amount in excess of the limits laid down under section 180(1)(c) of the Companies Act, 2013 and also state the borrowings, which are to be excluded from the said limits.

**Section B: Securities Laws**

**The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulation) Rules, 1957**

13. In public interest, HEM Stock Exchange Limited was issued an order by the Stock Exchange Board of India to produce certain information and explanation relating to its operation in writing. The management of the stock exchange were reluctant to part with such information with SEBI and approached you to seek your advice in the following matters:
- Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI;
  - Power of SEBI to ask for the information asked as stated above, over and above the periodic returns;
  - Period for which the Stock Exchange is required to maintain the books of accounts which may be inspected by SEBI.
  - Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI.

Advise them referring to the relevant provisions of the Securities Contracts (Regulation) Act, 1956.

**The Securities Exchange Board of India Act, 1992, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015**

14. State the types and functions of the various committees constituted under the SEBI(LODR) Regulations, 2015?

**PART II: ECONOMIC LAWS****The Foreign Exchange Management Act, 1999**

15. Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1<sup>st</sup> June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for ₹60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for ₹ 65 lacs. Mr. Henry Benjamin's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible.

**The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**

16. M/s Solomon Optimum Nutrition Limited had availed credit facilities from Royal Bank Ltd. The company made repayment of loan to some extent and not entirely and accordingly, the bank took recourse under the provisions of Section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and was duly advertised by the bank. The company also filed an application under Section 17(1) of SARFAESI Act, 2002 before the debts recovery tribunal which was dismissed by the impugned order. Being aggrieved the company approached the court. Examine in the light of the SARFAESI Act, 2002 whether the company will succeed in the petition filed before the court.

**The Prevention of Money Laundering Act, 2002**

17. Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. Mr. Alfred, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in South Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

**Foreign Contribution Regulation Act, 2010**

18. Mr. Peter, a Member of the Legislature in India, visited Sydney, Australia to attend World Trade Conference as a representative of Government of India after obtaining due permission of the Central Government as per the provisions of Foreign Contribution (Regulation) Act, 2010. His expenditure on foreign travel was borne by Bret Lee Limited, a foreign company. While attending the conference, Mr. Peter suddenly encountered chest pain and he was immediately admitted in the nearby hospital for medical care and treatment. The medical expenses of ₹ 2,00,000/- was borne by Bret Lee Limited. Mr. Peter seeks your advice about the procedure to be followed in the above situation under the provisions of Foreign Contribution (Regulation) Act, 2010. Please advise suitably.

**The Arbitration and Conciliation Act, 1996**

19. On 1<sup>st</sup> day of April, 2016, Arnold Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors for supply of parts of mixer and grinder for manufacturing its latest model. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of The Arbitration and Conciliation Act, 1996, discuss:
- (i) The type of arbitration agreement made between them.
  - (ii) Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2017.

**The Insolvency and Bankruptcy Code, 2016**

20. What is the Insolvency Resolution Process for financial creditors?

**SUGGESTED ANSWERS/HINTS**

1. (i) (a) According to Section 152(6) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation
- Directors liable to retire by rotation:  $11 \times \frac{2}{3} = 7.3$  or 8
- So, maximum number of persons, who can be appointed as directors not liable to retire by rotation:  $11 - 8 = 3$ .
- (b) According to Section 152(6)(c) of the Companies Act, 2013,  $\frac{1}{3}$ <sup>rd</sup> of such of the Directors for the time being as are liable to retire by rotation, or their number is neither three nor a multiple of three, then, the number nearest to the  $\frac{1}{3}$ <sup>rd</sup> shall retire from office. Therefor the Directors liable to retire by rotation are  $11 \times \frac{2}{3}$  i.e. 7.3 or 8.
- No. of directors to retire at AGM:  $8 \times \frac{1}{3}$  i.e. 2.67. Hence nearest to  $\frac{1}{3}$ <sup>rd</sup> is 3.
- (c) According to Section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of Section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director.



In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14<sup>th</sup> day. Hence, the contention of the directors are valid.

- (d) According to Section 149(1) of the Companies Act, 2013, if the company wants to appoint more than 15 directors, it can do so after passing a special resolution. Hence, the Board of directors of Frontline Limited, before increasing the strength of directors from 11 to 18 by appointing additional directors, have to pass a special resolution.

But, these appointments cannot be done through single resolution. Each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement. A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved. [Section 162 of the Act].

- (ii) As per Section 149(10) of the Companies Act 2013, an Independent Director shall hold office for a term up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) no independent director shall hold office for more than two consecutive terms. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director.

The Ministry of Corporate Affairs in its General Circular 14/2014 dated June 09, 2014 clarified that section 149 (10) of the Act provides for a term of "up to five consecutive years" for an independent director. As such while appointment of an independent director for a term of less than five years would be permissible, appointment of any term (whether for five years or less) is to be treated as one term under section 149 (10) of the Act. Further under section 149 (11) of the Act, no person hold office of independent director for more than 'two consecutive terms'. Such a person shall have to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.

Therefore Mr. Robert cannot be appointed as an Independent Director at the AGM proposed to be held in 2018. In such case the person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

2. (i) Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board / Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director attending

meetings of the Board or committees thereof may be decided by the Board of Directors or the Remuneration Committee thereof which shall not exceed the sum of ₹ 1 lac per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-dependent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ₹ 30000 to ₹ 45000 per meeting by passing a resolution in board meeting and altering the Articles of Association by passing special resolution.

**(ii) Appointment of Key Managerial Personnel**

As per Section 203(3) of the Companies Act, 2013, a whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

However, the above sub-Section (3), shall not disentitle a key managerial personnel from being a director of any company with the permission of the Board.

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

In the given case, unanimous consensus of all the directors present at the meeting was lacking. Hence, Mr. Amit cannot be appointed as a Managing Director of CHH Limited.

3. (i) The directors of the company act together as a body and generally at the meeting of the Board duly convened, unless special powers are delegated to an individual director or the managing director. Where it is not possible to hold board meetings because the directors are busy elsewhere or the time for convening such a meeting is short, it is possible that the required resolution can be passed by way of circular resolution as provided in section 175 of the Companies Act 2013.

However, under section 179 of the Companies Act 2013, certain powers can be exercised by the Board of directors by means of a resolution passed at meeting convened for this purpose.

They are:

- (i) to make calls on shareholders in respect of money unpaid on their shares
- (ii) to authorize buy back of securities under section 68
- (iii) to issue securities, including debentures, whether in or outside India
- (iv) to borrow monies

- (v) to invest the funds of the company and
- (vi) to grant loans or give guarantee or provide security in respect of loans
- (vii) to approve financial statements and the Board's report
- (viii) to diversify the business of the company
- (ix) to approve amalgamation, merger or reconstruction
- (x) to take over a company or acquire a controlling or substantial stake in another company.
- (xi) Any other matter as prescribed in Rule 8 of the *Companies (Meetings of the Board and its Powers) Rules, 2014*.

In view of the above, the Managing Director can go ahead and complete the joint venture agreement after obtaining the approval of the board by passing a circular resolution.

For this purpose, the proposed resolution has to be circulated in draft along with the other necessary papers, if any, to all the directors in India at their usual residential addresses.

The resolution will become valid if the same is approved by majority of the directors and who are entitled to vote on the resolution. There after the resolution as passed by way of circulation will be entered in the minutes book of the Board of Directors and is enough compliance of the provisions of Companies Act, 2013 in this regard.

- (ii) As per Section 186(2) of the Companies Act, 2013, no company shall directly or indirectly
  - (a) give any loan to any person or other body corporate;
  - (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
  - (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more, except with the prior approval by means of a special resolution passed at a general meeting.

However, explanation provided in Section 186(2) of the Companies Act, 2013 states that for the purposes of this sub-Section, the word "person" does not include any individual who is in the employment of the Company.

As per the given facts, ASK Housing Finance Company Limited was prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited on the condition that such loans are guaranteed by the M/s NEWS Pharmacy Limited exceeding the limits prescribed in the Companies Act, 2013.

Here, the loans are to be guaranteed by M/s. News Pharmacy Limited for its employees which falls within the purview of the explanations which includes guarantees given for the employees. So, Section 186(2) shall not be applicable to it. Hence, it can give the guarantee without any condition on the limits imposed in the Section 186(2). Hence, there are no legal requirements to be fulfilled under the Companies Act, 2013 to give effect to the above proposal.

Answer will remain the same, even if the company provides security instead of guarantee as the provisions of the Section 186(2) are applicable for providing security also.

4. (i) According to Section 213(b)(i) of the Companies Act, 2013, the Tribunal may, on filling of an application by any other person (not being a member of company) or otherwise, if the Tribunal is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

The creditors of NTY Ltd should be guided in terms of the provisions stated above.

- (ii) Section 209 of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of:
- A company or
  - Relating to the key managerial personnel or
  - any director or
  - Auditor or
  - Company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers:

- a. enter with such assistance as may be required and search the place where such books or papers are kept, and
- b. Seize such books and papers as he considers necessary after allowing the company to take copies of the order from the Special court.

In the given scenario, the registrar has failed to obtain possession from special court. So, he is not authorised to enter the premises of the company and seize the books of accounts of MBIND Bronze Limited. Hence, the contention of MBIND Bronze Limited is valid in law.

**5. Central Government may by order provide for amalgamation in public interest.**

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government, may, by order notified in the official gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations, as may be specified in the order.

**Continuation by or against the transferee company of any legal proceedings**

The order may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to amalgamation.

**Same interest rights or compensation**

Every member or creditor including a debenture holder of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor and in case the interest or rights of such member or creditor in or against the transferee company are less than the interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the official gazette and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

**6. In the given instance, an appointment of Mr. Fair was made by a group of depositors of M/s. Bright Limited (listed company), as their representative to bring a Class Action Suit against the management of the Company.**

The given problem will be dealt with Section 432 read with the 245(10) of the Companies Act, 2013. Section 432 states that a party to any proceeding or appeal before the Tribunal or Appellate Tribunal as the case may be, may appear in person or authorize one or more Chartered Accountant or Company Secretaries or Cost Accountants or legal practitioners or any other person to present his case before the Tribunal or Appellate Tribunal as the case may be.

Whereas, Section 245(10) of the Companies Act, 2013, provides that an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in section 245(1) subject to the compliances of this section .

In view of the above, the appointment of Mr. Fair is valid and an application of Mr. Fair who is a representative of depositors, will be admitted by the Hon'ble Tribunal, provided, the requirement of minimum number of members filing the application under Section 245(3)(ii) is fulfilled.

**7. Failure to maintain proper books of accounts [Section 338(1) of the Companies Act, 2013]**

- where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up,
- every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable,
- be punishable with imprisonment for a term which shall be not less than one year but which may extend to three years and with fine which shall not be less than 1 lakh rupees but which may extend to three lakh rupees.

**Conditions when it shall be deemed that proper books of account have not been kept [Section 338(2) of the Act]:** For the purposes of sub-Section (1), it shall be deemed that proper books of account have not been kept in the case of any company,—

- where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, have not been kept.

In the instant case, no proper statements of all goods sold and purchased by the company engaged in ordinary retail trade is kept. It shall be deemed that proper books of account have been kept as ordinary retail trade is an exception under sub-Section (2). Thus, opinion of CFO is correct.

If the company is engaged in wholesale trade instead of ordinary retail trade, then it is deemed that proper statements of all goods sold and purchased by the company engaged in wholesale retail trade is not kept for more than 3 years period immediately prior to the date of winding up application. Hence, in this case, the CFO opinion will not hold good and will be punishable.

- 8. (i)** As per Section 581Y of the Companies Act, 1956, unless the Articles requires a larger number, one fourth of the total number of members of the producer company shall be the quorum at a general meeting. In this case, the company has got 100 members and hence, the quorum is 25.
- (ii)** Section 581 V of the Companies Act, 1956 provides that the quorum for a meeting of the Board shall be one third of the total strength of directors, subject to a minimum of

three. In the given case, 1/3 of 6 directors comes to 2, but minimum required is 3, hence, the quorum will be 3 directors for a board meeting.

- (iii) Section 581 P of the Companies Act, 1956 empowers the Board of Directors of Producer Company to co-opt one or more experts as director, but not exceeding one fifth of the total number of directors. As there are 6 directors in the given case, hence, co-opting one expert on the Board will be in order.
- (iv) Yes, as per Section 581ZF of the Companies Act, 1956, every producer company is required to have internal audit of its accounts carried out by a Chartered Accountant at such intervals and in such manner as may be specified in the Articles.

**9. As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which-**

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.
- (i) A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business in India though employs agents in India. It will not be deemed to be a foreign company.
- (ii) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business in India.
- (iii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India.
- (iv) According to the *Companies (Registration of Foreign Companies) Rules, 2014*, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:
  - (a) Business to business and business to consumer transactions, data inter-change and other digital supply transactions
  - (b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India
  - (c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management,
  - (d) Online services such as telemarketing, telecommuting, telemedicine, education and information research.

- (e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise.

Therefore, looking to the above description, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.

**10. (i) Admissibility of certain documents as evidence:**

Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to the provisions of that section, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purpose of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof of production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

On the ground stated above, XYZ Ltd. cannot validly raise any objection on the documents already filed by it with the Registrar.

- (ii) The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions-
1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
  2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
  3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.
  4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an



application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

11. (i) According to Section 417(1) of the Companies Act, 2013, the Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who—
- (a) has been adjudged an insolvent; or
  - (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
  - (c) has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or
  - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or
  - (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (b) to (e) without giving him a reasonable opportunity of being heard.

As per the proviso stated above, in case of sub-clause (a), i.e. where there is a case of insolvency, there is no requirement of giving an opportunity of being heard by the member of the NCLAT. Hence, the action taken by the Central Government against PRTJ is valid.

**Circumstances under which the Central government can remove the President, the Chairperson etc.,**

According to Section 417(2) of the Companies Act, 2013, the President, the Chairperson or the Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

In the instant case, it is advised that the decision of the Central Government to remove (without giving reasonable opportunity of being heard) Mr. PRTJ, member of NCLAT

who was adjudged as an insolvent by a competent authority is appropriate as per the clause (a) of Section 417(1) of the Companies Act, 2013.

- (ii) Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

**Filing of application:** Application for mediation and conciliation can be made by:

- (a) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)
- (b) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending any, suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

## 12. Draft of ordinary resolution under Section 180(1)(c) of the Companies Act, 2013

"Resolved that the company hereby consents to the Board of Directors borrowing monies not exceeding ₹ ..... (Rupees .....) in excess of the aggregate of the \*paid-up capital of the company, its free reserves and securities Premium, that is to say reserves not set apart for any specific purpose, as provided in Section 180(1)(c) of the Companies. Act, 2013, and in addition to any temporary loans obtained from the company's bankers in the ordinary course of business".

### **Borrowings**

Section 180(1)(c) does not apply to the borrowing by a company by way of temporary loans obtained from the company's bankers in the ordinary course of business. Therefore, in calculating the limits stipulated in this provision, temporary loans obtained from the company's bankers in the ordinary course of business shall be excluded.

The expression 'temporary loans' means loans repayable on demand or within six months from the date of the loan such as short term cash credit arrangements, the discounting of bills and the issue of other short terms loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of capital nature [Explanation to Section 180 (1)(c)].

**\*Through the enforcement of the Companies (Amendment) Act, 2017 w.e.f 9<sup>th</sup> February, 2018, in section 180 in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves" the word "paid-up share capital, free reserves and securities premium" is substituted.**

13. The question can be answered with reference to Section 6 of the Securities Contract (Regulations) Act, 1956 which empowers the Central Government to call for information. Accordingly:

- (a) **Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI:** Every recognized stock exchange should furnish periodical returns to SEBI in the prescribed format. These Returns contain information on current affairs of the Exchange including volume and value of transactions, short deliveries, important decisions taken by Board etc. [Section 6(1) of the Securities Contracts (Regulation) Act, 1956].
- (b) **Power of SEBI to ask for the information asked as stated above, over and above the periodic returns:** SEBI may by order in writing call for information or explanation relating to affairs of an Exchange or its member. [Section 6(3)(a) of the Act]
- (c) **Period for which the Stock Exchange is required to maintain the books of accounts which may be inspected by SEBI:** Every Stock Exchange has to maintain books of accounts for a period of 5 years and these books may be inspected by SEBI at any point of time. [Section 6(2) of the Act]
- (d) **Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI:** Every Director, Manager, Secretary or officer of the Exchange; every member of such stock exchange; if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm and every other person or body of persons who has had dealings in the course of business with any of the persons mentioned above whether directly or indirectly, is bound to provide information to Enquiry officer or SEBI representative who are looking into the affairs of the Exchange. [Section 6(4) of the Act]

14. **Types of Committees under SEBI (LODR) Regulations, 2015**

**A. Audit Committee:**

Every listed entity shall constitute a qualified and independent audit committee which shall have:

- (a) The audit committee shall have minimum three directors as members.
- (b) Two-thirds of the members of audit committee shall be independent directors.
- (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- (d) The chairperson of the audit committee shall be an Independent Director and he shall be present at Annual general meeting to answer shareholder queries.
- (e) The Company Secretary shall act as the secretary to the audit committee.
- (f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory

auditor and any other such executives to be present at the meetings of the committee.

**Meetings of Audit Committee:**

- (a) The audit committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings.
- (b) The Quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least 2 Independent directors.
- (c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

**B. Nomination and Remuneration Committee:**

The Board of directors shall constitute the nomination and remuneration committee as follows:

- The committee shall comprise of at least 3 directors;
- All directors of the committee shall be Non-Executive Directors; and
- At least 50 percent of the directors shall be independent directors.

The Chairperson of the nomination and remuneration committee shall be an independent director. The chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

**C. Stakeholders Relationship Committee:**

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- The Chairperson of this committee shall be a Non-Executive director.
- The Board of Directors shall decide other members of this committee.

**D. Risk Management Committee**

- The Board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.

- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
  - The Board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
  - **The provisions of this regulation regarding risk management committee shall be applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.**
15. Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means:
- (a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India
  - (b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

- (1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.
- (2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account

transactions by persons resident outside India are given in Schedule II to the *Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000*. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

16. According to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with prescribed fees to the Appellate Tribunal within 30 days from the date of receipt of the order of Debts Recovery Tribunal.

Further, no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt.

Thus, in the given situation Solomon Optimum Nutrition Limited can appeal to the Appellate Tribunal (now to NCLAT) by following the above provisions.

17. **Offence of Money Laundering:** Section 2(i)(y) of the prevention of Money Laundering Act, 2002 defines the term "scheduled offence", which accordingly means -
- (i) the offences specified under Part A of the Schedule; or
  - (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more
  - (iii) The offences specified under Part C of the Schedule.

This Schedule to the Act gives a list of all the above offences.

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

**Punishment:**

Section 4 of the said Act provides for the punishment for Money- Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

18. Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Central Government for any foreign hospitality. Foreign Hospitality [as per section 2(m)]

means any offer not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country with free boarding lodging or medical treatment. Therefore, prior approval is required from Central Government for the medical expenses. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which and the manner in which such hospitality was received by him.

As per Rule 7 of *Foreign Contribution (Regulation) 2011*, foreign hospitality may be received by member of Legislature in the following manner.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Hence, Mr. Peter has to follow the above procedure.

**19.** There are two basic types of arbitration agreement:

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

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

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Arnold Food Processors Limited shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

**20.** A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of

its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.