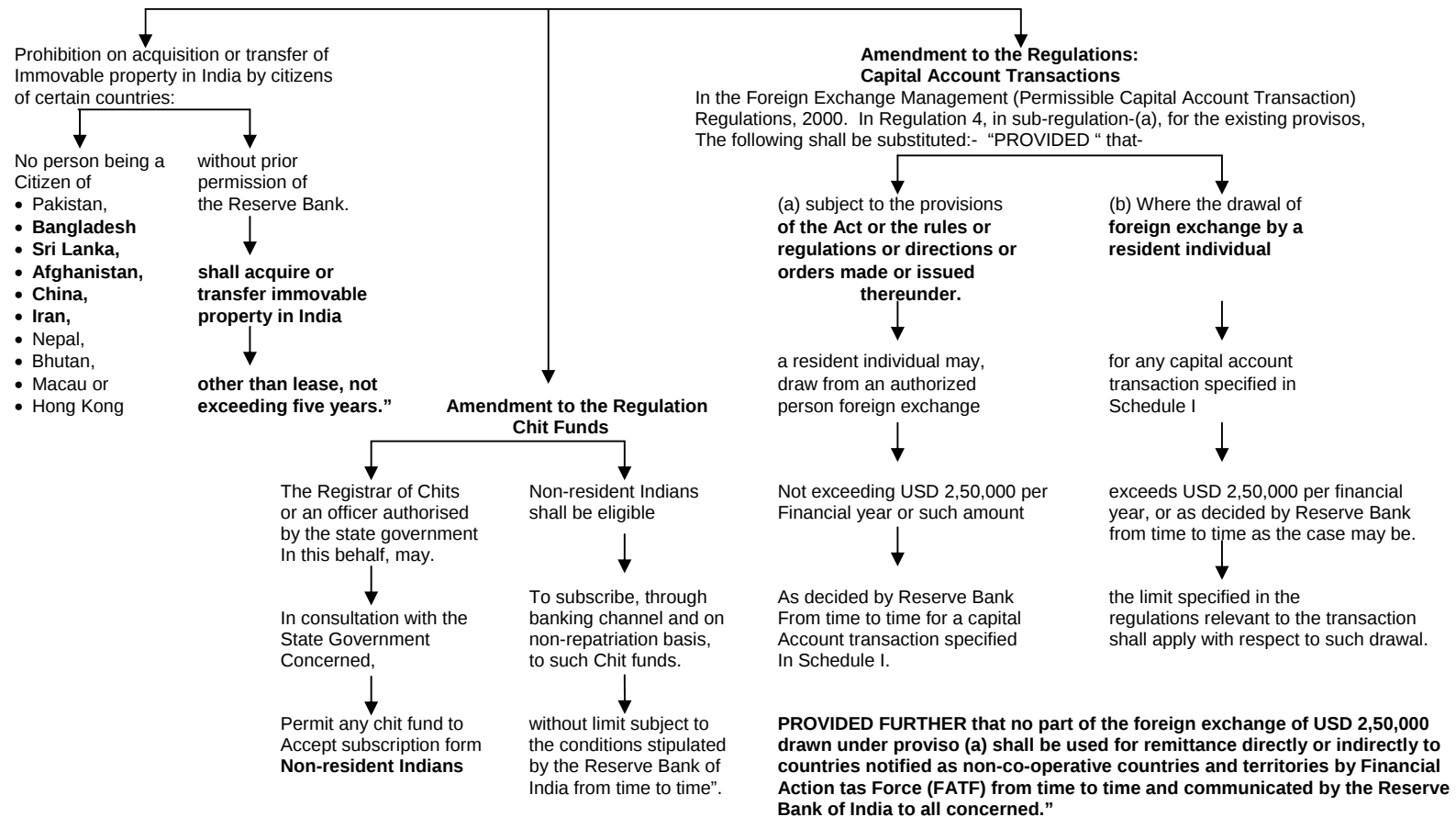


Foreign Exchange Management Act, 1999



SECURITY EXCHANGE BOARD OF INDIA ACT, 1992

Amendment in ICDR Regulation
Number 10 : Fast Track Issue

a. The equity shares
Of the issuer have
Been listed on any
Recognised stock
exchange

having nationwide
trading terminals

for a period of at
least three years
immediately
preceding the
reference date;

b. the average market
capitalisation of public
shareholding of the
issuer is

at least Rs. 1000 cr in
case of public issue and
Rs. 250 cr in case of
right issue;

[provided that for issuers, whose public shareholding is less than 15% of its issued equity capital, the annualised trading turnover of its equity shares has been at least 2% of the weighted average number of equity shares available as free float during such six months period;]

c. the annualised trading
turnover of the equity
shares of the issuer during
six calendar months

immediately preceding the
month of the reference date
has been

at least 2% of the weighted
average number of equity
shares listed during such six
months period:

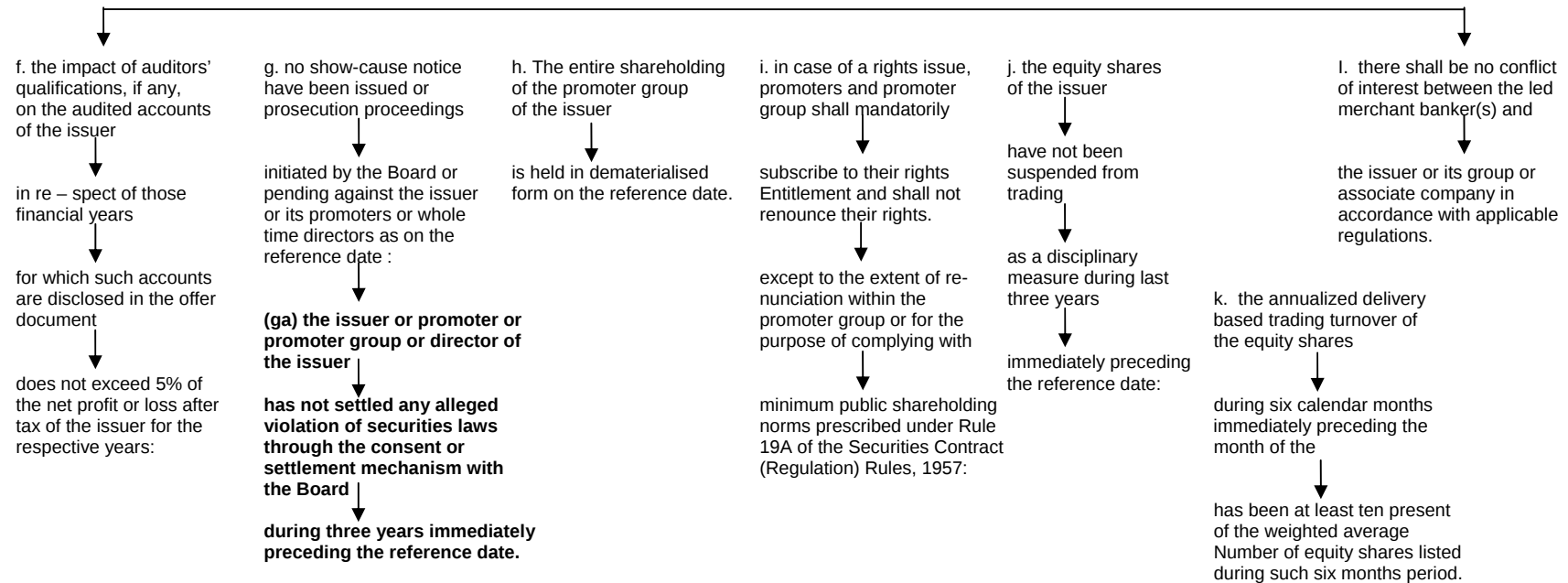
d. the issuer has
redressed at least
95% of the
complaints received
from the investors

till the end of the
quarter immediately
preceding the month
of the reference
date;

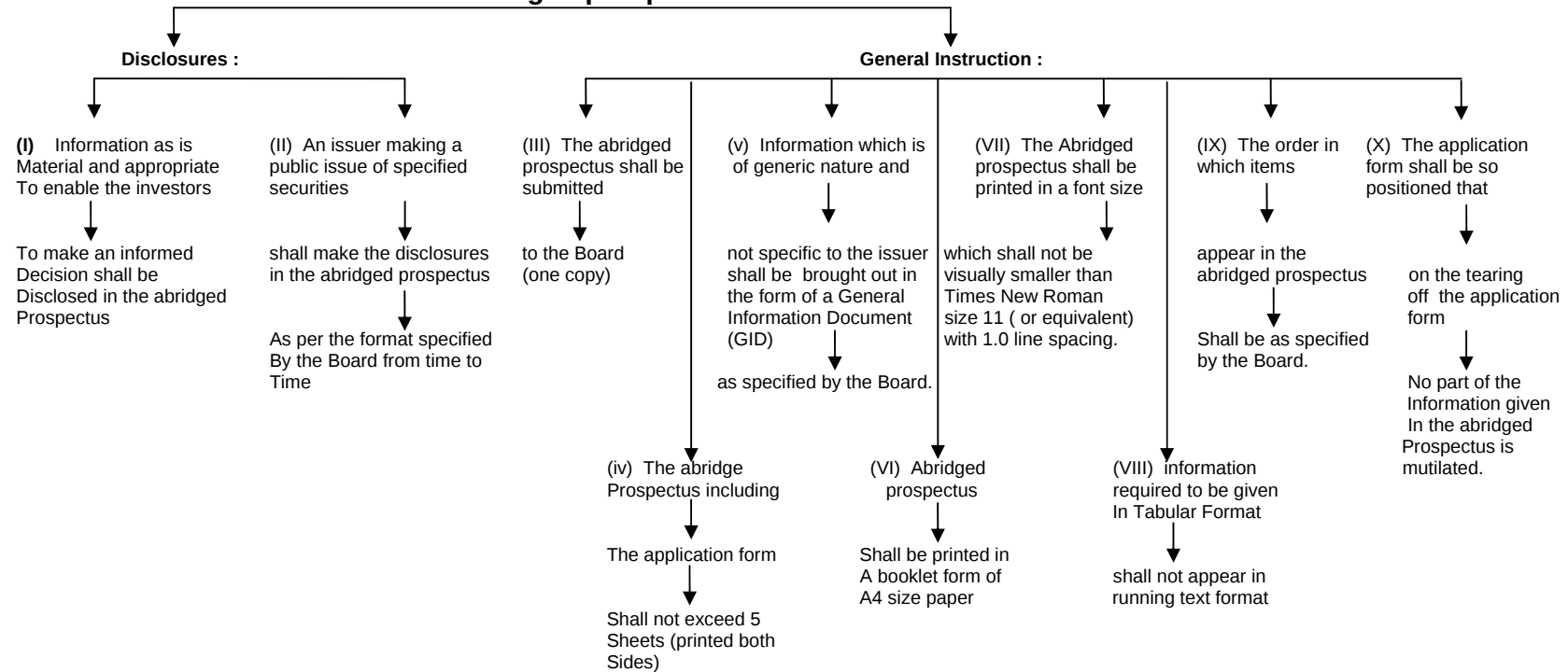
**Provided further that imposition
of only monetary fines by stock
exchanges on the issuer shall
not be a ground for ineligibility
this regulation**

e. the issuer has
been in
with in equity
listing agreement

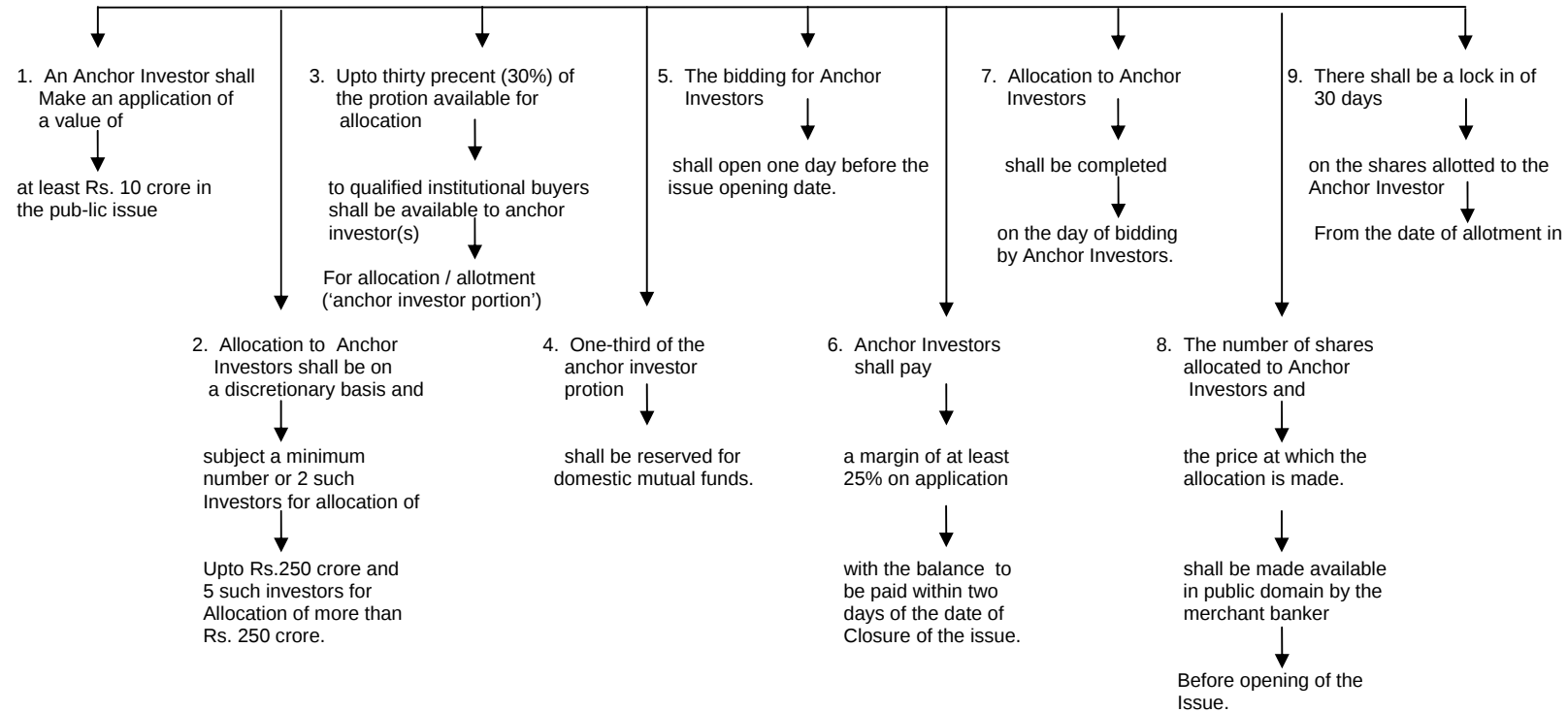
for a period of
at least three
immediately
preceding the
reference date :

SECURITY EXCHANGE BOARD OF INDIA ACT, 1992 2ND CHART

Amendment in ICCR Reg 58: Disclosure in Abridged prospectus



**Amendment in allocation to Anchor Investor :
Sch XI Part a**



THE COMPANIES ACT, 2013**CHAPTER – VII****GENERAL MEETINGS****[AMENDED W.E.F 23/09/16]**

Every company which has listed its equity shares on a recognised stock exchange and every company having not less than 1000 members **shall provide** to its members facility to exercise their right to vote on resolutions proposed to be considered at a **general meeting by electronic means**:

Provided that a *Nidhi*, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the SEBI (ICDR) Regulations, 2009 is not required to provide the facility to vote by electronic means:

Explanation - For the purpose of this sub-rule, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies ".

CHAPTER VIII - DECLARATION AND PAYMENT OF DIVIDEND**[SECTION - 123 TO 127]****THE INVESTOR EDUCATION AND PROTECTION FUND**

In exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. Short title, extent and commencement :-

- (1) these rules may be called **the** Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
- (2) They shall come into force **with effect from the 7th September 2016**.

2. Definitions.-

- (1) In these rules, unless the context otherwise requires,—
 "Authority" means the IEPF Authority constituted under **125(5)**;
 "Chairperson" means the chairperson of the authority appointed under 125(6);
 "Existing IEPF" means the Investor Education and Protection Fund (IEPF) constituted under section 205C of the Companies Act, 1956 (1 of 1956);
 "Fund" means the IEPF constituted under section 125 of the Act;
 "Investor" means any person, who has committed money in shares, or debentures, bond or deposits under a scheme or plan of a company registered under the Act;
 "Member" means member of the Authority appointed under 125(6);

3. Fund.-

- (1) The Authority shall administer the Fund.
- (2) There shall be credited to the Fund, the following amounts, namely :-
 - all amounts payable as mentioned in clause (a) to (n) of 125(2);
 - all shares in accordance with sub-section (6) of section 124 of the Act;
 - all the resultant benefits arising out of shares held by the Authority under clause (b);
 - all grants, fees and charges received by the Authority' under these rules;
 - all sums received by the Authority from such other sources as may be decided upon by the CG;
 - all income earned by the Authority in any year,
 - all amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 10B of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; and
 - all other sums of money collected by the Authority as envisaged in the Act.

In case of term deposits and debentures of companies, due unpaid or unclaimed interest shall be transferred to the Fund along with the transfer of the matured amount of such term deposits and debentures.

- (3) (a) All the money, which accrue under sub section (2) [except clause (g)] of section 125 of the Act shall be deposited in the **Consolidated Fund of India** under the Unclaimed and Unpaid dividends, deposits and debentures etc.'. Such sums along with amount deposited under section 205C of the

Companies Act, 1956 shall be transferred to the Fund in the non-interest bearing Public Account after taking due approval of Parliament through Appropriation Act. This noninterest bearing Public Account shall be termed as **IEPF Fund** and shall be utilised for the purposes provided under 125(3).

4. Accounts and audit.-

- (1) The Authority shall maintain proper accounts and other relevant records as given in Schedule to these rules and prepare an annual statement of accounts in such form as may be specified by the CG in consultation with the CAG.
- (2) The accounts of the Authority shall be audited annually by the Internal Audit Party of the office of Chief Controller of Accounts and Comptroller and Auditor-General of India at such intervals and any expenditure incurred in connection with such audit shall be payable by the Authority to the CAG.
- (3) The CAG or any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the CAG generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
- (4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the CG and that Government shall cause the same to be laid before each House of Parliament.

5. Statement to be furnished to the Fund.-

- (1) Any amount required to be credited by the companies to the Fund as provided under clause (a) to (n) of 125(2) of the Act shall be remitted into the specified branches of Punjab National Bank, which is the accredited Bank of the Pay and Accounts Office, Ministry of Corporate Affairs and other authorised banks engaged by the **MCA-21** system, within a period of thirty days of such amounts becoming due to be credited to the Fund.
- (2) The company shall, furnish a Statement in **Form No. IEPF 1** containing details of such transfer to the Authority within thirty days, of submission of challan
- (3) On receipt of the statement, the Authority shall enter the details of such receipt in a Register maintained physically or electronically by it in respect of each company every year, and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.
- (4) The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records.
- (5) The provisions of this rule shall be applicable *mutatis mutandis* in respect of the amounts to be credited to the Fund in pursuance of clauses (h) to (m) of 125(2).
- (6) Every company shall within a period of ninety days after the holding of AGM or the date on which it should have been, held as per the provisions of section 96 of the Act **and every year thereafter till completion of the seven years period**, identify the unclaimed amounts, as referred in sub-section 2 of section 125 of the Act, as on the date of holding of AGM or the date on which it should have been held as per the provisions of section 96 of the Act **separately furnish and upload on its own website and also on website of Authority** or

any other website as may be specified by the Government, a statement or information through **Form No. IEPF 2**, separately for each year, containing following information, namely:-

- the names and last known addresses of the persons entitled to receive the sum;
- the nature of amount;
- the amount to which each person is entitled;
- the due date for transfer into the Investor Education and Protection Fund; and
- such other information as may be considered relevant for the purposes.

6. Refunds to claimants from Fund. –

- (1) Any person, whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares, etc. has been transferred to the Fund, may claim the shares under provision to 124(6) or apply for refund under 125(3)(a) or under proviso to 125(3). as the ease may be, to the Authority by **making an application in Form IEPF 5** online available on website www.iepf.gov in along with fee. as decided by the Authority from time to time in consultation with the Central Government, under his own signature.
- (2) The claimant shall after making an application online in Form IEPF-5 under rule (1), send the same duly signed by him along with, requisite documents as enumerated in Form IEPF-5 to the concerned company at its registered office for verification of his claim.
- (3) The company shall within 15 days of receipt of claim form, send a verification report to the Authority in the format specified by the Authority along with all documents submitted by the claimant.
- (4) After verification of the entitlement of the claimant-
 - (a) to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority shall present a bill to the Pay and Accounts Office for e-payment.
 - (b) to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall either **credit the shares which are lying with depository participant in IEPF suspense account (name of the company) to the demat account of the claimant to the extent of the claimant's entitlement or in ease of the physical certificates, if any. cancel the duplicate certificate and transfer the shares in favour of the claimant.**
- (5) The Authority shall, in its records, cause a note to be made of all the payments made under sub-rule (4).

7. Power to direct payment of amount due to the Fund. –

- (1) The company shall furnish a statement to the Authority in **Form No. IEPF 6** within 30 days of end of financial year stating therein the amounts due to be transferred to the Fund in next financial year.

- (2) The company shall also furnish a statement to the authority within 30 days of the closure of its accounts for the financial year stating therein the reasons of deviation, if any, of amounts detailed in sub-rule (1) above and actual amounts transferred to the fund.
- (3) Authority shall furnish a report to the CG within 60 days of end of financial year giving details of companies who have failed to transfer the due amount to the Fund.
- (4) Authority shall also furnish a report to the CG by end of next financial year giving details of companies who have failed to file information.

8. Transfer of assets, liabilities, etc., of the existing IEPF to the Authority.-

On and from the date of establishment of the Authority, -

- (a) any reference to the existing IEPF in any law other than these rules or in any contract or other instrument shall be deemed as a reference to the Authority;
- (b) all properties and assets, movable and immovable, of or belonging to, the existing IEPF, shall vest in the Authority;
- (c) all rights and liabilities of the existing IEPF shall be transferred to, and be the rights and liabilities of the Authority';
- (d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing IEPF immediately before that date, for or in connection with the purpose of the said existing IEPF shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Authority;
- (e) all sums of money due to the existing IEPF immediately before that date shall be deemed to be due to the Authority; and
- (f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing IEPF, immediately before that date may be continued or may be instituted by or against the Authority.

9. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against the CG or Authority or any officer of the CG or any member, officer or other employee of the Authority' for anything which is in good faith done or intended to be done under these rules.

10. Repeal and savings. -

- (1) The IEPF (Awareness and Protection of Investors) Rules, 2001 and IEPF (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012 are hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken or purported to have been done or taken under the rules repealed by sub-rule (1) shall, in so far as it is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the corresponding provisions of these rules.

CHAPTER IX - ACCOUNTS OF COMPANIES**CHAPTER X – AUDIT & AUDITORS****CHAPTER IX : ACCOUNTS OF COMPANIES****[SECTIONS 128 TO 138 EXCEPT SECTIONS 130, 131 AND 132]****NOTIFIED WEF 01-06-2016 read with NCLT & NCLAT****SECTION 130 – Re opening of Accounts on Order of Court or Tribunal**

- (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:
- Provided that** the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the SEBI or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.
- (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

SECTION 131 – Voluntary Revision of Financial Statements

- (1) If it appears to the directors of a company that—
- (a) the financial statement of the company; or
 - (b) the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:
- Provided that** the Tribunal shall give notice to the Central Government and the Incometax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:
- Provided further that** such revised financial statement or report shall not be prepared or filed more than once in a financial year:
- Provided also that** the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
- (2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
- (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
 - (b) the making of any necessary consequential alternation.

- (3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
- (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
 - (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
 - (c) require the directors to take such steps as may be prescribed.

[AMENDMENT MADE BY NOTIFICATION DATED 29/07/2016]

The Board's report shall include a statement showing the name of every employee of the company, who the names of the top ten employees in terms of remuneration drawn and the name of every employee, who –

- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than ~~sixty lakh rupees~~ **one crore and two lakh rupees;**
- (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than ~~five lakh rupees per month~~ **eight lakh and fifty thousand rupees per month;**
- (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by:
 - MD or
 - WTD or
 - **MANAGER and****holds by himself or along with his spouse and dependent children, not less than 2% of the equity shares of the company.**

This make position clear that data of every employee above the threshold limit will be required to be given otherwise data of at least top ten employees is required to be given.

[COMPANIES AMENDMENT ACT 2015]

"details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;"

CHAPTER XIII - APPOINTMENT AND REMUNERATION OF**MANAGERIAL PERSONNEL****PART H – MANAGERIAL PERSONNEL****Section 196 - Appointment of managing director, whole-time director or manager.****I. APPOINTMENT BY COMPANY:**

(4) A MD, WTD or manager shall be appointed and the terms and conditions of such appointment and remuneration payable **[PRIVATE COMPANY EXEMPT w.e.f 5-06-15]**

A. be approved by the Board of Directors at a meeting which shall be

B. subject to approval by a resolution at the next general meeting of the company and

C. by CG in case such appointment is at variance to the conditions specified in that Schedule V:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Filing of return of appointment.- RULES

[Amendment made by notification dated 29/07/2016]

A company shall file a return of appointment of a MD, WTD or Manager, CEO, CS and CFO within 60 days of the appointment, with the Registrar in Form No. MR.1

SCHEDULE V

(See sections 196 and 197)

PART II**REMUNERATION****SECTION I****Remuneration payable by companies having profits :**

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons **not exceeding 11% of Net Profits**

[Amendment as Notified by MCA dated 12/09/2016]

SECTION II of Part II of Schedule V of the Companies Act, 2013 has been substituted by this amendment. This section relates to remuneration payable by companies having no profit or inadequate profit without Central Government approval.

REMUNERATION IN CASE OF ANY MANAGERIAL PERSONNEL

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits given in clause (A) –

Effective capital	Maximum yearly remuneration
(i) Negative or less than 5 crores	60 Lakhs
(ii) 5 crores and above but less than 100 crores	84 Lakhs
(iii) 100 crores and above but less than 250 crores	120 Lakhs
(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Double the remuneration

Above limits shall be doubled if the resolution passed by the shareholders is a special resolution. [Proviso to clause (A)]

MANAGERIAL PERSON IN PROFESSIONAL CAPACITY

A managerial person functioning in a professional capacity may get any amount of remuneration **without Central Government approval** on satisfaction of following conditions that such managerial person –

A) is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures [Independent from company], **and**

B) not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment [Independent from promoters and directors], **and**

C) possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates [Professional expertise and knowledge].

Interest in the company

Any employee of a company holding shares of the company **not exceeding 0.5% of its paid up share capital** under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be

deemed to be a person not having any interest in the capital of the company. [Proviso to section (b) of section II of part II of Schedule V]

Statutory Structure

“Statutory Structure” means any entity which is entitled to hold shares in any company formed under any statute. [Explanation to Schedule V of the Companies Act, 2013]

Difference with Section 197(4)

According to sub – section (4) of section 197 of the Companies Act, 2013 read with its proviso, the remuneration payable to directors shall be inclusive of all remuneration payable to him for services rendered by him in any other capacity except services rendered are of professional in nature and in opinion of Nomination and Remuneration Committee or of Board of Directors as the case may be, director has requisite qualification for practice of profession.

GENERAL CONDITIONS FOR MANAGERIAL REMUNERATION

In relation to both clauses (A) and (B), following conditions shall apply –

- 1) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee [approval by Board and NRC, if required];
- 2) the company has not committed any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous **period of 30 days in the preceding financial year before the date of appointment of such managerial person** and in case of a default, the company obtains **prior approval from secured creditors** for the proposed remuneration and the fact of such prior approval having been obtained is mentioned in the explanatory statement to the notice convening the general meeting
- 3) an **ordinary resolution or a special resolution, as the case may be**, has been passed for payment of remuneration as per the limits laid down in item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years [Approval in GM].
- 4) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the information mentioned in the Schedule V

CHAPTER XIV - INSPECTION, INQUIRY AND INVESTIGATION**FLOW OF CONTENTS:****PART – A: INQUIRY & INSPECTION.****PART – B: INVESTIGATION.****PART – C: INSPECTOR.****P.S. : Sections 213, 218, 221, 222, 226 & 227 are not yet Notified.****Section – 213 Investigation into company's affairs in other cases.**

The Tribunal may,—

(a) on an application made by—

- (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
- (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

- (i) 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;
- (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
- (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,
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:

Provided that if after investigation it is proved that—

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs **shall be punishable for fraud in the manner as provided in section 447.**

Section – 218. Protection of employees during investigation.

- (1) **Notwithstanding anything contained in any other law for the time being in force, if—**
- (a) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or
 - (b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes—
 - (i) to discharge or suspend any employee; or
 - (ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
 - (iii) to change the terms of employment to his disadvantage, the company, other body corporate or person, as the case may be, **shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.**
- (2) If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
- (3) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.
- (4) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
- (5) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

Section-221 Freezing of assets of company on inquiry and investigation.

- (1) **Where it appears to the Tribunal**, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period

not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

- (2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section 222 - Imposition of restrictions upon securities

- (1) Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.
- (2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

CHAPTER XXVI - NIDHI COMPANIES**What is Nidhi Company?**

“Nidhi” means a company which has been incorporated as a Nidhi **with the object** of

-Cultivating the habit of thrift and savings amongst its members,
-receiving deposits from, and lending to, its members only, for their mutual benefit, and
Which complies with rules of Chapter XXVI of Companies Rules, 2014.

Nidhi in the Indian context / language means “TREASURE”. However, in the Indian financial sector it refers to any mutual benefit society notified by the Central / Union Government as a Nidhi Company.

The companies doing Nidhi business, viz. borrowing from members and lending to members only, are known under different names such as Nidhi, Permanent Fund, Benefit Funds, Mutual Benefit Funds and Mutual Benefit Company.

Nidhi's are more popular in South India and are highly localized single office institutions. They are mutual benefit societies, because their dealings are restricted only to the members; and membership is limited to individuals. The principal source of funds is the contribution from the members. The loans are given to the members at relatively reasonable rates for purposes such as house construction or repairs and are generally secured. The deposits mobilized by Nidhi's are not much when compared to the organized banking sector.

Since Nidhi's come under one class of NBFCs, RBI is empowered to issue directions to them in matters relating to their deposit acceptance activities. However, in recognition of the fact that these Nidhi's deal with their shareholder-members only, RBI has exempted the notified Nidhi's from the core provisions of the RBI Act and other directions applicable to NBFCs. As on date (February 2013) RBI does not have any specified regulatory framework for Nidhi's.

Applicability

The Central Government made '[Nidhi Rules, 2014](#)' for the purpose of carrying out the objectives of 'Nidhi' companies. These rules shall be applicable to-

- Every company which had been declared as a Nidhi or Mutual Benefits under Section 620A(1) of Companies Act, 1956;
- Every company functioning on the lines of a Nidhi company or Mutual benefit society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1) of Companies Act, 1956;
- Every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Companies Act, 2013.

Requirements for Nidhi Company

- A Nidhi company to be incorporated under this Act shall be a Public Company;
- No preference shares shall be issued.
- If preference shares had already been issued by a Nidhi Company before commencement of this Act, such preference shares are to be redeemed in accordance with the terms of issue of such shares;
- The object of the company shall be cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to its members only for their mutual benefits;
- It shall have the words 'Nidhi Limited' as part of its name;

Requirement after Incorporation:

Every Nidhi shall, within a period of **one year from the commencement of these rules**, ensure that it has—

- Minimum number of members should be 200;
- Net owned funds shall be Rs.10,00,000/- or more ('Net owned funds' means the aggregate of paid up equity share capital and free reserved as reduced by the accumulated and intangible assets appearing in the last audited balance sheet);
- Ratio of net owned funds to deposit shall be not more than 1:20;
- Unencumbered term deposits of not less than 10% of the outstanding deposits as specified in Rule 14;

General restrictions

Rule 6 provides general restrictions. According to this Rule NO Nidhi shall-

- 1) Carry on the business of
 - Chit Fund,
 - Hire Purchase Finance,
 - Leasing Finance,
 - Insurance or Acquisition of Securities issued by anybody corporate;
- 2) Issue
 - Preference Shares,
 - Debentures or
 - Any Other Debt Instrument by any name or in any form whatsoever;
- 3) Open any Current Account with its members;
- 4) Acquire another company by;
 - Purchase of securities or
 - Control the composition of the Board of Directors of any other company in any manner whatsoever or
- 5) Enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over Nidhi;
- 6) Carry on any business other than the business of borrowing or lending in its own name;
- 7) Accept Deposits from or lend to any person, other than its members;
- 8) Pledge any of the assets lodged by its members as security;
- 9) Take Deposits from or lend money to anybody corporate;
- 10) Enter into any Partnership Arrangement in its borrowing or lending activities;
- 11) Issue or cause to be issued any advertisement in any form for soliciting deposit;
- 12) Pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or the granting loans.

NOTE:

- Nidhi's which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

Membership

- A Nidhi shall not submit a body corporate or trust as a member.
- Except as otherwise permitted under these rules, every Nidhi shall ensure that its membership is not reduced to less than 200 members at any time.
- A minor shall not be admitted as a member of Nidhi.
- But deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

Rule 7 provides that every Nidhi shall issue equity shares of the nominal value of not less than Rs.10/- each. This requirement shall not apply to a company which has been declared as a Nidhi company.

Acceptance of deposits:

- A Nidhi shall not accept deposits exceeding 20 times of its Net Owned Assets as per last audited financial statements.
- The fixed deposits shall be accepted for a minimum period of 6 months and a maximum period of 60 months.
- Recurring deposits shall be accepted for a minimum period of 12 months and a maximum period of 60 months.
- In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by Nidhi.
- The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed Rs.1,00,000/- and the interest shall not exceed 2% above the rate of interest payable to savings bank account by nationalized banks.
- Interest for fixed and recurring deposits shall be at a rate not exceeding the maximum rate of interest prescribed by RBI which the NBFC can pay on their public deposits.

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank or post office deposits in its own name an amount which shall not be less than 10% of the deposits outstanding at the close of the business on the last working day of the second preceding month.

In case of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of 10%

Loan

A Nidhi shall provide loans only to its members.

The rate of interest to be charged on any loan shall not exceed 7.5% above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

(3) For the purposes of sub-rule (2), the amount of deposits shall be calculated on the basis of the last audited annual financial statements

Dividend:

- A Nidhi shall not declare dividend exceeding 25% or
- There has been no default in repayment of matured deposits and interest; and
- It has completed with all the rules as applicable to Nidhis.

Director:

- The director shall be a MEMBER of Nidhi.
- He shall hold office for a term up to 10 consecutive years on the Board.
- He shall be eligible for re-appointment only after the expiration of 2 years ceasing to be a director.
- The person to be appointed as a Director shall comply with the requirements of Section 152(4) of the Act and shall not have been disqualified in Section 164.

Auditor:

- The tenure of Auditor is five consecutive years.
- No auditor or audit firm as auditor shall be appointed for more than 2 terms of 5 consecutive years.
- The auditor shall be eligible for subsequent appointment after the expiration of two years from the completion of his term.
- The Auditor of the company shall furnish a **Certificate** every year to the effect that the company has complied with all the provision contained in the rules and such certificates shall be annexed to the audit report and in case of non compliance he shall specifically state the rules which have not been complied with.

Returns:

- Within 90 days from the closure of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in **Form NDH – 1** with the Registrar duly certified by a CS in practice or a CA in practice or a Cost Accountant in practice.
- If the company is not complying with the above it shall within 90 days from the close of the 1st financial year, **apply to the RD in Form NDH -2 for extension of time** and
- The RD may consider the application and pass orders within 30 days of the receipt of the application.

If there is failure the Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions besides being liable for penal consequences provided in the Act.

EVERY COMPANY COVERED UNDER RULE 2 SHALL FILE HALF YEARLY RETURN WITH THE REGISTRAR:

In **Form NDH-3** within thirty days from the conclusion of each half year duly certified by a CS in practice or CA in practice or cost accountant in practice.

Companies Covered under Rule -2 are following:

- Every company which had been declared as a Nidhi or Mutual Benefits under Section 620A(1) of Companies Act, 1956;
- Every company functioning on the lines of a Nidhi company or Mutual benefit society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under Section 620A(1) of Companies Act, 1956;
- Every company incorporated as a Nidhi as per Section 406 of Companies Act, 2013.

Penalty

- If a company contravenes any of the provisions of the rules the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs.5,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs.500/- for every day after the first during which the contravention continues.

EXEMPTIONS TO A NIDHIS COMPANY

New Delhi, the 5th June, 2015

G.S.R. 465(E).—In exercise of the powers conferred by clauses (a) and (b) of sub-section (1) of Section 462 read with section 406 of the Companies Act, 2013 (18 of 2013) and in supersession of notification number GSR 517(E), dated the 31st August, 2006 and GSR 326(E), dated the 8th April, 2011 or any other notification issued under section 620A of the Companies Act, 1956, except as respects things done or omitted to be done before such supersession, the Central Government in the interest of public, hereby directs (hat certain provisions of the Companies Act, 2013, as specified in column (2) of the Table, shall not apply or shall apply with such exceptions, modifications and adaptations, as specified in column (3) of the said Table, to *Nidhis*, namely:—

Serial No.	Provisions of the Companies Act, 2013	Exceptions, modifications and adaptations
(1)	(2)	(3)
1.	Sub-section (2) of Section 20	Shall apply subject to the modification that in the case of a Nidhi, the document may be served only on members who hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital of the Nidhis whichever is less. For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi.
2.	Section 42 except sub-section (1), explanation (11) to sub-section (2), sub-sections (4), (6), (8), (9) and (10)	Shall not apply.
3.	Clause (b) of sub-section (1) of Section 47	Shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders.
4.	Section 62	Shall not apply.
5.	Sub-section (1) of Section 61	Shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.
6.	Sub-section (5) of Section 123	Shall apply, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the

		member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
7.	Section 127	Shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
8.	Sub-section (1) of Section 136	Shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy.
9.	Section 160	In sub-section (1), for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted.
10.	Section 185	Shall not apply, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.
11.	Second proviso to sub-section (1) of Section 197	Shall apply with the modification that the remuneration of a director who is neither managing director nor whole-time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the

		company in general meeting and also to the provision;: of section 197: Provided that no approval of the company in general meeting shall be required where,— (a) a Nidhi does not have a managing director or a whole-time director or a manager; (b) the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent, of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and (c) a remuneration payable under clause (b) is approved by a special resolution passed in (his behalf by the Nidhi.
12.	Section 403	Shall apply, with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.

CHAPTER XXVII – NCLT & NCLAT**SECTIONS AND PROVISIONS OF THE COMPANIES ACT, 2013 RELATING TO
TRIBUNAL NOTIFIED W.E.F. 1/6/2016**

SR.	SECTION	PURPOSE
1	Sub-section (7) of section 7 [except clause (c) and (d)]	Legal action for false or incorrect information at the time of Incorporation
2	Second proviso to sub-section (1) of section 14	Conversion of Public to Private Limited
3	Sub-section (2) of section 14	Conversion of Public to Private Limited
4	Sub-section (3) of section 55	Rollover of existing redeemable preference shares
5	Proviso to Clause (b) of sub-section (1) of section 61	Changes in voting rights by Consolidation or sub-division of share Capital
6	Sub-sections (4) to (6) of section 62	Changes in terms of issue of Debentures to facilitate Conversion into equity shares
7	Sub-sections (9) to (11) of section 71	Action by Debenture trustee once the secured Assets becomes insufficient
8	Section 75	Action against Company by defrauding Depositors by non-payment
9	Section 97	Power to call for AGM in case of failure by the Company
10	Section 98	Power to call for meetings other than AGM
11	Section 99	Punishment for failure to comply with Tribunal Direction regarding Meetings
12	Sub-section (4) of section 119	Order for inspection in case of failure by the Company
13	Section 130	Re-opening of Accounts by Authorities
14	Section 131	Voluntary revision of financial statements
15	Second proviso to sub-section (4) and sub- section (5) of section 140	Removal or change of Auditor before due Date and Suo Moto action by Tribunal for removal
16	Sub-section (4) of section 169	Removal of Directors – representation and relaxation of provisions in certain cases
17	Section 213	Investigation into the affairs of the Company
18	Sub-section (2) of Section 216	Appointment of Inspectors
19	Section 218	Protection of employees during investigation
20	Section 221	Freezing of assets of Company on inquiry and investigation

21	Section 222	Imposition of restrictions upon securities
22	Sub-sections (5) of section 224	Action against Company or Directors on inspector's report
23	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245	Action against Prevention and Oppression and Mismanagement
24	Reference of word 'Tribunal' in sub-section (2) of section 399	Order for production of documents by Registrar
25	Sections 415 to 433 (both inclusive)	Tribunal and its Chairman, Members etc and provisions relating thereto.
26	Sub-section (1)(a) and (b) of section 434	Transfer of pending proceedings
27	Sub-section (2) of section 434	Appeal against Company Law Board Order
28	Section 441	Compounding of offences
29	Section 466	Dissolution of CLB and consequential provisions

Section 415 to Section 433 (both inclusive) has also came into force. These sections deal with administration of NCLT and NCLAT.

CONSTITUTION OF NCLT AND NCLAT:

I. NCLT & NCLAT Consist [Section 407 & 408]:

- There are two classes of members to the National Company Law Tribunal; Judicial Members and Technical Members.
- The Tribunal shall be headed by the President while the Appellate Tribunal by Chairperson.
- NCLAT not exceeding 11 members for hearing appeals against the orders of the Tribunal

II. Qualification: (President/Member of NCLT [Section 409]

SR.	PRESIDENT	JUDICIAL MEMBER	TECHNICAL MEMBER
<u>1</u>	Is/has been Judge of High Court ≥ 5 years	Is/has been Judge of High Court (any period)	Has Member of Indian Corporate Law Service /Indian Legal Service ≥ 15 years (out of 15 years at least 3 years to be in the pay scale of Joint Secretary to GOI or equivalent post)
<u>2</u>		Is/has been District Judge atleast 5 years	Is/has been Practicing Chartered Accountant at least 15 years
<u>3</u>		Has been Advocate of court held a judicial office or as member of a tribunal atleast 10 years	Is/has been Practicing Cost Accountant at least 15 years
<u>4</u>			Is/has been Practicing COMPANY SECRETARY at least 15 years
<u>5</u>			Person with proven ability, integrity and standing having special knowledge and experience ≥ 15 years

<u>6</u>			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years
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III. Qualification: (Chairman/Member of NCLAT) [Section 410 & 411]

- National Company Law Appellate Tribunal, constituting of a Chairperson and not exceeding eleven members for hearing appeals against the orders of the Tribunal.

SR	Chairman	Judicial Member	Technical Member
1	Is/has been Judge of Supreme Court	Is/has been Judge of High Court	Person with proven ability, integrity and standing having special knowledge and experience ≥ 25 years [2](in below given specified areas)
2	Is/has been Chief Justice of High Court	Is a Judicial Member of Tribunal for at least 5 years	

IV. Selection of Members [Section 412]

SR	President/Chairman	Judicial Members of the Appellate Tribunal	Members of the Tribunal and the Technical Members of the Appellate Tribunal
1	Shall be Appointed after consultation with the Chief Justice of India.	Shall be Appointed after consultation with the Chief Justice of India.	shall be appointed on the recommendation of a Selection Committee consisting of :

V. Selection Committee Consisting:

The Secretary, MCA shall be the Convener of the Selection Committee.

SR.	Position	<u>Selection Committee Consisting</u>
1	Chairperson	Chief Justice of India or his nominee
2	Member	A senior Judge of the SC or a Chief Justice of High Court
3	Member	Secretary in the Ministry of Corporate Affairs
4	Member	Secretary in the Ministry of Law and Justice
5	Member	Secretary in the Department of Financial Services in the MOF

VI. Terms: [Section 413]**Tenure-**

President/ Judicial Member/ Technical Member Shall hold office for 5 year from the date of enter into office.

Re-appointment-

President/ Judicial Member/ Technical Member Eligible for another term of 5 year.

Eligibility NCLT-

- In case of President shall hold office until he attain age of **67 years**.
- In case of Member age atleast 50 year shall hold office until he attain age of **65 years**

Eligibility NCLAT

- In case of President shall hold office until he attain age of **70 years**.
- In case of Member age atleast 50 year shall hold office until he attain age of **67 years**

Advantages of NCLT & NCLAT:

- It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR, AAIFT). Thus there will be a consolidation of Corporate Jurisdiction.
- There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep.
- This tribunal shall comprise of technical experts who will provide more concrete and precise decision.
- There will be mixture of judicial and equitable jurisdiction while deciding matters.
- There shall be reduction in period of winding up from 20-25 years to 2 years.
- Reduction in pendency of cases, expeditious disposal of cases.

A. Winding up:

The NCLT has also been empowered to pass an order for winding up of a company. Therefore Practicing CS may represent the winding up case before the Tribunal.

B. Compromise and Arrangement:

With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in practice will be able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities

C. Sick Companies

Since all powers of BIFR have been entrusted to NCLT, detecting the Sick companies and providing resolution of the queries and for making reference to the Tribunal for revival and rehabilitation of the Company

The provisions also mandated preparation of scheme and seeking approval from the Tribunal as may be required. Thus the practicing professionals could play a pivot role in the same area.

Section 414: Salary, allowances and other terms and conditions of service of Members

The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment

Section 415: Acting President and Chairperson of Tribunal or Appellate Tribunal

(1) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his death, resignation or otherwise, **the senior-most Member shall act as the President or the Chairperson**, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

Section 416: Resignation of Members

The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of **3 months from the date of receipt of such notice** by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

Section 417: Removal of Members

- (1) **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, 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.**
- (2) Without prejudice to the provisions of sub-section (1), 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.

Section 418: Staff of Tribunal and Appellate Tribunal

- (1) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.

Section 420: Order of the Tribunal

- (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) **The Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record,** amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:
- Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.
- (3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

Section 421: Appeal from orders of Tribunal.

- (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal under sub-section (1) shall be filed within a period of **45 days from the date on which a copy of the order of the Tribunal** is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:
- Provided that** the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not

exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Section 422: Expeditious disposal by Tribunal and Appellate Tribunal

422. (1) Every Endeavour shall be made by the NCLT or the NCLAT, as the case may be, for the disposal of such application or petition or appeal within 3 months from the date of its presentation before the NCLT or the filing of the appeal before the NCLAT
- (2) Where any application or petition or appeal is not disposed off within the period specified in subsection (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding 90 days as he may consider necessary.

Section 423: Appeal to Supreme Court

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 424: Procedure before NCLT and NCLAT

- (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules made thereunder, the NCLT and the NCLAT shall have power to regulate their own procedure.
- The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure

Section 426: Delegation of powers

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

Clause 427: President, Members, officers, etc., to be public servants

The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code

Section 431: Vacancy in NCLT or NCLAT NOT to invalidate acts or proceedings

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

New Delhi, the 21st July, 2016

G.S.R. 716(E).—In exercise of the powers conferred by section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely;-

1. Short title and Commencement

- (1) These rules may be called the National Company Law Tribunal Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

PART - I

Definitions, forms and etc.

2. Definitions.- In these rules, unless the context otherwise requires,

- (1) **“Act”** means the Companies Act, 2013 (18 of 2013);
- (4) **“applicant”** means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act;
- (5) **“application”** means any application, interlocutory application or proceedings filed under the provisions of the Act, including any transferred application or transferred petition as defined under sub-rule (29) ;
- (7) **“Bench”** means a Bench of the Tribunal constituted under section 419 of the Act and includes Circuit Benches constituted by the President with prior approval of the Central Government to sit at such other geographical locations as may be necessary having regard to requirements;
- (8) **“Central Registry”** means the registry in which all the applications or petitions and documents are received by the Registrar for allocation to the concerned Bench of the Tribunal for disposal;
- (15) **“interlocutory application”** means an application in any appeal or original petition on proceeding already instituted in the Tribunal, but not being a proceeding for execution of the order or direction of Tribunal;
- (17) **“petition”** means a petition or an application or an appeal or a complaint in pursuance of which any proceeding is commenced before the Tribunal;
- (18) **“person interested”** means a shareholder, creditor, employee, transferee company and other company concerned in relation to the term or context referred to in the relevant provisions of the Act or any person aggrieved by any order or action of any company or its directors;
- (25) **“Secretary”** means Secretary of the Tribunal and in the absence of Secretary, such other officer of the Tribunal to whom the powers and functions of the Secretary are delegated.

3. Computation of time period.-

Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Tribunal is closed, that day and any succeeding days on which the Tribunal remains closed shall also be excluded.

4. Forms.-

The forms annexed as Annexure ‘A’ to these rules with such modifications or variations as the circumstances of each case may require shall be used for the

purpose mentioned therein and where no form is prescribed to cover a contingency, a form as may be approved by the Registrar, shall be used.

5. Format of order or direction or rule.-

Every rule, direction, order, summons, warrant or other mandatory process shall be issued in the name of the President and shall be signed by the Registrar or any other officer specifically authorised in that behalf by the President, with the day, month and year of signing and shall be sealed with the seal of the Tribunal.

7. Custody of the records.-

The Registrar shall have the custody of the records of the Tribunal and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the Tribunal without the leave of the Tribunal:

Provided that the Registrar may allow any other officer of the Tribunal to remove any official paper or record for administrative purposes from the Tribunal.

11. Inherent Powers.-

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

12. Calendar.-

The calendar of days of working of Tribunal in a year shall be as decided by the President of the Tribunal.

15. Power to extend time.-

The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

PART-II

Power and functions of President, Registrar and Secretary

16. Functions of the President.-

In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers:

- (a) preside over the consideration of cases by the Tribunal;
- (b) direct the Registry in the performance of its functions;
- (c) prepare an annual report on the activities of the Tribunal;
- (d) transfer any case from one Bench to other Bench when the circumstances so warrant;
- (e) to withdraw the work or case from the court of a member.
- (f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.

17. Functions of the Registrar.-

(1) The Registrar shall have the following functions, namely:-

- (a) registration of appeals, petitions and applications;
- (b) receive applications for amendment of appeal or the petition or application or subsequent proceedings.
- (c) receive applications for fresh summons or notices and regarding services thereof;
- (d) receive applications for fresh summons or notices and for short date summons, notices;

- (e) receive applications for substituted service of summons or notices;
 - (f) receive applications for seeking orders concerning the admission and inspection of documents;
 - (g) transmission of a direction or order to the civil court as directed by Tribunal with the prescribed certificates for execution etc., and
 - (h) such other incidental or matters as the President may direct from time to time.
- (2) All adjournments shall normally be sought before the concerned Bench in court and in extraordinary circumstances, the Registrar may, if so directed by the Tribunal in chambers, at any time adjourn any matter and lay the same before the Tribunal in chambers.

18. Functions of the Secretary-

- (1) There shall be a Secretary at the Principal Bench of the Tribunal, New Delhi.
- (2) The Secretary shall, under the general superintendence and control of the President, discharge such duties, functions and exercise such powers as are prescribed under these rules and as assigned by the President from time to time.
- (3) Secretary shall -
 - (a) be in charge of the long term projects and initiatives of the Tribunal;
 - (b) supervise the divisions and sections of the Human Resources;
 - (c) prepare, monitor and manage budgetary allocations and financial managements of the Tribunal and the Benches;
 - (d) provide all necessary support in the day to day operations of the Tribunal;
 - (e) manage and supervise the facilities and administrative services of the Tribunal;
 - (f) manage and administer the public grievances mechanism of the Tribunal;
 - (g) coordinate with authorised representatives and other professionals in the smooth functioning of the Tribunal;
 - (h) oversee information & communication technology & other technological facilities in the Tribunal;
 - (i) manage and facilitate communication and services of the Tribunal;
 - (j) manage, monitor and administer the public affairs and public safety provisions within the premises of the Tribunal; and
 - (k) supervise library and research wings of the Tribunal.

19. Delegation of powers by the President.

The President may assign or delegate to any suitable officer all or some of the functions required by these rules to be exercised by the Registrar.

PART-III

Institution of proceedings, petition, appeals etc.

24. Number of copies to be filed.-

The appellant or petitioner or applicant or respondent **shall file three authenticated copies** of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

29. Registration of proceedings admitted.-

On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

30. Calling for records.-

On the admission of appeal or petition or application the Registrar shall, if so directed by the Tribunal, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

PART- IV**General procedure****34. General Procedure.**

- (1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
- (2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in **Form No. NCLT. 4.**
- (3) Every petition or application or reference shall be filed in form as provided in **Form No. NCLT. 1** with attachments thereto accompanied by **Form No. NCLT.2** and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with **Form No. NCLT. 3.**
- (4) Every petition or application including interlocutory application shall be verified by an affidavit in **Form No. NCLT.6.** Notice to be issued by the Tribunal to the opposite party shall be in **Form NCLT-5.**

35. Advertisement detailing petition.

- (1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.
- (2) Every such advertisement shall state:-
 - (a) the date on which the application, petition or reference was presented;
 - (b) the name and address of the applicant, petitioner and his authorised representative, if any;
 - (c) the nature and substance of application, petition or reference;
 - (d) the date fixed for hearing;
 - (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.
- (3) Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.
- (4) An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:
Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

37. Notice to Opposite Party.

- (1) The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No. NCLT.5 shall be accompanied by a copy of the application with supporting documents.
- (2) If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.
- (3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

38. Service of Notices and processes.

- (1) Any notice or process to be issued by the Tribunal may be served by post or at the e-mail address as provided in the petition or application or in the reply;
- (2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; -
 - (a) by hand delivery through a process server or respective authorised representative;
 - (b) by registered post or speed post with acknowledgment due; or
 - (c) service by the party himself.

39. Production of Evidence by Affidavit.

- (1) The Tribunal may direct the parties to give evidence, if any, by affidavit.
- (3) Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

40. Production of additional evidence before the Bench. –

- (1) Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector, appointed by the central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Act, but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be produced.
- (2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

41. Filing of Reply and other Documents by the Respondents.

- (1) Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by the Tribunal.

43. Power of the Bench to call for further information or evidence.

- (1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-
 - (a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or
 - (b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

44. Hearing of petition or applications.

- (1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.
- (2) Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interests of the justice.

45. Rights of a party to appear before the Tribunal.

- (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.
- (2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

47. Oath to the witness.

The Bench Officer or the Court Officer, as the case may be, shall administer the following oath to a witness:-

"I do swear in the name of God / solemnly affirm that what I shall state shall be the truth and nothing but the truth. "

49. Ex-parte Hearing and disposal.

- (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

50. Registry to send certified copy.

The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

51. Power to regulate the procedure.

The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.

52. Summoning of witnesses and recording Evidence.-

(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

58. Effect of non-compliance.

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice.

59. Procedure for imposition of penalty under the Act.

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorised in this behalf.

PART- VII

Procedures in respect of matters earlier dealt by other quasi-judicial bodies, courts and tribunals

64. Matter earlier dealt by Company Law Board.

(1) Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

PART XIX**DISPOSAL OF CASES AND PRONOUNCEMENT OF ORDERS****146. Disposal of Cases.-**

On receipt of an application, petition, appeal etc, the Tribunal, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:

Provided that the Tribunal, after considering an appeal, may summarily dismiss the same, for reasons to be recorded, if the Tribunal is of opinion that there are no sufficient grounds for proceedings therewith.

149. Power to impose Costs.

The Tribunal may, in its discretion, pass such order in respect of imposing costs on the defaulting party as it may deem fit.

150. Pronouncement of Order.

- (1) The Tribunal, after hearing the applicant and respondent, **shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.**
- (3) A certified copy of every order passed shall be given to the parties.
- (4) The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.
- (5) Every order or judgment or notice shall bear the seal of the Tribunal.

154. Rectification of Order.

- (1) **Any clerical or arithmetical mistakes** in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal **on its own motion or on application of any party** by rectification.
- (2) **An application under sub-Rule (1) may be made in Form No. NCLT. 9 within two years from the date of the final order** for rectification of the final order not being an interlocutory order.

155. General power to amend.

The Tribunal may, **within a period of thirty days from the date of completion of pleadings**, and on such terms as to costs or otherwise, as it may think fit, **amend any defect or error in any proceeding before it**; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

161. Filing of Order of the Tribunal with the Registrar of Companies.

The certified copy of the order passed by the Tribunal shall be filed by the company in **form INC-28 with the ROC** within the time specified in the Act or specified by the Tribunal. Where no time limit is prescribed by the Tribunal, such order shall be filed **within 30 days** from the date of receipt of certified copy of the order.

**MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION**

New Delhi, 21st July 2016

G.S.R. 717(E).—In exercise of the powers conferred by section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

- (1) These rules may be called the National Company Law Appellate Tribunal Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

22. Presentation of appeal.-

- (1) Every appeal shall be presented in **Form NCLAT-1** in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
- (2) Every appeal shall be accompanied by a certified copy of the impugned order.
- (3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
- (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.
- (5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.
- (6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

23. Number of copies to be filed.-

The appellant or petitioner or applicant or respondent **shall file three authenticated copies** of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

29. Calling for records.-

On the admission of appeal, the Registrar shall, if so directed by the Appellate Tribunal, call for the records relating to the proceedings from the respective Bench of Tribunal or adjudicating authority and retransmit the same at the conclusion of the proceedings or at any time.

Part XV
SUPREME COURT ORDERS

100. Register of Special Leave Petitions/Appeal.-

(1) A Register in Form NCLAT-9 shall be maintained in regard to Special Leave Petitions or Appeals against the orders of the Appellate Tribunal to the Supreme Court and necessary entries therein be promptly made by the Judicial Branch.

(2) The register shall be placed for scrutiny by the Chairperson in the first week of every month.

101. Placing of Supreme Court orders before Appellate Tribunal.-

Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of the Appellate Tribunal is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

CHAPTER XXVIII - SPECIAL COURTS**Introduction**

Chapter XXVIII of the Companies Act, 2013 deals with the concept of Special Courts.

This concept has assumed greater importance especially in the recent times as this will help in speedy trial of all offences under the Act.

Hence, this will definitely facilitate in good corporate governance and stricter implementation of the Law. Due to this, the stakeholders will be benefited at large.

With intent to punish the guilty, the Legislature has bring in, **the Special Courts in the Companies Act, 2013.**

Offences to be non-cognizable (Section 439) (AMENDMENT ACT, 2015)

The term “Non-cognizable offence” is defined under section 4 of the Cr.PC. It is an offence for which a police officer may not arrest without warrant.

- (i) **Offences under the Companies Act, 2013 deemed as non-cognizable:** Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non-bailable. The Companies Act, 2013 establishes the offence covered under the section 212(6) as a public wrong which has to be prevented and controlled. This non-bailable nature of the offences deter the offender and the others from committing further and similar offences.

- (ii) **Cognizance of offence:** A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -

- (a) The Registrar,
- (b) A shareholder of the company, or
- (c) Of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

- (iii) **Attendance of complainant:** where the complainant is the Registrar or a person authorised by the Central Government as given under sub-section (2), the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

- (iv) **Non-application of sub-section (2) on the action of the liquidator:** The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

1. ESTABLISH OF SPECIAL COURT – (SECTION 435)

- (1) The Central Government may for the purpose of providing speedy trial of offences *punishable* under this Act *with imprisonment with two year or more*, by notification establish or designate Special Courts.
All other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.
- (2) A Special Court shall consist of a single judge appointed by the Central Government. The Judge shall be appointed with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- (3) A person shall not be qualified for appointment as a judge of Special Court unless he was holding a Sessions Judge or an Additional Sessions Judge.

OFFENCES TO BE TRIED BY SPECIAL COURTS – (SECTION 436)

- (1)
 - (a) All offence under sub-section (1) of section 435 of the Companies Act shall be triable only by the Special Court for the area in which the registered office of the company in relation to which the offence is committed.
 - (b) Where a person accused of or suspected of the commission of an offence under the Act is forwarded, a Judicial Magistrate may authorise the detention of that person for fifteen days or an Executive Magistrate for seven days. Where the Magistrate considers that the detention of the person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction.
 - (c) The Special Court may exercise the same power which a Magistrate having may exercise under Section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him.
- (2) When trying an offence under this Act, a Special Court may also try an offence under the Code of Criminal Procedure, 1973 in a same trial.
- (3) The Special Court may try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years. In case of summary trial, a sentence of imprisonment for a term exceeding one year shall not be passed. Where the Special Court think it is undesirable to try the case summarily, the Special Court shall record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear in regular trial.

APPEAL AND REVISION – (SECTION 437)

The High Court may exercise all the powers conferred by Chapter XXIX and XXX of the Code Criminal Procedure, 1973 on a High Court as if a Special Court were a Court of Session trying cases.

APPLICATION OF CODE TO PROCEEDING BEFORE SPECIAL COURT – (SECTION 438)

The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court. The Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court be deemed to be a Public Prosecutor.

TRANSITIONAL PROVISIONS – (SECTION 440)

This transitional provision came into force, when many Special Courts is being established by another notification of same date 18th May 2016. The notification established special courts only in 8 states and Union Territories. In case of all other States and Union Territories, this transition provision under Section 440 shall apply.

MEDIATION AND CONCILIATION PANEL [CONSISTING OF EXPERTS]**Mediation:** Intervention by Third Party in a Dispute**Conciliation:** Adjusting or Settling Disputes in a Friendly manner

1. Assessee's Case pending in front of:-
2. CG, NCLT or NCLAT
3. Either Party [Assessee or Authority] may Refer the Case to:-
4. Mediation & Conciliation Panel [Maintained by CG]
5. It shall Dispose off the Case within 3 Months from Date of Reference
6. Any Party Aggrieved with such Recommendation shall:-
7. File Objection to CG, NLCT or NCLAT

**MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION
New Delhi, the 9th September, 2016**

G.S.R. 877 (E) – in exercise of the powers conferred under section 442 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules:

1. Short Title and Commencement –

- (1) These rules may be called the Companies (Mediation and Conciliation) Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions -

- (1) In these rules, unless the context otherwise requires-
 - (a) “Act” means the Companies Act, 2013 (18 of 2013)
 - (b) “Regional Director”, means the person appointed by the CG in the MCA as such.
 - (c) “Annexure”, means the annexure attached to these rules :
 - (d) “Forms” or “e-Forms” means a form set forth in the Annexure which shall be used for the matter to which it relates :
 - (e) “Panel” means the Mediation and Conciliation Panel.
- (2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or the rules.

3. Panel of mediators or conciliators –

- (1) Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators in the respective regions and such panel shall be placed on the website of the MCA or on any other website as may be notified by the CG
- (2) The Regional Director may invite applications from persons interested in getting empanelled as mediator or conciliator and possessing the requisite qualifications specified in Rule 4.
- (3) A person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications shall apply to the Regional Director in Form MDC-1.
- (4) Application received under sub-rule (3), if rejected by the Regional Director, the Regional Director shall record the reasons in writing for the same.
- (5) The Regional Director shall invite applications from persons interested in getting empanelled as mediator or conciliator every year during the month of February and update the Panel which shall be effective from 1st of April of every year.

Provided that for Financial Year 2016-17, the Regional Director may call for applications from the persons interested in getting empanelled as mediator or conciliator, within 60 days from the date of publication of these rules and prepare the panel for the current financial year within a period of 30 days.

4. Qualifications for empanelment.-

A person shall not be qualified for being empanelled as mediator or conciliator unless he —

- (a) has been a Judge of the Supreme Court of India ; or
- (b) has been a Judge of a High Court; or
- (c) has been a District and Sessions Judge ; or
- (d) has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force; or
- (e) has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience; or
- (f) is a qualified legal practitioner for not less than ten years; or
- (g) is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary; or
- (h) has been a Member or President of any State Consumer Forum ; or
- (i) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

5. Disqualifications for empanelment.-

A person shall be disqualified for being empanelled as mediator or conciliator, if be —

- (a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending;
- (b) has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude ;
- (c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government;
- (d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority; or
- (c) has, in the opinion of the Central Government, such financial or other interest in the subject matter of dispute or is related to any of the parties, as is likely to affect prejudicially the discharge by him of his functions as a mediator or conciliator.

6. Application for appointment of Mediator or Conciliator and his appointment-

- (1)
 - (a) Parties concern may agree on the name of the sole mediator or conciliator for mediation or conciliation between them;
 - (b) Where, there are two or more sets of parties and are unable to agree on a sole mediator or conciliator, the Central Government or the Tribunal or the Appellate Tribunal may ask each party to nominate the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal may appoint the mediator or conciliator, as may be deemed necessary for mediation or conciliation between the parties.
- (2) The application to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to any proceeding pending before it for mediation or conciliation shall be in Form MDC-2 and shall be accompanied with a fee of one thousand rupees.
- (3) On receipt of an application under sub-rule (2), the Central Government or the Tribunal or the Appellate Tribunal shall appoint one or more experts from the panel

- (4) The Central Government or the Tribunal or the Appellate Tribunal, as the case may be, before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel, if it deems fit in the interest of parties.

7. Deletion from the Panel -

The Regional Director may by recording reasons in writing and after giving him an opportunity of being heard, **remove any person from the Panel.**

8. Withdrawing name from Panel.-

Any person who intends to withdraw his name from the Mediation and Conciliation Panel may make an **application to the Regional Director indicating the reasons for such withdrawal** and the Regional Director shall take a decision on such application within fifteen days of receipt of such application and update the Panel accordingly.

9. Duty of mediator or conciliator to disclose certain facts.-

- (1) It shall be the duty of a mediator or conciliator to **disclose** to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, **about any circumstances which may give rise to a reasonable doubt as to his independence** or impartiality in carrying out his functions.
- (2) Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about existence of any circumstance referred to in sub-rule (1).

10. Withdrawal of appointment-

The Central Government or the Tribunal or the Appellate Tribunal as the case may be, upon receiving any disclosure furnished by the mediator or conciliator under rule 9. or after receiving any other information from a party or other person in any proceeding which is pending and on being satisfied that such disclosures or information has raised a reasonable doubt as to the independence or impartiality of such mediator or conciliator, may withdraw his appointment and in his place, appoint any other mediator or conciliator in that proceeding:

Provided that the mediator or conciliator may, offer to withdraw himself from such proceeding and request the Central Government or the Tribunal or the Appellate Tribunal as the case may be to appoint any other mediator or conciliator.

11. Procedure for disposal of matters.

- (1) For the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely
- (i) he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present;
 - (ii) he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree;
 - (ii) he may conduct joint or separate meetings with the parties ;
 - (iii) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to

be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite

party or parties:

Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;

- (iv) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

- (2) Where there is more than one mediator or conciliator, the mediator or conciliators may first concur with the party that agreed to nominate him and thereafter interact with the other mediator or conciliator, with a view to resolve the dispute.

12. Mediator or Conciliator not bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908-

The mediator or conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 while disposing the matter, but shall be guided by the principles of fairness and natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

16. Offer of settlement by parties.

- (1) Any party to the proceeding may, "without prejudice" offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.
- (2) Any party to the proceeding may make a, "with prejudice" offer to the other party at any stage of the proceedings with a notice to the mediator or conciliator.

17. Role of Mediator or Conciliator

The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties :

Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.

18. Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.

19. Time limit for completion of mediation or conciliation.

- (1) The process for any mediation or conciliation under these rules shall be completed within a period of **3 months from the date of appointment of expert** or experts from the Panel.
- (2) **On the expiry of three months** from the date of appointment of expert from the Panel, the **mediation or conciliation process shall stand terminated.**
- (3) In ease of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within three months, the Tribunal or as the ease may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party' to the proceedings, extend the period for mediation or conciliation by such period not exceeding three months.

20. Parties to act in good faith.

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.

22. Privacy

The mediation or conciliation sessions or meetings shall be conducted in privacy where the persons as mentioned in rule 13 shall be entitled to represent parties but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.

23. Protection of action taken in good faith .

No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any part)' to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, to testify' regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.

24. Communication between mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal.—

In order to preserve the confidence of parties in the CG or the Tribunal or the Appellate Tribunal as the case may be and the neutrality of the mediator or conciliator, there shall be no communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the ease may be, in the subject matter:

Provided that, if any communication between the mediator or conciliator and the CG or the Tribunal or the Appellate Tribunal, as the case may be, is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative :

Provided further that communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the ease may be, shall be limited to communication by the mediator or conciliator:

- (i) about the failure of the party to attend;
- (ii) about the consent of the parties;
- (iii) about his assessment that the case is not suited for settlement through the mediation or conciliation;
- (iv) about settlement of dispute between the parties.

27. Expenses of the mediation and conciliation.—

- (1) At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting.
- (2) The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

29. Resort to arbitral or judicial proceedings .

The parties shall not initiate, during the mediation or conciliation under these rules, any arbitral or judicial proceedings in respect of a matter that is the subject-matter of the mediation or conciliation, except that a party may initiate arbitral or Judicial proceedings, where, in his, opinion, such proceedings are necessary for protecting his rights.

30. Matters not to be referred to the mediation or conciliation.

The following matters shall not be referred to mediation or conciliation, namely:—

- (a) the matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Act; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties.
- (b) cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.
- (c) cases involving prosecution for criminal and non compoundable offences.
- (d) cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be.

FAST TRACK ISSUANCES - FPO AND RIGHTS ISSUES**OBJECTIVE**

Fast track issue is a faster and cost effective method of raising capital by listed companies. It means the listed companies can access the Indian primary market for raising the capital through public issue.

STOCK MARKET REGULATOR SEBI ON INDIA ON, 23 JUNE 2015.

liberalized norms for raising capital by way of **FOLLOW ON PUBLIC OFFERINGS (FPO) AND RIGHTS ISSUES** using the fast-track route.

In order to enable more number of listed companies to raise further capital using the fast-track route,

SEBI board has approved the proposal to reduce the minimum public holding requirement **from rs 3000 crore to RS.1000 crore in case of FPO and to RS.250 crore in case of RIGHTS ISSUE**, subject to compliance with certain additional conditions.

Sebi has introduced this **FTI** in order to enable well established and compliant listed companies satisfying certain specific entry norms/conditions to access Indian primary market in a time effective manner.

Such companies can proceed with FPOs / right issues by filing a copy of **RHP** (red herring prospectus) / prospectus with the registrar of companies (**ROC**) or the letter of offer with designated stock exchange (SE), SEBI and stock exchanges.

Such companies are not required to file draft offer document for SEBI comments and to stock exchanges.

Entry norms for companies seeking to access primary market through **FTI's** in case **aggregate value of securities including premium exceeds rs. 50 lacs.**

The following are the eligibility criteria:

- (i) the shares of the company have been listed on any stock exchange having nationwide terminals **for a period of at least three years immediately preceding the date of filing of offer document with ROC/ RSE**
- (ii) the **"average market capitalisation of public shareholding" of the company is at least rs. 3000 crores for a period of one year** up to the end of the quarter preceding the month in which the proposed issue is approved by the board of directors / shareholders of the issuer;
- (iii) the annualized trading turnover of the shares of the company during **6 calendar months** immediately preceding the month of the reference date has been **at least 2 % of the weighted average number of shares listed** during the said six months period;
- (iv) the company has **redressed at least 95% of the total shareholder / investor grievances or complaints** received till the end of the quarter immediately preceding the month of the date of filing of offer document with **ROC/RSE**.
- (v) the company has **complied with the listing agreement for a period of at least 3 years** immediately preceding the reference date;

- (vi) **THE IMPACT OF AUDITORS' QUALIFICATIONS**, if any, on the audited accounts of the company in respect of the financial years for which such accounts are disclosed in the offer document **does not exceed 5% of the net profit/ loss after tax** of the company for the respective years.
- (vii) **NO PROSECUTION PROCEEDINGS OR SHOW CAUSE NOTICES ISSUED** by the board are pending against the company or its promoters or whole time directors as on the reference date
- (viii) the entire shareholding of the promoter group is **held in dematerialised form** as on the reference date.

Thresholds prescribed for applicability of Competition Act to combinations

Certain thresholds have been prescribed for applicability of Competition Law to "combinations". In the event a combination satisfies **any one of the below mentioned thresholds**, it would be within the purview of Competition Law, unless there is a specific relaxation/ exemption provided

In relation to the Combinations regulations under the Competition Act, 2002 MCA has issued three notifications on 4 March 2016.

These notifications have been issued since the earlier notifications on the subject issued in 2011 were valid only for a period of 5 years.

Particulars	New Notification
Notification on Thresholds	Value of asset/turnover thresholds under Section 5 of the Act increased by <u>100%</u> (Refer table below for updated thresholds)
Target based exemption	Life span of the small target exemption extended by another 5 years with the following increased thresholds: Total Assets in India $\leq$ 350 Cr; or Total Turnover in India $\leq$ 1000 Cr
Notification on Group definition	Earlier notification extended for a period of another 5 years – no change

Updated chart for thresholds:

Particulars	Assets		Turnover
INDIA			
Either acquirer or target or both have*:	INR 20,000 million	or	INR 60,000 million
Group to which the target will belong have**	INR 80,000 million	or	INR 240,000 million
WORLDWIDE			
Either acquirer or target or both have: In case of a merger, the enterprise after merger or created as a result of merger	USD 1,000 million, with at least INR 10,000 million in India	or	USD 3,000 million, with at least INR 30,000 million in India
Group has :	USD 4,000 million, with at least INR 10,000 million in India	or	USD 12,000 million, with at least INR 30,000 million in India

The above changes shall come into force with effect from 4th March 2016 and shall be in effect till 4th March 2021 (however no sunset clause for the notification on thresholds).

3. Meaning of certain terms

- (a) 'Group' means two or more enterprises which, directly or indirectly, are in a position to
 - (i) exercise 26% or more of the voting rights in another enterprise; or
 - (ii) appoint more than 50% of the members of the Board of directors in another enterprise; or
 - (iii) control the management or affairs of another enterprise.

PAST ICAI EXAM QUESTION PAPERS**NOVEMBER 2015**

1. (a) Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases :
- (i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.
 - (ii) Dividend amount of ` 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

- (b) You are working as the Finance Head of Super Energy Ltd. The company is in advance stage of finalising projects of wind power generation, which will considerably improve the operational and financial strengths of the company. You have got some information that one of the directors of the company, who is involved in the project, is indulged in trading of shares of the company. Write a note for internal circulation explaining insider trading of securities and consequences of contravention of the relevant provisions of the Companies Act, 2013.

- (c) RPS Ltd. got its shares listed with a Stock Exchange. It has been regularly paying the listing fees. Certain information about shareholding pattern etc; was asked by the Stock Exchange, which the company could not supply in the prescribed time. It was then given a further opportunity to furnish the desired information along with supporting document, but in vain, as the company did not maintain any record. What are the penalties leviable against the company under the Securities Contracts (Regulation) Act, 1956 for the failure to furnish the information ?

- (d) Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted ? Elaborate.

- (e) One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members-passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members) decisions.

Examining the provisions of the Companies Act, 2013 answer the following:

- (i) Whether the contention of members against the non-compliance of members' decision by the directors is tenable ?
 - (ii) Whether it is possible for the members usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting ?
2. (a) The auditor of Organic Foods Ltd. accepted the Certificate from Mr. Rohan who is the manager, a person of knowledge, competence and high reputation, as to the value of the stock in trade. The valuation of stock referred to above was found to be grossly overstated for several years in the balance sheets of the company. As a result of the over valuation, dividends were paid out of capital. The Auditor did not examine the books of account very minutely. If they had done so and compared the amount of stock at the beginning of the year, with the purchases and sales during the year, they would have noticed the over valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends based on the balance sheets figures. Based on the above facts, you are required to decide, with reference to the provisions of the Companies Act, 2013 and the decided case laws, the following issues :
- (i) Whether the Auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors.
 - (ii) What are the statutory duties of the Auditors in this regard ?
- (b) Best Plastics Limited is being wound up by the Court. The Official Liquidator after realization of the assets has an amount of ` 28 lakhs in his hand towards payment of creditors of the company. Details of creditors are as follows:
- | | |
|--------------------------|-----------------|
| (i) Secured Creditors | ` 20 lakhs |
| (ii) Workers wages | ` 15 lakhs |
| (iii) Income Tax payable | ` 2 lakhs |
| (iv) Unsecured Creditors | ` 40 lakhs |
| Total Creditors | <u>77 lakhs</u> |
- Since the available amount in the hands of Liquidator is only ` 28 lakhs, which is insufficient to meet the claims of all the above creditors, explain the procedure you would follow for payment of the above in accordance with the provisions of the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of secured creditors.
- (c) ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company-Balance Sheet and Statement of Profit & Loss and the Board's Report for the year ended 31st March, 2015 were authenticated by two of the directors, Mr. X and Y under their signatures.
- Referring to the provisions of the companies Act, 2013 :
- (i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.
 - (ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report ?

3. (a) (i) In the annual general meeting of XYZ Ltd, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance, of the matter and take action against the director on its own ?
Justify your answer with reference to the provisions of the Companies Act, 2013.
- (ii) CB Ltd., an unlisted company, having a paid up equity share capital of ` 6 crore consisting of 60 lakh equity shares of ` 10 each, proposes to reduce the denomination of equity shares to ` 2 per share and make an initial public offer at a premium of ` 98 per share.
Examine whether it is possible for the company to go ahead with these proposals under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations, 2009 ?
- (b) Queens Limited is a Company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K, as the additional, director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K, as a director on the Company's Board was rejected by the members at the company's Annual General Meeting.
Examining the provisions of the Companies Act, 2013, answer the following:
- (i) Whether Mr K's appointment as additional director by the Board of Directors is valid ?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time ?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the Board as additional director, for the first time, can continue to act as a director ?
4. (a) Elaborate the provisions of the Companies Act, 2013 regarding Notice of Board Meeting. Draft a notice for the first meeting of the Board of Directors of India Timber Ltd.
- (b) (A) DJA Company Limited, incorporated under the provisions of Companies Act, 2013, has two subsidiaries - AJD Limited and AMR Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2015. Examining the provisions of the Companies Act, 2013, answer the following :
- (i) In what manner the subsidiaries - AJD Limited and AMR Limited shall prepare their Balance Sheet and Profit & Loss Account ?
- (ii) What would be your answer in case the DJA Limited - the holding company, is not required to prepare consolidated financial statements under the Indian Accounting Standards?
- (iii) What shall be your answer in case one of the subsidiary company's financial statements do not comply with the Accounting Standards ?
- (iv) To what extent is the Central Government empowered to exempt a company from preparing the financial statements in compliance with the Indian Accounting Standards ?

- (B) Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr.S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company ?
5. (a) A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6 July, 2014 and F, G and H were also appointed as directors on 7th August, 2014 in the company. In the Annual General meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and reappointed as directors.
At the AGM, resolution for A's retirement and reappointment was passed. However, before the resolution for 'B' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.
In the light of above and with reference to relevant provisions of the Companies Act, 2013, answer the following :
- (i) Whether proposals for retirement by rotation and reappointment of A and B only were sufficient ?
- (ii) What will be the status of B as a director in the company ?
- (b) Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013 ? Explain.
- (c) (i) The mango producers in Lucknow have entered into an 2x2 =4 arrangement among them whereby they have decided not to sell the mango below certain price. This arrangement has been made in writing but not intended to be enforced by any legal proceedings. Referring to the provisions of the Competition Act, 2002, examine whether the said arrangement shall fall within the jurisdiction of the term 'agreement' within the meaning of the said Act.
- (ii) The coconut producers in Tirunelveli (Tamil Nadu) have formed an association to control the production of coconuts. Referring to the provisions of the Competition Act, 2002, examine whether the said association to control the production of coconuts shall fall within the jurisdiction of the term 'Cartel' under the provisions of the said Act.
6. (a) Ideal Producer Co. Ltd. was incorporated on 1st April, 2009. Its paid up capital of ` 10 Lakh consists of 1 lakh 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 agronomies, as Director on its Broad. Whether is it permissible ?
- (iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2015-16 ?

- (b) (i) Mr. Gambler has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advice as to how can he be released on bail. Advise him.
 - (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 ?
7. Attempt any four :
- (a) India Exports Limited engaged in the export of software products to U.S. One party in U.S. to whom the company exported certain products failed to pay the amount due for these exports resulting into non-repatriation of amount to India. The Adjudicating Authority on coming to know about this, levied a penalty on India Exports Limited under the provisions of Foreign Exchange Management Act, 1999.
The company seeks your advice as to which authority, to whom it can make an appeal against the decision of Adjudicating Authority. State also, the time limit within which the appeal can be lodged.
 - (b) What do you understand by 'public interest' ? Explain, giving suitable examples, about its relevance under the Companies Act, 1956.
 - (c) Under Section 31 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, certain situations have been specified in which the provisions of this Act are not applicable. You are required to mention any four of such situations.
 - (d) Explain the usefulness of following terms in interpreting/construing statute:
 - (i) Preamble
 - (ii) Use of Foreign Decisions
 - (e) Bharat Insurance Company issued a policy having sum assured of ` 5 lakhs on the life of Ms. Nirmala. While obtaining education loan of ` 4 lakh for higher studies, Ms. Nirmala assigned the above insurance policy in favour of the Bank providing the loan. Who, in this case, will be called the 'Policy Holder' under the Insurance Act, 1938 and why ? Explain.

MAY – 2016

1. (a) Explain the law laid down under the companies Act, 2013 in respect of filing of annual financial statements with Registrar of companies in the following two situations who is liable for the default.
 - (i) Where financial statements of the company are filed with the ROC after 10 months from its due date;
 - (ii) Where financial statements are not at all filed by the company with the ROC?
 - (b) a group of creditors of MAC Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is including in destruction and falsification of the accounting records of the company. The complaints 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 10 A.M. on 1st July 2015 and the Roc entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize. Examine the powers of the Registrar to seize the books of the company.
 - (c) Indian Software Ltd. seeks to export to its client in Indonesia. In this regard –
 - (i) explain the procedure to be adopted for export of software under the Foreign Exchange Management act, 1999 and also state the period within which export value is to be realised.
 - (ii) explain the position in case of delay in receipt of payment from its client.
 - (d) Explain the functioning of the 2 types of Front Office (FO) in accessing MCA 21 portal of the Ministry of Corporate Affairs.
Also state the nature of services which can be availed of by its user on the MCA 21 portal.
 - (e) XYZ, a recognised stock exchange fails to comply with certain directions issued by the Securities and Exchange Board of India and the adjudicating officer initiated proceedings for the purpose of imposing penalty. The stock exchange seeks your advice whether it is possible to go for settlement of the proceedings. Advise explaining the relevant provisions of the Securities Contracts (Regulation) Act, 1956?
2. (a) (i) XYZ Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 :
 - (1) Extent of promoters contribution;
 - (2) Lock in period of securities held by promoters;
 - (3) Lock in period of securities held by persons other than promoters;
 - (4) Lock in period of securities allotted to employees of the company under Employee stock option.
 - (ii) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of L.R. Ltd. a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.
- (b) On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of

- shareholders and public interest. Referring to the provisions of the Companies Act, 2013 state the restrictions, if any, on the provisions of the Companies Act, 2013 state the restrictions, if any, on the number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government
- (c) What are the conditions to be fulfilled for calling meetings at shorter notice than as prescribed by Companies Act, 2013.
One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him
3. (a) (i) A Scheme of amalgamations was approved by overwhelming majority of members of both the merging companies at meetings called as per directions of the Court, the exchange ratio was questioned by a small group of members of one of the merging companies. The exchange ratio was fixed by a reputed firm of Chartered Accountants.
Examine with reference to the decide case law under the Companies Act, 1956 whether the dissenting shareholders will succeed . Would your answers be different if the exchange ratio was objected to by the Central Government?
- (ii) State the circumstances in which a director of a company is required under the Companies Act, 2013 to disclose his interest in a contract or arrangement to be entered into by the company. Examine whether the validity of the contract is affected by non- disclosure of interest by the director.
- (b) The Articles of association of Coimbatore Milk Producers Limited restricts the membership to producers. You are required to answer the following questions explaining the relevant provisions of the Companies Act, 1956.
- (i) Mr. Gopal, one of the members proposes to transfer part of his shares. State the steps to be taken by Mr. Gopal to give effect to the proposed transfer.
- (ii) Mr.Ramu, one of the members nominated his son, Mr. Krishnan to be entitled to his shares in the event of his death.Mr. Ramu died. State than can be taken by the producer company in case Mr. Krishnan is not a producer.
- (c) (i) Shyam& Co. is engaged in the manufacture of cement. It sold the goods initially below the cost price for a year and slowly, its other competitors went out of the market. thereafter, the enterprise changed its strategy and sold the goods above its cost price and made substantial profits. Examine the action, if any, which may lie against this enterprise under the Competition Act, 2002.
- (ii) What do you mean by anti- competitive agreements, viz, tie- in arrangement and resale price maintainance?
4. (a) (i) R Ltd.wants to constitute an Audit Committee.Draft a board resolution covering the following matters [compliance with companies Act,2013 to be ensured].
- (1) Member of the Audit Committee
- (2) Chairman of the Audit Committee
- (3) Any functions of the said Committee
- (ii) What would be the minimum likely turnover or capital of this company?

- (iii) What is the role of the Audit Committee vis a vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Sec.144?
- (b) XYZ Limited is an unlisted public company having a paid – up capital of twenty crore rupees as on 31st March , 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March ,2015.The total number of directors is thirteen.

Referring to the provisions of the Companies Act,2013 answer the following:

- (i) State the minimum number of independent directors that the company should appoint.
 - (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company?
 - (c) The Insurance Act ,1938 requires to establish Tariff Advisory Committee (TAC).In this regard, specify:
 - (i) Object and purpose of TAC:
 - (ii) Constitution of its members and Chairperson.
5. (a) International Technologies Limited,a listed company ,being managed by a Managing Director proposes to pay the following managerial remuneration:
- (i) Commission at the rate of five percent of the net profit to its Managing Director,Mr Kamal.
 - (ii) The directors other than Managing Directors are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company.The commission is to be distributed equally among all the directors.
 - (iii) The company also proposes to pay suitable additional remuneration to Mr.Bhatt,a director,for professional services rendered as software engineer,whenever such services are utilised.

You are required to examine with reference to the provisions of the Companies Act,2013 the validity of the above proposals.

- (b) (i) Central Government and Government of Maharashtra together hold 40% of the paid – up share capital of MN Limited.A government company also holds 20% of the paid – up share capital in MN Limited.
- (ii) PQ Limited is a subsidiary but not wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act , 2013 whether MN Limited and PQ Limited can be considered as Government Company.

- (c) Apex Limited failed to repay the amount borrowed from the bankers,ACE Bank Limited,Which is holding a charge on all the assets of the company.The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act ,2002 by appointing four persons as directors.The company is managed by Managing Director,Mr.X Referring to the provisions of the said Act,examine whether Mr.X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company.

6. (a) AVM Producer company Ltd. seeks your advice on the following aspects of the working of a Producer company under the Companies Act, 1956 :-
- (i) Criteria for appointment of Secretary as also the legal position, if its financial position is unsatisfactory.
 - (ii) Can the Board of Directors of the company direct its member to surrender his shares to the company, if so, under what circumstances?
 - (iii) Provisions relating to donation to any institution, as also to a political party.
 - (iv) Provisions relating to investment of general reserves, as also investment in the share of a company, other than a producer company.
- (b) A company was in financial distress. They pledged certain immovable properties with a nationalised bank in the belief that their loan limits would be increased. However within 3 months, some creditors filed a petition for winding up. The management was accused of fraudulent preference.
- (i) In the above context discuss fraudulent preference.
 - (ii) Would your answer be different if the charge was created in favour of an NBFC?
- (c) The adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advice explaining the relevant provisions of the Prevention of Money Laundering Act, 2002
7. Answer any four of the following:
- (a) DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders directors. Referring to the provisions of the Companies Act, 2013 advice on the following:
- (i) Define the expression 'small shareholders' and specify the number of small shareholders who may serve notice on the company for a director representing them.
 - (ii) It is possible to appoint a person, who does not hold any share in the company, as small shareholders director?
 - (iii) What is the tenure of small shareholders director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders director.
- (b) Mr Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August, 2015. He makes complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013.
- Also state the offences under the Companies Act, 2013 which are cognisable and which are non – cognizable.

- (c) Explain the provisions of the Companies Act ,1956 relating to preparation and filing of Statement of Affairs (SA)in case of winding of a company by the court, with regard to the following aspects:
 - (i) Who is required to prepare and file SA and whether cost and expenses incurred in preparing SA are recoverable?
 - (iii) Contents of SA and the period within which the same is required to be submitted and to whom ?Also state about delay in filing SA and up to what period the same is allowed.
- (d) How will you interpret the definition in a statute,if the following words are used in a statute?
 - (i) Means, (ii) IncludesGive one illustration for each of the above from statutes you are familiar with
- (e) Galilio Ltd.is a foreign company in Germany and it established a place of business in Mumbai.Explain the relevant provisions of the Companies Act,2013 and rules made thereunder relating to preparation and filing of financial statements,as also the documents to be attached alongwith the financial statements by the foreign company.

NOVEMBER – 2016

1. a. The Directors of Som Limited proposed dividend at 12% on equity shares or the financial year 2015-16. The same was approved in the Annual General Meeting of the company held on 20th September, 2016. The Directors declared the approved dividend. They seek your opinion on the following matters :
 - i. Mr. Ashok, holding equity shares of face value of Rs. 10 lakhs has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?
 - ii. Ms. Nini was the holder of 1,000 equity shares on 31st March, 2016, but she has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2016. Who will be entitled to the above dividend?(4 marks)
- b. Seafood Limited, a public limited company was incorporated on 1st April, 2015. The company has conducted four Board Meetings during the financial year 2015-16 i.e. on 6th April, 2015, 28th August, 2015, 30th September, 2015 and 30th March, 2016.
 - i. Has the company contravened the provisions of the Companies Act, 2013 in respect of the conduct of the meetings?
 - ii. Will your answer differ if the company was incorporated under Section 8 of the Companies Act, 2013?(4 marks)
- c. RSE Stock Exchange Limited, a recognized stock exchange is involved in trading of shares of Son Limited. The SEBI on receiving a complaint from a group of investors enquired and found that trading of shares of Son Limited is being conducted in a manner detrimental to the interest of the general investors. In order to curb the same, the SEBI wants to issue some directions to RSE Stock Exchange Limited. Referring to the provisions of the Securities Contract (Regulation) Act, 1956, discuss whether the SEBI has power to issue such directions. Can such directions be given to an individual who made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956, or regulations made thereunder?(4 marks)
- d. Referring to the provisions of Companies Act, 2013, examine the following :
 - i. XYZ Limited, a listed company has constituted an audit committee consisting of five members out of whom two are independent directors. Subsequently, the company increased the composition of audit committee to six members with three independent directors.
 - ii. Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid?(4 marks)
- e. Lifesys Limited, a billion dollar, Indian company wishes to create a chair in a reputed university in the U.S. This chair is for the department of Computer Science. The company wishes to obtain your advice in regard of the following with reference to the FEMA, 1999.
 - i. Is such "chair" creation permissible?
 - ii. What can be the maximum amount that can be donated for such chair?
 - iii. Any formalities to be complied with?(4 marks)

2. a. Super Real Estate Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (Rs. In crores)
2011-12	20
2012-13	40
2013-14	30
2014-15	70
2015-16	50

- Calculate the amount that the company can spend towards CSR.
- Give the composition of CSR committee of a listed and unlisted company.
- Will the company suffer penalties if they fail to provide for or incur expenditure for CSR?
- List only two activities that are expressly prohibited from being considered as CSR activities.(8 marks)

The Balance Sheet of Loyal Limited as at 31-03-2016 disclosed the following details :

- Authorised share capital - Rs.400 crore
- Paid up share capital - Rs.150 crore
- Reserves and surpluses - Rs.750 crore

The Company has issued, in the year 2011, fully convertible debentures of Rs.100 crores which are due for conversion in the year 2016. The company proposes after the conversion of debentures to issue Bonus Shares in the ratio of 1:1.

Referring to the provisions of the Security and Exchange Board of India, (Issue of Capital and Disclosure Requirements) Regulations, 2009, explain the provisions with regard to:

- Authorisation to issue the Bonus shares
- Revision of paid up share capital
- Source of funds
- Any other restriction(8 marks)

3. a. Mr. Smart, a technocrat aged 71 years and reputed to be a specialist in reviewing sick companies is being considered to be appointed as Managing Director of Downhill Industries Limited. The company has been incurring losses for the past several years and its "effective capital" is Rs.500 crore. Referring to the provisions of the Companies Act, 2013, discuss:

- Can Mr. Smart be appointed as Managing Director of the company despite being over 70 years of age? If so, what is the process to be followed to enable this?
- What is "effective capital" as per Schedule IV of the Act?
- What is the maximum permissible remuneration under the Companies Act, 2013?(8 marks)

- b. Greater DINA Investors Association made a complaint by an informal letter to the Central Government that Management of Secret Limited has been indulging in fraudulent activities causing loss to the shareholders and that an investigation should be carried out to find out the whole truth. On receipt of the letter, the Central Government directed the Association to approach them formally after complying with the provisions of the Companies Act, 2013. Advise the Association.(4 marks)

- c. Mr. Arnab, one of the Directors of Aim Insurance Company Limited had taken some life insurance policies from the company. He, now, wants to avail a

temporary loan from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Mr. Arnab, approached you, now about the matter. Advise him with reference to the Insurance laws Amendment Act, 2015 as well as sec 185 of the Companies Act, 2013, whether such loan can be obtained by him.(4 marks)

4.
 - a. Bengaluru Limited is a listed company with a net worth of Rs. 95 lakhs. And turnover of Rs.11.6 crores as on 31st March,2016. The company wants to circulate financial statements in electronic mode. Referring to the provisions of the Companies Act, 2013, advise the company whether it can do so.(4 marks)
 - b. Dull Limited was not running its business since last 2 years. It had no significant accounting transactions during that period. Hence the company had applied and was granted the status of a 'dormant company' by the Registrar of Companies. Now the company has got some opportunity and recently started its operations. Therefore the company is intending to get back the status of an active company and approached you for your advice on the basis of the applicable provisions of the Companies Act, 2013 and appropriate Rule of the Companies (Registration Offices and Fees) Rules, 2014. Also state the power of the Registrar to remove the name of a company from the register of 'dormant company' and treat it as an active company.(4 marks)
 - c. State with reference to the provisions of the Companies Act,2013, whether the following persons can be appointed as a Director of a company.
 - i. Mr. L, who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls.
 - ii. Mr. G is Director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2014, 2015, and 2016.(4 marks)
 - d. The Board of Directors of Shakti Bank Limited, a banking company incorporated in India, for the accounting year ended on 31-03-2016, transferred 15% of its net profit to its reserve fund. Certain shareholders of the company objected to the above act of Board of Directors on the ground that it is violative of the provisions of the Banking Regulations Act,1949. Examine the relevant provisions of the Banking Regulation Act 1949 to decide whether the contention of the shareholder is tenable.(4 marks)
6.
 - a. Soft and Secure Lenders Limited, has convened a Board Meeting on 25th October,2016. One of the items of the agenda is to approve the grant of loan of Rs.20 crore to Easy Going Industries Limited, for expansion of its business activities. At the Board Meeting, out of the total of six Directors of the lending company, five directors were present and expect one director, the remaining four directors approved the grant of loan of Rs.20 crores to Easy Going Industries Limited. The Borrowing company has taken loans from a public financial institution and also deposits from public. Examine the loan proposal with reference to the provisions of the Companies Act,2013
 - b. Discuss "Related Party Transactions" under the Companies Act,2013, with specific reference to the nature of transactions which fall under the purview of the Companies Act,2013
 - c. GST Limited is a securitization and reconstruction company under SARFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the circumstances when the certificate can be cancelled. Further, state the authority which can cancel the certificate if the registration.

- d. Upon an enquiry made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Sct,2002, describe the matters which may be provided in the said order.
7. a. Winding-up proceeding has been commenced by the court against Lucy Limited, a non-government company. Even after completion of one year from the date of commencement of winding up proceedings, it has not been possible to conclude the same. Discuss the duties of the liquidator with respect to auditing and filing of the required statements with the appropriate authority as per the provisions of the Companies Act,1956. Also discuss the penalty which can be imposed on the liquidator for contravention of the above provisions.
- b. Sky Limited, a listed company has been incorporated under the Companies Act,2013. An intermittent vacancy of a women director has arisen on 15th June,2016. Advise the company to fill the vacancy as per the provisions of the Companies Act,2013. The Board Meeting was held on 14th August,2016.
- c. Can a holding company advance any loan to its wholly owned subsidiary company? What are the relevant provisions of the Companies Act, 2013 with regard to granting of loans by holding company to its wholly owned subsidiary company? Mention the penalties for the contravention of the provisions of the Companies Act,2013.
- d. Explain very briefly the significance of conjunctive and disjunctive words “or” “and” in the manner of interpretation of statutes.
- e. Discuss the provisions relating to annual reports of Government Companies –
- Where in addition to the Central Government, any state Government is a member of the company
 - Where the Central Government is not a member of the Government Company
-