PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER, 2015

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

(A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

The Study material (October 2014 edition) of Corporate and Allied Laws is relevant for November 2015 examinations. It contains all relevant Amendments/ Circulars/ Notifications etc. in the Companies Act, 2013 and the Allied Laws up to 30th September, 2014. Below are the further Amendments/ Circulars/ Notifications etc. issued between 1st October, 2014 to 30th April, 2015 which are also applicable for the said examinations:

SL.No.	Heading of Amendments	Gist
Section –A: Company Law		
1.	The Companies (Audit and Auditors) Amendment Rules, 2014	**Vide Notification G.S.R. 722(E) dated 14thOctober 2014,** the Central Government amended the Companies (Audit and Auditors) Rules, 2014. According to it, in the Companies (Audit and Auditors) Rules, 2014, after rule 10, the new section 10A has been inserted. "10A. For the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness."
2.	The Companies (Accounts) Amendment Rules, 2014.	**Vide Notification G.S.R. 723(E), dated 14th October, 2014**, the Central Government amended the Companies (Accounts) Rules, 2014. In the Companies (Accounts) Rules, 2014, in rule 6, after the existing proviso, the following provisos have been inserted- "Provided further that nothing in

		this rule shall apply in respect of preparation of consolidated financial statement by an intermediate wholly-owned subsidiary, other than a wholly-owned subsidiary whose immediate parent is a company incorporated outside India: Provided also that nothing contained in this rule shall, subject to any other law or regulation, apply for the financial year commencing from the 1st day of April, 2014 and ending on the 31st March, 2015, in case of a company which does not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both, for the consolidation of financial statement in respect of associate companies or joint ventures or both, as the case may be."
3.	Clarification on matters relating to Consolidated Financial statements	**Vide General Circular No, 39/2014, dated 14th October, 2014**, clarifications has been issued on the manner of presentation of notes in Consolidated Financial Statement (CFS) to be prepared .Circular clarified that Schedule III to the Act read with the applicable Accounting Standards does not envisage that a company while preparing its CFS merely repeats the disclosures made by it under stand-alone accounts being consolidated. In the CFS, the company would need to give all disclosures relevant for CFS only.
4.	Right of persons other than retiring director to stand for directorship -	**Vide General Circular 38/2014, dated 14th October 2014, c**larity

	Refund of deposit under section 160 of the Companies Act, 2013 in certain cases.	has been bought by companies registered under section 8 of the Companies Act, 2013 about the manner in which the amount of deposit of rupees one lakh received by them under section 160(1) of the Companies Act, 2013 is to be handled if the depositor fails to secure more than twenty five have per cent of the total valid votes. It has been clarified that in such cases, the Board of directors of a section 8 company is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded.
5.	Amendments to Schedule VII	**Vide Notification G.S.R. 741(E) dated 24th October, 2014**, the Central Government hereby made further amendments to Schedule VII of the Companies Act, 2013. (a) In item (i), after the words "and sanitation", the words "including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation" shall be inserted; (b) In item (iv), after the words "and water", the words "including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;" shall be inserted.
6.	The Companies (Accounts) Amendment Rules, 2015.	**Vide Notification G.S.R. 37(E) dated 16th January 2015** the Central Government amended the Companies (Accounts) Rules, 2014.

		In the Companies (Accounts) Rules, 2014,- (i) after rule 2, new rule 2A dealing with "Notice of address at which books of account are to be maintained" has been inserted. (ii) in rule 6, after the third proviso, the following proviso has been inserted-
		"Provided also that nothing in this rule (rule 6)shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April,2014. (iii) the Annexure, after Form AOC-4, the Form no. AOC-5 (Notice of address at which books of account are to be maintained have been inserted.
7.	The Companies (Appointment and Qualification of Directors)Amendment Rules, 2015	**Vide Notification G.S.R. 42(E) dated 19th January 2015** the Central Government further amended the Companies(Appointment and Qualification of Directors) Rules, 2014. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 16, following proviso has been inserted- "Provided that in case a company has already filed Form DIR-12 with the Registrar under rule 15,a foreign director of such company resigning from his office may authorise in writing a practicing chartered accountant or cost accountant in practice or company secretary in practice or any other

		resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation."
8.	The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015	**Vide Notification G.S.R. 43 (E) dated 19th January 2015**, Central Government amended the Companies (Corporate Social Responsibility Policy) Rules, 2014. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (2),— (i) for the words "established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise", the words "established under section 8 of the Act by the company, either singly or along with its holding or subsidiary or associate company, or along with any other company or holding or subsidiary or associate company of such other company, or otherwise" shall be substituted; (ii) in the proviso, in clause (i), for the words "not established by the company or it sholding or subsidiary or associate company, it", the words "not established by the company, either singly or along with its holding or subsidiary or associate company, or along with any other company or holding or subsidiary or associate company of such other company" shall be substituted.
9.	The Companies (Registration Offices and Fees) Amendment Rules, 2015	**Vide Notification G.S.R. 122(E) dated 24th February, 2015,** the Central Government amended the Companies (Registration Offices and Fees) Rules, 2014.

		In the Companies (Registration Offices and Fees) Rules, 2014,— (a) in rule 10, after sub-rule (6), the following sub-rule shall be inserted, namely:— "7. Any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of Corporate Affairs shall be furnished in Form No. GNL-4 as an addendum". (b) in the Annexure, after Form No. GNL-3, Form no. GNL-4 has been inserted pursuant to Rule 10(7) of the Companies(Registration offices and Fee) Rules, 2014 for filing addendum for rectification of defects or incompleteness.
10.	The Companies (Removal of Difficulties) Order, 2015	**Vide Order S.O. 504(E) dated 13 February 2015,** the Central Government issued an order to remove the difficulties having arisen in giving effect to the provisions contained under sections 2(85) and 186(11)(b) of the Companies Act, 2013. In the Companies Act, 2013- (a) in section 2, in clause (85), in sub-clause (i), for the word "or" occurring at the end, the word "and" shall be substituted; and (b) in section 186 sub-section (11), in clause (b), after item (iii), the following item shall be inserted, namely :— "(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business."

11.	Clarification with regard to section 185 and 186 of the Companies Act 2013 - loans and advances to employees.	**Vide General Circular No, 04/2015, dated 10/3/2015** clarification has been issued on the applicability of provisions of section 186 of the Companies Act, 2013 relating to grant of loans and advances by Companies to their employees. It has been clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.
12.	The Companies (Meetings of Board and its Powers) Amendment Rules,20l5.	**Vide Notification G.S.R. 206 (E) dated 18th March, 2015,** the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014. Item no. 3, 5, 6, 7, 8, and 9 of Rule 8 prescribing powers of Board which shall be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board shall be omitted.
13.	Remuneration to managerial person under Schedule XIII of the Companies Act, 1956 - Clarification with regard to payment for period	**Vide General Circular 07/2015 dated 10th April, 2015,** it has been clarified that a managerial person who has been appointed in

		accordance with provisions of Schedule XIII of the Companies Act, 1956, may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of 1956 Act even if the part of his/her tenure falls after 1st April, 2014.
14.	The Companies (Auditor's Report) Order, 2015.	**Vide Order S.O. 990(E) dated 10th April 2015,** the Central Government, after consultation with the Institute of Chartered Accountants of India, issued the Companies (Auditor's Report) Order, 2015 in exercise of the powers conferred by section 143(11) of the Companies Act, 2013 and in supersession of the Companies (Auditor's Report) Order, 2003.
Section B: Allied Laws		
15.	SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009	SEBI **Vide Notification dated 24th March, 2015** has issued SEBI (Issue of Capital and Disclosure Requirements)(Amendment) Regulations, 2015. The amendments have been carried out in regulation 4 and 54 of SEBI (ICDR) Regulations, 2009. Regulation 4 deals with general conditions for public issues and right issues. Under point (3) of this regulation further clause(c) and (d) have been inserted. Regulation 54 deals with letter of offer, abridged letter of offer, pricing and period of subscription. In the proviso under the point (7) after the word "Investors" following line is inserted "part payment on

		application shall not be less than 25% of the issue price".
16.	The Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999	**Vide Notification dated 23rd March, 2015,** Ministry of Law and Justice further amended the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 by enacting the Insurance Laws (Amendment) Act, 2015. It shall be deemed to have come into force on the 26th day of December, 2014. **Students please Note:** The reading material in relation to the Insurance Act, 1938 as amended by the Insurance (Amendment) Act, 2015 is given at the end of this RTP. Students are advised read the revised material in place of the existing matter given in the Chapter 23 – Para 23.10 to 23.21 of Module 2 of Final Course Study Material, Paper 4 – Corporate and Allied Laws.

(B) Non-Applicability of the following Chapters / Amendments for the said examinations:

S.No.	Subject Matter
(i)	Chapter 9 of the study material (October, 2014 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies.
(ii)	Chapter 15 of the study material (October, 2014 edition) covering provisions relating to the National Company Law Tribunal and Appellate Tribunal.
(iii)	The Companies (Amendment) Act, 2015

PART – II: QUESTIONS AND ANSWERS

QUESTIONS

SECTION – A: COMPANY LAW

Dividend

1. (a) Examine the validity of given situations as per the Companies Act, 2013:

   (i) A company wants to transfer more percentage of profits to reserves than it had transferred in the previous year.

   (ii) A company wants to declare dividends out of past reserves instead of current year profits.

   (b) ABC Limited in the Annual General Meeting declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2015. But the Company failed to post the dividend warrant to Mr. S, an equity shareholder of the Company, up to 30th June, 2015. Mr. S, filed a suit against the ABC Ltd. for the payment of dividend along with interest at the rate of 20 percent per annum for default period.

   Decide in the light of provisions of the Companies Act, 2013, whether Mr. S would succeed? Also state the directors' liability in this regard under the Act.

Accounts and Audit

2. (a) XYZ , a refinery company controlled by the Central Government, incorporated on 30th June, 2015. The XYZ company decided to appoint Mr. Ramaswamy as a first auditor. The Board of Directors of XYZ Company appointed him as an auditor in first annual general meeting. M, a member of the company raised its objection on the appointment of the Mr. Ramaswamy as a first auditor of XYZ company stating that Board is not authorized for the appointment. Examining the provisions of the Companies Act, 2013, state whether the contention of M is tenable.

   (b) The Board of Directors of X company undertakes to make contribution under the discharge of its social responsibilities for promotion of sanitation facilities and to make available clean and safe drinking ganga water in nearby villages. State in the light of the Companies Act, 2013, whether the company can undertake such a responsibility and contribute towards the achievement of such social responsibility?

3. (a) P Limited did not prepare its Balance Sheet and the Profit and Loss Account for the year in conformity with some of the mandatory Accounting Standards issued by the Institute of Chartered Accountants of India. State with reference to the provisions of the Companies Act, 2013, the responsibilities of directors of the company in this regard.

(b) The Board of Directors of Sunrise Ltd. want to circulate unaudited accounts before the Annual General Meeting of the shareholders of the Company. Examine the validity of the act of the Board of Directors under the provisions of the Companies Act, 2013

Appointment and qualification of Directors

4. (a) The Articles of Association of Surya Private Co. provided that the maximum number of Directors in the company shall be 15. Presently, the company is having 12 directors. The Board of Directors of the said company desired to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so.

(b) M/s. Bharat Pharma Limited is a company listed with Bombay Stock Exchange. The company were having 500 small shareholders in the said company, so they wanted to appoint Mr. A as a Director as their representative on the Board of Directors of the said company. Mr. A is holding 1000 equity shares of 10 each in the said company. State in the light of the Companies Act, 2013 whether the proposal to appoint Mr. A as a Small Shareholders' Director can be adopted by the company. Examine, if Mr. A is already holding a position of small shareholders' director in more than two companies.

5. Annual general meeting of Amba Ltd. is scheduled to be held in compliance with the provisions of the Companies Act, 2013. Please advise the company in relation to the retirement of Directors.

(i) Which of the existing directors shall be retiring by rotation and be eligible for re-election?

(ii) In case of vacancies caused by retirement and the meeting could not decide how such vacancies to be dealt with. What shall be further course of action?

Appointment and Remuneration of Managerial Personnel

6. (a) The Board of Directors of a listed company have decided to fix payment of sitting fee for each Meeting of Directors subject to maximum of ₹ 30,000. In view of increased responsibilities of women directors of the company, the company proposes to increase the sitting fee to ₹ 45,000 per meeting. State whether the company can accept such a proposal to increase the sitting fees for women directors keeping in view the provisions of the Companies Act, 2013.

(b) X, a Director of PQR Ltd., was appointed on 1st April, 2013, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31st March, 2015, the company suffered heavy losses. The company was not in a position to pay any remuneration but he (X) was paid ₹ 50 lacs for the year, as paid to other directors. The effective capital

of the company is ₹ 150 crores. Referring to the provisions of the Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to X.

7. (a) Mr. Pawan is proposed to be appointed as Manager for life by the Article of Association of Sri Ram private company incorporated on 1st June, 2015. Examine in the light of the Companies Act, 2013, whether such an appointment is valid.

   (b) M, a Managing Director of Super tech Pvt. Ltd. was removed during the tenure of office and certain compensation was paid to him. Later found that during the tenure of his office that he was guilty of corrupt practices and the company felt that no compensation should have been paid to him and therefore wants to recover the compensation so paid to him. Explaining the law given under the Companies Act, 2013, can the company succeed to recover the compensation paid to M?

Meetings of Board and its powers

8. State the legal requirements to be complied with by a public company in respect of a Board Meeting. Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

   (i) An interested Director;

   (ii) A Director who has expressed his inability to attend a particular Board Meeting;

   (iii) A Director who has gone abroad (for less than 3 months).

9. (a) State whether the acts done by the Board meeting be invalid if it was found afterwards that there was some defect in the appointment of directors or any person acting as a director?

   (b) M/s Aravalli Ltd. had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed an ordinary resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf of the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the following issues, having regard to the provisions of the Companies Act, 2013.

      (i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable.

      (ii) Can shareholders takeover the powers which by the articles are vested in the directors by passing a resolution in the general meeting?

Inspection, Inquiry and Investigation

10. A majority of the Board of Directors of M/s Esteem Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. They want that the company should make an application to the Central Government to appoint an Inspector to carry out investigation and find out the whole truth. Explain the relevant law that should be taken to achieve the purpose.

Compromise, Arrangements and Amalgamations

11. (a) A scheme of reconstruction of Company was, approved by its shareholders and creditors in their meeting and resolutions to that effect were passed. Afterwards a few shareholders and creditors of the company raised objections against the said arrangements of reconstruction. The entire paid up capital of the company was wiped out by the accumulated losses. Advise the Directors of the said company about the steps to be taken, to give effect to the proposed scheme under the Companies Act, 1956.

(b) Answer the following with reference to a scheme of amalgamation of companies explaining the relevant provisions of the Companies Act, 1956:

(i) Whether companies being amalgamated must be companies registered in India.

(ii) What is the majority required for approving the scheme of amalgamation in a meeting of members of a company called as per directions of the court? Is the scheme to be approved by preference shareholders?

(iii) When will the court order dissolution of the transferor company?

Prevention of Oppression and Mismanagement

12. What is meant by oppression'? State whether the aggrieved party would succeed in obtaining relief from Company Law Board on the ground of oppression in the following cases:

(i) The majority of the Board of directors override the minority directors and the minority directors apply to Company Law Board complaining oppression by majority directors.

(ii) A petition by majority shareholders complaining oppression by minority shareholders.

Give your answer according to the provisions of the Companies Act, 1956.

Winding Up

13. (a) By an order of the Court, X company was wound up with effect from 15.3.2015. Mr. G, who ceased to be a member of the Company from 1.6.2014 received a notice from the liquidator to deposit a sum of ₹ 15,000 as his contribution towards the liability on the shares previously held by him. Mr. G seeks your opinion about his liability under the Companies Act, 1956.

(b) H Limited has its subsidiary company S Ltd, which is formed to carry out some of the objectives of H Limited. H Ltd suspends one of its several businesses, by passing a resolution at the company's extraordinary general meeting, with effect from 1st January 2015. The business continued to be suspended till March 2015. On 1st April 2015, a group of shareholders of H Ltd file a petition in the court for winding of the company on the ground of suspension of business by the company.

Referring to the provisions of the Companies Act, 1956, decide:

(1) Whether the shareholders' contention shall be tenable?

(2) What would be your answer in case H Ltd suspends all its business?

(3) Can shareholders of S Ltd. file a petition in the court for winding up of their company (S Ltd) on the ground that the holding company viz., H Ltd has suspended its entire business, though S Ltd. has not suspended business?

Producer Companies

14. (i) A two year old Producer Company registered under Section 581C of the Companies Act, 1956 wants to donate some amount. The Chief Executive of the Producer Company has approached you to advise him as to how and for what purposes the donation can be made by such company. Also state the monetary restrictions, if any, laid down in the Companies Act, 1956 on making donations by a Producer Company. You are informed that as per the Profit & Loss account of the Producer Company for its last accounting year, net profit was ₹ 20.00 lacs.

(ii) Mr. Farmar is an expert in modern agriculture practices. He intended to lend his services as a director in Krishna Cotton Producer Company Ltd. which was registered under Section 581C of the Companies Act, 1956. Advise Mr. Farmar as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the directors (3) The time limit within which the appointment should be made (4) the co-option of directors and (5) the voting powers of such co-opted directors.

Companies Incorporated outside India

15. Aster Ltd., is a company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital is held by companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the country in which it is incorporated.

Examine

(i) Is the prospectus of the company valid?

(ii) What other disclosures in the prospectus are required to be made by a foreign company?

Offences and Penalties/E-Governance/Special Courts

16. State the functioning of the Mediation and Conciliation Panel as per Section 442 of the Companies Act, 2013?

17. Which offences are deemed to be Non- cognizable under the Companies Act, 2013? Enumerate the relevant provisions.

Miscellaneous provisions

18 (i) Mr. Atharva, a director of National highway Tolls Private Limited, authorised by board of directors to prepare and file return, report or other documents to registrar on the behalf of the company. He timely filed all the required documents to Registrar; however, subsequently it is found that the filed documents are false in respect to material particulars (knowing it to be false) submitted to registrar. Explain the penal provision under the Companies Act, 2013.

(ii) It is apprehended by the Directors of a Public Company that they are likely to be prosecuted for an offence under the Companies Act, 2013 which is not compoundable. Explain the provisions of the Companies Act, 2013 under which the Directors can seek relief from the liability for offence. What will be the position in case prosecution has already been launched?

19. (i) The Board of Directors of Humble Limited decided to pass a resolution to purchase certain equity shares of Pioneer Limited at a meeting. Draft a specimen Board Resolution to be passed at the said meeting.

(ii) Kitply Woods Limited decide to appoint Mr. W as its Managing Director for a period of 5 years with effect from 1st May, 2015. Mr. W fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.

The terms of appointment are as under:

(i) Salary ₹ 1 lakh per month;

(ii) Commission, as may be decided by the Board of Directors of the company;

(iii) Perquisites;

Free Housing,

Medical reimbursement upto ₹ 10,000 per month,

Leave Travel Concession for the family,

Club membership fee,

Personal Accident Insurance ₹ 10 lakh,

Gratuity, and

Provident Fund as per Company's policy.

You being the Secretary of the said Company, are required to draft a resolution to give effect to the above, assuming that Mr. W is already the Managing Director in a public limited company.

SECTION – B: ALLIED LAWS

The Securities and Exchange Board of India (SEBI)

20. (i) On the complaint of Mr. X, SEBI after enquiry finds that Mr. Y a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. Y under the Securities and Exchange Board of India Act, 1992.

(ii) Gauri Chemicals Limited, a listed company, having a paid-up equity share capital of ₹ 80 crore and net worth of ₹ 120 crores as on 31st March, 2015 proposes to raise funds to finance its expansion programme by issue of equity shares under the "Qualified Institutions Placement Scheme."

Answer the following with reference to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:

(i) What are the conditions to be satisfied by the company so that it can make Qualified Institutions Placement?

(ii) What is the maximum amount that can be raised by the company under the proposed issue of shares?

(iii) What are the restrictions, if any, with regard to pricing of issue and transferability of shares by qualified institution buyers?

The Securities Contracts (Regulation) Act, 1956

21. (a) The Securities and Exchange Board of India received serious complaints against Mr. S, a member of Bombay Stock Exchange. State as to what powers can be exercised by the Securities and Exchange Board of India to make enquiries and to take action in this matter, under the provisions of the Securities Contracts (Regulation) Act, 1956?

(b) State how a recognised stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities.

The Foreign Exchange Management Act, 1999

22. (a) Mr. Sekhar resided for a period of 150 days in India during the Financial year 2013-2014 and thereafter went abroad. He came back to India on 1st April, 2014 as an employee of a business organization. What would be his residential status during the financial year 2014-2015?

(b) State in the light of FEMA, 1999, the residential status of the following corporations whether they are "Person resident in India" or "Person resident outside India".

(i) MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2015.

(ii) WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2015.

(iii) WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch.

The Competition Act, 2002

23. (a) Examine with reference to the relevant provisions of the Competition Act, 2002 the following:

(i) Whether a Government Department supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not a water tax) can be considered as an 'Enterprise'.

(ii) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer.'

(b) ABC Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment.

The Banking Regulation Act, 1949, The Insurance Act, 1938, The Insurance Regulatory and Development Authority Act, 1999, The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

24. (a) The Board of Directors of VDV Ltd., a banking company incorporated in India, for the accounting year ended 31-3-2015 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide:

(i) Whether contention of the Shareholders is tenable.

(ii) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund.

(b) M, wants to nominate Mr. S, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938.

The Prevention of Money Laundering Act, 2002 & Interpretation of Statutes, Deeds and Documents

25. (a) Explain the meaning of the term "Money Laundering". Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him

under Prevention of the Money Laundering Act, 2002.

(b) (i) What is the effect of proviso? Does it qualify the main provisions of an Enactment?

(ii) Does an explanation added to a section widen the ambit of a section?

(iii) What do you understand by the term 'Preamble" and how does it help in interpretation of a statute?

SUGGESTED ANSWERS / HINTS

1. (a) Section 123 of the Companies Act, 2013 deals with the provision related to the declaration of dividend.

(i) The first proviso to 123 (1) of the Companies Act, 2013 provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Therefore, under the Companies Act, 2013 the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. Therefore, the company is free to transfer any part of its profits to reserves as it deems fit.

(ii) The second proviso to section 123 (1) of the Companies Act, 2013 permits a company to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the rules prescribed in this behalf. Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 provides for the declaration of dividend out of reserves as under:

(1) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.

However, this rule will not apply if a company has not declared any dividend in each of the three preceding financial year.

(2) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid-up capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such drawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

(5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

(b) Section 127 of the Companies Act, 2013 lays down the penalty for non payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend:

a. every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and

b. the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

Therefore, in the given case Mr. S will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

2. (a) According to Section 139(7) of the Companies Act, 2013, in the case of a government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

In the given case, XYZ is directly controlled Central Government company, incorporated on 30th June, 2015. Mr. Ramawamy was appointed as first Auditor in the first Annual general meeting. As per the above provision, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days.

Thus, M objection on the appointment of the Ramaswamy as auditor, is correct. As per the above provision, Comptroller and Auditor-General of India is authorized to appoint him as auditor, in case of his failure to appoint within the prescribed period, then the Board may appoint such auditor of the company.

(b) Section 135 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility. According to which it is mandatory for every company with specified criteria to spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. The Companies (CSR Policy) Rules, 2014 provides that the CSR may include:-

(i) Projects or programs relating to activities specified in Schedule VII to the Act; or

(ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

The MCA vide Notification No. G.S.R. 741(E) dated 24th October, 2014, has amended Schedule VII to the Companies Act, 2013, whereby, contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga have also been included in the activities which may be included by companies in their Corporate Social Responsibility policies.

Accordingly, in the given case, X company can take such responsibility and contribute for the promotion of sanitation facilities and rejuvenation of river ganga for supply of safe drinking water in nearby villages where it operates.

3. (a) Section 129(1) of the Companies Act, 2013 states that financial statement of the company shall comply with the accounting standards notified under section 133. Further section 129(5) says that where the Financial Statements of the company do not comply with the accounting standards, such companies shall disclose in its financial statements, the following, namely:

(a) the deviation from the accounting standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation.

Also section 129(7) provides that if a company contravenes the provisions of section 129 (which requires compliance with accounting standards), the managing director, whole-time director in charge of finance, the Chief Financial Officer or any other

person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Moreover, the Board of Directors is also required under section 134(5) of the Companies Act, 2013 to include a Directors Responsibility Statement indicating therein that in the preparation of the financial statements the applicable accounting standards had been followed along with proper explanation relating to material departures, if any. If such person (as above referred) fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, be punishable with imprisonment for a term which may extend to 1year, or with fine not less than ₹ 50,000 but which may extend to ₹ 5,00,000 or with both.

(b) Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So the act of the Board of Directors of sunrise limited is not valid.

4. (a) Under section 149(1) of the Companies Act, 2013 every company shall have the Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors.

The proviso to section 149(1) states that a company may appoint more than fifteen directors after passing a special resolution.

From the provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public company, private or a one person company, the maximum number of directors is the same for all types of companies at 15 directors.

In the given case since the number of directors is proposed to be increased to 16, the company will be required to comply with the following provisions:

(i) Alter its Articles of Association under section 14 of the Act;

(ii) Authorise the maximum number of directors to 16 by means of a special resolution of members passed at a duly convened general meeting of the company.

(b) Section 151 of the Companies Act, 2013 provides that a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Further, the explanation to section 151 clarifies that for the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

The Companies (Appointment & Qualifications of Directors) Rules, 2014 clearly provides that a listed company, may upon notice of not less than one thousand small shareholders or one- tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

In the given case, the company is a listed one, hence the provisions of section 151 will apply. Therefore, the number of small shareholders who can send the notice for the appointment of a small shareholders director must not be less than 1,000 or one tenth of the total number of small shareholders i.e.,50 small shareholders may propose a person as a candidate for the post of small shareholders. They must give 14 days notice to the company under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

Thus, as per the above provision, Company may appoint Mr. A as small shareholders' director in the company. Also, that Mr. A shall not hold the position of small shareholders' director in more than two companies at the same time. Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company

5. Rotational Directors and Retirement:

(i) According to section 152(6)(a)(i) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Further, section 152(6)(c) of the Act states that one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

From the above provisions, it is clear that the directors who are liable for rotation at every annual general meeting shall be one third of those directors who constitute the two thirds of the total number of directors and who are liable for rotation at every AGM. For example if the number of directors is 14 then the directors liable for rotation at every AGM will be = 14x2/3 = 9 and the directors who will retire will be one third of 9 = 3.

Under section 152(6)(d) the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. Therefore, the directors who will retire by rotation shall be those who have been in office for the longest term since their appointment. In case of two or more directors who were appointed on the same date at the same AGM, the retiring directors will be mutually agreed by them or in the absence of such agreement, will be determined by lots.

(ii) Under section 152(6)(e) of the Companies Act, 2013 the Vacancy caused by the retirement of directors at the AGM may be filled in the same annual general meeting by appointing either the retiring directors or some other person. The annual general meeting may also decide not to fill the vacancy arising from the retirement of one or more directors.

Section 152(7) (a) provides that if the vacancy of the director retiring by rotation, is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152 (7)(b) further provides that if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless:

(a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(b) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(c) he is not qualified or is disqualified for appointment;

(d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or

(e) section 162 is applicable to the case.

6. **(a)** Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and woman director which shall be not less than the sitting fee payable to other directors[Rule 4 of the Companies(Appointment and Remuneration of Managerial Personnel) Rules,2014]

From the above, it is clear that fee to women directors can be increased from ₹ 30,000 to ₹ 45,000 per meeting by passing a Board Resolution.

(b) Under Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. 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 ₹ 60 Lakhs in the year in case the effective capital of the company is between ₹ 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lacs in the year as remuneration to Mr. X is valid in case he accepts it as under the said schedule he is entitled to a remuneration of ₹ 60 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

7. **(a)** Section 196(2) of the Companies Act, 2013 lays down that no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time. No concession or exception is allowed by the Act to private companies.

Hence, the proposal to appoint Mr. Pawan as Manager for life in a private company is not valid.

Further, section 196(4) of the Companies Act, 2013 provides that a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V of the Act.

From the above, it is clear that Mr. Pawan cannot legally appoint anyone including Mr. Angad to succeed him as the Manager of the company and consequently Mr. Angad cannot succeed Mr. Pawan as Manager of the company after the death of 'L'.

(b) The Companies Act, 2013 does not provide for the refund of any compensation paid by the company to its Managing Director, Whole Time Director or Manager. It only lays down the situations given under Section 202(2) of the Companies Act, 2013 under which no compensation is payable for loss of office and one such situation is the commitment of fraud or breach of trust by the director.

Moreover, in *Bell vs. Lever Brothers, (1932)*, Lever Brothers removed their managing director of a subsidiary by paying him compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been removed without compensation. An action was then commenced to recover back the compensation money. It was held that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him. Thus, M is not bound to refund the compensation. Hence, the company cannot succeed to recover the compensation from M.

8. Legal requirements to be complied with by a public company in respect of a Board Meeting:

(a) **Frequency of meeting:** According to Section 173(1) of the Companies Act, 2013, every company shall hold its first Board Meeting within 30 days of the date of incorporation. Further, for subsequent meetings, at least four Board Meetings will be held in a year in such a manner that not more than one hundred and twenty days shall elapse between two Board Meetings.

(b) **Notice of meeting:** Under section 173(3) a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

The proviso to section 173 (3) further provides that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

(c) **Quorum for meetings:** According to Section 174(1) of the Act, the quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher. The directors participating by video conferencing or any other audio visual means shall be counted for the purposes of determining the quorum

(d) **Adjourned meeting:** According to Section 174(4) of the Act, if a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise

provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or it that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

Notice of Board meeting

(i) Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every Board Meeting. It is immaterial whether a director is interested or not.

An Interested Director: Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted

(ii) A Director who has expressed his inability to attend a particular Board Meeting: In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting; notice must be given to that director

(iii) A director who has gone abroad: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The Companies Act, 2013, allows delivery of notice of meeting by electronic means also. This is important because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio visual means.

9. (a) Under section 176 of the Companies Act, 2013 no act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

Therefore, from the above provisions of law, all acts done by the Board meeting or by its committee meeting or by any person acting as a director shall be as valid as if every such director or such person had been duly appointed and was qualified to be a director. The validity of all such acts done is not affected even if it discovered later on that there was some defect in the appointment of any one or more of such directors or of any person acting as a director.

However, once the defect in appointment is noticed by the company, no such acts of the director will be valid.

(b) According to section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

The Companies Act, 2013 vide section 180 (1) lays down the powers of the Board of Directors of a company which can be exercised only with the consent of the company by a special resolution. Clause (a) of section 180(1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of the members of the company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders by a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of the members to have the proposal approved by a special resolution.

In the given case therefore, the procedure followed is completely incorrect. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

(i) Therefore, the contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution.

(ii) Further, in exercising their powers the directors do not act as agent for the majority members or even all the members. The members therefore cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers.

10. Investigation into affairs of Company: (1) According to section 210 (1) of the Companies Act, 2013 the Central Government may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;

(c) in public interest.

(2) According to section 210(3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

In the given case, the majority of directors are already of the view that the affairs of the company are not conducted in a manner beneficial either to the company or to the members and want to make an application to the Central Government to appoint an inspector. Therefore, the steps to be carried out for the purpose will be as under:

(a) Convene an Extraordinary General Meeting of members for passing the required special resolution. The provisions for convening the meeting should be complied with and the explanatory statement with the notice of the meeting must provide full details of the proposed special resolution.

(b) Once the special resolution is passed, a copy of it along with the copy of the notice should be filed with the Registrar;

(c) An application should be made under section 210 (1) to the Central Government requesting it to appoint an inspector to investigate the affairs of the company.

(d) The Central Government on receipt of such notice will ask for information, documents and other supporting evidence and may order an investigation only if it is of the opinion that an investigation is warranted. It may appoint one or more inspectors to investigate into the affairs of the company and to report thereon in such manner as it may direct.

11. (a) Scheme of reconstruction: The Company is a sick company and therefore can be considered as a company liable to be wound up with the meaning of section 390 of the Companies Act, 1956. The proposed scheme involves a compromise or arrangement with members and creditors and attracts section 391 of the said Act. An application be submitted before the High Court under section 391 of the said Act. On such application the court may order that a meeting of creditors and/or members be called and held as per the directions of the court.

The company must send notice of meeting to every creditor/member containing a statement setting forth the terms of compromise explaining its effects. At the meetings convened as per directions of the court majority in number representing atleast ¾ in value of creditors/members present and voting must agree in

compromise or arrangements. Thereafter the company must present a petition to the court for confirmation of the compromise or arrangement.

The notice of application made by the company will be served on the Central Government and the court will take into consideration representation, if any, made by the Central Government (Section 394A). The court will sanction the scheme, if satisfied, after consideration of all relevant matters. Copy of order issued by the court must be filed with the Registrar of Companies and then only the order will come into effect. Copy of the said order must be annexed to memorandum of Association issued thereafter. The scheme sanctioned by the court shall be binding on all members and creditors even on those who were dissenting.

(b) **(i)** A scheme of compromise or arrangement may provide for amalgamation of companies under section 394 of the Companies Act, 1956. Section 394(4)(b) defines the 'transferee' and 'transferor' companies. While the 'transferee company' does not include any company other than a company within the meaning of the Companies Act, 1956, the transferor company includes any body corporate whether a company within the meaning of the Companies Act or not. Hence the scheme of amalgamation may provide for transfer of foreign companies to Indian companies.

(ii) Majority in number representing three-fourths in value of members or class of members, as the case may be, present and voting either in person or by proxy, where proxies are allowed under the rules made under section 643 must approve the scheme or arrangement providing for amalgamation of companies [Section 391(2)]. Any member who though present at the meeting, does not vote for or against, but remains neutral, is not to be taken into consideration.

As the expression used is 'member', not only holders of equity shares but also preference shareholders will have to be taken into account and the value of their shares be included or, if the meeting of holders of preference shares and equity shares are ordered by the court to be held separately, the three-fourths majority of each class will have to be ascertained separately.

(iii) The scheme may provide for the dissolution, without winding up, of any transferor company [Section 394(1)]. The Court shall not order dissolution of any transferor company unless the official liquidator has, on scrutiny of the books and papers of the company, made a report to the court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest [Second proviso to Section 394(2)].

12. Oppression: The term oppression' is not defined in the Companies Act, 1956. Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd*, as given below:

"The conduct complained of should be at the lowest involve a feasible departure from the standards of fair dealing and the violation of the conditions of fair play on which every shareholder entrusting his money to the company is entitled to rely.

(i) Oppression of a member as a director: The oppression dealt with by section 397 is only oppression of members in their character as such; and it is only in that character they can involve section 397. The harsh treatment, for instance, of a member who is a director or other officer or employee, by the Board of directors or management does not come within (section 397). It has been held in *Re. Bellador Silk Ltd.* that if the majority of the Board of **d**irectors override the minority directors the latter cannot resort to section 397 and hence the minority directors will not succeed in getting relief from CLB on the ground of oppression.

(ii) Right not confined to minority: According to section 399, the right to apply for relief under section 397/398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10th of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Calcutta High Court in *Re. Sindhri Iron Foundry (P) Ltd*. that the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied, even though the Delhi High Court held a contrary view in *Suresh Kumar Sanghi v. Supreme Motors Ltd***.**

13. (a) Liability of Contributory: 'Contributory' is a term used in the case of winding up of a company. A Contributory can be past or present member and is liable to contribute to the assets of the company in the event of winding up.

In the instant case, Mr. G ceased to be a member of the Company when it went into liquidation from 15.3.2015. Thus, Mr. G will be treated as a past member. He will not be required to contribute to the assets of the company if the following conditions are fulfilled:

(1) If Mr. G had ceased to be a member of the company for a period of one year or upwards before the commencement of the winding up. In this case, since one year has not elapsed, Mr. G will be liable to contribute to the assets of the company.

(2) If the debt or liability of the company was contracted or incurred after he ceased to be a member.

(3) If the present members are able to satisfy the contributions required to be made by them under the Act.

In any case, the liability of the past or present member cannot exceed the unpaid amount on the shares and if the shares are fully paid up, no contribution is required to be made by the members past or present.

(b) The problem relates to suspension of business by a company. Section 433 of the Companies Act, 1956 provides that if a company does not commence its business within a year from its incorporation or suspends its business for a whole year, it may be wound up by the court. The contention of the shareholders of H Ltd that the company is liable to be wound up on the ground of suspensions of business, is not tenable for the following reasons:

(1) A company may be wound up by court if a company suspends its business for a whole year. Here the business was suspended only on 1.1.2015. Hence on 1st April, 2015 the business has not been suspended for the whole year to attract Section 433(c).

(2) Where a company having much business discontinues one of them, it cannot be said to have suspended business within the meaning of Section 433(c).

(3) Where a company ceases to do any business but is a holding company of subsidiaries engaged in the pursuit of the business, which it was previously doing, it cannot be said that the company has suspended its business (*Ref; Eastern Telegraph Company Ltd*).

14. (i) As per provisions of section 581 ZH of the Companies Act, 1956, a Producer Company may, by special resolution, make donation or subscription to any institution or individual for the following purposes:-

(a) For promoting the social and economic welfare of Producer Members or Producers or general public; or

(b) For promoting the mutual assistance principles.

Thus as per the above stated provisions of the Companies Act, 1956, a Producer Company may make a donation by passing a special resolution and for the above mentioned purposes.

The 1st Proviso to the said section 581ZH lays down the monetary limit for making the donation by a Producer Company. According to the said proviso the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Since the net profit of the Producer Company as per its last profit & loss account was ₹ 20.00 lacs, it can make a total donation of ₹ 60,000/- in this year being three percent thereof.

(ii) According to section 581P of the Companies Act, 1956 the members who sign the memorandum and the articles may designate (not less than five) as first directors and who shall govern the affairs of the company until the directors are appointed at the Annual General Meeting.

(1) According to section 581-O every producer company shall have at least five and not more than fifteen directors.

(2) The period of office of director shall be not less than one year and not exceeding 5 years as may be specified in the articles.

(3) The election of directors shall be conducted within 90 days from the date of registration of the producer company. In the case of Inter-state co-operative society the election shall be held within a period of 360 days.

(4) The directors are normally elected and appointed by the members in the Annual General Meeting. The Board may also co-opt one or more expert directors as an additional director. Such directors cannot exceed 1/5th of the total number of directors.

(5) The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles. The maximum period for which such experts are appointed as directors will be as provided in the articles of association and it cannot exceed 5 years.

Thus Mr. Farmar can be appointed as expert director but he will not have any voting right in the election of chairman of the Board of directors. His tenure of office can be between one to five years.

15. Under section 379 of the Companies Act, 2013 where

a. Not less than 50% of the paid-up share capital,

b. whether equity or preference or partly equity and partly preference, of a foreign company

c. is held either singly or in the aggregate by one or more citizens of India or by one or more companies or bodies corporate incorporated in India,

d. such company shall comply with this Chapter (XXII) and

e. such other provisions of this Act as may be prescribed

f. with regard to the business carried on by it in India

g. as if it were a company incorporated in India.

It may further be added that the chapter XXII which governs the foreign companies is spread from section 379 to section 393.

From the above provisions, it is clear that Aster Ltd. will fall within the purview of section 379 as more than 50% (50% preference share capital + 20% equity share capital = 70%) is held by companies incorporated in India.

Further, section 387 (1) (a) (iv) requires for the prospectus of a foreign company to include the date on which and the country in which the company would be or was incorporated.

(i) In view of the above provisions, the prospectus issued by Aster Ltd. is a non compliant prospectus. Thus, according to Section 387 the prospectus is not valid

Further, according to section 393 which states that any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it. Therefore, it may be concluded that the non disclosure of the country in which it was incorporated will not invalidate the validity of any contract, dealing or transaction entered into by Aster Ltd.

(ii) Under section 387 (1) of the Companies Act, 2013 no person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, unless the prospectus is dated and signed, and contains the following particulars:

a. the instrument constituting or defining the constitution of the company;

b. the enactments or provisions by or under which the incorporation of the company was effected;

c. the address in India where the said instrument, enactments or provisions,or copies thereof can be inspected. If the same are not in the English language, a certified translation thereof in the English language should be available for inspection;

d. the date on which and the country in which the company would be or was incorporated; and

e. whether the company has established a place of business in India and , if so, the address of its principal office in India, and the matters specified under section 26 (so far as they are applicable) which lays down the matters to be included in a prospectus issued by an Indian Company.

16. Mediation and Conciliation Panel: In common parlance, Mediation means intervention of some third party in a dispute with the intention to resolve the dispute.

Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial means. This new provision introduced by the Companies Act, 2013 has come into force with effect from 1st April, 2014 vide notification dated 26th of March, 2014. Section 442 of the Companies Act, 2013 deals with the constitution and functioning of the mediation and conciliation panel in order to dispose the matter.

Section 442 lays the following law with respect to the functioning of the Mediation and Conciliation Panel:

(1) **Central Government to maintain the Panel of Mediators:** The Central Government shall maintain a panel of experts to be known as Mediation and conciliation panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Hence, it is important that the case should be pending before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) **Panel consisting of experts:** The panel shall consist of such number of experts having such qualification as may be prescribed.

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

(i) any parties to the proceedings. (It shall be accompanied with such fees and in such form as may be prescribed.)

(ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu* refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

(4) **Appointment of expert/s from panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may appoint one or more experts from the Panel as may be deemed fit.

(5) **Fees, terms and conditions of the experts:** The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(6) **Procedure for the disposal of matter:** In order to dispose the matter, the Mediation and Conciliation Panel shall follow such procedure as may be prescribed.

(7) **Period for the disposal of matter:** The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(8) **Filing of objection on the recommendation of the panel:** Any party aggreived by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

17. Offences to be non-cognizable: A new section 439 of the Companies Act, 2013 provides for offences to be non-cognizable. According to this section:

(i) Every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

(iii) 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.

(iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(v) Where the complainant is the Registrar or a person authorised by the Central Government, 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.

(vi) The above provisions 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.

(vii) The liquidator of a company shall not be deemed to be an officer of the company.

18. (i) According to section 448 of the Companies Act, 2013, if any person makes a statement which is false in any material particulars, knowing it to be false or omits any material facts, knowing it to be material, such person shall be liable under section 447. As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud. Provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence, Mr. Atharva, a director of National highway Tolls Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

(ii) Relief under Section 463: Under section 463(1) of the Companies Act, 2013 if in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case he is

or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such terms, as it may think fit.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

In the given case, the offence is not compoundable i.e. it carries imprisonment as a punishment either alone or with a fine. In either case, it would indicate that a criminal liability is indicated. Hence, the court will not have the power to grant relief under section 463. However, the nature of the offence will have to be examined.

19. (i) Specimen Board Resolution: Purchase of Equity Shares

Resolution passed at the meeting of the board of directors of Humble Limited held at its registered office situated at _____ on _____ (day) at _____ A.M.

"Resolved unanimously that pursuant to provisions of Section 186(2) of the Companies Act, 2013, the company be and is hereby authorized to purchase ……. equity shares of ₹ …… each of Pioneer Limited, the investment in addition to other investments made to date in the aggregate being within the limits prescribed under the said section."

"Resolved further that Mr. ……, a Director of the company, be and is hereby authorised to sign /execute the necessary documents in this connection."

Sd/-

Board of Directors

Humble Limited

(ii) Draft Board Resolution

"Resolved that consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. W, who is already the Managing Director of another limited company, and fulfils the conditions as specified in Schedule V of the Companies Act, 2013, as the Managing Director of the company for a period of 5 years effective from 1st May, 2015 subject to approval by a resolution of shareholders in a general meeting and that Mr. W may be paid remuneration as follows:

(i) Salary of ₹ 1 Lakh per month

(ii) Commission

(iii) Perquisites: Free Housing, Medical reimbursement upto ₹ 10,000, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of ₹ 10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.

Resolved further that the Secretary of the company be and is hereby authorize to prepare and file with the Registrar of Companies necessary forms and returns in respect of the above appointment."

Sd/

Board of Directors

Kitply Woods Limited

(Note: Since in the given case Mr. W fulfils all the conditions for appointment of Managing Director as specified in Schedule V, approval of Central Government is not required)

20. (i) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider -

(a) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(b) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(c) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. Y. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

(ii) (1) **Conditions for qualified institutions placement [Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:** Gauri Chemicals Limited, a listed company may make qualified institutions placement if it satisfies the following conditions:

(a) a special resolution approving the qualified institutions placement has been passed by its shareholders;

(b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nation wide trading terminal for a period of at least one year prior to the

date of issuance of notice to its shareholders for convening the meeting to pass the special resolution:

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

(d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred in the regulations shall also be specified.

(2) **Restrictions on amount raised:** The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

In the instant case, the net worth of Gauri Chemicals Limited is ₹ 120 crore. Therefore, the maximum amount that can be raised by the company under the proposed issue of shares is ₹ 600 crore (5*120).

(3) **Restrictions on Pricing of issue and transferability of shares:**

Pricing of issue: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Transferability of shares: The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

21. (a) Disciplinary action against members of Stock Exchange: SEBI can exercise the following powers under Securities Contracts (Regulation) Act, 1956 on receipt of serious complaints against the affairs of Mr. S, a member of Bombay Stock Exchange.

(i) SEBI may, if it is satisfied that it is in the interest of the trade or in the public interest, by order in writing call upon the member of the stock exchange to furnish in writing information or explanation in respect of the matter under inquiry [Section 6(3)(a)].

(ii) SEBI instead of calling for information, may either appoint one or more persons to make an enquiry or direct the governing body of stock exchange to make inquiry and submit its report to SEBI [Section 6(3)(b)].

In case of adverse findings, SEBI can direct Bombay Stock Exchange to take disciplinary action against Mr. S, such as fine, expulsion from membership, suspension from membership for a specified period and any other penalty of a like nature not involving the payment of money. Bye-laws of the stock exchange usually provide for such punishment [Section 9(3)(b)]. Bombay Stock Exchange is under obligation to take the action as directed.

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

(1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

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

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

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

22. (a) According to the provisions of section 2(v) of the Foreign Exchange Management Act, 1999, a person in order to qualify for the purpose of being treated as a "Person Resident in India" in any financial year, must reside in India for a period of more than 182 days during the preceding financial year. In the given case, Mr. Sekhar has resided in India for a period of only 150 days, i.e., less than 182 days, during the financial year 2013-2014. Hence he cannot be considered as a "Person Resident in India" during the financial year 2014-2015 irrespective of the purpose or duration of his stay.

(b) (i) As per the provisions of section 2(v)(ii) of the Foreign Exchange Management Act, 1999 (FEMA) any person or body corporate registered or incorporated in India is a “Person resident in India”. As per section 2(v) of the said Act the term “person” includes a company. Section 2(v)(iv) of the said Act states that an office, branch or agency outside India owned or controlled by a person resident in India is a “Person resident in India”.

In the light of the above provisions of FEMA, the residential status of the New York branch of MKP Ltd is that of a “Person resident in India” from the date of its establishment since it is owned by a person, i.e., a company, resident in India.

(ii) As per provisions of section 2(v)(iii) of the Foreign Exchange Management Act, 1999 (FEMA) an office, branch or agency in India owned or controlled by a person resident outside India is a "Person resident in India". Section 2(w) of the said Act states that a person who is not resident in India is a "Person resident outside India".

On application of the above provisions of FEMA, it can be concluded that WIP Ltd. is a "Person resident outside India" and since it owns a branch in Chandigarh, India, the residential status of the said Chandigarh branch is that of a "Person resident in India" from the date of its establishment.

(iii) As per provisions of section 2(v)(iv) of the Foreign Exchange Management Act, 1999 (FEMA) an office, branch or agency outside India owned or controlled by a person resident in India is a "Person resident in India". Here, the Singapore branch of WIP Ltd. is controlled by its Chandigarh branch which is a "Person resident in India". Therefore, the residential status of the Singapore branch of WIP Ltd. shall be that of a "Person resident in India".

23. (a) (i) Enterprise: The term 'enterprise' is defined in section 2(h) of the Competition Act, 2002. Accordingly 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relatable to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of the Competition Act, 2002.

(ii) Consumer: The term 'consumer' is defined in section 2(f) of the Competition Act, 2002. Accordingly 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under the Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of the Competition Act, 2002.

(b) Section 2(i) of the Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined in the Sale of Goods Act, 1930 and includes –

(a) products manufactured, processed or mined;

(b) debentures, stock and shares after allotment

(c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of section 2(i) of the Competition Act, 2002 only after allotment and not before allotment.

24. (a) In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equivalent to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1 when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.

2. when the Central Govt. feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

(i). Contention of share holders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.

(ii). In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.

(b) Section 39 of the Insurance Act, 1938 deals with the nomination by policy holder. According to which, the holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

The given problem is based on above provision i.e. minor as a nominee. Here, Mr. M wants to nominate S his minor son as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision.

25. (a) **Money Laundering**: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

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

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

(b) **(i)** Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should not be, ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no other provision. *[Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]*

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explaining the main provisions contained in that section. If there is some ambiguity in the provisions of the main section, the explanation is inserted to harmonise and clear up and ambiguity in the main section. Something may added be to or something may be excluded from the main provision by insertion of an explanation. But the explanation should not be construed to widen the ambit of the section.

(iii) The "Preamble" expresses the scope, object and purpose of the Act. It may recite the ground and the cause making a statue and the evil, which is sought to be remedied by it. It is a part of the statute and can legitimately be used for construing it. However, it does not over-ride the plain provisions of the Act, but if the wording of the statute gives rise to the doubts as to its proper construction, e.g., where the words or phrase have more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, then the Preamble can and ought to be referred to in order to arrive at the proper construction.

Applicability of Pronouncements/Legislative Amendments/Circulars etc. for November, 2015 – Final Examination

Paper 1: Financial Reporting

I. Framework for the Preparation and Presentation of Financial Statements.

II. Accounting Standards

AS No.	*AS Title*
1	Disclosure of Accounting Policies
2	Valuation of Inventories
3	Cash Flow Statements
4	Contingencies and Events Occurring after the Balance Sheet Date
5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies
6	Depreciation Accounting
7	Construction Contracts (Revised 2002)
9	Revenue Recognition
10	Accounting for Fixed Assets
11	The Effects of Changes in Foreign Exchange Rates (Revised 2003)
12	Accounting for Government Grants
13	Accounting for Investments
14	Accounting for Amalgamations
15	Employee Benefits
16	Borrowing Costs
17	Segment Reporting
18	Related Party Disclosures
19	Leases
20	Earnings Per Share
21	Consolidated Financial Statements
22	Accounting for Taxes on Income
23	Accounting for Investment in Associates in Consolidated Financial Statements
24	Discontinuing Operations

25	Interim Financial Reporting
26	Intangible Assets
27	Financial Reporting of Interests in Joint Ventures
28	Impairment of Assets
29	Provisions, Contingent Liabilities and Contingent Assets
30	Financial Instruments: Recognition and Measurement
31	Financial Instruments: Presentation
32	Financial Instruments: Disclosure

III. Guidance Notes on Accounting Aspects

1. Guidance Note on Accrual Basis of Accounting.
2. Guidance Note on Accounting Treatment for Excise Duty.
3. Guidance Note on Terms Used in Financial Statements.
4. Guidance Note on Availability of Revaluation Reserve for Issue of Bonus Shares.
5. Guidance Note on Accounting Treatment for MODVAT/CENVAT.
6. Guidance Note on Accounting for Corporate Dividend Tax.
7. Guidance Note on Accounting for Employee Share-based Payments.
8. Guidance Note on Accounting for Credit Available in respect of Minimum Alternate Tax under the Income Tax Act, 1961.
9. Guidance Note on Measurement of Income Tax for Interim Financial Reporting in the context of AS 25.
10. Guidance Note on Applicability of Accounting Standard (AS) 20, Earnings per Share.
11. Guidance Note on Remuneration paid to key management personnel – whether a related party transaction.
12. Guidance Note on Applicability of AS 25 to Interim Financial Results.
13. Guidance Note on Turnover in case of Contractors.
14. Guidance Note on the Revised Schedule VI to the Companies Act, 1956*

[*Schedule III to the Companies Act, 2013.]

IV. Applicability of the Companies Act, 2013 and other Legislative Amendments

The relevant notified Sections of the Companies Act, 2013 up to 31st March, 2015 and other legislative amendments including relevant Notifications / Circulars / Rules /

Guidelines issued by Regulating Authority up to 30th April, 2015.

Non-Applicability of Ind ASs:

The Ministry of Corporate Affairs has notified Roadmap for applicability of Indian Accounting Standards (Ind AS) vide Notification No. G.S.R.…….(E) dated 16 February, 2015, for compliance by the class of companies specified in the said roadmap. The notification has been uploaded on www.mca.gov.in along with the thirty nine (39) Indian Accounting Standards (Ind AS). **Students may note that these Ind ASs are not applicable for November, 2015 Examination.**

Paper 3: Advanced Auditing and Professional Ethics

I. Statements and Standards

1. Statement on Reporting under Section 227(1A) of the Companies Act, 1956 (Section 143 of the Companies Act, 2013).
2. Framework for Assurance Engagements.

II. Engagements and Quality Control Standards on Auditing

S.No	*SA*	*Title of Standard on Auditing*
1	SQC 1	Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements
2	SA 200	Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing
3	SA 210	Agreeing the Terms of Audit Engagements
4	SA 220	Quality Control for Audit of Financial Statements
5	SA 230	Audit Documentation
6	SA 240	The Auditor's responsibilities Relating to Fraud in an Audit of Financial Statements
7	SA 250	Consideration of Laws and Regulations in An Audit of Financial Statements
8	SA 260	Communication with Those Charged with Governance
9	SA 265	Communicating Deficiencies in Internal Control to Those Charged with Governance and Management
10	SA 299	Responsibility of Joint Auditors
11	SA 300	Planning an Audit of Financial Statements
12	SA 315	Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment

13	SA 320	Materiality in Planning and Performing an Audit
14	SA 330	The Auditor's Responses to Assessed Risks
15	SA 402	Audit Considerations Relating to an Entity Using a Service Organization
16	SA 450	Evaluation of Misstatements Identified during the Audits
17	SA 500	Audit Evidence
18	SA 501	Audit Evidence - Specific Considerations for Selected Items
19	SA 505	External Confirmations
20	SA 510	Initial Audit Engagements-Opening Balances
21	SA 520	Analytical Procedures
22	SA 530	Audit Sampling
23	SA 540	Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures
24	SA 550	Related Parties
25	SA 560	Subsequent Events
26	SA 570	Going Concern
27	SA 580	Written Representations
28	SA 600	Using the Work of Another Auditor
29	SA 610	Using the Work of Internal Auditors
30	SA 620	Using the Work of an Auditor's Expert
31	SA 700	Forming an Opinion and Reporting on Financial Statements
32	SA 705	Modifications to the Opinion in the Independent Auditor's Report
33	SA 706	Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report
34	SA 710	Comparative Information – Corresponding Figures and Comparative Financial Statements
35	SA 720	The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements
36	SA 800	Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Framework
37	SA 805	Special Considerations-Audits of Single Purpose Financial Statements and Specific Elements, Accounts or Items of a Financial Statement
38	SA 810	Engagements to Report on Summary Financial Statements

39	SRE 2400	Engagements to Review Financial Statements
40	SRE 2410	Review of Interim Financial Information Performed by the Independent Auditor of the Entity
41	SAE 3400	The Examination of Prospective Financial Information
42	SAE 3402	Assurance Reports on Controls At a Service Organisation
43	SRS 4400	Engagements to Perform Agreed Upon Procedures Regarding Financial Information
44	SRS 4410	Engagements to Compile Financial Information

III. Guidance Notes and other publications

1. Code of Ethics
2. Guidance Note on Independence of Auditors.
3. Guidance Note on Audit Reports and Certificates for Special Purposes.
4. Guidance Note on Audit under Section 44AB of the Income-tax Act (Revised in view of Latest Form 3CA, 3CB and 3CD notified on 25th July).
5. Guidance Note on Audit of Inventories.
6. Guidance Note on Audit of Debtors, Loans and Advances.
7. Guidance Note on Audit of Investments.
8. Guidance Note on Audit of Cash and Bank Balances.
9. Guidance Note on Audit of Liabilities.
10. Guidance Note on Audit of Revenue.
11. Guidance Note on Audit of Expenses.
12. Guidance Note on Computer Assisted Audit Techniques (CAATs).
13. Guidance Note on Audit of Payment of Dividend.
14. Guidance Note on Audit of Capital and Reserves.

IV Applicability of the Companies Act, 2013 and Other Legislative Amendments:

(i) The relevant notified Sections of the Companies Act, 2013 up to 31st March, 2015 alongwith other legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authorities cut-off date will be 30th April, 2015.

(ii) Companies (Auditor's Report) Order, 2015 [CARO] issued by Ministry of Corporate Affairs on 10th April, 2015 is applicable for November 2015 Examination.

Paper 4: Corporate and Allied Laws

Applicability of the Companies Act, 2013 and other legislative amendments

The relevant sections of the Companies Act, 2013, notified up to 31st March, 2015 along with other relevant Rules/ Notifications/ Circulars/ Clarification/ Orders issued by the Ministry of Corporate Affairs upto 30th April, 2015.

SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009

SEBI vide Notification dated 24th March, 2015 has issued SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2015.

The Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999

Vide Notification dated 23rd March, 2015, Ministry of Law and Justice further amended the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999 by enacting the Insurance Laws (Amendment) Act, 2015.

Non-Applicability of the following Chapters/Amendments/Circulars/Notifications

S.No.	Subject Matter
1.	Chapter 9 of the study material (October, 2014 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies.
2.	Chapter 15 of the study material (October, 2014 edition) covering provisions relating to the National Company Law Tribunal and Appellate Tribunal.
3.	The Companies(Amendment)Act, 2015

The Insurance Act, 1938
As Amended by the Insurance Laws (Amendment) Act, 2015

23.10 Introduction

(Highlights of the Amendment Act, 2015)[1]

The Insurance Laws (Amendment) Bill, 2015 was passed by the Lok Sabha on 4th March, 2015 and by the Rajya Sabha yesterday i.e. on 12th March, 2015.The passage of the Bill thus paved the way for major reform related amendments in the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The Insurance Laws (Amendment) Act 2015 deemed to *come into force on 26th December 2014*. The amendment Act paved way for removing archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control.

In addition to the provisions for enhanced foreign equity, the amended law will *enable capital raising* through new and innovative instruments under the regulatory supervision of IRDAI. Greater availability of capital for the capital intensive insurance sector would lead to greater distribution reach to under / un-served areas, more innovative product formulations to meet diverse insurance needs of citizens, efficient service delivery through improved distribution technology and enhanced customer service standards. The Rules to operationalize the new provisions in the Law related to foreign equity investors have already been notified on 19th February 2015 under powers accorded by the Ordinance.

The four public sector general insurance companies, presently required as per the General Insurance Business (Nationalisation) Act, 1972 (GIBNA, 1972) to be 100% government owned, are now allowed to raise capital, keeping in view the need for expansion of the business in the rural and social sectors, meeting the solvency margin for this purpose and achieving enhanced competitiveness subject to the Government equity not being less than 51% at any point of time.

Further, the amendments to the laws will enable the *interests of consumers to be better served* through provisions like those enabling penalties on intermediaries / insurance companies for misconduct and disallowing multilevel marketing of insurance products in order to curtail the practice of mis-selling. The amended Law has several provisions for levying higher penalties ranging from up to ₹ 1 Crore to ₹ 25 Crore for various violations including mis-selling and misrepresentation by agents / insurance companies. With a view to serve the interest of the policy holders better, the period during which a policy can be repudiated on any

[1] Press Information Bureau, Ministry of Finance, Govt. of India, dt. 13th March, 2015

ground, including mis-statement of facts etc., will be confined to three years from the commencement of the policy and no policy would be called in question on any ground after three years. The amendments provide for an easier process for payment to the nominee of the policy holder, as the insurer would be discharged of its legal liabilities once the payment is made to the nominee. It is now obligatory in the law for insurance companies to underwrite third party motor vehicle insurance as per IRDAI regulations. Rural and Social sector obligations for insurers are retained in the amended laws.

The Act will entrust responsibility of appointing insurance agents to insurers and provides for IRDAI to regulate their eligibility, qualifications and other aspects. It enables agents to work more broadly across companies in various business categories; with the safeguard that conflict of interest would not be allowed by IRDAI through suitable regulations. *IRDAI is empowered* to regulate key aspects of Insurance Company operations in areas like solvency, investments, expenses and commissions and to formulate regulations for payment of commission and control of management expenses. It empowers the Authority to regulate the functions, code of conduct, etc., of surveyors and loss assessors. It also expands the scope of insurance intermediaries to include insurance brokers, re- insurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time. Further, properties in India can now be insured with a foreign insurer with prior permission of IRDAI; which was earlier to be done with the approval of the Central Government.

The amendment Act *defines 'health insurance business'* inclusive of travel and personal accident cover and discourages non-serious players by retaining capital requirements for health insurers at the level of ₹ 100 Crore, thereby paving the way for promotion of health insurance as a separate vertical.

The amended law enables *foreign reinsurers to set up branches in India* and *defines're-insurance'* to mean "the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium", and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap.

The Life Insurance Council and General Insurance Council have now been made *self-regulating bodies* by empowering them to frame bye-laws for elections, meetings and levy and collect fees etc. from its members. Inclusion of representatives of self-help groups and insurance cooperative societies in insurance councils has also been enabled to broad base the representation on these Councils.

Appeals against the orders of IRDAI are to be preferred to SAT as the amended Law provides for any insurer or insurance intermediary aggrieved by any order made by IRDAI to prefer an appeal to the Securities Appellate Tribunal (SAT).

23.11 Important Definitions (Section 2)

(1) "*Actuary*" means an actuary as defined in clause (a) of sub-section (1) of section 2 of the Actuaries Act, 2006.

(1A) "*Authority*" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999

(6C) "*Health insurance business*" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.

(7A) "*Indian insurance company*" means any insurer, being a company which is limited by shares, and, (a) which is formed and registered under the Companies Act, 2013as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015;(b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed. The expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

(9) "*Insurer*" means (a) an Indian Insurance Company, or(b) a statutory body established by an Act of Parliament to carry on insurance business, or(c) an insurance co-operative society, or(d) a foreign company engaged in re-insurance business through a branch established in India. The expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members.

(16B) "*Re-insurance*" means the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium.

23.12 Provisions Related To Insurance

(a) Indian properties not to be insured with foreign insurers (section 2CB)

Without the permission of the IRDA, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India.

(b) Requirements as to Capital (Section 6)

Type of Insurance Business	Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and registration)
Life insurance or general insurance	₹ 100 crore

Health insurance (exclusively)	₹ 100 crore
Re-insurer (exclusively)	₹ 200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ₹ 5,000 crore)

(c) Further Conditions (Section 6A)

To carry on the business of life or general or health or re-insurance the following further requirements are to be satisfied by such companies:

- that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations;
- that the voting rights of shareholders are restricted to equity shares;
- that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new.
- The aforesaid conditions shall not apply to a public company which before the commencement of the Insurance (Amendment) Act, 1950, has issued any shares other than ordinary shares each of which has a single face value or shares, the paid-up amount whereof is not the same for all them for a period of three years from such commencement.

(d) Audit of accounts of insurance companies (Section 12)& Submission of returns (Section 15)

Unless subject to audit under the Companies Act, 2013, the balance sheet, profit and loss account, revenue account and profit andloss appropriation account of every insurer, in respect of all insurance businesstransacted by him, shall be audited annually by an auditor, and the auditor shall in the audit of allsuch accounts have the powers of, exercise the functions vested in, and discharge theduties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the Companies Act, 2013.

The audited accounts and statements and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer. Of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, If the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

(e) Actuarial Valuation/Report (section 13)

Atleast once a year, every insurer carrying on life insurance business shall cause an investigation of the life insurance business carried on by him including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to made in accordance with the regulations. The Authority may, having regard to the

circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made. If the investigation is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

(f) Record of Policies and claims (Section 14)

Every insurer, in respect of all business transacted by him, shall maintain

1. a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice;
2. a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof;
3. a record of policies and claims may be maintained in any such form, including electronic mode, as may be specified by the regulations made under this Act;
4. Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

(g) Investment of Assets (Section 27)

Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired andin respect of which he has assumed liability in the following manner namely:-

1. 25% of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities; and
2. the balance in any of the approved investments as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

In the case of an insurer carrying on general insurance business, 25%of the assets in Government Securities, a further sum equal to not less than ten per cent of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein. (Section 27A)

All assets of an insurer carrying on general insurance business shall subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27. (Section 27B)

An insurer may invest not more than five per cent in aggregate of his controlled fund or assets in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations. (Section 27C)

(h) Prohibition of loans (Section 29)

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner. This shall not apply to such loans made by an insurer to a banking company, as may be specified by the Authority. Further this shall not be applicable from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance. The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

(i) Liability of directors for contravention (Section 30)

If by reason of a contravention of any of the provisions of section 27, 27A,27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policy holders, every director, manager or officer who is knowingly a party to such contra vention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

(j) Obligations of Insurers in respect of third party risks of motor vehicles (Section 32D)

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations: The Authority may, by regulations, exempt any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of this section.105B. If an insurer fails to comply with the provisions

of section 32B, section 32Cand section 32D, he shall be liable to a penalty not exceeding twenty-five crore rupees. (Section 105B)

(k) Power of investigation and inspection by authority (Section 33)

The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person ("Investigating Officer") specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer: The Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section. Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection.

It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case maybe, to produce before the Investigating Officer directed to make the investigation or inspection, all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify. The Investigating officer shall make a report to the Authority on such inspection and the Authority may after giving such opportunity to the insurer or intermediary to make a representation. All expenses incidental to any investigation shall be defrayed by the insurer or intermediary or insurance intermediary and shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

(l) Prohibition of payment by way of commission or otherwise for procuring business (Section 40)

No person shall, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations. No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

(m) Appointment of insurance agents (Section 42)

An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business. Such person should not suffer from any of the

disqualifications. Further no person shall act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers: The Authority shall, while framing regulations, ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be an agent.

(n) Prohibition of insurance business through principal agent, special agent and multilevel marketing (Section 42A)

No insurer shall, on or after the commencement of the Insurance Laws (Amendment) Act, 2015, appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them. No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme. The Authority may, through an officer authorised in this behalf, make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme. "multilevel marketing scheme" means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

(o) Policy not to be called in question after three years (Section 45)

No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later. A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud. The insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

(p) Agent/intermediary not to be a director (Section 48A)

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company. Any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2015 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act. The Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to avoid conflict of interest.

(q) Prohibition of business on dividing business (Section 52)

No insurer shall commence any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policyholder depend wholly or partly on the number of policies becoming claims within certain time-limits: This does not deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

(r) Councils of Life and General Insurance (Section 64C)

On and from the date of commencement of this Act, the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India, shall be deemed to have been constituted as the respective Councils under this Act.

(s) Surveyors or loss assessors (Section 64UM)

No person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance Laws (Amendment) Act, 2015, unless he possesses such academic qualifications as may be specified by the regulations made under this Act; and is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors. In the case of a firm or company, all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be, shall fulfil the same requirements. Every surveyor and loss assessor shall comply with the code of conduct in respect of his duties, responsibilities and other professional requirements, as may be specified by the regulations made under the Act.

(t) Assets and liabilities how to be valued (Section 64V)

Assets shall be valued at value not exceeding their market or realizable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf. A proper value shall be placed on every item of liability of the insurer in the manner as may be specified by the regulations made in this behalf. Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by the regulations.

(u) Sufficiency of assets (Section 64V)

Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations. An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority. The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

Thus, the amendments incorporate enhancements in the Insurance Laws in keeping with the evolving insurance sector scenario and regulatory practices across the globe. The amendments will enable the Regulator to create an operational framework for greater innovation, competition and transparency, to meet the insurance needs of citizens in a more complete and subscriber friendly manner. *The amendments are expected to enable the sector to achieve its full growth potential and contribute towards the overall growth of the economy and job creation*.