



**SWAPNIL PATNI'S
CLASSES**

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CA FINAL LAW

AMENDMENTS

For May 2019 & Onwards

Corporate + Economic Law

(Applicable for old + New syllabus)

BY CA Swapnil Patni

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Corporate Law

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Chapter- 1

APPOINTMENT AND QUALIFICATION OF DIRECTORS

1.1 Resident Director [Section 149(3)]

- Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year:
- Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated

1.2 Who can become the Independent Director [Section 149(6)]

- In relation to a company, an independent director means a director other than a managing director or a whole-time director or a nominee director, and who fulfills the following criteria:
 - (a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- substituted by the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government".
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - (ii) Who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) Who has or had no pecuniary relationship pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- As per Notification 463 (E) dated 5th June, 2015, the above point no. (3) [section 149(6)(c)] shall not apply in case of a Government company.
- (d) none of whose relatives—
 - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

- (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;
- (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

- *Enforcement of the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018 vide Notification G.S.R. 431(E) dated 7th May 2018*
"None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-
 - (i) is indebted to the company, its holding, subsidiary or associate company or their

promoters, or directors; or

(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,

for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year."

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);]

(e) Who, neither himself nor any of his relatives—

(i) Holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years

(ii) Is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of

- a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

- any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

- holds together with his relatives two per cent. or more of the total voting power of the company; or

- is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.

According to the Companies (Appointment and Qualification of Directors) Rules, 2014, independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

1.3 Cancellation or Surrender or Deactivation of DIN

Rule 11

- The Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the procedure for cancellation or surrender or deactivation of DIN as under:

(1) The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DINs shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

Provided that before cancellation or deactivation of DIN pursuant to the above clause (b), an opportunity of being heard shall be given to the concerned individual.

- For this purpose-

- (i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation.
- (ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.
- (c) of the death of the concerned individual;
- (d) the concerned individual has been declared as a person of unsound mind by a competent Court;
- (e) if the concerned individual has been adjudicated an insolvent.
- (f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.
- Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.
- (2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A
- (3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

1.4 Company to Inform DIN to Registrar (Section 157)

- (1) Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed ~~within the time specified under section 403~~. Every such intimation shall be furnished in such form and manner as may be prescribed. [Section 157(1)]
- (2) If a company fails to furnish the DIN under sub-section (1) above, ~~before the expiry of the period specified under section 403 with additional fee,~~
 - (a) the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and
 - (b) every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. [Section 157(2)]

1.5 Intimation of Changes in Particulars Specified in DIN Application

Rule 12

- The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for Intimation of changes in particulars specified in the DIN application according to which:
 - (1) Every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely;-
 - (a) the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;
 - (b) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
 - (c) the applicant shall submit the Form DIR-6;
 - (2) The Central Government, upon being satisfied, after verification of such changed particulars from

the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

- (3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- (4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

Rule 12A Directors KYC –

Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e- form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October, 2018.

1.6 Disqualification for Appointment of Director (Section 164)

- (1) A person cannot be appointed as director of a company in any of the following cases:
 - (a) he is of unsound mind and stands so declared by a competent court;
 - (b) he is an undischarged insolvent;
 - (c) he has applied to be adjudicated as an insolvent and his application is pending;
 - (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.
- However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company
- (e) An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- (g) he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding five years; or
- (h) he has not complied with sub-section (3) of section 152 which requires a director to have a Director Identification Number under section 154.
- (2) No person who is or has been a director of a company which—
 - (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
 - (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. [Section 164 (10)]

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment

- Non applicability of section 164(2): Section 164(2) is not applicable to Government company's.

MCA vide Notification No.463(E) has exempt Government company from the provisions of section 164(2) of the Companies Act, 2013.

- (3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2) of section 164 as stated above.
 Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification
- However, the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—
- (a) for thirty days from the date of conviction or order of disqualification;
 - (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or
 - (c) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

1.7 Vacation of Office of Director (Section 167)

- (1) The office of a director shall become vacant in case [Section 167(1)]-
 - (a) he incurs any of the disqualifications specified in section 164;
 Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.
 - (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
 - (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
 - (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
 - (e) he becomes disqualified by an order of a court or the Tribunal;
 - (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months.
 Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-
 - (i) for thirty days from the date of conviction or order of disqualification;
 - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of
 - (g) he is removed in pursuance of the provisions of this Act;
 - (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
- (2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. [Section 167(2)]
- (3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting. [Section 167(3)]
- (4) A private company may, by its articles, provide any other ground for the vacation of the office of a director

in addition to those specified in sub-section (1). [Section 167(4)]

1.8 Removal of Directors (Section 169)

Section 169(1)

- A company may, by **ordinary resolution**, remove a director other than a director appointed by the Tribunal under section 242 of the Act, **before the expiry of the period of his office after giving him a reasonable opportunity of being heard.**
- **Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard**
- **Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation**

CA Final All India Rankers of Nov 2018. Studied From CA Swapnil Patni



Chapter- 2

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

2.1 Appointment of Managing Director, Whole Time Director or Manager (Section 196)

Disqualification [section 196(3)]:

- No company shall appoint or continue the employment of any person as managing director, whole- time director or manager who-
 - (a) is below the age of 21 years or has attained the age of 70 years.
- Provided that a person who has attained the age of seventy years may be appointed to such office by the passing of a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.
- Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made
- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent; or
- (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

Procedure of appointment [section 196(4)]:

- Subject to the provisions of section 197 and Schedule V, 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 that schedule Specified in Part I of that Schedule
- Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:
- Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

2.2 Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits (Section 197)

Overall Maximum Managerial Remuneration [Section 197(1)]

- (a) The overall managerial remuneration to the Directors including managing director, whole time director and manager is summarized as under:

Sr. No.	Persons entitled for remuneration	Maximum remuneration in any financial year	If remuneration exceeds maximum remuneration in any financial year as provided under column (b)
	(a)	(b)	(c)
(i)	Directors including managing director, whole time director and manager of public companies	11% of the net profits of the company for that financial year	Company in general meeting with approval of Central Government subject to provisions of Schedule V may pay remuneration in excess of 11% of the net profits of the company
(ii)	One Managing director/ Whole time director/ manager	5% of the net profits of the company for that year	With the approval of the company in general meeting by a Special Resolution this limit may be exceeded.
(iii)	More than one Managing director/ Whole time director/ manager	10% of the net profits	With the approval of the company in general meeting this limit may be exceeded.
(iv)	Directors who are neither Managing director nor whole time directors	1% of the net profits of the company if there is a managing director or a whole time director	Approval of the company in general meeting is required
(v)	Directors who are neither Managing director nor whole time directors	3% of the net profits of the company if there is no managing director or whole time director	Approval of the company in general meeting is required

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

■ No profits or profits are inadequate [Section 197(3) & (11)]:

- (a) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay by way of remuneration any sum exclusive of sitting fees to its directors, including any managing or whole-time director or manager except in accordance with the provisions of Schedule V.
- (b) ~~If the company is not able to comply with such provisions of Schedule V in the above case, then previous approval of the Central Government shall be taken.~~
- (c) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of

increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall **not have any effect unless such increase** is in accordance with the conditions specified in that Schedule ~~and if such conditions are not being complied, the approval of the Central Government had been obtained.~~ **[Section 197(11)]**

■ **Refund of excess [Section 197(9)]:**

~~If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.~~

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company

The company shall **not waive** the **recovery of any sum refundable** to it under sub-section (9) ~~unless permitted by the Central Government~~ approved by the company by special resolution within two years from the date the sum becomes refundable **[Section 197(10)]**

Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.

■ **Section 197(16)**

The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

■ **Section 197(17)**

On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended

2.3 Calculation of Profits (Section 198)

1) **Credit shall not be given for those specified in section 198(3):**

- a) **profits**, by way of **premium on shares or debentures** of the company, which are issued or sold by the company **unless the company is an investment company as referred to in clause (a) of the Explanation to section 186**
 - b) **profits** on **sales by the company of forfeited shares**;
 - c) **profits** of a **capital nature** including profits from the **sale of the undertaking** or any of the undertakings of the company or of any part thereof;
 - d) **profits** from the **sale of any immovable property or fixed assets of a capital nature** comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets;
- Provided that where the **amount for which any fixed asset is sold exceeds the written-down value**

thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value.

- e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
- f) Any amount representing unrealised gains, notional gains or revaluation of assets

■ Sums specified in section 198(4) shall be deducted:-

- a) all the usual working charges;
- b) directors' remuneration
- c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- f) interest on debentures issued by the company;
- g) interest on mortgages executed by the company and on loans and advances secured by a charge on
- h) its fixed or floating assets;
- i) interest on unsecured loans and advances;
- j) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
- k) outgoings inclusive of contributions made under section 181;
- l) depreciation to the extent specified in section 123;
- m) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year ~~which begins at or after the commencement of this Act~~, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- n) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- o) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m) above;
- p) debts considered bad and written off or adjusted during the year of account.

2.4 Central Government or Company to Fix Limit with regard to Remuneration (Section 200)

- Notwithstanding anything contained in this Chapter, ~~the Central Government or~~ a company may, while according its approval under section 196, to any appointment or to any remuneration under Section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing such remuneration the ~~Central Government~~ shall have regard to:
- (1) the financial position of the company;
 - (2) the remuneration or commission drawn by the individual concerned in any other capacity;
 - (3) the remuneration or commission drawn by him from any other company;
 - (4) professional qualifications and experience of the individual concerned;
 - (5) any other matters as may be prescribed

Rule 6 – Parameters for consideration of remuneration

- According to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, for the purposes of clause (5) above ~~the Central Government or~~ the company shall have regard to the following matters, namely:-
 - (1) the Financial and operating performance of the company during the three preceding financial years.
 - (2) the relationship between remuneration and performance.
 - (3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board and employees or executives of the company.
 - (4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
 - (5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

2.5 Forms of, and Procedure in relation to, Certain Applications (Section 201)

- (1) Every application made to the Central Government under ~~this Chapter section 196~~ shall be in Form No. MR.2 and shall be accompanied by fee as may be specified for the purpose.
- (2) Before any application is made by a company to the Central Government under ~~any of the sections aforesaid, section 196~~ there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.
- (3) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.
- (4) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Rule 7 – Parameters for consideration of remuneration

- ~~(5) The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, prescribes that the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-~~
 - ~~(a) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any. While doing so, the clear reason and justification for payment of remuneration beyond the said limit has to be recorded in writing.~~
 - ~~(b) The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon, preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel.~~
 - ~~(c) The approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years.~~
 - ~~(d) a statement along with a notice calling the general meeting referred to above point (c), shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit.~~
 - ~~(e) The company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.~~

Every such [application seeking approval](#) shall be made to the [Central Government](#) within a period of ninety days from the date of such appointment.

Swapnil Patni's Classes

SWAPNIL SIR With 43 AIR of NOV-18 EXAM



Chapter- 3

MEETING OF BOARD AND ITS POWERS

3.1 Meetings of Board (Section 173)

Participation in Board meeting [Section 173 (2)]:

- (a) Sub section (2) of section 173 allows directors to attend Board meetings,
 - (i) In person, or,
 - (ii) through video conferencing, or,
 - (iii) other audio visual means as may be prescribed.
- (b) Such audio visual means should be capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.
- (c) Provided that , the Central Government may by notification specify such matters which shall not be dealt with in a meeting through video conferencing and other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso

3.2 Audit Committee (Section 177)

Formation of an Audit Committee:

- An audit committee shall be constituted by the Board of directors of:
 - (a) ~~Every listed company~~, Every listed public company and
 - (b) Such other class or classes of companies as may be prescribed.
- The Companies (Meetings of Board and its Powers) Rules, 2014 have prescribed-
- The following classes of companies that shall constitute Audit Committee:
 - (i) all public companies with a paid up capital of 10 crore rupees or more;
 - (ii) all public companies having turnover of 100 crore rupees or more;
 - (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Responsibilities of an Audit Committee:[Section-177(4)]

- Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—
 - (a) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- In case of Government companies, in this clause, for the word -recommendation for appointment, remuneration and of appointment- the words - recommendation for remuneration-shall be substituted
- (b) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (c) examination of the financial statement and the auditors' report thereon;
- (d) approval or any subsequent modification of transactions of the company with related parties;
- "Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;"
- Provided further that in case of transaction, other than transactions referred to in section 188, and

where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

- Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:
- Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."

3.3 Nomination & Remuneration Committee and Stakeholders Relationship Committee (Section 178)

Formation of nomination and remuneration committee: [Section 178(1)]

- (i) A nomination and remuneration committee shall be constituted by the Board of directors of:
 - ~~Every listed company~~, Every listed public company and
 - Such other class or classes of companies as may be prescribed.
- (ii) The Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed the following classes of companies that shall constitute Nomination and Remuneration Committee of the Board:
 - all public companies with a paid up capital of ten crore rupees or more;
 - all public companies having turnover of one hundred crore rupees or more;
 - all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Constitution of the committee [Section 178 (2)]:

- The Nominations and Remuneration Committee shall-
 - (i) Identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down.
 - (ii) Recommend to the Board their appointment and removal of directors and senior management ~~carry out evaluation of every director's performance. shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance~~
- This sub-section shall not apply to Government Company except with regard to appointment of senior management- and other employees.

Policy forming by remuneration committee [Section 178(4)] :

- According to section 178(4), the Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) of section 178 ensure that—
 - (i) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
 - (ii) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
 - (iii) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

Provided that such policy shall be placed on the website of the company, if any, and the salient

features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report

- It is imperative to disclose such a policy in Board's Report.

Penalty for Contraventions [Section 178(8)]:

- In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:
- Provided that ~~non-consideration of a resolution of any grievance~~ inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

3.4 Loan to Directors (Section 185)

- 1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
 - a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
 - b) any firm in which any such director or relative is a partner.
 - 2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—
 - a) a special resolution is passed by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
 - b) the loans are utilised by the borrowing company for its principal business activities.
- Explanation. - For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—
 - (a) any private company of which any such director is a director or member;
 - (b) Anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (c) Anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- 3) Nothing contained in sub-sections (1) and (2) shall apply to—
 - a) the giving of any loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or
 - b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
 - c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee

given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

- d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.

- 4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—
- (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;
 - (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
 - (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'



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All India Rankers of Nov 2018.
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Chapter- 10

MISCELLANEOUS PROVISIONS

10.1 Fee for Filing, Etc. (Section 403)

(1) Submission within time:

- Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed.

~~(2) Submission after the time specified in relevant provision:~~

- ~~■ Any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed.~~

~~(3) Submission after the expiration of above 270 days also:~~

- ~~■ Any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in the expiration of above mentioned 270 days, on payment of fee and additional fee specified under this section.~~

~~Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case maybe, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case maybe, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies~~

(4) Penalty or punishment on submission after the expiration of above 270 days also:

- Where a company fails or commits any default to submit, file, register or record any document, fact or information within 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default."

- In case of Nidhis, section 403 shall apply, with the modification that the filing fees in respect of every return of allotment made under sub-section 9 of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.

Chapter- 11

COMPOUNDING OF OFFENCES, ADJUDICATION AND SPECIAL COURTS

11.1 Establishment of Special Court (section 435)

(1) Establishment of number of special court:

- The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary.
- Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

(2) Appointment of judge:

A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) Eligibility:

A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of—
 - (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
 - (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

11.2 Application of Code to Proceedings Before Special Court (Section 438)

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

11.3 Offence to be Non-Cognizable (Section 439)

Cognizance of offence:

- A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -
 - (a) The Registrar,
 - (b) A shareholder or a member of the company, or
 - (c) Of a person authorised by the Central Government in that behalf.
- Provided that the court may take cognizance of offences relating to issue and transfer of securities

and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

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

11.4 Transitional Provisions (Section 440)

- Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a ~~Court of Session~~ Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:
- Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a ~~Court of Session~~ Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be under this section.



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CUTTACK



Anmol Dhamija

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Taranjeet Singh

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LAW
NEW DELHI



Shubham Agrawal

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MUMBAI



Vaishali Gupta

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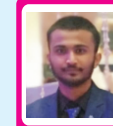
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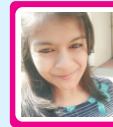
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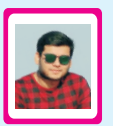
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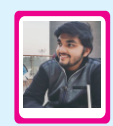
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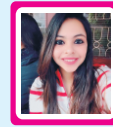
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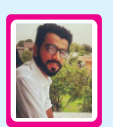
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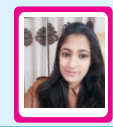
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Kritika Garg

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AHMEDABAD



Shantanu Sonawane

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JALGAON

Chapter- 12

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

12.1 Constitution of Appellate Tribunal (Section 410)

- (1) The Central Government shall, by notification constitute with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal (NCLAT) consisting of a chairperson and such number of judicial and technical members, not exceeding eleven, as the Central Government may deem fit.
- (2) NCLAT when constituted will be for hearing appeals against the orders of the Tribunal orders of the Tribunal or of the National Financial Reporting Authority
- (3) The Ministry of Corporate Affairs, hereby constitutes the NCLAT for hearing appeals against the orders of the NCLT with effect from 1st June 2016.

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Chapter- 14

VALUATION BY REGISTERED VALUERS

COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

2. Definitions

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

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

3. Eligibility for registered valuers

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

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

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

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

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

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

(e) Is not a minor;

(f) Has not been declared to be of unsound mind;

(g) Is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

(h) Is a person resident in India;

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

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

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

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

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

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

(2) No partnership entity or company shall be eligible to be a registered valuer if-

- (a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is not a subsidiary, joint venture or associate of another company or body corporate;
- (b) It is undergoing an insolvency resolution or is an undischarged bankrupt;
- (c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h), (i), (j) and (k) of sub-rule (1);
- (d) Three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case maybe, are not registered valuers; or
- (e) None of its partners or directors, as the case maybe, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

4. Qualifications and experience

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

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

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

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

5. Application for certificate of registration

- (1) An individual eligible for registration as a registered valuer under rule 3 may make an application

to the authority in Form-A of Annexure-II along with a non- refundable application fee of five thousand rupees in favour of the authority.

- (2) A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure- II along with a non-refundable application fee of ten thousand rupees in favour of the authority.
- (3) The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.
- (4) The authority may require the applicant to submit additional documents or clarification within twenty- one days.
- (5) The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.
- (6) If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in Form-C of the Annexure-II within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
- (7) If, after considering an application made under this rule, the authority is of the prima facie opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.
- (8) The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.
- (9) After considering the explanation, if any, given by the applicant under sub-rule (8), the authority shall either -
 - (a) Accept the application and grant the certificate of registration; or
 - (b) Reject the application by an order, giving reasons thereof.
- (10) The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

6. Conditions of Registration

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

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

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

7. Conduct of Valuation

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:
Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
 - (a) Internationally accepted valuation standards;
 - (b) valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
 - (a) background information of the asset being valued;
 - (b) purpose of valuation and appointing authority;
 - (c) identity of the valuer and any other experts involved in the valuation;
 - (d) disclosure of valuer interest or conflict, if any;
 - (e) date of appointment, valuation date and date of report;
 - (f) inspections and/or investigations undertaken;
 - (g) nature and sources of the information used or relied upon;
 - (h) procedures adopted in carrying out the valuation and valuation standards followed;
 - (i) restrictions on use of the report, if any;
 - (j) major factors that were taken into account during the valuation;
 - (k) conclusion; and

- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

8. Temporary surrender

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

9. Functions of a Valuer

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

10. Transitional Arrangement

Any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules upto 31st January, 2019

Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st January, 2019, the valuer shall complete such valuation or such part within three months thereafter.

11. Eligibility for registered valuers organisations

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

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

- (a) an organisation registered as a society under the Societies Registration Act, 1860 (21 of 1860) or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882 (2 of 1882).
- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
- (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation ;

- (c) conducts training for the individual members before a certificate of practice is issued to them;
 - (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in Annexure-I;
 - (e) provides for continuing education of individuals who are its members;
 - (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
 - (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in Annexure- III, within one year from the date of commencement of these rules.

12. Conditions of Recognition

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

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

13. Cancellation or suspension of certificate of registration or recognition

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

14. Complaint against a registered valuer or registered valuers organisation

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

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership

entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

15. Valuation Standards

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

16. Committee to advise on valuation matters

- (i) The Central Government may constitute a Committee to be known as "Committee to advise on valuation matters" to make recommendations on formulation and laying down of valuation standards and policies for compliance by companies and registered valuers.
- (ii) The Committee shall comprise of-
 - (a) a Chairperson who shall be a person of eminence and well versed in valuation, accountancy, finance, business administration, business law, corporate law, economics;
 - (b) one member nominated by the Ministry of Corporate Affairs;
 - (c) one member nominated by the Insolvency and Bankruptcy Board of India;
 - (d) one member nominated by the Legislative Department;
 - (e) upto four members nominated by Central Government representing authorities which are allowing valuations by registered valuers;
 - (f) upto four members who are representatives of registered valuers organisations, nominated by Central Government.
 - (g) upto two members to represent industry and other stakeholder nominated by the Central Government in consultation with the authority;
 - (h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.
- (iii) The Chairperson and Members of the Committee shall have a tenure of three years and they shall not have more than two tenures.

17. Punishment for contravention

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

18. Punishment for false statement

- (a) If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,— which is false in any material particulars, knowing it to be false; or
- (b) Which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

65 AIR IN THE YEAR 2018



CA Swapnil Patni



CA Ankita Patni



CA Harshad Jaju



CA Anand Bhargariya

SPC Achieves New Heights Of Success



Shadab Hussain

AIR 1
CA FINAL
ISCA
KOTA



Sakshi Airan

AIR 1
CA INTER / IPCC
EIS-SM
INDORE



Deepa Jain

AIR 1
CA INTER / IPCC
AUDIT
DELHI



Pushap Goyal

AIR 2
CA INTER / IPCC
EIS-SM
DELHI



Parth Gupta

AIR 3
CA INTER / IPCC
ADV ACC, AUDIT, IT-SM
DELHI



Parth Gupta

AIR 4
CA INTER / IPCC
IT-SM
CUTTACK



Gunjan Garg

AIR 6
CA FINAL
LAW
JAIPUR



Suraj Jhunjhunwala

AIR 7
CA INTER / IPCC
ITSM
CUTTACK



Anmol Dhamija

AIR 8
CA FINAL
ISCA
DELHI



Nitya Bhannashali

AIR 8
CA INTER / IPCC
LAW, IT-SM
VAPI



Taranjeet Singh

AIR 10
CA FINAL
LAW
NEW DELHI



Shubham Agrawal

AIR 10
CA FINAL
LAW
MUMBAI



Raghav Nagpal

AIR 11
CA INTER / IPCC
LAW
DELHI



Vaishali Gupta

AIR 11
CA FINAL
LAW, ISCA
DELHI



Anu

AIR 12
CA INTER / IPCC
LAW, EIS-SM, AUDIT
JALANDHAR



Ariba Zakir

AIR 14
CA INTER / IPCC
ITSM
ALLAHABAD



Aryan Gupta

AIR 17
CA INTER / IPCC
EIS-SM
DELHI



Vipul Kumar

AIR 18
CA FINAL
ISCA
GHAZIABAD



Rashesh Pillai

AIR 19
CA FINAL
LAW
VADODARA



Ishant Goel

AIR 20
CA INTER / IPCC
EIS-SM, AUDIT
FARIDABAD



Shruti Aggarwal

AIR 23
CA INTER / IPCC
EIS-SM
BAHADURGARH



Akriti Aggarwal

AIR 24
CA INTER / IPCC
LAW
DELHI



Gurpreet Singh

AIR 25
CA FINAL
DT
PUNE



Yash Agarwal

AIR 26
CA FINAL
LAW, ISCA
PUNE



Param Sehgal

AIR 27
CA INTER / IPCC
IT
ALIGARH



Praveen Ponniya

AIR 28
CA FINAL
LAW
JAIPUR



Aditya Thakare

AIR 29
CA FINAL
LAW
PUNE



Vrutant Gabrani

AIR 29
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EIS-SM, AUDIT
CAPS, NAGPUR



Simran Garg

AIR 30
CA INTER / IPCC
LAW
DELHI



Sanchit Sonthalia

AIR 30
CA INTER / IPCC
EIS-SM
DELHI



Anup Mishra

AIR 30
CA INTER / IPCC
ITSM
GORAKHPUR



Tannu Garg

AIR 30
CA INTER / IPCC
LAW
JAIPUR



Shivam Bhalaria

AIR 31
CA FOUNDATION
LAW
DELHI



Mayank Mokashi

AIR 32
CA INTER / IPCC
AUDIT, EIS-SM
NAGPUR



Sharad Malpani

AIR 32
CA INTER / IPCC
EIS-SM
PALI



Charu Goyal

AIR 33
CA INTER / IPCC
EIS-SM, LAW
MATHURA



Abhinav Khairnar

AIR 33
CA FINAL
LAW
PUNE



Mukta Gokhale

AIR 32
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SFM
PUNE



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LAW
FARIDABAD



Gagan Sharma

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ITSM
GWALIOR



Chirayu Maloo

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ISCA
CHITORGARH



Akshay Jain

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SFM
PUNE



Kiran Jain

AIR 38
CA FINAL
LAW
MUMBAI



Umesh Chaudak

AIR 38
CA FOUNDATION
ACCOUNTS, MATHS
BANGLORE



Tamanna Mali

AIR 38
CA FINAL
LAW
PUNE



Nikhil Jain

AIR 39
CA FINAL
LAW, ISCA
MUMBAI



Aviral Bhatia

AIR 40
CA FINAL
LAW
JAIPUR



Ankur Garg

AIR 40
CA INTER / IPCC
LAW
DELHI SOUTH-EX



Prakhav Vashney

AIR 42
CA INTER / IPCC
LAW
DELHI



Vaibhav Garg

AIR 42
CA INTER / IPCC
AUDIT
DELHI



Kashish Nimawat

AIR 44
CA FINAL
AUDIT
JHUNJHUNU



Binay Jain

AIR 44
CA FINAL
LAW
ROURKELA



Krishna Sahu

AIR 44
CA FINAL
LAW
MUMBAI



Nikhil Ramnani

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JODHPUR



Shreya Agrawal

AIR 45
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LAW
INDORE



Aditya

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DELHI



Kritika Gupta

AIR 46
CA FINAL
LAW
LUDHIANA



Gourav Jain

AIR 47
CA FINAL
LAW
HOWRAH



Naina Agarwal

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LAW
DELHI



Rahul Moondra

AIR 48
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JODHPUR



Monika Soni

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LAW
UDAIPUR



Rishabh Gupta

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LAW



Kritika Garg

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PATIALA



Reepal Patel

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CA FINAL
LAW
AHMEDABAD



Shantanu Sonawane

AIR 49
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LAW, EIS-SM, AUDIT
JALGAON