



**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
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SUPPLEMENT EXECUTIVE PROGRAMME

for

December, 2022 Examination

Securities Laws and Capital Markets

MODULE 2, PAPER 6

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Students appearing in Examination shall note the following:

Students appearing in December, 2022 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31st May, 2022.

The students are advised to acquaint themselves with the monthly and Regulatory updates published by the Institute.

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LESSON 4

An overview of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

(1) SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 (January 14, 2022)

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which has come into force on the date of their publication in the Official Gazette. Provided that the amendments to sub-regulation (3A) of regulation 32, regulation 49, regulation 129, regulation 145, clause (10) and clause (15) of Part A of Schedule XIII and Schedule XIV shall come into force from April 1, 2022, for issues opening on or after April 1, 2022.

The amendments *inter alia* provide that-

- In regulation 2(1)(III), in the definition the words “wilful defaulter” wherever it appears, shall be substituted with the words “wilful defaulter or a fraudulent borrower” and the words “wilful defaulters” shall be substituted with the words “wilful defaulters or fraudulent borrowers”.
- **General conditions for object of the issue for IPO/FPO/Right issue [Insertion: Regulation 7(3), 62(2A) and 104(3)]**

An issuer making an IPO/FPR/Right issue shall ensure that the amount for general corporate purposes and such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 35% of the amount being raised by the issuer.

However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty 25% of the amount being raised by the issuer.

Further, provided that such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

- Regulation (8A) is inserted prescribing the additional conditions for an offer for sale for issues under regulation 6(2).

Regulation (8A) - For issues where draft offer document is filed under sub-regulation (2) of regulation 6 of these regulations:

- a. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than fifty per cent of their pre-issue shareholding on fully diluted basis;
- b. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, less than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than ten per cent of pre-issue shareholding of the issuer on fully

diluted basis;

- c. for shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, provisions of lock-in as specified under regulation 17 of these regulations shall be applicable, and relaxation from lock-in as provided under clause (c) of regulation 17 of these regulations shall not be applicable.

- **Lock-in period for venture capital fund or alternative investment fund [Amendment: Regulation 17(c)]**

The equity shares held by a venture capital fund or alternative investment fund of category I or Category II or a foreign venture capital investor shall be locked in for a period of at least 6 months from the date of purchase by the venture capital fund or alternative investment fund of Category I or Category II or foreign venture capital investor.

- **Price and Price Band [Insertion: Proviso to Regulation 29(2)]**

As per regulation 29(2), the cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to 120% of the floor price. **Provided that the cap of the price band shall be at least 105% of the floor price.**

- **Allocation in the net offer [Insertion: Regulation 32(3A) and 129 (3A)]**

In an issue made through book building process, the allocation in the non-institutional investors' category shall be as follows:

- (a) 1/3rd of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 2 lakh and up to Rs. 10 lakh;

- (b) 2/3rd of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 10 lakh.

Provided that the unsubscribed portion in either of the sub-categories specified in clauses (a) or (b) may be allocated to applicants in the other sub-category of non-institutional investors.

- **Monitoring of utilization of IPO proceeds [Amendment: Regulation 41, 82 and 137]**

If the issue size exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored only by a credit rating agency registered with the SEBI instead of Scheduled commercial Banks and Public Financial Institutions. Monitoring of the funds raised by the issuer companies must be done for the entire proceeds instead of the erstwhile requirement of 95% of the amounts raised.

- **Refund of Application Money [Amendment: Regulation 45, 86 and 141]**

In the event of non-receipt of minimum subscription of 90%, all application monies received shall be refunded to the applicants forthwith, but not later than **4 days** (earlier 15 days) from the closure of the issue.

- **Release of subscription money [Amendment: Regulation 53(2) and Regulation 94(2)]**

In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund through verifiable means the entire monies

received within **4 days** (earlier 7 days) of receipt of intimation from stock exchanges rejecting the application for listing of specified securities, and if any such money is not repaid within **4 days** (earlier 8 days) after the issuer becomes liable to repay it, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the **4th day** (earlier 8th day), be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

- **Period of subscription [Amendment: Regulation 87]**

The rights issue shall be kept open for subscription for a minimum period of **7 seven days** (earlier 15 days) and for a maximum period of 30 days and no withdrawal of application shall be permitted after the issue closing date.

- **Eligibility requirements for further public offer [Amendment: Regulation 103]**

(1) An issuer shall be eligible to make a further public offer, if it has not changed its name in the last one year period immediately preceding the date of filing the relevant offer document:

Provided that if an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by its new name.

(2) An issuer not satisfying the condition stipulated in the proviso to sub-regulation (1), shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least seventy five per cent. of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

- **Issuers Ineligible to Make a Preferential Issue [Regulation 159]**

- i. Amendment to Regulation 159(1)*

Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the **90 trading days** (earlier six months) preceding the relevant date.

- ii. Regulation 159(4) has been inserted as:*

An issuer shall not be eligible to make a preferential issue if it has any outstanding dues to the Board, the stock exchanges or the depositories. However, this shall not be applicable in a case where such outstanding dues are the subject matter of a pending appeal or proceeding(s), which has been admitted by the relevant Court, Tribunal or Authority, as the case may be.

- **Conditions for preferential issue [Insertion: Regulation 160(f)]**

The issuer has made an application seeking in-principle approval to the stock exchange, where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

- **Tenure of convertible securities[Insertion: 162(2)]**

Upon exercise of the option by the allottee to convert the convertible securities within the tenure, the issuer shall ensure that the allotment of equity shares pursuant to exercise of the convertible securities is completed within 15 days from the date of such exercise by the allottee.

- **Disclosures to Shareholders [Regulation 163]**

- i. Amendment to Regulation 163(2)*

The issuer shall place a copy of the certificate of **a practicing company secretary** before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of the SEBI (ICDR) Regulations, 2018.

- ii. Amendment to Regulation 163(3)*

Specified securities may be issued on a preferential basis for consideration other than cash: Provided that consideration other than cash shall comprise only swap of shares pursuant to a valuation report by an independent registered valuer, which shall be submitted to the stock exchange(s) where the equity shares of the issuer are listed.

- **Lock-in [Amendment: Regulation 167]**

Lock in requirement for securities allotted to promoters/ promoter group (upto 20% of the post issue capital) has been reduced to 18 months. For allotment exceeding 20% of the post issue capital, lock in period has been reduced to 6 months. Lock in requirement for allotment to persons other than promoters and promoter group has been reduced to 6 months.

- **Pledge of locked-in specified securities [Insertion: Regulation 167A]**

167A. Specified securities, except SR equity shares, held by the promoters and locked-in under the provisions of these regulations, may be pledged as collateral for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company:

Provided that the loan has been granted to the issuer or its subsidiary(ies) for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the conditions for sanction of the loan:

Provided further that the lock-in on the specified securities shall continue pursuant to the invocation of the pledge and the entity invoking the pledge shall not be eligible to transfer the specified securities till the lock-in period stipulated in these regulations has expired.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022_55351.html

(2) Disclosures in the abridged prospectus and front cover page of the offer document (Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/14 dated February 04, 2022)

Background

Section 2(1) of the Companies Act, 2013 defines an abridged prospectus as *a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board India by making regulations in this behalf.*

In terms of Regulation 34(1) SEBI (Issue of Capital and Disclosure Requirements), 2018, abridged prospectus shall contain the disclosures as specified in Annexure I of Part E of Schedule VI of ICDR Regulations.

Further, Section 33(1) of the Companies Act stipulates that that every application form for the purchase of any securities of a company shall be accompanied by an abridged prospectus.

Brief Analysis

In order to further simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged prospectus, the format for disclosures in the abridged prospectus has been revised and is placed at Annexure A of this Circular. This Circular shall be applicable for all issues opening after the date of this Circular. While the disclosures in the abridged prospectus shall be as per Annexure A of this Circular instead of Annexure I of Part E of Schedule VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the disclosure on front outside cover page shall be as per Annexure B of this Circular.

For details: https://www.sebi.gov.in/legal/circulars/feb-2022/disclosures-in-the-abridged-prospectus-and-front-cover-page-of-the-offer-document_55920.html

(3) SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022 (April 27, 2022)

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette. Vide this notification it is provided that the amendments relating to regulations 32(3A), 49, 129, 145, clause (10) and clause (15) of Part A of Schedule XIII and Schedule XIV carried out by the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 shall come into force in the following manner: -

- (a) for public issues of a size less than Rs. 10,000 crore and opening on or after April 1, 2022; with effect from April 1, 2022;
- (b) for public issues of a size equal to or more than Rs. 10,000 crore and opening on or after April 1, 2022; with effect from July 1, 2022.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2022_58496.html

(4) Processing of ASBA applications in Public Issue of Equity Shares and Convertibles

(Circular No. SEBI/HO/CFD/DIL2/P/CIR/2022/75 dated May 30, 2022)

SEBI has reviewed the processing of Application Supported by Blocked Amount (ASBA) applications in the Public Issues by market intermediaries and Self-Certified Syndicate Banks (SCSBs) as a part of the continuing efforts to further streamline the bidding process and to ensure the orderly development of securities market.

SEBI vide this circular has provided that the ASBA applications in Public Issues shall be processed only after the application monies are blocked in the investor's bank accounts. Accordingly, all intermediaries / market infrastructure institutions are advised to ensure that appropriate systemic and procedural arrangements are made within three months from the date of issuance of this circular.

Further provided that the Stock Exchanges shall accept the ASBA applications in their electronic book building platform only with a mandatory confirmation on the application monies blocked. The circular shall be applicable for all categories of investors viz. Retail, QIB, NII and other reserved categories and also for all modes through which the applications are processed and for public issues opening on or after September 01, 2022.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/processing-of-asba-applications-in-public-issue-of-equity-shares-and-convertibles_59338.html

(5) Streamlining the Process of Rights Issue

(Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/66 dated May 19, 2022)

SEBI has streamlined the rights issue process and provided that the trading in Right Entitlements (REs) on the secondary market platform of stock exchanges commence along with the opening of the right issue and has to be closed at least three working days prior to the closure of the rights issue. Earlier, the requirement was four days. SEBI received representation from the market that in case there are trading holidays between the last date of REs trading date and issue closure, the provision of the minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum 2 working days are required for the settlement of REs traded on last day of REs trading window. REs traded on the exchange platform have a T+2 rolling settlement.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/streamlining-the-process-of-rights-issue_59023.html

LESSON 5

An overview of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

(1) SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022 (January 24, 2022)

SEBI vide its notification dated January 24, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

The amendments inter alia provide that-

- The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors **or as a manager** is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. **[Regulation 17(1C)]**
- The appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders. Further, the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment. **[Insertion: Proviso to Regulation 17(1C)]**
- Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on a **quarterly basis**, promptly upon its receipt. **[Substitution: Regulation 32(7)]**
- Issuance of duplicates or new certificates in cases of loss or old decrepit or worn out certificates in dematerialised form. This will improve ease, convenience and safety of transactions for investors. **[Regulation 39(2)]**
- The requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialised form with a depository. Further, transmission or transposition of securities held in physical or dematerialised form shall be effected only in dematerialised form. **[Substitution: Proviso to 40(1)]**

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022_55526.html

(2) SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 (March 22, 2022)

SEBI has notified SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 on March 22, 2022, which shall come into force on the date of their publication in the Official Gazette. SEBI vide this notification has omitted the regulation 17(1B) related to separation of role of Chairperson and MD/CEO. It is provided that this provision may not be retained as a mandatory requirement and instead be made applicable to the listed entities on a voluntary basis.

For details: https://www.sebi.gov.in/legal/regulations/mar-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2022_57098.html

(3) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022 (April 11, 2022)

SEBI on April 11, 2022, has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notifications SEBI has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to align the framework and terminology with respect to 'Security Cover' wherein the term 'Asset Cover' has been substituted with term 'Security Cover' in regulation 54 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Further, it is prescribed that the maintenance of security cover is sufficient to discharge both principal **and interest thereon** in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/sebi-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2022_57988.html

(4) Simplification of procedure and standardization of formats of documents for issuance of duplicate securities certificates

(Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/70 dated May 25, 2022)

With a view to make issuance of duplicate securities more efficient and investor friendly, SEBI has simplified the procedure and documentation requirements for issuance of duplicate securities.

The requirements are as specified below:

1. Submission by the security holder of copy of FIR including e-FIR/Police complaint/Court injunction order/copy of plaint, necessarily having details of the securities, folio number, distinctive number range and certificate numbers.
2. Issuance of advertisement regarding loss of securities in a widely circulated newspaper.

However, there shall be no requirement to comply with above mentioned Para 1 and 2, if the value of securities as on the date of submission of application, along with complete documentation as prescribed by the SEBI does not exceed Rs.5 Lakhs.

3. Submission of Affidavit and Indemnity bond as per the format prescribed by the SEBI. There shall be no requirement of submission of surety for issuance of duplicate securities
4. In case of non-availability of Certificate Nos./Distinctive Nos./ Folio nos., the RTA (upon written request by the security holder) shall provide the same, to the security holder only where the signature and the address of the security holder matches with the RTA / listed

company's records. In case the signature and/or the address do not match, the security holder shall first comply with the KYC procedure and then only the details of the securities shall be provided to the security holder by the RTA/listed company.

As mandated vide SEBI Circular dated January 25, 2022, duplicate securities shall be issued in dematerialized mode only.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-issuance-of-duplicate-securities-certificates_59173.html

LESSON 6

An Overview of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

(1) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 (December 06, 2021)

SEBI vide its notification dated December 06, 2021, has notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 which shall come into force on the date of their publication in the Official Gazette.

The amendments *inter alia* provide that-

I. Through this amendment, regulation 5A which deals with delisting offer has been substituted:

The delisting offer *inter alia* provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation (Regulation 5A).

Provided that the acquirer shall have declared his intention to so delist the target company at the time of making such public announcement of an open offer as well as at the time of making the detailed public statement. A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made shall not suffice.

Provided further that if the open offer is for an indirect acquisition that is not a deemed direct acquisition under sub-regulation (2) of regulation 5, the declaration of the intent to so delist shall be made initially only in the detailed public statement.

Brief Analysis:

Under the earlier framework, if an open offer is triggered, compliance with Takeover Regulations could take the incoming acquirer's holding to above 75% or perhaps even 90%, however, to ensure compliance with Securities Contract (Regulation) Rules, 1957 (SCRR) the acquirer would be forced to first bring his stake down to 75% as the SEBI (Delisting of Equity Shares) Regulations, 2021 would not let the acquirer even to attempt at delisting unless the holding is first brought down to 75%. Such directionally contradictory transactions in a sequence pose complexity in the takeover of listed companies especially where the acquirer desires to get the company delisted pursuant to his take over.

II. In Regulation 22(1) which deals with Completion of acquisition, the first proviso has been substituted with the following, namely,

“Provided that in case of an offer made under sub-regulation (1) of regulation 20 of these regulations, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 170 of the Securities and Exchange Board of India (Issue of Capital and Disclosure requirements) Regulations, 2018, subject to the non-obstante clause in sub-regulation (4) of regulation 7 of these regulations.”

III. In Regulation 22(1) which deals with Completion of acquisition, the following proviso has been inserted, namely,

“Provided that in case of proportionate reduction of the shares or voting rights to be acquired in accordance with the relevant provision under sub-regulation (4) of regulation 7, the acquirer shall undertake the completion of the scaled down acquisition of shares or voting rights in the target company.”

For details: https://www.sebi.gov.in/legal/regulations/dec-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-third-amendment-regulations-2021_54464.html

LESSON 12

MUTUAL FUNDS

(1) Change in control of the asset management company involving scheme of arrangement under Companies Act, 2013

(Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/10 dated January 31, 2022)

To streamline the process of providing approval to the proposed change in control of an asset management company (“AMC”) involving scheme of arrangement which needs sanction of National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013, SEBI vide this circular has provided that the application seeking approval for the proposed change in control of the AMC under Regulation 22(e) of Mutual Fund Regulations shall be filed with SEBI prior to filing the application with the NCLT.

Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI. The validity of such in-principle approval shall be 3 months from the date of issuance, within which the relevant application shall be made to NCLT. Within 15 days from the date of order of NCLT, applicant shall submit the application for the final approval along with copy of the NCLT Order approving the scheme, to SEBI for final approval.

The provisions of this Circular shall be applicable to all the applications for change in control of AMC for which the schemes of arrangement are filed with NCLT on or after March 1, 2022.

For details: https://www.sebi.gov.in/legal/circulars/jan-2022/change-in-control-of-the-asset-management-company-involving-scheme-of-arrangement-under-companies-act-2013_55745.html

(2) SEBI (Mutual Funds) (Amendment) Regulations, 2022 (January 25, 2022)

SEBI, vide its notification dated January 25, 2022, has notified the SEBI (Mutual Funds) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. However, the amendments to sub-regulation IV of regulation 3, sub-regulation VI of regulation 3, sub-clause (e) of clause (i) of sub-regulation VIII of regulation 3 and sub-clause (b) and (f) of clause (iii), sub-clause (b) and (c) of clause (iv) and clause (vi) of sub-regulation IX of regulation 3, shall come into force on April 1, 2023.

The amendments *inter alia* provide that-

- Regulation 18(15)(c) which specifies “when the majority of the trustees decide to wind up or prematurely redeem the units” has been substituted namely: -

“when the majority of the trustees decide to wind up a scheme in terms of clause (a) of sub-regulation (2) of regulation 39 or prematurely redeem the units of a close ended scheme”

- Sub-regulation (3) of regulation 39 shall be substituted as follows, namely –

“(3) Where a scheme is to be wound up under sub-regulation (2), the trustees shall give notice within one day, disclosing the circumstances leading to the winding up of the scheme, —

a) to the Board; and

b) in two daily newspapers having circulation all over India, a vernacular newspaper circulating at the place where the mutual fund is formed:

Provided that where a scheme is to be wound up under clause (a) of sub-regulation (2), the trustees shall obtain consent of the unit holders participating in the voting by simple majority on the basis of one vote per unit and publish the results of voting within forty five days from the publication of notice under sub-regulation (3):

Provided further that in case the trustees fail to obtain the required consent of the unitholders under clause (a) of sub-regulation (2), the schemes shall be reopened for business activities from the second business day after publication of results of the voting.”

- Regulation 50(1) which specify “To maintain proper books of account and records, etc.” the following sub-regulation (1A) has been inserted namely: -

“(1A) The financial statements and accounts of the mutual fund schemes shall be prepared in accordance with Indian Accounting Standards (IND AS) and any addendum thereto, as notified by the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time:

Provided that in case there is any conflict between the requirements of IND AS and these regulations and guidelines issued thereunder, the asset management companies shall follow the requirements specified under these regulations.”

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-mutual-funds-amendment-regulations-2022_55593.html

(3) Audit Committee of Asset Management Companies (AMCs)

(Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2022/17 dated February 09, 2022)

Taking into account the recommendation of Mutual Fund Advisory Committee (MFAC) and the feedback received from the industry, SEBI has prescribed that the AMCs of mutual funds shall be required to constitute an Audit Committee. The role, responsibility, membership and other features of the Audit Committee of AMC are detailed in this circular. Currently, the requirement for an Audit Committee is at the level of trustees of Mutual Funds.

Role: The Audit Committee of the AMC shall be responsible for oversight of financial reporting process, audit process, company’s system of internal controls, compliance to laws and regulations and other related process, with specific reference to operation of its Mutual Fund business.

Membership:

- (1) The Audit Committee of AMC shall have minimum 3 directors as members.
- (2) At least two-third members of the Audit Committee shall be independent directors of AMC. If two-third of the total strength results into fraction, then higher number after rounding up shall be considered.

- (3) The members of the Audit Committee will be appointed by the Board of Directors of AMC.
- (4) All members of Audit Committee shall be persons with ability to read and understand the financial statement and at least one member shall have experience and background in finance and accounts.
- (5) The Chairperson of the Committee shall be an independent director, with adequate experience in the areas of finance and financial services.

Meetings: The Chairperson of the Audit Committee shall call the meeting as and when required. However, atleast four meetings shall be called in a financial year and not more than one hundred and twenty days shall elapse between two meetings.

Quorum: The quorum for meeting shall either be two members or one third of the members of the Audit Committee, whichever is greater, with at least two independent director.

For details: <https://www.sebi.gov.in/legal/circulars/feb-2022/circular-on-audit-committee-of-asset-management-companies-amcs-55987.html>

Lesson 13

Collective Investment Schemes

(1) SEBI (Collective Investment Schemes) (Amendment) Regulations, 2022 (May 10, 2022)

SEBI has notified the SEBI (Collective Investment Schemes) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification, the following amendments to the SEBI (Collective Investment Schemes) Regulations, 1999, have been made:

1. In Regulation 2(e), the definition of “**auditor**” has been modified as-
“auditor” means a firm, including a limited liability partnership, constituted under the Limited Liability Partnership Act, 2008, who is eligible and qualified to audit the accounts of a company under section 141 of the Companies Act, 2013.
2. The definition of “**designated employees**” has been inserted:
“designated employees” of the Collective Investment Management Company includes:
 - (i) chief executive officer, chief investment officer, chief risk officer, chief information security officer, chief operation officer, fund manager, compliance officer, sales head, investor relation officer, heads of other departments and dealer of the Collective Investment Management Company;
 - (ii) persons directly reporting to the chief executive officer (excluding personal assistant/ secretary);
 - (iii) fund management team and research team;
 - (iv) other employees as identified by Collective Investment Management Companies or trustees.
3. In regulation 9 which specify Conditions for eligibility for registering as Collective Investment Management Company, clause (c) has been substituted with the following clause, namely,-
“(c) the applicant or its promoters should have a sound track record and general reputation of fairness and integrity in all their business transactions.”
4. Under the heading “Criteria for fit and proper person”, after regulation 9A, the following regulation 9B has been inserted, namely,-
“9B (1) No Collective Investment Management Company or a promoter of a Collective Investment Management Company, their associates or group companies, through the schemes of the Collective Investment Management Company or otherwise, individually or collectively, directly or indirectly, have –
 - (a) ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company; or

(b) representation on the board of the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company.

(2) Any shareholder holding ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of a Collective Investment Management Company, shall not have, directly or indirectly,-

(a) ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company; or

(b) representation on the board of the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company:

Provided that in the event of a merger, acquisition, scheme of arrangement or any other arrangement involving the promoters of the Collective Investment Management Company, shareholders of the Collective Investment Management Company or trustee companies, their associates or group companies which results in the incidental acquisition of shares, voting rights or representation on the board of the Collective Investment Management Company or trustee companies, this regulation shall be complied with within a period of one year of coming into force of such an arrangement.”

5. In regulation 14, which specify the obligations of Collective Investment Management Company, the following clause has been inserted, namely,-

“The Collective Investment Management Company and its designated employees shall invest such amounts in such schemes of the Collective Investment Management Company, as may be specified by the Board from time to time.”

6. The following regulation 24(6) has been inserted, namely,-

“Closure of subscription list

Each collective investment scheme shall immediately after the closure of the subscription list comply with the following conditions, namely,-

(a) minimum subscription amount of rupees twenty crore;

(b) minimum twenty investors; and

(c) no person shall hold more than twenty-five percent of the assets under management of scheme:

Provided that where the collective investment scheme fails to comply with this subregulation, Collective Investment Management Company shall be liable to refund the application money to the applicants.”

7. Regulation 30 dealing with Offer period has been substituted with the following, namely,

“Offer period

No collective investment scheme shall be open for subscription for more than fifteen days:

Provided that collective investment scheme may be kept open for subscription for a maximum of another fifteen days subject to issuance of public notice by the Collective Investment Management Company before the expiry of initial fifteen days.”

For details: https://www.sebi.gov.in/legal/regulations/may-2022/securities-and-exchange-board-of-india-collective-investment-schemes-amendment-regulations-2022_58854.html

LESSON 15

Structure of Capital Market

(1) SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 (January 14, 2022)

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2019, which has come into force on the date of their publication in the Official Gazette. The amendments enable SEBI to generate unique registration numbers of Foreign Portfolio Investors on receiving the basic details of the applicants seeking FPI registration from either of SEBI registered Depositories.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2022_55352.html

(2) SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022 (January 24, 2022)

SEBI has notified the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

The amendment inserted Chapter III-B on Special Situation Fund in the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

Meaning: “special situation fund” means a Category 1 Alternative Investment Fund that invests in special situation assets in accordance with its investment objectives and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016.

Applicability: The provisions of this Chapter shall apply to special situation funds and schemes launched by such special situation funds.

Investment in special situation funds

- (1) Each scheme of a special situation fund shall have a corpus as may be specified by the SEBI.
- (2) The special situation fund shall accept from an investor, an investment of such value as may be specified by the SEBI.
- (3) The special situation fund shall not accept investments from any other Alternative Investment Fund other than a special situation fund.

Investment by special situation funds

- (1) Special situation funds shall invest only in special situation assets and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016. However, the special situation fund shall not invest in,
 - i. its associates; or
 - ii. the units of any other Alternative Investment Fund other than the units of a special situation fund; or
 - iii. units of special situation funds managed or sponsored by its manager, sponsor or associates of its manager or sponsor.

(2) Any investment by a special situation fund in the stressed loan acquired under clause 58 of the Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 as amended from time to time shall be subject to lock-in period as may be specified by the SEBI.

In this context, SEBI vide its Circular No. SEBI/HO/IMD-I/DF6/P/CIR/2022/009 dated January 27, 2022 has specified the following:

- (a) Each scheme of SSF shall have a corpus of at least 100 crore rupees.
- (b) SSF shall accept an investment of value not less than 10 crore rupees from an investor. In case of an accredited investor, the SSF shall accept an investment of value not less than 5 crore rupees. Further, in case of investors who are employees or directors of the SSF or employees or directors of the manager of the SSF, the minimum value of investment shall be 25 lakh rupees.
- (c) SSF intending to act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 shall ensure compliance with the eligibility requirement provided thereunder.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2022_55525.html

https://www.sebi.gov.in/legal/circulars/jan-2022/introduction-of-special-situation-funds-as-a-sub-category-under-category-i-aifs_55625.html

(3) SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2022 (March 16, 2022)

SEBI has notified the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification, clause (d) of regulation 15(1) regarding general investment conditions, has been substituted which provides that-

“Category III Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds and the large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds:

Provided that for investment in listed equity of an Investee Company, Category III Alternative Investment Funds may calculate the investment limit of ten per cent of either the investable funds or the net asset value of the scheme and large value funds for accredited investors of Category III Alternative Investment Funds may calculate the investment limit of twenty per cent of either the investable funds or the net asset value of the scheme, subject to the conditions specified by the Board from time to time.”

For details: https://www.sebi.gov.in/legal/regulations/mar-2022/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2022_56966.html

LESSON 16

SECURITIES MARKET INTERMEDIARIES

(1) SEBI (Depositories and Participations) (Amendment) Regulations, 2022 (February 23, 2022)

SEBI has notified the SEBI (Depositories and Participations) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette.

The amendment has been made in Regulation 35(a)(viii) of the SEBI (Depositories and Participants) Regulations, 2018. Vide this amendment, SEBI has increased the networth requirements for stock broker to register as a depository participant and provides that the stock broker shall have a networth of rupees three crores {within one year of the date of this notification}, which shall be increased to rupees five crores {within two years of the date of this notification}.

Further provided that a self-clearing member fulfilling the networth requirements as provided under the SEBI (Stock Brokers) Regulations, 1992 shall also be eligible to register as a depository participant.

For details: https://www.sebi.gov.in/legal/regulations/feb-2022/securities-and-exchange-board-of-india-depositories-and-participations-amendment-regulations-2022_56368.html

(2) SEBI (Stock Brokers) (Amendment) Regulations, 2022 (February 23, 2022)

SEBI has notified the SEBI (Stock Brokers) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. Vide this amendment, a new clause “professional clearing member” has been inserted in regulation 2(1)(ca) which means a member having clearing and settlement rights in any recognized clearing corporation, but not having trading rights in any recognized stock exchange.

For details: https://www.sebi.gov.in/legal/regulations/feb-2022/securities-and-exchange-board-of-india-stock-brokers-amendment-regulations-2022_56372.html

(3) SEBI (Custodian) (Amendment) Regulations, 2022 (April 25, 2022)

SEBI has notified the SEBI (Custodian) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette.

The following has been amended namely: -

- In Regulation 2(e), the definition of custodial services has been amended namely: -

“custodial services” in relation to securities or goods of a client or gold or gold related instruments **or silver or silver related instruments** held by a mutual fund or title deeds of real estate assets held by a real estate mutual fund scheme in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 means, the safekeeping of such securities or goods or gold or gold related instruments **or silver or silver related instruments** or title deeds of real estate assets and providing services incidental thereto.

- Regulation 8 which specify “Procedure and Grant certificate” new sub-regulation (7) has been inserted namely: -

“A custodian holding a certificate of registration as on the date of commencement of the Securities and Exchange Board of India (Custodian) (Amendment) Regulations, 2022, may provide custodial services in respect of silver or silver related instruments held by a mutual fund only after taking prior approval of the Board.”

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-custodian-amendment-regulations-2022_58498.html

(4) SEBI (Debenture Trustees) (Amendment) Regulations, 2022 (April 11, 2022)

SEBI on April 11, 2022, has notified the SEBI (Debenture Trustees) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette. Vide this notification SEBI has amended the provisions of the SEBI (Debenture Trustee) Regulations, 1993, to align the framework and terminology with respect to ‘Security Cover’ wherein the term ‘Asset Cover’ has been substituted with term ‘Security Cover’ in regulation 15 of the SEBI (Debenture Trustee) Regulations, 1993.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/sebi-debenture-trustees-amendment-regulations-2022_57987.html
