



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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SUPPLEMENT PROFESSIONAL PROGRAMME

for

December, 2022 Examination

**RESOLUTION OF CORPORATE DISPUTES,
NON-COMPLIANCES & REMEDIES**

MODULE 2

PAPER 6

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Lesson 1 - Shareholders' Democracy

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 came 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. [Proviso to Regulation 17(1C)].

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

Lesson 5 – Regulatory Action

1. Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021(December 31, 2021)

Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995(said rules) are made for the purpose of holding inquiry for the purpose of imposing penalty under Chapter VI-A of the SEBI Act, 1992 which is related to penalties and adjudication under this Act.

Now, by Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021, the Central Government has amended said rules w.e.f. December 31, 2022.

Amendment to Rule 2

In rule 2(b), for the word, figures and letter “section 15L”, the word, figures and letter “section 15I” has been substituted.

Amendment to Rule 7

Rule 7 has been substituted with the following:

Service of notices and orders.

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:–

- (a) by delivering or tendering it to that person or his duly authorised agent; or
- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

For details: <https://www.sebi.gov.in/legal/rules/jan-2022/securities-and-exchange-board-of-india-procedure-for-holding-inquiry-and-imposing-penalties-rules-1995-last-amended-on-december-31-2021-55412.html>

2. Faceless Jurisdiction of Income-tax Authorities Scheme, 2022 (March 28, 2022)

Section 30 of the Income-tax Act, 1961(the Act) empowers the Central Government to make a scheme for the following purposes:

- (a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or
- (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or
- (c) exercise of power to transfer cases under section 127; or
- (d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,

The scheme intend to impart greater efficiency, transparency and accountability by:

- (i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
- (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
- (iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

In terms of above section, the central government has notified Faceless Jurisdiction of Income-tax Authorities Scheme, 2022. The scheme provides the coverage relating to Scope, Powers and Performance of functions of income-tax authorities which are as under:

- (a) the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120 of the Act; or
- (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in—
 - (i) section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;
 - (ii) the Faceless Appeal Scheme, 2021 notified under sub-sections (6B) and (6C) of section 250 of the Act with reference to the disposal of appeals;
 - (iii) the Faceless Penalty Scheme, 2021 notified under sub-sections (2A) and (2B) of section 274 of the Act with reference to imposition of penalty under Chapter XXI of the Act;
 - (iv) the e-Verification Scheme, 2021 notified under sub-sections (1) and (2) of section 135A of the Act with reference to the calling for of information under section 133 of the Act, collecting certain information under section 133B of the Act, or calling for information by prescribed authority under section 133C of the Act, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 of the Act;
 - (v) the e-Settlement Scheme, 2021 notified under sub-sections (11) and (12) of section 245D of the Act with reference to the settlement of pending applications by the interim Board;
 - (vi) the e-advance rulings Scheme, 2022 notified under sub-sections (9) and (10) of section 245R of the Act with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.

Impact

Now, the vesting of jurisdiction with the Assessing Officer as referred to in section 124 of the Act shall be in a faceless manner through automated allocation for the purposes including Faceless Assessment, Faceless Appeal, Faceless Penalty, e-Verification, e-Settlement schemes.

For details: <https://incometaxindia.gov.in/communications/notification/notification-15-2022.pdf>

Lesson 6 - Adjudication, Prosecutions, Offences and Penalties

Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021(December 31, 2021)

Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (Said Rules) are made for the purpose of holding inquiry for the purpose of imposing penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G3, 23GA and 23H of the Securities Contracts (Regulation) Act, 1956.

Amendment to Rule 7

Rule 7 has been substituted with the following:

Service of notices and orders.

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:—

- (a) by delivering or tendering it to that person or his duly authorised agent; or
- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

For details: https://www.sebi.gov.in/legal/rules/dec-2021/securities-contracts-regulation-procedure-for-holding-inquiry-and-imposing-penalties-amendment-rules-2021_55155.html

Lesson 7 - Relief and Remedies

Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022 (January 14, 2022)

Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (Settlement Proceedings Regulations) had been notified to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto. These regulations were notified on November 31, 2018 and are in force with effect from January 1, 2019

Now, by Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022, SEBI has amended the above said Settlement Proceedings Regulations w.e.f. January 14, 2022. The changes made by this amendment *inter-alia* includes as under:

i. Regulation 4(2) has been omitted which was as under:

“Notwithstanding anything contained in regulation 4(1), the Board may consider the application, if satisfied that there was sufficient cause for not filing it within the specified period and it is accompanied with non-refundable fees as specified in Part-B of the Schedule-I:

Provided that, where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation (1), the settlement amount determined in accordance with Schedule-II of these regulations shall be increased by twenty-fivepercent:

Provided further that, no such delayed application shall be considered if the application is filed after one hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first hearing, whichever is earlier.”

Impact

The provision relating to the power of considering application after the specified period is omitted.

ii. Amendment to Regulation 6

Regulation 6(1)(b)

Earlier

Where the applicant does not submit or delays the submission of information, document, etc., as called for by the Board.

Now

Where the applicant does not submit or delays the submission of information, document, Revised Settlement Terms, etc., as called for by the Board

Impact

The application may also be rejected if the applicant does not submit or delays the submission of Revised Settlement Terms or any other information or document as called for by the SEBI. The words “Revised Settlement Terms” has been specifically added by the amendment.

Regulation 6(1)(f)

Regulation 6(1)(f) providing one more ground for rejection of application has been added, which is as under:

“Where the applicant fails to comply with the condition precedent(s) for settlement within the time as required by the Internal Committee.”

iii. Amendment to Regulation 9

a. Regulation 9(2)(j)

Regulation 9(2) provides the inclusive list of non-monetary settlement terms. Clause j has added to this list which is as under:

Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

b. Explanation to regulation 9(4)

The explanation which defines the “Legal Costs” has been amended by including other expenses incurred by the Board in any other proceeding before any Court or Tribunal in respect of such application

iv. Amendment to Regulation 13

Regulation 13 provides the provisions regarding Proceedings before the Internal Committee. Clause (ba) has been added to sub-regulation 13(2) empowering the Internal Committee to:

“require the applicant to comply with certain condition precedent(s) within a specified time period for consideration of the application for settlement.”

Regulation 13(2)(c) has been amended by empowering Internal Committee to permit the applicant to submit revised settlement terms within a period not exceeding fifteen working days

from the date of the Internal Committee meeting in place of period of ten days which was provided earlier.

Further, the proviso to regulation 13(2)(c) has been omitted which was as under:

“Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount”

v. Regulation 15

Regulation 15 provides the provisions related to Action on the recommendation of High Powered Advisory Committee.

Amendment to Regulation 15(2)(a)

Regulation 15(2)(a) has been amended by omitting the provision for allowing the extension of time for remitting the settlement amount, which was as under:

”, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand.

Explanation to regulation 15(2)(a)

Earlier the remittance was allowed by “direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorized electronic mode of payment”

Now this provision has been substituted by allowing the “*payment through the dedicated payment gateway provided for the purpose*”.

vi. Schedule I and II of the Settlement Proceedings Regulations have also been amended.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2022_55363.html

Note: 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.