



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

# **PROFESSIONAL PROGRAMME**

## **SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE**

**[OLD SYLLABUS]**

**MODUL- 1**

**PAPER - 2**

**(RELEVANT FOR STUDENTS APPEARING IN  
JUNE, 2020 EXAMINATION)**

This study supplement is relevant for the student appearing for the Professional Programme. The students are advised to read Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in the Companies Act, 2013 and Other Regulations up to November, 2019, which are applicable for June, 2020 Examination. The students are advised to read all the relevant regulatory amendments made and applicable up to November, 2019 along with the study material\*\*. In the event of any doubt, students may write to the Institute for clarifications at [academics@icsi.edu](mailto:academics@icsi.edu).

***Disclaimer***

These academic updates have been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of these academic updates should do so only after cross checking with the original source. This document is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or actions taken in that behalf.

\*\*The students may also refer to the E-book on Companies Act, 2013 on the MCA website (<http://ebook.mca.gov.in/default.aspx>) or ICSI website (<http://ebook.mca.gov.in>) for the updated Companies Act, 2013 and rules made thereunder. The Students are also advised to visit the Website of the ICSI, MCA, SEBI, RBI and other regulator for recent updates on the Subject.

## PROFESSIONAL PROGRAMME

### SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

#### [Old Syllabus] MODULE I – PAPER 2

#### Lesson wise Important update for June, 2020 Examinations

Lesson No.	Lesson Name	Key Updates
<b>Part A</b>		
1	Secretarial Audit and Secretarial Standards – An Overview	<ol style="list-style-type: none"><li>1. Revised Secretarial Standards on Board Meeting and General Meeting effective from October 1st, 2017.</li><li>2. Secretarial Standard on Dividend.</li><li>3. Secretarial Standard on Board Reports.</li><li>4. Effect of the various sections notified under:<ul style="list-style-type: none"><li>• Companies (Amendment) Act, 2017.</li><li>• Companies (Amendment) Ordinance, 2018.</li><li>• Companies (Amendment) Ordinance, 2019.</li></ul></li></ol>
2	Check Lists for Secretarial Audit	<ol style="list-style-type: none"><li>1. Amendments in the Act, Rules, Circulars and Notification by MCA.</li><li>2. Amendments in the existing SEBI Regulations.</li><li>3. New Regulations by SEBI<ul style="list-style-type: none"><li>• SEBI (Buy Back of Securities) Regulations 2018.</li><li>• SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.</li></ul></li><li>4. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 and subsequent amendments.</li><li>5. RBI Master Direction Foreign Investment in India dated 04.01.2018.</li><li>6. RBI Master Direction - External Commercial Borrowings, Trade Credit and Structured obligations dated 26<sup>th</sup> March, 2019.</li></ol>

		<ol style="list-style-type: none"> <li>7. Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers</li> <li>8. Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (Updated as on January 04, 2018)</li> <li>9. Master Direction - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities (Updated as on May 10, 2018)</li> <li>10. Master Direction – Reporting under Foreign Exchange Management Act, 1999.</li> <li>11. RBI notification no. RBI/2018-19/226 A.P. (DIR Series) Circular No. 37 dated 28.06.2019 on Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies.</li> <li>12. RBI master direction No. RBI/DBR/2019-20/71 Master Direction DBR. Appt.No: 9/29.67.001/2019-20 dated 02.08.2019 on Master Direction - Reserve Bank of India ('Fit and Proper' Criteria for Elected Directors on the Boards of PSBs) Directions, 2019.</li> <li>13. RBI Master Direction No. RBI/2019-20/37DBR. AML.BC.No.11/14.01.001/2019-20dated 09.08.2019 related to Master Direction (MD) on KYC.</li> <li>14. RBI Notification no. RBI/2019-20/89 DOR.Appt. BC.No.23/29.67.001/2019-20 dated 04.11.2019 , Guidelines on Compensation of Whole Time Directors/ Chief Executive Officers/ Material Risk Takers and Control Function staff.</li> </ol> <p><a href="https://www.rbi.org.in/Scripts/BS_ViewMasterDirections.aspx?did=335">https://www.rbi.org.in/Scripts/BS_ViewMasterDirections.aspx?did=335</a></p>
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**Part B**

3	Due Diligence – An Overview	-----
4	Issue of Securities	<ol style="list-style-type: none"> <li>1. Amendments in the Companies Act, 2013.</li> <li>2. SEBI (ICDR) Regulations, 2018 and amendment thereunder.</li> <li>3. Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and amendment thereunder.</li> </ol>

5	Depository Receipts Due Diligence	Amendment in SEBI (LODR) Regulations.
6	Due Diligence – Mergers & Amalgamations	<ol style="list-style-type: none"> <li>1. Amendments in SEBI (LODR) Regulations.</li> <li>2. Amendments in SEBI (SAST) Regulations.</li> <li>3. SEBI (ICDR) Regulations, 2018 and amendment thereunder.</li> <li>4. SEBI (Buy Back of Securities) Regulations, 2018 and amendment thereunder.</li> </ol>
7	Competition Law Due Diligence	Notification issued by the CCI. Amendment in the Combinations Regulations.
8	Legal Due Diligence	-----
9	Due Diligence for Banks	-----
10	Environmental Due Diligence	-----
11	Search & Status Report	<ol style="list-style-type: none"> <li>1. Amendment in Section 77 to 87 in Companies (Amendment) Act, 2017 and Rules made thereunder.</li> <li>2. Companies (Amendment) Ordinance, 2018 and Rules made thereunder.</li> <li>3. Companies (Amendment) Ordinance, 2019 and Rules made thereunder.</li> </ol>
12	Compliance Management	-----

## Updates on Secretarial Standards (Chapter -1 & 2)

Secretarial Standards on Meetings of the Board of Directors (SS-1) and General Meetings (SS-2) have been revised by the ICSI and approved by the Central Government under section 118(10) of the Companies Act, 2013. The revised SS-1 and SS-2 as issued by the ICSI are applicable to all the companies (except the exempted class of companies) w.e.f. 1st October, 2017. The revised SS-1 & SS-2 are available on ICSI website at the link: <https://www.icsi.edu/ssb/Home.aspx>.

For easy reference of the students, Comparative of the Old and the Revised Secretarial Standards are provided on the ICSI Website at the following link:

### 1. Comparative of Amendments in SS-1:

[https://www.icsi.edu/webmodules/ComparativeAnalysis\\_Amendments\\_SS1.pdf](https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS1.pdf)

### 2. Comparative of Amendments in SS-2:

[https://www.icsi.edu/webmodules/ComparativeAnalysis\\_Amendments\\_SS2.pdf](https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS2.pdf)

### 3. Secretarial Standard on Dividend (SS-3)

The Institute of Company Secretaries of India has issued Secretarial Standard on dividend (SS-3) in November 2017. The SS-3 is effective from 1<sup>st</sup> January, 2018 for Voluntary adoption by companies. The SS-3 is available on the ICSI Website at following link:

[https://www.icsi.edu/WebModules/SS3\\_DIVIDEDRELEASED\\_NC.pdf](https://www.icsi.edu/WebModules/SS3_DIVIDEDRELEASED_NC.pdf)

### 4. Secretarial Standard on Report of Board of Directors (SS-4)

The Institute of Company Secretaries of India has issued the Secretarial Standard on Report of the Board of Directors (SS-4). This Standard shall come into effect from 1st October, 2018.

The Companies Act, 2013, requires the Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.

This Standard (SS-4) prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto. In case, a particular disclosure which is required to be made as per this Standard is not applicable to a particular company, the company need not disclose the same in the Board's Report except where the Standard requires specific disclosure in this respect.

<https://www.icsi.edu/media/webmodules/FinalSS-4.pdf>

## **Important Points to be Remember on Secretarial Standards**

### 1. Mandatory observance of Secretarial Standards issued by ICSI?

Section 118(10) of the Companies Act, 2013 mandates the observance of Secretarial Standards on General and Board Meetings specified by The Institute of Company Secretaries of India and approved

by the Central Government.

Accordingly, the Secretarial Standards on Meetings of the Board of Directors (“SS-1”) and Secretarial Standards on General Meetings (“SS-2”), as approved by the Central Government, have been issued by the ICSI for observance by all companies (except exempted class of companies).

## **2. Effective date of revised SS-1 and SS-2?**

The revised SS-1 & SS-2 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1<sup>st</sup> October, 2017 in respect of Meetings of Board & its Committees and General Meetings for which Notices are issued on or after the said date, and will supersede the existing SS-1 and SS-2.

## **3. Status of existing SS-1 and SS-2 be applicable to the Board Meetings and General Meetings held on or before 30<sup>th</sup> September, 2017?**

The existing SS-1 and SS-2 will be applicable to the Board Meetings and General Meetings held on or before 30<sup>th</sup> September, 2017. It is only the ICSI Gazette Notification No. (1) SS of 2015 which shall stand withdrawn w.e.f 30<sup>th</sup> September 2017, without affecting the enforceability of existing SS-1 and SS-2 on such Meetings.

## **4. In case the Notice of the Meeting is issued before 1<sup>st</sup> October, 2017 by complying with earlier SS and the Board/General Meetings convened on 1<sup>st</sup> October, 2017 or thereafter then**

The Revised Secretarial Standards (SS-1 and SS-2) shall apply to Board Meetings and General Meetings, in respect of which Notices are issued on or after 1<sup>st</sup> October, 2017.

## **5. Approval of the Revised Secretarial Standards**

The SS-1 and SS-2 have been revised by the ICSI and the same have been approved by the MCA vide its letter No. 1/3/2014-CL.I dated 14<sup>th</sup> June, 2017. As the existing approval of Central Government under Section 118(10) of the Companies Act, 2013 would suffice for the enforceability of revised SS-1 & SS-2, these are not required to be notified in the Gazette of India.

## **6. What would be the position if a particular Standard becomes inconsistent due to subsequent changes in the law?**

If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

**Note: The checklist for the purpose of the secretarial audit shall be prepared in line with the various changes in the rules and regulations made on time to time.**

## **AMENDMENTS IN COMPANY ACT, 2013**

The students are advised to go through the amendments in the various sections of the Companies Act, 2013 and rules made there under. However, the highlights of the major amendments are provided below:

## **Companies (Amendment) Act, 2017:**

Students are advised to go through the Companies (Amendment) Act, 2017 as placed on the MCA Website. Also refer Chartered Secretary for the month of February, 2018 covering highlights of the Companies (Amendment) Act, 2017 for the same.

[http://mca.gov.in/Ministry/pdf/CAAct2017\\_05012018.pdf](http://mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf)

## **Companies (Amendment) Ordinance, 2018/ 2019**

Giving effect to the recommendations placed in the Report of the Committee to review Offences under the Companies Act, 2013, the Companies (Amendment) Ordinance, 2018 provides much needed relief to the corporates and professionals alike by decriminalising a host of offences. Considering re-categorisation of certain 'acts' punishable as compoundable offences to 'acts' carrying civil liabilities, the Ordinance further promotes the Indian Government's intent to promote ease of doing business.

The main reforms undertaken through the Ordinance include the following:

- Re-categorising of offences which are in the category of compoundable offences to an in-house adjudication framework. However, no change has been made in respect of any of the non-compoundable offences.
- Strengthen the in house mechanism for making good the default at the time of levying penalty, to sub-serve the ultimate aim of achieving better compliance.
- De-clogging the NCLT by:
  - enlarging the jurisdiction of Regional Director ("RD") by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.
  - vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and
  - vesting the Central Government the power to approve cases of conversion of public companies into private companies.
- Other corporate governance related reforms include re-introduction of declaration of commencement of business provision to better tackle the menace of 'shell companies'; protection of public deposits through greater disclosures; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of directorships beyond permissible limits to trigger disqualification of such directors.

### **(A) Re-categorising of offences:**

- Re-categorising of offences which are in the category of compoundable offences to an in-house adjudication framework. However, no change has been made in respect of any of the non-compoundable offences.

Some of the sections are as under:

- Section 53 : Prohibition of issue of shares at a discount  
Non-compliance with sub-section (3) of Section 53 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or



with both.

- Section 64(2) : Notice to be given to Registrar for alteration of share capital

Non-compliance with sub-section (1) of Section 64 shall result in the company and any officer in default being liable to a penalty, instead of being punishable with fine.

- Section 92(5): for failure/delay in filing annual return

Non-compliance with sub-section (4) of Section 92 shall result in:

- (i) The company being liable to a penalty, instead of being punishable with fine; and
- (ii) Every officer in default being liable to a penalty, instead of being punishable with fine or imprisonment or with both.

- Section 105(3): for Default in providing a declaration regarding appointment of proxy in a notice calling for general meeting

Noncompliance with sub-section (2) of Section 105 shall result in every officer in default being liable to a penalty, instead of being punishable with fine.

- Section 117(2) : Failure/Delay in filing Certain resolutions

Non-compliance with sub-section (1) of Section 117 shall result in the company and every officer in default including liquidator of a company, if any, being liable to a penalty, instead of being punishable with fine

## **(B) De-clogging the NCLT**

- Enlarging the jurisdiction of Regional Director (“RD”) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.

Power of Regional Director to compound offence punishable increased upto Rs. 2,500,000/- (Section 441- Compounding of certain offences)

As per Act, where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government, (Power of RD to compound offence punishable upto Rs. 500,000/-)

Through the Amendment, where the maximum amount of fine which may be imposed for such offence does not exceed Twenty five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

- vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41);

As per Companies Act, in case of Indian company having Holding/ subsidiary/ Associate Company situated outside India, it is allowed the change the financial year as per such company with the approval of Tribunal.

Through this Ordinance, Power of Tribunal has been transferred from Tribunal to Central Government, therefore, financial year of Company can be changed with approval of Central Government.

- vesting the Central Government the power to approve cases of conversion of public companies into private companies

In terms of Section 14(1), for Conversion of Public Company into Private Limited Company, approval of Tribunal is required. Through this amendment, Power of Tribunal has been transferred to Central Government.

Therefore, after notification of ordinance Public Company can be convert into Private Company with approval of Central Government.

### **(C) Other corporate governance related reforms:**

#### **Commencement of Business, etc. (Insertion of new section 10A)**

Re-introduction of section 11 omitted under the Companies (Amendment) Act, 2015 (after doing away with the requirements of minimum paid up capital) to provide for a declaration by a company having share capital before it commences its business or exercises borrowing power.

Non-compliance of section 11 by an officer in default shall result in liability to a penalty instead of fine.

#### **Registered office of company**

Insertion of sub-section (9) to section 12, stating that

“if Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provision of sub-section (8), cause a physical verification of the registered office of the company and if any default is found in complying with the requirements of sub- section (1), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII”.

#### **Disqualifications from appointment of directors**

A new clause in section 164(1) inserted, whereby a person shall be subject to disqualification if he accepts directorships exceeding the maximum number of directorships provided in section 165.

[http://mca.gov.in/Ministry/pdf/NotificationCAO2019\\_26032019.pdf](http://mca.gov.in/Ministry/pdf/NotificationCAO2019_26032019.pdf)

[http://mca.gov.in/Ministry/pdf/NotificationCAO2019\\_15012019.pdf](http://mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf)

### **Amendments in the Rules under Companies Act, 2013**

#### **Companies (Incorporation) Rules, 2014**

***Substitution of Rule 8 by the Companies (Incorporation) Fifth Amendment Rules, 2019 dated 10th May 2019***

8. Names which resemble too nearly with name of existing company.-

(1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded while comparing the names under sub-rule (1):-

(a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;

(b) the plural or singular form of words in one or both names;

#### **A. Illustrations**

(i) Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.

(ii) Pratap Technology Ltd. is same as Prataps Technology Ltd. and Prataps Technologies Ltd.

(iii) SM Computers Ltd. is not same as SMS Computers Ltd.

(c) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;

#### **B. Illustrations**

(i) ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.

(ii) TeamWork Ltd. is same as Team@Work Ltd. and Team-Work Ltd.

(d) use of different tenses in one or both names

#### **C. Illustrations**

(i) Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.

(ii) Speak English Solutions Limited is same as Spoken English Solutions Limited.

(e) use of different phonetic spellings including use of misspelled words of an expression;

#### **D. Illustrations**

(i) Chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd.

(ii) Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd.

(f) use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names;

#### **E. Illustrations**

(i) Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.

(ii) Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.

(g) the order of words in the names

**F. Illustrations**

- (i) Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.
- (ii) Ravi Builders and Contractors Limited is not the same as Ravi Shankar Builders and Contractors Limited.

(h) use of the definite or indefinite article in one or both names

**G. Illustrations**

- (i) Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.
- (ii) Isha Industries Limited is not the same as Anisha Industries Limited.

(i) a slight variation in the spelling of the two names including a grammatical variation thereof;

**H. Illustrations**

- (i) Color Technologies Ltd. is same as Colour Technologies Ltd.
- (ii) Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd.

(j) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English;

**I. Illustrations**

- (i) National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.
- (ii) Hike Construction Ltd. is not the same as Hike Nirman Ltd.

(k) addition of the name of a place to an existing name, which does not contain the name of any place;

**J. Illustrations**

- (i) If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.
- (ii) Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.

(l) addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand;

**K. Illustrations**

- (i) Thunder Services Ltd is same as Thunder11 Services Ltd and OneThunder Services Ltd
- (ii) Style Garments11 Ltd. is same as Style Garments Ltd and Style12 Garments Ltd.
- (iii) One 11 Power Equipment Ltd is not the same as One Power Equipment Ltd, if One 11 represents a brand:

Provided that clauses (f) to (h) and clauses (k) and (l) shall not be disregarded while comparing the names, if a no objection by way of a Board resolution has been provided by an existing company.

#### **8A. Undesirable names.-**

(1) The name shall be considered undesirable, if-

(a) it is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;

(b) save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(c) it includes any word or words which are offensive to any section of the people;

(d) the proposed name is identical with or too nearly resembles the name of a limited liability partnership:

Provided that the provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a limited liability partnership;

(e) the proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

Provided that the provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling with a reserved name;

(f) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

(g) the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;

(h) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(i) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available:

Provided further that provisions of rule 8 shall apply mutatis mutandis while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;

(j) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG, etc.;

Explanation.- For the purposes of this clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under the said Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

(k) the proposed name contains the words 'British India';

(l) the proposed name implies association or connection with an embassy or consulate of a foreign government;

(m) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government;

(n) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) then the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;

(o) it is identical with the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant;

(q) the proposed name includes the word "State", in case the company is not a Government company;

(r) the proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited;

(s) Use of descriptive names, where the name merely consists of commonly used words to describe an activity.

Explanation.—For the purposes of this clause,-

(A) the term "commonly used words" refers to use of generic expressions which may be used by any other company to describe its trade;

(B) while determining whether a name is descriptive or not, the objects of the proposed company or the order of words appearing in a name shall not be relevant;

(C) the name shall not be deemed to be descriptive where “commonly used words” are used in addition to other words in the name;

#### A. Illustrations

(i) The names Silk Manufacturers Private Limited and Manufacturers Silk Ltd. are descriptive names as they merely describe an activity which may also be carried out by any other company and the order of the words is not relevant while determining a descriptive name.

(ii) The names Computer World Ltd., Food Star Ltd., Tour Hub Ltd or House of Chocolate Ltd are not descriptive as the names do not merely consist of commonly used words.

(iii) The names Technical Vista Ltd or Vista Technical are not descriptive as the names do not merely consist of commonly used words and the order of the words is not relevant while determining whether a name is descriptive.

(iv) The name Drinking Water Plant Ltd. is a descriptive name, even if the object of the company is not related to making drinking water plant as it consists of commonly used words and objects of the proposed company is not relevant while determining whether a name is descriptive.

(v) The name Silk Wise Manufacturers Private Limited is not descriptive as it contains words other than commonly used words.

(t) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

Explanation.- For the purposes of this clause, ‘enemy country’ means so declared by the Government of India from time to time.

(u) the proposed name of a section 8 company under the Act does not include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and the like, etc.

(v) the proposed name of a Nidhi company under the Act does not have the last words “Nidhi Limited” as a part of its name.

(w) the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation.

(2) The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has been using in the last five years, the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a

declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

8B. Word or expression which can be used only after obtaining previous approval of Central Government. In terms clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:-

- (a) Board;
- (b) Commission;
- (c) Authority;
- (d) Undertaking;
- (e) National;
- (f) Union;
- (g) Central;
- (h) Federal;
- (i) Republic;
- (j) President;
- (k) Rashtrapati;
- (l) Small Scale Industries;
- (m) Khadi and Village Industries Corporation;
- (n) Financial Corporation and the like;
- (o) Municipal;
- (p) Panchayat;
- (q) Development Authority;
- (r) Prime Minister or Chief Minister;
- (s) Minister;
- (t) Nation;
- (u) Forest corporation;
- (v) Development Scheme;
- (w) Statute or Statutory;
- (x) Court or Judiciary;



(y) Governor;

(z) the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities; and

(za) Bureau.

## **Companies (Incorporation) Amendment Rules, 2019 dated 21.02.2019**

### **25A. Active Company Tagging Identities and Verification (ACTIVE)**

(1) Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 15.06.2019

Provided that any company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register:

Provided further that companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, shall not be required to file e-Form ACTIVE:

Provided also that in case a company does not intimate the said particulars, the Company shall be marked as "ACTIVE-non-compliant" on or after 16th June, 2019 and shall be liable for action under sub-section (9) of section 12 of the Act:

Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as "ACTIVE-non-compliant", unless "e- Form ACTIVE" is filed -

- (i) SH-07 (Change in Authorized Capital);
- (ii) PAS-03 (Change in Paid-up Capital);
- (iii) DIR-12 (Changes in Director except cessation);
- (iv) INC-22 (Change in Registered Office);
- (v) INC-28 (Amalgamation, de-merger)

(2) Where a company files "e-Form ACTIVE", on or after 16th June, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of ten thousand rupees.

### **38. Simplified Proforma for Incorporating Company Electronically (SPICe).-**

(1) The Application for incorporation of a company under this rule shall be in FORM No. INC- 32 (SPICe) alongwith e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of association (e-AOA) in Form no. INC-34.

Provided that in case of incorporation of a company falling under section 8 of the Act, FORM No. INC-32 (SPICe) shall be filed along with FORM No. INC-13 (Memorandum of Association) and FORM No. INC-31 (Articles of Association) as attachments.

Provided further that in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC-32 (SPICe) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34.

(2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act. Shall be filed in FORM No. INC-32] (SPICe). with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules. 2014:

Provided that where an applicant has applied for reservation of a name under Rule 9 and which has been approved therein, he may fill the reserved name as proposed name of the company.

Provided further that in case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees fifteen lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable.

(3) For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in FORM No. INC-32 (SPICe), and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in FORM No. INC-32 (SPICe) in case of proposed directors not having approved Director Identification Number.

(4) The promoter or applicant of the proposed company shall propose only one name in FORM No. INC-32 (SPICe).

(5) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in FORM No. INC-33 and Articles of Association (e-AoA) in FORM No. INC-34, in accordance with rule 13.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA

(6) For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. rule 9, and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply.

(7) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing FORM No. INC-32] (SPICe) in which case the company shall attach along with such FORM No. INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.

(8) FORM No. INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.

(9) (a) Where the Registrar, on examining FORM No. INC-32] (SPICe), finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for re-submission of documents shall not exceed thirty days.

(10) The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.”.

**Companies (Incorporation) Second Amendment rules, 2017 Notification dated 27th July, 2017 effective from 27th July, 2017**

<http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationSecondAmendmentRules2017.pdf>

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014:

1. For rule 28, the following rule shall be substituted, namely:—

**“28. Shifting of registered office within the same State.** —(1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No. INC.23 along with the fee and following documents, —

(a) Board Resolution for shifting of registered office;

(b) Special Resolution of the members of the company approving the shifting of registered office;

(c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the

consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;

(d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;

(e) acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting”.

3. In the principal rules, for rule 30, the following rule shall be substituted, namely: —

“30. Shifting of Registered Office from one State or Union Territory to another State

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely: —

(a) a copy of Memorandum of Association, with proposed alterations;

(b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;

(c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -

(a) advertise in the Form No. INC.26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the state in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter-response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

(10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed”.

### **Companies (Incorporation) Third Amendment Rules, 2018**

In the Companies (Incorporation) Rules, 2014.\_

(a) in rule 3, for Explanation to sub-rule (1), the following shall be substituted, namely:-

“Explanation I. - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year.

Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted”;

(b) for rule 15, the following shall be substituted, namely:-

**“15. Declaration from Subscribers and First Directors.-** For the purposes of clause (c) of sub-section

(1) of section 7, the declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9.”

(c) in Form No. INC-9, for the word 'Affidavit', the word 'Declaration' shall be substituted;

(d) in Form No. INC-32, (SPICe), in the List of Attachments, in item number 3, for the words and brackets "Affidavit and declaration by first subscriber(s) and director(s)" the words and brackets "Declaration by first subscriber(s) and director(s)" shall be substituted.

### **The Companies (Amendment) Act, 2019, Dated 31.07.2019 (Sections related to Audits)**

Amendment of section 132- In section 132 of the Companies Act, 2013:

(a) after sub-section (1), the following sub-section shall be inserted, namely:— "(1A) The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.";

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).";

(c) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause shall be substituted, namely:—

"(B) debaring the member or the firm from—

I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.".

In section 140 of the Companies Act, 2013, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".

## **Chapter – 3: Companies (Prospectus and Allotment of Securities) Rules, 2014.**

### **1. Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019. Dated 22nd May, 2019**

Every unlisted public company is required to submit Reconciliation of Share Capital Audit Report (Half-yearly in Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year ended 30th September and 31st March in every financial year for each ISIN separately certified by a company secretary in practice or chartered accountant in practice.

Further, The company is also immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

**Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019 dated 22<sup>nd</sup> January, 2019**

Rule 9A (Issue of securities in dematerialised form by unlisted public companies) of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply to an unlisted public company which is:- (a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary.

**Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018. dated 7 August, 2018**

**Substitution of Rule 14**

**14. Private placement.- (1)** For the purposes of sub-section (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations:

Provided that in the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:-

- (a) particulars of the offer including date of passing of Board resolution;
- (b) kinds of securities offered and the price at which security is being offered;
- (c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- (d) name and address of valuer who performed valuation;
- (e) amount which the company intends to raise by way of such securities;
- (f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of subsection (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate:

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed



amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

(2) For the purpose of sub-section (2) of section 42, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

Explanation.- For the purposes of this sub-rule, it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

(3) A private placement offer cum application letter shall be in the form of an application in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the name of such person pursuant to sub-section (3) of section 42:

Provided that no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(4) The company shall maintain a complete record of private placement offers in Form PAS-5.

(5) The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the bank account from where such payment for subscription has been received:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application:

Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.

(6) A return of allotment of securities under section 42 shall be filed with the Registrar within fifteen days of allotment in Form PAS-3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all the allottees containing-

- (i) the full name, address, Permanent Account Number and E-mail ID of such security holder;
- (ii) the class of security held;
- (iii) the date of allotment of security ;
- (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

(7) The provisions of sub-rule (2) shall not be applicable to –

- a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934); and
- b) housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987 (53 of 1987), if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

(8) A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry:

Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of sub-section (3) of section 179

### **Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 dated 10th September, 2018**

#### **Insertion of Rules 9A after rule 9**

#### **“9A. Issue of securities in dematerialised form by unlisted public companies.-**

(1) Every unlisted public company shall –

- (a) issue the securities only in dematerialised form; and
- (b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company,-

- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

(4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

(5) Every unlisted public company shall ensure that –

(a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

(b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and

(c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

(6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

(7) Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities or unlisted public companies.

(8) The audit report provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.

(9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and Protection Fund Authority.

(10) The Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.

#### **Companies (Acceptance of Deposits) Rules, 2014**

#### **Companies (Acceptance of Deposits) Amendment Rules, 2019 Dated 22<sup>nd</sup> January, 2019**

in rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words "Infrastructure Investment Trusts," the words "Real Estate Investment Trusts" shall be inserted.

(c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include –

#### **I to xvii**

(xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds registered

with the Securities and Exchange Board of India in accordance with regulations made by it”.

### **16 Return of Deposits to be Filed with the Registrar.**

Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

Explanation.- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

### **16A. Disclosures in the financial statement**

(1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.

(2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.”

(3) Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to 31st March 2019, as specified in Form DPT-3 within ninety days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

### **Companies (Acceptance of Deposit) Second Amendment Rules, 2017 dated 19th September, 2017 effective from 19th September, 2017**

[http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule\\_22092017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule_22092017.pdf)

In the Companies (Acceptance of Deposits) Rules, 2014, in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-

“Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Explanation.-For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006:

Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—

(i) a private company which is a start-up, for five years from the date of its incorporation;

(ii) a private company which fulfils all of the following conditions, namely:—

(a) which is not an associate or a subsidiary company of any other company;

(b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.”.

### **Companies (Acceptance of Deposits) Amendment Rules, 2018 dated 5 July, 2018 effective from 15 August, 2018**

In the Companies (Acceptance of Deposits) Rules, 2014

(a) in rule 4, in sub-rule (1), after the proviso, the following proviso shall be inserted namely-

“Provided further that a certificate of the statutory auditor of the company shall be attached in Form DPT- 1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.”;

(b) rule 5 shall be omitted

(c) in rule 13, for the proviso, the following shall be substituted, namely:-

“Provided that the amount remaining deposited shall not at any time fall below twenty per cent. of the amount of deposits maturing during the financial year.”;

### **Companies (Registration of Charges) Rules, 2014**

#### **1. Companies (Registration of Charges) Amendment Rules, 2019 dated 30<sup>th</sup> April, 2019**

##### **i. Substitution of Rule 3(2) & (3):**

(2) If the particulars of a charge are not filed in accordance with sub-rule (1) of Rule 3, such creation

or modification shall be filed in Form No. CHG-I or Form No. CHG9 within the period as specified in section 77 on payment of additional fee or advalorem fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

(3) Where the company fails to register the charge in accordance with sub-rule. (1) and the registration is effected on the application of the charge-holder, such charge-holder shall be entitled to recover from the company the amount of any fees or additional fees or advalorem fees paid by him 'to the Registrar for the purpose of registration of charge."

**ii. Substitution of Rule 12:**

"4.Application to Registrar.-

(1) For the purposes of the first proviso and clause (b) of the second proviso to sub-section (1) of section 77, the Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge including modification thereto, allow the registration of the same after thirty days but within the period as specified in the said provisos, on payment of fee, additional fee or advalorem fee, as may be applicable, as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

(2) The application under sub-rule (1) shall be made in Form No.CHG-I and Form No.CHG-9 supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company."

**iii. Substitution of Rule 12:**

**12. Rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge.-**

The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-

(a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

(b) direct extension of time for satisfaction of charge, if such filing is not made within a period of three hundred days from the date of such payment or satisfaction." .

**2. Companies (Registration of Charges) Amendment Rules, 2018.**

**8. Satisfaction of Charge.**

(1) A company or charge holder shall within a period of three hundred days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No.CHG-4 along with the fee.

(2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in Form No.CHG-5.

### **Companies (Significant Beneficial Owners) Rules, 2018**

### **Companies (Significant Beneficial Owners) Amendment Rules, 2019 Dated 08<sup>th</sup> February, 2019**

### **Amendments in the Rules 2, 3, 4, 7& 8 of the Companies (Significant Beneficial Owners) Rules, 2018**

(b) "control" means control as defined in clause (27) of section 2 of the Act;

(c) "form" means the form specified in Annexure to these rules;

(d) "majority stake" means;-

- (i) holding more than one-half of the equity share capital in the body corporate; or
- (ii) holding more than one-half of the voting rights in the body corporate; or
- (iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

(e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(f) "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;

(g) "section" means a section of the Act;

(h) "significant beneficial owner" in relation to a reporting company means an individual referred to in subsection (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

- (i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- (iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:

**Explanation I.** – For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

**Explanation II.** – For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely.—

(i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;

(ii) the individual holds or acquires a beneficial interest in the share of the reporting company under subsection (2) of section 89, and has made a declaration in this regard to the reporting company.

**Explanation III.** – For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely:-

(i) where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual,—

(a) holds majority stake in that member; or

(b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

(ii) where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF;

(iii) where the member of the reporting company is a partnership entity (through itself or a partner), and the individual,-

(a) is a partner; or

(b) holds majority stake in the body corporate which is a partner of the partnership entity; or

(c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv) where the member of the reporting company is a trust (through trustee), and the individual,-

(a) is a trustee in case of a discretionary trust or a charitable trust;

(b) is a beneficiary in case of a specific trust;

(c) is the author or settlor in case of a revocable trust.

(v) where the member of the reporting company is,-



- (a) a pooled investment vehicle; or
- (b) an entity controlled by the pooled investment vehicle, based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle,-
  - (A) is a general partner; or
  - (B) is an investment manager; or
  - (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

**Explanation IV.** Where the member of a reporting company is,

- (i) a pooled investment vehicle; or
- (ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

**Explanation V. –** For the purpose of this clause, if any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be ‘acting together’.

**Explanation VI. –** For the purposes of this clause, the instruments in the form of global depository receipts, compulsorily convertible preference shares or compulsorily convertible debentures shall be treated as ‘shares’.

- (i) “significant influence” means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies’.

**3. In the principal rules, for rules 3 and 4, the following rules shall be substituted, namely:-**

**“2A. Duty of the reporting company.-** (1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule

2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than ten per cent. of its;-

(a) shares, or

(b) voting rights, or

(c) right to receive or participate in the dividend or any other distribution payable in a financial year, give notice to such member, seeking information in accordance with sub-section (5) of section 90, in Form No. BEN-4.

### **3. Declaration of significant beneficial ownership under section 90.-**

(1) On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.

(2) Every individual, who subsequently becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.

**Explanation.-** Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.

**4. Return of significant beneficial owners in shares.-** Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.”

**In the said principal rules, for rules 7 and 8, the following rules shall be substituted, namely:-**

**“7. Application to the Tribunal.-** The reporting company shall apply to the Tribunal, -

(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or

(ii) where the information given is not satisfactory,

in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including –

(a) restrictions on the transfer of interest attached to the shares in question;

(b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;

(c) suspension of voting rights in relation to the shares in question;

(d) any other restriction on all or any of the rights attached with the shares in question.

**8. Non-Applicability.-**These rules shall not be made applicable to the extent the share of the reporting company is held by,-

(a) the authority constituted under sub-section (5) of section 125 of the Act;

(b) its holding reporting company:

Provided that the details of such holding reporting company shall be reported in Form No. BEN-2.

(c) the Central Government, State Government or any local Authority;

(d) (i) a reporting company, or

(ii) a body corporate, or

(iii) an entity,

controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

(e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,

(f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

**Companies (Accounts) Amendment Rules, 2019 Notification dates 22 October, 2019**

In the Companies (Accounts) Rules, 2014, in rule 8, In sub-rule (5), after clause (iii) the following clauses shall be inserted, namely:-

(iiia) a segment regarding opinion of the board with to integrity, expertise and experience(including the proficiency) of the independent directors appointed during the year”.

Explanation- For the purpose of this clause, the expression “proficiency” means the proficiency of the independent director as ascertained from the online proficiency self assessment test conducted by the institute notified under sub section(1) of the section 150.

**Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017. Notification dated 6th November, 2017 effective from 6th November, 2017**

In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 (hereinafter referred to as the principal rules), for rule 3, the following rule shall be substituted, namely:—

**“3. Filing of financial statements with Registrar.-** The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL:-

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) companies having paid up capital of five crore rupees or above;
- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015:

Provided that the companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy provided in Annexure-II A:

Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.”

[http://www.mca.gov.in/Ministry/pdf/Scan\\_XBRL\\_09112017.pdf](http://www.mca.gov.in/Ministry/pdf/Scan_XBRL_09112017.pdf)

**Companies (Registered Valuers and Valuation) Rules, 2017**

[http://www.mca.gov.in/Ministry/pdf/RegisteredValues\\_19102017.pdf](http://www.mca.gov.in/Ministry/pdf/RegisteredValues_19102017.pdf)

**ELIGIBILITY, QUALIFICATIONS AND REGISTRATION OF VALUERS**

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 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 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 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), (f), (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 may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, 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

(c) 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).

**8. 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.

**The students are advised to also refer Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 along with the complete Companies (Registered Valuers and Valuation) Rules, 2017**

## **Companies (Restriction on number of layers) Rules 2017**

*Notification dated 20<sup>th</sup> September, 2017 effective from 20<sup>th</sup> September, 2017*

[http://www.mca.gov.in/Ministry/pdf/CompaniesRestrictionOnNumberofLayersRule\\_22092017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesRestrictionOnNumberofLayersRule_22092017.pdf)

In exercise of the powers conferred under proviso to clause (87) of section 2, section 450 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the Companies (Restriction on number of layers) Rules, 2017.

### **Restriction on number of layers for certain classes of holding companies.**

(1) No company, other than a company belonging to a class specified in sub rule (2), shall have more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) The provisions of this rule shall not apply to the following classes of companies, namely:-

(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act 1949;

(b) a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999;

(d) a Government company referred to in clause (45) of section 2 of the Act.

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) Every company other than a company referred to in sub-rule (2) existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) -

(i) shall file, with the Registrar a return in Form CRL- 1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the official Gazette;

(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and



(iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub-rule (1), whichever is more.

(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

**Companies (Meetings of Board and its Powers) Second Amendment Rules 2017 Notification dated 13<sup>th</sup> July, 2017 effective from 13<sup>th</sup> July, 2017**

[http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules\\_14072017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesMeetingBoardPowersSecondRules_14072017.pdf)

Ministry of Corporate Affairs notified Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 dated July 13, 2017. As per the notification following amendment has been made in the Companies (Meetings of Board and its Powers) Rules, 2014 -

1. In Rule 3-

(a) In sub-rule(3), for clause (e), the following has been substituted:-

“(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year:

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”

(b)In sub-rule (11), in clause (a), after the words “decision taken by majority”, the words “and the draft minutes so recorded shall be preserved by the company till the conformation of the draft minutes in accordance with sub-rule (12)” has been inserted.

2. For Rule 6, the following rule has been substituted:-

"6. Committees of the Board - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'."

**Companies (Appointment and Qualification of Directors) Amendment Rules,2017**  
Notification dated 5<sup>th</sup> July, 2017 effective from 05<sup>th</sup> July, 2017

[http://www.mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesApptandQualificationofDirectorsAmdtRules_06072017.pdf)

The rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely:

(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act."]

**Inserted by the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018 Dated 7<sup>th</sup> May 2018**

**5 Qualifications of Independent Director**

(1) An 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.

(2) 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.

**Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 Notification dated 22 October, 2019, valid from 01.12.2019.**

The rule 6 shall be substituted namely:-

Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test:

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than sixty percent. in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.]

**Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 Dated 16<sup>th</sup> May 2019.**

**12B. Directors of company required to file e-form ACTIVE.-**

(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as "Director of ACTIVE non-compliant company".

(2) Where the DIN of a director has been marked as "Director of ACTIVE non-compliant company", such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.

(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as "Director of ACTIVE compliant company."

**NCLT Rules, 2016**

**National Company Law Tribunal (Amendment) Rules, 2017 Notification dated 5<sup>th</sup> July, 2017 effective from 05<sup>th</sup> July, 2017**

[http://www.mca.gov.in/Ministry/pdf/NationalCompanyLawTribunalAmdtRules\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/NationalCompanyLawTribunalAmdtRules_06072017.pdf)

"Rule 87A. Appeal or application under sub-section (1) and sub-section (3) of section 252.—

(1) An appeal under subsection (1) or an application under sub-section (3) of section 252, may be filed before the Tribunal in Form No. NCLT. 9, with such modifications as may be necessary.

(2) A copy of the appeal or application, shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

(3) Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order, as it deems fit.

(4) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that

(a) the appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

(b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;

(c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

(d) the company shall file pending financial statements and annual returns with the Registrar and

comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

(5) An application filed by the Registrar of Companies for restoration of name of a company in the register of companies under second proviso to sub-section (1) of section 252 shall be in Form No. NCLT 9 and upon hearing the application or any adjourned hearing thereof, the Tribunal may pass an appropriate order, as it deems fit.”.

**NCLAT (Amendment) Rules 2017 Notification dated 23<sup>rd</sup> August, 2017 effective from 23<sup>rd</sup> August, 2017**

[http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017\\_25082017.pdf](http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017_25082017.pdf)

The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Appellate Tribunal, such officer should be an officer not below the rank of Junior Time Scale or company prosecutor.

**National Company Law Tribunal (Second Amendment) Rules, 2019 dated 08<sup>th</sup> May, 2019**

In the National Company Law Tribunal Rules, 2016 , in rule 84, after sub-rule (2), the following sub-rules shall be inserted, namely: –

“(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least five per cent. of the total number of members of the company; or  
(b) one hundred members of the company,  
whichever is less; or
- (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;  
(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least five per cent. of the total number of depositors of the company; or  
(b) one hundred depositors of the company,  
whichever is less; or;
- (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.”

**SEBI Laws:**

**Updates on SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009:**

**Please note that the SEBI has notified the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 on 11<sup>th</sup> September, 2018**

**The aforesaid notification is available on the following link:**

<https://www.sebi.gov.in/legal/regulations/mar-2019/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-april-05-2019-41542.html>

Accordingly, the students are advised to go through the relevant provisions of the above regulation along with the further amendments.

### **Updates on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

#### **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2019.**

In the Securities and Exchange Board of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, in regulation 10,-

I.in sub-regulation

(1),- i.in clause (d),-

a. in sub-clause (ii), the words “or a competent authority” shall be omitted;

b. in sub-clause (iii), the words “or a competent authority” shall be omitted.

ii. in clause (i),-

a. the word “scheme” shall be omitted;

b. the existing proviso shall be substituted with the following proviso, namely,-

“Provided that the conditions specified under sub-regulation (6) of regulation 158 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 are complied with.”

c. after the proviso, the following explanation shall be inserted, namely,-

“Explanation. –For the purpose of this clause, “lenders” shall mean all scheduled commercial banks (excluding Regional Rural Banks) and All India Financial Institutions.

iii. Clause (ia) shall be omitted

II. Sub-regulation (2) shall be omitted.

#### **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2018 dated 31st December, 2018**

In the Securities and Exchange Board of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, -

a. in regulation 29, in sub-regulation (4), -

i. in the proviso, after the word “institution” and before the words “as pledgee”, the words “or a housing finance company or a systemically important non-banking financial company” shall be inserted; and

ii. after the proviso, the following Explanation shall be inserted, namely, -

“Explanation. - For the purpose of this sub-regulation, -

A. a “housing finance company” means a housing finance company registered with the National Housing Bank for carrying on the business of housing finance and is either deposit taking or having asset size worth rupees five hundred crores or more; and

B. a “systemically important non-banking financial company” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.”

### **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018**

In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,-

I.in regulation 3, in sub-regulation (2), after the proviso and before the explanation to sub-regulation (2), the following proviso shall be inserted, namely

"Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.

### **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018**

[https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2018\\_40332.html](https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2018_40332.html)

In the Securities and Exchange Board of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,

(1) in regulation 2:

(a) in sub-regulation (1), in clause (j), the words “is made” shall be substituted with the following,

namely:- “is required to be made under these regulations” 2

(b) in sub-regulation (1), after clause (j) and before clause (k), the following clause shall be inserted, namely;-

“(ja) “fugitive economic offender” shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018).”

(c) in sub-regulation (1), after clause (m) and before clause (n), the following clause shall be inserted, namely:-

“(ma) “listing regulations” means the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.”

(d) in sub-regulation (1), clause (r) shall be substituted with the following, namely:-

“(r) “postal ballot” means a postal ballot as provided for under Rule 22 of the Companies (Management and Administration) Rules, 2014 made under the Companies Act, 2013.”

(e) in sub-regulation (2), the words and figures “Companies Act, 1956 (1 of 1956)” shall be substituted with the words and figures “Companies Act, 2013 (18 of 2013)”

(2) in regulation 5A,-

(a) in sub-regulation (1), in the proviso, after the words “detailed public statement”, the following words and figures shall be inserted, namely:-

“and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice”

(b) sub-regulation (3) shall be substituted with the following, namely:-

“(3) In the event of failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:

(i) the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and

(ii) shall comply with all other applicable provisions of these regulations.

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.”

(3) after regulation 6A and before regulation 7, the following regulation shall be inserted, namely:-

“6B. Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.”

(4) in regulation 7, in sub-regulation (2), the words “total shares of” appearing after the words “additional ten per cent of the”, shall be substituted by the words “voting rights in”.

(5) in regulation 9,-

(a) the words “listing agreement”, wherever occurring, shall be substituted by the words “listing



regulations”.

(b) in sub-regulation (5), in clause (c), in the explanation, the words and figures “subsection (1A) of 81 of the Companies Act, 1956 (1 of 1956)” shall be substituted by the words and figures “clause (c) of sub-section (1) of section 62 of the Companies Act, 2013 (18 of 2013)”.

(6) in regulation 10,-

(a) the words “listing agreement”, wherever occurring, shall be substituted by the words “listing regulations or as the case may be, the listing agreement.”

(b) in sub-regulation (1), in clause (a), after sub-clause (iii) and before sub-clause (iv), the following explanation shall be inserted, namely:-

“Explanation: For the purpose of this sub-clause, the company shall include a body corporate, whether Indian or foreign.”

(c) in sub-regulation (1), in clause (h), the words and figures “sub-section (2) of section 87 of the Companies Act, 1956 (1 of 1956)” shall be substituted by the words and figures “sub-section (2) of section 47 of the Companies Act, 2013 (18 of 2013)”.

(d) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (i), the words and figures “section 77A of the Companies Act, 1956 (1 of 1956),” shall be substituted by the words and figures “section 68 of the Companies Act, 2013 (18 of 2013)”.

(e) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (iii), the words and figures “section 77A of the Companies Act, 1956 (1 of 1956),” shall be substituted by the words and figures “section 68 of the Companies Act, 2013 (18 of 2013)”.

(7) in regulation 17, in sub-regulation (3), after the proviso the following explanation shall be inserted, namely:-

“Explanation: The cash component of the escrow account as referred to in clause (a) above may be maintained in an interest bearing account, subject to the merchant banker ensuring that the funds are available at the time of making payment to the shareholders.”

(8) in regulation 18,-

(a) in sub-regulation (2), before the first proviso, the following explanation shall be inserted, namely:-

“Explanation:

(i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.

(ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.

(iii) The aforesaid shall be disclosed in the letter of offer.”

(b) in sub-regulation (4), the words “three working days” shall be substituted by the words “one working day”.

(9) in regulation 20, in sub-regulation (9), in the proviso, the words “three working days” shall be substituted by the words “one working day”.

(10) in regulation 22, in sub-regulation (2), the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(11) in regulation 24, in sub-regulation (1), in the first proviso, the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(12) in regulation 29, in sub-regulation (3), after the words “or the acquisition” and before the words “of shares or voting rights”, the words “or the disposal” shall be inserted.

(13) in regulation 32, in sub-regulation (1), after the words “issue such directions” and before the words “as it deems fit”, the words “or any other order” shall be inserted.

(14) in regulation 33,

(a) the words and symbol “shall have the power to issue directions through guidance notes or circulars:” shall be substituted by the words “may issue clarifications or guidelines from time to time”.

(b) the proviso shall be omitted

(15) in regulation 35, in sub-regulation (1), the word “stand” shall be substituted by the word “stands”.

**SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017 dated 14<sup>th</sup> August, 2017**

The revised Regulation 10 is as under:

**General exemptions.**

10.(1)The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor,—

**(a) acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—**

(i) immediate relatives;

(ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;

iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;

(iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;

(v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings

under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

Provided that for purposes of availing of the exemption under this clause,—

(i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause

(e) of sub-regulation (2) of regulation 8; and

(ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.

**(b) acquisition in the ordinary course of business by,—**

(i) an underwriter registered with the Board by way of allotment pursuant to an underwriting agreement in terms of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(ii) a stock broker registered with the Board on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;

(iii) a merchant banker registered with the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(iv) any person acquiring shares pursuant to a scheme of safety net in terms of regulation 44 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(v) a merchant banker registered with the Board acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(vi) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;

vii) a Scheduled Commercial Bank, acting as an escrow agent; and

(viii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.

**(c) acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement:**

Provided that,—

(i) both the acquirer and the seller are the same at all the stages of acquisition; and

(ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.

**(d) acquisition pursuant to a scheme,—**

(i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any statutory modification or re-enactment thereto;

(ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal ~~or a competent authority~~ under any law or regulation, Indian or foreign; or

(iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal ~~or a competent authority~~ under any law or regulation, Indian or foreign, subject to,—

(A) the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and

(B) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

**(da) acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016;**

**(e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;**

**(f) acquisition pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;**

**(g) acquisition by way of transmission, succession or inheritance;**

**(h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 87 of the Companies Act, 1956**

**(i) Acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India:**

Provided that the conditions specified under sub-regulation (6) of regulation 158 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 are complied with.

Explanation. —

For the purpose of this clause, "lenders" shall mean all scheduled commercial banks (excluding Regional Rural Banks) and All India Financial Institutions.

(j) increase in voting rights arising out of the operation of sub-section (1) of section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

~~(2)~~

(3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation(1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.

**4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3,—**

(a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;

(b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfillment of the following conditions,—

(i) the acquirer has not renounced any of his entitlements in such rights issue; and

(ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of,—

(A) the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue:

Provided that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and

(B) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue

(c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares: Provided that,—

(i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;

(ii) in the case of a shareholder resolution, voting is by way of postal ballot;

(iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorising the buy-back of securities under section 68 of

the Companies Act, 2013 ; and

(iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company:

Provided further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;

(d) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;

(e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;

(f) acquisition of shares in a target company from a venture capital fund or category I Alternative Investment Fund or a foreign venture capital investor registered with the Board, by promoters of the target company pursuant to an agreement between such venture capital fund or category I Alternative Investment Fund or foreign venture capital investor and such promoters.

(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees one lakh fifty thousand by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Explanation.—For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

[https://www.sebi.gov.in/legal/regulations/aug-2017/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2017\\_35634.html](https://www.sebi.gov.in/legal/regulations/aug-2017/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2017_35634.html)

## **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

### **1. Updates on SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

*Students are advised to read the updated Regulations as placed on the SEBI Website. Further the major amendment in the regulation are made through the following amendments:*

#### **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2019.**

*3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, in regulation 23, in sub-regulation (1A), for the word "two" appearing after the word "exceed" and before the word "percent", the word "five" shall be substituted.*

#### *Related Party Transaction*

*1A) Notwithstanding the above, with effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.*

#### **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2019.**

*in regulation 52, –(i) after sub-regulation (1), following proviso shall be inserted, namely, –“*

*Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.”*

*(ii) sub-regulations (5) shall be substituted with the following, namely, –“*

*(5) The listed entity shall, within seven working days from the date of submission of the information required under sub-regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents.”*

#### **SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2018**

[https://www.sebi.gov.in/legal/regulations/nov-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2018\\_41051.html](https://www.sebi.gov.in/legal/regulations/nov-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2018_41051.html)

These regulations shall come into force on the date of their publication in the Official Gazette. 3. In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, –

(i) in regulation 2, in sub-regulation (1), after clause (i) and before clause (j), the following clause shall be inserted, namely: “(ia) “fugitive economic offender” shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of

2018).”

(ii) in regulation 31, after sub-regulation (3), the following shall be inserted, namely:“(4) All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by the Board.”

(iii) the existing regulation 31A shall be substituted with the following, namely.-

“Reg 31A. Conditions for re-classification of any person as promoter / public (1) For the purpose of this regulation:

(a) “promoter(s) seeking re-classification” shall mean all such promoters/persons belonging to the promoter group seeking re-classification of status as public.

(b) “persons related to the promoter(s) seeking re-classification” shall mean such persons with respect to that promoter(s) seeking re-classification who fall under sub-clauses (ii), (iii) and

(iv) of clause (pp) of sub-regulation (1) of regulation 2 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(2) Re-classification of the status of any person as a promoter or public shall be permitted by the stock exchanges only upon receipt of an application from the listed entity along with all relevant documents subject to compliance with conditions specified in these regulations;

Provided that in case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application.

(3) Re-classification of status of a promoter/ person belonging to promoter group to public shall be permitted by the stock exchanges only upon satisfaction of the following conditions:

(a) an application for re-classification to the stock exchanges has been made by the listed entity consequent to the following procedures and not later than thirty days from the date of approval by shareholders in general meeting:

- (i) the promoter(s) seeking re-classification shall make a request for re-classification to the listed entity which shall include rationale for seeking such re-classification and how the conditions specified in clause (b) below are satisfied;
- (ii) the board of directors of the listed entity shall analyze the request and place the same before the shareholders in a general meeting for approval along with the views of the board of directors on the request:

Provided that there shall be a time gap of at least three months but not exceeding six months between the date of board meeting and the shareholder’s meeting considering the request of the promoter(s) seeking re-classification.



(iii) the request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.

(b) the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not:

- (i) together, hold more than ten percent of the total voting rights in the listed entity;
- (ii) exercise control over the affairs of the listed entity directly or indirectly;
- (iii) have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements;

(iv) be represented on the board of directors (including not having a nominee director) of the listed entity;

(v) act as a key managerial person in the listed entity;

(vi) be a 'wilful defaulter' as per the Reserve Bank of India Guidelines;

(vii) be a fugitive economic offender.

(c) the listed entity shall:

- (i) be compliant with the requirement for minimum public shareholding as required under regulation 38 of these regulations;
- (ii) not have trading in its shares suspended by the stock exchanges;
- (iii) not have any outstanding dues to the Board, the stock exchanges or the depositories

(4) The promoter(s) seeking re-classification, subsequent to re-classification as public, shall comply with the following conditions: (a) he shall continue to comply with conditions mentioned at sub-clauses (i), (ii) and (iii) of clause (b) of sub-regulation 3 as specified above at all times from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable;

(b) he shall comply with conditions mentioned at sub-clauses (iv) and (v) of clause (b) of sub-regulation 3 for a period of not less than three years from the date of such re-classification failing which, he shall automatically be reclassified as promoter/ persons belonging to promoter group, as applicable.

(5) If any public shareholder seeks to re-classify itself as promoter, it shall be required to make an open offer in accordance with the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(6) In case of transmission, succession, inheritance and gift of shares held by a promoter/ person belonging to the promoter group:

(a) immediately on such event, the recipient of such shares shall be classified as a promoter/ person belonging to the promoter group, as applicable.

(b) subsequently, in case the recipient classified as a promoter/person belonging to the promoter group proposes to seek re-classification of status as public, it may do so subject to compliance with conditions specified in sub-regulation(3) above.

(c) in case of death of a promoter/person belonging to the promoter group, such person shall automatically cease to be included as a promoter/person belonging to the promoter group.

(7) A listed entity shall be considered as 'listed entity with no promoters' if due to re-classification or otherwise, the entity does not have any promoter;

(8) The following events shall be deemed to be material events and shall be disclosed by the listed entity to the stock exchanges as soon as reasonably possible and not later than twenty four hours from the occurrence of the event:

(a) receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification;

(b) minutes of the board meeting considering such request which would include the views of the board on the request;

(c) submission of application for re-classification of status as promoter/public by the listed entity to the stock exchanges; (d) decision of the stock exchanges on such application as communicated to the listed entity;

(9) The provisions of sub-regulations 3, 4 and clauses (a) and (b) of sub-regulation 8 of this regulation shall not apply, if re-classification of promoter(s)/ promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity."

(iv) the existing regulation 102, shall be re-numbered as sub-regulation (1) of regulation 102.

(v) in regulation 102, after sub-regulation (1), the following sub-regulations shall be inserted, namely:-

"(2) For seeking relaxation under sub-regulation

(1), an application, giving details and the grounds on which such relaxation has been sought, shall be filed with the Board. (3) The application referred to under sub-regulation

(2) shall be accompanied by a non-refundable fee of rupees one lakh payable by way of direct credit in the bank account through NEFT/ RTGS/ IMPS or any other mode allowed by Reserve Bank of India or by way of a demand draft in favour of the Board payable in Mumbai."

(vi) in Schedule V, in clause C, in sub-clause 10, after point (k), the following point shall be inserted, namely:-

(l) disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

a. number of complaints filed during the financial year

b. number of complaints disposed of during the financial year

c. number of complaints pending as on end of the financial year"

(vii) in schedule VII, in clause C, in sub-clause (2), point (b) shall be substituted with the following, namely;-

“(b) where the securities are held in single name without a nominee, an affidavit from all legal heir(s) made on appropriate non judicial stamp paper, to the effect of identification and claim of legal ownership to the securities shall be required;

Provided that in case the legal heir(s)/claimant(s) is named in the succession certificate or probate of will or will or letter of administration, an affidavit from such legal heir(s) / claimant(s) alone would be sufficient.

Provided further that:

(i) for value of securities, threshold limit of up to rupees two lakh only, per listed entity, as on date of application, a succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 may be submitted :Provided that in the absence of such documents, the following documents may be submitted:

1. no objection certificate from all legal heir(s) who do not object to such transmission or copy of family settlement deed duly notarized and executed by all the legal heirs of the deceased holder;  
2. an indemnity bond made on appropriate non judicial stamp paper, indemnifying the Share Transfer Agent/ listed entity;

(ii) for value of securities, more than rupees two lakh per listed entity, as on date of application, a succession certificate or probate of will or will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925 shall be submitted;

(iii) the listed entity however, at its discretion, may enhance value of securities, threshold limit, of rupees two lakh.

**SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018**

[https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2018\\_40329.html](https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2018_40329.html)

**SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2018**

*Student are advised to read the amendment notification at the following link*

[https://www.sebi.gov.in/legal/regulations/jun-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2018\\_39204.html](https://www.sebi.gov.in/legal/regulations/jun-2018/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2018_39204.html)

## **SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2018**

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, in Schedule I, in clause (1), after the words “listed entity either directly” and before the words “or through their Registrar”, the words “or through the depositories” shall be inserted.

## **SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018**

*Students are advised to read the amendment notification at the following link*

[https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018\\_38898.html](https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018_38898.html)

## **SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2017 dated 15<sup>th</sup> February, 2017**

The revised regulation 37 is as under:

### **Draft Scheme of Arrangement & Scheme of Arrangement.**

**Regulation 37.** (1) Without prejudice to provisions of regulation 11, the listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before any Court or Tribunal under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230- 234 and Section 66 of Companies Act, 2013, whichever applicable, with the stock exchange(s) for obtaining Observation Letter or No-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.

(2) The listed entity shall not file any scheme of arrangement under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with any Court or Tribunal unless it has obtained observation letter or No-objection letter from the stock exchange(s).

(3) The listed entity shall place the Observation letter or No-objection letter of the stock exchange(s) before the Court or Tribunal at the time of seeking approval of the scheme of arrangement: Provided that the validity of the ‘Observation Letter’ or No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.

(4) The listed entity shall ensure compliance with the other requirements as may be prescribed by the Board from time to time.

(5) Upon sanction of the Scheme by the Court or Tribunal, the listed entity shall submit the documents, to the stock exchange(s), as prescribed by the Board and/or stock exchange(s) from time to time.

(6) Nothing contained in this regulation shall apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding company: Provided that such draft schemes shall be filed with the stock exchanges for the purpose of disclosures.

[https://www.sebi.gov.in/legal/regulations/feb-2017/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2017\\_34224.html](https://www.sebi.gov.in/legal/regulations/feb-2017/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2017_34224.html)

*\*Student are advised to go through the SEBI Circular on Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 at the link \*

[https://www.sebi.gov.in/legal/circulars/mar-2017/circular-on-schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957\\_34352.html](https://www.sebi.gov.in/legal/circulars/mar-2017/circular-on-schemes-of-arrangement-by-listed-entities-and-ii-relaxation-under-sub-rule-7-of-rule-19-of-the-securities-contracts-regulation-rules-1957_34352.html)

### **SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018**

In the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009,-

1. in regulation 3, after sub-regulation (2), the following sub-regulation shall be inserted, namely, "(3) Nothing in these regulations shall apply to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016], if such plan, –

(a) lays down any specific procedure to complete the delisting of such share; or

(b) provides an exit option to the existing public shareholders at a price specified in the resolution plan:

Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016[No. 31 of 2016]:

Provided further that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit:

Provided also that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016]."

II. in regulation 30, after sub-regulation (2) and before sub-regulation (3), the following sub-regulation shall be inserted, namely, -

"(2A) Notwithstanding anything contained in sub-regulation (1), an application for listing of delisted equity shares may be made in respect of a company which has undergone corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016]."

### **SEBI (Delisting of Equity Shares) (Second Amendment) Regulations, 2018**

*Student are advised to read the amendment notification at the following link*

[https://www.sebi.gov.in/legal/regulations/nov-2018/securities-and-exchange-board-of-india-delisting-of-equity-shares-second-amendment-regulations-2018\\_41046.html](https://www.sebi.gov.in/legal/regulations/nov-2018/securities-and-exchange-board-of-india-delisting-of-equity-shares-second-amendment-regulations-2018_41046.html)

### **SEBI (Buy-Back of Securities) Regulations, 1998**

*Student are advised to read the amendment notification at the following link*

The Securities and Exchange Board of India has notified the SEBI (Buy-Back of Securities) Regulations, 2018 Hence, the student are advised to go through the regulation as placed on the website of the SEBI.

[https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-buy-back-of-securities-regulations-2018\\_40327.html](https://www.sebi.gov.in/legal/regulations/sep-2018/securities-and-exchange-board-of-india-buy-back-of-securities-regulations-2018_40327.html)

### **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 – Dated January 21, 2019**

The some of the Amendments has been effective from the 01<sup>st</sup> April, 2019 , the Students are advised to go through these amendments, The Updated Insider Trading Regulations has been placed on the following link:

<https://www.sebi.gov.in/legal/regulations/jan-2019/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-january-21-2019-41717.html>

### **Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008**

Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2019.

1) in regulation 15, after sub-regulation (1), following sub-regulations shall be inserted, namely,-

2“(1A) Where an issuer fails to execute the trust deed within the period specified in the sub- regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed.

(1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document.”

## **AMENDMENTS IN THE COMPETITION LAW/ REGULATIONS: (CHAPTER - 7)**

### **The Competition Commission of India (General) Amendment Regulations, 2018.**

#### **46A. Authorizing an Advocate to accompany any person summoned by the Director General:-**

(1) An Advocate may accompany any person summoned by the DG to appear before him, subject to the following conditions, namely –

a) The Advocate shall not be allowed to accompany such person, unless a request in writing accompanied by a Vakalatnama or Power of Attorney is duly submitted to the DG, prior to commencement of the proceedings.

b) The Advocate shall not sit in front of the person so summoned.

c) The Advocate shall not be at a hearing distance and shall not interact, consult, confer or in any manner communicate with the person, during his examination on oath.

2) No misconduct on the part of the Advocate, accompanying the person summoned during continuance of his presence before the DG shall be permitted. In case of any misconduct, the DG for reasons to be recorded in writing shall forward a complaint to the Commission. The Commission, if satisfied with the complaint of the DG, may pass necessary order debaring the Advocate, guilty of misconduct, from appearing in the proceedings before the DG as well as before the Commission in future or till such time as the Commission deems necessary.

3) In the event of the misconduct being committed by any Advocate, the Secretary, if so directed by the Commission, shall forward a complaint to this effect in writing to the Bar Council of the State of which the Advocate is member.

[https://www.cci.gov.in/sites/default/files/regulation\\_pdf/193680.pdf](https://www.cci.gov.in/sites/default/files/regulation_pdf/193680.pdf)

### **CCI (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2018**

The Competition Commission of India (CCI) notified the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2018 on 9 October 2018 (Amendment Regulations).

Following are the key highlights from the Amendment Regulations:

- **Mechanism for computation of 210-day period**

Under the Competition Act, 2002 (Competition Act), a notified transaction cannot be completed until the CCI gives its approval or until the expiry of 210 calendar days from the date of notification, whichever is earlier. Prior to this amendment, there was ambiguity in the manner of computation of the 210-day period, particularly whether the clock-stops during the review process are required to be excluded while counting the period of 210 days, given that there is no categorical mention of such exclusion in the Competition Act and/or the Combination Regulations. The Amendment Regulations now clarify that the period of 210 days is extendable based on the number of times a request for information is issued by the CCI. This means a longer waiting period for a "deemed approval" and could result in significant uncertainty in approval timelines.

- **Withdrawal and refiling of notice (Regulation 16A)**

Previously, in cases where changes made to a notice (post filing) were likely to substantially affect the factors for determining appreciable adverse effect on competition, the CCI had the liberty to invalidate the notice. Now, in case a proposed transaction undergoes a significant change, the parties can withdraw the previous notice, and refile a fresh notice. The introduction of this provision provides flexibility to the parties to decide whether to "withdraw and refile" or to simply notify the CCI of any change to the notice. However, the final decision on whether to allow the refiling vests with the CCI.

While an invalidation of the notice by the CCI does not carry any penal consequences, it is an outcome most parties wish to avoid. The CCI has been following this practice of allowing the parties to "withdraw and refile" and the Amendment Regulations seek to formalize the same.

- **Introduction of provision for Phase I voluntary modifications [Regulation 19(2)]**

Previously, Regulation 19(2) of the Combination Regulations provided that if the CCI considers it necessary, it may ask for additional information and accept voluntary modifications, if made by the parties. However, after the substitution of Regulation 19(2) by the Amendment Regulations, the CCI may accept voluntary modifications, even when it does not deem such modifications to be necessary. Further, the previous Regulation 19(2) only provided that the CCI may accept modifications if offered by the parties but did not provide for the approval of the combination based on such modifications. However, in practice, the CCI approved the transaction after the parties proposed a modification. The substitution, therefore, is a welcome step as it has embodied the decisional practice of the CCI.

- **Introduction of provision for voluntary modifications before Phase II review [Regulation 25]**

The introduction of the new provision allows the parties to offer modifications (prior to a formal Phase II process) immediately after the CCI has formed its *prima facie* opinion under Section 29(1) of the Competition Act, in response to the show-cause notice issued by the CCI just before initiating a Phase



II investigation.

Now, the parties will not have to wait for the CCI to order modification after a long-drawn Phase II review process. As such, this would result in speedier resolution of the CCI's concerns and consequently will also result in quicker approvals. This insertion is a win-win situation for both the parties and the CCI and is consistent with the approach taken by other leading international merger authorities.

[https://www.cci.gov.in/sites/default/files/regulation\\_pdf/Comb.%20Amend%20Regl.2018.pdf](https://www.cci.gov.in/sites/default/files/regulation_pdf/Comb.%20Amend%20Regl.2018.pdf)

### **Competition Commission of India (Lesser Penalty) Regulations, 2009 Dated 08<sup>th</sup> August, 2017.**

Section 46 of the Indian Competition Act, 2002 (**Act**) and the Lesser Penalty Regulations give the Competition Commission of India (**CCI**) power to impose lesser penalties on an entity that:

- (a) makes a '*vital disclosure*' by submitting evidence of a cartel; or,
- (b) in the case of subsequent leniency applicants, provides '*significant added value*' to the evidence already in possession of the CCI.

Further, the leniency regime previously recognised the provision of 'markers' to only three leniency applicants, in order of priority. The first leniency applicant could receive up to 100% immunity from penalty, the second leniency applicant up to 50% reduction in penalty and the third leniency applicant up to 30% reduction in penalty.

The CCI, in *Re: Cartelization in respect of tenders floated by Indian Railways for supply of Brushless DC Fans (Suo Moto Case No. 03 of 2013)*, published its first leniency decision granting a 75% reduction in penalty to a leniency applicant who came forward after the CCI commenced investigation of the anti-competitive conduct.

With the Amended Lesser Penalty Regulation, now the CCI would recognize markers beyond the first three markers, i.e., now more than three applicants can apply for leniency. Such subsequent applicants (after the third applicant), will also be eligible for reduction in penalties of up to 30% now, provided they assist in giving '*significant added value*' to the evidence already in the possession of the CCI.

The Amended Lesser Penalty Regulations bring clarity to the existing leniency regime in India and provide incentives for companies and individuals to pro-actively assist in cartel enforcement.

The CCI has also amended provision relating to Access to File, Confidentiality, Definitions of 'Applicant' and 'Party', Role of Individuals, Application for 100% lesser penalty to be considered even if already granted to another applicant, and also for the Timelines for marking of priority status by applicant.

[http://www.cci.gov.in/sites/default/files/regulation\\_pdf/178210.pdf](http://www.cci.gov.in/sites/default/files/regulation_pdf/178210.pdf)

### **EXEMPTION NOTIFICATIONS UNDER COMPETITION ACT, 2002**

### **Exemption of combinations under section 5 and 6 of the Act involving the Central Public Sector Enterprises**

The Central Government through notification dated 22 November, 2017 exempted all cases of combinations under section 5 of the Act involving the Central Public Sector Enterprises (CPSEs)

operating in the Oil and Gas Sectors under the Petroleum Act, 1934 and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, from the application of the provisions of sections 5 and 6 of the Act, for a period of five years.

### **Exemption of Nationalized Banking Companies from 5 and 6 of the Act**

The Central Government through notification dated 30 August, 2017 exempted, all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, from the application of provisions of Sections 5 and 6 of the Competition Act, 2002 for a period of ten years.

### **Exemption of Regional Rural Banks from Section 5 and 6 of the Act**

The Central Government through notification dated 10th August, 2017, exempted the Regional Rural Banks in respect of which the Central Government has issued a notification under sub-section (1) of section 23A of the Regional Rural Banks Act, 1976, from the application of provisions of sections 5 and 6 of the Competition Act, 2002 for a period of five years.

### **Exemption from notifying a combination in Section 6(2) of the Competition Act, 2002**

The Central Government through notification dated 29<sup>th</sup> June, 2017, exempted every person or enterprise who is a party to a combination as referred to in section 5 of the Act from giving notice within thirty days mentioned in sub-section (2) of section 6 of the Act, subject to the provisions of sub-section (2A) of section 6 and section 43A of the Act, for a period of five years.

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