

SUPPLEMENT FOR PROFESSIONAL PROGRAMME#

#

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT
AND DUE DILIGENCE

Module-1

Paper - 2

(Relevant for students appearing in June 2018 Examination)

This supplement is for the Professional Programme. The students are advised to read their 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 31st December, 2017, applicable for June 2018 Examination. The students are advised to read all the relevant regulatory amendments made and applicable up to 31st December, 2017 along with the study material. In the event of any doubt, students may write to the Institute for clarifications at 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/default.aspx>) 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.

IMPORTANT ANNOUNCEMENT FOR STUDENT ON SUBJECT
SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT
AND DUE DILIGENCE

Clarification on applicability of the Companies (Amendment) Act, 2017 for June, 2018 examination

The Central Government has notified the Companies (Amendment) Act, 2017 (Amendment Act) on 3rd January, 2018. The provisions of this Amendment Act shall come into force on the date or dates as the Central Government may appoint by notification(s) in the Official Gazette. Since the Notifications, Circulars, Clarifications, etc. issued by the Regulators, on or before six months prior to the June 2018 Examination are applicable, accordingly, the Amendment is not applicable for the examination to be held in June, 2018. However, since this Amendment Act is very important and is in public domain, the students should be aware of the important changes.

PROFESSIONAL PROGRAMME

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE I - PAPER 2

Chapter wise Important Update for June, 2018 Examinations

Lesson No.	Lesson Name	Key Updates
Part A		
1	Secretarial Audit and Secretarial Standards – An Overview	<ol style="list-style-type: none">1. Revised Secretarial Standards on Board Meeting and General Meeting.2. Secretarial Standard on Dividend3. Conceptual understanding along with the Highlights of Companies Amendment Act, 2017
2	Check Lists for Secretarial Audit	<ol style="list-style-type: none">1. Amendments in the Act, Rules, Circulars and Notification by MCA.2. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 20173. RBI Master Direction Foreign Investment in India dated 04.01.20184. RBI Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers
Part B		
3	Due Diligence – An Overview	
4	Issue of Securities	Amendments in SEBI (ICDR) Regulations,
5	Depository Receipts Due Diligence	
6	Due Diligence – Mergers & Amalgamations	Amendments in SEBI (LODR) Regulations, SEBI
7	Competition Law Due Diligence	Notification issued by the CCI
8	Legal Due Diligence	
9	Due Diligence for Banks	
10	Environmental Due Diligence	
11	Search & Status Report	
12	Compliance Management	

Updates on Secretarial Standards (Relevant for 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

2. Comparative of Amendments in SS-2:

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 1st 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

4. **Important Points to be Remember on Secretarial Standards*

4.1 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).

4.2 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. 1st 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.

4.3 Status of existing SS-1 and SS-2 be applicable to the Board Meetings and General Meetings held on or before 30th September, 2017?

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

4.4 In case the Notice of the Meeting is issued before 1st October, 2017 by complying with earlier SS and the Board/General Meetings convened on 1st 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 1st October, 2017.

4.5 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 14th 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.

4.6 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.

5. AMENDMENTS IN THE COMPETITION LAW/ REGULATIONS:

5.1 COMPETITION COMMISSION OF INDIA (LESSER PENALTY) REGULATIONS, 2009

Dated 08th 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

5.2 EXEMPTION NOTIFICATIONS UNDER COMPETITION ACT, 2002

5.2.1 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.

5.2.2 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.

5.2.3 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.

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

The Central Government through notification dated 29th 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.

6. AMENDMENTS IN COMPANY LAW

1. Companies (Cost Records and Audit) Second Amendment Rules, 2017.

Notification dated 20th December, 2017 effective from 01st July, 2017

http://www.mca.gov.in/Ministry/pdf/CostRecordAudit2Rule_21122017.pdf

Ministry of Corporate Affairs has notified the Companies (Cost Records & Audit) Second Amendment Rules, 2017 dated 20th DECEMBER, 2017. In exercise of the powers conferred by sub-sections (1) and (2) of section 469 and section 148 of the Companies Act, 2013, the Central Government has made amendment to the Companies (Cost Records and Audit) Rules, 2014.

As per the notification following amendments has been made in the Companies (Cost Records and Audit) Rules, 2014 –

1. In Rule 2, after clause (aa), the following clause has been substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017:

(aa) "Customs Tariff Act Heading" means the heading as referred to in the Additional Notes in the First Schedule to the Customs Tariff Act, 1975.

2. In Rule 3, for the words "Central Excise Tariff Act Heading", occurring at both the places, the words "Central Tariff Act Heading" has been substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

3. In the Annexure to the Companies (Cost Records and Audit) Rules, 2014, in Form CRA-2, Form CRA-3 and Form CRA-4, for the words "CETA Heading", wherever it occurs the words "CTA Heading" has been substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017.

The Ministry has also clarified via Explanatory Memorandum that no person is being adversely affected by giving retrospective effect to this notification. The proposed amendments have been made on account of enactment of the Central Goods and Services Tax Act, 2017.

2. Companies (Cost Records and Audit) Amendment Rules, 2017.

Notification dated 7th December, 2017 effective from 01st April, 2016

http://www.mca.gov.in/Ministry/pdf/CompaniesCostrecordsAuditRule_08122017.pdf

Definition of Indian Accounting Standard has been inserted retrospectively from 1st April 2016 along with this amendment the form CRA-1 and CRA- 4 has also been substituted.

3. Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017.

Notification dated 4th December, 2017 effective from 4st December, 2017

http://www.mca.gov.in/Ministry/pdf/Scan_XBRL_05122017.pdf

with this amendment form AOC – 4 XBRL along with the Annexure - iii has been substituted

4. Companies (Accounts) Amendment Rules, 2017

Notification dated 7th November, 2017 effective from 07th November, 2017

http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsamendmentsRules_09112017.pdf

with this amendment form AOC – 4 has been substituted.

5. 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

6. Companies (Registered Valuers and Valuation) Rules, 2017

Notification dated 18th October, 2017 effective from 18th October, 2017

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 not a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (g), (h),

(i), (j) and (k) of sub-rule (1);

(d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case 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 read the Companies (Registered Valuers and Valuation) Rules, 2017.

7. Companies (Restriction on number of layers)Rules 2017

Notification dated 20th September, 2017 effective from 20th September, 2017

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:

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(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.

8. Companies (Acceptance of Deposit) Second Amendment Rules, 2017

Notification dated 19th September, 2017 effective from 19th September, 2017

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.”.

9. Companies (Arrests in connection with investigation by SFIO) Rules, 2017

Notification dated 24th August, 2017 effective from 24th August, 2017

http://www.mca.gov.in/Ministry/pdf/SFIORule_25082017.pdf

with the notification of this rule the Director SFIO shall be the competent authority for all decisions pertaining to arrest along with such other matters in this regard.

10. NCLAT (Amendment) Rules 2017

Notification dated 23rd August, 2017 effective from 23rd August, 2017

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.

12.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 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”.

13. Companies (Meetings of Board and its Powers) Second Amendment Rules 2017

Notification dated 13th July, 2017 effective from 13th July, 2017

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'."

14. Companies (Appointment and Qualification of Directors) Amendment Rules, 2017

Notification dated 5th July, 2017 effective from 05th July, 2017

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."]

15. National Company Law Tribunal (Amendment) Rules, 2017

Notification dated 5th July, 2017 effective from 05th July, 2017

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.”.

SEBI Laws:

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

A. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017 dated 14th August, 2017.

The revised Regulation 70 is as under:

Non Applicability of Regulation 70 of SEBI (ICDR) Regulations, 2009

70.(1)The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:

(a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-sections (3) and (4) of sections 81 of the Companies Act, 1956 or sub-section (3) and (4) of section 62 of the Companies Act, 2013, whichever applicable;

(b)pursuant to a scheme approved by a High Court under section 391 to 394 of the Companies Act, 1956 or a Tribunal under sections 230 to 234 of the Companies Act, 2013, whichever applicable

Provided that the pricing provisions of this Chapter shall apply to the issuance of shares under schemes mentioned in clause (b) in case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies pursuant to such schemes;

(c)in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the resolution plan approved by the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable:

Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).

(2)The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

(3)The provisions of regulation 73 and regulation 76 shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has granted relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or regulation 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, whichever applicable] ,if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.

(4) The provisions of sub-regulation (2) of regulation 72 and sub-regulation (6) of regulation 78 shall not apply to a preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with the Board or Insurance Company

registered with Insurance Regulatory and Development Authority of India or a Scheduled Bank listed under the Second Schedule of the Reserve Bank of India Act, 1934 or a Public Financial Institution as defined in clause 72 of section 2 of the Companies Act, 2013.

(5) The provisions of this Chapter shall not apply where the preferential issue of specified securities is made to 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, subject to the following conditions:

(a) the guidelines for determining the conversion price have been specified by the Reserve Bank of India in accordance with which the conversion price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

(b) the conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

(c) specified securities so allotted shall be locked-in for a period of one year from the date of their allotment:

Provided that for the purpose of transferring the control, the lenders may transfer the specified securities allotted to them before completion of the lock-in period subject to continuation of the lock-in on such securities for the remaining period, with the transferee; (d) the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in; (e) the applicable provisions of the Companies Act, 2013 are complied with, including the requirement of special resolution.

(6) The provisions of this Chapter shall not apply where the preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

(a) the guidelines for determining the issue price have been specified by the Reserve Bank of India in accordance with which the issue price shall be determined and which shall be in compliance with the applicable provisions of the Companies Act, 2013;

(b) the issue price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker

registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

(c)the specified securities so allotted shall be locked-in for a period of at least three years from the date of their allotment;

(d)the lock-in of equity shares allotted pursuant to conversion of convertible securities issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in;

(e)a special resolution has been passed by shareholders of the issuer before the preferential issue;

(f)the issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed allottee(s) in the explanatory statement to the notice for the general meeting proposed for passing the special resolution as stipulated at clause (e) of this sub-regulation:

a.the identity including that of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/ or who ultimately control the proposed allottee(s);

b.the business model;

c.a statement on growth of business overthe period of time;

d.summary of audited financials of previous three financial years;

e.track record in turning around companies, if any;

f.the proposed roadmap for effecting turnaround of the issuer.

(g)the applicable provisions of the Companies Act, 2013 are complied with.

https://www.sebi.gov.in/legal/regulations/aug-2017/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2017_35635.html

B. SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2017 dated 31st May, 2017

1. The systemically important non-banking financial companies have been included in the definition of “qualified institutional buyer”:

(xiii) systemically important non-banking financial companies.

“(z1a) “systemically important non-banking financial company” means a non-banking financial company registered with the Reserve Bank of India and having a net-worth of more than five hundred crore rupees as per the last audited financial statements.”

2. The revised Regulation 16 is as under:

Monitoring agency.

16. (1) If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer: Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.

(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilized.

(3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.

(4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

https://www.sebi.gov.in/legal/regulations/may-2017/sebi-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2017_35021.html

C. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2017 dated 15th February, 2017

The following Regulations has been inserted after Regulation 111.

“Liability for contravention of the Act, rules or the regulations.

111A. (1)The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to the liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in the circulars or guidelines issued by the Board:

(a)imposition of fines;

(b)suspension of trading;

(c)freezing of promoter/promoter group holding of designated securities, as may be applicable, incoordination with depositories;

(d)any other action as may be specifiedby the Board from time to time.

(2) The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in the circulars or guidelines issued by the Board.

Failure to pay fine.

111B. If the listed entity fails to pay any fine imposed upon it by the recognised stock exchange(s), within the period as specified from time to time, the stock exchange may initiate such other action in accordance with law, after giving a notice in writing.”

https://www.sebi.gov.in/legal/regulations/feb-2017/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2017_34225.html

3. Updates on SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017 dated 14th 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]¹⁰or 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 (5) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 are complied with.

(ia)Acquisition of shares by the person(s), by way of allotment by the target company or purchase from the lenders at the time of lenders selling their shareholding or enforcing change in ownership in favour of such person(s), pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India:

Provided that in respect of acquisition by persons by way of allotment by the target company, the conditions specified under sub-regulation (6) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 are complied with:

Provided further that in respect of acquisition by way of purchase of shares from the lenders, the acquisition shall be exempted subject to the compliance with the following conditions:

(a)the guidelines for determining the purchase price have been specified by the Reserve Bank of India and that the purchase price has been determined in accordance with such guidelines;

(b)the purchase price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall be a person who is registered under section 247 of the Companies Act, 2013 and the relevant Rules framed thereunder:

Provided that till such date on which section 247 of the Companies Act, 2013 and the relevant Rules come into force, valuer shall mean an independent merchant banker registered with the Board or an independent chartered accountant in practice having a minimum experience of ten years;

(c)the specified securities so purchased shall be locked-in for a period of at least three years from the date of purchase;

(d)the lock-in of equity shares acquired pursuant to conversion of convertible securities purchased from the lenders shall be reduced to the extent the convertible securities have already been locked-in;

(e)a special resolution has been passed by shareholders of the issuer before the purchase;

(f)the issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following information pertaining to the proposed acquirer(s) in the explanatory statement to the notice for the general meeting proposed for passing special resolution as stipulated at clause (e) of this sub-regulation:

a.the identity including of the natural persons who are the ultimate beneficial owners of the shares proposed to be purchased and/ or who ultimately control the proposed acquirer(s);

b.the business model;

c.a statement on growth of business over the period of time;

d.summary of audited financials of previous three financial years;

e.track record in turning around companies, if any;

f.the proposed roadmap for effecting turnaround of the issuer.

(g)applicable provisions of the Companies Act, 2013 are complied with.

(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)The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot, shall be exempted from the obligation to make an open offer under regulation 3.

(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 77A of the Companies Act, 1956;

(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 77A of the Companies Act, 1956 ; 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

4. Updates on SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2017 dated 15th 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

**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
