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)

SUPPLEMENT
PROFESSIONAL PROGRAMME

(NEW SYLLABUS)

for

June, 2021 Examination

GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

MODULE 1

PAPER 1

INDEX

Lesson 4
Board Processes through Secretarial Standards

The Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020. (Notification No: G.S.R. 806(E), Dated December 30, 2020)

The Central Government notified the Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020 to further amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 4, in sub-rule (2), for the word "31st December, 2020", the word "30th June, 2021" shall be substituted.

Impact
MCA vide this notification provides further relaxation till 30th June, 2021 in the requirement of holding Board meetings with physical presence of directors for approval of the restricted matters under Section 173(2) r/w Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 on account of current scenario due to COVID-19 pandemic.

Accordingly, up to 30th June, 2021, following restricted matters can be dealt in board meetings held through video conferencing or other audio-visual means by duly ensuring compliance of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. –
(i) The approval of the annual financial statements;
(ii) The approval of the Board's report;
(iii) The approval of the prospectus;
(iv) The Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013; and
(v) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

For details: http://www.mca.gov.in/Ministry/pdf/FourthAmdtRules_30122020.pdf

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Lesson 5
Board Committees

Section 36 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 178(8) of the Companies Act, 2013 w.r.t. Nomination and Remuneration Committee and Stakeholders Relationship Committee-Decriminalization of offences

Section 178(8)

Old Penal Provision

In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹25,000 but which may extend to ₹ 1Lakh , or with both.

New Penal Provision

In case of any contravention of the provisions of section 177 and section 178 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 5 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 1 Lakh.

Details of Changes

The Penalty for contravention of provision of Section 177(Audit Committee) and 178(Nomination and Remuneration Committee and Stakeholders Relationship Committee) of the Companies Act, 2013, has been fixed and punishment of imprisonment has been removed.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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Lesson 6
Corporate Policies and Disclosures

The Companies (Management and Administration) Amendment Rules, 2020, Dated August 28, 2020

The MCA has notified the Companies (Management and Administration) Amendment Rules, 2020 to further amend the Companies (Management and Administration) Rules, 2014.

In Rule 12(1) of the Companies (Management and Administration) Rules, 2014, a proviso has been inserted, specifying that the companies are not required to attach the extract of Annual Return with the Board's report in Form No. MGT.9, in case the web link of such Annual Return has been disclosed in the Board's report in accordance with Section 92(3) of the Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/Rule_29082020.pdf

Commencement Notification of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 w.r.t. amendment to Section 92(3) of the Companies Act, 2013, Dated August 28, 2020

The MCA has notified the provision of clause (ii) of section 23 of the Companies (Amendment) Act, 2017 related to amendment to Section 92(3) of the Companies Act, 2013 w.e.f. from August 28, 2020.

The amendment provides that every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_29082020.pdf

SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2020 (OCTOBER 8, 2020)

Forensic Audit Disclosure

Para A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires the listed companies to disclose certain events or information upon occurrence without any application of the guidelines for materiality.

As per the amendment, companies will now be required to disclose to Stock Exchange about the forensic audit initiated along with the details as prescribed.

These amendments shall come into force on the date of their publication in the Official Gazette i.e. October 8, 2020.

For details: https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2020_47821.html

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Lesson 8
Corporate Governance and Shareholders Rights

Section 6 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 26(9) of the Companies Act, 2013 w.r.t. Matters to be stated in prospectus — Decriminalisation of offences

Section 26(9)

Old Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs or both.

New Penal Provision

If a prospectus is issued in contravention of the provisions of Section 26 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹3 Lakhs and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than ₹ 50000 but which may extend to ₹ 3 Lakhs.

Details of Changes

Omission of imprisonment w.r.t. every person who is knowingly a party to the issue of such prospectus which has contravened the provisions of Section 26 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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Lesson 9
Corporate Governance and Other Stakeholders

INSTITUTIONAL INVESTORS- GLOBAL TRENDS

1. NEW CORPORATE GOVERNANCE CODE FOR FINNISH LISTED COMPANIES

Prologue

The new Corporate Governance Code for Finnish listed companies ("2020 CG Code") entered into force this January, and it will replace the previous Corporate Governance (CG) Code applied since 2016 ("2015 CG Code"). While the number of recommendations in the 2020 CG Code has decreased, the 2020 CG Code introduces additional requirements on listed companies, in particular in relation to remuneration and related party transactions as required by the Shareholders' Rights Directive and the national rules implementing the Directive.

The 2020 CG Code also introduces changes to the recommendation concerning the audit committee and clarifications to the recommendation concerning the assessment and disclosure of independence of board members.

The Making of the Code

In 2018, the Finnish Securities Market Association's board appointed a working group to update the CG Code to reflect the new regulations and the update needs to the 2015 CG Code development targets that had been identified over the years. Furthermore, the Shareholders' Rights Directive was implemented into Finnish company law in 2019 it created a need to amend and update the recommendations provided in the 2015 CG Code.

The Finnish Securities Market Association's board adopted the amended and updated CG Code in September 2019. As a result of which the new 2020 CG Code came into force in January 2020 replacing the previous Finnish CG Code.

Which companies must comply with the CG Code?

The Finnish CG Code is applicable to all companies that are listed on Nasdaq Helsinki Ltd (Helsinki Stock Exchange). According to the Rules of the Helsinki Stock Exchange, all issuers of shares that are traded on the official list must comply with the CG Code.

However, issuers of securities other than shares, as well as companies whose shares are listed, for example, on the Nasdaq First North Growth Market Finland (First North) marketplace, are not obliged to comply with the CG Code. Pursuant to the Securities Market Act, issuers of other securities traded on a regulated market, such as issuers of bonds, must include a CG statement in the management report or in a separate report. These and the companies traded on the First North marketplace may, of course, voluntarily apply the CG Code, either in full or partly.

Key changes to the 2015 CG Code

The key changes to the 2015 CG Code concern remuneration reporting and changes to the recommendations concerning related party transactions and the recommendation concerning the audit committee.

Remuneration reporting – remuneration policy and report for governing bodies

The structure of the remuneration section has been revised to correspond to the requirements of the Second Shareholder Rights Directive. For example, the company's remuneration statement has been replaced by the remuneration policy for governing bodies ("remuneration policy") and remuneration report for governing bodies ("remuneration report"), which are supplemented by information provided on the company's website.

The "governing bodies" referred to in the CG Code refer to the governing bodies of the company regulated in the Finnish Limited Liability Companies Act, i.e. the company's board of directors, supervisory board, if any, and the managing director and deputy managing director.

For this reason, the remuneration policy and report only concern the company's board of directors, supervisory board, if any, and the managing director and deputy managing director. It is not recommended that the management team's remuneration will be addressed in the remuneration policy or remuneration report.

However, Information on the remuneration of the rest of the management team will in future be provided on the company's website (on an aggregate level). The remuneration reporting section of the CG Code also includes a checklist to clarify the reporting obligations.

By law, listed companies must present the new remuneration policy to the annual general meeting held after 1 January 2020, i.e. companies listed on the Helsinki Stock Exchange will need to prepare and present their first remuneration policy to the annual general meeting of 2020 and publish the proposal for a remuneration policy earlier in 2020 (see below).

Depending on the content of the charter, preparing the remuneration policy and report can be included in the duties of the boards' remuneration committee (if such has been established).

Deadline for publishing the remuneration policy

It should be noted that although the 2020 CG Code came into force in January 2020, it is not mandatory for listed companies to disclose the remuneration policy from that date. The applicable remuneration policy shall be kept available on the company's website once published (as part of the summons to the annual general meeting or separately) and addressed by the annual general meeting.

According to the 2020 CG Code the remuneration policy to be proposed to the annual general meeting must be published as an appendix to a stock exchange release no later than three (3) weeks prior to the general meeting dealing with the report, or at an earlier date, e.g. in connection with the publication of the summons to the general meeting.

Following the first annual general meeting following 1 January 2020 and the decision on the remuneration policy, the remuneration policy proposal will be presented to the annual general meeting every four years, or whenever material changes are proposed to it.

Companies must disclose the first new remuneration report for the financial year beginning on or after 1 January 2020, i.e. in practice the first report will be disclosed in 2021, no later than three weeks prior to the general meeting. The remuneration reports for the financial years preceding 1 January 2020 can elect to comply with the instructions for the remuneration statement contained in the 2015 CG Code.

A new element in the remuneration report is the requirement that the report should reflect the development of the remuneration during the past five financial years compared to the development of the average remuneration of the employees and the economic development of the group and the company during the same period.

The new remuneration report may, going forward, be published as an appendix to a stock exchange release at the same time and manner as the financial statements, management report and CG report. The current CG Code allows the remuneration report to be incorporated as part of the CG report.

Advisory decision by the general meeting on the remuneration policy and remuneration report

Under the amended Limited Liability Companies Act, the rules implementing the Shareholders' Rights Directive, the decision by the general meeting concerning the remuneration policy and remuneration report is only advisory in nature. Consequently, shareholders are not allowed to propose changes to the policy or report presented by the board to the general meeting or introduce any alternative policy or report proposals, only to adopt or reject the board's proposals.

However, as the CG Code and Limited Lability Companies Act's provisions require that the general meeting will address the remuneration policy and report, the agenda of the annual general meeting should be updated to include the disclosure and advisory vote on the remuneration policy.

According to the preparatory works of the amended Limited Liability Companies Act's provisions implementing the Shareholders' Rights Directive, the company must take into consideration the decision by the general meeting on the previous remuneration policy as well as positions presented during the general meeting in respect of the remuneration report addressed at the general meeting. Consequently, material positions taken by shareholders should be recorded in the minutes to fulfil this requirement (when supported by a significant minority shareholder or if it gains wide support at the general meeting).

Proposal to elect board members and evaluation of the candidates' independence (Recommendations 1 and 10)

The board of directors should evaluate the independence of the directors and report which of the directors are independent of the company and which are independent of the significant shareholders. The board of directors will re-evaluate the situation every year, and the evaluation will be included in the company's CG statement.

As a new element, the evaluation must also indicate the rationale based on which a board member is found not to be independent (e.g. cross-ownership or familial relationship). An updated evaluation will be published on the company's website if factors affecting the director's independence change during the year.

If the proposal was made by a shareholder, the proposing shareholder's assessment of independence must be provided to the company together with the proposal.

The board of directors can also carry out its evaluation on its own initiative, for example, if a proposal concerning a board member has been received from a shareholder.
The biographical details of all candidates must be presented on the company's website. The publication of the candidates' biographical details on the company's website allows the shareholders to form an opinion on the proposed composition of the board of directors, especially with regard to new director candidates. In the same connection, information about the independence of the candidates must be provided.

Audit committee, Recommendation 16 (and Recommendation 8)

The recommendation concerning the audit committee and the rationale for it have been clarified to comply with existing legislation with respect to the requirement concerning the competence and expertise of members of the audit committee. The recommendation concerning the composition of the board of directors (Recommendation 8) has been updated to reflect that at least one member of the company's audit committee must have the expertise required by law.

The audit committee must have sufficient expertise and experience to be able to challenge and evaluate the company's internal accounting function and the company's internal and external audit function. Due to the mandatory auditing duties, legislation also requires that at least one member of the audit committee must have expertise in accounting or auditing.

In addition, the mandatory duties of the audit committee, such as duties relating to auditing and other duties, have been clarified in the text of the rationale provided in this recommendation.

Other duties of the audit committee may include assessing the use and presentation of alternative key figures, defining principles for monitoring and assessing related party transactions and processing the account of non-financial reporting.

Related party transactions, Recommendation 27

One of the key changes to the Limited Liability Companies Act introduced by the implementation of the Shareholders' Rights Directive in June 2019 included a special decision-making requirement for related party transactions.

The recommendation and its rationale have been revised in their entirety. In future, the recommendation requires that companies define and report their principles for monitoring and assessing related party transactions. The purpose of the principles is to ensure proper

decision making in related party transactions in accordance with the new requirements of the Limited Liability Companies Act.

The board of directors should consider, in particular, how the company identifies related party transactions, who shall be the receiving party for related party transactions reports and how the procedure will be supervised.

A relevant "related party transaction" is defined as a transaction that is carried out outside the ordinary course of the company's business or that is not carried out on normal business terms. To identify these transactions, the company must be able to identify its related parties and the transactions carried out by the company with the related parties.

The main features of the related party transactions principles will be disclosed in the company's CG report. As a result of that, companies listed on the Helsinki Stock Exchange should without delay review and, if needed, update their related party transactions principles to enable them to fulfil the CG reporting requirements.

It should be noted that the CG report published by a listed company concerning the financial year 2019 must comply with the 2020 CG Code, i.e. there is no possibility to apply the 2015 Code to the CG report (unlike the remuneration report for the financial period 2019, which can be prepared in accordance with the 2015 CG Code).

Key amendments to the CG report under the 2020 CG Code

In addition to the disclosure requirement concerning the related party transactions policy, the CG report will include the corresponding information on the deputy managing director as on the managing director. The term 'other executives' has been replaced by the term 'rest of the management team'. In addition, the recommendation concerning board members' independence and disclosure of the basis of the assessment may have an impact on the content of the CG report.

Management team, Recommendation 21

Recommendation 21, which concerned other executives, has been removed and replaced with instructions concerning the rest of the management team as part of the reporting section.

The term 'other executives' is no longer used in the CG Code in general, and has been replaced by the more accurate 'rest of the management team', which refers to the company's management team with the exclusion of the managing director. Information on the remuneration of the rest of the management team is no longer part of the remuneration report, but it is provided on the company's website.

Repealed recommendations and certain other changes

Recommendations 21 (Organisation of Other Executives) and 24 (Structure of Remuneration) of the 2015 Code have been removed. The contents of these recommendations have, in practice, been transferred to the section dealing with remuneration reporting. In addition, the numbering of two recommendations has been changed: the recommendation concerning

the nomination committee is numbered 18 (18a), and the recommendation concerning the shareholders' nomination board is numbered 19 (18b).

For more details and further reading, please refer:

1. https://www.borenius.com/2020/02/28/new-corporate-governance-code-for-finnish-listed-companies-what-actions-are-required/

2. https://ecgi.global/sites/default/files/codes/documents/corporate-governance-code-2020.pdf

JAPAN STEWARDSHIP CODE 2020

(Revisions to Japan's Stewardship Code in 2020)

Introduction

Japan's stewardship code is a set of regulatory guidelines to establish fiduciary duty by institutional investors on behalf of their clients. The code was proposed in 2012, following fallout from the 2008 financial crisis, and ratified in 2013. The Code defines principles for institutional investors to behave as responsible financial stewards with due regard both to their clients and beneficiaries and to investee companies. The Code primarily targets institutional investors investing in Japanese listed shares.

On 24 March 2020, Japan's Financial Services Agency (FSA) finalized and published the second revised version of Japan's Stewardship Code (the Code). The revised Code (the Revision Code) is intended to progress the Japanese government's corporate governance reform, one of the key pillars of Prime Minister Abe's economic revival program, following revisions to Japan's Corporate Governance Code in 2018.

Since its initial release, the Code has continued to embrace the following approach:

i) ***Soft Law Approach*** – although the Code is not legally binding, the FSA encourages institutional investors to voluntarily adopt the principles of the Code by disclosing a list of institutional investors who have become signatories.
ii) ***Principles-Based Approach*** – the Code adopts a principles-based approach (instead of a rules-based approach) so that the way in which the Code's principles are applied in practice, can differ depending on factors such as the investor's size and investment policies, as long as the purpose and spirit of these principles are followed.

iii) ***"Comply or Explain" Approach*** – the Code adopts a "comply or explain" approach under which an institutional investor can either disclose its intention to comply with a principle or provide sufficient explanation as to why it is not suitable to adopt such principle.

Noteworthy Changes in the Revised Stewardship Code 2020

1. Stress on Sustainability including ESG Factors: There was no mention of sustainability or ESG in the previous version of the Code. In light of the increasing focus on sustainability and ESG factors in corporate valuation, one of the main purposes of the Revision Code is to

address issues of sustainability including ESG factors. The Revision Code redefines "stewardship responsibilities" and clearly instructs institutional investors to consider sustainability (medium- to long-term sustainability including ESG factors) according to their investment management strategies in the course of their constructive engagement with investee companies.

The Revision Code also requests that institutional investors clearly explain, in their stewardship policies, how they consider sustainability issues according to their investment management strategies. Furthermore, it unequivocally states that in case of dialogue with investee companies, with respect to sustainability issues, institutional investors should ensure that such dialogue is consistent with their investment management strategies and leads to the medium-to long-term increase in corporate value and sustainable growth of investee companies.

2. Disclosure of reasons for votes on agenda items- The previous version of the Code stated that institutional investors should, in principle, disclose voting records for each investee company on an individual agenda item basis, noting that it would contribute to the enhancement of visibility for institutional investors, explicitly to explain why they voted for or against an agenda item. The Revision Code has taken this position further and specifically instructs institutional investors to disclose their voting rationale, whether they voted for or against agenda items, that are considered important from the standpoint of constructive dialogue with investee companies (including those perceived to give rise to a conflict of interest or those that need explanation in light of their voting policy).

3. Application of the Code to Asset Classes other than Listed Shares- The previous version of the Code stated that the Code mainly targets institutional investors investing in Japanese listed shares. While that remains unchanged, the Revision Code explicitly adds that it may also apply to other asset classes, as far as it contributes to fulfilling stewardship responsibilities as defined in the Code.

4. Stewardship activities of Asset Owners such as Corporate Pension Funds- To help corporate pension funds understand stewardship activities set forth in the Code, the Revision Code clarifies stewardship responsibilities of asset owners. The Revision Code instructs asset owners to encourage asset managers to engage in effective stewardship activities accordingly to their size and capabilities, in order to secure the interests of the beneficial owners. When asset owners manage funds and exercise their voting rights by themselves, they should engage in stewardship activities such as holding dialogues with investee companies accordingly to their size and capabilities.

5. Principles applied to Service Providers for Institutional Investors- The Revision Code adds Principle 8, which states that service providers for institutional investors, such as proxy advisors and investment consultants for pensions, should endeavor to contribute to enhancing the functions of the entire investment chain by appropriately providing their services, so that institutional investors can fulfil their stewardship responsibilities.

The Revision Code instructs service providers for institutional investors to establish and disclose clear policies on how to effectively manage circumstances that may give rise to conflicts of interest. The Revision Code notes that other principles of the Code (i.e. Principles

1 - 7), including the guidance, also apply to service providers for institutional investors as long as these principles do not conflict with Principle 8.

Please refer the following link:
https://www.fsa.go.jp/en/refer/councils/stewardship/20200324/01.pdf

For proxy advisors, the Revision Code expects them to develop appropriate and sufficient human and operational resources, including setting up a business establishment in Japan, in order to provide asset managers with proxy recommendations based on accurate information on each company. Proxy advisors should also disclose the voting recommendation process such as their primary information source or whether (and how) they conduct dialogue with investee companies to ensure transparency.

Additionally, the Revision Code recommends that proxy advisors actively exchange views with companies as necessary. This may contribute to assurance of transparency, as proxy advisors provide investee companies with opportunities to confirm accuracy of information, on which their proxy recommendations are premised (if requested by investee companies), and provide the opinions submitted by such companies to their clients together with their own recommendations.

For more details, please refer:

1. https://www.borenius.com/2020/02/28/new-corporate-governance-code-for-finnish-listed-companies-what-actions-are-required/

2. https://www.dlapiper.com/en/uk/insights/publications/2020/04/revisions-to-japans-stewardship-code/#:~:text=It%20sets%20out%20the%20principles,constructive%20engagement%20or%20purposeful%20dialogue.

3. https://www.fsa.go.jp/en/refer/councils/stewardship/20140407/01.pdf

4. https://www.investopedia.com/articles/investing/062515/japans-stewardship-code.asp#:~:text=Japan's%20stewardship%20code%20is%20a,crisis%2C%20and%20ratified%20in%202013.

ITALIAN CORPORATE GOVERNANCE CODE, 2020

In January 2020, the Italian Corporate Governance Committee released the new edition of the Corporate Governance Code. The Corporate Governance Code ("Code") applies to all companies with shares listed on the Italian main market (“Mercato Telematico Azionario”, hereinafter “MTA") managed by Borsa Italiana ("companies").

The companies adopting the Code are required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022.

The Italian Corporate Governance Code,2020 focuses on the following:

i) Article 1- Role of the board of directors

ii) Article 2- Composition of the corporate bodies

iii) Article 3- Functioning of the board of directors and the role of the chair.

iv) Article 4- Appointment of directors and board evaluation.

v) Article 5- Remuneration

vi) Article 6- Internal control and risk management system.

Sustainability and proportionality are at the heart of the new Corporate Governance Code for listed companies recently approved by the Italian Corporate Governance Committee (the "New CG Code").

The New CG Code - which replaces the current Corporate Governance Code (the "2018 CG Code") and will be applicable on a "comply or explain" basis, starting from the first financial year beginning after 31 December 2020 – has a renewed structure, divided into "Principles" and "Recommendations".

For more details, please refer: https://www.chiomenti.net/public/files/3109/New-Italian-Corporate-Governance-Code-for-listed-companies.pdf

https://ecgi.global/node/8009

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Lesson 10
Governance and Compliance Risk

Section 17 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 88 (5) of the Companies Act, 2013 w.r.t. Register of Members- Penalty fixed.

Section 88 (5)

Old Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3 lakhs and where the failure is a continuing one, with a further fine which may extend to ₹ 1000 for every day, after the first during which the failure continues.

New Penal Provision

If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2) of Section 88 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of changes:

The penalty amount for non-maintenance of register of members or debenture-holders or other security holders has been fixed for the company and penalty amount for officer in default along with continuing penalty is reduced.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Section 20 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 92 (5) & (6) of the Companies Act, 2013 w.r.t. Annual Return-Reduction of Penalty

Section 92 (5)

Old Penal Provision

If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 50000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 5 lakhs.

New Penal Provision
If any company fails to file its annual return under Section 92(4) of the Companies Act, 2013, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ₹ 10,000 and in case of continuing failure, with further penalty of ₹ 100 for each day during which such failure continues, subject to a maximum of ₹ 2 lakhs in case of a company and ₹ 50,000 in case of an officer who is in default.

Details of changes
Reduction in amount of monetary Penalty

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Section 63 of the Companies (Amendment) Act, 2020, dated September 28, 2020, amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided

Section 450

Old Penal Provision
If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013 the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ₹ 10,000, and where the contravention is continuing one, with a further fine which may extend to ₹ 1000 for every day after the first during which the contravention continues.

New Penal Provision
If a company or any officer of a company or any other person contravenes any of the provisions of the Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in the Companies Act, 2013, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ₹ 10,000, and in case of continuing contravention, with a further penalty of ₹ 1000 for each day after the first during which the contravention continues, subject to a maximum of ₹ 2 Lakhs in case of a company and ₹ 50,000 in case of an officer who is in default or any other person.

Details of Changes
The penal provisions under Section 450 of Companies Act, 2013, which provided for the punishment where no specific penalty or punishment is provided, is relaxed by providing the maximum amount of Penalty.
For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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Lesson 11
Corporate Governance Forums

CSR Audit

To ensure that the companies comply with the provisions of Section 135 and rules made thereunder and genuinely spend the CSR amount on the eligible welfare projects, it is imperative to improve governance and transparency in CSR sphere.

Akin to other areas of corporate activity requiring compliance, need for a dedicated independent professional has been felt in the arena of social responsibility as well. In this regard, an independent CSR Audit/ Review and issue of CSR Audit/Review Report by the Company Secretaries in Practice shall not only give the existing CSR mechanism much needed support and give necessary comfort to the stakeholders, regulators and the society at large that the companies are Complying with the legal requirements but will also give authentic information about the Utilisation of CSR funds by the companies in specified CSR activities.

It is heartening to note that The Institute of Companies Secretaries of India (ICSI) has suggested to Ministry of Corporate Affairs **for 'Requirement of Monitoring Mechanism in CSR'.**

For details: https://taxguru.in/chartered-accountant/icsi-requests-introduction-csr-audit-csr-review-mechanism.html

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Lesson 16
CSR and Sustainability

Notification No: G.S.R. 525 (E) Amendment in item no. (ix) of the Schedule VII of the Companies Act, 2013, dated August 24, 2020

In Schedule VII of the Companies Act, 2013, for item (ix) and the entries thereto, the following item and entries shall be substituted, namely:-

"(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defence Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)".

Details of Changes

MCA vide Notification dated August 24, 2020 has widened the scope of CSR Activities by amending item (ix) of the Schedule VII of the Companies Act 2013 to include more entities like Ministry of AYUSH etc., engaged in research and development to whom contribution shall be treated as Contribution for Corporate Social Responsibility (CSR) Activities as required under Section 135 of Companies Act, 2013.

For details: http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_26082020.pdf

Notification No: G.S.R. 526(E)- The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020, dated August 24, 2020

MCA vide Notification No.: G.S.R. 526(E), dated August 24, 2020 has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014

1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted, namely: -
Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that:

(i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII of the Companies Act, 2013.

(ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report.

2) In rule 4(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the words "excluding activities undertaken in pursuance of its normal course of business" shall be omitted. 14

3) In rule 6(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014-

(i) first proviso shall be omitted;
(ii) In the second proviso, the word "further" shall be omitted.

Details of Changes
MCA vide this amendment has notified that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the prescribed conditions.

Thereafter, under Rule 6(1) of CSR (Corporate Social Responsibility Policy) Rules, 2014, first proviso has been omitted which states that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company. Similarly, under Rule

4(1) “excluding activities undertaken in pursuance of its normal course of business” has been also omitted.

For details: http://www.mca.gov.in/Ministry/pdf/csr_26082020.pdf

Section 26 of the Companies (Amendment) Act, 2020 amended Section 134(8) of the Companies Act, 2013 w.r.t. Financial Statement, Board’s Report, etc.

Old Penal Provision

If a company contravenes the provisions of Section 134 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 25 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

If a company is in default in complying with the provisions of Section 134 of the Companies Act, 2013, the company shall be liable to a penalty of ₹ 3 Lakhs and every officer of the company who is in default shall be liable to a penalty of ₹ 50,000.

Details of Changes

Fixation of Penalty and omission of imprisonment in case of every officer of the company who is in default in complying with the provisions of Section 134 of the Companies Act, 2013.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

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