

**SUPPLEMENT FOR PROFESSIONAL PROGRAMME**

**ETHICS, GOVERNANCE AND SUSTAINABILITY**

**(PAPER - 6)**

**(Relevant for students appearing in June 2019 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 relevant law upto 31<sup>st</sup> December, 2018, applicable for June 2019 Examination. The students are advised to read all the relevant regulatory amendments made and applicable upto 31<sup>st</sup> December, 2018 alongwith the study material. In the event of any doubt, students may write to the Institute for clarifications at [academics@icsi.edu](mailto:academics@icsi.edu).

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The students may also refer to the E-book on Companies Act, 2013 on the MCA website for the updated Companies Act, 2013 and rules made thereunder.

The students are also advised to refer the websites of respective regulators for updated legislative provisions.

**IMPORTANT ANNOUNCEMENTS FOR STUDENT ON SUBJECT  
ETHICS, GOVERNANCE AND SUSTAINABILITY**

**From July 2018 to December 2018**

**1. Updates on Companies Act, 2013**

**A. Companies (Amendment) Act, 2017**

**1. (a) In section 134, sub section (1), the following Clause shall be substituted, namely-**

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."

**(b) In section 134, sub section 3, clause (a), for the words, "the extract of the annual return as provided under sub-section (3) of section 92;** The following Clause shall be substituted, namely-the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed.

**(c) In section 134, sub section 3, clause (p), for the words, annual evaluation has been made by the Board of its own performance and that of its committees and individual directors",** the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made"

**(2) (a) In section 135, sub section (1), for the words any financial year, the words immediately preceding financial year shall be substituted.**

**(b) In section 135, for sub-section (5), for the Explanation-**For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198., the following Explanation shall be substituted, namely :-

For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

## **B. Companies (Accounts) Amendment Rules, 2018**

**Notification dated 31 st July, 2018**

### **1. In the Companies (Accounts) Rule, 2014 in Rule 8,**

(i) in sub rule (5), after clause (viii) the following clauses shall be inserted namely-

(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(ii) after sub-rule (5), the following rule shall be inserted, namely:-

“(6) This rule shall not apply to One Person Company or Small Company”.

(iii) after rule 8, the following rule shall be inserted, namely:-

### **“8A. Matters to be included in Board’s Report for One Person Company and Small Company.**

(1) The Board’s Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

- a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- b) number of meetings of the Board;
- c) Directors’ Responsibility Statement as referred to in sub-section (5) of section 134;
- d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
- e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- f) the state of the company’s affairs;
- g) the financial summary or highlights;
- h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- i) the details of directors who were appointed or have resigned during the year;
- j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.”.

### **2. Updates on SEBI (Issue Of Capital & Disclosure Requirements) Regulations, 2018**

**Notification dated 11<sup>th</sup> September, 2018**

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:

## **1. Regulation 24 (Disclosures in the draft offer document and offer document)**

- (1) The draft offer document and offer document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed investment decision.
- (2) Without prejudice to the generality of sub-regulation (1), the red-herring prospectus, and prospectus shall contain:
  - (a) disclosures specified in the Companies Act, 2013 and;
  - (b) disclosures specified in **Part A of Schedule VI**.
- (3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.
- (4) The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, also the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document and the offer document and as required in terms of these regulations.
- (5) The lead manager(s) shall ensure that the information contained in the draft offer document and offer document and the particulars as per restated audited financial statements in the offer document are not more than six months old from the issue opening date.

## **2. Regulation 25 (Filing of the draft offer document and offer document)**

- (1) Prior to making an initial public offer, the issuer shall file three copies of the draft offer document with the concerned regional office of the Board under the jurisdiction of which the registered office of the issuer company is located, in accordance with **Schedule IV**, along with fees as specified in **Schedule III**, through the lead manager(s).
- (2) The lead manager(s) shall submit the following to the Board along with the draft offer document:
  - a) a certificate, confirming that an agreement has been entered into between the issuer and
  - b) the lead manager(s);
  - c) a due diligence certificate as per Form A of **Schedule V**;
  - d) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of **Schedule V**;
- (3) The issuer shall also file the draft offer document with the stock exchange(s) where the specified securities are proposed to be listed, and submit to the stock exchange(s), the Permanent Account Number, bank account number and passport number of its promoters where they are individuals, and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies with which the promoter is registered, where the promoter is a body corporate.
- (4) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:
  - a) the date of receipt of the draft offer document under sub-regulation (1); or
  - b) the date of receipt of satisfactory reply from the lead manager(s), where the Board has sought any clarification or additional information from them; or
  - c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency;or

- d) the date of receipt of a copy of in-principle approval letter issued by the stock exchange(s).
- (5) If the Board specifies any changes or issues observations on the draft offer document, the issuer and lead manager(s) shall carry out such changes in the draft offer document and shall submit to the Board an updated draft offer document complying with the observations issued by the Board and highlighting all changes made in the draft offer document and before registering or filing the offer documents with the Registrar of Companies or an appropriate authority, as applicable.
- (6) If there are any changes in the draft offer document in relation to the matters specified in **Schedule XVI**, an updated offer document or a fresh draft offer document, as the case may be, shall be filed with the Board along with fees specified in **Schedule III**.
- (7) Copy of the offer documents shall also be filed with the Board and the stock exchange(s) through the lead manager(s) promptly after registering the offer documents with Registrar of Companies.
- (8) The draft offer document and the offer document shall also be furnished to the Board in a soft copy.
- (9) The lead manager(s) shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-regulation (4) of regulation 25 if the Board has not issued observations:
- a) a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document;
  - b) a due diligence certificate as per **Form C of Schedule V**, at the time of registering of the offer document;
  - c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoter(s) towards amount received against promoters' contribution, before opening of the issue;
  - d) a certificate from a statutory auditor, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid and credited to the issuer's bank account by each of them towards such contribution;
  - e) a due diligence certificate as per **Form D of Schedule V**, in the event the issuer has made a disclosure of any material development by issuing a public notice pursuant to para 4 of **Schedule IX**.

**Regulation 26 (Draft offer document and offer document to be available to the public)**

- (1) The draft offer document filed with the Board shall be made public for comments, if any, for a period of at least twenty one days from the date of filing, by hosting it on the websites of the Board, stock exchanges where specified securities are proposed to be listed and lead manager(s) associated with the issue.
- (2) The issuer shall, within two days of filing the draft offer document with the Board, make a public announcement in one English national daily newspaper with wide circulation, one

Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing the fact of filing of the draft offer document with the Board and inviting the public to provide their comments to the Board, the issuer or the lead manager(s) in respect of the disclosures made in the draft offer document.

- (3) The lead manager(s) shall, after expiry of the period stipulated in sub-regulation (1), file with the Board, details of the comments received by them or the issuer from the public, on the draft offer document, during that period and the consequential changes, if any, that are required to be made in the draft offer document.
- (4) The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, Board and the stock exchanges, as applicable.
- (5) The lead manager(s) and the stock exchanges shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

#### **Regulation 43 (Issue-related advertisements)**

- (1) Subject to the provisions of the Companies Act, 2013, the issuer shall, after registering the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
- (2) The pre-issue advertisement shall be in the format and shall contain the disclosures specified in **Part A of Schedule X**.

Provided that the disclosures in relation to price band or floor price and financial ratios contained therein shall only be applicable where the issuer opts to announce the price band or floor price along with the pre-issue advertisement pursuant to sub-regulation (4) of regulation 29.

- (3) The issuer may release advertisements for issue opening and issue closing, which shall be in the formats specified in **Parts B and C of Schedule X**.
- (4) During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors' response to the issue

#### **Regulation 44 (Opening of the issue)**

- (1) Subject to the compliance with the provisions of the Companies Act, 2013, a public issue may be opened within twelve months from the date of issuance of the observations by the Board under regulation 25;
- (2) An issue shall be opened after at least three working days from the date of registering, the red herring prospectus, in case of a book built issue and the prospectus, in case of a fixed price issue, with the Registrar of Companies.



## **Regulation 51 (Post-issue advertisements)**

- (1) The lead manager(s) shall ensure that an advertisement giving details relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders, as applicable, or instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- (2) Details specified in sub regulation (1) shall also be placed on the websites of the stock exchange(s).

## **Regulation 55 (Post-issue reports)**

The lead manager(s) shall submit a final post-issue report as specified in **Part A of Schedule XVII**, along with a due diligence certificate as per the format specified in **Form F of Schedule V**, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.

## **New edition of the UK Corporate Governance Code**

The Financial Reporting Council (FRC) released the 2018 UK Corporate Governance Code. An updated edition of the FRC's Guidance on Board Effectiveness has also been published.

The Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere. The new Code applies to accounting periods beginning on or after 1 January 2019.

This Code puts the relationships between companies and stakeholders at the heart of long-term sustainable growth in the UK economy. The new, shorter and sharper Code is the product of extensive consultation.

This Code places emphasis on businesses building trust by forging strong relationships with key stakeholders and providing meaningful reporting to the stakeholders. It recommends the companies to establish a corporate culture that is aligned with the company's purpose, business strategy, promotes integrity and values diversity.

A summary of the key changes made in new edition include:

- **Workforce and stakeholders:** There is a new provision to enable greater board engagement with the workforce to understand their views. The Code asks boards to describe how they have considered the interests of stakeholders when performing their duty.
- **Culture:** Boards are asked to create a culture which aligns to company's values with strategy and to assess how they preserve value over the long-term.
- **Succession and diversity:** To ensure that the boards have the right mix of skills and experience, constructive challenge and to promote diversity, the new Code emphasises the need to refresh boards and undertake succession planning. The new Code strengthens the role of the nomination committee on succession planning and establishing a diverse board. It identifies the importance of

external board evaluation for all companies. Nomination committee reports should include details of the contact the external board evaluator has had with the board and individual directors.

- Remuneration: To address public concern over executive remuneration, the new Code emphasises that remuneration committees should take into account workforce remuneration and related policies when setting director remuneration. Importantly formulaic calculations of performance-related pay should be rejected. Remuneration committees should apply discretion when the resulting outcome is not justified.

The new Code is available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF>

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## **From January 2018 to June 2018**

### **1. Updates on Companies Act, 2013**

#### **A. Amendments in Companies (Amendments) Act, 2017**

The students should go through the Companies (Amendments) Act, 2017. Placed at [http://www.mca.gov.in/Ministry/pdf/CAAct2017\\_05012018.pdf](http://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf)

Various sections of the Companies (Amendments) Act, 2017 had been notified. For details the student may visit the below mentioned links:

Commencement notification dated 13.06.2018  
[http://www.mca.gov.in/Ministry/pdf/CommNotificatio1306\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/CommNotificatio1306_14062018.pdf)

Commencement notification dated 07.05.2018  
[http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentNoti\\_07052018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAmendmentNoti_07052018.pdf)

Commencement notification dated 21.03.2018  
[http://www.mca.gov.in/Ministry/pdf/commencementNotification2103\\_21032018.pdf](http://www.mca.gov.in/Ministry/pdf/commencementNotification2103_21032018.pdf)

Commencement notification dated 09.02.2018  
[http://www.mca.gov.in/Ministry/pdf/Commencementnotification\\_12022018.pdf](http://www.mca.gov.in/Ministry/pdf/Commencementnotification_12022018.pdf)

Commencement notification dated 23.01.2018  
[http://www.mca.gov.in/Ministry/pdf/NotificationComapniesAct\\_23012018.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationComapniesAct_23012018.pdf)

## **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018**

**Vide Notification dated 9<sup>th</sup> May, 2018** the Securities and Exchange Board of India hereby amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Unless otherwise specifically provided for in these regulations, they shall come

into force with effect from April 1, 2019. Since this is in public domain students are expected to be in know of the details. The same are available at:

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

## **Till December 2017**

### **1. Updates on Companies Act, 2013**

#### **B. Amendment in Secretarial Standards**

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. 1<sup>st</sup> 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 Original and the Revised Secretarial Standards are provided on the ICSI Website at the following links:

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

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

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

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

#### **C. Companies (Meetings of Board and its Powers) Second Amendment Rules 2017**

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.

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.

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

#### **D. Amendment in Schedule IV of the Companies Act, 2013**

An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within "**three months**" from the date of such resignation or removal, as the case may be.

The independent directors of the company shall hold at least one meeting "in a **financial** year", without the attendance of non-independent directors and members of management.

[http://www.mca.gov.in/Ministry/pdf/AmendmentIV\\_06072017.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentIV_06072017.pdf)

#### **E. Companies (Appointment and Qualification of Directors) Amendment Rules, 2017**

The amended Rule 4 provides that the following classes of unlisted public company(ies) are not required to appoint Independent Directors, namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company.

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

A clarification in this regard was further issued by MCA on 5th September 2017, wherein term joint venture has been defined as under:

“Joint venture”, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

[http://www.mca.gov.in/Ministry/pdf/GeneralCircular\\_05092017.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircular_05092017.pdf)

## **2. Stewardship Code for Insurers in India**

The growth in the Insurance Industry in recent years has resulted in a significant increase in the Funds of insurance companies. They are also significant investors in the securities markets and act as investors on behalf of the policyholders. There is increased emphasis on governance of public companies under the corporate and insurance law and the role and responsibility of Boards of companies has escalated.

Considering the fiduciary role played by the insurance companies as investors on behalf of the policyholders, it is felt that greater transparency is needed as regards the manner in which the investments are managed by them. In this regard, the Authority has examined the regulatory stipulations/ guidelines in various jurisdictions across the world and it was noticed that disclosures regarding decision making and voting at meetings of investee companies by institutional investors are being encouraged.

Insurance companies are significant institutional investors in listed companies and the investments are held by them as custodians of policyholders. Therefore, it is felt that insurance companies should play an active role in the general meetings of investee companies and engage with the managements at a greater level to improve their governance. This will result in informed decisions by the parties and ultimately improve the return on investments of insurers.

Therefore, the Authority has decided to implement a code for stewardship for the insurers. The code is in the form of a set of principles, which the insurers would need to adopt. The principles are being uniformly adopted for institutional investors, like Mutual Funds, Pension Funds, Foreign Portfolio Investors (FPIs), Alternative Investment Funds (AIFs), etc. The code broadly requires the insurers to have a policy as regards their conduct at general meetings of the investee companies and the disclosures relating thereto. It shall be applicable from FY 2017-18.

All insurers need to draw up a policy based on the principles spelt out in the stewardship code within 6 months from the date of issue of these guidelines and the Board of Directors should approve the same. The policy should be disclosed on the website within 30 days of approval by the Board by all insurers, alongside the public disclosures. Any change/ modification to the policy on stewardship should be specifically disclosed at the time of updating the policy document on the website.

The principles are intended to strengthen the role of insurers as stewards on behalf of the policyholders. The Authority is of the view that adoption of the principles would improve the confidence of the policyholders in the insurers on one hand and also ensure better corporate governance and decision making at investee companies on the other.

For more detail, please visit IRDAI website at: [https://www.irdai.gov.in/ADMINCMS/cms/frmGuidelines\\_Layout.aspx?page=PageNo3096&flag=1](https://www.irdai.gov.in/ADMINCMS/cms/frmGuidelines_Layout.aspx?page=PageNo3096&flag=1)

### **3. Paris Agreement**

At the 21st Conference of the Parties in Paris, Parties to the United Nations Framework Convention on Climate Change (UNFCCC) reached a landmark agreement to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future. The Paris Agreement brings all nations into a common cause to undertake take ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so.

The Paris Agreement's central aim is to strengthen the global response to the threat of climate change by keeping the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

On Earth Day, 22 April 2016, 175 world leaders signed the Paris Agreement at United Nations Headquarters in New York. This was by far the largest number of countries ever to sign an international agreement on a single day.

<http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>