

SUPPLEMENT FOR PROFESSIONAL PROGRAMME

GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

(PAPER - 1)

(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 31st December, 2018, applicable for June 2019 Examination. The students are advised to read all the relevant regulatory amendments made and applicable upto 31st December, 2018 alongwith the study material. In the event of any doubt, students may write to the Institute for clarifications at *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
GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS**

From September 2018 to December 2018

1. The Companies (Amendment) Ordinance, 2018 (effective from 02nd November, 2018) and Companies (Amendment) Ordinance, 2019

Link: http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf

**2. Companies (Corporate Social Responsibility Policy) Rules, 2014
Effective Date : 19th September, 2018**

Link:

http://www.mca.gov.in/Ministry/pdf/CompaniesCSRPolicyAmendRules2018_19092018.pdf

(1) in rule 2, -

(a) in sub-rule (1), in sub-clause (i) of clause (c), after the words “relating to activities”, the words “, areas or subjects” shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words “cover subjects enumerated”, the words “include activities, areas or subjects specified” shall be substituted;

(c) in sub-rule (1), in clause (e), for the words “company as”, the words “company in areas or subjects” shall be substituted.

(2) **in rule 5**, in clause (i) of sub rule (1), for the words “an unlisted public company or a private company”, the words “a company” shall be substituted.

(3) In rule 6, -

(a) in sub-rule (1), in clause (a), for the words “falling within the purview of” the words “areas or subjects specified in” shall be substituted;

(b) in sub-rule (1), in second proviso to clause (b), for the words, “activities included in Schedule VII” the words “areas or subjects specified in Schedule VII” shall be substituted.

(4) **in rule 7**, for the words, “purview of”, the words “areas or subjects, specified in” shall be substituted.

3. Companies (Amendment) Ordinance, 2018 (effective from 02nd November, 2018)

Link:

[http://www.mca.gov.in/Ministry/pdf/NotificationCompanies\(Amendment\)Ordinance_05112018.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationCompanies(Amendment)Ordinance_05112018.pdf)

1) Amendment of section 92: Annual Return

In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

If any company fails to file its annual return under sub-section (4), 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 fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”.

2) Amendment of section 137(3): Copy of financial statement to be filed with Registrar

Non-compliance with sub-section (1) or (2) of Section 137 shall result in: (i) the company being liable to a penalty, instead of being punishable with fine; and (ii) the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the board of directors with the responsibility of complying with the provisions of Section 137, and, in the absence of any such director, all the directors of the company, being liable to a penalty, instead of being punishable with fine or imprisonment or with both.

4. Companies (appointment and remuneration of managerial personnel) Amendment Rules 2018

Dated 12.09.2018

Link: http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf

In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, (i) in rule 6, (a) for the heading ‘application to the Central Government’ the heading ‘Parameters for consideration of remuneration’ shall be substituted. (b) the words ‘Central Government’ shall be omitted .

(ii) in rule 7, sub-rule (2) shall be omitted

5. Updates on SEBI (Issue Of Capital & Disclosure Requirements) Regulations, 2018

Notification dated 11th 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:

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.

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.

6. 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>