

# **SUPPLEMENT FOR PROFESSIONAL PROGRAMME**

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

**Module-1**

**Paper - 2**

**(Relevant for students appearing in December, 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 30<sup>th</sup> June, 2018, applicable for December 2018 Examination. The students are advised to read all the relevant regulatory amendments made and applicable up to 30<sup>th</sup> June, 2018 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 December, 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 December 2018 Examination are applicable.

**Accordingly, the Sections of the Companies (Amendment) Act, 2017, which are notified up to 30<sup>th</sup> June, 2018 are applicable for the examination to be held in December, 2018.** However, since this Amendment Act is very important and is in public domain, the students should be aware of the important changes.

Further, the Syllabus includes the various other topics which are taught in detailed in the other papers of the ICSI Syllabus, the Student are advised to read in detailed to have in depth knowledge.

## PROFESSIONAL PROGRAMME

### SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

#### MODULE I - PAPER 2

#### Chapter wise Important Update for December, 2018 Examinations

Lesson No.	Lesson Name	Key Updates
<b>Part A</b>		
1	Secretarial Audit and Secretarial Standards – An Overview	<ol style="list-style-type: none"><li>1. Revised Secretarial Standards on Board Meeting and General Meeting.</li><li>2. Secretarial Standard on Dividend</li><li>3. Effect of the various sections notified under Companies (Amendment) Act, 2017</li></ol>
2	Check Lists for Secretarial Audit	<ol style="list-style-type: none"><li>1. Amendments in the Act, Rules, Circulars and Notification by MCA.</li><li>2. Amendments in the SEBI Regulations</li><li>3. Amendments in FEMA Regulations Relating to FDI, ODI and ECB.</li></ol>
<b>Part B</b>		
3	Due Diligence – An Overview	
4	Issue of Securities	Amendments in SEBI (ICDR) Regulations, 2009
5	Depository Receipts Due Diligence	Amendment in SEBI (LODR) Regulations, 2015
6	Due Diligence – Mergers & Amalgamations	Amendments in SEBI (LODR) Regulations, 2015 Amendments in SEBI (SAST) Regulations 2011
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](https://www.icsi.edu/webmodules/ComparativeAnalysis_Amendments_SS1.pdf)

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

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

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

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

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

## **4. *\*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. 1<sup>st</sup> October, 2017 in respect of Meetings of Board & its Committees and General Meetings for which Notices are issued on or after the said date, and will supersede the existing SS-1 and SS-2.

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

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

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

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

#### **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 14<sup>th</sup> June, 2017. As the existing approval of Central Government under Section 118(10) of the Companies Act, 2013 would suffice for the enforceability of revised SS-1 & SS-2, these are not required to be notified in the Gazette of India.

#### **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 08<sup>th</sup> August, 2017.**

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

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

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

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

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

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

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

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

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

### **6. AMENDMENTS IN COMPANY LAW**

<http://www.mca.gov.in/MinistryV2/companiesact2013.html>

1. Companies (Incorporation) Second Amendment Rules, 2018 Dated : 23rd March, 2018
2. Companies (Incorporation) Amendment Rules, 2018 Dated: 20-01-2018
3. Companies (Incorporation) Second Amendment rules, 2017 Notification dated 27<sup>th</sup> July, 2017 effective from 27<sup>th</sup> July, 2017
4. <http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationSecondAmendmentRules2017.pdf>
5. Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018 Dated: 07 -05 -2018
6. Companies (Share Capital and Debentures) Second Amendment Rules, 2018 Dated: 07 -05 -2018
7. Companies (Share Capital and Debentures) Amendment Rules, 2018 Dated: 10 -04 -2018
8. Companies (Acceptance of Deposit) Second Amendment Rules, 2017 Notification dated 19<sup>th</sup> September, 2017 effective from 19<sup>th</sup> September, 2017
9. Companies (Management and Administration) Second Amendment Rules, 2018 Dated: 13-06-2018
10. The Companies (Management and Administration) Amendment Rules, 2018.
11. The Companies (Significant Beneficial Owners) Rules, 2018 Dated: 13.06.2018
12. Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017 dated 28.10.2017
13. The Companies (Accounting Standards) Amendment Rules, 2018. Effective from 1st day of April, 2018.
14. The Companies (Indian Accounting Standards) Amendment Rules, 2018.
15. Companies (Accounts) Amendment Rules, 2018 Dated: 27-02-2018
16. Companies (Cost Records and Audit) Second Amendment Rules, 2017. Notification dated 20<sup>th</sup> December, 2017 effective from 01<sup>st</sup> July, 2017



17. Companies (Cost Records and Audit) Amendment Rules, 2017. Notification dated 7th December, 2017 effective from 01st April, 2016
18. Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017. Notification dated 4<sup>th</sup> December, 2017 effective from 4<sup>st</sup> December, 2017
19. The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018.
20. Companies (Accounts) Amendment Rules, 2017 Notification dated 7<sup>th</sup> November, 2017 effective from 07<sup>th</sup> November, 2017
21. Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017. Notification dated 6<sup>th</sup> November, 2017 effective from 6<sup>th</sup> November, 2017
22. Companies (Audit and Auditors) Second Amendment Rules, 2018 Dated: 07-05-2018
23. Following amendments have been brought in: In rule 3,-
24. The Companies (Audit and Auditors) Amendment Rules, 2018.
25. The Companies (Appointment and Qualification of Directors) 3rd Amendment Rules, 2018.
26. The Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018. Dated 07-05-2018
27. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2018.
28. Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Notification dated 5<sup>th</sup> July, 2017 effective from 05<sup>th</sup> July, 2017
29. Companies (Removal of Difficulties) Order, 2018 Dated 21.02.2018
30. Companies (Meetings of Board and Its Powers) Amendment Rules, 2018, Dated: 07-05-2018
31. Companies (Meetings of Board and its Powers) Second Amendment Rules 2017 Notification dated 13<sup>th</sup> July, 2017 effective from 13<sup>th</sup> July, 2017
32. The Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018.
33. The Companies (Registered Valuers and Valuation) Amendment Rules, 2018.
34. Companies (Registered Valuers and Valuation) Rules, 2017 Notification dated 18th October, 2017 effective from 18th October, 2017
35. Companies (Restriction on number of layers) Rules 2017 Notification dated 20<sup>th</sup> September, 2017 effective from 20<sup>th</sup> September, 2017
36. Companies (Arrests in connection with investigation by SFIO) Rules, 2017 Notification dated 24<sup>th</sup> August, 2017
37. NCLAT (Amendment) Rules 2017 Notification dated 23<sup>rd</sup> August, 2017 effective from 23<sup>rd</sup> August, 2017

### **Companies (Incorporation) Second Amendment Rules, 2018 Dated : 23-03-2018**

Amendment in Rule 9, which is as under:

9. Reservation of name. An application for reservation of name shall be made through the web service available at [www.mca.gov.in](http://www.mca.gov.in) by using form RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re - submission of such application within fifteen days for rectification of the defects, if any .

With this amendment RUN facility for name reservation was made active. Accordingly within 15 days the application may be rejected or approved.

### **Companies (Incorporation) Amendment Rules, 2018 Dated: 20-01-2018**

Rule 12 Application for incorporation of companies Two major amendments were brought wherein

- E-Form INC -7 was omitted.
- in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as the Reserve Bank of India, the Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.

### **In Rule 38 Simplified Proforma for Incorporating Company Electronically (SPICe)**

- in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC -32 (SPICe) in the respective formats as specified in Table A to J in Schedule I without filing Form INC -33 and INC -34
- in case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC -32 (SPICe) shall not be applicable.

Accordingly MOA shall be filed with INC -32 where there are more than seven subscribers.

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

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

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

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

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

(a) Board Resolution for shifting of registered office;

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

(c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Where an objection has been received,

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

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

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

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

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

### **Companies (Prospectus and Allotment of Securities) Amendment Rules, 2018 Dated: 07 -05 -2018**

In line with Companies (Amendment) Act, 2017 read with section 26 of Companies Act, 2013 the following sub - rules were omitted:

- 3. Information to be stated in the prospectus
- 4. Reports to be set out in the Prospectus
- 5. Other matters and reports to be stated in the prospectus
- 6. Period for which information to be provided in certain cases

### **Companies (Share Capital and Debentures) Second Amendment Rules, 2018 Dated: 07 -05 -2018**

For the purpose of rules relating to issuance of Sweat equity shares the definition of Employee has been modified through this amendment. Current definition is as under: “Employee” means - (a) a permanent employee of the company who has been working in India or outside India; or (b) a director of the company, whether a whole time director or not; or (c) an employee or a director as defined in sub - clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

### **Companies (Share Capital and Debentures) Amendment Rules, 2018 Dated: 10 -04 -2018**

This Amendment amended the signing of Share Certificate. Accordingly: (3) Every certificate shall specify the shares to which it relates and the amount paid -up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary: In case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate. Explanation. – For the purposes of this sub -rule, it is hereby clarified that, - (a) in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose. (b) a director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose

### **Companies (Acceptance of Deposit) Second Amendment Rules, 2017 Notification dated 19<sup>th</sup> September, 2017 effective from 19<sup>th</sup> September, 2017**

[http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule\\_2092017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDepositSecondAmendmentRule_2092017.pdf)

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

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

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

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

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

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

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

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

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

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

### **Companies (Management and Administration) Second Amendment Rules, 2018 Dated: 13-06-2018**

In Companies (Management and Administration) Rules, 2014

(i) rule 13 relating to Return of Changes in Shareholding Position of Promoters and Top Ten Shareholders has been omitted. Henceforth the same is not required

(ii) in rule 15, the sub-rule(6), has been omitted. First proviso of section 94(1) of Companies Act, 2013 requires passing of special resolution to be maintaining register of members and annual return at some other place in India.

In consonance with the Companies (Amendment) Act, 2013 requirement of to give advance copy of such proposed resolution has been done away with, accordingly the rule has been amended.

(iii) in rule 18, in sub-rule (3), Explanation after clause (ix), has been omitted. This rule read with section 100 and 101 of Companies Act, 2013 and in consonance with Companies (Amendment) Act, 2017 the requirement of holding EGM in any place in India in the rules has been omitted.

The same has been incorporated in the Section 100 which now states that the an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

(iv) in rule 22, in sub-rule(16) has been substituted. In consonance with Companies (Amendment) Act read with section 110 and 108 of Companies Act, 2013 any aforesaid items required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108. Further it has been provided One Person Companies and other companies having members upto two hundred are not required to transact any business through postal ballot.

#### **The Companies (Management and Administration) Amendment Rules, 2018.**

In the Companies (Management and Administration) Rules, 2014, for Form No. MGT-6 and Form No. MGT-15, the following forms shall be substituted, namely:

#### **The Companies (Significant Beneficial Owners) Rules, 2018 Dated: 13.06.2018**

In consonance with section 90 of Companies Act, 2013 and Companies (Amendment) Act, 2017, rules relating to Beneficial Ownership were made effective. The detailed rules are available at [http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantBeneficial1306\\_14062018.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesSignificantBeneficial1306_14062018.pdf)

#### **Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017 dated 28.10.2017**

In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, in rule 6 (Manner of transfer of shares under sub-section (6) of section 124 to the Fund)& Rule 7 (Refund to claimants from Fund) has been amended. The Revised rule 6 may be read as under:

#### **6. Manner of transfer of shares under sub-section (6) of section 124 to the Fund**

(1) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of thirty days of such shares becoming due to be transferred to the Fund:



Provided that, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed:

Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st October, 2017, the due date of transfer of such shares shall be deemed to be 31st October, 2017.

Provided further that transfer of shares by the companies to the fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund.

(2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(3) The company shall follow the following procedure while transferring the shares, namely:-

(a) The company shall inform, at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.

(b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996 or shares already been transferred under sub-rule (1) above, the company shall not transfer such shares to the Fund:

Provided that the company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year.

(c) For the purposes of effecting the transfer, where the shares are dealt with in a depository-

(i) the Company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority.

(ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.

(d) For the purposes of effecting the transfer shares held in physical form-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;

(ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that

“Issued in lieu of share certificate No..... for the purpose of transfer to IEPF” and the same be recorded in the register maintained for the purpose;

(iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority."

(4) The company shall make such transfers through corporate action and shall preserve copies for its records.

(5) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF 4 containing details of such transfer.

(6) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares:

Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.

(7) The company shall maintain the details of shareholding of each individual shareholders whose shares have been credited to the DEMAT account of the Authority.

(8) All benefits accruing on such shares e.g., bonus shares, split, consolidation, fraction shares etc., except right issue shall also be credited to such DEMAT account.

(9) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority or in accordance with sub-rule (10) and (11).

(10) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

(11) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security

holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.

(12) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds”.

(13) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank.

(14) Authority shall furnish its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge.

The Revised Rule 7 may be read as under:

#### 7. Refund to claimants from Fund.-

(1) Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares under proviso to sub-section (6) of section 124 or apply for refund under clause (a) of sub-section (3) of section 125 or under proviso to sub-section (3) of section 125, as the case may be, to the Authority by submitting an online application in Form IEPF-5 available on the website [www.iepf.gov.in](http://www.iepf.gov.in) along with fee specified by the Authority from time to time in consultation with the Central Government.

(2) The claimant shall after making an application in Form IEPF-5 under rule (1), send the same duly signed by him along with, requisite documents as enumerated in Form IEPF-5 to the concerned company at its registered office for verification of his claim.

(2A) Every company which has deposited the amount to the Fund shall nominate a Nodal Officer for the purpose of coordination with IEPF Authority and communicate the contact details of the Nodal Officer duly indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID to the IEPF Authority, within fifteen days from the date of publication of these rules and the company shall display the name of Nodal Officer and his e-mail ID on its website.

(3) The company shall, within fifteen days from the date of receipt of claim, send a verification report to the Authority in the format specified by the Authority along with all the documents submitted by the claimant.

Provided that in case of non receipt of documents by the Authority after the expiry of ninety days from the date of filing of Form IEPF-5, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.

(4) After verification of the entitlement of the claimant-

(a) to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority shall present a bill to the Pay and Accounts Office for e- payment as per the guidelines,

(b) to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall credit the shares to the DEMAT account of the claimant to the extent of the claimant's entitlement.

(5) The Authority shall, in its records, cause a note to be made of all the payments made under sub-rule (4).

(6) An application received for refund of any claim under this rule duly verified by the concerned company shall be disposed off by the Authority within sixty days from the date of receipt of the verification report from the company, complete in all respects and any delay beyond sixty days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means.

(7) In cases, where the application is incomplete or not approved, a communication shall be sent to the claimant and the concerned company by the Authority detailing deficiencies of the application.

Provided that in case of non receipt of rectified documents by the Authority after the expiry of ninety days from the date of such communication, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.

(8) In case, claimant is a legal heir or successor or administrator or nominee of the registered share holder, he has to ensure that the transmission process is completed by the company before filing any claim with the Authority.

(9) In case, claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority, the company shall verify all requisite documents required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and furnish a copy of the same to the Authority while verifying the claim of such claimant.

(10) The claimant shall file only one consolidated claim in respect of a company in a financial year.

(11) The company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise and the Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc., leading to any litigation or complaint arising thereof.”

**The Companies (Accounting Standards) Amendment Rules, 2018. Effective from 1st day of April, 2018.**

In the Companies (Accounting Standards) Rules, 2006, in the “ANNEXURE”, under the heading “ACCOUNTING STANDARDS” under “Accounting Standard (AS) 11”, for the paragraph 32, the following paragraph shall be substituted, namely :—

“32. An enterprise may dispose of its interest in a non-integral foreign operation through sale, liquidation, repayment of share capital, or abandonment of all, or part of, that operation. The payment of a dividend forms part of a disposal only when it constitutes a return of the investment. Remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of the investment. In the case of a partial disposal, only the proportionate share of the related accumulated exchange differences is included in the gain or loss.

A write-down of the carrying amount of a non-integral foreign operation does not constitute a partial disposal. Accordingly, no part of the deferred foreign exchange gain or loss is recognised at the time of a write-down”.

**The Companies (Indian Accounting Standards) Amendment Rules, 2018.**

The Companies (Indian Accounting Standards) Rules, 2015 (hereinafter referred to as the principal rules), in the “Annexure”, under the heading “B. Indian Accounting Standards (Ind AS)”,-

I. in “Indian Accounting Standard (Ind AS) 101”, - (i) after paragraph 33, the following shall be inserted, namely:-

*\*(the Whole rule is not reproduced here, student may refer the relevant notification.)*

**Companies (Accounts) Amendment Rules, 2018 Dated: 27-02-2018**

According to amended Rules the Companies which are required to comply with Companies (Indian Accounting Standards) Rules, 2015 shall forward their statement in Form AOC-3A. Form AOC-3A was inserted.

**Companies (Cost Records and Audit) Second Amendment Rules, 2017. Notification dated 20<sup>th</sup> December, 2017 effective from 01<sup>st</sup> July, 2017**

[http://www.mca.gov.in/Ministry/pdf/CostRecordAudit2Rule\\_21122017.pdf](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.

**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](http://www.mca.gov.in/Ministry/pdf/CompaniesCostrecordsAuditRule_08122017.pdf)

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

**Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Second Amendment, Rules, 2017. Notification dated 4<sup>th</sup> December, 2017 effective from 4<sup>st</sup> December, 2017**

[http://www.mca.gov.in/Ministry/pdf/Scan\\_XBRL\\_05122017.pdf](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

**The Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018.**

In the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, rule 3, shall be numbered as sub-rule (1) of rule 3 and after sub-rule (1) as so numbered, the following subrules shall be inserted, namely:—

“(2) The companies which have filed their financial statements under sub-rule (1) shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.

(3) The companies which have filed their financial statements under the erstwhile rules, namely the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011, shall continue to file their financial statements and other documents as prescribed in sub-rule (1) though they do not fall under the class of companies specified therein.”.

**Companies (Accounts) Amendment Rules, 2017 Notification dated 7<sup>th</sup> November, 2017 effective from 07<sup>th</sup> November, 2017**

[http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsamendmentsRules\\_09112017.pdf](http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsamendmentsRules_09112017.pdf)

with this amendment form AOC – 4 has been substituted.

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

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

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

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

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

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

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

### **Companies (Audit and Auditors) Second Amendment Rules, 2018 Dated: 07-05-2018**

#### **Following amendments have been brought in: In rule 3,-**

(a) Explanation has been omitted;

(b) proviso to sub-rule (7) has been omitted. In consonance to Companies (Amendment) Act, 2017 read with section 139- requirement of annual ratification of appointment of auditor has been done away with.

Rule 9 relating to Liability to Devolve on Concerned Partners Only has been omitted.

in rule 10A, for the word "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" has been substituted.

In rule 14,- (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" has been substituted;

(b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" has been substituted.

### **The Companies (Audit and Auditors) Amendment Rules, 2018.**

In the Companies (Audit and Auditors) Rules, 2014, in the Annexure, for Forms ADT-1 and ADT-2, the following forms has been substituted.

### **The Companies (Appointment and Qualification of Directors) 3rd Amendment Rules, 2018.**

In the Companies Appointment and Qualification of Directors) Rules, 2014, in the annexure, (i) for form DIR-3, the following form has been substituted.

### **The Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018. Dated 07-05-2018**

In the Companies (Appointment and Qualification of Directors) Rules, 2014, rule 5 shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or



(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.” .

3. In the principal rules, in rule 16, for the word “shall”, the word “may” shall be substituted.

**The Companies (Appointment and Qualification of Directors) Amendment Rules, 2018.** Effective from the 26th of January, 2018. in rule 9,

(A) for the marginal heading, the following marginal heading shall be substituted, namely:-  
“Application for allotment of Director Identification Number before appointment in an existing company”;

(B) for sub-rule (1), the following shall be substituted, namely:-

“ (1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the Central Government for allotment of a Director Identification Number (DIN) along with such fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (SPICe) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICe)”;

(C) in sub-rule (3),

(I) In sub-clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:-

“(iiia) board resolution proposing his appointment as director in an existing company”;

(II) for clause (b), the following clause shall be substituted, namely:-

“(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by a company secretary in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company.”.

3. In annexure to the principal rules,

(A) for form No. DIR-3 the following form shall be substituted, namely:-

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

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

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

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

(a) a joint venture;

(b) a wholly owned subsidiary; and

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

**Companies (Removal of Difficulties) Order, 2018 Dated 21.02.2018**

Companies (Removal of Difficulty) Order, 2018 dated 21st February, 2018 has amended Section 169 of the Companies Act, 2013, to provide for removal of re-appointed independent director by way of a special resolution.

Revised section shall be read as under:

“A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.”

**Companies (Meetings of Board and Its Powers) Amendment Rules, 2018, Dated: 07-05-2018**

In rule 4, relating to Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means, the following proviso has been inserted, namely:-

“Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.”

In rule 6, relating to Committees of the Board, for the words “every listed company”, the words “every listed public company” has been substituted.

The Revised Rule shall be read as under:

The Board of directors of every listed public 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'.

In the principal rules, for rule 13, the following rule has been substituted, namely.

Revised Rule shall be read as under:

13. Special Resolution.- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.

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

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

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

1. In Rule 3-

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

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

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

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

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

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

#### **The Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018.**

in rule 19, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

“(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.”.

#### **The Companies (Registered Valuers and Valuation) Amendment Rules, 2018.**

The Companies (Registered Valuers and Valuation) Rules, 2017, in rule 11, for the figures, letters and word "31st March, 2018", occurring at both the places, the figures, letters and word "30th September, 2018" shall be substituted.

#### **Companies (Registered Valuers and Valuation) Rules, 2017 Notification dated 18th October, 2017 effective from 18th October, 2017**

### **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.**

**Companies (Restriction on number of layers) Rules 2017/Notification dated 20<sup>th</sup> September, 2017 effective from 20<sup>th</sup> September, 2017**

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

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

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

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

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

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

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

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

(b) a non-banking financial company as defined in clause (f) of Section 45\_1 of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

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

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

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

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

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

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

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

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

**Companies (Arrests in connection with investigation by SFIO) Rules, 2017 Notification dated 24<sup>th</sup> August, 2017**

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.

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



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

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

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.”

## **7. SEBI Laws:**

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

**The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018.**

In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, -

I.in regulation 70, in sub-regulation (1),-

- A. clause (c) shall be omitted; and
- B. the proviso to sub-regulation (1) shall be omitted.

II.in regulation 70, after sub-regulation (1) and before sub-regulation (2), the following sub-regulation shall be inserted, namely,-

(1A)The provisions of this Chapter, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985[1 of 1986]or the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016[No. 31 of 2016]whichever applicable."

**The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018.**

In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in regulation 82, clause (c) shall be omitted.

**The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2017 dated 14<sup>th</sup> 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 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)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](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)

### **The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2017.**

In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in regulation 37, in the proviso, in clause (b), after the word and symbol “category I” and before the words “or a”, the words and symbols “or category II” shall be inserted.

### **SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2017 dated 31<sup>st</sup> 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.

“(zla) “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.”

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

**Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2017 dated 15<sup>th</sup> 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 actionin 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](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)

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

### **The SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 dated 31-05-2018**

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

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

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

The revised Regulation 10 is as under:

#### **General exemptions.**

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

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

(i) Immediate relatives;

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

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

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

(v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

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

(i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and

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

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

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

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

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

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

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

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

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

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

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



Provided that,—

- (i) both the acquirer and the seller are the same at all the stages of acquisition; and
- (ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.

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

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

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

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

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

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

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

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

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

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

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

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

Provided that the conditions specified under sub-regulation (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](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)

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

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

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015,-

(i) in regulation 7, in sub-regulation (2), the words “both physical and electronic” shall be omitted.

(ii) in regulation 40, in sub-regulation (1),

a. the symbol “.” shall be substituted with the symbol.

b. the following proviso shall be inserted, namely, -“Provided that, except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.”

(iii) in Schedule VII, in clause A, sub-clause (2) shall be omitted.

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

In The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015,

I. in regulation 2, in sub-regulation (1), after clause (n) and before clause (o), the following clause shall be inserted, namely, -

2“(na) “Insolvency Code” means the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016]”

II. in regulation 15, after sub-regulation (2) and before sub-regulation (3), the following sub-regulations shall be inserted, namely,-

"(2A) The provisions as specified in regulation 17 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code:

Provided that the role and responsibilities of the board of directors as specified under regulation 17 shall be fulfilled by the interim resolution professional or resolution professional in accordance with sections 17 and 23 of the Insolvency Code.

(2B) The provisions as specified in regulations 18, 19, 20 and 21 shall not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing corporate insolvency resolution process under the Insolvency Code:

Provided that the roles and responsibilities of the committees specified in the respective regulations shall be fulfilled by the interim resolution professional or resolution professional."

III.in regulation 23, in sub-regulation(4), the following proviso shall be inserted, namely,-  
"Provided that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;"

IV.in regulation 24, in sub-regulation (5), after the word,"court/Tribunal" and before the symbol “.”, the following words shall be added, namely,-

", or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

V.in regulation 24, in sub-regulation (6), after the word, "court/Tribunal" and before the symbol “.”,the following words shall be added, namely,-

", or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved"

VI.in regulation 31A, after sub-regulation (8),the following sub-regulation shall be inserted, namely,-

"(9)The provisions of sub-regulations (5), (6) and clause (b) of sub regulation (7) of this regulation shall not apply, if re-classification of existing promoter or promoter group of the listed entity is as per the resolution plan approved under section 31 of the Insolvency Code, subject to the following conditions:(i)the existing promoter and promoter group seeking re-classification shall not remain in control of the listed entity; and (ii)such re-classification along with the underlying rationale shall be disclosed to the stock exchanges within one day of the resolution plan being approved."

VII.in regulation 37, after sub-regulation (6), the following sub-regulation shall be inserted, namely,-

"(7)The requirements as specified under this regulation and under regulation 94 of these regulations shall not apply to a restructuring proposal approved as part of a resolution plan by the Tribunal under section 31 of the Insolvency Code, subject to the details being disclosed to the recognized stock exchanges within one day of the resolution plan being approved."

VIII.in schedule III, in part A, in clause A, after sub-clause 15, the following sub-clause shall be inserted, namely,-

"16.The following events in relation to the corporate insolvency resolution process (CIRP) of a listed corporate debtor under the Insolvency Code:

a)Filing of application by the corporate applicant for initiation of CIRP, also specifying the amount of default;

- b )Filing of application by financial creditors for initiation of CIRP against the corporate debtor, also specifying the amount of default;
- c) Admission of application by the Tribunal, along with amount of default or rejection or withdrawal, as applicable;
- d)Public announcement made pursuant to order passed by the Tribunal under section 13 of Insolvency Code;
- e)List of creditors as required to be displayed by the corporate debtor under regulation 13(2)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- f) Appointment/ Replacement of the Resolution Professional;
- g) Prior or post-facto intimation of the meetings of Committee of Creditors;
- h)Brief particulars of invitation of resolution plans under section 25(2)(h) of Insolvency Code in the Form specified under regulation 36A(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- i) Number of resolution plans received by Resolution Professional;
- j) Filing of resolution plan with the Tribunal;
- m) Approval of resolution plan by the Tribunal or rejection, if applicable;
- k) Salient features, not involving commercial secrets, of the resolution plan approved by the Tribunal, in such form as may be specified;
- l) Any other material information not involving commercial secrets.

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

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

**The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018. Effective from April 1, 2019.**

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, -

(a) in regulation (2), in sub-regulation(1), in clause (zb), -i.

the following proviso shall be inserted after the definition and before the existing proviso, namely, -



“Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.”

ii. in the existing proviso, which shall be renumbered as the second proviso, the word “further” shall be inserted after the word “Provided” and before the word “that”.

(b) in regulation 15, in sub-regulation (2) as well as in the proviso to clause (b) of sub-regulation (2), the figure “17A” shall be inserted after the figure “17” and the figure “24A” be inserted after the figure “24”.

(c) in regulation (16), in sub-regulation (1), -

i. in clause (b), -

1. in sub-clause (ii), the words “or member of the promoter group of the listed entity” shall be inserted after the words “associate company”.

2. after the existing sub-clause (vii), the following new sub-clause shall be inserted, namely,-

“(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.”

The aforesaid amendments mentioned in clause (i) shall come into force with effect from October 1, 2018.

ii. in clause (c), the word “twenty” shall be substituted with the word “ten”.

iii. in clause (d), the words “executive directors, including all functional heads” shall be substituted with the following—

“chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer.”

(d) in regulation 17, -

i. in sub-regulation (1), -

1. in clause (a), the following proviso and explanation shall be inserted-

“Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;

Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

2. after the existing clause (b), the following new clause shall be inserted, namely,-

“(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.”

ii. after the existing sub-regulation (1), the following new sub-regulation shall be inserted, namely,-  
“(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.”

iii. after the newly inserted sub-regulation (1A) as above, the following new sub-regulation shall be inserted, namely, -

“(1B). With effect from April 1, 2020, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall –

(a) be a non-executive director;

(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013:

Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.

Explanation-The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

iv. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -“(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director ;

Explanation I –For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II -The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

**v. in sub-regulation (6), -**

1. after clause (c), the following new sub-clause shall be inserted, namely,-

“(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent

of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.”

2. after the existing clause (d), the following new clause shall be inserted, namely,-

“(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

- (i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
- (ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.”

**vi. the sub-regulation (10) shall be substituted with the following, namely, -**

“(10) The evaluation of independent directors shall be done by the entire board of directors which shall include –

(a) performance of the directors; and

(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation ,the directors who are subject to evaluation shall not participate.”

vii. after the existing sub-regulation 10, the following new sub-regulation shall be inserted, namely,:

“11. The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.”

(e) after the existing regulation 17, the following new regulation shall be inserted, namely, -

“17A. Maximum number of directorships. The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time-

(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

Provided that a person shall not serve as an independent director in more than seven listed entities.

(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”

(f)in regulation 19, -

a. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely,-

“(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.”

b. after the existing sub-regulation(3), the following new sub-regulation shall be inserted, namely,

-“(3A) The nomination and remuneration committee shall meet at least once in a year.”

(g)in regulation 20, -

a.in sub-regulation (1), for the words “the mechanism of redressal of grievances” the words “various aspects of interest” shall be substituted.

b. after the existing sub-regulation (2), the following new sub-regulation shall be inserted, namely, -

“(2A) At least three directors, with at least one being an independent director, shall be members of the Committee.”

c. sub-regulation (3) shall be substituted with the following, -

“(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.”

d. after sub-regulation 3, the following new sub-regulation shall be inserted, namely -“(3A)The stakeholders relationship committee shall meet at least once in a year.”

(h)in regulation 21, -

a. after the existing sub-regulation (3), the following new sub-regulation shall be inserted, namely,-

“(3A) The risk management committee shall meet at least once in a year.”

b.in sub-regulation (4), after the words “as it may deem fit” and before the symbol “.”, the words “such function shall specifically cover cyber security” shall be inserted.

c.in sub-regulation (5), the figure “100” shall be substituted with the figure “500”.

(i) in regulation 23, -

a.in sub-regulation (1), the words “including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly” shall be inserted after the words “related party transactions” and before the symbol “:”.

b. after sub-regulation (1), the following new sub-regulation shall be inserted, namely,-  
“(1A) Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed two percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.”

c.in sub-regulation (4), the words “the related parties shall abstain from voting on” shall be substituted with the words “no related party shall vote to approve”.

d.in sub-regulation (7), the words “abstain from voting” shall be substituted with the words “not vote to approve the relevant transaction”.

e. after the existing sub-regulation (8), the following new sub-regulation shall be inserted, namely, -

“(9) The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.”

The amendment shall come into force with effect from the half year ending March 31, 2019.

(j)in regulation 24, -

a. the existing sub-regulation (1) shall be substituted with the following, namely, -“(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.

Explanation-For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth

respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.”

b.in the Explanation to sub-regulation (4), the word “material” appearing after the word “unlisted” shall be omitted.

(k)after the existing regulation 24, the following new regulation shall be inserted, namely,-  
“24A.Secretarial Audit .Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.”

(l)in regulation 25, -

i.the existing sub-regulation (1) shall be substituted with the following new sub-regulation, namely, -

“(1) No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.”

ii. after the existing sub-regulation 7, the following new sub-regulations shall be inserted, namely, -

“(8) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

(9) The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

(10) With effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance (‘D and O insurance’) for all their independent directors of such quantum and for such risks as may be determined by its board of directors.”

(m)in regulation 29, in sub-regulation (1), in clause (f), the proviso thereto shall be omitted with effect from October 1, 2018.

(n)in regulation 32, after the existing sub-regulation (7), the following new sub-regulation shall be inserted, namely, -

“(7A) Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.”

(o) in regulation 33, in sub-regulation (3), -i.  
in clause (b), -

a. the word ‘may’ shall be replaced with the word ‘shall’;

b. the words and symbol “subject to following:” shall be substituted with the symbol “.” ; and

c. sub-clauses (i) and (ii) shall be omitted.

ii. in clause (e), the words “or limited reviewed” shall be inserted after the words “audited” and before the words “financial results”.

iii. after the existing clause (f), the following new clauses shall be inserted, namely, -

“(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.”

(p) in regulation 33, the following new sub-regulation shall be inserted, namely, -

“(8) The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/ companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.”

(q) in regulation 34, -

i. the existing sub-regulation (1) shall be substituted with the following new sub-regulation, namely, -

“(1) The listed entity shall submit to the stock exchange and publish on its website-

(a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;

(b)in the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.”

The amendment at clause (q) shall be applicable in respect of the Annual report filed for the year ended March 31, 2019and thereafter.

(r)in regulation 36, -

i.in sub-regulation (1), in clause (a), the words “ for the purpose” shall be omitted and the words “either with the listed entity or with any depository” shall be inserted.

The amendment at clause (r)(i) shall be applicable in respect of the Annual report filed for the year ended March 31, 2019and thereafter.

ii. after the existing sub-regulation (3), the following new sub-regulations shall be inserted, namely, -

“(4) The disclosures made by the listed entity with immediate effect from date of notification of these amendments-

(a) to the stock exchanges shall be in XBRL format in accordance with the guidelines specified by the stock exchanges from time to time; and

(b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool:

Provided that the requirement to make disclosures in searchable formats shall not apply in case there is a statutory requirement to make such disclosures in formats which may not be searchable, such as copies of scanned documents.

(5) The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:

(a)Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;

(b)Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.”

(s) in regulation 44, -

(i) the title ‘Voting by shareholders’ shall be replaced with the title‘ Meetings of shareholders and voting’; and



(ii) after the existing sub-regulation (4), the following new sub-regulations (5) and (6) shall be inserted, namely, -

“(5) The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.

(6) The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

Explanation: The top 100 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

(t) in regulation 46, in sub-regulation (2),

-i. for the words “on its website”, the words “under a separate section on its website” shall be substituted;

ii. after the existing clause (q), the following new clauses shall be inserted, namely, -

“(r) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.

(s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.”

(u) in Schedule II, -

a. in Part C, in clause A, after the existing sub-clause (20), the following new sub-clause shall be inserted, namely, -

“(21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans/advances/investments existing as on the date of coming into force of this provision.”

b. in Part D, -i. in clause A, after the existing sub-clause (5), the following new sub-clause shall be inserted, namely, -

“(6) recommend to the board, all remuneration, in whatever form, payable to senior management.”

ii. the contents under clause B shall be substituted with the following new provisions, namely,

-

“The role of the committee shall inter-alia include the following:

(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.

(2) Review of measures taken for effective exercise of voting rights by shareholders. (3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

(4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.”

c.in Part E, clause D shall be omitted.

The amendment in clause c.above shall come into effect from April 1, 2020.

(v)in Schedule III, in Part A, under the Clause A dealing with ‘Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of Regulation (30)’,after the existing sub-clause 7, the following new sub-clauses shall be inserted, namely, -

“(7A) In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.

(7B) Resignation of auditor including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:

i. Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges.

ii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided.

iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the detailed reasons as specified in sub-clause (i) above.”

(w)in Schedule IV, in Part A, in clause BB, the existing sub-clauses(i) and (ii) thereunder shall be substituted with the following, namely,-

“i. The management shall mandatorily make an estimate which the auditor shall review and report accordingly.

ii. Notwithstanding the above, the management may be permitted to not provide estimate on matters like going concerns or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly.”

(x)in Schedule V, -

a.in Part A dealing with ‘Related Party Disclosure’, after the existing clause 2, the following new clause shall be inserted, namely,-

“(2A) Disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.”

b.in Part B dealing with ‘Management Discussion and Analysis’, in clause 1, after the existing sub-clause (h), the following new sub-clauses shall be inserted, namely,-

“(i) details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:

(i)Debtors Turnover

(ii)Inventory Turnover

(iii)Interest Coverage Ratio

(iv)Current Ratio

(v)Debt Equity Ratio

(vi)Operating Profit Margin (%)

(vii)Net Profit Margin (%)or sector-specific equivalent ratios, as applicable.

(j) details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.”

c.in Part C dealing with ‘Corporate Governance Report’, -

i.in clause (2), -

1.in sub-clause (c), after the word “chairperson”, the symbol and words “, and with effect from the Annual Report for the year ended 31st March 2019, including separately the names of the listed entities where the person is a director and the category of directorship” shall be inserted.

3.after the existing sub-clause (g), the following new sub-clauses shall be inserted, namely,-

“(h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:

(i) With effect from the financial year ending March 31, 2019, the list of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and (

ii) With effect from the financial year ended March 31, 2020, the names of directors who have such skills/expertise/competence

(i) confirmation that in the opinion of the board, the independent directors fulfill the conditions specified in these regulations and are independent of the management.

(j) detailed reasons for the resignation of an independent director who resigns before the expiry of his tenure along with a confirmation by such director that there are no other material reasons other than those provided.”

ii. in clause (9), after the existing sub-clause (p), the following new sub-clause shall be inserted, namely, -

“q) list of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad.”

iii. in clause (10), after the existing sub-clause (g), the following new sub-clauses shall be inserted, namely, -

“(h) Details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Regulation 32 (7A).

(i) a certificate from a company secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority.

(j) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof:

Provided that the clause shall only apply where recommendation of / submission by the committee is required for the approval of the Board of Directors and shall not apply where

prior approval of the relevant committee is required for undertaking any transaction under these Regulations.

(k)total fees for all services paid by the listed entity and its subsidiaries, on a consolidated basis, to the statutory auditor and all entities in the network firm/network entity of which the statutory auditor is a part.”

Save as specified otherwise, the amendments to Schedule V shall be applicable in respect of Annual reports filed for the year ended March 31, 2019and thereafter.

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

**The revised regulation 37 is as under:**

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

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

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

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

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

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

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

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

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

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

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## **Update on FEMA**

**Student are advised to read the updates on the following master directions relating to FDI, ODI and ECB.**

1. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 and subsequent amendments.
2. RBI Master Direction Foreign Investment in India dated 04.01.2018
3. RBI Master Direction - External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers
4. Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad (Updated as on January 04, 2018)
5. Master Direction - Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign entities (Updated as on May 10, 2018)
6. Master Direction – Reporting under Foreign Exchange Management Act, 1999