



THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME (OLD SYLLABUS)

for

December, 2020 Examination

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

MODULE 1

PAPER 2

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Lesson 1 – Secretarial Audit and Secretarial Standards – An Overview

1. Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

Ministry of Corporate Affairs vide its Notification G.S.R.13 (E) dated January 3, 2020 has amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

According to the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020 the existing Rule 8A has been substituted as under:

“8A. every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary.”

Further Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which require the class of companies required to take Secretarial Audit Report has also been amended by inserting the Clause (c) which is as under:

“(c) Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.” The following Explanation has also been inserted below Rule 9:

“Explanation: - For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.”

The above said amended provisions shall be applicable in respect of financial year commencing on or after April 1, 2020.

For more details visit: https://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

2. Revised effective date for applicability of (a) ICSI Auditing Standards and (b) Guidelines on Issuance of Diligence Report for Banks by Peer Reviewed Units

a) ICSI Auditing Standards

The Institute has issued the following four ICSI Auditing Standards mandatorily applicable for Audit Engagements accepted by the Auditor on or after 1st April, 2020

- Auditing Standard on Audit Engagement (CSAS-1)
- Auditing Standard on Audit Process and Documentation (CSAS-2)
- Auditing Standard on Forming of Opinion (CSAS-3)
- Auditing Standard on Secretarial Audit (CSAS-4)

In view of the developments arising due to the spread of Covid-19 pandemic, the mandatory applicability of ICSI Auditing Standards CSAS-1 to CSAS-4 is hereby extended for Audit Engagements accepted by the Auditor on or after 1st October, 2020.

For more details visit:

https://www.icsi.edu/media/webmodules/Revised_Announcement_for_members-Auditing_Standards_and_Peer_Review.pdf

Lesson 2 – Checklist - Secretarial Audit

1. General Circular No.10/2020, Clarification on spending of CSR funds for COVID-19 dated 23rd March, 2020

It is clarified that spending of CSR funds for COVID-19 is eligible CSR activity. Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

For more details visit:

[https://upload.indiacode.nic.in/showfile?actid=AC_CEN_22_29_00008_201318_1517807327856&type=circular&filename=\(x\)_23032020covid.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_22_29_00008_201318_1517807327856&type=circular&filename=(x)_23032020covid.pdf)

Lesson 3 – Due Diligence – An Overview

1. Issuance of Diligence Report for Banks by Peer Reviewed Units only

The Council of ICSI has issued Guidelines for mandatory Peer Review for various Certification and Audit services in phased manner starting from 1st April, 2020. The detailed Guidelines are available at website at weblink <https://www.icsi.edu/prb/guidelines-peer-review/>

In view of the current situation, it is hereby informed that the requirement to issue Diligence Report for Banks in case of Consortium Lending / Multiple Banking Arrangements by Peer Reviewed Units only shall be effective from 1st July, 2020 instead of 1st April, 2020.

For more details visit:

https://www.icsi.edu/media/webmodules/Revised_Announcement_for_members-Auditing_Standards_and_Peer_Review.pdf

Lesson 4 - Issue of Securities

1. Securities And Exchange Board of India (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2020 dated February 05, 2020

The SEBI has issued SEBI (Issuing observations on draft offer documents pending regulatory actions) Order, 2020 wherein it has said that draft offer documents filed by companies for sale of securities will be kept in abeyance whenever there is a case of probable investigation or a probe is already in progress against the entities.

For more details visit: https://www.sebi.gov.in/legal/general-orders/feb-2020/sebi-issuing-observations-on-draft-offer-documents-pending-regulatory-actions-order-2020_45903.html

2. Circular issued dated January 22, 2020

The Securities and Exchange Board of India (SEBI) has simplified the rights issue process to make it more efficient and effective by amending the ICDR Regulations and LODR Regulations. SEBI has made changes to the Rights Issue process by reducing the period for advance notice to stock exchange, Issuance of newspaper advertisement disclosing date of completion of dispatch and intimation of same to the stock exchanges for dissemination on their websites, Introduction of dematerialized Rights Entitlements (REs), Trading of dematerialized REs on stock exchange platform.

For more details visit: https://www.sebi.gov.in/legal/circulars/jan-2020/streamlining-the-process-of-rights-issue_45753.html

3. SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020 (June 16, 2020)

SEBI has notified amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as under: -

In regulation 172, in sub -regulation (3) for the words “six months” the words “two weeks” shall be substituted.

Brief Analysis

With this amendment the relevant provision of regulation 172(3) under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be read as;-

Eligibility Conditions for Qualified Institutions Placement

172(3) The issuer shall not make any subsequent qualified institutions placement until the expiry of two weeks from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

For more details visit: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2020_46885.html

4. SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020 (June 22, 2020)

Rationale behind the amendment

Due to serious challenges faced by the corporate sector in the wake of developments related to COVID-19, SEBI has decided to provide an additional option to the existing pricing methodology for preferential issuance. In this regards SEBI has notified the Issue of Capital and Disclosure Requirements (Second Amendment) Regulations, 2020, whereby new regulation 164A to the SEBI (Issue of Capital and Disclosure Requirements), 2018 has been inserted which states pricing norms in the preferential issue of shares of companies having stressed assets.

“Pricing in preferential issue of shares of companies having stressed assets”

1. As per Regulation 164A(1) in case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume-weighted average price of the related equity shares quoted on a recognized stock exchange during the two weeks preceding the relevant date.
2. As per Regulation 164A(2) no allotment of equity shares shall be made unless the issuer company meets any two of the following criteria:
 - a) the issuer has disclosed all the defaults relating to the payment of interest/ repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non - Deposit taking Non -banking financial companies/ Deposit taking Non -banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November

21, 2019, and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default.

- b) there is an Inter -creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019.
- c) the credit rating of the financial instruments (listed or unlisted), credit instruments/borrowings (listed or unlisted) of the listed company has been downgraded to “D”.

3. The issuer company making the preferential issue shall ensure that the preference issue shall be made to a person not part of the promoter or promoter group as on the date of the board meeting to consider the preferential issue.

4. The resolution for the preferential issue an exemption from the open offer shall provide for the following:

- a) The votes cast by the shareholders in the ‘public’ category in favor of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that already holds specified securities shall not be included in the category of ‘public’ for this purpose.

Provided that where the company does not have an identifiable promoter; the resolution shall be deemed to have been passed if the votes cast in favor are not less than three times the number of the votes, if any, cast against it.

5. The proceeds of such preferential issues shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.

6. The allotment made shall be locked-in for a period of three years from the last date of trading approval.

For more details visit: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2020_46907.html

Lesson 6 - Due Diligence – Mergers & Amalgamations

1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020 (June 16, 2020)

SEBI notified the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020. SEBI makes the following regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. They shall come into force on the date of their publication in the Official Gazette.

I. In the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, in regulation 3, in sub-regulation (2), the following new proviso shall be inserted before the existing provisos, namely –
“Provided that the acquisition beyond five percent but upto ten percent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.”

The relevant provision of regulation 3(2) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is given hereunder as:-

3(2) - No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulation.

Rationale behind the amendment

As per regulation 3(2) any acquirer along with a person acting in concert, holding 25% stake (or more) in listed entities, were allowed to acquire further 5% stake in any financial year, without triggering open offer obligation under Takeover Code.

SEBI has granted one-time relaxation, allowing acquired and PAC to acquire 10% stake in listed companies, already holding 25% and more stake (but less than 75% stake), without triggering open offer obligation under Takeover Code in Financial Year 2020-21. The increase in limit is permitted only via a preferential issue of equity shares.

II. In the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, in regulation 6, in sub-regulation (1), the following shall be inserted after the first proviso, namely,-

“The relaxation from the first proviso is granted till March 31, 2021.”

The relevant provision of regulation 6(1) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is given hereunder as;-

Voluntary Offer

6.(1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations, subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding:

Provided that where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation.

Rationale behind the amendment

Earlier, a shareholder holding 25% or more of shares or voting rights was permitted to make a voluntary open offer, but only if he had not acquired any shares of the company via the creeping acquisition route in the preceding 52 weeks. That condition has now been relaxed till March 31, 2021.

For more details visit: https://www.sebi.gov.in/legal/regulations/jun2020/securities-and-exchange-board-of-india-substantial-acquisition-of-sharesand-takeovers-amendment-regulations-2020_46884.html

2. SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020 (June 22, 2020)

SEBI has notified amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as under:-

In regulation 10 a new sub-regulation (2B) inserted as:-

“any acquisition of shares or voting rights or control of the target company by way of the preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital

and Disclosure Requirements) Regulations, 2018 **shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.**

Explanation: The exemption from the open offer shall also apply to the target company with infrequently traded shares which is compliant with the provisions of subregulations (2), (3), (4), (5),(6), (7) and (8) of regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of regulation 165 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.”

Rationale behind the amendment

Listed Companies coming up with preferential issues under Regulations 164(A) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 will not trigger mandatory open offers to be made by such investors, under Regulations 3 & 4 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

For more details visit: https://www.sebi.gov.in/legal/regulations/jun-2020/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2020_46908.html

Lesson 12 - Compliance Management

1. Circular issued dated January 22, 2020

SEBI has issued circular specifying the uniform structure for imposing fines as a first resort for noncompliance with certain provisions of the Listing Regulations, freezing of entire shareholding of the promoter and promoter group and the standard operating procedure for suspension of trading in case the non-compliance is continuing and/or repetitive. The stock exchange shall with having regard to the interests of investors and the securities market take action in case of non-compliance with the listing regulations and follow the standard operating procedure for suspension and revocation of suspension of trading of specified securities.

For more details visit: <https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html>

2. Circular issued dated January 17, 2020

As per Regulations 52(7) of the SEBI LODR Regulations, a listed entity is required to submit to the stock exchange, a statement indicating deviation or variation, if any, in the use of proceeds of issue of nonconvertible debt securities or nonconvertible redeemable preference shares (NCRPs), from the objects stated in the offer document/Information memorandum.

For more details visit: <https://www.sebi.gov.in/legal/circulars/jan-2020/format-for-statement-indicating-deviation-or-variation-in-the-use-of-proceeds-of-issue-of-listed-non-convertible-debt-securities-or-listed-non-convertible-redeemable-preference-shares-ncrps-45710.html>

3. Additional requirements as per SEBI circular dated May 20, 2020

Listed entities should endeavour to ensure that all investors have access to timely, adequate and updated information. Towards this end, entities are encouraged to evaluate the impact of the CoVID -19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible and disseminate the same. An illustrative list of information that listed entities may consider disclosing, subject to the application of materiality, is given below:

- Impact of the CoVID -19 pandemic on the business;
- Ability to maintain operations including the factories/units/office spaces functioning and closed down;

- Schedule, if any, for restarting the operations;
- Steps taken to ensure smooth functioning of operations;
- Estimation of the future impact of CoVID -19 on its operations;
- Details of impact of CoVID -19 on listed entity's –
 - capital and financial resources;
 - profitability;
 - liquidity position;
 - ability to service debt and other
 - financing arrangements;
 - assets
 - internal financial reporting and
 - control
 - supply chain;
 - demand for its products/services;
- Existing contracts/agreements where non -fulfilment of the obligations by any party will have significant impact on the listed entity's business;
- Other relevant material updates about the listed entity's business.

The above list is only illustrative and not exhaustive. Further, to have continuous information about the impact of CoVID -19 on operations, listed entities may provide regular updates, as and when there are material developments.

Disclosure in Financial Statement

Additionally, while submitting financial statements under Regulation 33 of the LODR, listed entities may specify/include the impact of the CoVID -19 pandemic on their financial statements, to the extent possible.

No Selective Disclosures

When listed entities disclose material information related to the impact of CoVID -19, they should not resort to selective disclosures, keeping in mind the principles governing disclosures and obligations of a listed entity as prescribed in LODR Regulations, more specifically, having regard to the requirements of Regulation 4(2)(e) of the LODR on disclosure and transparency. Depending on circumstances peculiar to

a listed entity and on account of passage of time, the listed entity shall revisit, refresh, or update its previous disclosures.

Regulation 4(2)(e)

Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

- (i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non -financial disclosure.
- (ii) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.
- (iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

For more details visit: https://www.sebi.gov.in/legal/circulars/may-2020/advisory-on-disclosure-of-material-impact-of-covid-19-pandemic-on-listed-entities-under-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_46688.html

4. Format for Statement indicating Deviation or Variation in the use of proceeds of issue of listed non-convertible debt securities or listed nonconvertible redeemable preference shares (NCRPs) (17th January, 2020)

As per Regulations 52(7) of the SEBI LODR Regulations, a listed entity is required to submit to the stock exchange, a statement indicating deviation or variation, if any, in the use of proceeds of issue of non-convertible debt securities or non-convertible redeemable preference shares (NCRPs), from the objects stated in the offer document/Information memorandum.

For more details visit: <https://www.sebi.gov.in/legal/circulars/jan-2020/format-for-statement-indicating-deviation-or-variation-in-the-use-of-proceeds-of-issue-of-listed-non-convertible-debt-securities-or-listed-non-convertible-redeemable-preference-shares-ncrps-45710.html>

5. Companies Bill, 2020 :

The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha on March 17, 2020. Students are advised to go through the provision for the understanding of the proposed amendment in the Act. The key highlights of the Bill are as under:

Producer companies: Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.

Changes to offences: The Bill makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.

Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the Act, and (iii) limits the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.

Direct listing in foreign jurisdictions: The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions. Exclusion from listed companies: The Bill empowers the central government, in consultation with the Securities

and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".

Remuneration to non-executive directors: The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other wholetime directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.

Beneficial shareholding: Under the Act, if a person holds beneficial interest of at least 10% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company. The company is required to note the declaration in a separate register. The Bill empowers the central government to exempt any class of persons from complying with these requirements if considered necessary in public interest.

Exemptions from filing resolutions: The Act requires companies to file certain resolutions with the Registrar of Companies. These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans, or to provide guarantees or security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.

Corporate Social Responsibility (CSR): Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy. The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.

Periodic financial results for unlisted companies: The Bill empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or review of such results.

Benches of NCLAT: The Bill seeks to establish benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified.

The copy of the bill is available at the following link:

For more details visit: <https://www.egazette.nic.in/WriteReadData/2020/218806.pdf>