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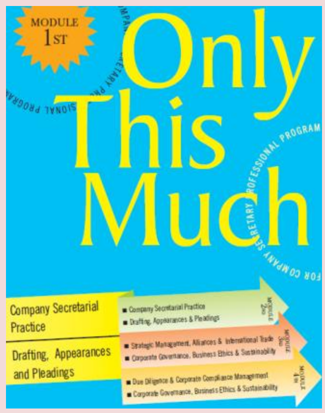

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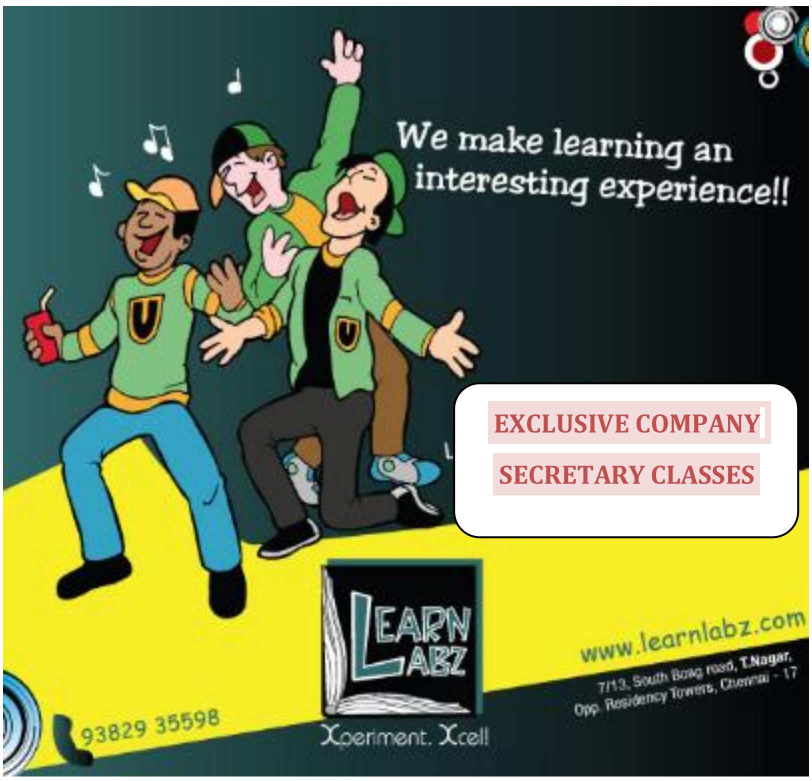

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Company Law/ Company Secretarial Practice/ Corporate Restructuring

1. Amendments in MCA-21 & Filing aspects
2. Amendments in Clauses of Memorandum Of Association
3. *Amendments in Unlisted Public Companies PREFERENTIAL ALLOTMENT Rules u/s. 81(1A)*
4. AMENDMENTS IN GENERAL MEETINGS & BOARD MEETINGS RELATED
5. Amendments in Managerial Remuneration under Schedule XIII
6. *Amendments in Related Party Transactions under Sections* 295, 297 & 314 *of Companies Act, 1956*
7. Amendments in Merger of Government Companies u/s. 396
8. DEFUNCT COMPANIES & FAST TRACK EXIT SCHEME
9. *Form & Contents of Annual Accounts under Revised Schedule VI*

For Direct & Indirect Tax Laws Amendments, download & print the ICSI Supplement from this link [this is applicable for CS Executive & Professional Program exams

CLICK HERE FOR FINANCIAL MANAGEMENT THEORY

Glance through MCA Guidelines on Governance

Securities Law/ Due Diligence

1. Amendments in SEBI ICDR Regulations, 2009
2. Amendments in Equity Listing Agreement
3. *Public Issue by SME's & SME Equity Listing Agreement (most predicted question for this exam)*
4. Debt market issues & Securitised Debt Listing Agreement
5. Revised Insider Trading Disclosures
6. NEW TAKEOVER CODE, 2011

Corporate Governance/ Securities Law

1. New Voluntary Governance Codes in India (including *MCA's Corporate Governance & CSR Code,* Secretarial Audit, ICSI's recommendations)
2. New Governance Codes abroad (including UK Corporate Governance & Stewardship Codes)
3. Other Amendments – Internal Control, Credo & Green Tribunal

Other Laws for CS Exams:

1. Amendments in FEMA & CONSOLIDATED Foreign Direct Investment (FDI) POLICY, 2012 [FOR DRAFTING & ALLIANCES IN PROFESSIONAL PROGRAM, ECONOMIC LAWS IN EXECUTIVE PROGRAM]
2. FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 & RULES 2011 [FCRA] replacing Old Act [FOR ECONOMIC LAWS IN EXECUTIVE PROGRAM & HAS COMPOUNDING PROVISIONS AS RELEVANT FOR DRAFTING]
3. Competition Act, 2002 & Mergers, Amalgamations, Acquisitions & Takeovers (MAAT) [FOR DRAFTING & CORPORATE RESTRUCTURING IN PROFESSIONAL PROGRAM & ECONOMICS LAWS IN EXECUTIVE PROGRAM]
4. Legal Metrology Act, 2009 replacing Standard Weights & Measures Act [FOR ECONOMIC LAWS IN EXECUTIVE PROGRAM]

MCA-21 & Filing Aspects

Almost all the filings are through **E-FILING mode**, all the payments are in **E-PAYMENTS mode** and all the certificates issued by RoC are **E-CERTIFICATES.** The concepts of **E-MEETINGS & E-VOTINGS** are discussed further.

- **Quick online incorporation process is available for formation of company WITHIN 24 hours now possible in India, kudos to the online initiative.**
- **The condonation of delay relating to rectification of charges under Section 141 will be dealt by ROC in place of Company Law Board.**

DIRECTORS IDENTIFICATION NUMBER (DIN) APPLICATIONS

The DIN-1 application can also be submitted ONLINE by the applicant himself using his DSC and has to be digitally signed by the practicing Chartered Accountants, Company Secretaries or Cost Accountants, who shall also verify the particulars of the applicants. Where the DIN 1 is VERIFIED by the professional, the DIN will be approved by the system IMMEDIATELY ONLINE.

REVISED ADDITIONAL FILING FEES FOR E-FORMS:

Period of Delay	Fixed rate of additional fee
Upto 30 days	Two times of normal fee
More than 30 days and upto 60 days	Four times of normal fee
More than 60 days and upto 90 days	Six times of normal filing fee
More than 90 days	Nine times of normal filing fees

DEFAULTING COMPANIES:

Section 610 of the Companies Act, 1956 confers a right to any person to inspect any document kept with RoC such as the financials & returns of the company.

If the Company has DEFAULTED in filing up-to-date Balance Sheet, Profit & Loss Account and Annual Returns, then NO other filing EXCEPT certain event based filings shall be accepted from SUCH companies and also from OTHER companies where the director of SUCH company is a director. Auditors & Company Secretaries of such companies or any other practising professionals like CA/CS/CWA shall NOT issue any certificates TILL such defect is RECTIFIED and ACTION in case of default shall be taken. However, this DOES NOT apply to companies MARKED AS HAVING MANAGEMENT DISPUTE. The permissible filings are:

a) Filing by Directors of defaulting Companies in respect of such companies:- E-forms 2, 3 (for allotments), 5 (for capital), 23 (for resolutions requiring registration) & 61 (for compounding of offences).

(b) Filing by Directors of defaulting Companies in respect of Companies having the status of DORMANT COMPANIES:- E-forms 61 (for compounding of offences), DIN-3, 32 (for directors & secretary), 21 (for orders) & FTE (for fast track exit schemes).

(c) Filing by Directors of defaulting Companies in respect of Companies having the status as ACTIVE IN PROGRESS companies:- E-forms DIN-3, 32 (for directors & secretary), 2, 3 (for allotments), 5 (for capital), 21 (for orders), 23 (for resolutions requiring registration), 61 (for compounding of offences), 23AC, 23ACA, 66, 20B, 21A (for financials & returns), 23B (intimation by auditors) & FTE (for fast track exit schemes).

MCA has clarified that LLP of Chartered Accountants will NOT BE TREATED as a Body Corporate for the limited purpose of Section 226(3)(a) of the Companies Act, 1956. This means, a CA's LLP can audit accounts.

COMPANIES MARKED AS HAVING MANAGEMENT DISPUTE:

1. Court or CLB directed to maintain STATUS QUO (to maintain the same state of affairs) with respect to forms & status of directors.
2. Where RoC is a party, Court or CLB has granted injunction/stay from taking document into record.
3. Where RoC is neither a party nor intimated, then the liability is on the parties for compliance.

CLAUSES OF MEMORANDUM OF ASSOCIATION

NAME AVAILABILITY & APPROVAL

The fee for e-form 1A is raised to Rs.1000/- and if the Name is undesirable, then RoC may reject or ask for re-submission WITHIN 3 days of application and such applicant shall be given ONLY 2 opportunities for such re-submission. RoC will issue 'Name Approval Letter' once the name is neither undesirable nor existing, to the satisfaction of RoC. However, if the Name is certified by Practising CS/CA/CMA, then it shall be approved ONLINE without RoC's consideration.

Validity of Name Approval = 60 days [cannot be renewed further].

Meaning, within such period file all such forms pertaining to incorporation of the Company. However, even after the EXPIRY of 2 opportunities of re-submission or 60 days as mentioned above, the applicant will be at liberty to file new e-form 1A with prescribed fees of Rs.1000/-.

OBJECT CLAUSE – DURING INCORPORATION & AMENDMENT

The Object clause determines the BUSINESS of the company. The nature of the company will change based on the object clause. If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, then NAME of the company should be INDICATIVE of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.; Further if the object of the company is to carry on the business of Banking, Investing in other entities (NBFC), Insurance or to practice the profession of Architecture, Chartered Accountancy, Cost Accountancy & Company Secretaries, then the concerned Registrar of Companies/LLP shall incorporate the same only on production of **IN-PRINCIPLE APPROVAL / NOC** from the concerned regulator/professional Institutes (RBI, IRDA, Council of Architect, ICAI, ICWAI & ICSI).

SITUATION CLAUSE: **The approval from Company Law Board for shifting of registered office from ONE STATE TO ANOTHER STATE under Section 17 shall be dealt by ROC.**

Unlisted Public Companies PREFERENTIAL ALLOTMENT Rules u/s. 81(1A)

Preferential Allotment **MEANS** allotment of shares or other instrument convertible into shares INCLUDING hybrid instruments convertible into shares on PREFERENTIAL BASIS made pursuant to Section 81(1A) of the Act.

NOTE: Allotment shall be made within 60 days of receipt of application money in case of UNLISTED PUBLIC LIMITED companies. Though there is NO time limit to make allotment in case of PRIVATE LIMITED companies, it shall become 180 days if share application is made by a foreign investor. Listed companies shall comply with ICDR.

CONDITIONS FOR PREFERENTIAL ALLOTMENT

1. The persons to WHOM offer is proposed shall be UPTO 49 (in number) as per Section 67 of the Act. Otherwise, it shall be treated as a PUBLIC OFFER and provisions of SEBI shall apply.

2. Where warrants are issued on a preferential basis with an option to apply for and get the shares allotted, the issuing company shall determine beforehand the price of the resultant shares.

3. The Special resolution authorizing the board to make preferential issue shall be passed mentioning the name & description (address, occupation & their father's name) of the proposed allottees and it shall be ACTED UPON within 12 months.

4. The monies payable on subscription shall be received through cheque or demand draft or through banking channels & NOT by cash.

5. On such receipt of money, the company shall ALLOT within 60 days OR REPAY within NEXT 15 days OR REPAID with interest @ 12% p.a after SUCH period.

GENERAL & BOARD MEETINGS RELATED

SENDING FINANCIALS BY E-MAIL TO MEMBERS IS PERMITTED ON SATISFYING THE FOLLOWING CONDITIONS:

1. Advance opportunity to be given to member to register & update email id with the company or depository.
2. The companies WEBSITE should display these documents WELL IN ADVANCE & a publication shall be made in newspapers about the same & its availability of it for INSPECTION at the Registered office.
3. If member INSIST on physical copy, then it shall be sent by POST free of COST.

(**this is a measure as per Green Initiative of MCA after Postal Department has stopped Certificate of Posting**)

RESOLUTIONS UNDER POSTAL BALLOT [SECTION 192A READ WITH COMPANIES (PASSING OF THE RESOLUTION BY POSTAL BALLOT) RULES, 2011]

Postal Ballot INCLUDES voting by share holders by postal or electronic mode INSTEAD OF voting personally by presenting for transacting businesses in a general meeting of the company.

"VOTING BY ELECTRONIC MODE" MEANS a process for recording votes by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the entire voting gets registered and counted in a electronic registry in a CENTRALISED SERVER. Any agency getting a certificate of **Standardisation Testing & Quality Certification** (STQC) from Department of Information & Technology can enable a platform for ELECTRONIC VOTING for shareholders.

MEETINGS THROUGH VIDEO CONFERENCING OR E-MEETINGS

Board & Committee Meetings:

a. Electronic mode of board & committee meetings are permitted (ie) video conferencing is allowed. Quorum NEED NOT be present physically. E-QUORUM is allowed. However, every director shall attend atleast 1 MEETING PHYSICALLY every financial year.
b. **ROLL CALL:** To ensure the actual presence, a ROLL CALL shall be made by Chairman or Company Secretary where a director needs to state his place, location and then the existence of QUORUM (includes directors participating through video conferencing) may be certified. To make a ROLL CALL in case of voting by poll & it shall be noted. To ensure presence of QUORUM throughout the meeting, again a ROLL CALL shall be made at the END of meeting.
c. To record the Chairman's speech on SUMMARY of decisions taken & the consent/dissent thereof with respect to each agenda item and it shall be preserved for 1 YEAR therefrom.
d. Circulate DRAFT minutes in SOFT COPY within 7 days of meeting for comments/clarification & then enter in MINUTES BOOK.

General Meetings

a. Electronic mode of board & committee meetings are permitted (ie) video conferencing is allowed. The quorum of 2 (for private) or 5 (for public company) shall be present at the place of the meeting along with the Chairman & Secretary. Members participating through video conferencing shall NOT be counted for quorum.
b. The LISTED COMPANIES shall provide video conferencing connectivity in ATLEAST 5 TOP states based on the no. of shareholders or at places where there are ATLEAST 1000 shareholders as per their registered address with the Depository [Enabling Video conferencing is **OPTIONAL**].
c. To record the Chairman's speech on SUMMARY of decisions taken & the consent/dissent thereof with respect to each agenda item and it shall be preserved for 1 YEAR therefrom.
d. Circulate DRAFT minutes in SOFT COPY within 7 days of meeting for comments/clarification & then enter in MINUTES BOOK.

217(2A) under Directors Report	**Statement giving details of employees whose salaries are beyond prescribed limit – presently, Rs. 5 lakhs per month or Rs. 60 lakhs per annum OR in receipt of remuneration MORE THAN Managerial Personnel AND he along with Dependants HOLD 2% or more.**

MANAGERIAL REMUNERATION UNDER SCHEDULE XIII:

- Central Government approval will NOT be required for payment of commission to Non Executive directors in addition to sitting fees under Section 309 if it does not exceed:

- 1% of Net Profits in companies with MD & Whole time directors
- 3% of Net Profits in companies WITHOUT Managing & Whole time directors.

CONDITIONS FOR PAYMENT WHEN THERE IS NO OR INADEQUATE PROFITS

- In case of **LISTED OR SUBSIDIARY OF A LISTED COMPANY**: [MORE THAN 2 [X] Normal Minimum remuneration] or where there is Negative Effective Capital, REMUNERATION can be paid with Remuneration Committee approval (+) Special Resolution (Valid for 3 years) (+) specific details given in notice to shareholders of the meeting in which the said resolution is to be passed (+) Central Government Approval. Thus, the limit of 2 times of Normal Minimum Remuneration can be EXCEEDED by such listed companies ONLY with prior Central Government approval.
- Still a SUBSIDIARY OF A LISTED COMPANY NEED NOT require Central Government approval as mentioned above, if —
  i. the Remuneration Committee and Board of Directors of the holding company give their CONSENT for the amount of such remuneration of the applicant and for the said amount to be DEEMED REMUNERATION by the holding company for the purpose of section 198 of the Companies Act, 1956 AND
  ii. a special resolution has been passed at the general meeting of the company for payment of remuneration of the applicant AND
  iii the remuneration of the applicant is deemed to be remuneration PAID BY HOLDING company AND
  iv. all members of the subsidiary are BODIES CORPORATE.
- Even further BOTH LISTED COMPANY & ITS SUBSIDIARIES shall NOT require Central Government approval if –
  i. the remuneration is fixed by Board of Industrial and Financial Reconstruction (BIFR) or
  ii. the managerial person is NOT having any interest in the capital of the company or its holding company, directly or indirectly or through any other statutory structures (any entity which is entitled to hold shares in any company formed under any statute) AND
  iii. the managerial person is NOT having any direct or indirect interest or related to the directors or promoters of the company or its holding company at any time during last 2 years on/before date of appointment AND
  iv. the managerial person is having a GRADUATE level qualification with EXPERT and specialized knowledge in the field of his profession.

RELATED PARTY TRANSACTIONS

CONTRACTS IN WHICH DIRECTORS ARE INTERESTED U/S. 297

Online approval of Central Government for Section 297 transactions related to contract with directors and related persons for purchase or sale or supply of goods or materials or services on satisfaction of prescribed conditions:

1. Proposed contract is COMPETITIVE @ arm's length WITHOUT CONFLICT of interest & FAVOURABLE as compared to similar contracts.
2. NO default is made in debts or its interest or deposits or filing of financials & returns.
3. The proposed contract is NOT covered under provisions of Managerial personnel or office or place of profit or loans u/s. 295.
4. The company & its directors have complied with Sections 173, 287, 299 – 301 of the Act.

MCA CLARIFICATION: When the BENEFICIARY of the loan/guarantee/security is a PUBLIC LIMITED COMPANY, approval of Central Government should ONLY BE SOUGHT if the provisions of Section 295(d) or (e) [dealing with Body Corporate] are attracted.

OFFICE OR PLACE OF PROFIT U/S. 314

- Appointment & giving remuneration to Directors under Office or Place of Profit for ANY VALUE (ie) payment of remuneration IN ADDITION TO sitting fees.

It shall require approval by way of Special Resolution.

- Appointment & giving remuneration to Certain persons u/s. 314(1) for a VALUE of Rs. 50,000/- or more PER month.

It shall require approval by way of Special Resolution.

- Appointment & giving remuneration to Certain persons u/s. 314 for a VALUE of Rs. 2,50,000/- or more PER month.

It shall require PRIOR approval of Central Government & Special Resolution.

- Selection committee of Independent directors required for selecting a relative of director for office or place of profit for a LISTED COMPANY. In respect of UNLISTED public companies need not have independent director but requires an EXPERT IN THE RESPECTIVE FIELD outside the company in the selection committee. However, both Independent directors & expert is exempted for selection committee of a PRIVATE LIMITED company.

Simplified Procedure u/s. 396 of Companies Act for merger of Government Companies

1. The Central Government company shall get approval from Central Cabinet (i.e) the Union Council of Ministers whereas the State Government company shall get approval from State Cabinet (i.e) the State Council of Ministers OR both that the proposed amalgamation is in PUBLIC interest.
2. The Government companies shall pass a RESOLUTION at General meeting with members holding 100% of voting right (Unanimous) AND the assent of ALL the creditors OR assent of 90% of Creditors in VALUE & the company should certify that there is NO objection from any other Creditor. The resolution should contain PARTICULARS of Assets & Liabilities of amalgamating Government companies.
3. On intimation of resolution & cabinet decision, Central Government shall publish an ORDER in Official Gazette to the effect that all the Undertakings, Properties, Liabilities, pre-existing rights & obligations, legal proceedings of Transferor Company shall become of the transferee company and it may provide for such incidental matters to effectively carry out the same. The order shall be a sufficient CONVEYANCE to VEST the assets & liabilities on transferee company.
4. The registration of the transferor company shall stand CANCELLED and that Company shall be deemed to have been DISSOLVED and shall cease to exist FORTHWITH as a corporate body and the registrar shall STRIKE its name off the register.
5. Government companies can also take the route of Sections 391-394 of Companies Act.

DEFUNCT COMPANIES & FAST TRACK EXIT SCHEME

DEFUNCT COMPANIES: It means a company which has nil asset and liability and
(i) has not commenced any business activity or operation since incorporation; or
(ii) is not carrying over any business activity or operation for last one year before making application under Form FTE (Fast Track Exit Scheme).

MCA HAS RELEASED FAST TRACK EXIT (FTE) SCHEME for this purpose. A brief summary of the same is under:

1. An application to be made in forms FTE as certified by Practicing Professional. If Directors name is not available in the online DIN database, the practising professional shall certify the LIST OF PRESENT DIRECTORS of the company.
2. The Application shall be accompanied by an AFFIDAVIT and an INDEMNITY BOND as stamped, notarised and duly executed; and a Statement of Accounts annexed prepared as on date NOT PRIOR to more than 1 month preceding the date of filing Form FTE, duly certified by a statutory auditor or PCA.
3. The company shall disclose pending litigations if any, involving the company while applying under FTE; Compoundable offences shall be compounded before Company Law Board. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.

FORM & CONTENTS OF ANNUAL ACCOUNTS

The contents of the Accounts should be as per Schedule VI of Companies Act. The Annual Accounts should be in VERTICAL FORM ONLY.

The Parts I, II, III & IV are dispensed with. The format shall be:

A. General Instructions	B. Part I – Form of Balance Sheet
C. General Instructions for Preparation of Balance Sheet	D. Part II – Form of Statement of Profit and Loss
E.General Instructions for Preparation of Statement of Profit and Loss	

XBRL FILING

"Extensible Business Reporting Language" (XBRL) means a standardised language for communication in electronic form to express report or file financial information by the companies under the Act. This method of filing with RoC for financials of a company in **E-FORMS 23AC & 23ACA** for Balance Sheet & Profit & Loss is MANDATED for all Companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; Companies with Paid-up capital of Rs.5 crores or above; Companies with Turnover of Rs.100 crores or above.

"Taxonomy" means in XBRL an ELECTRONIC DICTIONARY for reporting the business data as approved by the Central Government in respect of any documents or forms indicated in this Companies (Filing of documents and forms in XBRL) Rules, 2011.

Balance sheets of holding company NEED NOT include particulars under Section 212 as to its subsidiaries if it is disclosed in Annual report on satisfaction of the following:

If Board of directors give their consent and present consolidated financials (of Holding & All subsidiaries) in Annual Report, the information as to TOTAL capital, reserves, assets & liabilities, turnover, investments, PAT, dividend,etc…duly audited and in strict compliance of Accounting Standards. The Annual Accounts of subsidiaries to be made available for inspection & taking copies by Shareholders at the registered office of the company.

CURRENT & NON-CURRENT ASSETS & LIABILITIES

The NEW FORMAT of Schedule VI classifies & defines the CURRENT & NON-CURRENT assets & liabilities (WITHOUT netting off) for the purpose of reporting. It may so happen that the SAME item may be current in one quarter & non-current in next quarter. Each item in the Balance Sheet and profit and loss account to be CROSS-REFERENCED to any related information in the NOTES TO ACCOUNTS. The Notes to provide WHERE REQUIRED (considering important & excessive information):- (a) narrative descriptions or break up of items recognized in those statements and (b) information about items that do not qualify for recognition in those statements. COMPARATIVE AMOUNTS needs to be presented for all items shown in the financial statements including notes.

An asset/liability shall be classified as CURRENT when it satisfies any of the following:

- It is expected to be realized/settled in the company's normal OPERATING CYCLE (the time between the acquisition of assets for processing & their realization in cash or cash equivalents).
- It is held primarily for the purpose of being traded.
- It is expected to be realized/settled within 12 months after the reporting date.

ASSET is cash or cash equivalent unless it is RESTRICTED from being exchanged or used to settle a liability for atleast 12 months AFTER the reporting date. LIABILITY: The Company does not have an unconditional right to defer settlement of the liability for atleast 12 months after the reporting date.

Trade Receivables and Trade Payables are defined as receivables/payables on account of goods sold or services rendered in the normal course of business.

The Revised Schedule VI is covered from Exam point of View. For more reading you may visit https://docs.google.com/open?id=0B-36NqCFw_7NVldqOHV5VEJtSzA

ISSUE OF FRESH DUE DILIGENCE CERTIFICATES BY MERCHANT BANKER

a. at the time of filing the offer documents with the ROC & SEBI;

b. immediately before the opening of the issue ;

c. after the issue has opened but before it closes for subscription;

d. ON news reports in media after filing offer documents till the closure of issue;

e. along with Final Post Issue report.

Cultural Due Diligence: Cultural Due Diligence (CDD) is the process of identifying, assessing, investigating, evaluating and defining the cultures of two or more distinct corporates through a cultural analysis so that the similarities and differences that impact the merged organization are identified and remedial actions are taken well in advance.

ELIGIBILITY CRITERIA FOR IPO

1. The track record of distributable profits, on both stand-alone as well as consolidated basis for at least 3/5 previous years; If the SUBSIDIARY has NOT completed 5 years of existence, then it shall have net profits on a consolidated basis in atleast one year for which consolidated accounts are prepared.
2. 50% on monetary assets shall not be applicable in case the public offer is made entirely through an OFFER FOR SALE.
3. If the LISTED company has CHANGED its name, there is a condition that atleast 1% of total revenue during last 1 year should have come from NEW name. Now, a further option is given to the issuer where it is sufficient if the New ACTIVITY [Fixed Assets + Advances (to contractors/suppliers for New Project) + Works In Progress] is ATLEAST 50% of assets of the company.

No. of Anchor Investors	Allocation Value	Minimum Allotment
UPTO 2	UPTO 10 Crores	Rs. 5 crores PER Anchor Investor
2 – 15	10 – 250 crores	
5 – 25	Above 250 crores	

FAST TRACK ISSUES (FTI) & ALTERNATE METHOD OF BOOKBUILDING

The "average market capitalisation of public shareholding" [=sum of daily capitalization during the period divided by the number of trading days] of the Issuer is at least Rs. 5000 crores for a period of 1 year UPTO the END of the QUARTER preceding the month in which the proposed issue is approved by Board / Shareholders. **Kindly, non-compliance as to composition of board, if disclosed in offer document will be deemed as compliance. This means, violation of this term will NOT amount to violation of Listing agreement and such company would still remain eligible to make FTI's.**

Alternate Method of Book Building: It may be partly inspired from FRENCH AUCTION (where allotment made at BID PRICE – to QIB's) unlike dutch auction method of existing book building process. It can be used for FPO's. It is almost like a book building process BUT for pricing & allotment aspects. Only FLOOR PRICE may be disclosed in RHP whereas CAP may be determined by issue based on no. or % of securities from a SINGLE bidder or from revised or multiple bids. Till the specified securities on offer are exhausted, allotment will be continuously made for QIB's at BID PRICE on price priority basis. However, retail individual investors, non-institutional investors & employees shall be allotted at FLOOR PRICE on a proportionate basis.

NOTE: Issuer has the option to announce Floor price atleast one working day before issue opens. A DISCOUNT UPTO 10% from FLOOR price may be given to employees under ALTERNATE METHOD of book building.

OTHER ASPECTS, WORTH NOTING

1. The LIMITS of retail investor is increased to 2 lakhs from erstwhile limit of 1 lakh.
2. Reservation to EMPLOYEES whose salary UPTO Rs.2lakhs/employee shall be UPTO 5% of post issue Capital. Employee MEANS a permanent and full-time employee of the issuer, working in India or abroad [of Issuer or its Holding or Subsidiary or Material Associates as per consolidated Accounts] or a director of the issuer, whether whole time or part time and does NOT INCLUDE promoters and an immediate relative of the promoter.
3. The insurance funds set up and managed by the Department of Posts, India is also a QIB.
4. ASBA is a mode of payment which is mandatory for Public & Rights Issue where there is only one payment option. The non-retail investors i.e. Qualified Institutional Buyers (QIB) and Non-Institutional Investors, making application in public/ rights issue SHALL mandatorily make use of ASBA facility. Every ASBA form shall be annexed with abridged prospectus or letter of offer.
5. Shares reserved for QIB's (in case of book building), Promoters & Reserved Categories cannot be underwritten.
6. **If 'T' is the issue closing date, then the basis of allotment will be finalized in 'T + 7' days and securities will COMMENCE trading in Stock Exchange in 'T + 12" days. Thus, 12 day listing is possible.**
7. **Preferential Allotment Pricing:** Average WEEKLY high & low closing prices during 26 WEEKS & 2 weeks preceding the RELEVANT DATE.
8. ONE WARRANT may be attached to EACH specified security along with public issue or rights issue IF the TENURE of such warrant is UPTO 12 months from allotment in public/rights issue.
9. **Chapter XA** becomes "RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS": These requirements are in addition to compliance under Chapter X governing IDRs. However, the rights issues NEED NOT comply with the "Conditions for Issue of IDR" mentioned above. For being ELIGIBLE, the issuer shall NOT have breached any material obligation under IDR Listing agreement and under Deposit agreement with Domestic depository.

EQUITY LISTING AGREEMENT

CLAUSE 40A – MINIMUM PUBLIC SHAREHOLDING: -

The initial listing requirement of MINIMUM OFFER TO PUBLIC is prescribed under Rule 19(2)(b) of Securities Contract Regulation Rules, which is as under:

1. The minimum threshold level of public shareholding shall be 25% for all listed companies.

2. For new listing (IPOs), if the post issue capital of the company calculated at offer price is more than **Rs.4000 crores**, then the company may be allowed to go public with 10% public shareholding and comply with the 25% public shareholding requirement by **increasing** its public shareholding by atleast 5% per annum.

The continuous listing requirement under Clause 40A is as follows:

(i) The issuer company agrees to comply with the requirements specified in Rule 19(2)(b) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

(ii) Where the issuer company is required to achieve the minimum level of public shareholding , it shall adopt any of the following methods to RAISE THE PUBLIC SHAREHOLDING to the required level of 25% or as the case may be:-

(a) issuance of shares to public through prospectus; or

(b) offer for sale of shares held by promoters to public through prospectus; or

(c) sale of shares held by promoters through the secondary market (stock exchange mechanism) as per SEBI Circular; or

(d) Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended.

INSTITUTIONAL PLACEMENT PROGRAMME (IPP)
[CHAPTER VIII-A OF SEBI ICDR REGULATIONS 91A-91L]

This is to achieve MINIMUM PUBLIC SHAREHOLDING by fresh issue or offer for sale of shares.

"Institutional Placement Programme (IPP)" MEANS a FPO of eligible securities (equity listed & traded) by an eligible seller, in which the offer, allocation and allotment of such securities is made only to QIB.

Promoter Group offering shares under IPP ← SHOULD NOT HAVE bought/sold 12 weeks before

IPP offer Period shall be 1 – 2 days

Promoter Group offering shares under IPP → SHOULD UNDERTAKE NOT to buy/sell 12 weeks thereafter

CLAUSE 41 – FILING OF FINANCAILS THROUGH CORPFILING

- The Company has the OPTION to file either AUDITED (with audit report) or UNAUDITED (with limited review report) financial results WITHIN 45 days from the end of each of first 3 quarters in a financial year.
- For the LAST QUARTER: the company shall file AUDITED financial results for the LAST QUARTER & the ENTIRE FINANCIAL YEAR within 60 days from the end of Financial Year.
- The company shall also submit by way of a note, a STATEMENT OF ASSETS AND LIABILITIES as at the end of the HALF-YEAR and along with audited financial results for the ENTIRE financial year.

CLAUSE 32:

- The issuer shall supply SOFT COPIES of FULL annual reports to all shareholder(s) who have registered their EMAIL ADDRESS (es);

NEW CLAUSE 53 - Disclosures regarding agreements/arrangements/back-to-back treaties with the MEDIA COMPANIES/its Associates, their shareholding details and nominees of media companies on the Board of the Listed Company.

NEW CLAUSE 54 – Maintenance & Updation of a FUNCTIONAL WEBSITE with details of its business, financial information, shareholding pattern, compliance with corporate governance, contact information of the designated officials of the company who are responsible for assisting and handling investor grievances, etc.

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PUBLIC ISSUE BY Small & Medium Enterprises (SMEs) (Chapter XB of ICDR)

An issuer whose post-issue face value of capital DOES NOT exceeds Rs.10 crores shall issue its specified securities in accordance with the provisions of issues by Small or Medium Enterprises (SME). Kindly note, there is also Micro, Small & Medium Enterprises Development Act which classifies Industries and for such classification ONLY the investment made in plant & machinery are taken into account whereas under SEBI ICDR, the whole capital of the company should be Rs.10 crores or less.

In some cases even UPTO Rs. 25 crores may be considered under this chapter where shareholders agree to MIGRATE by passing a Special Resolution through Postal ballot WITH the votes in favour is atleast two times votes cast against by shareholders (OTHER than promoter shareholdings). Same way, issuer in SME Exchange can MIGRATE to Main Board (Main Board = Stock exchange other than SME exchange) if further issues likely to EXCEED 25 crores, by passing the abovementioned resolution.

Though most of the provisions of issue is COMMON, the following are the differences for SME issues:

1. NO requirement of filing draft offer document with SEBI.
2. There is no need to comply with Eligibility requirements of IPO & FPO.
3. Fast track issues cannot be made under this Chapter.
4. Minimum Application size shall be atleast Rs. 1 lakh per application and there shall be atleast 50 allottees in this issue.
5. 100% of offer through offer document shall be underwritten by Underwriters, out of which 15% shall be underwritten by Merchant bankers.
6. Nominated Investors & Market making: QIB/PE fund who undertakes the under-subscribed portion or receive/deliver during market making (for 3 years) with the Market Maker having an inventory of atleast 5% is called Nominated Investor. Such Market Maker shall not buy from promoter or person belonging to promoter group.

SME EQUITY LISTING AGREEMENT

To make finance available to small and medium enterprises (SMEs), SEBI has promoted dedicated exchanges and / or dedicated platform of the exchanges for listing and trading of securities issued by Small and Medium Enterprise (SME) and has included Chapter XB SEBI ICDR Regulations for those SME issuer whose post-issue face value capital **does not exceed ten crore rupees.**

SME listing agreement **is same as** Equity listing agreement. However, certain relaxations are provided to the issuers whose securities are listed on SME exchange in comparison to the listing requirement in Main Board. **Main Board** = Stock Exchange other than SME Exchange where Equity listing agreement (NOT SME listing agreement) to be complied with. The **relaxations** from Equity Listing Agreement as discussed above inter-alia include the following:

1. The Companies listed on the SME exchange shall supply SOFT COPIES of FULL annual reports to all shareholder(s) who have registered their EMAIL ADDRESS(es); HARD COPY of statement containing the SALIENT FEATURES of SUCH documents, as prescribed in Section 219(b)(iv) of the Companies Act, 1956 to those shareholder(s) who have NOT REGISTERED e-mails; HARD COPY of FULL annual reports to those shareholders who REQUESTS for the same. [**this is applicable for Other Equity Listing Agreement also as a Green Initiative of SEBI**].
2. Periodical financial results may be submitted on “half yearly basis”, instead of “quarterly basis” under Clause 41 and

3. Every issuer listed under SME Exchange shall have their **OWN WEBSITE.**
4. SMEs need not publish their financial results in newspapers, as required in the Main Board (=OTHER than SME Exchanges) but can make it available on their WEBSITE.

The Mumbai-based non-banking finance company (BCB FINANCE), which raised Rs 8.85 crore through the public issue of 3.54 million equity shares, is the first company to list on the SME Exchange of BSE. NSE too has announced their SME platforms called EMERGE.

DEBT MARKET ISSUES

ISSUANCE OF NON-CONVERTIBLE DEBENTURES (RESERVE BANK) DIRECTIONS, 2010

Non-Convertible Debenture (NCD) means a debt instrument issued by a corporate (including NBFCs) with original or initial maturity UPTO one year (with a minimum credit rating of AA or A2) and issued by way of private placement. The eligibility criteria for issue shall be:

i. the corporate has a tangible net worth of not less than Rs.4 crore, as per the latest audited balance sheet;
ii. the corporate has been sanctioned working capital limit or term loan by bank/s or all-India financial institution/s; and
iii. the borrowal account of the corporate is classified as a Standard Asset by the financing bank/s or institution/s.

SEBI (Issue and Listing of Debt Securities - ILDS) Regulations, 2008 & MARKET-LINKED DEBENTURES:

Equity linked debentures or stock linked debentures are HYBRID securities, the RETURNS of which are linked to equity markets (on other underlying securities/ indices OR through exposures on exchange traded derivatives). These are also called 'structured products'**.** **Kindly note,** this regulation DO NOT COVER Securities which do not promise to return the principal amount in full at the end of the tenor of the instrument since they are NOT debt securities**.** The issuer of Structured products or Market linked debentures should have a networth of Rs**. 100 crores.** It shall be mandatory for the issuer to appoint a THIRD PARTY VALUATION AGENCY which shall be a credit rating agency registered with SEBI. Only a SEBI regulated intermediary can SELL this security to a RETAIL investor.

The additional disclosures for issue of such securities include PROMINENT display of Credit Risk Factor & Model Risk Factor, i.e., the securities are created on the basis of complex mathematical models involving multiple derivative exposures which may or may not be hedged and the actual behavior of the securities selected for hedging may significantly differ from the returns predicted by the mathematical models.

SECURITISED DEBT LISTING AGREEMENT

The agreement requires disclosure of information at the pool, tranche and loan level. Increase in information and tradability on the exchange will lead to greater trading in the secondary market for MICRO-LOAN BACKED SECURITISED DEBT INSTRUMENTS. There are 20 clauses in the agreement with an Annexure and an Explanation of Terms.

SPDEs which make frequent issues of securitized debt instruments are permitted to file umbrella offer documents on the lines of a SHELF PROSPECTUS.

SPDE shall enter into listing agreement with the recognised stock exchanges where the securitised debt instruments are proposed to be listed. In case of a private placement of securitised debt instruments, the special purpose distinct entity shall file listing particulars with the recognised stock exchange along with the application made, containing such information as may be necessary for any investor in the secondary market to make an informed investment decision in respect of its securitised debt instruments. All credit ratings, including unaccepted ones, must be filed with the listing particulars.

The SPDE agrees to credit the demat accounts of allottees within 2 working days from allotment.

The securitized debt instruments listed on the Exchange shall REMAIN on the list TILL the maturity OR redemption of securitised debt instruments OR TILL the same are delisted as per the procedure laid down by SEBI.

REVISED INSIDER TRADING DISCLOSURES

INITIAL DISCLOSURE	CONTINUAL DISCLOSURE
Form A: by any person holding atleast 5%	**Form C: by any person holding atleast 5% or change in holding/voting exceeding 2%**
Form B: by any director/officer or dependants or promoter/promoter group [*as per SEBI Takeover Code*] disclosing shares or voting rights or position taken in derivatives by director/officer or dependants	**Form D: by any director/officer or dependants or or promoter/promoter group when change is MORE THAN, lowest of** • **Rs.5 lakhs** • **25,000 shares** • **1% of holding or voting.**

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 [replacing the erstwhile 1997 Takeover Code]

REGULATION 10 exemptions	REGULATION 11(1) exemptions	REGULATION 11(2) exemptions
Though no application is required, there are some reporting requirements. It deals with exemption from Regulation 3 & 4	Application to the SEBI is mandatory, if there is NO EXEMPTION provided under Regulation 10	Application to SEBI to RELAX any procedural requirement under Chapter III or IV having Regulations 3-27 of Takeover Code.
It is an Automatic exemption	This exemption is SUBJECT to the discretion of SEBI in the interests of securities & securities market.	This relaxation is SUBJECT to the discretion of SEBI in the interests of securities & securities market.

Regulation 10 conditions shall be complied with	Conditions under EXEMPTION ORDER shall be complied with	Comply with the condition under Reg 11(2) (a) & (b).
Post acquisition compliance can be made	Exemption to be sought before acquisition	Relaxation to be sought before acquisition.

EVENT-BASED DISCLOSURES OF ACQUIRERS & HOLDERS – *of Acquisition & Disposal of shares of Target company*

By	Any Acquirer with PAC	Any Acquirer with PAC holding 5% or more of shares or voting rights
What	Acquisition aggregating to 5% or more of shares or voting rights	Acquisition or disposal of 2% or more
Within	2 working days of receipt of allotment or acquisition of shares or voting rights	
To whom	Target Company @ its Registered office & the Stock Exchanges where shares of target company is listed	

PERIODICAL/CONTINUAL DISCLOSURES OF HOLDINGS & VOTING RIGHTS IN TARGET COMPANY

By	Persons with PAC's holding more than 25% or more	Promoter with PAC
What	Their holding & voting right as on 31st March	Their holding & voting right as on 31st March
Within	7 working days from the end of Financial Year	
To whom	Target Company @ its Registered office & the Stock Exchanges where shares of target company are listed	

DISCLOSURE OF ENCUMBERED SHARES IN TARGET COMPANY

By	Promoter with PAC	Promoter
What	Details of encumbered shares	Details of invocation or release of such encumbrance
Within	7 working days from creation or invocation or release of encumbrance	
To whom	Target Company @ its Registered office & the Stock Exchanges where shares of target company are listed	

When an acquirer acquires the SUBSTANTIAL QUANTITY of shares or voting rights of the Target Company, it results in SUBSTANTIAL ACQUISTION of Shares.

When an acquirer takes over the CONTROL of the target company, it is termed as TAKEOVER.

I. **Reg 3: SUBSTANTIAL ACQUISTION** of Shares: [MANDATORY BIDS]

The following are the trigger points for open offer:

1. Acquisition of 25% or more (of voting rights in target company) by Acquirer along with PAC's
2. Acquisition in excess of 5% by persons holding between 25% and 75%.
3. NO Acquisition when aggregate shareholding exceeds the 75%
    - Quantum of Additional Acquisition UPTO **5% in a financial year** by persons holding between 25% and 75% WITHOUT an open offer (CALLED CREEPING ACQUISITION)
    - Kindly note, for the "quantum of additional acquisition" as above, the GROSS acquisitions shall be considered regardless fall or rise in % and in cases where there is a issue of new shares by target company, consider the % of pre & post allotment voting rights as additional acquisition.
4. Without any acquisition, an INDIVIDUAL shareholding EXCEEDS the abovementioned limits BY WAY OF an acquisition by any other person (whether or not, there is a change in aggregate holding with PAC's).

II. **Reg 6: VOLUNTARY ACQUISITION** of Shares: [VOLUNTARY BIDS]

An acquirer (with PAC) holding between 25% and 75% can voluntarily make an open offer UPTO 75% AND shall acquire shares ONLY through open offer during that period. Thereafter, SUCH acquirer can acquire FURTHER SHARES FOR 6 MONTHS from completion of such voluntary open offer ONLY through ANOTHER voluntary open offer. However, acquisitions through bonus issue or stock splits or making a competing offer upon another person making an open offer is not treated as acquisition of FURTHER SHARES FOR 6 MONTHS as mentioned above and thus permitted during the period also.

NOTE:

1. Acquirer who acquired shares in target company during PRECEEDING 52 weeks WITHOUT an open offer requirement is NOT ELIGIBILE to make voluntary open offer AT ALL.
2. COMPETING OFFER (earlier called COMPETITIVE BIDS) is an offer made within 15 working days of a detailed public statement (DPS) by a person other than the Acquirer who has made such detailed public statement, is termed as a competing offer.

III. **Reg 4: TAKEOVER** of control of Target Company: [PARTIAL BIDS]

Acquisition of control directly or indirectly mandates public offer for acquiring shares of target company as per the Regulations.

IV. **Reg 5: INDIRECT ACQUISITION & TAKEOVER** of shares or voting rights or control of Target Company: [INDIRECT BIDS]

Acquisition of shares or voting rights or control over ANYOTHER company/entity, ENABLES a person/PAC to exercise or direct the exercise of shares or voting rights or control, then as such acquisitions INDIRECTLY attracts open offer are considered as an INDIRECT ACQUISITION of shares or voting rights or control.

OFFER PRICE [VALUATION]

- The minimum price payable as the offer price under the new takeover code shall be the highest of:
    - the negotiated price under the agreement that attracted the open offer;
    - volume-weighted average price paid by the acquirer and persons acting in concert in the preceding fifty-two weeks;
    - highest price paid by the acquirer or persons acting in concert with him during the preceding twenty-six weeks;
    - sixty trading day volume weighted average market price (for frequently traded shares).
    - where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

Takeover Code portion from exam point of view is covered in this. However, for more reading you may visit ***http://yehseeyes.blogspot.com/2012/03/takeover-code-2011-supplement-study.html***

Voluntary Governance Codes in India

Many regulators in India have come out with various Voluntary Codes for the Companies which may be complied with in addition to the compliance of existing laws and regulations. The crucial codes are:

1. MCA's Corporate Governance Voluntary Guidelines, 2009 [& Secretarial Audit]
2. IRDA's Corporate Governance Guidelines for Insurance Companies, 2009
3. DPE's Guidelines on Corporate Governance for Central Public Sector Enterprises, 2010
4. RBI's Master Circular on Corporate Governance for Non Banking Finance Companies (NBFC's) & Corporate Governance in Banks
5. ICSI's Recommendation to strengthen Corporate Governance Framework in India
6. MCA's proposed National Corporate Governance Policy, 2012 & the Concept Paper of ICSI
7. MCA's Corporate Social Responsibility Voluntary Guidelines, 2009
8. DPE's Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises, 2010
9. DPE's Guidelines on Sustainable Development for Central Public Sector Enterprises, 2011
10. MCA's National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business, 2011
11. Corporate Governance provisions in proposed Companies Bill, 2011

Try remembering the FULL NAME OF THE GUIDELINES ALONG WITH THE YEAR & QUOTE AS MANY PLACES AS POSSIBLE IRRESPECTIVE OF WHETHER YOU KNOW THE INSIDE CONTENTS OR NOT.

MCA stands for Ministry of Corporate Affairs governing Companies Act and allied legislations. IRDA stands for Insurance Regulatory & Development Authority of India constituted under IRDA Act, 1999 read with Insurance Act. DPE stands for Department of Public Enterprises under Ministry of Heavy Industries & Public Enterprises. RBI stands for Reserve Bank of India under RBI Act, 1934. ICSI stands for the Institute of Company Secretaries of India.

CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009

These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines." It amongst other things, recommend the introduction of **SECRETARIAL AUDIT**. Para V of the Guidelines states that :

"Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders."

Companies, which do not adopt these guidelines, either fully or partially, are expected to inform their shareholders about the reasons for not adopting these Guidelines. This is in consonance with the popular doctrine of "Comply or Explain". The Board should give its comments on the Secretarial Audit in Directors' Report as provided in Para V of the Guidelines.

A Legal Compliance Reporting System is necessary to comply with sub-clause I(C)(iii) of Clause 49 of the Listing Agreement.

Scope and Contents of Secretarial Audit Scope:

The scope of Secretarial Audit comprises verification of the compliances under the following enactments, rules, regulations and guidelines:

(i) The Companies Act, 1956 and the Rules made there under ;

(ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the Rules made thereunder;

(iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed there under;

(iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

(v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act');

(a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;

(b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;

(c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;

(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

(f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and

(h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

(vi) The Listing Agreement(s) entered into by the Company with Stock Exchange (s).

(vii) Secretarial Standards issued by The Institute of Company Secretaries of India.

(viii) Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;

(ix) Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;

(x) Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007;

(xi) Corporate Governance Guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA; and

(xii) Other corporate laws as may be applicable specifically to the auditee company.

Note: Do not confuse with the term Secretarial Audit used earlier to denote an audit of reconciling share capital under Depositories law. That is now renamed as **RECONCILIATION OF SHARE CAPITAL AUDIT to be carried out by a Practising Company Secretary or Chartered Accountant.**

IRDA's Corporate Governance Guidelines for Insurance Companies, 2009

The Insurance Act, 1938 stipulates that insurance companies in India would be PUBLIC COMPANIES and hence, would require a properly constituted Board and it is advisable for them to familiarize with the provisions of Clause 49 of Equity Listing agreement. Where any provisions of these guidelines appear to be in conflict with the provisions contained in any law or regulations, the legal provisions will prevail. However where, the requirements of these guidelines are more rigorous than the provisions of any law, these guidelines shall be followed.

DPE'S GUIDELINES ON CORPORATE GOVERNANCE FOR CENTRAL PUBLIC SECTOR ENTERPRISES (CPSE), 2010

Governance of State-owned enterprises becomes all the more important because of the utilization of sovereign funds in multinational operations. These Guidelines shall be adopted by CPSE's. Central Public Sector Enterprises (CPSEs) are those companies in which the direct holding of the Central Government or other CPSEs is 51% or more. They are classified into four schedules namely 'A', 'B', 'C' and 'D' based on certain quantitative & qualitative factors; however standard values have not been spelt out for each such classification. They are also categorised as Maharatna, Navratna, Miniratna and other profit making or listed CPSE's.

Non-listed CPSEs: Each CPSE should strive to institutionalize good Corporate Governance practices broadly in conformity with the SEBI Guidelines. The guidelines provide that the provisions shall also be applicable to all the unlisted CPSE's on mandatory basis.

These Guidelines are almost similar to Clause 49 of Equity Listing Agreement.

RBI'S MASTER CIRCULAR ON CORPORATE GOVERNANCE FOR NON BANKING FINANCE COMPANIES (NBFC'S) & CORPORATE GOVERNANCE IN BANKS

These guidelines are applicable to all Deposit taking NBFCs with deposit (NBFC-D) size of Rs 20 crore and above and all non-deposit taking NBFCs with asset size of Rs 100 crore and above (NBFC-ND-SI). If an NBFC is a listed company, it shall be governed by clause 49 of Equity Listing agreement.

ICSI RECOMMENDATION TO STRENGTHEN CORPORATE GOVERNANCE FRAMEWORK

The following recommendations are in order. Hence while you write, you may quote as Recommendation No. 1 deals with …..

1. A Maximum TENURE of 6 years in aggregate should be specified for independent directors.
2. The POSITIVE ATTRIBUTES for independent directors like integrity, ability to read and understand financial statements etc. should be specified.
3. The NOMINEE DIRECTORS have a clear mandate to safeguard the constituency they represent i.e. the financial institution they represent.
4. There should be a clear demarcation of the roles and responsibilities of the CHAIRMAN of the Board and that of the MANAGING DIRECTOR/ CEO.
5. Induction TRAINING of directors should be made mandatory.
6. There should be rigorous annual EVALUATION OF ITS PERFORMANCE and that of its committees and individual directors.
7. Consider public limited companies & Private companies that are either holding or subsidiary companies while calculating the 15 companies limit.
8. Include all the committees of listed companies on which such director is a member to calculate the limits of Chairmanship/Membership.
9. The constitution of REMUNERATION COMMITTEE of non executive (with Chairman & Majority being independent) to be made mandatory.
10. The constitution of NOMINATION COMMITTEE of non executive (with Chairman & Majority being independent) should be made mandatory.
11. The constitution of CORPORATE COMPLIANCE COMMITTEE with Executive & Non executive director should be made mandatory.

12. REMUNERATION POLICY for the members of the Board and Key Executives should be clearly laid down and disclosed.
13. Directors' Responsibility Statement should include a statement that the directors had devised proper systems to ensure COMPLIANCE OF ALL LAWS applicable to the company.
14. Secretarial Audit should be made mandatory in respect of listed companies and certain other companies to be conducted by a Company Secretary in Practice.
15. Adoption of WHISTLE BLOWER POLICY should be made mandatory, to begin with, for listed companies.
16. The term lineal ascendants and descendants for the definition of the term RELATIVE should be clarified by giving an indicative list.
17. ROTATE AUDIT PARTNER every 3 years and audit firm every 6 years.
18. In Listed companies, the shares held by promoters should be held in ELECTRONIC FORM.
19. The promoters' shares that are PLEDGED should be independently verified by a Company Secretary in Practice.
20. There should be STANDARD STRUCTURE OF THE ANNUAL REPORT.
21. NO SOLICITATION by companies in their Annual Report to invest in their shares.
22. It should be mandatory for equity based mutual funds to disclose on their company website their VOTING POLICIES & VOTING RECORDS.
23. It should be mandatory for INSTITUTIONAL INVESTORS to disclose as to how they manage material conflicts of interests.
24. A directive be issued to clarify the nature of the information that can be exchanged at meetings between institutional investors and companies.
25. Clarification be issued about the circumstances under which consultation and voting agreements between institutional investors may take place without triggering the provisions of Takeover Code.
26. Constitution of INVESTOR RELATIONS CELL should be made mandatory for Listed Companies.

MCA'S CORPORATE SOCIAL RESPONSIBILITY VOLUNTARY GUIDELINES, 2009

These guidelines are voluntary and not prepared in the nature of a prescriptive road-map, they are not intended for regulatory or contractual use. It is highly advisable that companies should inform their shareholders about the genuine reasons for not adopting these guidelines either fully or partially, for which purpose an e-form CSR is released under MCA website which also has fields to include the names of subsidiary companies & stakeholders.

The CORE ELEMENTS in CSR Policy (as approved by Board of Directors**) includes the following:**

1. **Care for all Stakeholders**
2. **Ethical functioning**
3. **Respect for Workers' Rights and Welfare**
4. **Respect for Human Rights**
5. **Respect for Environment**
6. **Activities for Social and Inclusive Development**

DPE'S CSR GUIDELINES FOR CPSE'S

- !!!BENEFITS to staff and GRANTS to organisations will NOT amount to CSR!!!
- Contributions made to CSR activities (though not project based) as per the guidelines would be permitted (as CSR activity) UPTO 5% of CSR budget in a financial year.
- !!!Contribution to National CSR Hub also amounts to CSR!!!

DPE's Sustainable Development Guidelines for CPSE's

!!!NOT A SUSTAINABLE DEVELOPMENT ACTIVITY!!!

1. Core business activities or activities to comply with statutory requirements
2. Activity which benefits CPSE staff or voluntary effort by CPSE staff
3. Mere grants to organisations

MCA's National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business, 2011

The Guidelines emphasize that businesses have to endeavour to become responsible actors in society, so that their every action leads to sustainable growth and economic development. Thus, it uses the word RESPONSBILE BUSINESS (instead of CSR). This guideline lays down the basic requirements for businesses to function responsibly, thereby ensuring a wholesome and inclusive process of economic growth. It needs to be emphasized that all PRINCIPLES are equally important and non-divisible – this implies that if a business endeavours to function responsibly, it would have to adopt each of the nine (9) principles (given in the chart below) in their ENTIRETY rather than picking and choosing what might suit them. **It also has a Business Responsibility Reporting Framework under Chapter 5.**

(9) PRINCIPLES	
1. Ethics, Transparency & Accountability	2. Product life cycle sustainability
3. Employees well being	4. Stakeholder engagement
5. Human rights	6. Environment
7. Policy Advocacy	8. Inclusive growth
Customer Value	

Students may download these guidelines from WWW.MCA.GOV.IN **and read the various case studies given under each of the nine principles in the guidelines.**

GOVERNANCE CODE ABROAD

1. **UK Corporate Governance Code, 2010**
2. **UK Stewardship Code, 2010**
3. **Principles for Responsible Investment**
4. **GRI G3.1 Guidelines**
5. **CSIA's Twenty Practical Steps to Better Corporate Governance**

UK Corporate Governance Code (2010)

The Combined Code on Corporate Governance is now renamed as UK Corporate Governance Code. This applies to all companies with a Premium Listing of equity shares regardless of whether they are incorporated in the UK or elsewhere and has introduced new provisions like board evaluation and annual elections. Under STANDARD LISTING (for GDR's, Debt Securities, Securitized Derivatives & miscellaneous securities) the companies shall comply with EU minimum standards and PREMIUM LISTINGS (for shares with FULL voting rights) shall also be required to comply with super-equivalent rules (for companies with trading & revenue track record of 3 years). The code is based on the underlying principles of all good governance: accountability, transparency, probity and focus on the sustainable success of an entity over the longer term.

1. The purpose of corporate governance is to facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company.

2. The first version of the UK Code on Corporate Governance (the Code) was produced in 1992 by the Cadbury Committee. Its paragraph 2.5 is still the classic definition of the context of the Code: Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.

3. Corporate governance is therefore about what the board of a company does and how it sets the values of the company, and is to be distinguished from the day to day operational management of the company by full-time executives.

4. The Code is a guide to a number of key components of effective board practice. It is based on the underlying principles of all good governance: accountability, transparency, probity and focus on the sustainable success of an entity over the longer term.

5. The Code has been enduring, but it is not immutable. Its fitness for purpose in a permanently changing economic and social business environment requires its evaluation at appropriate intervals. The reviews preceding this one were in 2005 and 2007. The Preface, which should be regarded as an integral part of the Code, introduces the changes made in the current review.

6. The new Code applies to accounting periods beginning on or after 29 June 2010 and, as a result of the new Listing Regime introduced in April 2010, applies to all companies with a Premium Listing of equity shares regardless of whether they are incorporated in the UK or elsewhere.

The UK Stewardship Code, 2010

(earlier this code was published as Institutional Shareholder's/Investors Committees Code – ISC/IIC)
The Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities. **Engagement** includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at general meetings. This code is based on comply/explain concept and is complementary to UK Corporate Governance Code.

PRI- Principles for Responsible Investment

An Investor Initiative in Partnership with United Nations Environment Programme (UNEP) and the UN Global Compact

Institutional investors have influence in the management of a company because of the large pool invested and right to exercise the voting rights in a company. They can play an active role in better corporate governance of the invested company.

Institutional investors have a duty to act in the best long-term interests of the beneficiaries. In this fiduciary role, the United Nations-backed Principles for Responsible Investment Initiative (PRI) aims to help investors integrate the consideration of environmental, social, and corporate governance (ESG) issues that can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes), ownership practices, and thereby improve long-term returns to beneficiaries. By applying these Principles institutional investors commit to the following:

1. Incorporation of ESG issues into investment analysis and decision-making processes and provide ESG training for investment professionals.
2. Shall perform as active owners and incorporate ESG issues into their ownership policies and practices by exercise of voting rights
3. Seek appropriate disclosure on ESG issues by the entities in which we invest by using tools such as the Global Reporting Initiative, UN Gloable Compact & integrating ESG issues in Annual reports.
4. Shall promote acceptance and implementation of the Principles within the investment industry.
5. Work together to enhance effectiveness in implementing the ESG Principles.
6. Report on activities and progress towards implementing the ESG Principles. There is increasing evidence that ESG issues can be material to performance of portfolios, particularly over the long term.

GRI (Global Reporting Initiative) GUIDELINES

G3.1 was launched in March 2011 and is the most comprehensive sustainability reporting guidance available today. G3.1 includes expanded guidance for reporting on human rights, local community impacts, and gender.
G3.1's Performance Indicators are organized into categories: Economic, Environment and Social. The Social category is broken down further by Labour, Human Rights, Society and Product Responsibility sub-categories. However, you may write about G3 guidelines as such.

Twenty Practical Steps to Better Corporate Governance

ICSI is a founder member of Corporate Secretaries International Association, alongwith the Chartered Secretaries Institutes of Australia, Hong Kong, Malaysia, Singapore, South Africa, UK and Zimbabwe. CSIA has evolved **Twenty Practical Steps to Better Corporate Governance:**
1. Recognize that good corporate governance is about the effectiveness of the governing body — not about compliance with codes
2. Confirm the leadership role of the board chairman
3. Check that non-executive directors have the necessary skills, experience,
and courage
4. Consider the calibre of the non-executive directors
5. Review the role and contribution of non-executive directors
6. Ensure that all directors have a sound understanding of the company
7. Confirm that the board's relationship with executive management is sound
8. Check that directors can access all the information they need
9. Consider whether the board is responsible for formulating strategy
10. Recognize that the governance of risk is a board responsibility
11. Monitor board performance and pursue opportunities for improvement
12. Review relations with shareholders — particularly institutional investors
13. Emphasise that the company does not belong to the directors
14. Ensure that directors' remuneration packages are justifiable and justified
15. Review relations between external auditors and the company
16. Consider relations with the corporate regulators

17. Develop written board-level policies covering relations between the company and the societies it affects
18. Review the company's attitudes to ethical behaviour
19. Ensure that company secretary's function is providing value
20 Consider how corporate secretary's function might be developed

MEANING AND DEFINITION OF INTERNAL CONTROL

The **Standard on Internal Audit 12 (SIA-12)** issued by the Institute of Chartered Accountants of India (ICAI) dealing with Internal Control Evaluation states as under:

Internal control system means all the policies and procedures (internal controls) adopted by the management of an entity to assist in achieving management's objective of ensuring, as far as practicable, the orderly and efficient conduct of its business, including adherence to management policies, the safeguarding of assets, the prevention and detection of fraud and error, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

As per Clause 49 of Equity Listing Agreement, it is the Responsibility of audit committee to review **adequacy of internal audit function and internal audit reports** *or to report to the Board, any failure of internal control systems of a material nature. Further, there is a CEO/CFO Certification as mentioned below under Clause 49.* CEO is the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO is the whole-time Finance Director or any other person heading the finance function discharging that function.

Under **MCA's Voluntary Guidelines on Corporate Governance, 2009**, ***Board to place Systems to ensure Compliance with Laws:*** *In order to safeguard shareholders' investment and the company's assets, the Board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems. The Directors' Responsibility Statement should also include a statement that proper systems are in place to ensure compliance of all laws applicable to the company. It should follow the "comply or explain" principle. IMPACT ANALYSIS on Minority Shareholders shall be given alongside every Agenda item.*

STATEMENT OF VALUES & CREDO:

VALUES STATEMENTS are conceived by management and are fully developed with input from all stakeholders. Credo is a Latin word which means a set of fundamental beliefs or a guiding principle. For a company, a credo is like a mission statement. The Walmart's credo being: Respect for the Individual, Service to our Customers and Strive for Excellence.

SELECTION COMMITTEE U/S. 314 OF Companies Act:

The selection and appointment of a relative of a director holding office or place of profit in the company shall be approved by adopting the SAME PROCEDURE applicable to NON-RELATIVES. For LISTED PUBLIC COMPANIES, the SELECTION of director holding office or place of profit shall be approved by SELECTION COMMITTEE, the majority of it should have INDEPENDENT directors & an EXPERT in respective FIELD from outside the company. The Selection Committee of UNLISTED public company should have an EXPERT whereas ANY DIRECTOR can be a member in case of Private companies.

ENVIRONMENTAL LAWS & GREEN TRIBUNAL

Article 48A of Constitution of India imposes duty on the State to protect and improve the environment and safeguard the forests and wildlife of the country. Similarly, Article 51A provides for the protection and improvement of the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Recently the Central Government has enacted the National Green Tribunal Act, 2010 thereby repealing National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997. The **Schedule I** to the ***National Green Tribunal Act, 2010*** provides for the legislations governing environmental laws in India, which are:

(1) The Water (Prevention and Control of Pollution) Act, 1974;
(2) The Water (Prevention and Control of Pollution) Cess Act, 1977;
(3) The Forest (Conservation) Act, 1980;
(4) The Air (Prevention and Control of Pollution) Act, 1981;
(5) The Environment (Protection) Act, 1986;
(6) The Public Liability Insurance Act, 1991;
(7) The Biological Diversity Act, 2002.

POWERS OF NATIONAL GREEN TRIBUNAL: (just like any other Tribunal in India**)**

- Green Tribunal has to follow the 'principles of natural justice' and as per Section 20, it shall also apply the principles of sustainable development, the precautionary principle and the polluter pays principle.
- Notwithstanding Criminal Procedure Code, the offence under this Act is deemed to be non-cognizable. The provisions of Civil Procedure Code will not apply to the Tribunal. However, the Limitation Act applies. Civil Court has NO jurisdiction to entertain matters falling under Tribunals jurisdiction.
- Green Tribunal has the powers of Civil Court while trying a suit; it is a "deemed civil court" and proceedings before it are "deemed civil proceeding". Write down the powers of Civil Court here…

The Schedule II of this Act provides for the GROUNDS in which compensation may be claimed.

CAPS: SECTOR-SPECIFIC POLICY FOR FOREIGN INVESTMENT

In the following sectors/activities, FDI up to the limit indicated below is allowed subject to other conditions as indicated. In Sectors/Activities not listed below, FDI is permitted up to 100 per cent on the automatic route subject to sectoral rules/ regulations applicable.

<u>100% Automatic Route:</u> Agriculture related, Alcohol distribution & brewing, Mining related, Coffee & Rubber related, Hazardous chemicals, Industrial Explosives, Drugs & Pharmaceutical related, Power - transmission distribution & trading (NOT from atomic power plant), Airports, Township development & Infrastructure project, Industrial Parks & SEZ, RBI registered Non-Banking Companies (NBFC), SEBI Intermediaries, Venture Capital and Wholesale/cash & carry trading.

<u>100% Approval Route:</u> Single Brand Product Retailing.

<u>26% Automatic Route:</u> Public sector Banks, Insurance Sectors.

<u>20% Automatic Route:</u> Private Sector Bank.

<u>FIPB Route:</u> Beyond the ceiling limits in the abovementioned sectors and for any investment in the following sectors: Print Media related, Tea Sector, Defence production, Asset Reconstruction Companies, Broadcasting related – Cable, DTH & FM Radio, Commodity/Stock Exchanges, Courier services, Credit Information Company, Satellites.

Prohibition on foreign investment in India

(i) Foreign investment in any form is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, **Trusts)** which is engaged or proposes to engage in the following activities:
a. Business of chit fund, or
b. Nidhi company, or
c. Agricultural or plantation activities, or
d. Real estate business, or construction of farm houses, or
e. Trading in Transferable Development Rights (TDRs).
(ii) It is clarified that "real estate business" means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.
(iii) In addition to the above, Foreign investment in the form of FDI is also prohibited in certain sectors such as:

a. Retail Trading (except single brand product retailing)
b. Atomic Energy
c. Lottery Business including Government / private lottery, online lotteries, etc.
d. Gambling and Betting including casinos, etc
e. Business of chit fund
f. Nidhi company
g. Trading in Transferable Development Rights(TDRs)
h. Activities / sectors not opened to private sector investment
i. Agriculture (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea Plantations)
j. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

COMPLIANCES under FEMA Capital Account Transactions – Foreign Direct Investments (FDI) & Overseas Direct Investments (ODI)

- **For FDI: Receipt of Forex for Equity –**within 180 days → **ALLOTMENT** –within 30 days → **FILE FC-GPR; <u>Note:</u>** For Public companies, it shall be 60 days, instead of 180 days.
- **For FDI: Annual Return on Foreign Exchange Assets & Liabilities** within **31st July of every year**
- **Form FNC shall be filed for opening of Branch or Liaison or Project office in India by a foreign entity**

For ODI: Form ODI, comprising of four parts:
Part I - includes the following:
Section A – Details of the Indian Party
Section B – Details of Investment in New Project
Section C - Details of Investment in Existing Project
Section D – Funding for JV / WOS
Section E – Declaration by the Indian Party (to be retained by AD Category – I bank)
Section F - Certificate by the Statutory Auditors of the Indian Party (to be retained by AD Category – I bank)
Part II - Reporting of Remittances
Part III - Annual Performance Report (APR)
Part IV – Report on Closure/Disinvestment/Voluntary Liquidation/Winding up of JV / WOS

Lumpsum Payment vs. Royalty: The Indian Joint Venture Company may in lieu of technology transfer

agree for a lumpsum consideration to be paid or a payment of royalty as a % of units sold. As per the extant FEMA Regulations, the royalty or lumpsum payment can freely remitted out of India WITHOUT ANY CEILING LIMITS subject to withholding of taxes, if any.

Note: The Current FDI Policy of India also permit conversion of royalty or lumpsum fees into equity shares of the Indian company subject to approvals & intimations, if any.

FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 & RULES 2011 [FCRA]

The Foreign Contribution (Regulation) Act, 2010 and The Foreign Contribution (Regulation) Rules, 2011 have been enacted w.e.f. 1-5-2011 replacing the old FCR Act and Rules, 1976. Most of the provisions are SAME as the Old Act. So you may write the same old provisions in case you forget the concerned provisions in this new Act. This Act is applicable to individuals, Hindu Undivided Family (HUF), Association and a Section 25 company.

DOES FCRA APPLY TO COMMERCIAL OR BUSINESS ORGANISATIONS – NO, since FEMA is applicable for them.

WHAT IS FOREIGN CONTRIBUTION?
Foreign Contribution includes all kind of transfers from foreign sources as per old Act but does NOT INCLUDE commercial receipts. Thus, Trusts can receive consultancy or other commercial receipt from foreign sources even WITHOUT HAVING FC REGISTRATIONS.

A member of a Panchayat cannot receive any foreign contribution.

FC FROM RELATIVES OR SCHOLARSHIP, STIPEND ETC.
No permission is required to obtain foreign contribution from a relative under Section 4. However, Rule 6 provides that any gift from relatives above Rs. 1,00,000 in one year shall be intimated to the FCRA department in Form FC-1.

Section 7 of FCRA, 2010 provides that foreign contribution can also be transferred non FC organisation with prior approval. Rule 23(4) provides that an organisation may apply in Form FC-10 for transfer of FC funds to unregistered organisations.

ADMINISTRATIVE EXPENSES: The definition of administrative expenses includes various expenses such as rent, vehicles etc. which can also be incurred for programme purposes. It shall NOT EXCEED 50% of total expenses.

The Act excludes consultancy or commercial receipts from the purview of foreign contribution.

APPLICATION FOR REGISTRATION UNDER FCRA

The FCRA, 2010 provides for renewal of registration of Trust & Non Profit Organisations, every 5 years. All NGOs have to apply in Form FC-5 six months before the due date [can be extended to 4 months from Certificate date]. In case an NGO fails to apply for renewal within the due date, its registration shall become invalid.

POWERS FOR REJECTING AN APPLICATION/SUSPENSION/CANCELLATION OF FCRA CERTIFICATE

Under section 12, various strict conditions have been provided for REJECTING an application for REGISTRATION OF A TRUST which include that the applicant should not have been prosecuted or convicted for indulging in activities aimed at conversion or creating communal tension. There is a power given to authorities to suspend the registration (after giving an opportunity of being heard) for a period UPTO 180 days. During suspension the organisation CANNOT receive any foreign funds WITHOUT prior approval. Similarly the registration certificate can be cancelled after giving an opportunity of being heard on committing certain defaults. Once a registration certificate is cancelled, such person shall not be eligible for registration or prior permission for the next 3 years from the date of cancellation.

FOREIGN COMPANY & FOREIGN SOURCE – same as in Old Act

All NGOs are required to file Form FC-7 alongwith a certificate for Chartered Accountant, if they receive contribution in kind.

PERSONS SPECIFICALLY DEBARRED FROM RECEIVING FOREIGN CONTRIBUTION

Section 3 of FCRA, 2010 specifies that the following persons cannot receive foreign contribution:
(a) candidate for election.
(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper.
(c) Judge, Government servant or employee of any corporation.
(d) member of any legislature
(e) political party or office-bearer thereof.
(f) Organisation of a political nature.
(g) Association or company engaged in broadcast of audio or visual news.
(h) Correspondent, columnist etc. related with the company referred in clause (g).

POWER TO PROHIBIT SOURCES FROM WHICH FC CAN BE ACCEPTED

The Act provides power to the Central Government under section 11(3)(iv) to notify such source(s) from which foreign contribution shall be accepted with prior permission only.

DISCLOSURE OF INFORMATION IF RECEIPTS EXCEED Rs. ONE CRORE

Rule 12 provides that if the contributions received during the year exceed Rs. one crore, then the organisation has to keep in the public domain all data of receipts and utilisation during the year and also in the subsequent year.

REPORTING BY BANKS

Rule 15 provides that the bank should report to the FCRA department within 30 days under two circumstances :

(i) if any foreign contribution is received without registration or prior permission,
(ii) if foreign contribution is receive in excess of Rs. one crore during a period of 30 days, this rule will apply to all FC funds received through valid registration or prior permission.

FILING OF RETURN & METHOD OF ACCOUNTING

Rule 16 provides that the annual return accompanied by Income and Expenditure statement, Receipt and Payment Account and Balance Sheet shall be submitted by 31st of December.
- The return shall be filed in Form FC-6
- A copy of bank statement certified by the bank has to be submitted
- A nil return is required to be filed if there is no activity.

Section 19 of the FCRA, 2010 just provides that accounts with regard to FC receipt and utilisation should be maintained. The Rule 17 provides that accounting statements shall be preserved for 6 years.

COMPOUNDING OF OFFENCES UNDER FCRA, 2010 {Important for DRAFTING OF PROFESSIONAL PROGRAM}

Section 41 of Foreign Contribution Regulation Act (FCRA), 2010 read with Rule 21 of FCRR deals with composition of offences by Trusts & Non Profit organisations. The provisions are similar to Companies Act. Same offence cannot be compounded within 3 years of the first offence. Secretary, Ministry of Home Affairs, New Delhi being the Compounding Authority; an application on a plain paper as accompanied by a fee of Rs.1000/- in the form of a DD/Cheque payable to be made to the Ministry of Home Affairs for composition of offences.

Competition Act, 2002 & Mergers, Amalgamations, Acquisitions & Takeovers (MAAT)

REGULATION OF COMBINATIONS [MAAT] – The Third Anchor [Section 5 & 6 of **Competition Act, 2002**]

GROUP: two or more enterprise directly or indirectly in a position to, exercise 26% or more voting rights in other or appoint more than 50% of board of directors in other; or control the management or affairs of other.

The following **SCHEDULE-I ITEMS** will be exempted from filing with CCI:

1. Acquisition UPTO 15% or SUBSTANTIAL assets/business operations for investment purpose or in ordinary course of business, not leading to control.
2. Acquisition where acquirer already has 50% & there is NO change from joint control to SOLE control.
3. Amended or renewed tender offer where notice has been filed by the party making the offer prior to such amendment or renewal of offer. Provided that prior intimation of such change has been duly made;
4. Acquisition of stock-in-trade, raw materials, stores and spares in the ordinary course of business;
5. Acquisition of shares or voting rights pursuant to a bonus issue or stock-splits or consolidation of face value of shares or subscription to rights issue (to extent of entitlement), not leading to acquisition of control;
6. Acquisition of shares or voting rights by a securities underwriter or a registered stock broker on behalf of clients, in the ordinary course of their respective businesses;
7. Acquisition of control, shares, voting rights or assets by one person or enterprise of another person or enterprise within the same group;
8. Acquisition of current assets (i.e. interest accrued on investments, stores and spare parts, loose tools, stock-in-trade, works-in-progress, sundry debtors, cash balance on hand and bank balance) in the ordinary course of business;
9. Combinations taking place entirely outside India with insignificant local nexus and effect on markets in India.

NOTE:

1. Any ENTERPRISE being acquired has assets UPTO Rs.250 crores or turnover UPTO Rs.750 crores is exempt from provisions of Section 5.
2. Any GROUP exercising LESS THAN 50% of voting right in other enterprise is exempt from provisions of Section 5.
3. **Combination only regulated - no registration required - no prior approval – CCI will only examine whether it creates AAA on competition if it exceeds below mentioned REVISED limits.**

N	PARTICULARS U/S.5 OF COMPETITION ACT	WHERE	ASSETS	TURNOVER
1.	• Acquisition [Single Acquirer] [Different Goods & Services] • Acquisition of Control over an Enterprise engaged in SIMILAR/Identical goods & services DIRECTLY or INDIRECTLY • Merger or Amalagamation of TWO enterprises.	In India Cr-crore; Mn-million Bn-billion	Rs.1500 cr	Rs.4500 cr
		In or outside India, in aggregate	USD 750 cr including Rs.750 cr in India	USD 2250 cr including Rs.2250 cr in India
2.	• Acquisition by Group [Dissimilar Goods & Services] • Acquisition by a Group engaged in SIMILAR/Identical goods & services DIRECTLY or INDIRECTLY • Merger or Amalagamation in a Group	In India	Rs.6000 cr	Rs.18000 cr
		In or outside India, in aggregate	USD 3 bn including Rs.750 cr in India	USD 9 bn including Rs.2250 cr in India

Notice for combinations exceeding above limits shall be filed in Form I/II within 30 days of proposal. CCI shall determine whether there is any Adverse Appreciable Effect on Competition within 30 days of filing. CCI after giving an opportunity of being heard shall pass a final order approving or rejecting the combination within 210 days of filing or on expiry of 210 days, it shall amount to deemed approval.

In case of acquisitions by banks, financial institutions, foreign institutional investors & venture capital funds, an application shall be filed in Form III within 7 days of acquisition.

Legal Metrology Act, 2009

(most of the provisions are SAME as erstwhile Standards of Weights & Measures Act, 1976. So you may write the same old provisions in case you forget the concerned provisions in this new Act)

The Central Government has appointed the date 1st April 2011 from which the **Legal Metrology Act, 2009** and all the Rules made thereunder, will come into effect. The Central Government has also notified the following Rules made under the Act:

- The Legal Metrology (Packaged Commodities) Rules, 2011
- The Legal Metrology (General) Rules, 2011
- The Legal Metrology (National Standards) Rules,2011
- The Legal Metrology (Numeration) Rules, 2011
- The Legal Metrology (Approval of Models) Rules, 2011
- The Indian Institute of Legal Metrology Rules, 2011

"Legal Metrology" and "Legal Metrology Officer":

Now, all officers under the Director or the Controller are Legal Metrology Officer.

- Section 2(g): "Legal Metrology" means that part of metrology which treats units of weighment and measurement, methods of weighment and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weighments and measurements;
- Section 2(h) "legal metrology officer" means Additional Director, Additional Controller, Joint Director, Joint Controller, Deputy Director, Deputy Controller, Assistant Director, Assistant Controller and Inspector appointed under sections 13 and 14.

Definition of "Protection": The term Protection is now defined. It means the utilization of reading obtained from any weight or measure, for the purpose of determining any step which is required to be taken to safeguard the well-being of any human being or animal, or **to protect any commodity**, vegetation or thing, whether individually or collectively; it may be construed to include the term "industrial production" within the meaning of "protection".

Power of the Director and the Controller: The Director will enforce the provisions in relation to inter-state trade and commerce. The Controller will function in relation to intra-state (within the state) trade or commerce.

Government Approved Test Centres: The Central Government may notify the kinds of weights and measures, verification of which may be allotted to GATC. However, no such notification has yet been issued.

Nomination of a Director

Under Section 49(1) of the new Act, when an offense has been committed by a company, the Director nominated by the Company shall be held liable for the offense. However, it does not grant immunity to the Company or its other officers, if any connivance is detected.

- The price shall be printed on the package in the manner given below; 'Maximum or Max. retail price Rs / ₹..... inclusive of all taxes or in the form MRP Rs / ₹.....incl., of all taxes after taking into account the fraction of less than fifty paisa to be rounded off to the preceding rupees and fraction of above 50 paise and up to 95 paise to the rounded off to fifty paise.

For packaging soaps, lotion and creams (except milk cream), it is permissible to declare the weight or volume qualified by the words "when packed".

Sec	Other Provisions as per www.metrologycentre.com

7(4)	**Standard Weight & Measure:** The physical characteristics, configuration, construction details, materials, equipment, performance, tolerances, period of re-verification, methods or procedures of tests shall be such as may be prescribed (in the General Rules)
8	(1) Any weight or measure which conforms to the standard unit of such weight or measure and also conforms to such of the provisions of section 7 as are applicable to it shall be the standard weight or measure. (2) Any numeral which conforms to the provisions of section 6 shall be the standard numeral. (3) No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral. (4) No weight or measure, shall be manufactured or **imported** unless it conforms to the standards of weight or measure specified under section 8: Provided that provisions of this section shall not apply for manufacture done exclusively for export or for the purpose of any scientific investigation or research.
9	(1) The reference standards, secondary standards and working standards of weights and measures shall be such as may be prescribed. (2) Every reference standard, secondary standard and working standard shall be verified and stamped in such manner and after payment of such fee as may be prescribed. (3) Every reference standard, secondary standard and working standard which is not verified and stamped in accordance with the provisions of sub-section (2) shall not be deemed to be a **valid** standard.
17	**Provisions related to manufacturer, dealer, repairer, user, packer and importers:** (1) Every manufacturer, repairer or dealer of weight or measure shall **maintain such records and registers** as may be prescribed. (2) The records and registers maintained under sub-section (1) shall be produced at the time of inspection to the persons authorized for the said purpose under section 15(1).
18	(1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any **pre-packaged commodity** unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed under the LM (PC) Rules. (2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed in the PC Rules.
19	No person shall **import** any weight or measure unless he is **registered** with the Director in such manner and on payment of such fees, as may be prescribed (under the General Rules).
20	No weight or measure, whether singly or as a part or component of any machine shall be **imported** unless it conforms to the standards of weight or measure.
24(1)	**Provisions related to verification and stamping:** Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.

Company Law/ Company Secretarial Practice/ Corporate Restructuring

1. **Amendments in MCA-21 & Filing aspects**
2. **Amendments in Clauses of Memorandum Of Association**
3. *Amendments in Unlisted Public Companies PREFERENTIAL ALLOTMENT Rules u/s. 81(1A)*
4. **AMENDMENTS IN GENERAL MEETINGS & BOARD MEETINGS RELATED**
5. **Amendments in Managerial Remuneration under Schedule XIII**
6. *Amendments in Related Party Transactions under Sections 295, 297 & 314 of Companies Act, 1956*
7. **Amendments in Merger of Government Companies u/s. 396**
8. **DEFUNCT COMPANIES & FAST TRACK EXIT SCHEME**
9. *Form & Contents of Annual Accounts under Revised Schedule VI*

For Direct & Indirect Tax Laws Amendments, download & print the **ICSI Supplement from this link [this is applicable for CS Executive & Professional Program exams**

CLICK HERE FOR FINANCIAL MANAGEMENT THEORY

Glance through **MCA Guidelines on Governance**

Securities Law/ Due Diligence

1. Amendments in SEBI ICDR Regulations, 2009
2. **Amendments in Equity Listing Agreement**
3. *Public Issue by SME's & SME Equity Listing Agreement (most predicted question for this exam)*
4. **Debt market issues & Securitised Debt Listing Agreement**
5. **Revised Insider Trading Disclosures**
6. **NEW TAKEOVER CODE, 2011**

Corporate Governance/ Securities Law

1. **New Voluntary Governance Codes in India** **(including** *MCA's Corporate Governance & CSR Code,* Secretarial Audit**, ICSI's recommendations)**
2. **New Governance Codes abroad (including** UK Corporate Governance **& Stewardship Codes)**
3. **Other Amendments – Internal Control, Credo & Green Tribunal**

Other Laws for CS Exams:

1. **Amendments in FEMA & CONSOLIDATED Foreign Direct Investment (FDI) POLICY, 2012** *[FOR DRAFTING & ALLIANCES IN PROFESSIONAL PROGRAM, ECONOMIC LAWS IN EXECUTIVE PROGRAM]*
2. **FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 & RULES 2011 [FCRA] replacing Old Act** *[FOR ECONOMIC LAWS IN EXECUTIVE PROGRAM & HAS COMPOUNDING PROVISIONS AS RELEVANT FOR DRAFTING]*
3. **Competition Act, 2002 & Mergers, Amalgamations, Acquisitions & Takeovers (MAAT)** *[FOR DRAFTING & CORPORATE RESTRUCTURING IN PROFESSIONAL PROGRAM & ECONOMICS LAWS IN EXECUTIVE PROGRAM]*
4. **Legal Metrology Act, 2009 replacing Standard Weights & Measures Act** *[FOR ECONOMIC LAWS IN EXECUTIVE PROGRAM]*