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## **Supplement to Only This Much for Company Secretary Executive Program with Updates 2010**

**ECONOMIC &  
LABOUR LAWS**

**SECURITIES  
LAW &  
COMPLIANCES**

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## **ECONOMIC & LABOUR LAW – 100 MARKS**

### **PART A - ECONOMIC LAWS – 60 MARKS**

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## **SECURITIES LAW & COMPLIANCES – 100 MARKS**

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This update as a supplement to 2<sup>nd</sup> edition of Only This Much for Company Secretary Executive Programme on Company law, Economic & Labour laws and Securities law & Compliances, tries to capture the amendments in the said subjects during 2009 and 2010 from CS exam point of view and of course, in the style of Only This Much!!!

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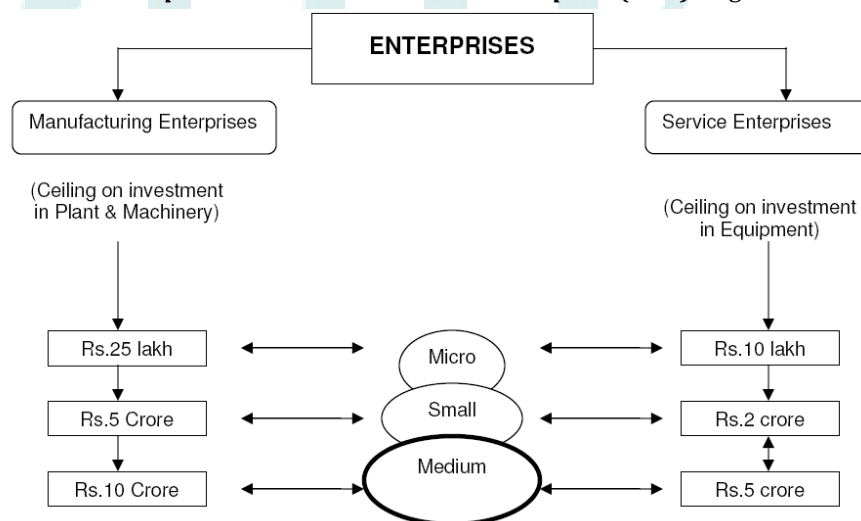
## **INDUSTRIES (DEVELOPMENT & REGULATION) ACT 1951 (IRDA) READ WITH MICRO, SMALL & MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006**

### **PART A – ECONOMIC LAWS – 60 MARKS**



IDRA has classified industries into Large Industry, Small Scale Industry (SSI), Small Scale Business Enterprise, Ancillary and Tiny Industry. The Central Government has rescinded the notification defining various types of industry vide notification dated **27th February 2009**.

As the notification classifying TYPES OF INDUSTRY is repealed, definition under the Micro, Small and Medium Enterprises Development Act (MSMED), 2006 will hold good. **SSI's is equivalent to Micro or Small Enterprise (MSE)** as given below:



### **FOR MANUFACTURING PRODUCTS RESERVED FOR MSE BY LARGE INDUSTRY:**

*The large industries have to satisfy the following conditions to manufacture the products reserved for MSE/SSI as per Foreign Direct Investment (FDI) Policy,*

- Compulsory License to be obtained.
- **Letter of Undertaking** with Director General of Foreign Trade (DGFT) that "Export of
- **MINIMUM 50% of [New Additional Annual Production] within 3 years of commencement of production".**
- **Install Pollution Control Equipment & recover some by-products from waste.**



- Prior approval of Foreign Investment Promotion Board (FIPB) will be required, if Foreign Direct Investment exceeds 24%.

#### **EXEMPTION FROM FIPB APPROVAL for MSE's**

100% Foreign Direct Investment (FDI) **in Micro or Small Enterprise** is allowed **under Automatic Route** subject to Sectoral Caps, if any, irrespective of any other approvals or ceiling limits as per the Foreign Direct Investment (FDI) policy in India.

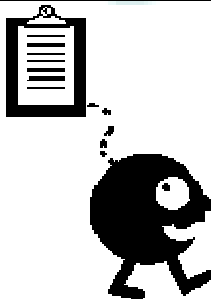
#### **FOREIGN TRADE POLICY [FTP] 2009-14**

Its such a change in name from FTP 2004-09 to 2009-14 as a part of regular amendments. Most of the provisions remain the same **with the following being** important from CS exam point of view.

#### **\* Trading/Export Houses \***

**This is the** new name of the erstwhile Star Export Houses **with revised values**. **Trading/Export house is the status** given to the export entities & such entities are permitted to use **the given status along with their** brand or company name. **It is a boost to the image of the company & such status will be given** based on Average [Free On Board / Free On Road (FOB/FOR) export value during Current year [+] 3 Preceding years] Export Performance {AEP}.

#### **Status Holders or Trading/Export Houses**

<b>STATUS</b>	<b>AVERAGE EXPORT PERFORMANCE</b>	
	<b>Rupees 20 crores</b>	
<b>Export House</b>		
	<b>Rupees 100 crores</b>	
<b>Star Export House</b>		

	Rupees 500 crores
Trading House	
	Rupees 2,500 crores
Star Trading House	
	Rupees 7,500 crores
Premier Trading House	

## **COMPETITION ACT 2002**

### **Repeal of MRTP Act**

*Its just a liberalization in the syllabus.* Monopolies Restrictive Trade Practices Act, 1969 is repealed with effect from 1<sup>st</sup> September 2009 and Competition Act, 2002 is fully made applicable.

Competition Act **deals with** Anti-competitive agreements and Abuse of dominance **which is** void **or actionable** only if **it creates Adverse Appreciable Affect (AAA) on competition.** **Section 19 of the Competition Act, 2002 provides that while determining whether an agreement or dominance has AAA on competition, the Competition Commission of India (CCI) shall give due regard to all or any of the following;**

- **Creation barriers to new entrants in the market;**
- **Driving existing competitors out of the market;**
- **Foreclosure of competition by hindering entry into the market;**
  - **Accrual benefits to consumers;**
- **Improvements in production or distribution of goods or provision of services and**
- **Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.**

**The most important provision in the Act as to prior approval for Mergers, Amalgamations, Acquisitions & Takeovers is required only on crossing the following ceiling limits:**



	Particulars	Where	Assets	Turnover
N				
1.	Acquisition [Single Acquirer] [Different Goods & Services] Acquisition of Control over an Enterprise engaged in SIMILAR/Identical goods & services DIRECTLY or INDIRECTLY Merger or Amalgamation of TWO enterprises.	In India Cr-crore; Mn-million Bn-billion	Rs. 1000 cr	Rs. 3000 cr
		In or outside India, in aggregate	USD 500 mn including Rs.500 cr in India	USD 1500 mn including Rs.500 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 Amalgamation in a Group	In India	Rs. 4000 cr	Rs. 12000 cr
		In or outside India, in aggregate	USD 2 bn including Rs.500 cr in India	USD 6 bn including Rs.500 cr in India

## **FOREIGN EXCHANGE MANAGEMENT ACT (FEMA), 1999**

Valuation under Foreign Direct Investment (FDI) into India shall no more based on erstwhile CCI guidelines:

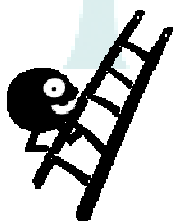
### **Issue Price (for all issues other than Rights Issue):**

**Price of shares issued to persons resident outside India under the FDI Scheme, shall be on the basis of SEBI ICDR Regulations in case of listed companies.**

**In case of unlisted companies, valuation of shares has to be done by a SEBI registered Category I Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow Method (DCF) .**

**In case of issue of shares on preferential allotment the price shall not be less than the price as applicable to transfer of shares from resident to non-resident.**

**Form FC-GPR: For issue of shares as mentioned above form FC-GPR shall be submitted within 30 days of allotment of shares. Kindly note, in case of FDI, allotment shall be done within 180 days of foreign inflow of funds.**



## Transfer Price

*Transfer by Resident to Non-resident (i.e. to foreign national, NRI, FII and incorporated non-resident entity other than erstwhile OCB)*

*Listed = Minimum price as per Preferential Issue under SEBI ICDR regulation with date of purchase/sale as relevant date.*

*Unlisted = Minimum price as per Fair value under Discounted Cash Flow Method and certified by Merchant Banker or Chartered Accountant.*

*Transfer by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI and FII) to Resident*

*Should be within Minimum price as said above in Transfer by Resident to Non-Resident under Issue price for all issues (other than Rights issue).*

*Form FC-TRS: In case of transfer as mentioned above, FC-TRS should be submitted within 60 days from the date of receipt of the amount of consideration. The onus of submission of the form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India.*

## Export of goods & services

*The period of realisation and repatriation to India of the amount representing the full export value of goods or software exported is increased from six months to twelve months from the date of export.*

## Prevention of Money Laundering Act, 2002

*Banks, Financial Institutions & SEBI registered Intermediaries should introduce a system of maintaining proper record of transactions prescribed under the Act, as mentioned below:*

- all cash transactions of the value of more than Rs. 10 lakh or its equivalent in foreign currency;
- all series of cash transactions integrally connected to each



other which have been valued below Rs. 10 lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the aggregate value of such transactions exceeds Rs. 10 lakh;

- **all transactions involving** receipts by non-profit organisations of value more than rupees ten lakh or its equivalent in foreign currency
- **all cash transactions where** forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security or a document has taken place facilitating the transaction and
- **All suspicious transactions whether or not made in cash and by way of as mentioned in the Rules.**



**Scheduled Offence:** The following are the revised schedule of offences under the Act,

<b>Part A</b>	<b><i>Schedule I to the Act [for waging war against Government of India] [irrespective of value]</i></b>
<b>Part B</b>	<b><i>Schedule I to the Act [Total value of offences - Rs.30 lakhs OR more] [&amp; also covers serious offences]</i></b>
<b>Part C</b>	<b><i>Schedule I to the Act [offences which have cross-border implications]</i></b>

#### **Attachment of property:**

Provisional Attachment of Property UPTO 150 days is allowed **by director / officer & a copy of order of attachment along with the reasons, to be sent to Adjudicating Authority.**

***In case of retention or attachment of property, the adjudicating authority shall serve a Show cause notice [of not less than 30 days] as to why all or any of such property should not be declared to be the properties involved in money laundering and confiscated by the Central Government.***

***The Central Government shall return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention against Corruption.***

## PART B -LABOUR LAW – 60 MARKS

### PAYMENT OF GRATUITY ACT, 1972



The Payment of Gratuity Act, 1972 amended for raising the ceiling of Gratuity for employees to **Rs. 10 lakh from the erswhile limit** of Rs. 3,50,000/-.

The new definition of employees under Gratuity Act is as follows,

“Employees” means any persons [NOT being an Apprentice] employed for wages in any kind of work (manual or otherwise) or in connection with work of factory, mine, plantation, oilfield, railway company, port or other establishment.

*So, even teachers are eligible for gratuity now overriding the famous Ahmadabad Private Primary Teachers Association case.*

### EMPLOYEES PROVIDENT FUNDS (EPF) & MISCELLANEOUS PROVISIONS ACT, 1952

*Provident Fund to International workers*

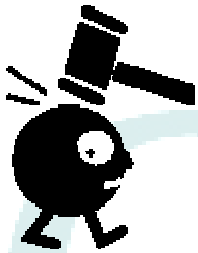
*International worker is (a) an Indian employee who has worked or is going to work in a foreign country with which India has entered into a social security agreement and when the employee is eligible to avail social security programme of that country (b) an employee other than Indian employee, working for an establishment in India to which the EPF Act applies.*

*Employees Deposit Linked Insurance (EDLI) Scheme amended: In effect, on death during employment, Family member/nominee will get the following:*

**IF** Average balance is more than Rs.50,000/-

**THEN Insurance Amount = Rs. 50,000/- + 40% (Excess), subject to a maximum of Rs. 1,00,000/-**

## **EMPLOYEES STATE INSURANCE (ESI) ACT, 1948**



**Section 2(12) of ESI:** "factory" means any premises including the precincts thereof -  
(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on

~~with the aid of power or is ordinarily so carried on, or (b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on,~~

No more applicable

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

**Section 2(6A) of ESI:** "dependant" means any of the following relatives of a deceased insured person, namely :-

- *a widow, a minor legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;*
- *if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;*

**ESI INSPECTORS ARE NOW CALLED SOCIAL SECURITY OFFICERS (SSO).**

In case of determination of contribution u/s. 45, the ESI Corporation power is limited to 5 years of contribution becoming due. [limitation period]



Appeal to Appellate Authority can be preferred by employee for order determining contribution (as above) within 60 days by depositing 25% of contribution (ordered or as per own calculation - whichever is higher), which is refundable with interest on success of appeal.

**Section 51E:** An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established. [*Agnes v.*

## **WORKMEN COMPENSATION ACT, 1923 – NOW CALLED EMPLOYEES COMPENSATION ACT**

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**Workmen's Compensation Act is now Employees Compensation Act, 1923.** It's a mere change in name **and the definition of term employee now** includes clerical employees & casual employees **also**. **Further,**

**The word 'workman' is replaced with 'employees' in all places.**

**the minimum compensation limits to employees on no-fault basis are increased to Rs.1,20,000 & 1,40,000 (erstwhile limits being Rs. 80,000 & 90,000) for death & permanent total disablement respectively.**

**under the maximum compensation limit, the monthly wage limit of Rs.4,000/ is now increased to Rs.8,000/-**

**Funeral expenses limit extended to Rs.5000 (from Rs.2,500)**

**The employee shall be reimbursed the actual (full) medical expenditure incurred by him for treatment of injuries caused during the course of employment.**

**Time limit for disposal of cases relating to compensation introduced- The Commissioner shall dispose of the matter relating to compensation within 3 months of reference.**

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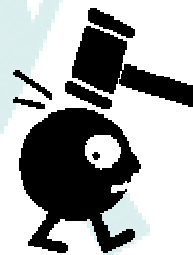
# SECURITIES LAW & COMPLIANCES

## PART A – SECURITIES LAW – 60 MARKS

### **SECURITIES CONTRACT REGULATION ACT (SCRA), 1956**

*Minimum offer to Public or Public Shareholding or Initial listing requirement under Rule 19(2)(b) of Securities Contract Regulation Rules (SCRR), 1957:*

- The minimum threshold level of public holding shall be 25% for all listed companies.
- Existing listed companies having less than 25% public holding have to reach the minimum 25% level by an annual addition of not less than 5% to public holding.
- For new listing (IPOs), if the post issue capital of the company calculated at offer price is more than Rs. 4000 crores, 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 at least 5% per annum.



The new SCRR definitions worth noting includes,

*Public = persons other than – (i) the promoter and promoter group (as per SEBI ICDR); (ii) subsidiaries and associates of the company.*

*Public shareholding = shares held by public EXCLUDING shares which are held by custodian against depository receipts issued overseas.*

### **Continuous listing requirement under Rule 19A of SCRR**

- **The requirement for continuous listing will be same as the conditions for initial listing.**
- **Every listed company shall maintain public shareholding of at least 25%. If the public shareholding in a listed company falls below 25% at any time, such company shall bring the public shareholding to 25% within a maximum period of 12 months from the date of such fall.**

**Note: SEBI cannot relax the listing requirement of 25% in any case.**

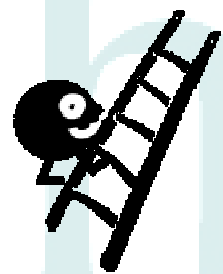
### **Setting up SME Stock Exchanges**

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

**On satisfying the following conditions, an application for SME Exchange can be made by any company:**

- 1. It is a corporatised and demutualised entity;**
- 2. It has a networth of atleast Rs. 100 crores;**
- 3. It shall have nation wide trading terminals and an online screen-based trading system with quote or order driven system;**
- 4. The clearing function of the stock exchange shall be performed by a clearing corporation/ clearing house;**
- 5. The minimum lot size for trading on the stock exchange shall be one lakh rupees.**

**The above eligibility criteria shall mutatis mutandis (as such) apply to recognised stock exchanges having nationwide trading terminals and which desires to set up a trading platform for SMEs.**



## **EQUITY LISTING AGREEMENT & ITS CLAUSES**

*The violation of any clause in the listing agreement may attract a penalty UPTO Rs. 25 crores or an imprisonment UPTO 10 years as per Section 23 of SCRA.*

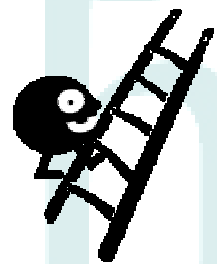
*Electronic Filing And Retrieval (EDIFAR) under Clause 51 is repealed now. CFDS has replaced EDIFAR under Clause 52. CFDS stands for Corporate Filing & Dissemination System and can be accessed from [www.corpfiling.co.in](http://www.corpfiling.co.in). It offers a XBRL (Extensible Business Reporting Language) enabled common platform for listed companies to file their returns with stock exchanges and also a common place for investors to view information related to listed companies. The Compliance Officer and the company shall be responsible for ensuring the correctness, authenticity and comprehensiveness of the information, statements and reports filed under this clause.*

*Clause 19: To give 2 days advance notice of Board meeting to stock exchange for buyback, bonus, dividend, rights issue & debenture issue.*

*Audit committee approval is mandatory before appointment of CFO and shall be given only after assessing qualification, experience & background.*

### **OBLIGATIONS UNDER CLAUSE 41:**

- ❖ The financial results prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods.
- ❖ The financial results must be intimated to the stock exchange within 15 minutes of conclusion of the meeting of the Board or Committee in which they were approved.
- ❖ **QUARTERLY FILING:** In case the company opts to submit un-audited financial results within 45 days from the quarter, they shall be subjected to limited review by the statutory auditors of the company and a copy of the Limited Review report shall be furnished to the stock exchange within 45 days from end of the quarter.
- ❖ In case the company opts to submit audited financial results within 45 days from the quarter, it shall be accompanied by the audit report.
- ❖ If the company has subsidiaries also have to submit quarterly and year to date consolidated financial results within 45 days from the end of the quarter; and also submit annual audited consolidated financial results to the stock exchange.
- ❖ **LAST QUARTER FILING:** In case the company opts to submit un-audited



financial results for the last quarter, the same shall be subjected to limited review within 45 days from the end of financial year. The company shall also submit audited financial result for the entire financial year as soon as they are approved by the Board.

- ❖ In case the company opts to submit audited financial results for entire financial year, it shall submit within 60 days from the end of financial year. In case the company opts to submit audited financial results for the entire financial year, it shall intimate the stock exchange in writing within one month of end of the financial year, about such exercise of option.

*Note: Limited review or Audit reports shall be given by auditor who holds valid certificate issued by Peer Review Board of ICAL.*

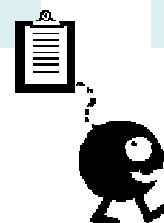
#### **Clause 16:**

- The company shall CLOSE TRANSFER BOOKS (& further transfer will be deferred) once a year during AGM,
- if it has not closed during declaration of dividend or right or bonus shares or shares for conversion of debentures.
- Instead of closing the books, the company may also fix RECORD DATE.
- 7 working days advance notice shall be given for book closure & record date to exchange;
- also it shall be ensured that the time gap between 2 book closures and record dates would be atleast 30 days.

Note: As per Clause 23, letters of allotment/rights shall be issued within 6 weeks of record date or opening of transfer books.

#### **Other Important Updates under Listing Agreement:**

- To issue SHARE CERTIFICATE within 1 month of lodgment for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies and
- To issue NEW share certificate within 6 weeks of notification of LOSS and on receipt of proper indemnity.
- For TRANSFER of securities, there shall be a proper instrument of transfer, duly executed & accompanied by requisite documents and shall seek PAN of transferee for physical transfers.
- Any minor difference in signature may be intimated to transferor, who may be object WITHIN 15 days, and then shares will be transferred;





- also the company shall COMPENSATE & keep the benefit in ABEYANCE, if transfer is NOT effected/rejected within 1 month; dispute may be referred to Arbitration mechanism of exchange.

**Note: Any attachment or prohibitory orders restraining transfer shall be intimated.**

7 working days advance notice *to stock exchanges shall be given for corporate actions like* mergers, de-mergers, splits and bonus shares *by companies whose stock forms part of INDEX or if it has DERIVATIVES* whereas 21 days advance notice for Payment of dividend, interest & redemption and warrants *thereof*.

**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 requirements in Main Board. Main Board = Stock Exchanges 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:

- *Companies listed on the SME exchange may send to their shareholders, a statement containing the salient features of all the documents [in abridged form], as prescribed in proviso to section 219(b)(iv) of the Companies Act, 1956, instead of sending a full Annual Report;*
- *Periodical financial results may be submitted on “half yearly basis”, instead of “quarterly basis” under Clause 41 and*
- *Every issuer listed under SME Exchange shall have their own website.*
- *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.*

## **SEBI (INTERMEDIARIES) REGULATION 2008**

### **Mandatory PAN requirement for transaction in Cash Market**

*Permanent Account Number (PAN) shall be mandatory for all entities/ persons who are desirous of transacting in the securities market. The Stock exchanges shall ensure that the members of their exchanges shall collect copies of PAN cards issued to their existing as well as new clients and maintain the same in their record after verifying with the original and then cross-check with the Income Tax Department. Thus, PAN becomes a sole identification number for all transactions in the securities market, irrespective of the amount of transaction. PAN may not be insisted for Central or State Governments or by officials of Court like Official Liquidator or for investors from Sikkim.*

### **Unique Client Code (UCC)**

*It shall be mandatory for the broker to use unique client code for all clients. For this purpose the broker shall collect and maintain in their back office the Permanent Account Number (PAN) allotted by the Income Tax Department for all their clients.*

### **Investing in issue of securities:**

*The applicants may note that in case the DP ID & Client ID and PAN mentioned in the share application form and entered into the electronic bidding system of the stock exchanges by the syndicate members do not match with the DP ID & Client ID and PAN available in the depository database, the application is liable to be rejected. (the said information shall also be disclosed in prospectus, application & pre-issue advertisements).*

### **PRESERVATION OF RECORDS:**

*Every recognized stock exchange and its members to maintain and preserve the specified books of account and documents for a period ranging from two years to five years.*

## **MUTUAL FUNDS & VENTURE CAPITAL FUNDS**

*Exit loads may be uniform and no discrimination shall be made among investors based on the subscription amount to the mutual fund scheme.*

### **MUTUAL FUND (MF) OFFERS:**

*MF Offer Document may be split into two parts i.e.*

- *Statement of Additional Information (SAI) and Scheme Information Document (SID). SAI shall incorporate all statutory information on Mutual Fund. Mutual Funds shall prepare SID, SAI and Key Information Memorandum (KIM) in the simplified format and update it, as per SEBI circular dated 23rd May 2008.*

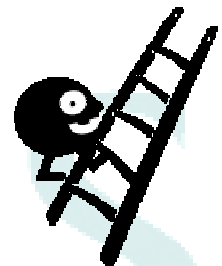
The mutual fund schemes (other than ELSS) offer period for subscription shall be kept open UPTO 15 days.

Cheques or demand drafts are used as mode of payments for subscribing to New Fund Offers (NFO) of Mutual Funds. Now, in addition to that, MF subscribers will also be provided with Application Supported by Blocked Amounts (ASBA) option, which is discussed in detail under SEBI (ICDR) Regulations.

In case of open ended schemes, the statement of accounts & unit certificates (if applicant so desires) shall be despatched for the accepted applications WITHIN 5 working days of closure of offer period OR on receipt of request from unit holders.

In case of close ended schemes, the statement of accounts or issue units in demat form for accepted applications WITHIN 5 working days of closure of offer period.

The refunds shall be made WITHIN 5 working days of closure of offer period, otherwise, Asset Management Company (AMC) shall pay an interest @ 15% p.a.



### **Revised Qualification to apply for VCF:**

*Every Venture Capital Fund shall give a Firm commitment from the investors for contribution of atleast Rs.5 crores at the time of making an application for registration.*

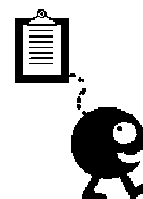
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*Every Foreign Venture Capital Fund shall give a Firm commitment from the investors for contribution of atleast USD 1 million at the time of making an application for registration.*

.....

#### **Internal audit:**

Every stock broker, trading & clearing member of stock exchange shall carry out internal audit on systems, operations, efficacy of investor grievances redressal and compliance of securities law on half-yearly basis by independent CS/CA/CWA in practice and submit report within 3 months to stock exchange.



Every Credit rating agency shall carry out internal audit on systems, operations, efficacy of investor grievances redressal and compliance of securities law within 2 months from the end of every half year from an independent CS/CA/CWA in practice and submit Action taken report within next 2 months to SEBI.

.....

### **PART B – COMPLIANCES – 40 MARKS**

#### **DEBT MARKETS**

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*Issue of convertible debt securities (debentures) & convertible preference shares, either partially or fully or optionally into listed or unlisted equity shall be guided by the disclosure norms applicable to equity or other instruments offered on conversion in terms of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009. The provisions for LISTING of equities and convertible debt securities/preference shares are almost similar.*

*The issue and listing of non-convertible debt securities, whether issued to the public or privately placed, is to be done in accordance with the provisions of the Securities and Exchange Board of India (Issue and Listing of Debt Securities-ILDS) Regulations, 2008. It gives the procedure for issuance, trading & settlement in fixed income securities.*

.....

### **Types of Listing Agreement:**

- **Equity & Convertible debt listing agreement**
  - **Listing Agreement for Small & Medium Enterprises (SME)**
  - **Simplified Debt listing agreement (for non-convertible debt securities)**
- 
- **Part A: Minimum disclosures, when equity of issuer is already listed;**
  - **Part B: Detail disclosure (though lesser than equity listing agreement) for all other cases.**
- 
- **Simplified Indian Depository Receipts (IDR) Listing agreement**

## **INVESTOR PROTECTION**

*The following are the SEBI Regulations concerning investor protection:*

- **SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009;**
- **SEBI (Ombudsman) Regulation, 2003 – designed to redress the investor's grievance against listed companies or intermediaries or both for amicable settlement;**
- **SEBI (Prohibition of fraudulent and Unfair Trade Practices relating to securities market) Regulation, 2003 – to prohibit any fraudulent and unfair Trade practices relating to securities market;**
- **SEBI (Prohibition of Insider Trading) Regulations, 1992: The basic objectives are to prohibit persons who have more access to company's information which can be used to benefit the individual or group of individual or agency**

### **SEBI guidelines for Legal Aid to Investors to take action:**

*'Legal proceedings' MEANS any proceedings before a court or tribunal where 1000 or more investors affected or likely to be affected by market misconduct. The aid for a particular legal proceedings shall be:*

*UPTO Rs. 20 lakh if it is before the Supreme Court of India and*

*UPTO Rs. 10 lakh before any other forum. The bills submitted shall be certified by the Auditor of the Investors' Association and UPTO 75% of the expenses actually incurred shall be reimbursed WITHIN 15 days of the receipt of claims.*

#### **SEBI (Informal Guidance) Scheme 2003 & SEBI Consent orders.**

*Code of Conduct to all Intermediaries operating in securities market under SEBI (Intermediaries) Regulation, 2008.*

*SEBI's measure to prevent money laundering & combat financial terrorism: As per the provisions of the Prevention of Money Laundering Act (PMLA), every intermedisary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules notified under the PMLA (dealt under PMLA chapter).*

**SEBI (Investor Protection & Education Fund - IPEF) Regulations, 2009:  
MCA has IEPF whereas SEBI has IPEF and stock exchanges has IPF!!!**

**The following amounts shall be credited to the IPEF:-**

- (a) contribution by SEBI;**
- (b) grants and donations given to the Fund by CG/SG;**
- (c) proceeds from SEBI Takeover code;**
- (d) security deposits in respect of public and rights issues, amounts in Investor Protection Fund (IPF) in the event of de-recognition of stock exchanges;**
- (e) interest or other income received out of any investments made from the Fund;**
- (g) such other amount as SEBI may specify in the interest of investors.**

.....

***The IPEF shall be utilised for the purpose of protection of investors and promotion of investor education and awareness in accordance with these regulations such as,***

.....

***(a) educational activities including seminars, training, research and publications, aimed at investors;***

***(b) awareness programmes including through media - print, electronic, aimed at investors;***

***(c) funding investor education and awareness activities of Investors' Associations recognized by SEBI;***

***(d) aiding investors' associations recognized by the Board to undertake legal proceedings in the interest of investors in securities that are listed or proposed to be listed;***

***(e) refund of the security deposits which are held by derecognised stock exchanges.***

***(f) expenses on travel of members of the Committee, who are not officials of SEBI, and special invitees to the meetings of the Committee, in connection with the work of the Committee;***

***(g) salary, allowances and other expenses of office of Ombudsman; and***

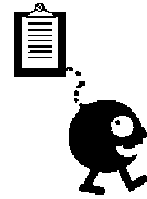
***(h) such other purposes as may be specified by SEBI.***

## Public issue of Securities

### SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009

for issue of equities / convertible securities to public

SEBI (Disclosure and Investor Protection - DIP) Guidelines, 2000 was the compendium of all circulars issued by SEBI relating to issuance of securities. It is now replaced by SEBI (Issue of Capital & Disclosure Requirements - ICDR) Regulations with effect from 26<sup>th</sup> August 2009. ICDR contains 111 regulations divided into 11 chapters with 20 schedules.



#### What now?

*Its a mere change of name. **Whatsoever, as applicable in the erstwhile** DIP guidelines still applies. **So, all your readings still holds good. Now, update with few more concepts.***

*“anchor investor” **MEANS a Qualified Institutional Buyer (QIB), an application for a value of 10 crore rupees or more in a public issue made through the book building process in accordance with these regulations.***

***ASBA - Applications Supported by Blocked Amount is a method of investing. It is now applicable to** all types of issues including public, rights and mutual fund issues. Further, it is also applicable to all types of investors irrespective of whether retail investors or not.*

***If 'T' is the issue closing date, then the basis of allotment will be finalised on 'T+7' days and securities will commence trading in stock exchanges on 'T+12' days. Thus, a 12-day listing is possible.***

**Note:** The public issue shall be kept open for a minimum of 3 days and a maximum of 10 days, irrespective of whether there is revision in pricing or not.

***Shares reserved for QIB's in case of bookbuilding cannot be undewritten.***



## **Reservation:**

*Reservation to employees is limited UPTO 5% of post issue capital.*

*Further, such reservation shall not exceed Rs. 1 lakh per employee.*

## **Free Pricing under Public issue**

*Discount UPTO 10% of price may be given to retail individual investors and also to employees entitled for reservation*

*Discount UPTO 10% from Floor price may be given to employees under Alternate method of bookbuilding.*

*Alternate method of book building: It may be partly inspired from French Auction (where allotments made at bid price – to QIB's) unlike the dutch auction method of existing book building process. It is applicable only for FPO's. It is almost like book building process but for pricing & allotment aspects. Only FLOOR PRICE may be disclosed in RHP whereas CAP may be determined by issuer based on no. or % of securities from a single bidder. 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.*

## **PUBLIC ISSUE BY SME'S**

### **Chapter XA of ICDR – Regulations 106A-J**

An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of issues by Small or Medium Enterprises (SME). Kindly note, there is also Micro, Small & Medium Enterprises Development Act which classifies Industries but 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 [ie, 10 crores to 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 at least two times votes cast against cast by shareholders (other than promoter shareholders). Same way, issuer in SME exchange can MIGRATE to Main Board (Main Board = stock exchange other than SME exchange) if further issue 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,*

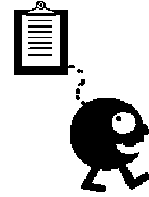
<b><i>NO requirement of filing draft offer document with SEBI.</i></b>
<b><i>There is no need to comply with Eligibility requirements of IPO &amp; FPO.</i></b>
<b><i>Fast track issues cannot be made under this Chapter.</i></b>
<b><i>Minimum Application size shall be atleast Rs. 1 lakh per application and there shall be atleast 50 allottees in the issue.</i></b>
<b><i>100% of offer through offer document shall be underwritten by Underwriters, out of which 15% shall be underwritten by Merchant Bankers.</i></b>

Nominated Investor & Market making: QIB/PE fund who undertakes the under-subscription portion or receive/deliver during Market making (for 3 years) with the market makers having an inventory of atleast 5% is called Nominated Investor. Market Maker shall not buy from promoter or persons belonging to promoter group.

## **DELISTING OF SECURITIES**

The new name of SEBI (Delisting of Securities) Guidelines, 2003 is SEBI (Delisting of Equity Shares) Regulations, 2009.

Now, there are three types of delisting:



### **1. Voluntary Delisting – Chapter III [Regulations 5-8];**

- When exit opportunity (ie. An opportunity to sell shares) is required;
- When exit opportunity is not required [ie, when securities are continued to be listed in atleast one recognised stock exchange with nation wide trading].

### **2. Simple procedure for Delisting of Small Companies & by Operation of law – Chapter VII [Regulations 27-28];**

### **3. Compulsory Delisting – Chapter V [Regulations 22-24].**

**COOLING PERIOD:** It is time period during which no application can be made for fresh listing, once delisting is made (ie) the time when company cannot raise money from securities market.

- There shall be no cooling period where there is a delisting of small company is involved.
- The cooling period shall be 5 years in case of Voluntary delisting & delisting by operation of law whereas a cooling period for compulsory delisting shall be 10 years.

## **INTERNATIONAL CAPITAL MARKET**

*No prior RBI approval for External Commercial Borrowings (ECB) amendments as to change in Name of Borrower or Currency or Repayment or Bank after allotment of Loan Registration Number (LRN), if other Terms remains the same.*

### **Corporates under Investigation**

*Corporates which have violated the ECB policy and are under investigation by Reserve Bank and / or by Directorate of Enforcement, will not be allowed to access the Automatic route for ECB. Any request by such corporates for ECB will be examined under the Approval route.*

### **Pricing under FCCB**

The pricing of Foreign Currency Convertible Bonds (FCCB) shall not be less than average 2 week high & low closing prices of shares quoted on stock exchange. (similar to pricing of QIP under ICDR)



## **INDIAN DEPOSITORY RECEIPTS (IDR)**

*In every issue of IDR atleast 50% shall be subscribed by QIB's & out of which,*

*UPTO 30% of allocation shall be made to Anchor Investors (AI) on same day of bidding. AI shall be,*

	<b>UPTO 250 crores</b>
<b>2 or more, if allocation is</b>	
	<b>ABOVE 250 crores</b>
<b>5 or more, if allocation is</b>	

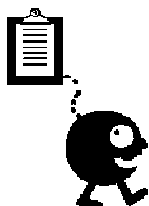
UPTO 1/3<sup>rd</sup> of AI portion is reserved for domestic Mutual Funds (MF).

*The balance 50% of IDR issue may be subscribed by Non-Institutional & Retail Individual investor including employees on a proportionate basis. Further, atleast 30% shall be allocated to Retail Individual investors.*

## Company Law – 100 Marks

### **MINISTRY OF CORPORATE AFFAIRS – 21<sup>ST</sup> CENTURY (MCA – 21)**

#### **E-STAMPING**



Companies (Electronic Filing and Authentication of Documents) Rules, 2006 read with Scheme for Filing of Statutory Documents and other Transactions by Companies in Electronic Mode (Amendment) Scheme, 2009 enables COLLECTION of stamp duty through MCA portal, thus, DISPENSING with the requirement of Physical Filing. This scheme is OPTIONAL now and will be made MANDATORY with effect from 1<sup>st</sup> January 2010. Currently e-forms 1 regarding Incorporation, e-form 5 regarding Authorised capital and e-form 44 regarding documents delivered by Foreign company.

In case of any OTHER forms/documents where the STAMP DUTY payable is UPTO Rs.100/-, then E-FILING the scanned copy is sufficient PROVIDED the ORIGINAL is retained for 3 years. However, with regard to e-form 61 when filed for COMPOUNDING of offences u/s. 621A, physical copy shall be filed irrespective of value.

#### **What are Certified Filing Centers (CFC's)?**

*The Certified Filing Centres are set-up by the Professionals of ICSI, ICAI & ICWAI for the purposes of enabling e-filing of corporates under Companies Act. While the services available from the Facilitation Centres (like, Physical Front Office) set-up by the Ministry are without any charge, the services provided by these Certified Filing Centres entail payment of service charges.*

## ***What are Front offices?***

*There are two types of Front offices. The Virtual Front Office (VFO) is what the online e-filing mechanism under the MCA21 portal. The Physical Front Office (PFO) will be a replacement to the RoC counters (as there is no physical filing of documents), which is currently functioning only in the metropolitan cities. The PFO will also accept paper documents and enable scanning & filing the same with RoC online.*

*Do read & remember the updated list of e-forms from:*

***<http://www.mca.gov.in/MCA21/dca/downloadforms/Download eForm choose.html>***

## **BOARD MEETING**



### **CONFIRMATION OF MINUTES**

Honourable Supreme Court has passed a landmark decision in the case of Kerala State Electricity Board v. Hindustan Construction Company Ltd. regarding the confirmation of minutes. The essence of the judgment is as follows,

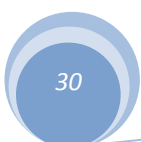
**“The ACCURACY of the minutes and NOT the VALIDITY of the decision is there before the subsequent board meeting. Hence, once a decision is duly taken, it can only be changed by a SUBSTANTIVE resolution properly ADOPTED for such a change. Thus, NON CONFIRMATION of minutes in the subsequent meeting does NOT have any effect on the decision taken at the earlier meeting.”**

## **COMPANY SECRETARY**

### ***Get mandatory secretarial compliance certificate***

***IF your share capital is between 10 lakhs & 2 crores;***

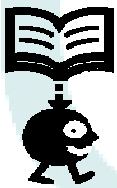
***IF your share capital is between 2 crores & 5 crores and you have not appointed whole time company secretary.***



### **Mandatorily appoint a Whole Time Company Secretary:**

- *IF your share capital is between 2 crores & 5 crores and you have not got the Compliance Certificate;*
- *IF your share capital is above 5 crores.*

*Secretarial Compliance Certificate (eForm 66 – Section 383A) and Signing Annual Returns by a practising Company Secretary shall not exceed 80 companies in a calendar year.*



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