

The Companies (Amendment) Act, 2015

The MCA vide Notification No. S.O. 1440(E) dated 29th May, 2015 notified the following amendments amongst various Sections.

Section 123: Declaration of dividend

In Section 123(1) after third proviso the following was added as fourth Proviso:

“Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.”

Effect of this addition of fourth proviso: With insertion of 4th proviso in section 123(1), no Co. shall declare dividend unless carried over previous losses and depreciation not provided in previous year(s) are set off against profit of the company for the current year.

Section 124: Unpaid Dividend Account

The Amended Section 124 (6) shall be read as under:

All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed: Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.”

Effect of this Amendment: With this amendment, the requirement of transfer of equity shares on which the dividend remains unpaid or unclaimed for a continuous period of seven years shall be made to the IEPF.

Section 134: Financial Statement, Board's Report, etc.

In section 134 (3) after clause (c), the following was inserted:

“(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;”

Effect of this Amendment: With this amendment the Board of Directors has to give details in Board's report about the fraud reported by the auditors that are not required to be reported to the Central Government.

Section 143: Power and Duties of Auditor and Auditing standards

The Amended Section 143 (12) shall be read as under:

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

Effect of this Amendment: The Auditor need to report to immaterial frauds to the board or Audit Committee, if any, and material frauds to the Central Government, as the case may be, which he came across during the audit of the company committed by its officers and employees.

Note: This section of Companies (Amendment) Act, 2015 is not yet notified

Section 177: Audit Committee

In Section 177(4) after clause (iv) the following proviso has been inserted-

“Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;”

Effect of this Amendment: With this amendment, the Audit Committee has been given power to give omnibus approvals for related party transactions proposed to be entered into by the Company upto certain threshold.

Note: this section of Companies (Amendment) Act, 2015 is not yet notified

Section 185: Loan to Director

In section 185 (1) (b) the following clauses and proviso has been inserted:

(c) any loan made by a holding company to its wholly owned subsidiary\ company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

Effect of this Amendment: With this amendment, the exemption given under Rule 10 of Companies (Meeting of Board and its Powers) Rules, 2014 for loan made to wholly owned subsidiary was incorporated into the Act as a matter of abundant caution.

Section 188: Related Party Transactions [RPTs]

After Amendment Section 188(1) shall be read as:

(i) for the words “special resolution”, at both the places where they occur, the word “resolution” shall be substituted;

(ii) after the third proviso, the following proviso shall be inserted, namely:—

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval;

After Amendment Section 188(3) shall be read as:

for the words “special resolution”, the word “resolution” shall be substituted.”

Effect of this Amendment: In consideration of practical difficulties faced by corporates the requirement of special resolution for passing RPT has been diluted. Members may pass such transactions by an ordinary resolution. The requirement of passing of RPTs by Ordinary Resolution is now not applicable for transactions between holding and wholly owned subsidiary companies.

Section 212: Investigation into affair of company by Serious Fraud Investigation Office

After amendment Section 212(6) shall be read as under:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by –

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

Effect of this Amendment: No major effect of this amendment, only the detailed list of sections has been substituted.

Section 462: Power to exempt a class or classes of companies from provisions of this Act

After amendment section 462(2) shall be read as under:

A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

After Amendment the following was added as 462(3) & (4):

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in subsection (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.”

Exemption Notifications for Various Companies for CA Final

S. No.	Private Companies	
	NOTIFICATION NO. GSR 464(E) [F.NO.1/1/2014-CL-V], DATED 5-6-2015	
1.	Chapter I, sub-clause (viii) of clause (76) of section 2.	Shall not apply with respect to section 188.
	Effect: Section 2(76)(viii) is not applicable to a private company with respect to Section 188 (i.e. related party transactions). Accordingly a holding/ subsidiary/ associate company of a private limited company or a subsidiary of holding company of a private limited company will not be considered as related party.	
2.	Chapter X, Clause (g) of sub-section (3) of section 141.	Shall apply with the modification that the words "other than OPCs, Dormant Cos., Small Cos. and Private Companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the words "twenty companies".
	Note: Section 141(3) deals with conditions for eligibility for appointment as an auditor of a company. Section 143(3)(g) limits the number of audits by an auditor to twenty companies. Effects: OPCs, Dormant Cos., Small Cos. and Pvt. Cos. having paid-up share capital less than one hundred crore rupees are excluded from this limit.	
3.	Chapter XI, section 160.	Shall not apply.
	Note: Section 160 deal with right of persons other than retiring directors to stand for directorship. Effect: Now, for private companies' requirement of Deposit of Rupees one lakh is, not required.	
4.	Chapter XI, section 162.	Shall not apply.
	Note: Section 162 deals with appointment of directors to be voted individually. Effect: Now, more than one director can be appointed through a single resolution.	
5.	Chapter XII, section 180.	Shall not apply.
	Note: Section 180 deals with restrictions on powers of the Board. Effects: Special Resolution is not required to exercise such power of board as provided in Section 180.	
6.	Chapter XII, sub-section (2) of section 184.	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.
	Note: Section 184 deals with disclosure of interest by director. Section 184(2) prohibits interested director from participating in meeting. Effects: Interested director of a private company can participate in the meeting after disclosing his interest.	
7.	Chapter XII, section 185.	Shall not apply to a private company — (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a Co. from Banks or Financial Institutions or any Body Corporate is less than twice of its Paid up share capital or Rs. 50 Cr., whichever is lower; and (c) such a Co. has no default in repayment of such borrowings subsisting at the time of making transactions under this section.
	Note: the Provisions of Section 185 shall not apply to a private company if the following conditions are fulfilled. (a) that no other body corporate has invested any money in share of the company; (b) that the borrowings of such company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) that the company has not made any default in repayment of such borrowings, subsisting at the time of making transactions under this Section.	
8.	Chapter XII, 2 nd proviso to sub-section (1) of section 188	Shall not apply.
	Note: Second proviso to Section 188(1) states that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. Effects: In Pvt. Co., related party to any contract or arrangement can vote on such resolution as a member of the company.	
9.	Chapter XIII, sub-sections (4) and (5) of section 196.	Shall not apply,
	Note: Section 196(4) deals with appointment of MD, WTD, Manager. Section 196(5) deals with validating actions of MD, WTD, Manager, if the appointment is not approved by a company in general meeting. Effects: Approval of CG on variation of terms of appointment from Schedule V is not required for private companies.	
10.	The private companies, while complying with such exceptions, modifications and adaptations, as specified above, shall ensure that the interests of their shareholders are protected.	

Exemption Notifications for Various Companies for CA Final

S. No.	Government Companies	
	NOTIFICATION NO. GSR 463(E)[F.NO.1/2/2014-CL-V], DATED 5-6-2015	
1.	Chapter VIII, second proviso to sub-section (1) of section 123.	Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.
	Note: The second proviso which provides that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf, shall not be so applicable to a Govt. Company specified above.	
2.	Chapter VIII, sub-section (4) of section 123.	Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.
	Note: Section 123(4) states that the amount of dividend, including interim dividend, shall be deposited in a scheduled bank in a separate bank in a separate account within five days from the date of declaration of such dividend. It does not apply to a Government Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Govt. Co.	
3.	Chapter IX, section 129.	Shall not apply to the extent of application of AS 17 (Segment Reporting) to the companies engaged in defence production.
	Note: Section 129 relates to provisions relating to financial statement. Section 129 shall not apply Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.	
4.	Chapter IX, clause (e) of sub-section (3) of sec. 134.	Shall not apply.
	Note: Section 134(3)(e) mandates Board's report to include in case of a company covered under sub-section (1) of section 178 (Companies required to nomination and remuneration committee), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178. It shall not apply to Government Companies. Accordingly, the Board's report does not have to disclose company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178.	
5.	Chapter IX, clause (p) of sub-section (3) of section 134.	Shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.
	Note: Section 134(3)(p) requires the Board report to include in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors; It shall not apply in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the Co., or, as the case may be, the State Government, as per its own evaluation methodology.	
6.	Chapter XI, section 149(1)(b) and first proviso to sub-section (1) of section 149.	Shall not apply.
	Note: Provisions relating to maximum number of directors as provided in Section 149 do not apply to Government Companies.	
7.	Chapter XI, clause (a) of sub-section (6) of section 149.	In section 149, in sub-section (6), in clause (a), for the word "Board", the words "Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government" shall be substituted.
	Note: Section 149(6)(a) relates to one of the conditions for being appointed as Independent director. It states that the independent director, who is in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience. In case of Government Companies, the independent director, who is in the opinion of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, is a person of integrity and possesses relevant expertise and experience, can be appointed as independent director subject to fulfilment of other conditions.	

8.	Chapter XI, clause (c) of sub-section (6) of section 149.	Shall not apply.
	Note: Section 149(6)(c) states that independent directors not to have had pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year. This provision shall not apply to a Government Company.	
9.	Chapter XI, sub-section (5) of section 152.	Shall not apply where appointment of such director is done by the Central Government or State Government, as the case may be.
	Note: Section 152(5) deals with consent to act as director shall not apply to a Government Company.	
10.	Chapter XI, sub-sections (6) and (7) of section 152.	Shall not apply to — (a) a Govt. Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Govt. Co.
	Note: Section 152 (6) and (7) relates rotation of directors and filling up of vacancy of retiring director. It shall not apply to a government company subject to above said conditions.	
11.	Chapter XI, section 160.	Shall not apply to — (a) a Govt. Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Govt. Co., referred to in (a) above, in which the entire paid up share capital is held by that Government company.
	Note: Section 160 relates to right of persons other than retiring directors to stand for directorship. Section 160 does not apply to a Government Company if the above said conditions are fulfilled.	
12.	Chapter XI, section 162.	Shall not apply to — (a) a Govt. Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Govt. Co., referred to in (a) above, in which the entire paid up share capital is held by that Government company.
	Note: Section 162 relates to appointment of directors to be voted individually. Section 162 does not apply to a government company if the aforesaid conditions are fulfilled. Thus, more than one director may be appointed through a single resolution.	
13.	Chapter XI, section 163.	Shall not apply to — (a) a Govt. Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Govt. Co., referred to in (a) above, in which the entire paid up share capital is held by that Government company.
	Note: Section 163 relates to option to adopt principle of proportional representation for appointment of directors. Section 163 does not apply to a government company if the above said conditions are fulfilled.	
14.	Chapter XI, sub-section (2) of section 164.	Shall not apply.
	Note: Section 164(2) relating to disqualification of director, for non-filing of financial statements for continuous period of three years in which he is a director or failure to repay deposits etc. Section 164(2) does not apply to a Government Company.	
15.	Chapter XI, section 170.	Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.
	Note: Section 170 relates to register of directors and key managerial personnel and their holdings. Section 170 does not apply to a Government Company if the above said conditions are fulfilled.	
16.	Chapter XI, section 171	Shall not apply to a Govt. Co. in which the entire share capital is held by the Central Govt., or by any State Government or Governments or by the Central Government or by one or more State Governments.
	Note: Section 171 deals with member's right to inspect. Section 171 does not apply to a Government Company if the above said conditions are fulfilled	

17.	Chapter XII, clause (i) of sub-section (4) of section 177.	In clause (1) of sub-section (4) of the section 177, for the words "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted.
	Note: Section 177(4) deals with terms of reference of audit committee. Audit committee of a government company can recommend only for remuneration of auditor.	
18.	Chapter XII, sub-sections (2), (3) and (4) of section 178.	Shall not apply to Government company except with regard to appointment of 'senior management' and other employees.
	Note: Provisions relating induction of directors, criteria/ qualifications etc. does not apply to a Govt. Co. and accordingly, Nomination and Remuneration Committee of Govt. Co. will lay down those criteria for senior management and other employees.	
19.	Chapter XII, section 185.	Shall not apply to Government company in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.
	Note: Section 185 prohibits loans to directors with few exceptions. It shall not apply to Govt. Co. in case such Co. obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the Co., or, as the case may be, the State Govt. before making any loan or giving any guarantee or providing any security under the section.	
20.	Chapter XII, section 186.	Shall not apply to — (a) a Government company engaged in defence production; (b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.
	Note: Section 186 relates to loans and investment by company. It does not apply to the above said government companies.	
21.	Chapter XII, first and second proviso to sub-section (1) of section 188.	Shall not apply to — (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.
	Note: Section 188 in respect of related party transactions does not apply to Govt. Co. if above said conditions are fulfilled.	
22.	Chapter XIII, sub-sections (2), (4) and (5) of section 196.	Shall not apply.
	Note: Section 196(2) relates to term of managing director not to exceed five years. Section 196(4) relates to approval of the members/ Central Government as the case may be for appointment of managing director and section 196(5) relates to validity of actions of Managing Director if his appointment is not approved at the General Meeting. These provisions are not applicable to a government company.	
23.	Chapter XIII, section 197	Shall not apply.
	Note: The provisions relating to overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits as given in section 197 does not apply to a Government Company.	
24.	Chapter XIII, sub-sections (1), (2), (3) and (4) of section 203.	After sub-section (4), the following sub-section shall be inserted, namely :— "(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole time director of the Government Company."
	Note: The Provisions of Section 203 relating to appointment of KMP shall not apply to MD/CEO/Manager or in their absence a whole time director of the Government Company.	

25.	Chapter XXIX, sub-section (2) of section 439.	In sub-section (2), the words "the Registrar, a shareholder of the company, or of" shall be omitted.
	Note: Section 439 deals with offences to be non-cognizable. As per Section 439(2) states that no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf. With the deletion of words "the Registrar, a shareholder of the company, or of" relates to a government company, no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of a person authorised by the Central Government in that behalf.	
26.	The Government companies, while complying with such exceptions, modifications and adaptations, as specified above, shall ensure that the interests of their shareholders are protected.	

Exemption Notifications for Various Companies for CA Final

S. No.	Section 8 Companies	
	NOTIFICATION NO. GSR 466(E) [F.NO.1/2/2014-CL.I], DATED 5-6-2015	
1.	Sub-section (1) of section 136.	In sub-section (1), for the words "twenty one days", the words "fourteen days" shall be substituted.
	Note: Section 136(1) deals with the rights of members to copies of audited financial statement, before twenty-one days before the date of annual general meeting. Section 8 companies may send the audited financial statements 14 days before the date of annual general meeting.	
2.	Sub-section (1) of section 149 and the first proviso to sub-section (1).	Shall not apply.
	Note: Section 149(1) and first proviso to sub-section (1) relates to minimum and maximum number of directors. It is not applicable to Section 8 Companies.	
3.	Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), clause (i) of sub-section (12) and sub-section (13) of section 149.	Shall not apply.
	Note: The cluster of sub-sections of section 149 given herein pertains to independent directors. These provisions will not apply to a Section 8 Company.	
4.	Section 150.	Shall not apply.
	Note: Section 150 deals with manner of selection of independent directors and maintenance of databank of independent directors, which is not applicable to Section 8 companies.	
5.	Proviso to sub-section (5) of section 152.	Shall not apply.
	Note: Proviso to sub-section (5) of section 152 relates to appointment of independent directors. It is not applicable to section 8 companies.	
6.	Section 160.	Shall not apply to companies whose articles provide for election of directors by ballot.
	Note: Section 160 deals with right of persons other than retiring directors to stand for directorship. Section 160 shall not apply to section 8 companies whose articles provide for election of directors by ballot.	
7.	Sub-section (1) of section 165.	Shall not apply.
	Note: Section 165(1) deals with restrictions on number of directorships. Directorship of Section 8 Companies are not reckoned for this purpose.	
8.	Sub-section (1) of section 173.	Shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.
	Note: Section 173(1) mandates convening of first board meeting within 30 days of incorporation and minimum of four board meeting every year, with a gap not exceeding 120 days between two consecutive meetings. With regard to Section 8 companies this section shall apply only to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every six calendar months.	
9.	Sub-section (1) of section 174.	In sub-section (1), — (a) for the words "1/3 rd of its total strength or two directors, whichever is higher", the words "either 8 members or 25%, of its total strength whichever is less" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that the quorum shall not be less than two members".
	Note: Section 174(1) states that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this subsection. In case of Section 8 companies the quorum for the board meetings shall be either eight members or twenty five per cent of its total strength whichever is less. However, the quorum shall not be less than two members.	
10.	Sub-section (2) of section 177.	The words "with independent directors forming a majority" shall be omitted.
	Note: Section 177(2) requires audit committee to have majority of independent directors. It is not required for Section 8 Cos.	
11.	Section 178.	Shall not apply.
	Note: Section 178 pertains to nomination and remuneration committee and stakeholders' relationship committee. Section 178 is not applicable to section 8 companies.	

12.	Section 179.	Matters referred to in clauses (d), (e) and (f) of sub-section (3) may be decided by the Board by circulation instead of at a meeting.
	Note: Section 179(3) deals with resolutions to be passed at meetings of the Board. Section 179(3)(d), (e) and (f) pertains to resolution to borrow monies, to invest funds of the company and to grant loans or give guarantee or provide security in respect of loans. These items may be decided by the Board by circulation in case of Section 8 companies.	
13.	Sub-section (2) of section 184.	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
	Note: Section 184(2) prohibits participation of interested directors. In case of Section 8 Companies it shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.	
14.	Section 189.	Shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.
	Note: Section 189 deals with register of contracts or arrangements in which directors are interested. Section 189 is applicable to section 8 companies only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.	
15.	The Companies covered under section 8 of the Companies Act, 2013, while complying with such exceptions, modifications and adaptations, as specified above, shall ensure that the interests of their shareholders are protected.	

Exemption Notifications for Various Companies for CA Final

S. No.	Nidhi Companies	
	NOTIFICATION NO. GSR 465(E)[F.NO.2/11/2014-CL.V], DATED 5-6-2015	
1.	Sub-section (5) of Section 123	Shall apply, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
	Note: Section 123(5) states that no dividend shall be paid by a company in respect of any shares therein except to the registered shareholder of such share or his order or to his banker and shall not be payable except in cash. These provisions shall apply subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.	
2.	Section 127	Shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
	Note: Section 127 deals with punishment for failure to distribute dividend. However for Nidhi companies, where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local news paper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.	
3.	Sub-section (1) of Section 136	Shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy.
	Note: Section 136(1) deals with the right of the members to copies of audited financial statement. In case of Nidhi companies, for members not holding individually or jointly shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by Public notice as prescribed above.	
4.	Section 160	In sub-section (1), for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted.
	Note: Section 160(1) requires a deposit of Rs. 1 lakh for nomination of a director. For Nidhi companies such deposit is Rs 10,000.	
5.	Section 185	Shall not apply, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.
	Note: Section 185 prohibits loans to directors with some exceptions. However, it shall not apply to Nidhi Companies, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.	

6.	Second proviso to sub-section (1) of section 197	<p>Shall apply with the modification that the remuneration of a director who is neither managing director nor whole-time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197: Provided that no approval of the company in general meeting shall be required where,—</p> <p>(a) a Nidhi does not have a managing director or a whole-time director or a manager;</p> <p>(b) the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent, of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and</p> <p>(c) a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.</p>
	<p>Note: Section 197 deals with overall maximum managerial remuneration and managerial remuneration in case absence or inadequacy of profits. Second proviso to Section 197(1) limits the remuneration payable to directors who are neither managing directors nor whole-time directors to one percent of the net profits of the company, if there is a managing or whole-time director or manager, and three percent of the net profits in any other case. However, Nidhi companies are allowed to pay remuneration to directors who are neither managing directors nor whole-time directors, for performing special services subject to conditions as laid down.</p>	
7.	Section 403	<p>Shall apply, with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.</p>
	<p>Note: Section 403 deals with filing fee. For Nidhi companies it shall apply with the modification that the filing fees in respect of every return of allotment under sub-section (9) of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.</p>	
8.	<p>The Nidhis, while complying with such exceptions, modifications and adaptations, as specified above, shall ensure that the interests of their shareholders are protected.</p>	

Accounts of companies - right of members to copies of financial statements - circulation of financial statement at shorter notice and placing/ filing of unaudited financial statements of a foreign subsidiary not having place of business in India: MCA vide its General Circular 11/2015, Dated 21-7-2015, has clarified as follows:

1. Stakeholders have drawn attention to the proviso to section 101(1) of the Companies Act, 2013 (Act) which allows general meetings to be called at a shorter notice than twenty one days, and sought clarification as to whether provisions of section 136 would also allow circulation of financial statements at a shorter notice if conditions under section 101 are fulfilled [a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent of the members entitled to vote at such meeting].

2. The matter has been examined and it is clarified that a Co. holding a general meeting after giving a shorter notice as provided u/s 101 of the Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

2.1 Attention has also been drawn to the provisions of clause (a) of fourth proviso to section 136(1) which require every company having a subsidiary or subsidiaries to place on its website, if any, separate audited accounts in respect of each of its subsidiary. Further, fourth proviso to section 137(l) requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India. Clarification has been sought on—

(a) Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted, and;

(b) Whether accounts of such foreign subsidiary would need to be as per format under Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient.

2.2 The matter has been examined in the Ministry in consultation with ICAI and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of sections 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Co. Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such accounts.

Companies (Filing of Documents and Forms in XBRL) Rules, 2015 [vide Notification, Dated 9-9-2015]:

(A). Filing of financial statement and other documents in XBRL Form with Registrar [Rule 3]:

1. Companies required to file financial statements and other documents in XBRL Form: The following class of companies shall file their financial statements (including consolidated financial statements, if applicable) and other documents (i.e. Auditors' Report and Directors' Report) under section 137 of the Act, with the Registrar in e-form "AOC-4 XBRL" for the financial years commencing on or after 1st April, 2014 using the XBRL taxonomy¹, namely:—

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid up capital of rupees five crore or above;
- (iii) all companies having turnover of rupees hundred crore or above; or
- (iv) all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011

MCA clarified that companies other than those mentioned in point (2) below *may* voluntarily opt for XBRL filing

2. Companies exempted from XBRL filing: Provided that the companies in:

- Banking,
- Insurance,
- Power Sector, and
- Non-Banking Financial companies

are exempted from XBRL filing. Thus, these Cos. cannot even voluntary file F.S. and other documents in XBRL Form

(B). Filing of cost audit report [Rule 4]: A Co. required to furnish cost audit report and other documents to the Central Government under section 148(6) of the Companies Act, 2013 and rules made thereunder, shall file such report and other documents using the XBRL taxonomy for the financial years commencing on or after 1st April, 2014 in e-Form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

¹ "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

AMENDMENTS IN ALLIED LAWS
Foreign Exchange Management Act, 1999

1. Capital Account Transaction [Section 6]

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

- ²(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions;
- ³(c) any conditions which may be placed on such transactions

Provided that the Reserve Bank or the Central Govt. shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

⁴(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

- (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;
- (b) the limit up to which foreign exchange shall be admissible for such transactions; and
- (c) any conditions which may be placed on such transactions.

⁵For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank [Section6(7)].

2. Special provisions relating to assets held outside India in contravention of section 4 [Section 37A]⁶:

(1) **Power to seize:** Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any:

- foreign exchange,
- foreign security, or
- immovable property,

situated outside India, is suspected to have been held in contravention of section 4, he may after *recording the reasons in writing*, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) **Order of seizure with relevant material to be placed before competent authority within 30 days:** The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

(3) **Disposal of petition by the competent authority subject to principal of natural justice:** The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

Explanation — While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) **Order of competent authority to continue till the disposal of adjudication proceedings and passing of appropriate orders if the aggrieved person discloses and brings back the assets held outside India:** The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).

(5) **Right of further appeal:** Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) **Compounding provisions not applicable:** Nothing contained in section 15 shall apply to this section.

² Substituted by the Finance Act, 2015

³ Inserted by the Finance Act, 2015

⁴ Inserted by the Finance Act, 2015

⁵ Inserted by the Finance Act, 2015

⁶ Inserted by the Finance Act, 2015, w.e.f. 9-9-2015

2.1. Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015:

1. The Government of India has enacted The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Black Money Act) on May 26, 2015 to address the issue of undisclosed assets held abroad. It provides for separate taxation of income and assets acquired abroad from income not disclosed but chargeable to tax in India.

2. To effectively deal with assets held abroad by persons resident in India in violation of the Foreign Exchange Management Act, 1999 (FEMA) for which declarations have been made and taxes and penalties have been paid under the provisions of the Black Money Act, Reserve Bank has issued the Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015 notified through Notification dated September 25, 2015.

3. Accordingly, it is clarified that:

a) No proceedings shall lie under the Foreign Exchange Management Act, 1999 (FEMA) against the declarant with respect to an asset held abroad for which taxes and penalties under the provisions of Black Money Act have been paid.

b) No permission under FEMA will be required to dispose of the asset so declared and bring back the proceeds to India through banking channels within 180 days from the date of declaration.

c) In case the declarant wishes to hold the asset so declared, she/ he may apply to the Reserve Bank of India within 180 days from the date of declaration if such permission is necessary as on date of application. Such applications will be dealt by the Reserve Bank of India as per extant regulations. In case such permission is not granted, the asset will have to be disposed of within 180 days from the date of receipt of the communication from the Reserve Bank conveying refusal of permission or within such extended period as may be permitted by the Reserve Bank and proceeds brought back to India immediately through the banking channel.

3. Liberalised Remittance Scheme:

The Reserve Bank of India had announced a Liberalised Remittance Scheme (the Scheme) in February 2004 as a step towards further simplification and liberalization of the foreign exchange facilities available to resident individuals.

As per the Scheme, resident individuals may remit up to USD 2,50,000⁷ per financial year for any permitted capital and current account transactions or a combination of both. The Scheme was originally operationalised vide A.P. (DIR Series) Circular No. 64, dated February 4, 2004

The facility under the Scheme is in addition to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes.

However, remittances for gift and donation cannot be made separately and are subsumed under the limit available under this LRS. Accordingly, resident individuals can remit towards gifts and donations up to USD 2,50,000 per financial year under the Scheme.

Further, a resident individual can give rupee gifts to his visiting NRI/PIO close relatives [means relative as defined in the Companies Act] by way of crossed cheque/ electronic transfer within the overall limit of USD 2,50,000 per financial year and the gifted amount should be credited to the beneficiary's NRO account. An individual resident can lend money by way of crossed cheque/ electronic transfer to a Non-resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] within the overall limit of USD 2,50,000 per financial year under the Liberalised Remittance Scheme, to meet the borrower's personal or business requirements in India, subject to conditions. The loan should be interest free and have a maturity of minimum one year and cannot be remitted outside India.

⁷ Limit increased from USD 1,25,000 to USD 2,50,000 vide RBI's A.P. (DIR Series 2014-15) Circular No.106, Dated 1-6-2015

1. Listing and Issue of Capital by Small and Medium Enterprises on Institutional Trading Platform without Initial Public Offering [Chapter XC of SEBI (ICDR) Regulations, 2009]

Applicability: The provisions of this chapter shall apply to entities which seek listing of their specified securities exclusively on the institutional trading platform either pursuant to a public issue or otherwise.

Definitions:

- (a) "institutional trading platform" means the trading platform for listing and trading of specified securities of entities that comply with the prescribed eligibility criterias specified in regulation 106Y;
- (b) "institutional investor" means:
 - (i). qualified institutional buyer; or
 - (ii). family trust or systematically important NBFCs registered with Reserve Bank of India or intermediaries registered with the SEBI, all with net-worth of more than Rs. 500 crores, as per the last audited financial statements;

Eligibility Criterias [Regulation 106Y]:

(1) The following entities shall be eligible for listing on the institutional trading platform,—

- (a) an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least 25% of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with the Board, as the case may be; or
- (b) any other entity in which at least 50% of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with the Board, as the case may be.

(2) No person, individually or collectively with persons acting in concert, shall hold 25% or more of the post-issue share capital in an entity specified in (1) above

Listing without public issue

(1) An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents and prescribed fees with SEBI.

(2) The draft information document shall contain the disclosures as specified for draft offer document in these regulations.

(3) Regulations relating to the following shall not be applicable in case of listing without public issue:

- (i) allotment;
- (ii) issue opening/closing;
- (iii) advertisement;
- (iv) underwriting;
- (v) benefit reservation for outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares;
- (vi) pricing;
- (vii) dispatch of issue material;
- (viii) and other such provisions related to offer of specified securities to public.

(4) The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed.

(5) The entity shall list its specified securities on the recognised stock exchange(s) within thirty days from the date of issuance of observations by SEBI

(6) Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.

(7) The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.

⁸ Containing amendments made vide Notifications issued by SEBI in August, 2015;

(8) The signatories shall also certify that all disclosures made in the information document are true and correct.

(9) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

Listing pursuant to public issue:

(1) An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents and prescribed fees, with SEBI.

(2) The minimum application size shall be Rs. 10 lakhs.

(3) The number of allottees shall be more than 200.

(4) The allocation in the net offer to public category shall be as follows:

(a) 75% to institutional investors:

Provided that there shall be no separate allocation for Anchor Investors;

(b) 25% to non-institutional investors;

(5) Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.

(6) The allotment to institutional investors may be on a discretionary basis whereas the allotment to non-institutional investors shall be on a proportionate basis.

(7) The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.

(8) In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than 10% of the issue size.

(9) The offer document shall disclose the broad objects of the issue.

(10) The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

Lock-in:

(1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue

Provided that nothing contained in this regulation shall apply to:

(i) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme in prescribed manner;

(ii) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor [Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor]

(iii) equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue:

(2) The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms of sanction of the loan.

Trading lot: The minimum trading lot shall be ten lakh rupees.

Exit of entities listed without making a public issue:

(1) An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if—

(a) its shareholders approve such exit by passing a special resolution through postal ballot where 90% of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and

(b) the recognised stock exchange where its shares are listed approve of such an exit.

(2) The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.

(3) No entity promoted by promoters and directors of an entity delisted at (2) above, shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting [Provided that this provision shall not apply to another entity promoted by the independent directors of such a delisted entity]

Migration to main board: An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

2. Fast Track Issue [Regulation 10]:

The provisions about:

- (i) filing of draft offer document (i.e. red herring prospectus);
- (ii) obtaining in principle approval from recognised stock exchange; and
- (iii) submission of due diligence certificates, etc.

shall not be applicable to a public issue or rights issue if the issuer satisfies the following conditions:

- (a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date;
- (b) the average market capitalisation of public shareholding of the issuer is at least Rs. 1000 crore in case of public issue and Rs. 250 crores in case of rights issue;
- (c) the annualised trading turnover of the equity shares of the issuer during 6 calendar months immediately preceding the month of the reference date has been at least 2% of the weighted average number of equity shares listed during such 6 months' period
- (d) the issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date;
- (e) the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date:

Provided that if the issuer has not complied with the provision of the equity listing agreement relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition;

Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation

- (f) the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent. of the net profit or loss after tax of the issuer for the respective years;
- (g) no show-cause notices have been issued or prosecution proceedings initiated by the Board or pending against the issuer or its promoters or whole time directors as on the reference date;
- (ga) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI during three years immediately preceding the reference date;
- (h) the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date.
- (i) in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;
- (j) the equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;
- (k) the annualized delivery-based trading turnover of the equity shares during 6 calendar months immediately preceding the month of the reference date has been at least 10% of the weighted average number of equity shares listed during such six months' period;
- (l) there shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations

Application Supported by Blocked Amount [ASBA]: As per Regulation 58, in all,—

- (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
- (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only

3. Post-issue reports [Regulation 65]:

- (1) In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.
- (2) In rights issue, the lead merchant banker shall submit post-issue reports as follows:—
 - (a) initial post issue report in prescribed manner, within three days of closure of the issue;
 - (b) final post issue report in prescribed manner, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.

W.e.f. **1-6-2015**. Prior to its substitution, Explanation below Section 288(2) has been amended as follows:

Explanation.—In this section (i.e. Section 288), "accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949, who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, but does not include [except for the purposes of representing the assessee under sub-section (1)]—

- (a) in case of an assessee, being a company, the person who is not eligible for appointment as an auditor of the said company in accordance with the provisions of sub-section (3) of section 141 of the Companies Act, 2013; or
- (b) in any other case,—
 - (i) the assessee himself or in case of the assessee, being a firm or association of persons or Hindu undivided family, any partner of the firm, or member of the association or the family;
 - (ii) in case of the assessee, being a trust or institution, any person referred to in clauses (a), (b), (c) and (cc) of sub-section (3) of section 13;
 - (iii) in case of any person other than persons referred to in sub-clauses (i) and (ii), the person who is competent to verify the return under section 139 in accordance with the provisions of section 140;
 - (iv) any relative of any of the persons referred to in sub-clauses (i), (ii) and (iii);
 - (v) an officer or employee of the assessee;
 - (vi) an individual who is a partner, or who is in the employment, of an officer or employee of the assessee;
 - (vii) an individual who, or his relative or partner—
 - (i) is holding any security of, or interest in, the assessee:
Provided that the relative may hold security or interest in the assessee of the face value not exceeding one hundred thousand rupees;
 - (ii) is indebted to the assessee:
Provided that the relative may be indebted to the assessee for an amount not exceeding one hundred thousand rupees;
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee:
Provided that the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding one hundred thousand rupees;
 - (viii) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed;
 - (ix) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

Announcement [17.9.2015]

Sub.: Amendment in ICAI Website Guidelines

It is hereby announced that the Council at its 345th Meeting held on 14th - 16th August, 2015 decided to amend the ICAI Website Guidelines, based on the recommendations of the Ethical Standards Board. The amendment has been carried out between paras 6(ix) and (7) of the Website Guidelines, and is shown in bold hereunder:-

"6(ix) Nature of assignments handled (to be displayable only on specific "pull" request). Names of clients and fee charged cannot be given.

Note: Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator.

Where such disclosure of names of clients and/or fees charged is made on the website, the member/firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that "*This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/ area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].*"

(7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also."

Strategic Debt Restructuring Scheme [RBI Master Circular Dated July 1st, 2015]:

It has been observed that in many cases of restructuring of accounts, borrower companies are not able to come out of stress due to operational/ managerial inefficiencies despite substantial sacrifices made by the lending banks. In such cases, change of ownership will be a preferred option. Thus, the banks may, at their discretion, undertake a 'Strategic Debt Restructuring (SDR)' by converting loan dues to equity shares, which will have the following features:

- (i). Examine whether the account will be viable by effecting a change in ownership. If found viable under such examination, then the Banks may decide on whether to invoke the SDR, i.e. convert the whole or part of the loan and interest outstanding into equity shares in the borrower company, so as to acquire majority shareholding in the company;
- (ii). Such decision should be well documented and approved by minimum of 75% of creditors by value and 60% of creditors by number;
- (iii). The share price for such conversion of debt into equity will be determined as per the method given in paragraph 44 of this circular;
- (iv). The SDR conversion package must be approved within 90 days from the date of deciding to undertake SDR;

On completion of conversion of debt to equity as approved under SDR, the existing asset classification of the account, as on the reference date (i.e. the date on which decision to undertake SDR was taken), will continue for a period of 18 months from the reference date.

Secretarial Standard 1 on Meetings of the Board of Directors

Secretarial Standard 1 on Meetings of the Board of Directors issued by ICSI and effective from 1st July, 2015, provides that:

- “National Holiday” includes:
 - (i). Republic Day i.e. 26th January,
 - (ii). Independence Day i.e. 15th August,
 - (iii). Gandhi Jayanti i.e. 2nd October, and
 - (iv). such other day as may be declared as National Holiday by the Central Government.
- “Quorum” means the minimum number of Directors whose presence is necessary for holding of a Meeting.
- Every Meeting shall have a serial number.
- The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting for any reason, at any stage of the Meeting.
- A Meeting may be convened at any time and place, on any day, excluding a National Holiday.
- A Meeting adjourned for want of Quorum shall also not be held on a National Holiday.
- Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means.
- Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means.
- Proof of sending Notice and its delivery shall be maintained by the company.
- The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.
- Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.
- Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.
- For this purpose under SEBI (Prohibition Insider Trading) Regulations, 2015, “unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –
 - (i) financial results;
 - (ii) dividends;
 - (iii) change in capital structure;
 - (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
 - (v) changes in key managerial personnel; and
 - (vi) material events in accordance with the listing agreement
- Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.
- To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, if any, shall be present at such Meeting. If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any. In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.
- A Director shall not be reckoned for Quorum in respect of an item in which he is interested and he shall not be present, whether physically or through Electronic Mode, during discussions and voting on such item.
- Every company shall maintain separate attendance registers for the Meetings of the Board and Meetings of the Committee.