

# Academic Updates for May 2022

## CA Final – Corporate and Economic Laws

### Chapter 1: Appointment and Qualification of Directors

#### 1.3 - Independent Director [Sec. 149(4) – 149(13), Sec. 150, Rules 4, 5, & 6]

**Compliances required by a person eligible and willing to be appointed as an independent director – Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014**

**Online Proficiency Self-Assessment Test – Rule 6(4)**

Every individual whose name is so included in the data bank under rule 6(1) shall pass an online proficiency self-assessment test conducted by the institute within a period of **2 year** from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the data bank of the institute.

***Exemption from online proficiency self-assessment test\****

- **An individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than 3 years as on the date of inclusion of his name in the data bank:**
  - (A) as a director or KMP, as on the date of inclusion of his name in the databank, in one or more of the following, namely:**
    - (a) listed public company; or**
    - (b) unlisted public company having a paid-up share capital of ₹ 10 crore or more; or**
    - (c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or**
    - (d) bodies corporate incorporated outside India having a paid-up share capital of US\$ 2 million or more; or**
    - (e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or**
  - (B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the C.G. or any S.G, and having experience in handling:**
    - (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or**
    - (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities; or**
  - (C) in the pay scale of Chief General Manager or above in the SEBI or the RBI or the IRDAI or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws.**

		<ul style="list-style-type: none"> <li>• For the purpose of calculation of the period of 3 years referred above, any period during which an individual was acting as a director or as a KMP in 2 or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.</li> <li>• Following individuals, who are or have been, for at least 10 years:             <ul style="list-style-type: none"> <li>(A) an advocate of a court; or</li> <li>(B) in practice as a chartered accountant; or</li> <li>(C) in practice as a cost accountant; or</li> <li>(D) in practice as a company secretary,</li> </ul>             shall not be required to pass the online proficiency self-assessment test.           </li> </ul> <p><i>*As amended by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 w.e.f. 19.08.2021.</i></p>
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**Chapter 2: Meetings of the Board and its Powers**

**2.2 - Meetings of Board (Sec. 173)**

<p><b>Participation in Board Meeting - Sec. 173(2)</b></p>	<p>The participation of directors in a meeting of the Board may be either</p> <ul style="list-style-type: none"> <li>• in person</li> <li style="padding-left: 20px;">or</li> <li>• through video conferencing</li> <li style="padding-left: 20px;">or</li> <li>• other audio-visual means, as may be prescribed.</li> </ul> <div style="background-color: #f0f0f0; padding: 10px; margin-top: 10px;"> <p style="text-align: center;"><i>Points to remember</i></p> <ul style="list-style-type: none"> <li>• <i>Video conferencing or other audio-visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.</i></li> <li>• <i>“Audio visual means” should be capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.</i></li> <li>• <i>First proviso to Sec. 173 provides that C.G. may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio-visual means.</i></li> <li>• <i>Second Proviso to Sec. 173 is inserted by Companies (Amendment) Act, 2017 w.e.f. 07.05.2018, which states as under: "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio-visual means in such meeting on any matter specified under the first proviso."</i></li> <li>• <i>Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, requires the company to comply with the procedure in case of Board Meetings through video conferencing or other audio-visual means.</i></li> <li>• <i>Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, specifies the matters not to be dealt with in a meeting through video conferencing or other audio-visual means. However, Rule 4 has been omitted by the Companies (Meetings of the Board and its Powers) Amendment Rules, 2021 w.e.f. 15.06.2021.</i></li> </ul> </div>
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**Chapter 4: Inspection, Inquiry and Investigation**

**4.5 - Investigation into affairs of company (Sec. 210)**

**Appointment of inspectors - Sec. 210(3)**

For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

**Conditions as to Security- Rule 5 of the Companies (Inspection, Investigation and Inquiry) Rules, 2014**

- The C.G. may before appointing an inspector u/s 210(3), require the applicant to give a security not exceeding ₹ 25,000 for payment of the costs and expenses of investigation as per the criteria given below:

Sl. No.	Turnover as per previous year balance sheet (₹)	Amount of security (₹)
1	Turnover upto ₹ 50 crore	₹ 10000
2	Turnover more than ₹ 50 crore & upto ₹ 200 crore	₹ 15000
3	Turnover more than ₹ 200 crore	₹ 25000

- The security shall be refunded to the applicant if the investigation results in prosecution.

**Chapter 14: SEBI Act, 1992 and SEBI (LODR) Regulations, 2015**

**14.11 - Basics of SEBI (LODR) Regulations, 2015**

**Key features of SEBI (LODR) Regulations, 2015**

**Composition of Board - Reg. 17(1)**

- BOD shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than 50% of the BOD shall comprise of non-executive directors:  
Provided that the BOD of the top 1000 listed entities shall have at least one independent woman director.  
**Explanation:** Top 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.
- Where the Chairperson of the Board is a non-executive director, at least 1/3<sup>rd</sup> of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors:  
Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.  
**Explanation:** For the purpose of this clause, the expression "related to any promoter" shall have the following meaning:
  - (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
  - (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.
- The board of directors of the top 2000 listed entities shall comprise of not less than 6 directors.

		<ul style="list-style-type: none"> <li>No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.</li> </ul>
<b>Board Meetings – Reg. 17(2)</b>		<ul style="list-style-type: none"> <li>The Board shall meet at least 4 times a year, with a maximum time gap of 120 days between any two meetings.</li> <li>The quorum for every meeting of the board of directors of the top 2000 listed entities shall be 1/3<sup>rd</sup> of its total strength or 3 directors, whichever is higher, including at least one independent director.</li> </ul>
<b>Review of Compliance Report – Reg. 17(3)</b>		The Board shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.
<b>Evaluation of Independent Directors – Reg. 17(10)</b>		<p>The evaluation of independent directors shall be done by the entire board of directors which shall include:</p> <p>(a) performance of the directors; and</p> <p>(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:</p> <p>Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.</p>
<b>Maximum number of directorships – Reg 17A</b>		<p>The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time:</p> <p>(1) A person shall not be a director in more than 7 listed entities: Provided that a person shall not serve as an independent director in more than 7 listed entities.</p> <p>(2) Notwithstanding the above, any person who is serving as a whole time director/managing director in any listed entity shall serve as an independent director in not more than 3 listed entities.</p> <p>For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.</p>

#### 14.14 – Corporate Governance

<b>Risk Management Committee (Regulation 21)</b>	<p>(a) The Risk Management Committee shall have minimum 3 members with majority of them being members of the BOD, including at least 1 independent director and in case of a listed entity having outstanding SR equity shares, at least 2/3<sup>rd</sup> of the Risk Management Committee shall comprise independent directors.</p> <p>(b) The Chairperson of the Risk Management Committee shall be a member of the Board of Directors and senior executives of the listed entity may be members of the committee.</p> <p>(c) The risk management committee shall meet at least twice in a year.</p> <p>(d) The quorum for a meeting of the Risk Management Committee shall be either 2 members or 1/3<sup>rd</sup> of the members of the committee, whichever is higher, including at least 1 member of the board of directors in attendance.</p> <p>(e) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than 182 days shall elapse between any two consecutive meetings.</p>
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- (f) The Board of Directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit and such function shall specifically cover cyber security.
- (g) It may be noted that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.
- (h) The provisions of this regulation shall be applicable to top 1000 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year and a high value debt listed entity.
- (i) The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

### Chapter 17: PMLA, 2002

#### 17.5 - Obligation of Banking Companies, Financial Institutions and Intermediaries (Sec. 12 - Sec. 15)

<p><b>Reporting entity to maintain records (Sec. 12)</b></p>	<b>Prevention of Money-laundering (Maintenance of Records) Rules, 2005,</b>	
	<p><b>Maintenance of records of transactions - Rule 3</b></p>	<p>Every reporting entity shall maintain records of following:</p> <ul style="list-style-type: none"> <li>(i) Cash transactions of value of more than ₹ 10 lakhs in foreign currency.</li> <li>(ii) Series of cash transactions if total in a month exceeds ₹ 10 lakhs in foreign currency.</li> <li>(iii) Cash transactions where forged or counterfeit currency or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions.</li> <li>(iv) Suspicious transactions: whether or not made in cash by deposits, withdrawals, transfers, cheques, credit or debit in non-monetary accounts like d-mat, security account, money transfers, loans and advances, collection services of currency etc.</li> <li>(v) All transactions involving receipts by non-profit organisations of value more than ₹ 10 lakhs or its equivalent in foreign currency.</li> </ul>
	<b>Meaning of Suspicious Transaction - Rule 2(g)</b>	
	<p>Suspicious transaction means a transaction referred to in Sec. 2(h), including an attempted transaction, whether or not made in cash, which, to a person acting in good faith:</p> <ul style="list-style-type: none"> <li>(a) gives rise to a reasonable ground of suspicion that it may involve the proceeds of an offence specified in the Schedule to the Act, regardless of the value involved;</li> <li>(b) appears to be made in circumstances of unusual or unjustified complexity;</li> <li>(c) appears to have no economic rationale or bona fide purpose; or</li> <li>(d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism.</li> </ul>	
<p><b>Records containing information - Rule 4</b></p>	<p>The records shall contain information about nature of transaction, amount of transaction, currency, date of transaction and parties to transaction.</p>	
<p><b>Procedure and manner of maintaining information - Rule 5</b></p>	<ul style="list-style-type: none"> <li>• The records will be maintained in hard and soft copies in accordance with procedure and manner as may be specified by its Regulator (e.g. RBI, SEBI, IRDA etc.).</li> <li>• Internal mechanism will be developed by Banking company, FI and intermediary to maintain such information.</li> </ul>	

**17.8 - Reciprocal Arrangement for Assistance in certain matters (Sec. 55 – Sec. 61)**

<b>Special Court to release the property (Sec. 58A)</b>	Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.
<b>Letter of request of a contracting State or authority for confiscation or release the property (Sec. 58B)</b>	Where the trial under the corresponding law of any other country cannot be conducted by reason of: (a) the death of the accused or (b) the accused being declared a proclaimed offender, or (c) for any other reason or having commenced but could not be concluded, the C.G. shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.
<b>Reciprocal arrangements for processes and assistance for transfer of accused persons (Sec. 59)</b>	Where a Special Court, in relation to an offence punishable under section 4, desires that: (a) a summons to an accused person, or (b) a warrant for the arrest of an accused person, or (c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or (d) a search warrant, issued by it, shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.
<b>Attachment, seizure and confiscation, etc., of property in a contracting State or India (Sec. 60)</b>	<ul style="list-style-type: none"> <li>• <b>Order for execution of letter of request:</b> Where the Director has made an order for attachment of any property under section 5 or for freezing u/s 17(1A) or where an Adjudicating Authority has made an order relating to a property u/s 8 or where a Special Court has made an order of confiscation relating to a property u/s 8(5) or u/s 8(6), and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed u/s 10(1), as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.</li> <li>• <b>Forward such letter of request to the Director:</b> Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the C.G. may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.</li> <li>• <b>Property involved in money laundering stand to be confiscated to the C.G.:</b> Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money laundering under the corresponding law of that country has been committed, the Special Court shall, on receipt of an application from the Director for execution of confiscation, order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.</li> <li>• <b>Director to direct for tracing and identifying such property:</b> The Director shall, on receipt of a letter of request u/ss 58 or 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.</li> </ul>



	<ul style="list-style-type: none"> <li>• The steps may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.</li> <li>• Any inquiry, investigation or survey shall be carried out by an authority in accordance with such directions issued in accordance with the provisions of this Act.</li> <li>• The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.</li> <li>• When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.</li> </ul>
<b>Procedure in respect of letter of request (Sec. 61)</b>	Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State, shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the C.G. may, by notification, specify in this behalf.

**17.9 – Miscellaneous (Sec. 62 – Sec. 75)**

<b>Notice, etc., not to be invalid on certain grounds (Sec. 68)</b>	No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.
<b>Recovery of fine or penalty (Sec. 69)</b>	Where any fine or penalty imposed on any person u/ss 13 or 63 is not paid within 6 months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

**Chapter 19: Arbitration and Conciliation Act, 1996**

**19.5 - Conciliation**

<b>Conciliation in India</b>	<p>In India conciliation is governed by the Arbitration and Conciliation Act, 1996 and by Section 89 of the Code of Civil Procedure 1908.</p> <p>Section 61 of Arbitration and Conciliation Act, 1996 provides that any dispute arising out of a legal relationship, whether contractual or not, can be conciliated. Important statutory provisions as contained in Arbitration and Conciliation Act, 1996 are given below:</p>	
<b>Commencement of conciliation proceedings (Sec. 62)</b>	<ul style="list-style-type: none"> <li>• The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.</li> <li>• Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.</li> </ul>	

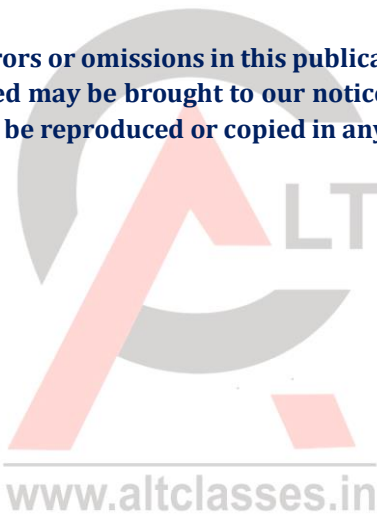
		<ul style="list-style-type: none"> <li>• If the other party rejects the invitation, there will be no conciliation proceedings.</li> <li>• If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.</li> </ul>
<b>Termination of conciliation proceedings (Sec. 76)</b>	The conciliation proceedings shall be terminated:	<ul style="list-style-type: none"> <li>(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or</li> <li>(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or</li> <li>(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or</li> <li>(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.</li> </ul>

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Law stated in this publication is upto 31.10.2021 and is relevant for May 2022 Exams and onwards.

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