BRINGING CAPITAL INTO A COMPANY

Legal Structures · ROC Compliance · Valuation · Regulatory Considerations

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SESSION ROADMAP

Your 2-hour journey

01
Setting the Stage

02
Legal Structures

03
ROC Compliance

04
Valuation

05
Regulatory Overlay

06
Case Studies + Q&A

MODULE 01

Setting the Stage

Why companies raise capital · Governing framework · Key stakeholders

WHY DO COMPANIES RAISE CAPITAL?

Business Growth

Expand capacity, new geographies, product lines

Working Capital

Fund day-to-day operations & seasonal requirements

Acquisitions / M&A

Buy out competitors, strategic targets

Debt Refinancing

Replace expensive debt with cheaper equity/instruments

Regulatory Capital

NBFC, bank & insurance minimum net-worth norms

Founder Liquidity

Partial exit while keeping control via secondary sale

THE GOVERNING FRAMEWORK

Multi-regulator landscape

Companies Act, 2013

MCA / ROC

FEMA / RBI

FDI, ECB, Pricing

CAPITAL RAISING

Income Tax Act 1961 / 2025

SEBI Regulations

ICDR, PIT, Takeover

DPIIT / Startup India

MODULE 02

Legal Structures for Bringing in Capital

Equity · Debt · Hybrid Instruments · Choosing the Right Structure

EQUITY INSTRUMENTS

Section 42 & 62 — Companies Act, 2013

S.62(1)(a) Rights Issue

- Offered pro-rata to existing shareholders
- Notice period: 15–30 days
- Renunciation permitted

S.42 Private Placement

- Max 200 persons per class per year
- Offer letter (PAS-4) mandatory
- Allotment within 60 days of receipt of funds

S.62(1)(b) ESOP

- Special resolution required
- Compensation committee approval
- Lock-in applicable

S.62(1)(c) Preferential Allotment

- Special resolution + valuation report
- Registered valuer (SFA) mandatory
- SEBI pricing for listed cos

SHARE CLASSES — RIGHTS & RESTRICTIONS

Section 43 & 55 — Companies Act, 2013

EQUITY SHARES

- Residual ownership — last in liquidation
- Voting rights: 1 share = 1 vote (typically)
- Dividend: discretionary, not guaranteed
- No cap on return
- Carries maximum upside AND risk
- DVR Shares: differential voting rights (S.43)

PREFERENCE SHARES

- Priority in dividend and on winding up
- Typically no / limited voting rights
- Fixed dividend — not deductible for company
- Redeemable: mandatory within 20 years (S.55)
- Convertible preference: FEMA implications
- Arrears of dividend — rights on winding up

CONVERTIBLE INSTRUMENTS

The Investor's Preferred Route

CCD	**Compulsorily Convertible Debentures**	FEMA: Equity (FDI) Tax: Interest deductible	**Low for investor**
OCD	**Optionally Convertible Debentures**	FEMA: Debt (ECB norms) Tax: Interest deductible	**Medium**
CCP	**Compulsorily Convertible Preference**	FEMA: Equity (FDI) Tax: Dividend not deductible	**Low for investor**
OCP	**Optionally Convertible Preference**	FEMA: Debt (ECB norms) Tax: Dividend not deductible	**High structuring risk**

DEBT INSTRUMENTS

Section 71, 73 & 186 — Companies Act, 2013

S.71 Non-Convertible Debentures (NCD)

- Secured / unsecured
- Debenture Redemption Reserve (DRR) mandatory for public issuance
- Debenture Trustee required for secured NCDs

S.186 Inter-Corporate Deposits / Loans

- Max: 60% of paid-up + free reserves OR 100% of free reserves
- Board resolution or special resolution (above threshold)
- Rate of interest ≥ prevailing RBI bank rate

S.73-76 Fixed Deposits from Public

- Only eligible companies (net worth / turnover criteria)
- DIP Rules compliance — credit rating mandatory
- Deposits not exceeding 25% of paid-up + free reserves

FEMA/RBI External Commercial Borrowings

- Available for eligible borrowers only
- Minimum average maturity: 3 years (Track I)
- End-use restrictions — no investment in real estate/equity

INSTRUMENT SELECTOR — DECISION MATRIX

Match the instrument to the situation

Situation	Recommended Instrument	Key Law
Domestic PE/VC investment	CCPS or CCD	S.42 / S.62(1)(c)
Founder control preservation + growth	DVR Equity + Rights Issue	S.43 / S.62(1)(a)
Foreign strategic investor	Equity (FDI) / CCPS	FEMA / S.62(1)(c)
Short-term working capital from group co.	Inter-corporate loan	S.186
Long-term infrastructure funding	NCD + ECB	S.71 / FEMA
Early-stage startup fund raise	CCD (SAFE structure)	S.42 + FEMA care
Employee retention / alignment	ESOP	S.62(1)(b)

MODULE 03

ROC Compliance Obligations

Pre-Allotment · Post-Allotment Filings · Traps & Penalties

PRE-ALLOTMENT COMPLIANCE CHECKLIST

01

Verify Authorized Capital

Ensure MOA has sufficient authorized share capital. File SH-7 to increase if needed before allotment.

02

Board Meeting

Approve the offer. For private placement: approve PAS-4. For preferential: approve in-principle, fix record date.

03

Convene General Meeting

Special resolution required for S.42 (private placement), S.62(1)(c) (preferential), and S.71 (debentures with special rights).

04

File MGT-14

File Board / GM resolutions with ROC within 30 days. Non-filing attracts penalty under S.403.

05

Issue Offer Letter (PAS-4)

Issue Private Placement Offer Letter within 30 days of GM approval. Cannot make public announcement.

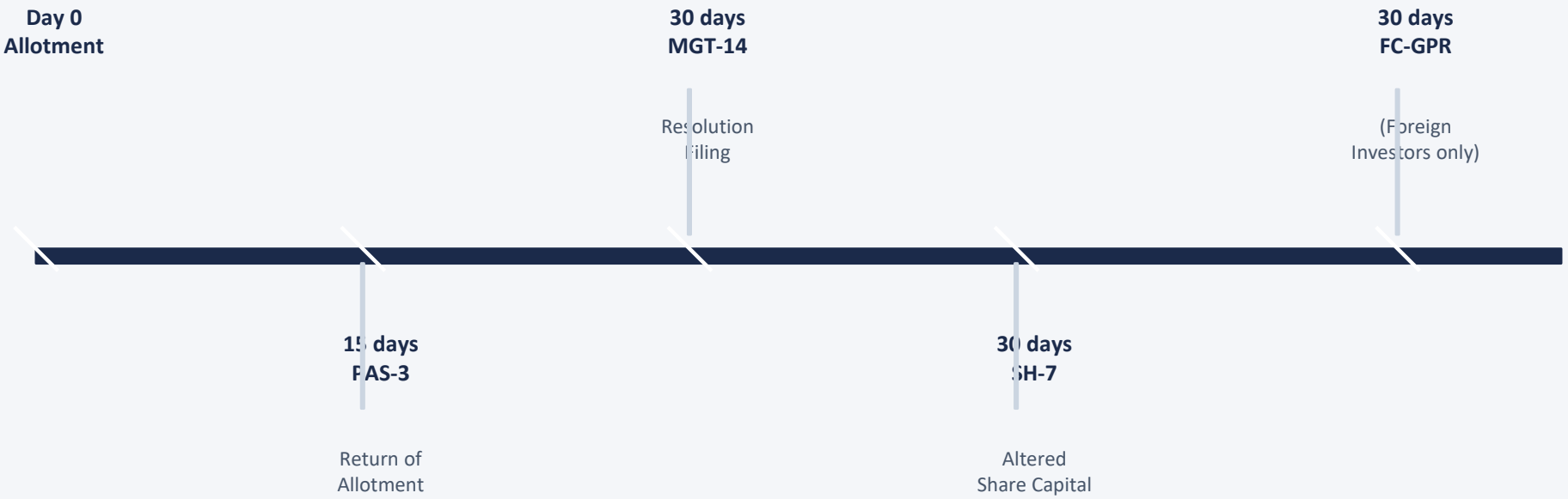
06

Valuation Report

Registered Valuer report for preferential allotment (S.62(1)(c)). For foreign investor: FEMA pricing compliance.

ROC FORMS — FILING TIMELINE

Post-allotment obligations at a glance



⚠ PENALTY ALERT:

PAS-3 delay: Penalty of INR 1,000/day (company) + INR 500/day (officer). MGT-14 delay: INR 100/day additional fee. FC-GPR delay: FEMA compounding required.

COMMON COMPLIANCE TRAPS

Know them before your client falls into them

TRAP 01 **Deemed Public Offer**

Allot to 200+ persons in a class in one year → Section 42 is violated → SEBI's ICDR applies. Severe consequences.

TRAP 02 **Application Money Misuse**

Funds received before allotment must sit in a SEPARATE bank account. Mixing with operating accounts = violation of S.42(6).

TRAP 03 **No PAS-4 Issued**

Making oral / email offers without issuing PAS-4. The private placement is invalid. All money must be refunded within 15 days.

TRAP 04 **MGT-14 Not Filed**

Resolution passed but not filed within 30 days. Attracts additional fees + potential ROC inquiry.

TRAP 05 **S.186 Limit Breach**

Inter-corporate loan exceeds limits without special resolution. Common in group companies during cash pooling.

TRAP 06 **FC-GPR Delay**

FDI received but FC-GPR not filed within 30 days. FEMA compounding required — time-consuming and embarrassing.

MODULE 04

Valuation: Legal & Practical Dimensions

When it's mandated · Registered Valuers · Methods · The Price Squeeze

WHEN IS VALUATION MANDATED?

Statutory triggers across regulators

Regulator	Law Reference	Trigger	Who Values?
Companies Act	**S.62(1)(c)**	Preferential allotment of shares	Registered Valuer (SFA)
Companies Act	**S.192**	Non-cash transactions involving directors	Registered Valuer
Companies Act	**S.230/232**	Mergers & Restructuring (Scheme of Arrangement)	Registered Valuer
FEMA / RBI	**FEMA 20R**	Issue / transfer of equity to / from non-residents	SEBI-Reg. MB or CA (DCF/NAV)
Income Tax	**S.50CA [1961] r.w.r 11UA/11UAA S.79 [2025] r.w.r 57**	Transfer of unquoted shares below FMV	Specified person under Rule 247

VALUATION METHODS — PRACTICAL OVERVIEW

DCF (Discounted Cash Flow)

When: Going concern, growth stage, startups

✓ Forward-looking; preferred for PE/VC; captures future potential

✗ Highly sensitive to discount rate & terminal growth assumptions

NAV / Book Value (Net Asset Value)

When: Investment holding cos, asset-heavy businesses, liquidation

✓ Simple, objective, based on audited financials

✗ Does not capture goodwill, brand or future earnings

Comparable Company (CCM / CCA)

When: When industry peers exist with available data

✓ Market-based; used for listed companies

✗ India lacks deep comparable data for unlisted cos

Rule 11UA Method (IT Act — Prescribed)

When: Angel tax purposes (ITA 1961) – ITA 2025 has no angel tax provisions

✓ Gives statutory safe harbour — no tax challenge

✗ May not reflect commercial reality; prescriptive formula

REGISTERED VALUERS UNDER COMPANIES ACT

An Opportunity for CA Practitioners

3	IBBI	3 Yrs	50 Hrs
Asset Classes	**Regulator**	**Experience Req.**	**CPE/Year**
SFA · LFA · P&M	Insolvency & Bankruptcy Board	Post-qualification (for CAs)	Mandatory for renewal

ASSET CLASSES

- Securities or Financial Assets (SFA) — Shares, debentures, derivatives
- Land & Building / Real Estate (LFA)
- Plant & Machinery (P&M)

WHO CAN APPLY?

- Chartered Accountants (for SFA & LFA)
- Company Secretaries (for SFA)
- MBA Finance / CFA with experience (SFA)

MODULE 05

Regulatory Overlay

FEMA / RBI · SEBI · Income Tax (ITA 1961 & ITA 2025)

FEMA / RBI — FOREIGN INVESTMENT FRAMEWORK

FDI vs. FPI

- FDI: 10%+ stake in unlisted co OR direct investment
- FPI: Portfolio investment via SEBI-registered route
- FDI: automatic or government route depending on sector

Pricing Guidelines

- Issue to non-resident: NOT BELOW FMV
- Transfer from non-resident: NOT BELOW FMV
- Transfer to non-resident: NOT ABOVE FMV by buyer

Reporting: FIRMS Portal

- FC-GPR: within 30 days of allotment
- FC-TRS: within 60 days of transfer
- ARF (Advance Remittance Form): within 30 days of receipt

Prohibited Sectors

- Lottery, gambling, chit funds
- Real estate (direct construction, farmhouse)
- Atomic energy, rail (select activities)

INCOME TAX — CAPITAL RAISING IMPLICATIONS

ITA 1961 & ITA 2025 — Section Cross-Reference

Provision / Topic	ITA 1961	ITA 2025	Practical Implication
Angel Tax — Company Taxed	S.56(2)(viib)	**NA**	Shares issued at premium above Rule 11UA FMV → excess taxable in company's hands as income from other sources. Abolished in Finance Act, 2024
Unexplained Cash Credits	S.68	**S.102**	Investor's creditworthiness and source of funds must be established. Unsatisfied AO can add entire share capital as income
LTCG on Unlisted Shares	S.112 (20%+index) / S.112A (10%)	**S.197 / S.198**	Listed: 10% LTCG above INR 1L (S.112A). Unlisted: 20% with indexation or 10% without
Angel Tax — Investor Taxed	S.56(2)(x)	**S.92(2)(m)**	If investor receives shares at undervaluation (price < FMV), the differential is taxable in investor's hands
ESOP Perquisite Tax	S.17(2)(vi)	**S.17(1)(d)**	Taxed at exercise as perquisite = (FMV on exercise – exercise price) × number of shares.

SEBI — WHEN DOES IT APPLY?

Not just for listed companies

LISTED COMPANIES

- SEBI ICDR Regulations apply to all public issues
- Preferential allotment pricing: 2-week / 26-week VWAP formula
- PIT Regulations: insider trading blackout windows
- Takeover Code (SEBI SAST): triggered at 25% / 5% creep
- Continuous disclosure obligations — price-sensitive info

UNLISTED COMPANIES

- SEBI applies if > 200 allottees (deemed public offer)
- Pre-IPO placement: SEBI ICDR Chapter V-A applies
- QIB placement to institutions: SEBI framework
- Employee stock options: SEBI SBEB Regulations
- Unlisted public cos: prospectus rules under SEBI

MODULE 06

Case Studies

End-to-end walkthroughs of real-world scenarios

CASE STUDY 1 — VC INVESTMENT VIA CCDS

Domestic PE Fund into a Private Limited Company

FACT PATTERN:

TechStart Pvt Ltd (DPIIT startup). Domestic VC fund invests INR 5 crores via CCDs. Conversion at IPO or next round. No foreign investor.

1 — Check AuC

Is INR 5 Cr convertible into authorised capital? Increase via SH-7 if needed.

2 — Board Meeting

Approve CCD issuance terms: face value, interest rate, conversion ratio.

3 — Special Resolution

Pass SR under S.42 (private placement) + S.71 (debenture issuance terms).

4 — File MGT-14

File SR with ROC within 30 days. Attach minutes and resolution.

5 — Issue PAS-4

Issue Private Placement Offer Letter within 30 days of SR. VC is 1 identified person.

6 — Open Separate A/C

Open dedicated bank account. VC transfers INR 5 Cr. Do not touch till allotment.

7 — Allot CCDs

Board resolution for allotment. Prepare CCD Certificate / Debenture Trust Deed if secured.

8 — File PAS-3 + IT Compliance

File within 15 days. Collect VC's ITR/bank statement for S.68 defence. Check angel tax.

CASE STUDY 2 — FDI INTO UNLISTED COMPANY

US-based Strategic Investor Acquiring Minority Stake

FACT PATTERN:

ManufactureCo Pvt Ltd (manufacturing, auto-route sector). US company wants 25% equity stake for USD 2 million. Existing promoters hold 100%. No DPIIT recognition.

COMPANIES ACT CHECKLIST

- Increase AuC if needed (SH-7)
- Board approval for preferential allotment
- Special resolution (S.62(1)(c))
- Registered Valuer report (SFA)
- File MGT-14 within 30 days
- Allotment within 12 months of SR
- PAS-3 within 15 days
- Update register of members

FEMA / RBI CHECKLIST

- Verify sector: auto-route ✓
- Confirm investor KYC (FEMA 20R)
- Open Escrow / NRO account for USD
- FMV valuation by CA/MB (FEMA pricing)
- Receive funds → Bank A2 form
- File FC-GPR on FIRMS within 30 days
- Annual return (FLA) in July
- If SHA has put-option: check FEMA compliance

KEY TAKEAWAYS

What every CA practitioner should remember

01	Capital raising is a multi-regulator exercise — Companies Act, FEMA, SEBI, and Income Tax all speak simultaneously.
02	Choose the instrument FIRST based on purpose, control, tax efficiency, and investor preference. Documentation follows.
03	Private placement: 200-person cap is sacred. Breach = deemed public offer. Separate bank account is non-negotiable.
04	Valuation must be done proactively — not as an afterthought. Align FEMA, IT, and Companies Act reports.
05	DPIIT startup recognition defers ESOP tax — a simple step with outsized compliance benefit.
06	ITA 2025 retains the same substantive positions as ITA 1961. Know both section references while the transition happens.

Thank You

Questions & Open Discussion

All section references cited are for guidance purposes.
ITA 2025 references are as per the Income Tax Act, 2025 passed by Parliament.
Always verify current notifications, rules and CBDT/RBI circulars for client-specific advice.

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