

COMPLIANCE MANAGEMENT, AUDIT & DUE DILIGENCE

CHART BOOK

Professional Programme | New Syllabus



Muskan Gupta

Chapter 01

COMPLIANCE FRAMEWORK

Introduction

- Company has to comply with lot of Rules and regulations.
- Board of Director has a duty to identify the scope and implication of laws which are applicable on the organization.
- To ensure compliance of applicable laws, company has set up '**Compliance Framework**'
- CS plays the most important role in compliance framework.

Steps undertaken by BOD

01

Development and Maintenance of a Compliance program

02

Review effectiveness of compliance systems

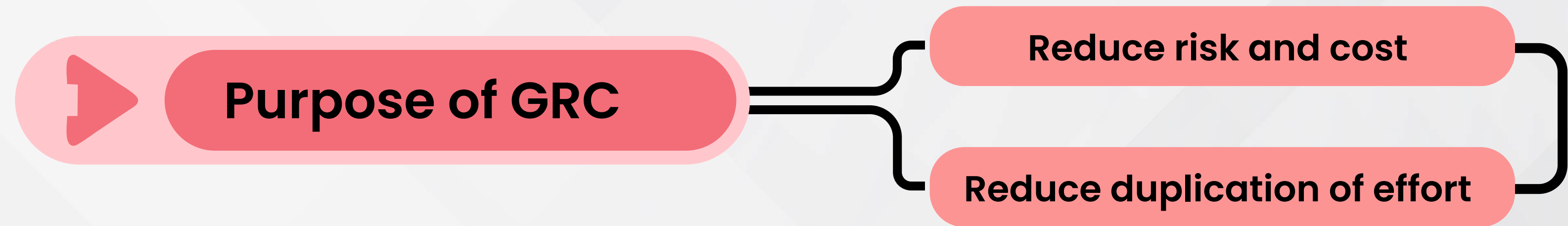
03

Ensuring its updation and relevance



Case:-
Maruti Suzuki
Ltd.

GOVERNANCE, RISK MANAGEMENT & COMPLIANCE



Functions of GRC



Components of Compliance Framework

Compliance Chart

- It is prepared after considering:
 1. Identification of Applicable laws.
 2. Risk Assessment
 3. Risk Mitigation
 4. Compliance Monitoring
 5. Compliance Reporting

Compliance Advisory

- Advices on Compliance of applicable laws and effect of non-compliance

Compliance Scorecard

- A tool to analyze the position of organization in compliance.

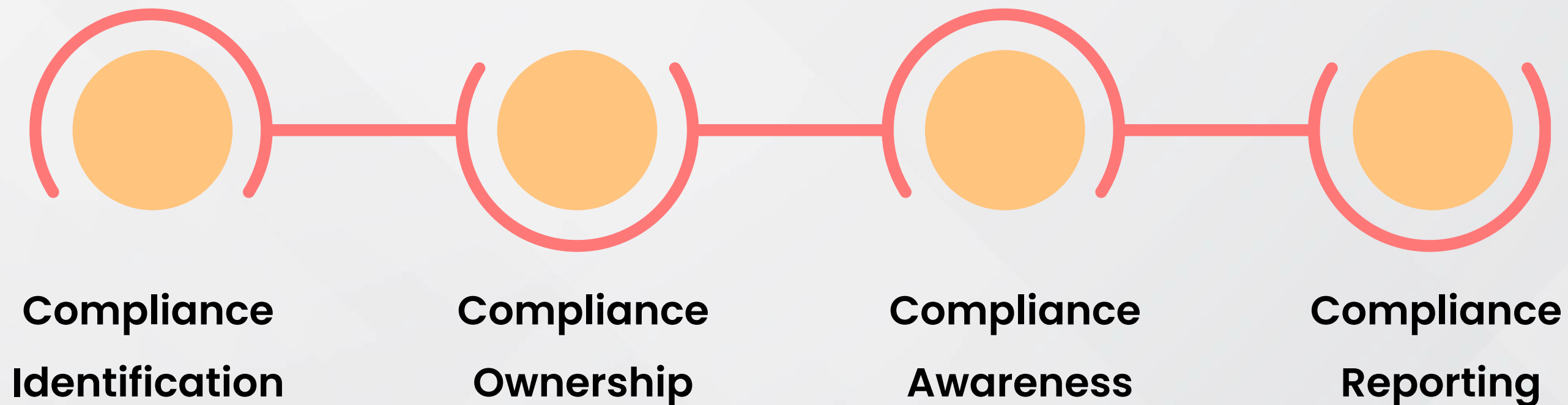
Contents of Compliance Chart

- 1 Reference to Compliance related laws
- 2 Statement stating about Compliance, obligation and risk associated with it
- 3 Risk Level: – Low, – Medium, – Critical
- 4 Policy for risk mitigation
- 5 Ownership of Activities
- 6 To whom and how compliance related finding is reported

Advantages of Well designed Compliance Management System

(Acronym = RATNA AA GAYA TO DIRECT PASS)

1. Access to **R**ules and Regulations
2. Compliance **A**udit
3. Compliance **T**raining
4. Compliance **T**ask Management
5. Compliance **D**ashboard
6. Compliance **P**olicies and Procedures



A] Identification Of Applicable Laws

- It includes identification of laws applicable on the company with the consultation of '**Functional Heads**'
- To identify the compliances CS has to get familiar with business model of Company

Sources to identify Laws

- Engagement with management
- Laws and Regulations
- Permits and Licenses
- Treaties, Conventions and Protocols
- Internal Policies and Procedure etc

Company has to comply with following laws

- Labour Laws
- Fiscal/ Tax Laws
- Securities Laws
- Commercial Law
- Corporate and Economic Law
- Cyber Law etc

Case :- 1. Re. Siddharth Gupta vs Delhi Golf club ltd.

2. Cloudbail fined by CCPA

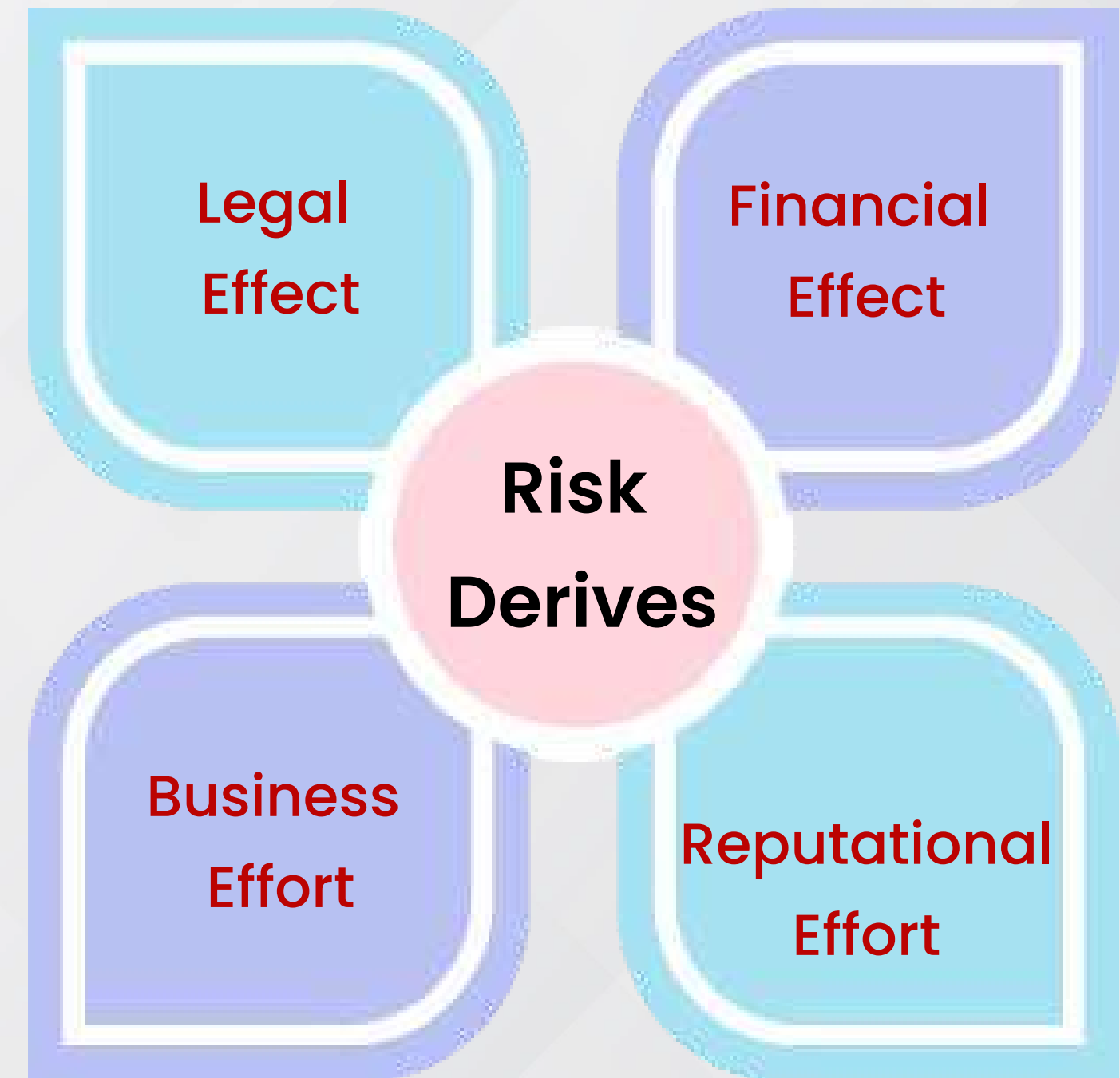
B] Compliance Risk Assessment

- It is the process where company identifies inherent risk and categorizes it into:

- 1.Low
- 2.Medium
- 3.High
- 4.Critical

- Risk Assessment includes:

- 1.Identify area of potential non compliance.
- 2.Rating the risk
- 3.Assess outcomes

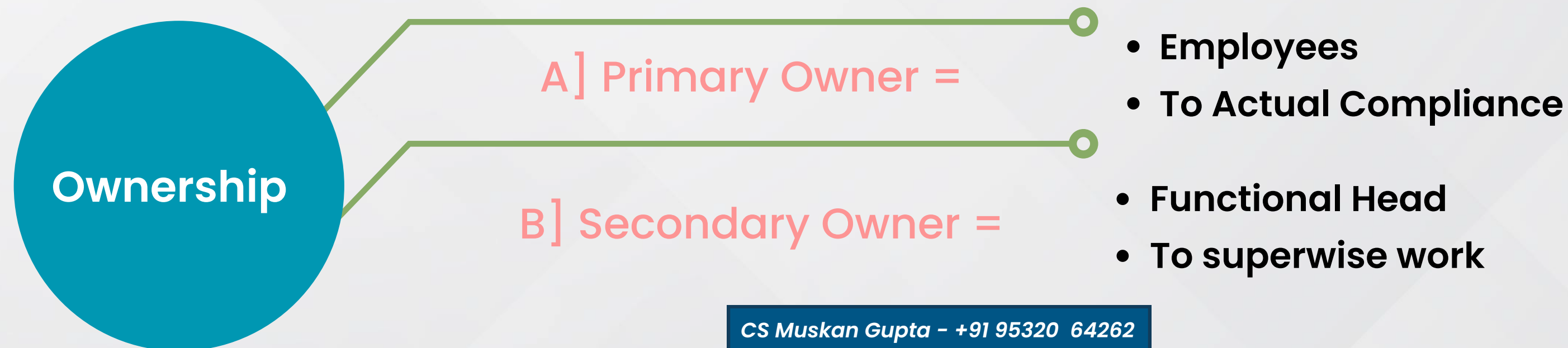


Techniques to assess the risk

1. Detailed Assessment = To ensure risk is properly assessed and mitigated
2. High Level Risk Assessment = Result If detailed assessment is used here to do deep assessment.

C] Compliance Monitoring & Ownership

- It enable companies to recognize whether their framework has been implemented properly.
- it means 'Oversight' of the company@: operation.
- Compliance ownership involve identifying compliances function and Individual wise.



ROLE OF VARIOUS LEVEL OF MANAGEMENT

Top Management

- 01 Understand Compliance Obligation
- 02 Approve Policy and Procedure
- 03 Motivate Employees

Compliance Officer

- 01 Perform Compliance Obligation
- 02 Update Compliance Obligation
- 03 Risk Identification
- 04 Conflict Intimation

Senior Management

- 01 Analysis on regulatory change
- 02 Form Policies
- 03 Motivate compliance officer
- 04 Guide compliance officer

Legal Cell

- 01 Identify changed Law
- 02 Communicate in writing to compliance owner
- 03 Review Policies
- 04 Resolution of Doubts



Process

Functional Head identifies reporting of various Laws

Functional Head collects information from various departments

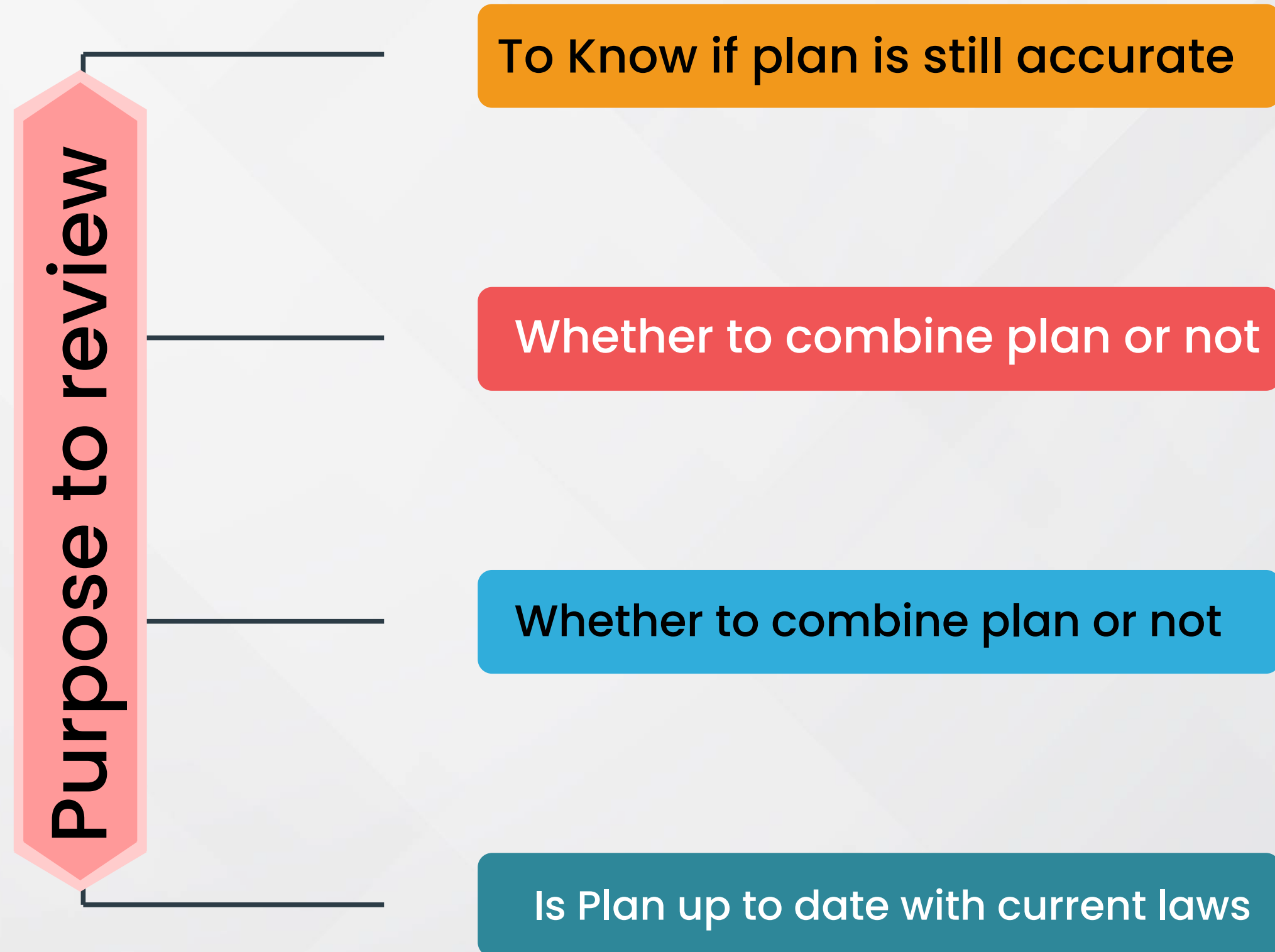
Functional Head declares report based on departmental inputs

Send it to CS

CS gives his/her opinion to M.D

M.D submit it to Board of Directors

Role Of CS in Compliance Chart[Review & Updation



COMPLIANCE RISK MONITORING PLAN MUST INCLUDE

1. Critical and high compliance risk
2. Key compliance risk mitigation activity
3. Routine business transactions
4. Compliance with the laws
5. Policies issued by compliance department

Methodology for accessing compliance mechanism

**Risk
Assessment**

**Program
Design**

**Policies
&
Procedure**

**Communication,
Training
&
Implementation**

**Ongoing
self
assessment**

- **Why Training is important**

1. Understand Compliance obligation/Framework.
2. To know roles and responsibility
3. Identify critical and high compliance obligation
4. Know how to do compliances
5. Consequences of not doing compliance

- **What includes in Training**

1. Statement which provide compliance obligation.
2. Business process to which obligation are linked
3. Brief description of training
4. Target Audience
5. Frequency of training

ESSENTIAL THINGS TO CREATE COMPLIANCE TRAINING PROGRAMME

- 1 Make it **Personal**
- 2 Make it **Interesting**
- 3 Make it **Understandable**
- 4 Make it **Accessible**
- 5 Make it **Ongoing**

Compliance Audit

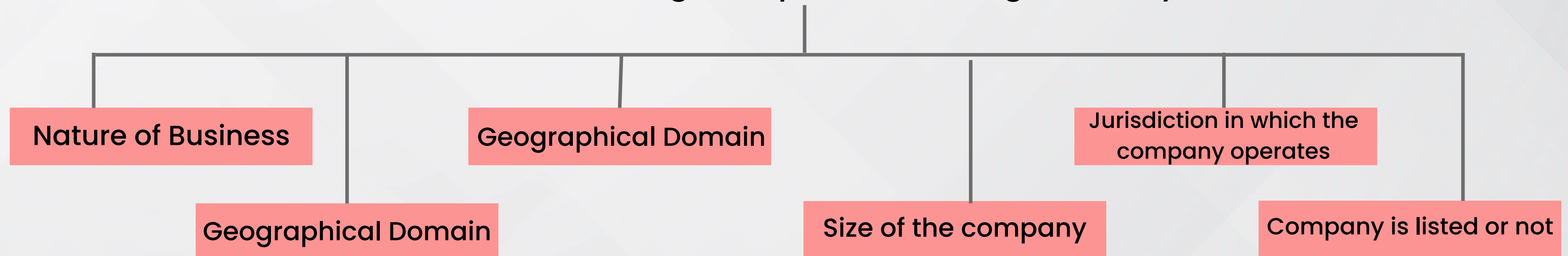
- It is independent assessment of whether company is in compliance of applicable laws
- It may be:

Regulatory

Propriety

- Better compliance of law
- Real time status of compliances
- Lays foundation for controlled environment
- Real time status of pending Litigation
- It creates safety value
- Recognizes as good corporate citizen
- Creates Goodwill

Factors affecting Compliance Management System



ROLE OF CS IN COMPLIANCE MANAGEMENT SYSTEM

- To ensure company is in Compliance with applicable laws
- Make applicable disclosures to regulate
- Advise on compliance risk
- Guide board of directors

DIRECTOR RESPONSIBILITY STATEMENT [Section 134(5)]

- DRS includes:
 1. Report applicable Accounting standard has been followed
 2. Report about accounting Policies applied by directors
 3. Report about director's proper and sufficient care for maintenance of Accounting record
 4. Report about director prepared annual Account on a going concern basis

Certain Compliances under Companies Act 2013

Points	Particulars
Board Meeting	• Minimum 4 B.M in a year • Max Gap = 120 days • 1 Meeting in each quarter of a calendar year
Notice of Board Meeting	• At least 7 days prior to meeting • Short notice allowed if ratify by 1 independent act
Notice of AGM	• Bend to 1.Directors 2.Members 3.Auditor 4.Legal Representative
Financial Statement	• File Financial Statement to ROC in 30 days from AGM in form AOC4.
Circulate Financial Statement	• It circulate to member, trustees 21 days prior to AGM.

Points	Particulars
Annual Return	- AGM 60 days ROC - It upload on website - Certify if= i. Annual turnover 50 CR or more ↓ In form MGT08 OR ii. Paid up capital 10 CR or more OR iii. Listed Company
Disclose of Interest	Director disclose their interest in form MBP01
Auditor Appointment	File form ADT01 in 15 days from appointment
Appoint CB	- CO. having paid up Capital = 10 CR or more. - Appoint whole time CB.

Compliance Management Tools

It is a software which help in managing Compliances.

OBJECTS OF CMT

- Digitalization
- Automation
- Compliances

Case: Bharti Airtel Limited.

Kinds of CMT

- All purpose Compliance Management Platform
 1. Risk Remedy
 2. Solve Technical issue
 3. Corporate Governance
- Industry Specific
 1. Comply laws applicable to particular industry.
 2. Structured framework.
- GRC Software
 - Focus on
 1. Managing risk
 2. Monitor Compliance Risk
 3. Handle corporate Governance task.

BENEFITS OF CMT

- Reduce manual work
- Streamline risk oh human error reduced
- Build reputation
- Create roadmap for business
- Simplify monitoring

Chapter 02

DOCUMENTATION AND MAINTENANCE OF RECORD

Introduction

Document

Record

- It is part of written, printed or e matter which provide information.
- It may be:- Structured or Unstructured

- It is Evidence of past.
- It can be used as a proof

Role of CS in Documentation

- ✦ **Ensure Confidentiality** of documents.
- ✦ Check whether documents are **consistent with prior records**
- ✦ Responsible for :- **Store, Maintain, Retrieve** {Corporate Document}
- ✦ Responsible to **maintain Document** related to **Group Companies**. i.e Subsidiary, Associate etc

Case:-

M/S SDU Holding [Pvt] Ltd.
{Consequences of Non maintaining. Record}

Purpose of Documentation

- ▶▶ Client service
- ▶▶ Accountability
- ▶▶ Research
- ▶▶ Communication
- ▶▶ Resource management
- ▶▶ Legal requirement
- ▶▶ Professional Responsibility
- ▶▶ Quality

Guiding principles of Good Documentation

- ▶▶ Clear
- ▶▶ Concise
- ▶▶ Complete
- ▶▶ Correct
- ▶▶ Contemporary
- ▶▶ Consecutive
- ▶▶ Client centric
- ▶▶ Collaborative
- ▶▶ Comprehensive

Documentation Practices

Good

- Concise , Legible
- Clear Example
- Information should not be assumed
- Complete record
- Superceded Document Retain

Bad

- Not dated and not signed
- Delegated work not documented
- Events not recorded in order
- Unauthorized sop adopted
- Overwritten/white out

Do's

- Record as soon as it generates
- Add reference note
- Validate document software
- Limited document access
- Specify when data is recorded/reviewed/approved

Dont's

- Delay in recording
- Encourage handwritten documentation
- Falsify documents intentionally
- Back dated document
- Pre - dated document

Case:-

**M/S India Bulls Real Estate Ltd vs.
ROC.**

E-Repository of Document

- It used to store electronic document record etc.
- Through software = 'Document Management System'
- DMS used to manage and track the document

Advantages of DMS

- 1] Check in or check out by official contract
- 2] Lock or unlock documents
- 3] Simultaneous editing
- 4] Ease in audit trail
- 5] Annotation



Case: – **North American Regional Health Care Provider**

Electronic Record

Advantages

- 1] Cost effective
- 2] Ease to use
- 3] Labor saving
- 4] Search Ability
- 5] Portability

Disadvantages

- 1] Software risk
- 2] Format risk
- 3] Reliability
- 4] Portability

Admissibility of Electronic Record

Case:- Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal

Maintenance and Inspection of E-Record under Companies Act, 2013

Section 120

- It provides for:-
 - Maintenance of Document in E-form
 - Inspection of Document in E-form

Rule 27 [Co. (Management and Administration Rule) 2014]

- Listed company
- Company having 1000 or more stakeholders



Maintain its record in E-form

Rule 28

- MD/CS/Authorized person responsible for the maintenance and security of E-records
- Above person shall:-
 1. Provide protection against unauthorized access
 2. Take necessary step to ensure security / Integrity of record.
 3. Arrange record in a way that permits easy access etc

Case:- 1] M/s Michelin India pvt. Ltd.
2] Anil Kumar Poddar vs. Bonanza Industrial Ltd

Difference between

Physical Data Room

Virtual Data Room

- It contains paper/ files
- Less secured
- Longer time required to create
- Searching of Document consume lot of time
- Restricted access.

- E-copies/ soft copies of document
- More secured
- Short time required
- Multiple buyer can review the document at the same time
- Not restricted access

- Useful for small well defined project
- With existing identification scheme

- It is usually system generated name

→ A] **Descriptive File**

→ B] **Non-Descriptive File**

**Coding &
Nomenclature**

Best Practices for file naming

- ✦ Be unique and consistently structured
- ✦ Limit character length between 25–35 characters
- ✦ Contain file format extension
- ✦ Avoid Blank spaces
- ✦ Use hyphens and underscore
- ✦ Standard Date Notation {Year/month/Date}

Safety and retrieval of records

A] Descriptive File

- Name of Individual who have worked on the same document

B] Result of Reviews

- Record of changes

C] Inspection

- who can access and change the record

D] Information Analysis

D] Monitoring of Work Performance

- who can access and change the record

Safety of record governed by 3 assets

- 1] Keeping together
- 2] Ensure life cycle
 - Current phase
 - Semi - Current phase
 - Non - current phase
- 3] Record Preservation

Case:- US Food & Drug Administration

A] Regulation 9

- Listed entity shall have policy for preservation
- 2 Categories
 - 1. Preserve Permanent
 - 2. Preserve for 8 years

B] Regulation 30(8)

- Listed entity shall **disclose** all information on the website which was disclosed to stock exchange Reg. 30
- Remain on website for at least **5 years**

Preservation Of Record

Factors considered for archival policy of the company

- 1] Analysis and restructuring existing system
- 2] Organizing and controlling record
- 3] Providing physical protection for record
- 4] Managing record in record centre
- 5] Managing archives
- 6] Supporting and sustaining the program

Setting up of a record room

A] Humidity

Standard Humidity =
30% - 40%
If excess = Leads to
fungus
If Less = Leads to fragile

B] Temperature

Required same as of
human beings

C] Light

It should be 'Visible'
Ultraviolet radiation
should be avoided

Suggestive step for protecting confidential information

1

All confidential document should be stored in locked room

2

Electronic confidential information protected through encryption and password

3

Employees should not leave confidential information visible on their monitor when they leave office

4

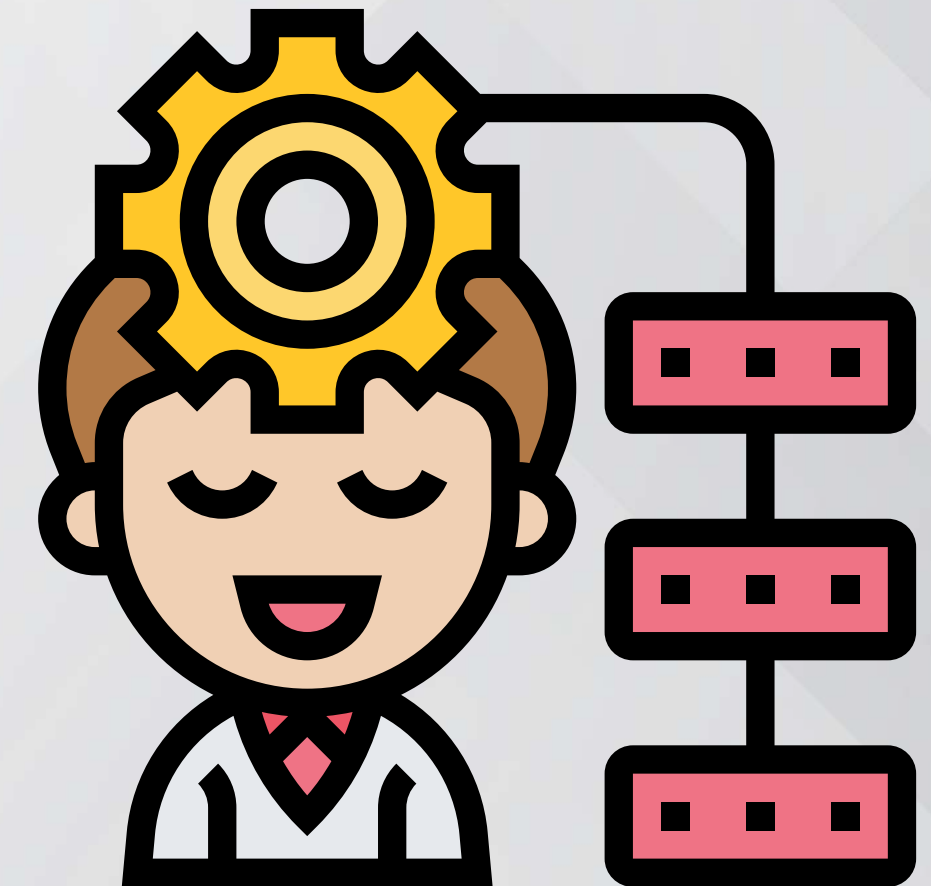
Employees should not discuss confidential information in public places

5

Confidential information should be marked as 'Confidential'

6

Avoid use of email to transfer sensitive information.



Preservation of Record

A] Permanent

- 1] Sale deed
- 2] Minutes record
- 3] Certificate of Incorporation etc

B] 8 years

- 1] Voucher
- 2] Books of account
- 3] Any other document decided by CEO

C] 3 years

- 1] Tender document
- 2] Lease deed
- 3] E-mail record etc

Chapter 03

SIGNING AND CERTIFICATION

HISTORICAL BACKGROUND

- Initially this concept was introduced to avoid delay in registration of charges.
- Later Department of Parliament standing committee introduced the concept of Pre – certification.
- Naresh Chandra committee also recommended Pre– certification.
- Section 383 C of Companies Act, 2013 provide concept of related to Pre – Certification

Pre – Certification

- It is certification of correctness of a document by professional before filing it to ROC
- Initially Pre – Certification was done to avoid delay but eventually it evolved to check correctness of Document
- Once e-form is pre – certified by professional then registrar can rely on it without any further examination



Rule (1),(2),(5)

- E- form is required to be authenticated by an authorized person using digital signature

Rule 8(6)

- Scanned image of document must be of the original signed document

Rule 8(7)

- Person signing the form should ensure all required documents are attached properly

IMPORTANCE OF PRE - CERTIFICATION

Ensure correctness

Self Regulation Aids good governance

Pre- emptive step

VARIOUS CERTIFICATION BY PCS

Companies Act, 2013

- INC 20A, INC 22, INC 28
- PAS 03
- SH 07
- CHG 01, CHG4, CHG9
- MGT 14
- DTR 06, DTR12
- MR 01, MR 02
- MSC01, MSC03, MSC04
- GNL01, GNL03
- ADT 01
- NDH 1, NDH 2, NDH 3
- MGT 07
- AOC 4
- DIR 3 KYC

SEBI [LODR]

- Regulation 40 (9)
 - Certify share transfer is in compliance
- Regulation 24 (A)
 - Secretarial Audit Report

SEBI [Depositors & Participants] Regulation, 2018

- Regulation 55A
 - Reconciliation of total issued capital
- Regulation 76
 - Reconciliation of share capital audit report

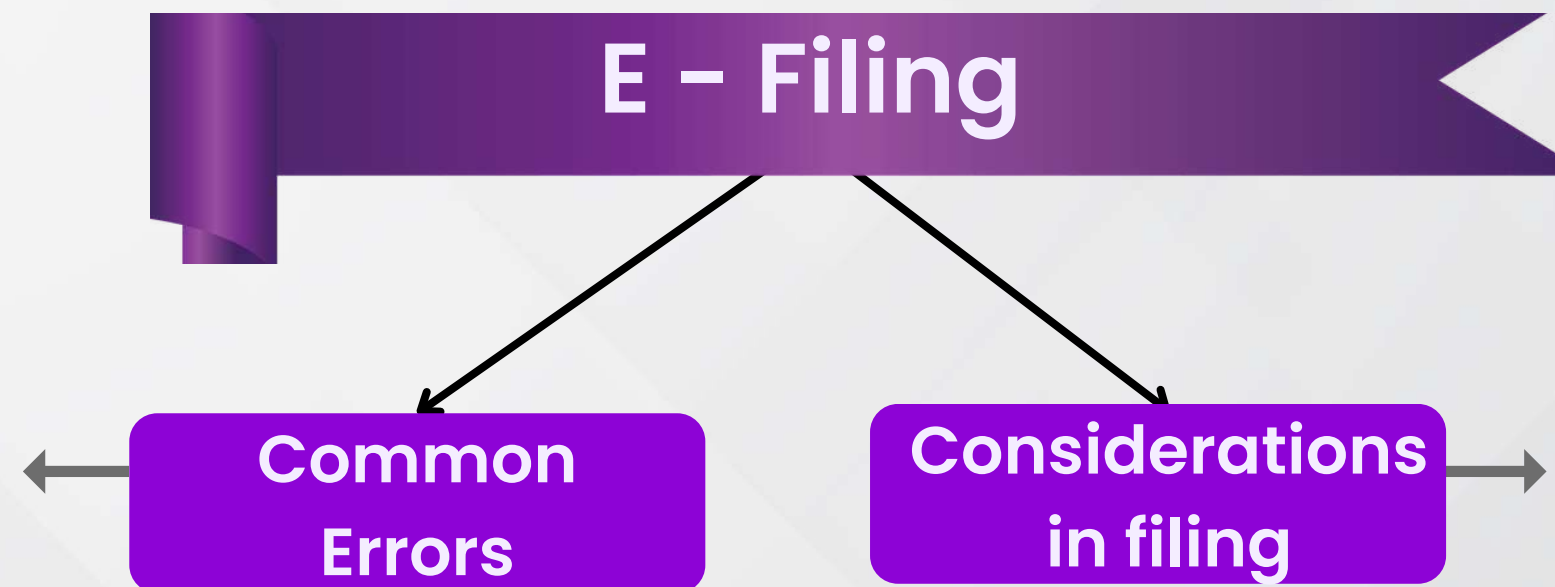
LLP Act, 2008

- Form 3
 - LLP agreement and changes
- Form 4
 - Change in DP/partner
- Form 11
 - Annual return of LLP
- Form 15
 - Shifting of registered office

PREPARATION BEFORE PRE – CERTIFICATION

- ① Obtain letter of engagement authorized by professional for assignment
- ② Maintain physical/scanned copy of verified document
- ③ Ensure all documents are legible and visible
- ④ Verify documents with companies record
- ⑤ Form is signed by Companies' authorized person

- DSC is not registered
- Payment of challan has not been done
- Made duplicate payment
- Excess size of form
- Use outdated version of form



- Before filing go through instruction kit
- Ensure latest version of E form downloaded
- DIN and DSC are mandatory
- Don't wait for last days of filing
- Don't forget to pay filing fees

- ✦ Signing of annual return [MGT 07] next line
- ✦ Certification of annual return [MGT 8]
- ✦ Issue of secretarial audit report [MR 3]
- ✦ Certification of E forms under Companies Act 2013
- ✦ Internal audit of D.P
- ✦ Certificate of reconciliation of capital etc

Annual Return

A] Signing [MGT 07]

- Who signs :-
 1. OPC/Small company = CS or Director
 2. Other Company = CS and Director
- While signing check
 1. Return stated correct facts
 2. Company complied with all applicable provisions
- Some additional checks(In case of Private Company)
 1. Company did not invite public to subscribe securities
 2. If number of members exceed 200 then the excess members will not be included in 200 as per section 2 (68)(i)

B] Certification [MGT 08]

- Applicable to :-
 1. Listed Company
 2. Company having
- POC = 10 CR or more
OR
- Turnover = 50 CR or more
- PCS should check following compliances before certification
 1. Status under the act
 2. Maintenance of register and record
 3. Contracts with related party comply section 188
 4. Declaration or payment of dividend
 5. Provision of buyback
 6. Closure of registers etc

Case:- 1] Deep Himanshu Desai vs. Union of India

SCOPE AND EXTENT OF WORK FOR PCS

- Documents verified before certification of annual return by PCS

1. MOA/AOA

2. Forms filed with ROC

3. Statutory Registers

A] PAS 5

B] MGT 01 [Reg. Of members]

C] MGT 02 [Reg. Of Debenture holders]

D] Registration of Directors

E] Registration of KMP

F] Registration of Related Property Contracts

G] Registration of Loan and Advance etc

4. Minutes of meeting

5. Notice/Agenda of meeting

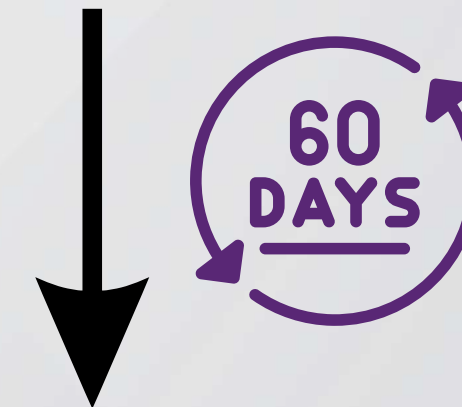
6. Attendance Register

7. Shareholding Pattern

8. List of Promoters

TIME LIMIT TO FILE ANNUAL RETURN

- AGM OR Date on which AGM should have been held



File Annual Return

Consequences

A] Not filing Annual Return

1.DIRECTOR

- Penalty = 10,000 rs
- If continue default = 100rs/day up to
- Disqualification

Case:- 1] **Abbas Maru vs Union Of India**

2] **Gautam Mehra vs Union Of India**

2 lakh = company

50k = Officer in Default

DISQUALIFICATION

- Disqualified for five years if annual return is not filed for consecutive three years.

PENALTY FOR MIS-STATEMENT

- Imprisonment in between
- 6 month – 10 years
- Fine = Amount involved-3x Amount involved

2.COMPANY

Case:- **AVS Enterprises vs ROC.**

- Penalty
- Winding up = Default in section 92 for preceding 5 years
- Inactive status = Not filed Annual Return for last 2 years
- Dormant status = Not filed Annual return for last 2 years

B] Wrong Certification of Annual Return

- CS is liable under:-

1. Section 447, 448 and 449 of Companies Act, 2013
2. ₹2,00,000 penalty
3. Liable for disciplinary action

DETAILED SCRUTINY OF ANNUAL RETURN

- PCs has to verify the documents properly to certify annual return
- It is impossible to check all the documents so PCs uses certain techniques for sample checking

*Guidelines adopted while deciding about the extent of checking required

- 1] Internal control
- 2] Materiality
- 3] Risk assessment

* When material facts are concealed in annual return then PCS may certify it with Reservation/Qualification/Adverse Remark

CORPORATE GOVERNANCE CERTIFICATION BY PCS

It can be issued by

- i] statutory auditor or
- ii] PCS

It is annexed to Directors report

Format for compliance report on corporate governance

Annexure	Particulars
I	On Quarterly basis
II	At financial year end
III	At end of 6 months from FY end
IIII	Half Yearly Basis

- For verification, Company should provide access to PCS of registers, books, etc.
- PCS Should do communication to previous auditor about is incumbent related to certification
- PCS Who certifier should present in AGM to provide clarification

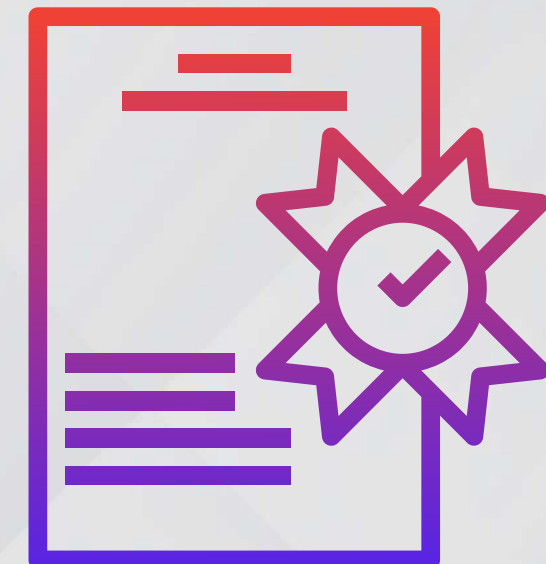
Types of Certification

A] Qualified

- If there is any specific non - compliance

B] Unqualified

- All the compliances complied properly



PENALTY FOR FALSE CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE

Companies Act, 2013

1. **Section 448**

- If make false statement in any document, record etc
- Liable u/s 447

2. **Section 449**

- If give false evidence on oath
- Imprisonment = 3 to 7 years

Securities Contract [Regulation] Act, 1956

1. **Section 23H**

- Fail to comply any provision
- Fine = Max 1 crore

2. **Section 23M**

- Offense for which no punishment prescribed in SCRA
- Imprisonment = Max 10 years

OR

- Fine = Max 25 crore or Both

SIGNING OF FINANCIAL STATEMENTS

1. **Section 129 and Schedule III of Companies Act, 2013**

- It includes
 1. Balance Sheet
 2. Profit & Loss account
 3. Cash flow statement
 4. Statement change in equity
 5. Explanatory note
- Signing=
 1. Chairperson OR 2 Directors AND
 2. CEO/CS/CFO

**Case:- Sourajit Ghosh vs. Union
Of India**

A] Rights of Shareholder

- Opportunity to participate and vote next line
- Being informed about rules
- Protection of minority
- Exercise ownership right
- Opportunity to ask questions to BOD

B] Timely Information

- Disclose rights attached to shares before acquire
- Timely inform about meetings and agenda

C] Equitable Treatment

- All shareholders of same series should be treated equally
- Effective shareholder participation in key decisions
- Procedure to cast vote should not be expensive

D] Role of Stakeholder

- Right to obtain effective redressal
- Access to relevant and sufficient information
- Respect the right of stakeholder

E] Disclosure and Transparency

- Information disclosed in accordance to prescribed standard
- Minutes maintained explicitly recording, Dissenting opinions

F] Responsibility of BOD

1. Disclosure of information

- Disclose material interest
- Ensure transparency to stakeholders

2. Key functions

- Monitor effectiveness of governance practice
- Select, Replace, Compensate, KMP
- Oversee process of disclosure and communication
- Ensure integrity of accounting and financial reporting system

3. Other responsibilities

- Provide strategic guidance
- Set corporate culture next line
- Act in good faith with due care
- Maintain high ethical standard
- Exercise independent judgment
- Treat all shareholders fairly

- Adopt in AGM
- It is circulated along with any
 1. Notes
 2. Auditors Report
 3. Boards Report
- If fail to comply provision of financial statements
- Penalty = i] Company = 3 lakh rupees
ii] Officer in default = 50,000 rupees



OBLIGATION AND PENAL PROVISION

A] Company

- Fine/penalty
- Wind by C.G

B] Authorized Representative

- Action under section 447 & 449
- Fine/penalty



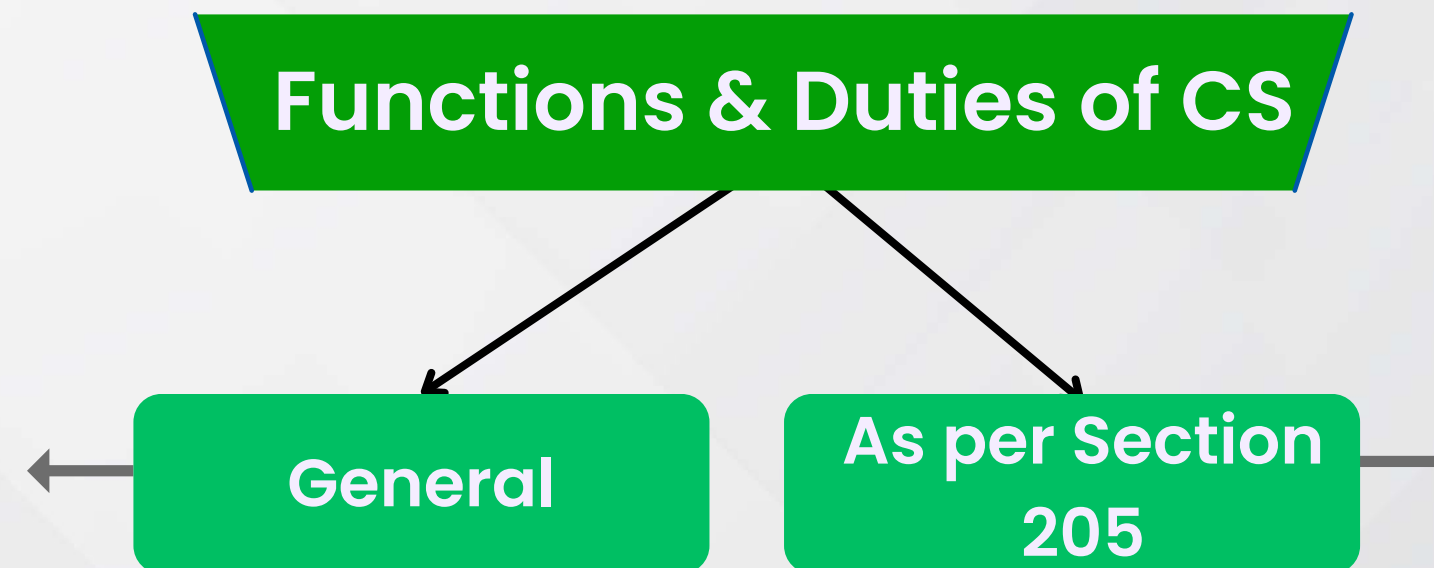
C] Action by regulator

- Action under section 447 & 449
- Fine/penalty
- DSC shall be deactivated
- Can conduct inquiry with 15 days prior notice
- Refer matter to Institute of Disciplinary Proceedings
- Forward to:-
 1. RD
 2. E-Governance Cell
 3. R.D forward to Joint Secretary, E- Governance Division, on or before 7th of every month

Chapter 04

LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES

- i] Earlier Department of Company Affairs
Conduct exam for = 'Government Diploma in Company Secretaryship'
- ii] 4/10/1968 = Institute of Company Secretaries of India [ICSI] set up as a 'Not for Profit Company'
- iii] 1980 = ICSI converted into statutory body
- iv] Now CS recognized as a KMP under Companies Act, 2013



- CS is legal expert and possesses expertise in corporate, security, Capital market law
- Chief advisor to BOD
- Extended expertise in areas like CSR, BRSR, ESG

- Report BOD about compliance of companies Act, 2013
- Guide BOD as per their duties
- Facilitate in convening meetings
- Represent before various regulatory authorities
- Assist BOD in conducting companies's affairs
- Discharge duties specified in Act, Rules, etc.

Case:- Mayank Agrawal vs. M/S Technology Frontiers Pvt. Ltd.

Regulation 6

- ✦ Ensure Compliance with regulatory provision
- ✦ Coordinate with
 1. SEBI
 2. Stock exchange
 3. Depository
- ✦ Ensure correct procedure is followed
- ✦ Monitor grievance redressal mechanism

Company Secretary as a part of Senior Management

- CS is a part of senior management of any listed entity
- CS plays two roles
 - A] CS in Practice
 - B] CS in employment

Register Of Members

Include :-

- Full name, DOB, Domicile
- Membership no.
- Qualification
- Email Id, Mobile no., Telephone no.
- Whether hold certificate of practice
- {Change communicate in 30days}

Removal from Register of Members

When member:-

- Is dead
- Request to remove
- Did not pay membership fee
- Disable under Section 8
- For any other reason cease to act as a member

ASSOCIATE & FELLOW MEMBER

i] Associate Member

- Section 5 of CS Act, 1980
- Any person whose name being entered in Register of member, it is deemed to be associate
- Name enters in register if:
- Passed examination and complete training as per CS[AMM] Reg. 2020

OR

- Passed qualifying for exam and training prescribed in this regulation

OR

- Passed exam outside india which is recognized by CG or Council as equivalent

OR

- Register as a student of Institute of Chartered Secretary and Administration, London on or before 31/12/1972 and pass all the exams and training

OR

- If a person is a citizen and reside outside of India and has passed all exams and training conducted by Institute of Chartered Secretaries and Administration, London

ii] Fellow Member

- Not complete minimum number of professional development credit hours.
- Fellow Member
- Section 5 of CS Act, 1980
- Person being associate who has been in continuous practice in India as a CD for 5 years
- AND
- Possess practical experience as council prescribe

*No associate member can become fellow member if:-

- Found guilty for professional misconduct and = His name removed or Imposed fine {In preceding 5 years}
- Not completed minimum number of professional development credit hours.

CERTIFICATE OF PRACTICE

- Section 2(d) of CS Reg. 1982
- It gives grant to holder to practice as a CS
 - i] In India
 - OR
 - ii] Outside India



DEEMED TO BE IN PRACTICE

If engaged in following activities:-

- Engage oneself in practice of the CS in relation to any company
- OR
- Offer to perform service related to Promotion, Formation, Incorporation, Amalgamation, Reconstruction of Company
- OR
- Offer to perform services as follows
 - Share transfer agent
 - Issue house
 - Stock broker
 - Secretarial Auditor
 - Advisor to a company on management
- OR
- Hold oneself out in a public as a CS in practice
- OR
- Render professional service respect to principle of profession of CS
- OR
- Render other service as, in opinion of council can may be rendered by CS in practice

REGULATION 4(2) OF CS REG, 1982

No person shall have entitled his name in Register as a fellow member unless he/she: -

Was fellow [Inc. Honorary fellow] of dissolved company immediately before commencement of Act

Is an Associate and has been in practice for at least 5 years

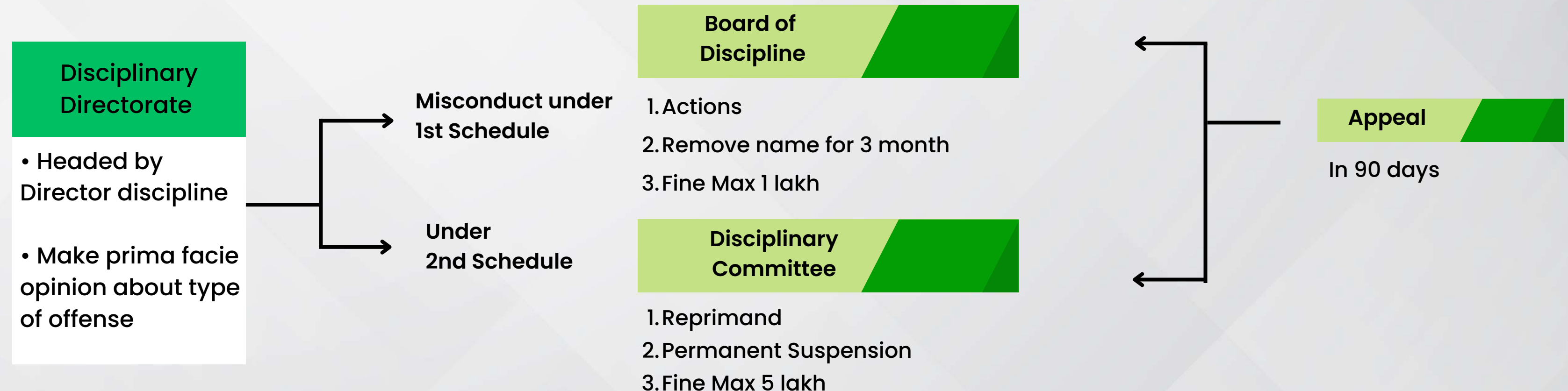
OR

Admitted as a Fellow under earlier Regulation

OR

Is an Associate for at least 5 years and possesses practical experience prescribed by Council

1.DISCIPLINARY MECHANISM



Part 1 [CS in Practice]

Misconduct

Allows any other person to practice in his name	Exception: i] PCS is a partner ii] PCS is an employee
PCS pays commission/brokerage out of his professional fees	PCS can pay to:- 1. Partner 2. Retired Partner 3. Member of Institute 4. Member of other professional body
Accept part of profit of the work of a person who is not member of the institute	Exception:- 1. Member of the Institute 2. Member of other professional body
PCS enter into partnership	PCS can enter into partnership with:- 1. Other PCS 2. Member of other recognized professional body
Secure any professional business from means which are not allowed to CS	Can secure business through 1. His employee 2. His partner
Solicit client directly/indirectly	Except: 1. Secure work from another PCS 2. Respond to tenders/enquiries issued by various users of professional services
Advertisement of professional attainment or use of any designation	Allowed advertisement: 1. Degree of university established by law 2. Recognized by CG 3. Membership of ICSI or other recognized institute

First Schedule of CS Act,1980

Accept position of CS without giving prior intimation to previous CS	
PCS charging fees 1. As a % of profit 2. On contingent event	Allowed :- ☐ If it is permitted under any Regulations made under this act
Engage in the business other than of CS	Except :- ☐ Council allows certain occupation
PCS allows signature on his behalf or on behalf of his firm	Except :- ☒ Member of ICSI ☐ Partner

Part 2 [CS in Service]

Misconduct
1. CS pay commission/share to anyone out of his remuneration
2. Accept any commission or gratification

Part 3 [Member of ICSI]

Misconduct
1. Person who is not fellow member, but act as a fellow member
2. Does not provide information asked by :- 1. Institute 2. Council 3. Board of Discipline 4. Quality Review Board Appellate authority
3. Give false information intentionally to:- 1. Invite work from another CS 2. Respond tender In write up

Part 4 [Member of ICSI]

Misconduct
1. Guilty for offense punishable up to 6 months
2. Disrepute profession

Second Schedule of CS Act, 1980

Part 1 [CS in Practice]

Misconduct
Fails to invite attention to any material departure from generally accepted procedure related to secretarial practice
Disclose confidential information of client Except = i] Client gave consent ii] Required by law
1. Certifies report related to 'Company Secretarial Practice' without examining Except = If examined by: i] Any pcs ii] His employee iii] His partner
Permit his name/firm name used in connection with any report which is 'Contingent upon future Transaction' lead to belief that it is true
Give opinion on report of entity in which he/firm/partner have 'Substantial interest'

Misconduct
Not exercise due- diligence Grossly negligent in conducting Professional duties
Fails to obtain sufficient information which is necessary to express opinion
Fails to keep the money of client in separate bank account Fail to use money for purpose for which they are intended to use
Fail to disclose material fact known to him in report where he is engaged in professional capacity
Fail to disclose material mis – statement known to him in report

Part 2 [Member of ICSI]

Misconduct
Defalcates money received in his professional capacity
Contravene any provision of this act Contravene i] Regulation ii] Guideline issued by Council
Disclose confidential information of client being an employee. Except:- Allowed by Employee, Required by law
False information given intentionally to :- Council, Director Discipline, Board of Discipline, Quality Review Board, Appellate Authority
Guilty for offense for more than 6 months

UDIN

- It is of 17 digits
- It is used to verify documents attested by CS in practice
- In e-forms, UDIN should be mentioned in optional attachments
- **When to be generated**
 1. At the time of signing Report, Return etc
OR
 2. 7 days in advance before signing
- **UDIN Guidelines are issued to:-**
 1. Enable stakeholders to verify genuineness of certification
 2. Prevent counterfeiting of various attestation
 3. Ease to maintain register of attestation
 4. Ensure compliance of guidelines issued by institute

ECSIN

- It is **18 digit** Alpha-numeric number
- It generated to identify CS employed in particular company

Liability Of CS

Statutory

- Maintain records and documents
- Arrange meetings
- Issue certificates, dividends etc
- Prepare minutes

Contractual

- Liable for exceeding authority
- Liable to disclose secret information
- Liable for fraud etc

ICSI [Guidelines for advertisement by CS] 2020

- Became effective from 1/4/2020
- Applicable on = PCS

PERMISSIBLE ADVERTISEMENT

- Display scope of work on his website
- Display of location of workspace, meeting room etc
- **Write ups** and professional updates
- Appear on **local radio** or **tv**
- Give speech in **seminar, conference** etc
- Use **social media**
- Sponsoring any event



NOT PERMISSIBLE ADVERTISEMENT

- Violation of provision of Companies Act, 2013
- Claim superiority over other CS
- Anything which disrepute profession or institute
- Constitute guarantee to any professional assignment
- It should not be '**Self Laudatory**' not include words like = Best, Better
- **False** or **misleading**
- Not contain **humorous slogan**
- Advertisement which mislead or eventually **harm customers**

Complainant [against ICSI member].

- 50 rs Deposit
- Act/omission details
- Details

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Guilty



Give opportunity of being heard to Respondent



On the basis of reply of Respondent



Give order and communicate to



Respondent

Complainant

Chapter 05

VALUES, ETHICS & PROFESSIONAL CONDUCT

- Ethics derived from Greek word = **Ethos**, which means character/custom
- Every professional work on certain principles and beliefs that are Values
- Ethics are implemented in organization to ensure protection of stakeholder

Types/Branches of Ethics

1 **Descriptive** = Deals with what people actually believe to be right or wrong

2 **Normative** =

- Deals with 'Norms'
- Set rightness or wrongness of action

3 **Meta Ethics** =

- Deals with 'Norms'
- Set rightness or wrongness of action

4 **Applied ethics** =
6 Key Domains

- Decision ethics
- Professional ethics
- Clinical ethics
- Business ethics
- Organizational ethics
- Social ethics

DIFFERENCE BETWEEN ETHICS AND VALUES

ETHICS

1. It is guidelines for conduct which address question about morality
2. It is a system of moral principles
3. Follow particular course of action
4. It is consistent in nature
5. It helps to decide what is morally correct or incorrect
6. Determine upto what extent our options are correct or wrong

1. Professional ethics
2. Business ethics
3. Environmental ethics
4. Social ethics
5. Religious ethics

Examples

VALUES

1. It is principle and ideals which help in making the judgement
2. It is stimuli of our thinking
3. Influence emotional state of mind
4. Values are different for each person
5. Values tell us what to do in life
6. It defines our priorities for life

1. Respect
2. Integrity
3. Responsibility
4. Honesty
5. Empathy
6. Courage
7. Fairness
8. Diversity

Examples

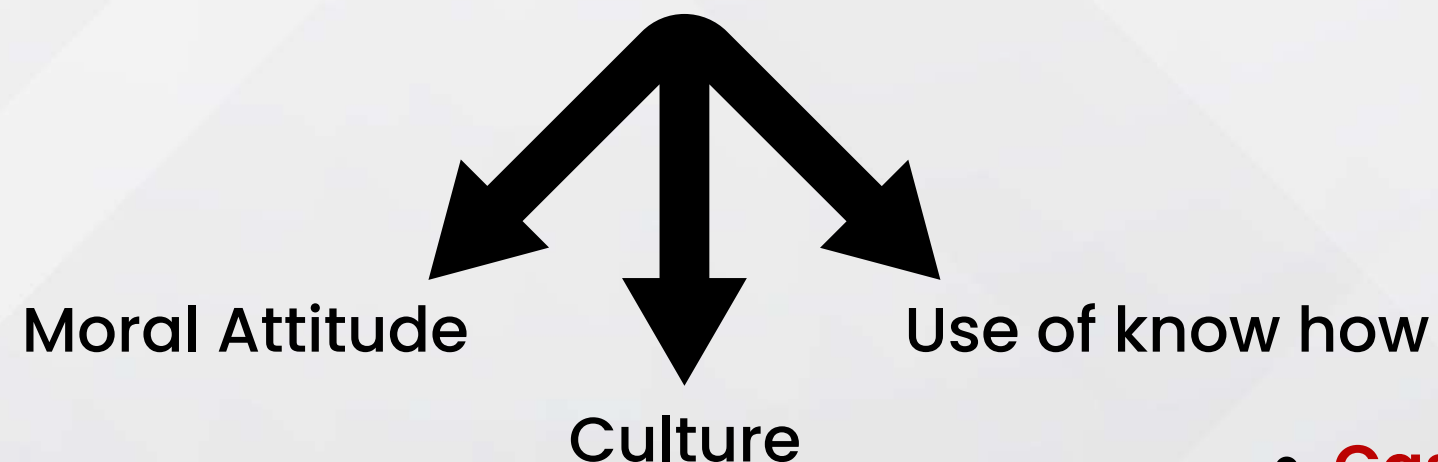
Ethical Practices



1. **Beneficence:** It stipulates that ethical theories should strive to achieve great amount of good
2. **Least Harm:** If in case no choice appears beneficial, then decision maker chooses to do least harm possible
3. **Utilitarian:** Locus of right and wrong solely on the outcome or consequences
4. **Autonomy:** Decision making focus on allowing people to be autonomous and have control over their selves
5. **Justice:** Decision maker should focus on actions that are fair to all

PROFESSIONAL ETHICS

Ethics arises from



- Professional is an exclusive custodian of expertise
- To become good professional they should desire dynamic movement to promote value revolution
- Professionals expected to conduct themselves in such a manner to uphold Grace, Dignity, Professional Standing of Institute

- **Case :-** Re. Mahesh Chand Agrawal



Parameters to set up healthy corporate ethics

1. Compliance with law of the land
2. Become corporate citizen
3. Disclose information in timely manner
4. Respect fundamental human rights
5. Protect irreplaceable earth

A] Integrity

- Acting professionally in business
- Display proper understanding of your role
- Not accept improper gifts
- Avoid conflict of interest
- Avoid involvement in unethical activities etc

B] High Standard of Service

- Uphold requirement of royal charter
- Act within your level of competence
- Maintain professional skill and knowledge
- Respect confidentiality of information

C] Transparency

- Being open and frank in Business dealings
- Not being underhand in any Business Transaction
- Treat all work as if it was reported in public domain

D] Professional Behaviour

- It require that member act in a way which conforms to relevant law

SINGAPORE ASSOCIATION OF ICOSA CODE

- i] Member required to uphold **Institute charter**
- ii] Member **cognizant** of professional responsibility toward wider community
- iii] Member safeguard interest of their = **A] Employee B] Colleagues C] Client**
- iv] Not enter into activity including Conflict of interest
- v] Member should not use **confidential information** for personal gain
- vi] Member should refrain from actions which **Disrepute Institution**

Recent Disciplinary Case Studies on Ethics and Values

2018

- ICSI suspend member for 3 month due to professional misconduct

2021

- SEBI imposed 10 lakh penalty on CS for failing to disclose certain material information

2021

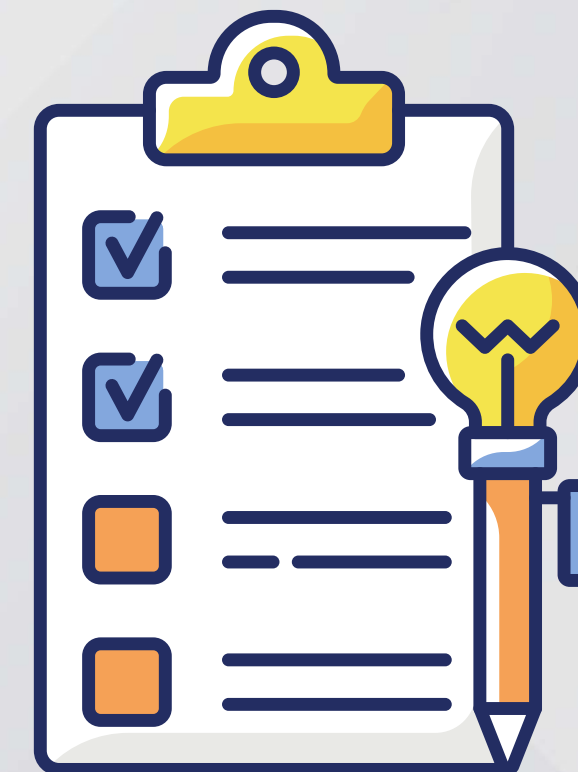
- SEBI barred CS from practicing for 3 year due to submission of false documents and failing to conduct due diligence

2022

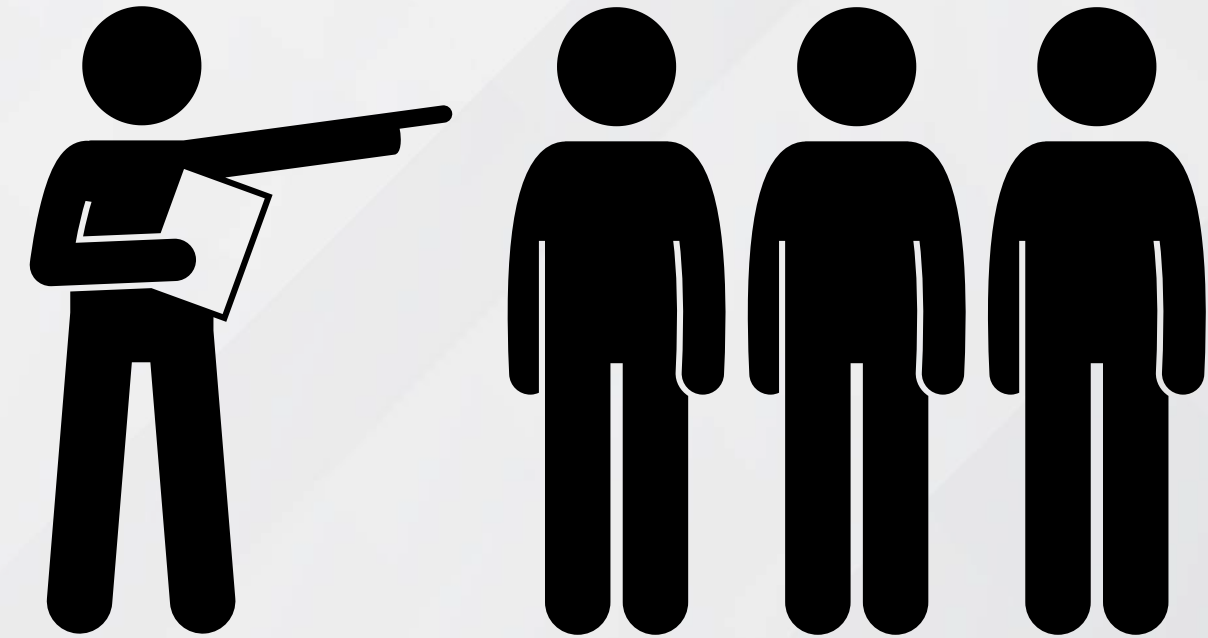
- ICSI reprimand member and impose 10k penalty for professional misconduct

- i] Is there any ethical question?
- ii] Understand the fact
- iii] Check your options available
- iv] Understand the consequences
- v] Test your opinion
- vi] Explain your option
- vii] Take the action
- viii] Reflect an outcome

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- A] Fair dealing
- B] Not exploit undue professional opportunity
- C] Maintain Confidentiality
- D] Not misuse other solicitor's mistake for personal gain
- E] Avoid conflicts
- F] Make inadvertent disclosure
- G] Maintain integrity of evidence
- H] Honour undertaking of Professional
- I] Deal with other person
- J] Due care while dealing with client documents
- K] Dealing with media
- L] Promote Anti - Discrimination



ETHICAL DILEMMA

- It is also known as 'Moral Dilemma'
- It is decision making problem between two possible imperatives
- 'Absolute' or 'Pure' Ethical Dilemma only occurs when two or more ethical standard apply to situations but they are in conflict



Resolve Ethical Dilemma

End Based

- Select option which generate most good for most people

Rule Based

- Follow standards that you want others to follow

Case Based

- Identify right vs. right
- Lay out options as per principle
- One approach will be 'Most right'

Common Causes of Laws, Ethics & Values

1. Unclear policies in some cases
2. Conflict between organization and Individual goal
3. Cultural value and Background
4. Dynamic & Different human nature
5. Ambition & Discrimination
6. Pressure from management
7. Negotiation skills
8. Situation when decision is taken by a manager
9. Conflicting values

STRATEGY FOR OVERCOMING FROM THE EVILS

- A] Satisfaction
- B] Ends not to justify the means
- C] Ethical Leadership
- D] Character professional should always consider the old idiom

RECENT CASES



Punjab National Bank Case



IL & FS Case



Hero

Hero Motorcorp.



DHFL Case



Yes Bank Crisis



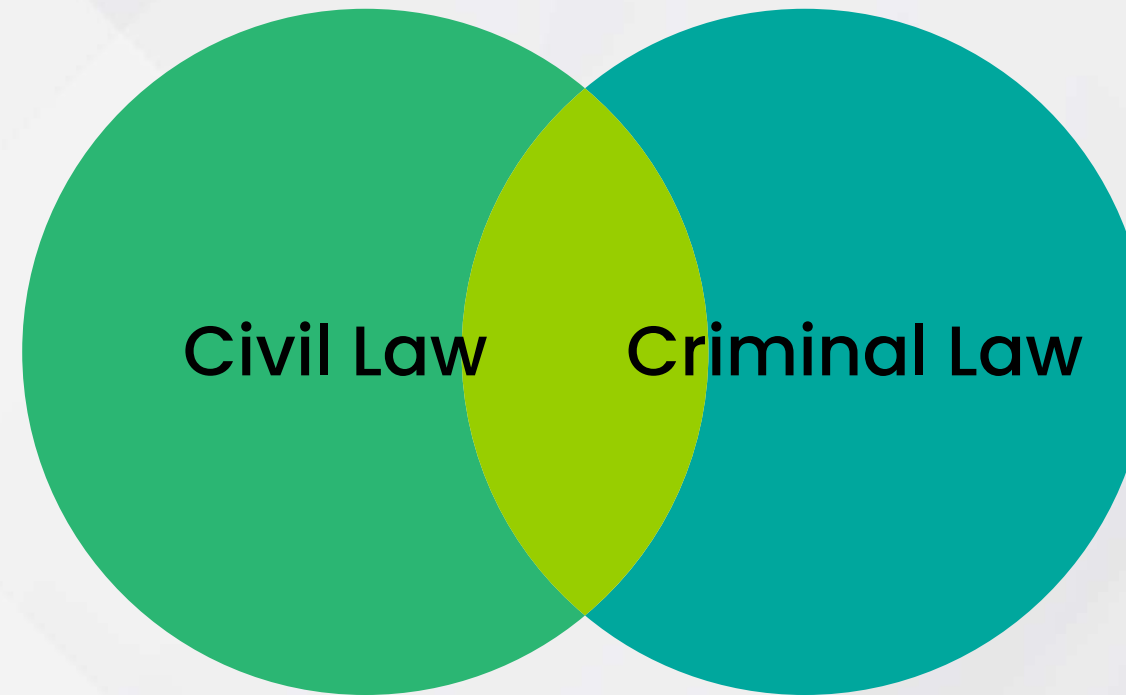
Volkswagen's Emissions Scandal

Chapter 06

NON – COMPLIANCE, PENALTIES AND ADJUDICATION

DIFFERENCE

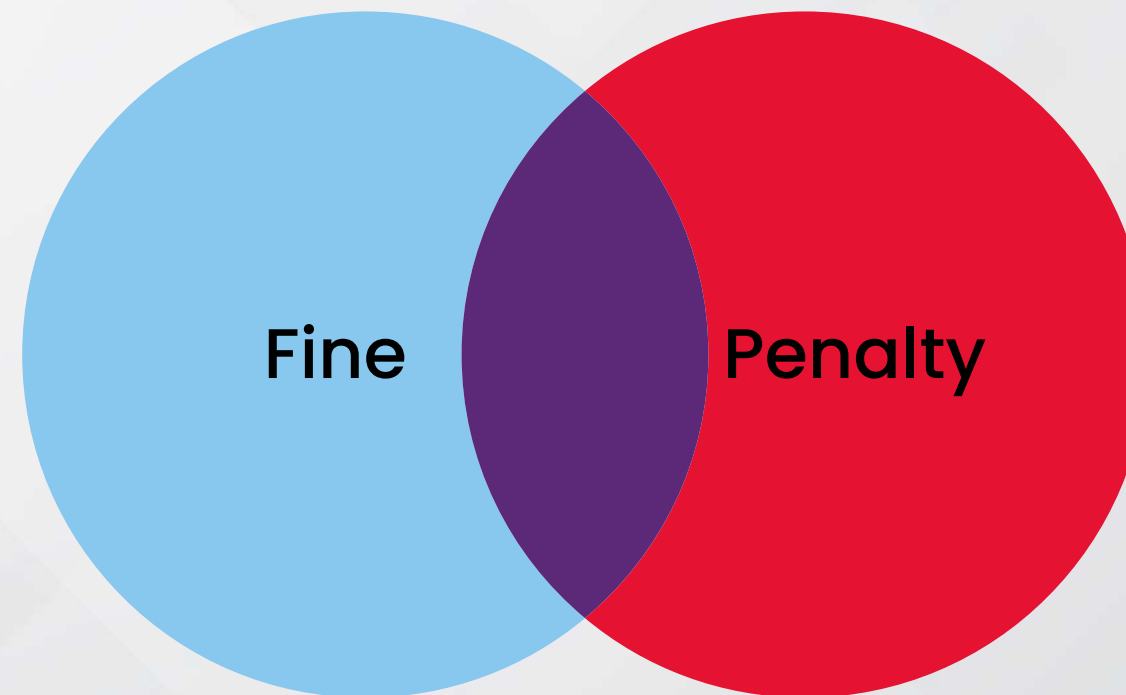
- 1. Private dispute
- 2. Objective is to resolve dispute
- 3. Order can be passed for :-
 - i) Damage ii) Compensation



- 1. Offence against society
- 2. Objective is to punish the offender
- 3. Order can be passed for :-
 - i) Fine ii) Imprisonment

Note: Company law is the mixture of Civil and Criminal

- It is a punishment imposed for crime
- 2. It is punishment for criminal offence
- 3. It can be only imposed by court of law.
- 4. It is punitive measure



- 1. Punishment impose for non-compliance
- 2. It is punishment for civil offence
- 3. It may be imposed by administrative officer
- 4. It is compensatory measure



Discrimination of offence

- MCA constitute committee under Mr. Injeti Srinivas to review offence
- Companies [Amendment] Act. 2020=
 - i) Remove imprisonment for certain offence
 - II) Substitute it with penalty
 - III) Reduce penalty amount in certain cases
 - Default in section 92 & 137 lead to withdraw :-
 - A)Exemption to private company
 - B)Ineligible for Buy Back
 - C)Disqualification of Director
 - D)Company become inactive

Special Court [Section 435]

- Recommended by = Company Law committee chaired by :- Shri Tapan Ray
- Purpose = Special Trial
- It consists = i) Single judge {Session Judge} = If imprisonment prescribed 2 year or more
 - ii) Judicial Magistrate First Class = other offence
- It is appointed by CG in consultation with chief justice of high court

Offence Triable by Special Court

- Specified offence under section 435(1)
- To remove detention before expiry which was ordered by magistrate U/S 167 of CRPC.

Cases :- i] **S. Satyanarayan vs. Energo
masch power Engineering**
ii] **SFIO**
Vs
Rahul Modi

Section	Offence	Penalty/Fine
1] 447 Case : Komal Chaddha vs SFIO	- Any act omission concealment of fact. - Abuse of position with intent to :- i) Gain undue Advantage ii) Injure interest of company stakeholder - Whether or not wrongful gain or loss	Amount Involved Upto 10 lakh or 1% of Total Turnover [Less] * Imp = upto 5 year OR * Fine = upto 50 Lakh OR Both More than 10 lakh or 1% of Total Turnover [Less] * Imp = 6 month to 10 yrs * Fine = Amt. involved to 3x Amt. involved
2] 448 Case: Usha martin Telemartics vs Roc.	<u>Punishment for false statement :-</u> - Any report, return Document etc. required under Co. Act. 2013 i) Have false material particular ii) Intentionally omit material fact	Liabe Under Section 447
3] 449	<u>False Evidence</u> - Any person gives false evidence intentionally on :- - Upon Examination of Oath - Affidavit	Imprisonment = 3 years to 7 years AND/OR FINE = Maximum 10 lakhs

Section	Offence	Penalty/Fine
4] 450 Case : Doha Brokerage & Financial Services vs. ROC.	<u>No Specific Punishment</u> - Who - i] Company - ii] Officer - ii] Other Person - Contravene any provision for which no specific Punishment given	- Penalty= 10,000 rs - Continued Offence = 1000 rs / day upto - i] Company = 2lakh - ii] Officer = 50,000
5] 451 Case: Pahuja Takii Seed Ltd. vs ROC.	<u>Repeated Default</u> Commit same offence for 3 years	Twice Punishment prescribed
6] 452	<u>Wrongful withholding of property.</u> Officer / Employee wrongfully obtain possession of company's property	Exemption from Imprisonment - If PF, Gratuity, Pension not paid - Compensation under 'Workers Compensation Act, 1923 not paid Fine= 1 lakh to 5 lakh Imprisonment = 2 years Maximum
7] 453	<u>Improper use of "Limited" or "Private Limited"</u>	500 rs to 2000 rs only

ADJUNCTION OF OFFENCE

A] Issue show cause notice to company & officer

- Adjudicating officer issue SCN of **15-30 days**
- It indicate 'Nature of default'
- Reply in 'E-mode'

B] Enquiry by A.O.

- If required physical appearance the issue notice in '**10 days**'
- Person may desire to give oral representation with A. O. permission

C] Date of Hearing

- On this date, give reasonable opportunity to be heard

D] Order of Adjudicating Authority

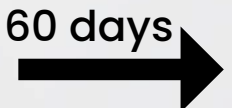
- Order in  30 days = Physical appearance not required
90 days = Physical appearance done
- Delay in order record in writing
- A.O. sends a copy of order to company officer concerned

PENALTY IMPOSED BY A.O.

- Penalty pay through MCA Portal
- Penalty amount credited to 'Consolidate Fund Of India'
- If Default in section 92 & 137. If rectified in 30 days, then penalty shall not be imposed



APPEAL AGAINST THE ORDER

- ROC  60 days → R.D.
- Appeal in writing
- In form 'ADI'
- Accompanied by order
- If there is defect in appeal then R.D allows time of **14 days** to rectify the appeal
- It can extend for more than 14 days on sufficient cause

DISPOSAL OF APPEAL BY R.D.

- 
- Copy of notice sent to A. O.
 - Reply of A. O.
 - R. D. intimate hearing date to party
 - Hearing by R. D.
 - If party is absent then R. D. pass Ex parte order
 - Set aside Ex-parte order
 - R. D. pass order & Communicate
 - If not Comply order in 10 days then company shall be punishment with 25000 Rs. To 50000 Rs.

- **Recent order of A. O.**

- 1] Kodagu Heritage
- 2] Ms Joy Ice Cream [Bangalore] Pvt. Ltd.
- 3] Narangs International Hotels Pvt. Ltd.
- 4] Sunshakti Solar Power Project Pvt. Ltd.

PENALTIES & ADJUDICATION UNDER SEBI ACT, 1992

- SEBI / Adjudicating Officer Appeal SAT
Appeal Supreme Court
- Enforcement Department handles appeal
against SEBI
- Enforcement Directorate

Wings

- A] SAT Litigation Division
- Division handle appeal against order of SEBI
 - Assist SEBI :-
 1. Filing affidavit
 2. File written submission

- B] Prosecution Division
- Related to filing prosecution proceeding

- C] Settlement Division
- Deals with :-
 1. Registration of settlement application
 2. Calculate settlement amount

PENALTIES UNDER SEBI

	Offence	Penalty/Fine
15A	Furnish False Document / Fail to maintain Book.	1 Lakh to 1 Lakh / day upto 1 crore
15B	Intermediary Fail to enter into agreement with client	
15C	Company Fail to address Investor Grievances	
15D	Fail to Comply CIS Condition	
15E	Fail to observe rules & regulation by an Asset management company	
15EAB	Default Incase of Investment Adviser & Research analyst	
15F	Broker fails to make contract note	
15HB	Penalty for Contravention where no separate penalty has been provided	

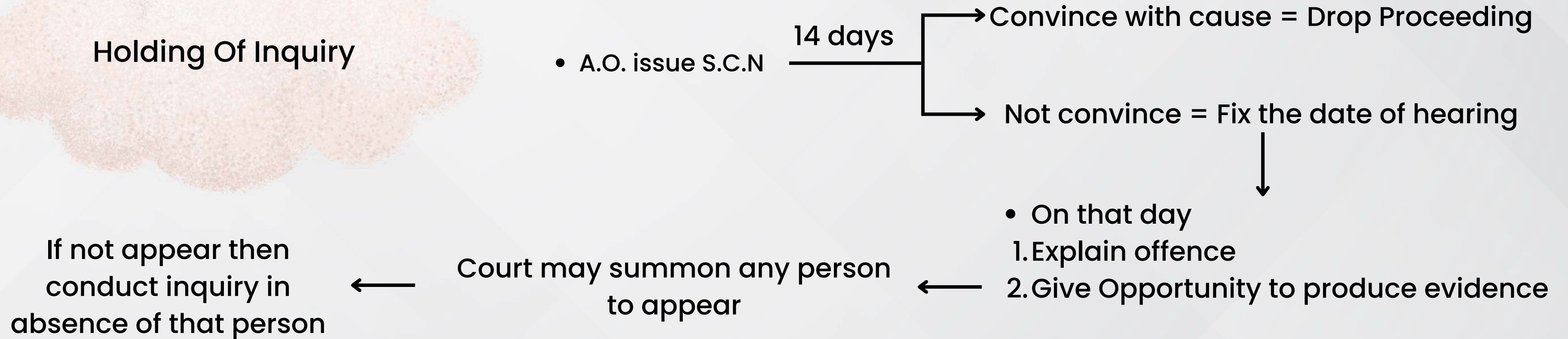
	Offence	Penalty/Fine
15F(B)	Charge Excess brokerage than specified.	1 Lakh to 5 times of Excess Brokerage
15G	i) Insider Communicate Unpublished information. ii) Deal on Unpublished Price Sensitive information in Stock of Listed Company	10 lakh to 25 crore or 3x Profit [Higher]
15H	Non-Disclosure of Acquisition of shares & Takeovers	10 lakh to 25 crore or 3x Profit [Higher]
15HA	Fraudulent & Unfair Trade Practice relate to securities	5 Lakh to 25 crore or 3x Profit [Higher]
15HAA	i) Knowingly Alter, Destroy, Conceal, falsifies record ii) Failure to protect E-data base of SEBI	1 Lakh to 10 crore or 3x Profit [Higher]

POWER TO ADJUDICATE

- Officer to Adjudicate = Not below the rank of 'Division Chief'
- Factors considered while Adjudicating Quantum of penalty
 1. Amount of disproportionate gain
 2. Amount of Loss Caused to investor
 3. Repetitive nature of default



Holding Of Inquiry



SECURITIES CONTRACT [REGULATION] ACT, 1956

	Offence	Penalty/Fine
23A	i] Person fails to furnish any books, return, document etc ii] Fail to maintain the same as per requirement	1 Lakh to 1 Lakh / day upto 1 crore
23B	Person fail to enter into agreement with client	
23C	Listed company or broker fails to redress grievances of investor	
23D	Broker fail to segregate client money and use for own purpose	
23E	Breach conditions of :- 1.CIS 2.Mutual Fund 3.REIT/INVIT 4.AIF	5 lakh to 25 crores
23F	Issue dematerialize security more than issued securities on stock exchange	
23G	SE fails or neglect to furnish report to SEBI	
23GA	SE / Clearing corp. fails to conduct business with its members	5 lakh to 25 crores or 3x Gain [High]
23H	If there is no specific penalty	1 Lakh to 1 crore

Recovery Mode

1. Attach and sell movable property
2. Attach Bank account
3. Attach and sell immovable property
4. Arrest the person
5. Appoint receiver to manage property

Continuance of Proceeding

- Legal representative liable to pay deceased person liability upto extent **'Estate of Deceased'**
- Any proceeding before recovery officer except **'Imposed Penalty'** continue against Representative after death of person

Appeal

- SEBI or Adjudicating Authority Order

Appeal
45 Days

Power to Grant Immunity

- On recommendation of C.G. / SEBI if person make full disclosure the he/she can be granted immunity
- SEBI recommendation does not bind on CG.
- If prosecution instituted earlier then it can not

Procedure to hold Inquiry

1. Appoint A.O. to hold inquiry
2. Show cause notice
3. Fix date of appearance and hold personal hearing
4. Give opportunity to produce evidence
5. Order of the Board/A.O.
 - i] Impose Penalty
 - ii] Date & Signature
 - iii] Rectification of error {Rectify in 15 days}

SAT

- Give OOBH to both parties
- Order
 1. Confirm
 2. Modify
 3. Set Aside

FEMA, 1999

OFFENCE

1. Person contravene any Provision of the Act.

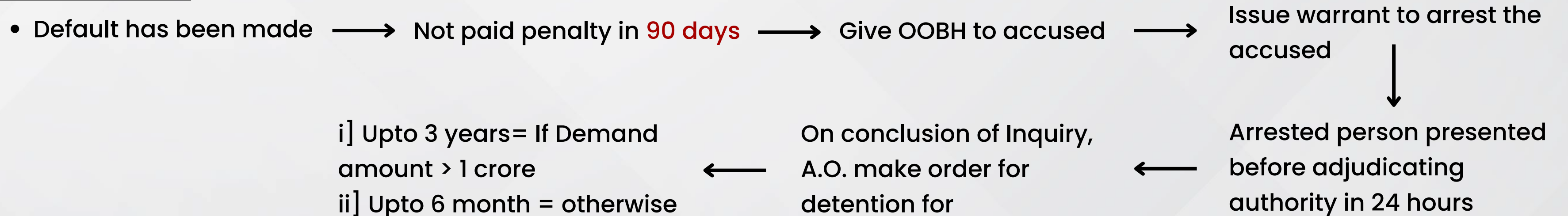
2. Hold = i] Foreign Exchange ii] Foreign security
iii] Immovable property
Outside India exceeding threshold limit

PENALTY

1. Sum involved is quantifiable {3 times of such contravention}
2. Not quantifiable {Upto 2 lakh rs}
3. Contravention continues {5,000/day}

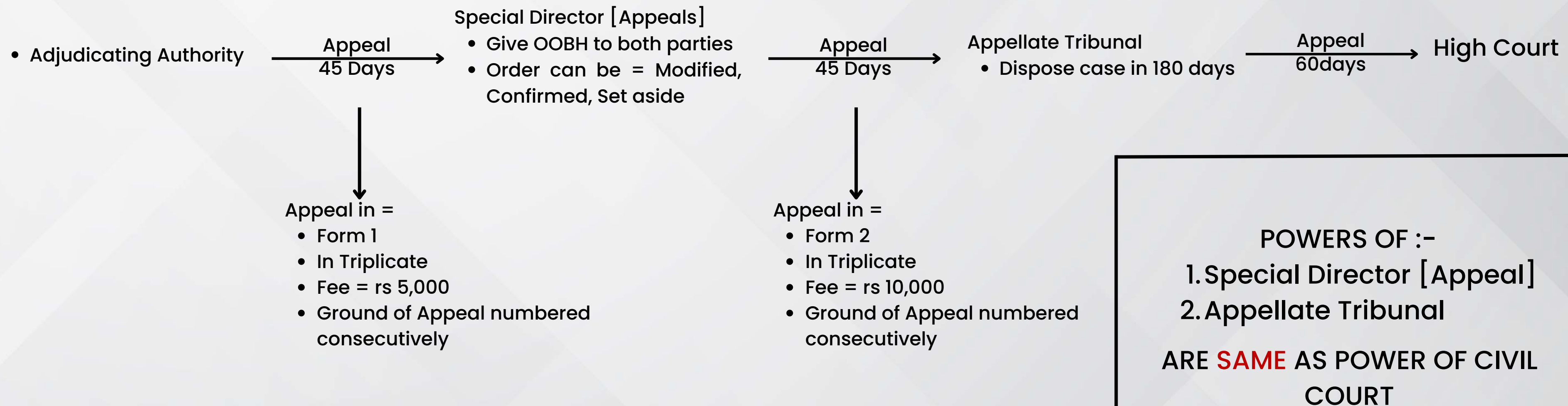
1. Penalty = Upto 3 times of Sum involved
a. Imprisonment = Maximum 5 years

ENFORCEMENT OF ORDER



- CG May appoint as many officer of CG as it may think fit.
- A. O. hold enquiry only on a complaint received in a writing by any officer authorized by CG
- Power of A. O. is same as of Civil Court
- Dispose complaint in 1 year from date of receipt of the complaint

APPEAL



DIFFERENCES

SECTION 441 [COMPOUNDING

- R. D. Compound offence amounting to = upto 25 Lakh
- NCLT compound = Above 25 Lakh
- Compounding done with Consent of both parties
- Generally Not Appealable

[SECTION 454] ADJUDICATION

- No such monetary limits
- It is Arbitrary & there is no consent of any party
- Appeal can be filed

FEMA [Adjudication Proceeding & Appeal] Rules, 2000

- Rule 3 = CG appoint adjudicating authority for holding inquiry
- Rule 4 = Holding of Inquiry
 1. Issue SCN of 10 Days atleast
 2. Notice contain nature of default
 3. Fix date of appearance & conduct personal hearing
 4. Opportunity given to produce evidence
 5. Power to Summon & enforce attendance
 6. Adjudicating Authority give order



- Head Quarter = New Delhi
- Regional offices = Mumbai, New Delhi, Chennai, Hyderabad, Kolkata
- Headed by = Director [Not below the rank of 'Joint Secretary']
- Section 210 = Investigation by SFIO into affairs of the company by CG
 1. On complaint by ROC U/s 208
 2. Special resolution passed by the company
 3. In public interest
 4. On the order of court or Tribunal

Investigation by SFIO

1. CG assign case to SFIO U/s 210.
2. SFIO appoint investigation officer & make a team
3. Officer = i] Does necessary arrest and appear that person before Magistrate in 24 hours
ii] Seize any goods and send the list of seized goods to SFIO
4. Officer makes report and send it to SFIO
5. SFIO forwards it to CG
6. CG asks SFIO to :-
 - i] Start prosecution U/s 447
 - ii] Apply Tribunal for disgorgement



Tribunals

	President	Judicial Member	Technical Member	Term
Tribunal-	Is/ has been judge of High Court for 5 years	Is/ has been judge of High Court OR District Court Judge for 5 years OR Advocate for 10 years	- Practiced as CA/CS/CMA for 15 years OR - Person of ability, integrity have knowledge of 15 years in Industrial finance, management, ,Investment, Accountancy OR - Presiding officer of labour court for 5 years OR - Member of Indian Legal Service or Indian Corporate Law Service for 15 years	5 years and eligible to reappoint upto the age of i] President = 67 years ii] Member = 65 years
Appellate Tribunal-	Is/has been judge of Supreme Court and CJI of High Court	Is/has been judge of High Court or Judicial Member of Tribunal for 5 years	- Person of :- Ability, Integrity, Special knowledge AND 25 years experience in Industrial Finance, Industrial Management, Accounting, Investment	Same as of the terms of Tribunal
Appeal	NCLT $\xrightarrow[\text{45 Days}]{\text{Appeal}}$ NCLAT $\xrightarrow[\text{60days}]{\text{Appeal}}$ Supreme Court			

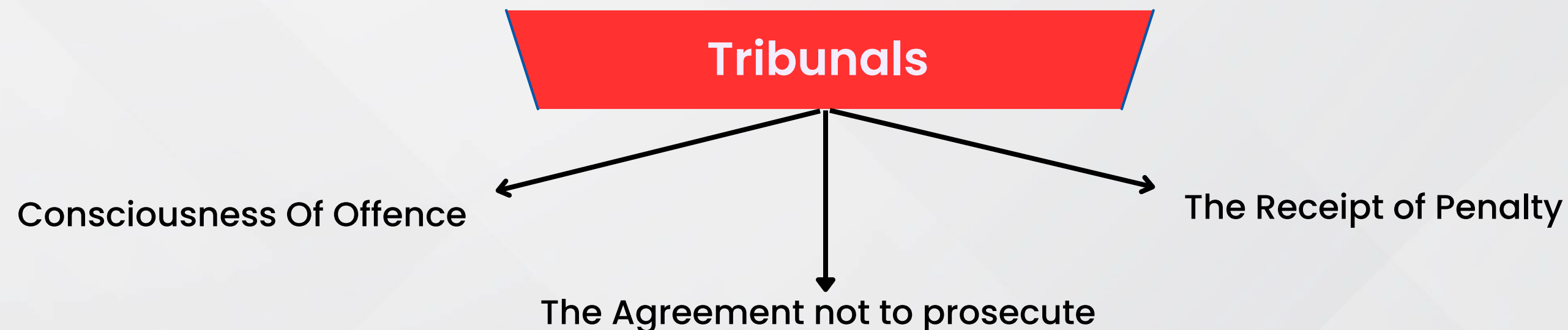
Chapter 07

RELIEF AND REMEDIES

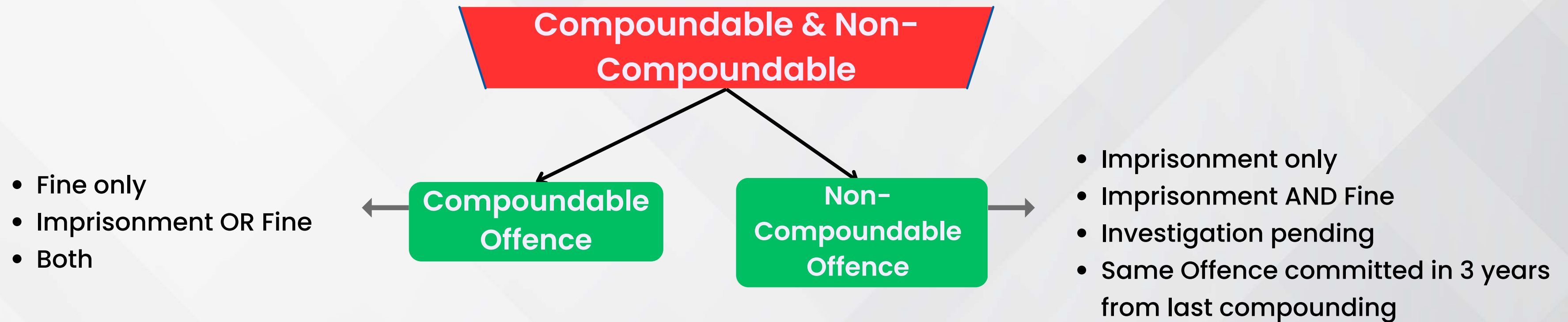
- There is no definition of compounding under Companies Act 2013
- Legal meaning = 'Doing good the default'
- Compounding mechanism give option to offender to pay money in lie of his prosecution and prolonged litigation

BENEFITS OF COMPOUNDING OF OFFENCE

1. Avoid heavy penalties
2. Less time consuming
3. Keep the business flow unhindered.
4. Does not burden court with cases
5. No Disqualification of director since fees payable on compounding not treat as a penalty.



COMPOUNDING UNDER COMPANIES ACT, 2013 {SECTION 441}



Case:- A] Ciphersites India (pvt) Ltd
B] Capital Small finance Bank vs. Registrar of companies

COMPOUNDING AUTHORITIES

- A] Regional Director {Amount upto 25 lakh}
- B] NCLT {Amount above 25 lakh}

Case:- UW International Training & education centre for health private Ltd.



COMPOUNDABLE

POWER TO

R.D

- Contravention Related to prospectus
- Violation of share holders right
- Default in Rectification of registrar
- Failure to publish confirmation order of Reduction of share capital.
- Default in redemption of debenture
- Failure to maintain statutory registrar

NCLT

- Default / Failure in :-
 1. Related to formation of section & Co.
 2. Securities to be dealt with stock exchange
 3. Duplicate share certificate
 4. Deposit repayment
 5. Fraud involve amount
 6. 10 lakh or 1% of Turnover [Less]

Case:- Pahuja Takli Seed Ltd. Vs Roc.

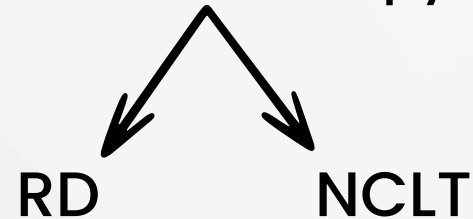
COMPOUNDING OF REPEATED OFFENCE

- If default compound and contravention of the same in 3 years then it cant compound,
- Sec 451 proceeding will start and company and officer in default punishable with twice amount

NON-COMPOUNDABLE

- Default /failure /Contravention in :-
 1. Deceitfully passionate owner of any share
 2. Tribunal order of Refusal of Registration
 3. Purchase of companies own share
 4. Tampering with minutes
 5. Distribute dividend after 30 days
 6. Provision of section 139, 143, 144, 145.
 7. Political contribution
 8. Disobeys direction issued by Registrar or inspector
 9. Offence in Liquidation by officers
 10. Section 452
 11. Fraud of amount exceed threshold

- 1 Check offence is compoundable
- 2 Hold board meeting
- 3 Application to ROC for compounding
- 4 RoC forward copy to



Case:- **Schneider Electric IT Business India Pvt Ltd.**

- 5 RD/NCLT - intimate order in 7 days from compounding to ROC
 - Copy of order sent to ROC in **30 days**

COMPOUNDING UNDER SCRA, 1956 & DEPOSITORIES ACT, 1996

- Any offence under these Acts except i) Imprisonment
ii) Imprisonment and fine are compoundable
- Compounding Authority
 1. Securities Appellate Tribunal [SAT]
 - OR
 2. Court before which proceeding initiated.

Case:- **Prakash Gupta vs SEBI**

CONSENT ORDER

- It can be passed at any stage after probable cause of violation found
- It gave wider array on enforcement
- It achieved a twin goal
 1. Appropriate sanction
 2. Reduce Long drawn litigation
- It settle administrative or Civil proceeding between Regulator and the Party who violate the term

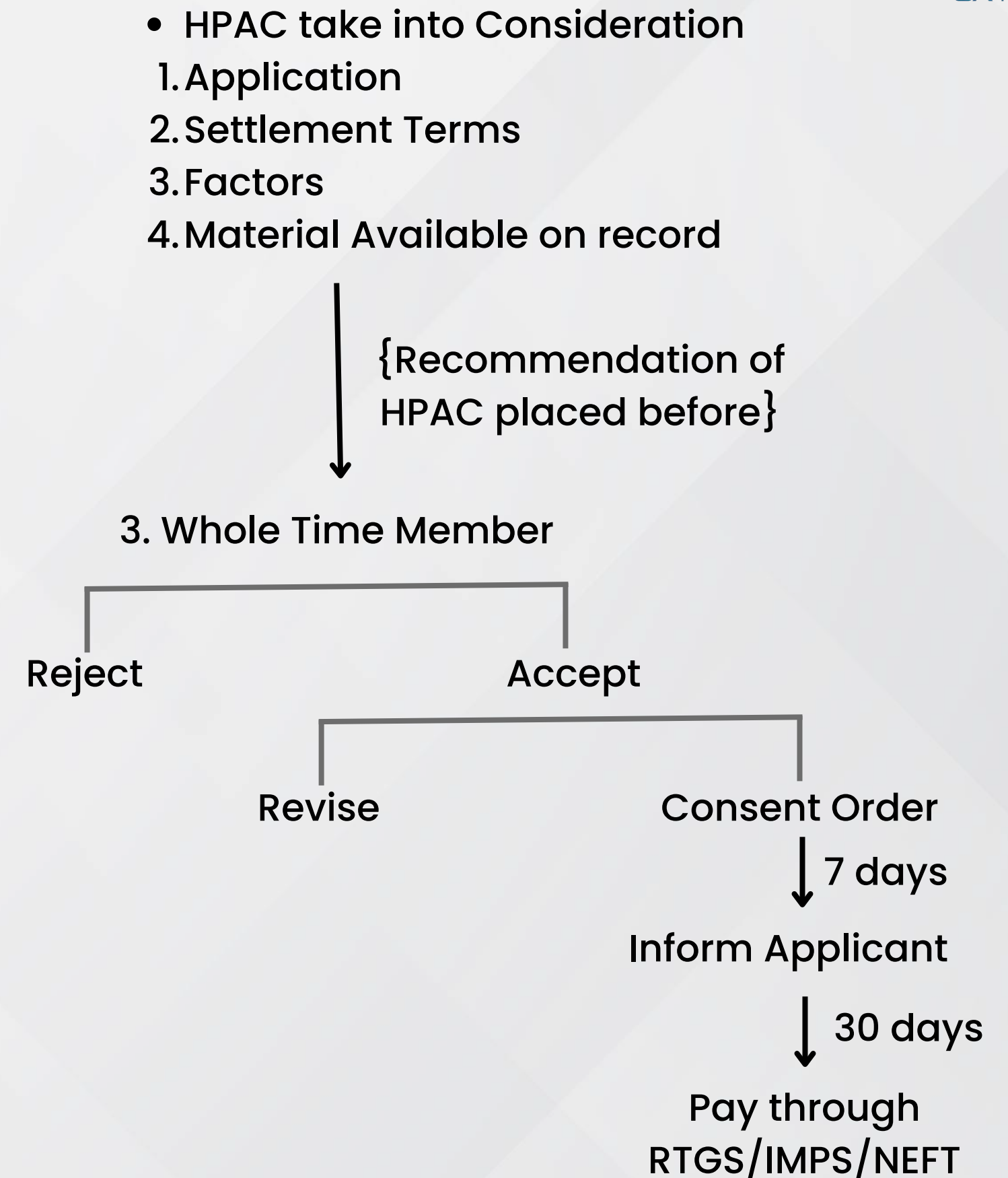
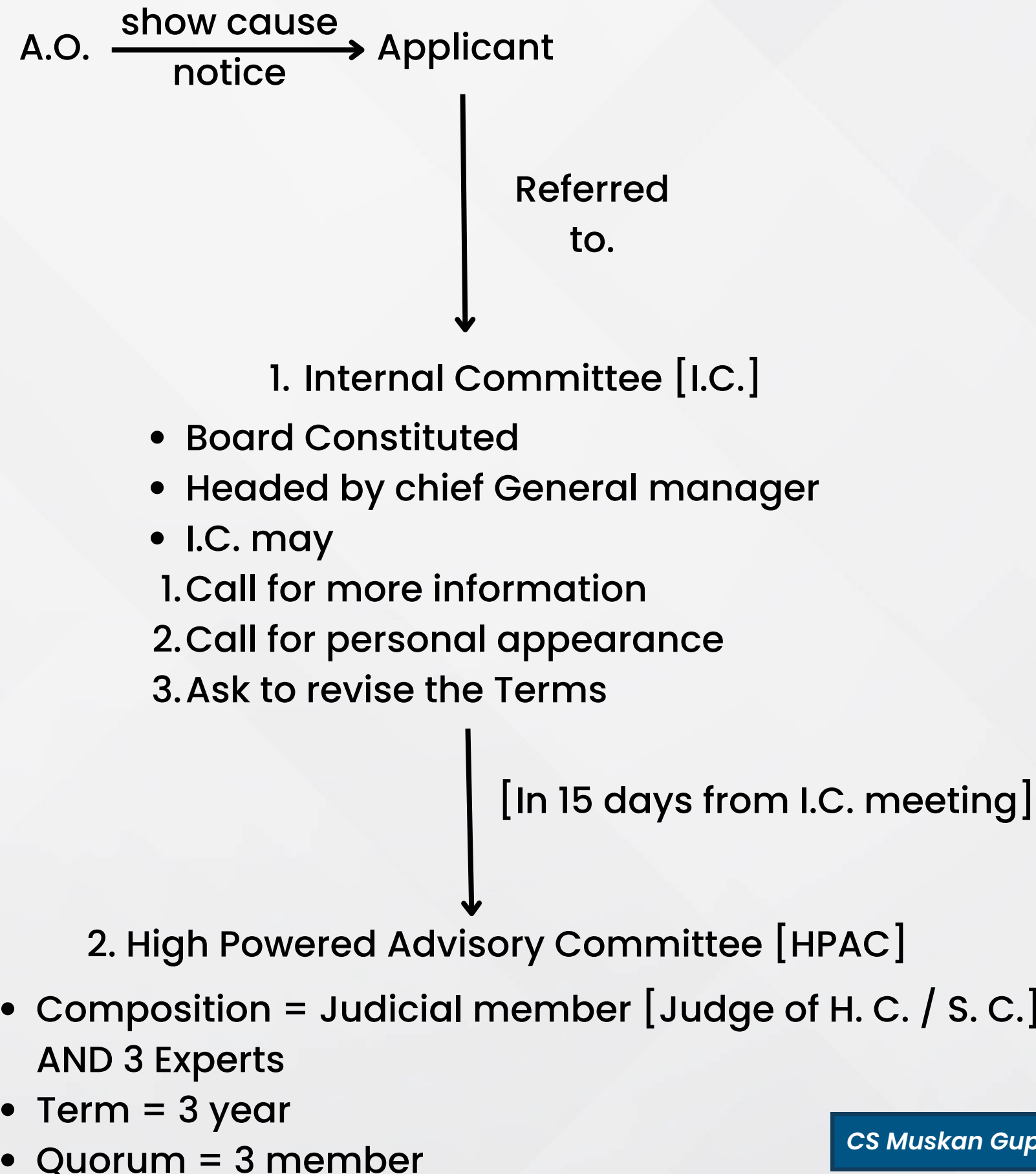
SEBI [Settlement Proceedings] Regulation, 2018

Regulation	Particulars
3. Application for Settlement	• Application in form specified in schedule 1 PART A • Accompanied Non refundable fees as per schedule 1 PART B • Applicant shall make full and true disclosure
4. Limitation	• Application shall not accept after expiry of 60 days from the show cause notice
5. Scope of Settlement	• A] Application not accept if 1.Application for same default rejected earlier 2.Investigation / Inquiry / Audit is pending 3.Monies under any order is due • B] Board Not settle if :- 1. It has market wide impact 2. Caused Loss to Large Number of Investor 3. It affected Market Integrity • C] For Settlement Board take into Consideration 1.Applicant Complaint with security Law 2.Applicant provide exit option 3.Application paid due amount if any
6. Rejection Grounds	1.Not respond to boards communication 2.Applicant not submit in formation 3.Applicant violate the undertaking in any manner 4.No appearance before internal committee

SEBI [Settlement Proceedings] Regulation, 2018

Regulation	Particulars
7. Withdrawal	• Applicant can withdraw application before whole time member pass order • Once withdraw cant apply again except increase in 50% Term.
8. Effect of pending application in court	• Filing of Application do not affect continuance of proceeding • Courts order is kept in abeyance until application disposed off
9. Terms of Settlement	• 1] Monetary or 2] Non-Monetary • Suspend Business • Exit from management • Disgorged any amount • Lock in of Securities etc.
10. Factors considered to arrive at settlement order	• Nature of default • Benefit from default • Extent of harm to investor • Any other application pending • Other factors
19. Settlement with confidentiality	• Conditions are as follows :- 1. Not Include in violation of security law 2. Provides continuous and Complete disclosure 3. Co-operate in Inquiry/Inspection/Investigation

Regulation	Particulars
22. Confidentiality	• A. Information which kept Confidential 1. Identity of Application 2. Info. Evidence furnished • B. Information Disclosure if :- 1. Disclosure required by Law 2. Applicant ready to disclose and consent given in writing 3. Public Disclosure by Applicant
16. Summary Settlement	• If default nature is :- 1. Delayed Disclosure 2. Non-Disclosure by Listed companies 3. Disclosure not made in specified format 4. Delayed compliance 5. Other such defaults A.O. $\xrightarrow[\text{In 30 days}]{\text{Notice}}$ Applicant • File application • Payment of amount



AUTHORTIES TO COMPOUND

RBI [ALL OFFENCES EXCEPT OFFENCE UNDER SECTION 3(A)]

Sum Involved	Authority to Compound
Upto 10 lakh	Assistant General Manager
10 lakh - 40 lakh	Deputy General Manager
40 lakh - 1 crore	General Manager
1 crore +	Chief General Manager

ED [OFFENCE UNDER SECTION 3(A)]

Sum Involved	Authority to Compound
Upto 5 lakh	Deputy Director of ED
5 lakh - 10 lakh	Add. Director of ED
10 lakh - 50 crore	Special Director
50 lakh - 1 crore	Spec. Director w Deputy Legal
1 crore +	Director of ED with Special ED

PENAL PROVISION UNDER FEMA [SECTION 13]

Contravention Amount

Quantifiable

Penalty = 3x of sum involved

Continuing Offence =

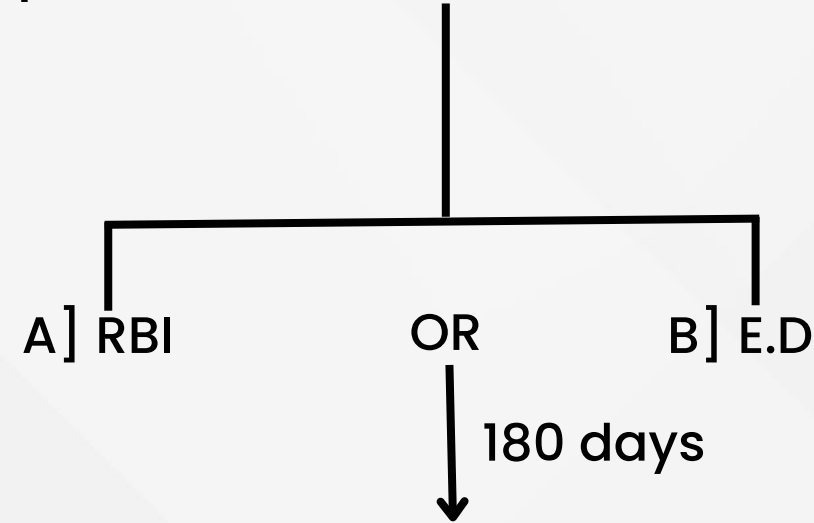
External upto 500/day Penalty

Non - Quantifiable

Upto 2 lakh

PROCEDURE FOR COMPOUNDING

1] Application with Demand Draft of rs. 5,000



2] Order given by respective Authority. It should be = Dated & Signed and Specified Provision of Act

↓ 15 days

3] Applicant pays money for compounding

Limit

- After compounding cant compound same offence for 3 years
- If appeal is made than cant compound

FACTORS CONSIDERED

1. Amount of Loss
2. Amount of unfair gain
3. Repetition of contravention
4. Economic Benefits due to Contravention
5. Contravention in Disclosure of full fact

Case:- A] **M/s Candor view India Pvt. Ltd.**
B] **Mrs. Joyee Lynn RBI**



DIFFERENCE

MEDIATION

- Mediator assist disputants to reach settlement
- Less third party involvement
- Mediator not give any suggestion
- Final decision is called 'settlement'

CONCILIATION

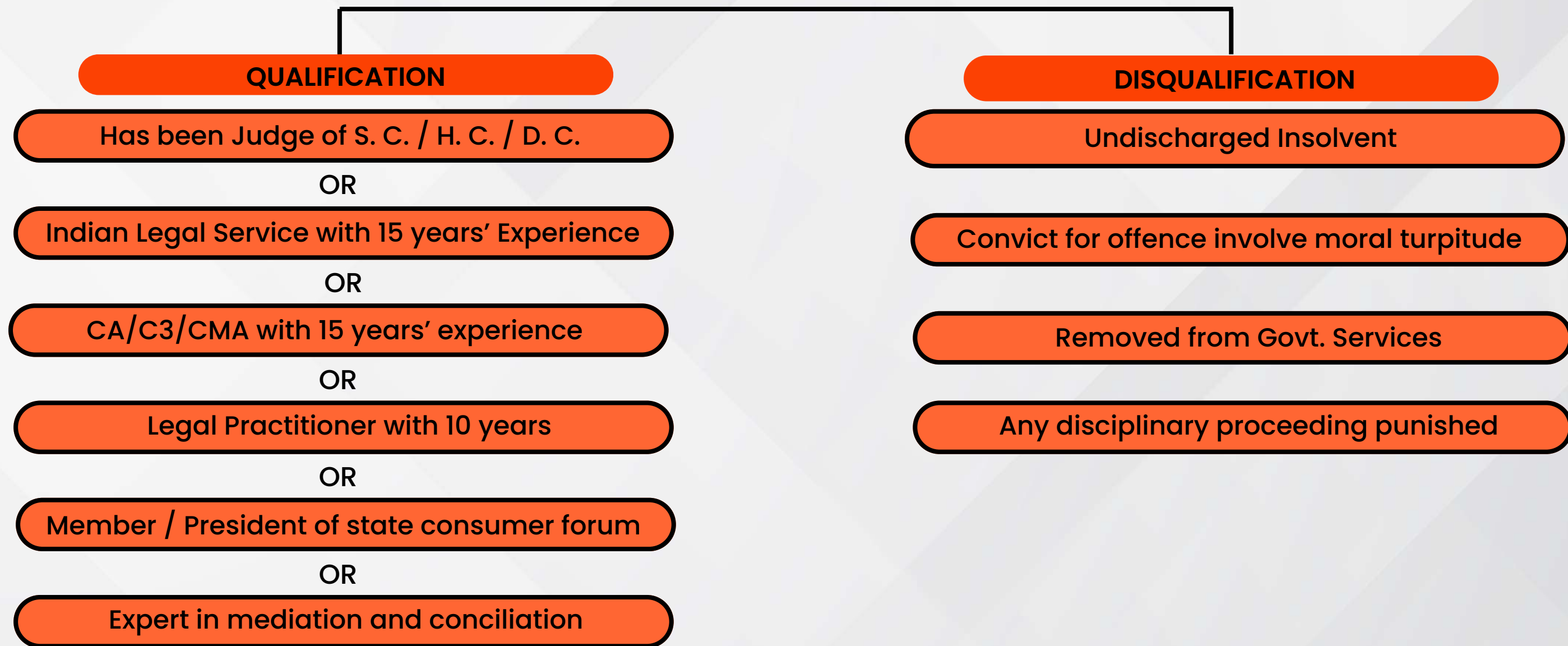
- Conciliation bring disputant to Agreement through negotiation
- More third party involvement
- Conciliator suggest terms for settlement
- Final decision is called 'Award'

[M&C] Under Companies Act, 2013 [Section 442]

- Regional Director [R.D.] make a panel of M&C on behalf of central Govt.
- R. D. update panel quarterly.
- Interested person make application in 'MDC 01'
- M&C dispose matter in 3 month
- Aggrieved party may object before
 - i] Tribunal OR ii] C. G.

ADVANTAGES

1. Informal
2. Confidential
3. Quick and Inexpensive
4. Easy to enforce



Application for Appointment

- Parties agree on the same mediator and appoint him
- In unable to appoint then apply CG/Tribunal in MDC2 + 1000 Rs. Fees to appoint. Mediator out of panel

Application for Appointment

- R. D. can remove any person after giving OOBH

WITHDRAWAL OF NAME

- Withdrawal name from panel by giving notice
- R. D. update panel in 15 Days

Duty of mediator/conciliator to disclose certain facts

- Panelled personal should inform R. D. whenever
 1. His independence is affected
 2. He becomes partial

Procedure to dispose off matters

1. Mediator or conciliator fix the day, date time with parties consultation
2. Notice of meeting should give
3. Copy of memo should send to 'morc' 10 Days before meeting
4. Conduct joint/separate meetings
5. Furnish all important information to m/c.

REPRESENTATION

- Parties can present through authorised attorney

CONSEQUENCES OF NON-ATTENDANCE

- If not attend 2 consecutive meetings by parties then matter fail
- Report to C.G./Tribunal / A. T.

- On request of M/C appoint any Institution / organisation to assist

ROLE OF M/C

1. They voluntary attempt to resolve dispute
2. Not impose any terms of compromise
3. They identity issue & assist

Parties are sole responsible to take decision

No one can impose decision on parties

Time Limit

- Complete in 3 month (+) 3 month extension from appointment

Confidentiality, Disclosure, Inadmissibility

1. If m/c receive info. From party with condition not to disclose, It will not disclose to anyone
2. No audio/video recording of proceeding
3. Witness statement also not recorded
4. View of m/c also kept private

No Communication between m/c & A. T./CG/Tribunal Except :-

1. About failure to attend meeting
2. About consent of parties
3. About Settlement
4. About Assessment that case is not suitable for settlement

SETTLEMENT AGREEMENT

- 1] Settlement between parties
- ↓
- 2] Reduce in writing and send to m/c
- ↓
- 3] Send to CG/T/A.T.
- ↓ 14 days
- 4] CG/Tribunal satisfied that matter is settled if not satisfied, start prosecution

FEES/EXPENSES

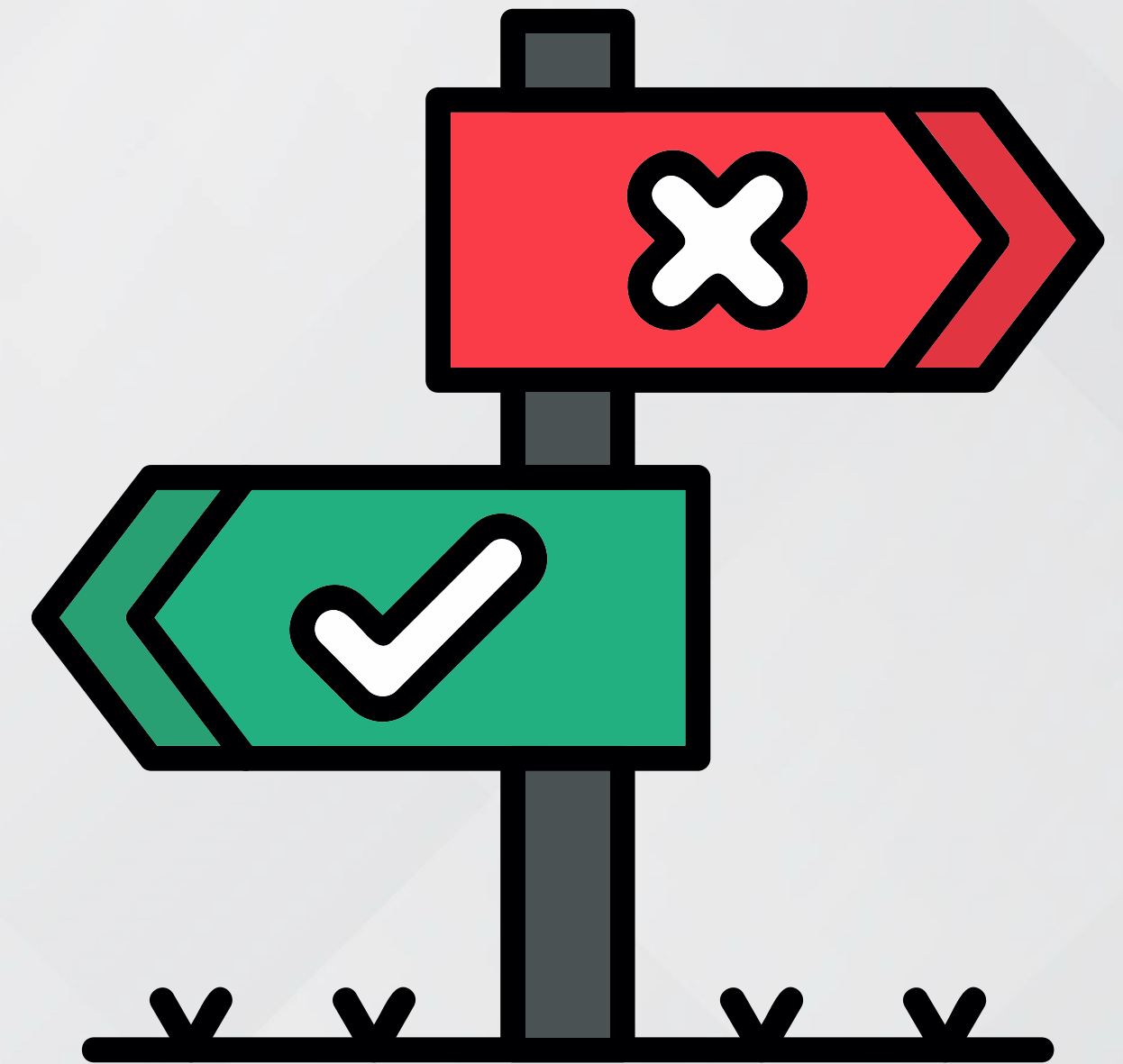
- While Referring matter to m/c, CG/T/AT fix the fees
- Both parties born cast equally
- Party incur expenses to bring witness of his side
- Before commencement m/c ask parties to deposit money

Ethics followed by m/c

- Impartiality
- Independence
- Qualified
- Integrity & fairness
- Follow due diligence
- No Unacceptable Behaviour

Matter not referred to m/c

- Fraud Case
- Criminal Prosecution
- Public interest involved
- Inquiry / Inspection / Investigation of matter made



Chapter 08

CONCEPTS OF VARIOUS AUDITS

INTRODUCTION

- Audit is Independent Examination of
 1. Record
 2. Books of Accounts
 3. Financial & Non Financial Statements etc
- Audit word is derived from the Latin word 'Audire' which means 'To hear'
- **Companies Act 2013 & Audits**
 1. Section 204 = Secretarial Audit
 2. Section 139 to 147 = Statutory Audit
 3. Section 148 = Cost Audit
 4. Section 138 = Internal Audit



TYPES OF AUDIT

Financial

- Statutory Audit
- Internal Audit
- Cost Audit

Compliance

- Secretarial Audit
- CSR Audit
- Corporate Governance Audit
- Takeover Audit etc

CORPORATE GOVERNANCE AUDIT

It ensures :-

- Fairness
- Accountability
- Integrity
- Transparency

Need

- Ensure Commitment of Board in managing company
- Increase capital flow in the company

Scope

- Financial & Non-Financial info.
- Rights of Share holder
- Composition of BOD
- Control Environment
- Risk Management
- Strategic Plans

Checklist

- Accountability {Check} :-
 1. Separation of ownership & Control
 2. Management Accountable to BOD
 3. BOD Accountable to Shareholder
 4. Audit Committee comply with policies
 5. Independent director working properly
- Fairness {Check} :-
 1. Minority treated equally
 2. Procedure to resolve violation
 3. Pricing policy is proper
- Transparency {Check} :-
 1. Shareholder know their rights
 2. Disclose material matters
 3. Policy on Political contribution
 4. Practice related to insider trading prohibition etc
- Responsibility {Check} :-
 1. Policy on shareholders rights & responsibility
 2. BOD responsibility in place
- Shareholder Interest {Check} :-
 1. Shareholder have right to participate in decision making
 2. Capital Structure should be disclosed
 3. Exercise ownership rights by shareholder
 4. Minority shareholder protected from abuse
 5. Disclose material interest or not



CORPORATE GOVERNANCE DUE DILIGENCE

A] Board Independence & Governance

- Board Composition [As per Regulation 17 of LODR]
- Proportion of Independent Director
- At least 1 woman director
- Top 1000 Listed Company = Have 1 Independent woman director
- Details of D&O Policy etc

B] Board system & Procedure

- Details of circulation of Agenda
- Board meeting details
- Attendance in B. M.
- List of Applicable laws
- Policy on succession planning
- Policy of Action taken report etc.

C] Board Committees

- Name of Committee
- Details of Chairperson
- Proportion of Independent Director
- Risk Assessment
- Review RPT etc.

D] Transparency

- Details of Disclosure in Annual Report
- Disclosure on Payment to Director
- Details of material cases etc.

E] Consistent Shareholder Value Enhancement

- Growth in Net worth
- Dividend policy
- EPS
- Details of public share holders
- Details of Investor satisfaction survey.

F] Other Shareholders Value Enhancement

- Details of vendor / supplier
- Personal Policy
- Policy on Esops
- Policy on prevention of sexual harassment

F] CSR

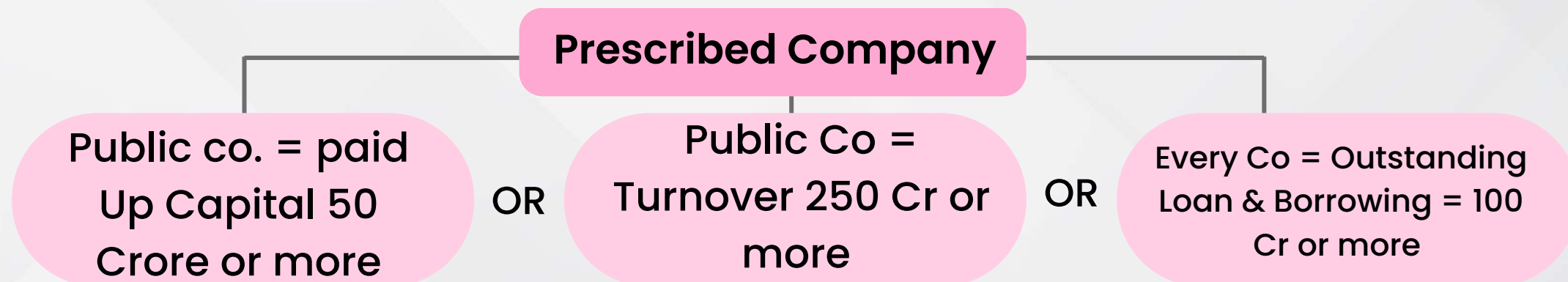
- Policy on CSR
- Sustainability Report
- Budget for CSR etc.

SECRETARIAL AUDIT

- It covers Non-Financial Aspect
- Compliance with all laws & Regulations

Section 204 of Co. Act 2013

- Listed & Prescribed Company attach secretarial Audit Report in [MR-03] with Boards Report.
- Also explain observations mentioned in [MR-03]
- Penalty for = Rs. 200000/- Violation



Regulation 24 A

- Recommendation of Kotak Committee
- All material unlisted subsidiary has to undertake secretarial Audit.
- Listed Co has to submit 'Secretarial Compliance Report' to Stock Exchange within 60 days

Purpose of secretarial Audit

- Company do Compliance & Lay foundation of Good Governance
- Lesser Chances of Penalty
- Employees Loyalty increase
- Goodwill Increase
- Company become 'Good Corporate Citizen'

INTERNAL AUDIT = SECTION 138

Applicability

Listed Company

Unlisted Company

Private Company

PUC = 50 Cr or More

OR

T/O = 200 Cr or More

OR

O/S Loan = 100 Cr or More

OR

O/S Deposit = 25 Cr or More

T/O = 200 Cr or More

OR

O/S Loans = 100 Cr or More

It assesses

- Efficiency of Internal Control System
- Compliance with all Applicable Laws
- Facilitate Good Practice in Risk Management
- Structure Programs & Activities
- Do Saving by identifying inefficiencies

CSR AUDIT

Limit of CSR

- 1] Net Worth = 500 Cr or More
OR
- 2] Turnover = 1000 Cr or More
OR
- 3] Net Profit = 5 Cr or More

CSR Committee

- 3 Director = 1 Independent Director
- [2 Director = In Co. not required to appoint I. D.]

Spend

- 2% of Average of Net Profit of Last 3 Financial year

Coverage

- Activities Provided under schedule VII of Co. Act. 2013

Purpose

- Compliance with section 135.
- Check CSR Project Life Cycle
- Check & monitor Co. Activity
- Conduct financial Review of Project
- Evaluate Internal control

Methods

- Review Policy
- Review Beneficiary
- Interact with Beneficiary
- Review CSR Expenditure

Different measure of CSR Audit

- How Company conduct social surveys
- How Co. undertake Impact Assessment
- How Co. identify possible Impact of CSR.

Checklist

1. CSR Committee applicable or not
 2. If Co. has approved CSR Policy
 3. Whether CSR Project in the purview of SCH VII
 4. Composition of CSR Committee disclosed in Board Report or not
 5. Activity as per policy or not.
 6. Net Profit as per section 198 or not?
- Etc.

TAKEOVER AUDIT

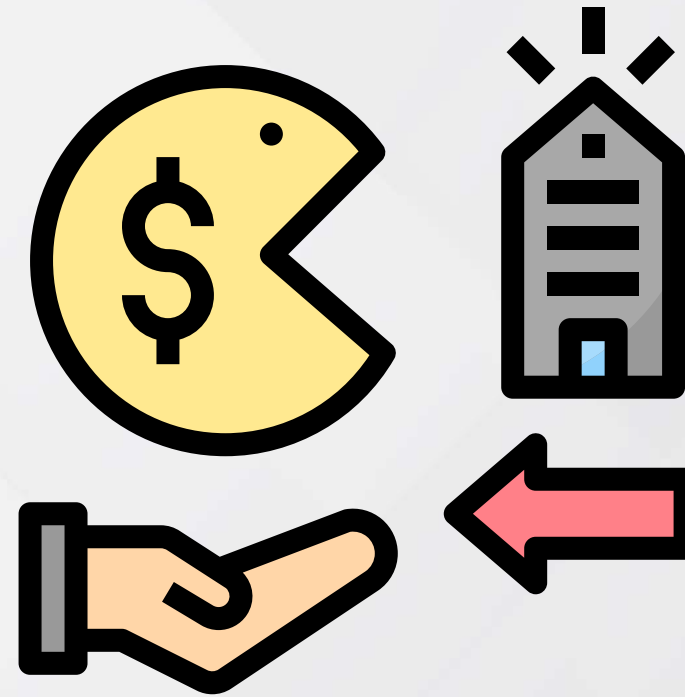
Comply Provisions of

Companies Act, 2013

SEBI [SAST] Regulation, 2011

It Includes

- Identification & Categorization of Acquirer
- Disclosers made timely
- Monitor promotor holding
- Timely intimation to stock exchange
- Timely reports under SAS

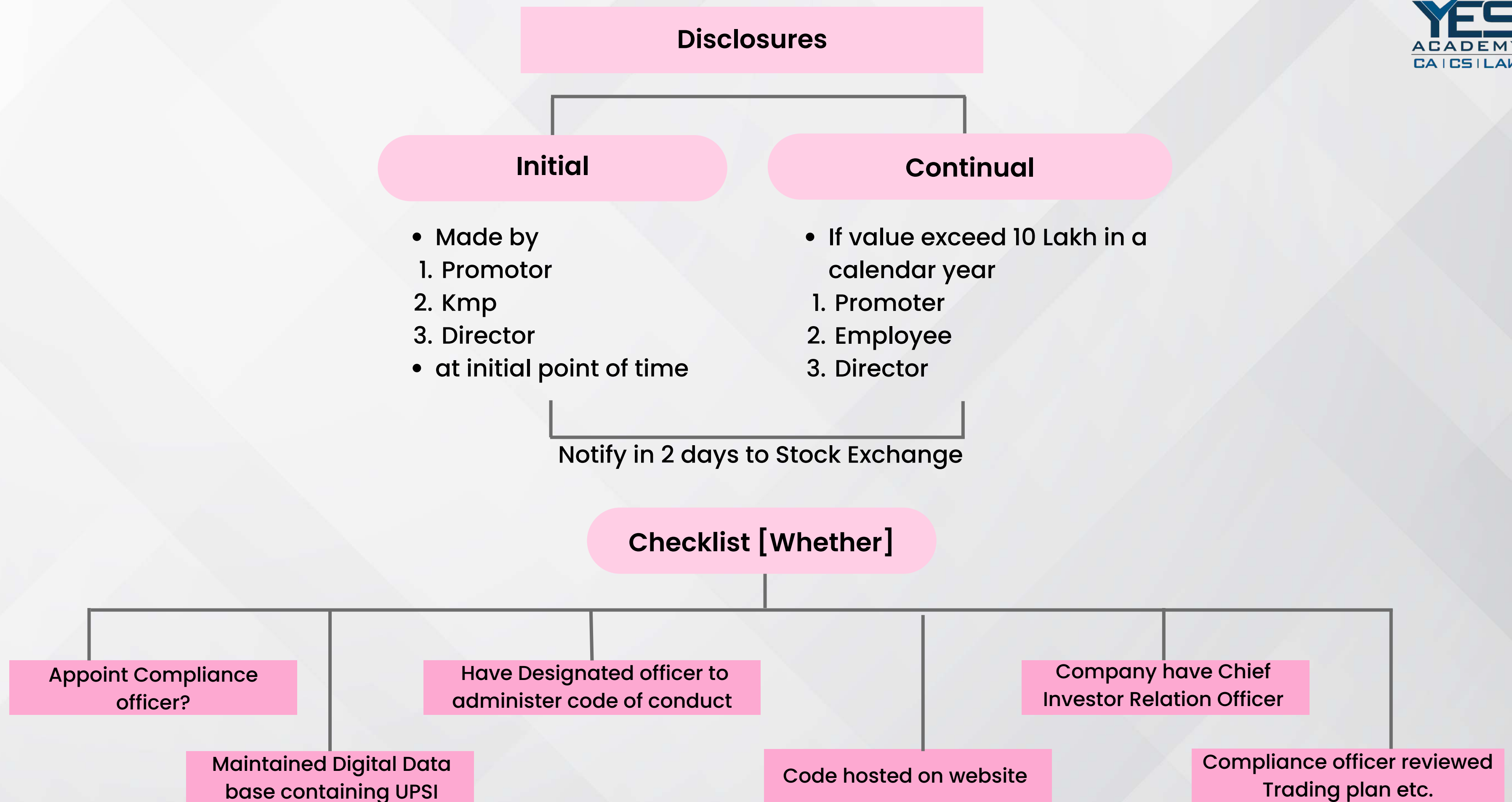


Consequences of violation

- Penalties such as :-
 1. Disinvestment ordered
 2. Transfer of shares
 3. Direct acquire not to exercise voting right
 4. Acquire not to dispose Assets
 5. Cease & Desist from exercising control etc

INSIDER TRADING AUDIT

Regulation - SEBI [PIT] Reg, 2015



INDUSTRIAL & LABOUR LAW AUDIT

- It Helps to identify non-compliances in labour & Industrial laws
- It Helps in promoting cordial relation in Employer & Employee

Laws Under this Audit

- Factories Act, 1948
- Industrial Dispute Act, 1947
- Payment of Wages Act, 1936
- Minimum Wages Act, 1948
- Employees State Insurance Act, 1948
- Employees Provident Fund & misc. Provisions Act, 1952
- Payment of Bonus Act, 1965
- Payment of Gratuity, Act 1972
- Maternity Benefit Act, 1961
- Industrial Employment Act, 1946
- Employees Compensation Act, 1923
- Equal Remuneration Act, 1976
- Employment Exchange Act, 1959

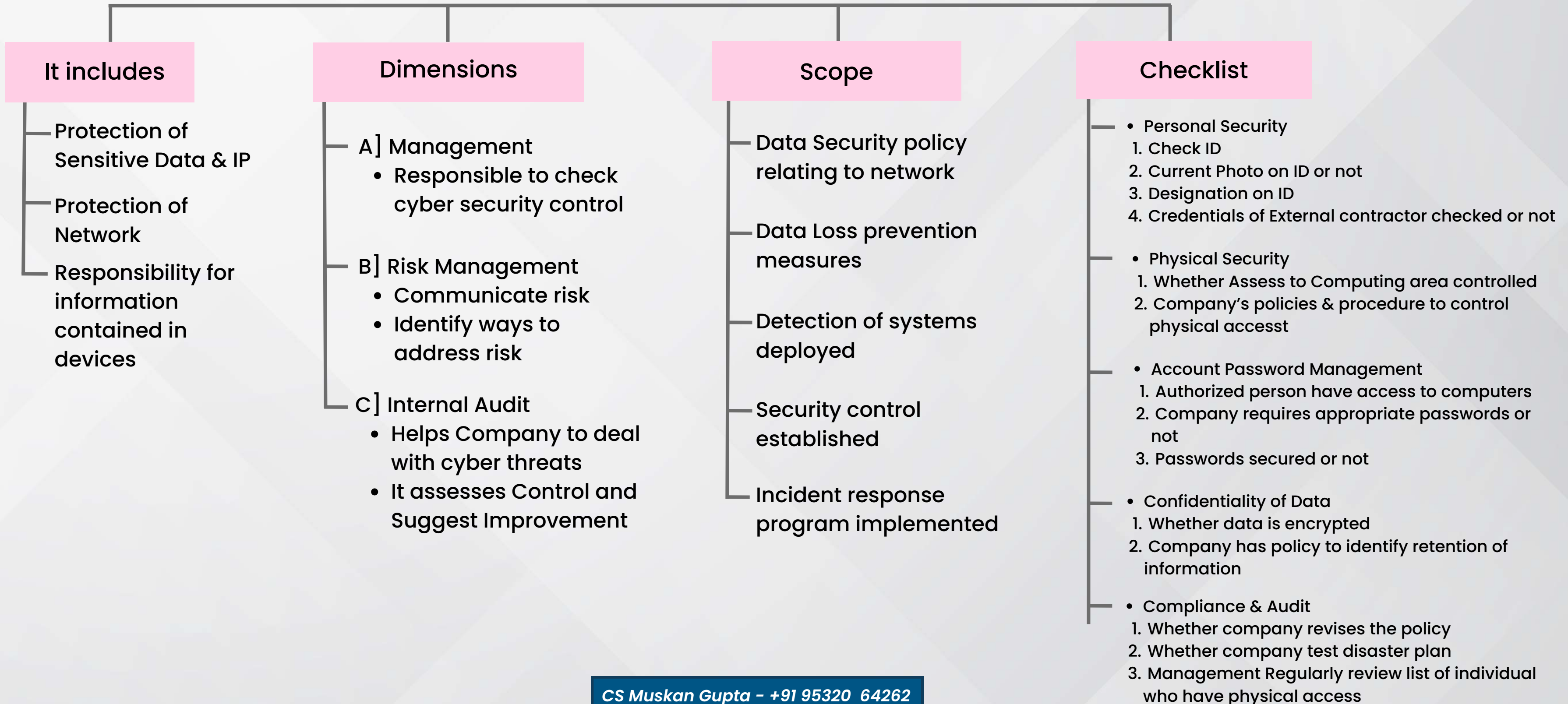
Some Common Checkpoints

1. Whether this Act applicable?
2. Whether Company comply with the provision
3. Whether company maintained muster roll?



CYBER AUDIT

- It minimize risk of i] Financial Loss ii] Damage to reputation due to failure of Information Technology
- Objective = 'Assess effectiveness of cyber security & policies'



ENVIRONMENTAL AUDIT

Environment Includes

Water

Air

Land

Objectives

- Verify Environmental Compliances
- Effective utilization of Resources
- Identify Environmental Risk

Attention to matters during Audit

- Initiatives to prevent Environment
- Conserve Renewable & Non-Renewable Resources
- Consequences of violation mentioned in directors report
- Consequences of vicarious liability

Process of Environmental Audit

- Understand Industrial Activity
- On Site Audit
- Assess the Impact
- Follow up or review



Checklist

1. Environmental Policy
 - Whether Company prepared policy?
 - Whether policy is document
 - Whether policy is available to public freely?
 - Whether Policy based on Environmental Aspect?
2. Environmental Aspect
 - Whether procedure to identify environmental aspect?
 - Environmental Aspect such as :-
 - 1] Air Emission
 - 2] Waste management
 - 3] Soil Pollution
 - 4] Hazardous material etc
3. Legal & other Requirement
 - Procedure to identify applicable law.
 - Any other Legal Requirement
 - Following permits taken or not :-
 - 1) Air Emission permit
 - 2) Waste water Discharge permits
 - 3) Environmental fees
 - 4) Registration at Authorities

Types

Environment Compliance Audit

- Following Laws are covered :-
- 1. **Air Pollution**
 - Factories Act, 1948
 - Air [Prevention & Control of Pollution] Act. 1981.
 - Motor Vehicles Act. 1988.
- 2. **Water Pollution**
 - The River Boards Act 1956
 - Water [Prevention & Control Pollution] Act. 1974.
 - Merchant Shipping [AMM] Act. 1970
- 3. **Radiation**
 - Atomic Energy Act. 1962
- 4. **Pesticides**
 - Poison Act. 1919
 - The Factories Act. 1948.
 - The Insecticides Act. 1968
- 5. **Miscellaneous**
 - The Indian forest Act. 1927
 - The Wildlife [Protection] Act. 1972
 - Environment [Protection] Act. 1986
 - The public Liabilities Insurance Act. 1991

Environment Management System Audit

- ISO 14001= Standard
- It provide framework to improve effectiveness of environment management
- It is established to :-
 - 1] Identify & Control environmental impact of Activity.
 - 2] Improve Environmental performance.
 - 3] Help to achieve environmental objective
- Published in 1996, 2005, 2011



INFORMATION SYSTEM AUDIT

It evaluates the system that maintain data integrity & safeguard Assets

It Examine
following Areas :-

- 1] High level system architecture view.
- 2] Business Process mapping
- 3] Database Access Control
- 4] Anti-virus Control
- 5] Logging & Auditing systems & Processes etc.

Checklist

A] Management Control

- Check Securities policies
- Whether Constitute steering committee
- Possibility of Business continuity planning
- Whether document properly cross indexed?

B] Operational Control

- Monitor Physical Asset or not?
- Whether there are adequate environmental control

C] Organizational Control

- Whether role of each department defined or not?

D] Application Control

- Whether each of computer system has its set of control or not.

FORENSIC AUDIT

- Its purpose to examine financial illegal activities
- It is highly specialized Audit
- Should have knowledge of fraud Investigation Technique.

Done in Two phases

Investigation

Investigate Companies Accounts etc

Once fraud detect

Litigation

Then resolve it through litigation

Areas

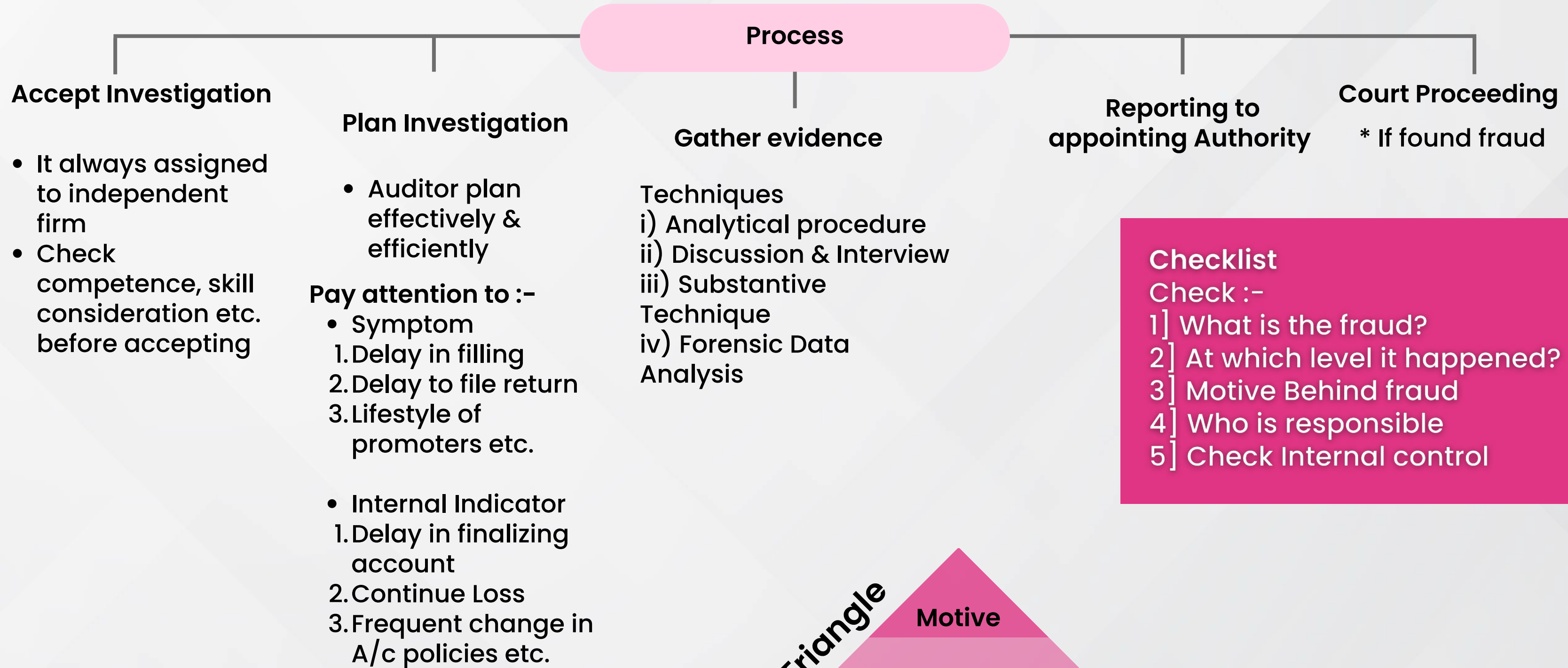
- 1] Criminal Investigation
- 2] Fraud Investigation
- 3] Professional Negligence
- 4] Arbitration Case
- 5] Dispute Settlement

Purpose of Audit

- A] Corruption
 - i] Bribery
 - ii] Extortion
 - iii] Conflict of Interests
- B] Asset Misappropriation
- C] Financial statement fraud

Process

- Accept Investigation
- Plan Investigation
- Gather evidence
- Reporting to appointing Authority
- Court Proceeding



SOCIAL AUDIT

It is way to measure understand report Organizations social & ethical performance

Implications

It impact upon Governance

It enhance local Governance

It make sure decision should be taken with the consent of all concerned people.

Objectives

- 1] Assess gaps between need & resource of local development
- 2] Create Awareness among Beneficiaries
- 3] Increase efficiency of Local Development
- 4] Estimate opportunity cost for stake holder who not set timely Access to public services.
- 5] Security of various policy decisions.

Rights of Auditor

- 1] Seek clarification from implementing agency about decision making.
- 2] Consider existing scheme of the agency.
- 3] Access to related Registers & Documents.

Use of Social Audit

- 1] Result of Audit need not to be disclosed.
- 2] Positive result can disclosed voluntary & Negative can kept internal.

Implementation

- 1] Empowerment of People.
- 2] Proper Documentation
- 3] Accessibility of Documents
- 4] Punitive Actions

Steps

- 1] Clarity of purpose of Local elected body
- 2] Identify stakeholder
- 3] Define accepted performance indicator
- 4] Regular meeting to review indicator
- 5] Follow up meetings
- 6] Establish group of Trusted Local people to judge implementation of social audit.
- 7] Finding of social audit share with Local Stake holder.

ICSI SOCIAL AUDIT STANDARDS

Objections

- 1] Verify Authenticity of project
- 2] Identify gap between:
 - Audit Project
 - Desired Project
- 3] Assess Nature of Project
- 4] Evaluate cost & efficiency of project
- 5] Verify fulfilment of statutory requirement.

Scope

- 1] Will project impact
 - Economical
 - Social – Condition of Locals?
- 2] Will there is significant change in access of Natural Resource?
- 3] Various groups differently impacted or not?
- 4] Will Project change demand for service?
- 5] Does locals have governance to deal with long term affect of project?

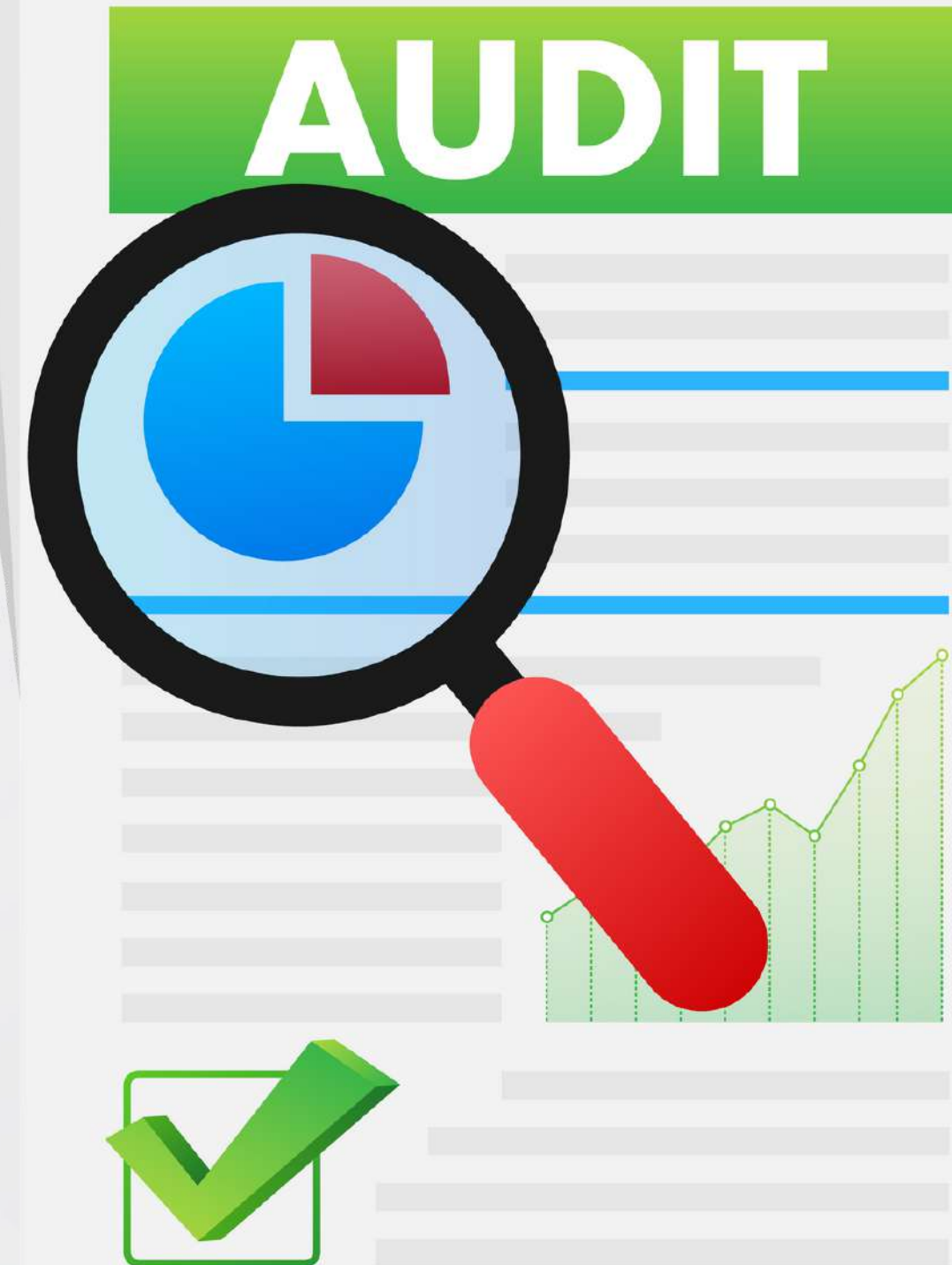
Benefits

- 1] Encourage social Performance
- 2] Improve stake holder relation
- 3] Enhance social reputation
- 4] Source of financial data on social activities.

Eligibility to establish social intent

Perform Activities mention under Reg. 292E of SEBI
[ICDR] Reg. 2015
Same Activities as given under SCH VII of Co. Act.
2013.

Social Audit record maintain for 8 years.



Chapter 09

AUDIT ENGAGEMENT

INTRODUCTION

It is 'Contractual Arrangement'

By Audit Engagement Letter

Between Auditee & Auditor

APPOINTING AUTHORITY

AUDITOR

First statutory Auditor

Subsequent statutory Auditor

Secretarial Auditor

Auditee under CIRP

Internal Auditor

Tribunal Exercise powers

Tribunal Exercise powers

Internal Audit of stock Broker

AUTHORITY TO APPOINT

Board of Director

Member in AGM

Board of Director

Resolution Professional

Board of Director

Tribunal

Director / Designated Partner

Depend upon type of Auditee

Appointment of Authority

A] One to one Basis

1

Select Auditee after assessing risk:-

- Performance Risk
- Engagement Risk
- Reputation Risk
- Commercial Risk

2

Communicate Auditor willingness to take up Audit

3

Conduct Pre-engagement Discuss meeting

1. Understand Business
2. Terms of Engagement
3. Audit Process
4. Periodicity of Audit
5. Prior year Audit Result
6. Nature of Audit



4

Auditor give following Declarations

1. ***Limit*** of Audit should not exceed
2. Not have ***substantial conflict of Interest***
3. Not debarred & Restrict by ICSI

Limit

1. Secretarial Audit
 - 10 per year
2. Compliance Report
 - 5 per year
3. If peer Reviewed
 - Additional 5 Audit & Compliance Report

Conflict of Share

- Hold shares upto 2% of PSC or Nominal value 50,000 Rs.
- OR
- Indebted upto 5 Lakh
- OR
- Employee of Company more than 2 years [can Appoint in implement safeguard]

Substantial Conflict of Share

- Hold shares more than 2% of PSC or Nominal value 50,000 Rs.
- OR
- Indebted more than 5 Lakh or Amount impairs independence
- OR
- Employee of Company for less than 2 years [can not Appoint in implement safeguard]

B] Tending Process

Pre-engagement meeting with management

1

3

Sign engagement Letter with management

Submission of bids

2

4

Certificate from Auditor including declarations

Pre-conditions to Accept Audit Engagement Letter

- Company will give access to :-
 1. All Information
 2. All Additional information
 3. Persons / Employees within the company

Internal control system is free from mis-statement

Secretarial / Non-financial statement as per reporting framework



Criteria to decline Engagement

Client status impair independence

Circumstances lead to unusual risk to firm

Audit engagement Letter

Content

- It contain Terms & Condition of Audit engagement
- It has been signed by parties before engagement
- It is reviewed every year.

1. Objective of Audit
2. Responsibility of Auditor and Auditee
3. Audit Risk
4. Audit Limitation
5. Audit Plan

Audit Fees

Depends on:-

Size of the
organization

Nature of
Business

Internal
Control
System

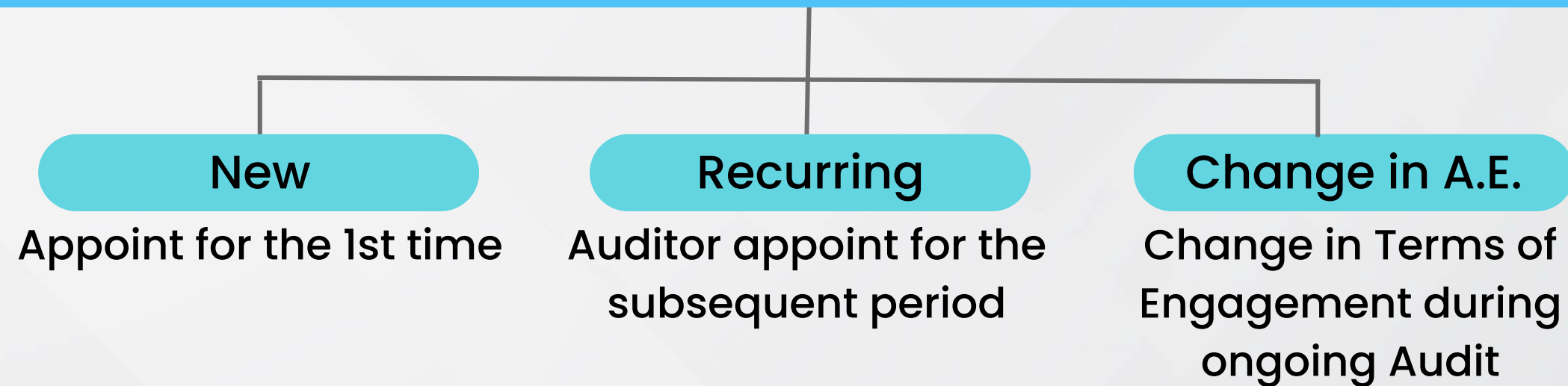
Scope of
Audit

Frequency
of Audit etc

- Fees charge on Percentage Basis is not advisable
- Fees decide in AGM [Section 142]

Case:- Re. R. Swarup P. Reddy vs M. N. Pratap Reddy

Types of Audit Engagement



CS AS 1 Applies

- On Practicing Company Secretary who conducts Audit
Except = Audit conduct on voluntary basis

Types of Audit

Secretarial Audit

Internal Audit

Internal Audit of :-

Stock Broker
Investment Advisor
Portfolio Manger
Credit Rating Agency
Research Analyst

Confidentiality

Auditor should not :-

1. Disclose any info. of auditee without their permission
2. Use info. For personal use
3. Carelessly maintain confidentiality among staff
4. Not maintain confidentiality among firm
5. Disclose info. of prospective client



Audit Engagement Process

1. Pre-Engagement meeting
2. Appointment
3. Audit Engagement Letter

It includes:-

Responsibility of

Auditor

1. Maintain confidentiality
2. Maintain UPSI
3. Do Audit as per Terms & Condition
4. Depute a Trained Professional

Auditee

1. Give Access to all info. To Auditor
2. Communication to Previous Auditor
3. Provide Management Engagement Letter
4. Depute a Person for Communication

4. Communication to Previous Auditor

Succeeding Auditor

Draft Letter
Sent through

Previous Auditor

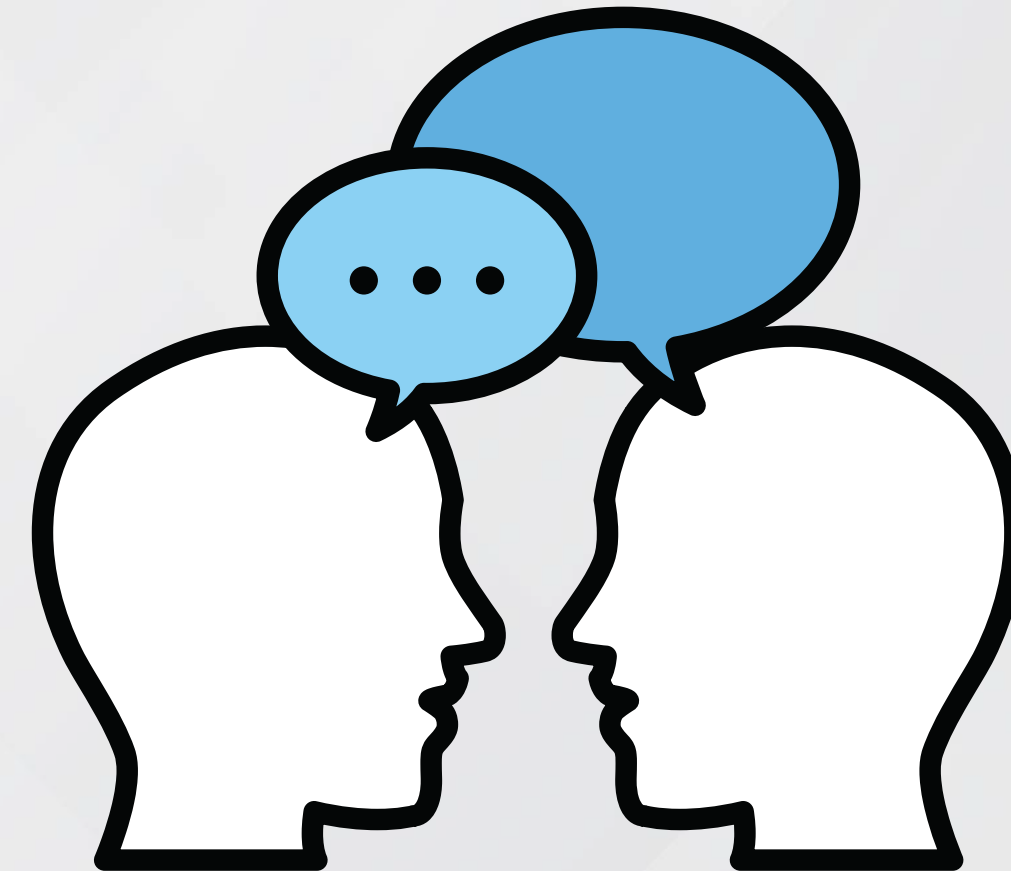
If Previous Auditor replied :-

1. By Hand
2. Email
3. Post
4. Registered Acknowledgement

1. Consider Reply
2. Maintain Confidentiality

In following matters communicate

- 1] Sign Annual Return [MGT.07]
- 2] Certify Annual Return [MGT.08]
- 3] Secretarial Audit [Section 204]
- 4] Internal Audit [Section 138]
- 5] Audit of Material unlisted subsidiary
- 6] Certify Transfer of Security
- 7] Certify non-disqualification of director
- 8] Due diligence of Bank etc.



Chapter 10

AUDIT PRINCIPLES & TECHNIQUES

Audit Principles

Independence Integrity objectively

Confidentiality

Audit system & Internal control

Skill & Competence

Documentation

Planning

Audit Evidence

Reporting

Audit Techniques

Examination of Record

- Commonly used
- Ensure validity

Inquiry

Auditor get info from :-

- Inside OR
- Outside Resources

Sampling

Auditor draws opinion by selecting a sample of Transaction

Confirmation

- It is response to inquiry
- To Confirm certain data

Compliance Test

- Check effectiveness of Internal control system

Substantive Test

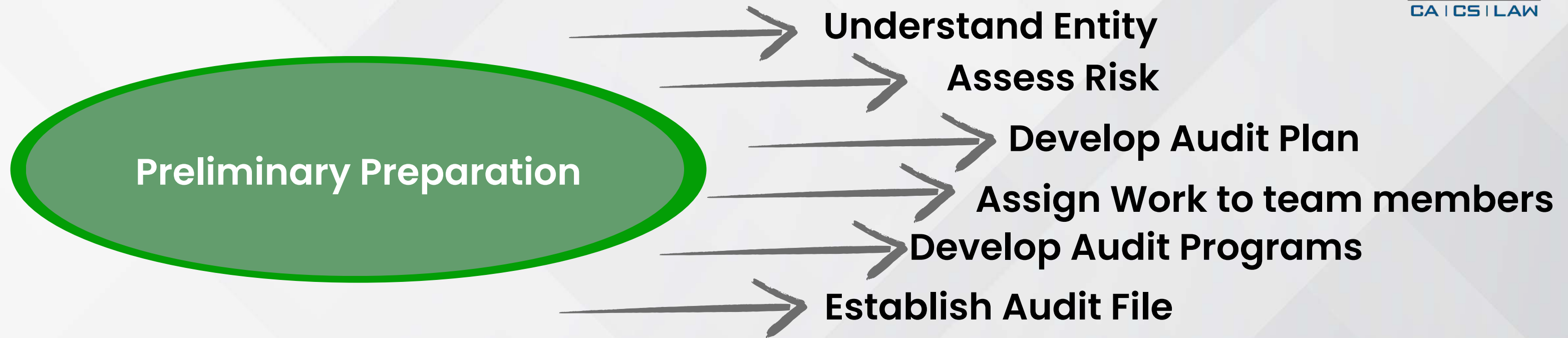
1. Test Transaction
2. Test significant ratios & Trend

Computer Technique

- Technique like :-
 1. Audit software
 2. Test Pack
 3. mapping to check Accuracy of Data

Analytical Review

Compare past & present data



Questionnaire

- It is series of questions concerning 'Internal control'
- Questions framed in a manner that answer will be either 'yes' or 'no'
- It is issued to client & requested to fill it up from :-
 1. Executives
 2. Employees
- Questionnaire used in Audit as :-
 1. To plan the Audit
 2. Administering the questionnaire
 3. Analyze responses
 4. Conduct follow up interviews

Interviews

Following 3 Not done at the same time

1. Orientation

- Objective is to identify 'Audit Subjects'
- It gives flexibility to auditor to explore new themes

2. Examination

- Aims at specific issue
- Collect info. through :-
i] Personal opinion ii] Experience
- It have more structured format

3. Confirmation

- It goes together with :-
1. Orientation OR
2. Examination
- It confirm facts & findings

Difference

Audit Plan	Audit Program
• Provide Strategy to conduct Audit • Plans made to cover 1. Acquire knowledge of Internal control 2. Establish expected degree of reliance on internal control 3. Co-ordinate work to be done	• Outline of now audit to be done • It contain step by step instructions to carry out Audit. • It is the form of checklist • Lay down following Audit procedure 1. Evaluation Process 2. Ascertain Accuracy 3. Verify document 4. Security of supporting document 5. Check overall disclosure 6. Prepare & submit report

Identification of Applicable laws

- In India, every mode of business needs to obey various laws

- To ensure Compliance :-
 1. Document Inventory of Applicable laws.
 2. Publish its compliance policy.
 3. Exchange e-mails with different teams.
 4. Place Internal Reports
 5. Conduct compliance Assessment

Master checklist

- Audit is 'Post-mortem' of companies Affairs.
- To give opinion, Auditor independently check affairs

• Checklist :-

Entities Operation

- Contain:-
 1. Object of company as per MOA.
 2. Capital Structure
 3. Details of Directors
 4. Details of the KMP.
 5. Details of the functional Head etc

Financial & Non-financial Reporting Requirement

- Check Changes in :-
 1. Laws & Regulations
 2. Accounting Standard
 3. Accounting Rule
- In Non-financial disclosure Audit team check :-
- Limit, Criteria, etc. to understand compliance

Legal & Regulatory Requirement

- It differs company to company
- Check compliance with all laws & Regulations

Matter of shareholder & public-Interest

- Identify extent of public & shareholder interest in companies' Activity
- Through factors :-
 1. Public deposits
 2. Loan & Advance dividend
 3. CSR, etc

Review of control environment

- Check :-
 1. Operating Environment
 2. Ability of management to control operation.
 3. Organizational Structure
 4. Supervision & Monitoring, etc

Working Papers

- It is a document prepared by Auditor
- It includes evidences gathered during Audit
- It is prepared throughout Audit
- It give information about :-
 1. Auditor Properly planned
 2. Audit Adequately supervised
 3. Appropriately reviewed
 4. Evidence is sufficient



- It includes :-

1. Scanned Document [Write down its source]
2. Tick marks
3. Cross referencing
 - Use to refer one info. In more than place
 - Only primary work cross referred
4. *Standard Working Process

4. *Standard Working Process

General File

- It contains :-
 1. Draft & Final report
 2. Audit Response
 3. Info. Of Audit.

Work Paper

- It contains :-
 1. Detail Audit procedure
 2. Detail working paper

Future Audit Consideration

Future Audit ideas are mentioned here

Types of working paper

Permanent File

- It Contains info. Which is use for more than one Audit
- It includes :-
 1. Statutory Documents
 2. Rules & Regulation of the Company
 3. Copies of Document of continuing importance:-
 - Letter of engagement
 - Communication to previous Auditor
 - Legal Documents
 4. Address of Registered office
 5. Outline of History of Company
 6. Analysis of ratios & Trends, etc

Current Audit File

- It Includes :-
 1. Appointment Letter for current year.
 2. Extract of important meeting.
 3. Audit Plan / Program
 4. Current year's secretarial record.
 5. Communication with management team.
 6. Audit Review points etc.

Working Paper Review

- It consists of :-
 1. Compliance Recognition
 2. Reaching conclusion
 3. Review Audit Program
 4. Discussion with the Management
 5. Review Audit Procedure
 6. Document Review Notes

Retention

- Working Papers belong to Auditor.
- It retains as per the requirement of law

Identification of the event & Corporate Action

- Following Points consider as a event
 1. Acquisition
 2. Scheme of Arrangement
 3. Revision in Rating
 4. Fraud / Default by KMP or Promoter
 5. Change in Director / KMP
 6. Appointment of share Transfer Agent
 7. Proceedings of meetings
 8. Outcome of Board Meeting etc

Audit Sampling

- It is investigative tool
- In this method, Auditor draws opinion by selecting a sample

Objective

- Gather enough evidence
- Reduce the number of Resources
- Detect any error of frauds.
- Audit sampling importance

Two Forms

Statistical
Auditor do Random
sampling

Non-Statistical
Sample chase on the basis
of 'Auditor's Judgement'

Working Paper Review

- It consists of :-
 1. Compliance Recognition
 2. Reaching conclusion
 3. Review Audit Program
 4. Discussion with the Management
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Sample chase on the basis
of 'Auditor's Judgement'

TESTING METHODS USED DURING AUDIT

A] Inquiry

- It is straight forward method
- Auditor asks questions to the Accountant, Manager and the Key Staff Members

B] Observation

- It is used when there is no documentation
- Auditor observes the Task, Procedure and the Condition
- It is performed during 'On-site visit'

C] Examination of Evidence

- It is used to check 'Manual control are consistently performed & documented'

D] Re-Performance

- It is done when inquiry, observation & physical examination have failed to assure that control is performing effectively
- So, Reset only sample of work

E] Computer Assisted Audit Technique

- It is used to analyze 'Large Volume Data'
- CAAT runs a script over data to find out the Irregularities and Fraudulent Entries

Primary

Tests of Internal control

Purpose

A] Shortening the Audit Process

- Internal control are 'Rules & Procedure' established by company

- Purpose is to check whether Control detecting mis-statement errors or not
- Control effective = control Risk Low [Vice Versa]

B] Providing Additional Audit Evidence

Substantive Checking



➡ It is a Auditing Technique which check error in companies Account / Financial statement

Who does?

1. Companies Internal Audit Staff OR
2. Hired External Auditor [Conduct once at the end of year]

Steps of substantive checking

1. Company make Assertion & Present to Auditor
 - Categories of Assertion :-
 - A] Occurrence or Existence
 - B] Disclosure & Presentation
 - C] Obligation & Rights
 - D] Accuracy or Valuation
 - E] Completeness
2. Auditor Creates a Plan
 - Activities included in Audit Plan :-
 1. Examine physical adjustments & journal entries
 2. Match underlying Accounting Record with companies financial statement
 3. Test different Transactions & Disclosers
3. Auditor shares Audit Result with the Company
 - Share Audit Result with the management of the company
 - Auditor may ask for additional testing

Examples of substantive checking

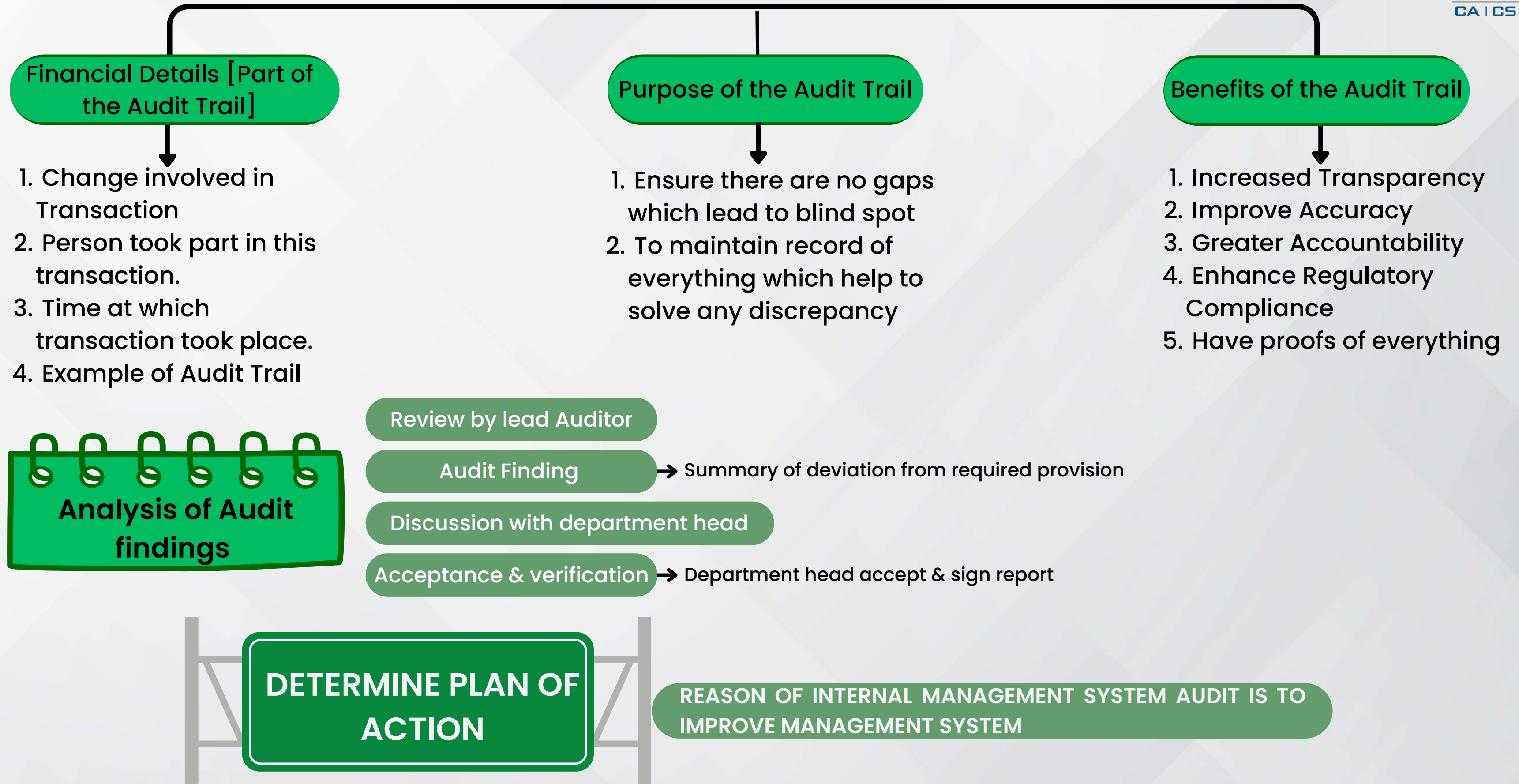
- ➡ Confirm Amount Payable are correct by contacting supplier
- ➡ Confirm Amount Receivable are correct by contacting customer
- ➡ Confirm Bank Balance with the confirmation from bank
- ➡ Confirm loan balances by contacting lenders
- ➡ Recalculate the calculation that were already made by the client, etc



- ➡
 - Audit Trail is useful to trace all the events happened during Audit
 - Rules 3 [Manner of Books of Accounts to be kept in electronic mode] of companies Rules, 2014 state that :-
 - Use only that software which has feature to record Audit trail

How Audit Trail works

1. It have few key details to provide info. about a transaction
2. Every Access to account & record should be tracked
3. If edit made to information then record the name of the person who edit
4. If info. Deleted then record that also



Chapter 11

AUDIT PROCESS & DOCUMENTAION

Auditor Plan Audit to :-

Gather enough evidence for reasonable opinion

CS AS-02

Objectives

- Conduct Audit as per specified Audit Process
- Maintain document that provides :-
 - i) Sufficient Records
 - ii) Evidence that Audit is properly planned

Audit Planning

It means

— Establish & develop overall Audit Process

Purpose

- To carry out audit in efficient & effective way
- To determine 'materiality' of audit
- It should be documented

It Includes

- Identify audit areas
- Risk assessment
- Audit Technique
- Prepare Audit schedule

It includes detailed layout to conduct :-

- Audit Procedure
- Timing
- Sample sizes etc.

Overview of Audit Process

Planning

1. Understand the company
2. Establish audit Objective
3. Determine materiality
4. Assessment of Risk
5. Prepare Audit Plan
6. Prepare detailed audit program

Execution

1. Sampling of transaction
2. Sampling for testing of control
3. Identify events
4. Perform **Control Testing** and **Analytical Procedure**
5. Perform Substantive test
6. Review of working paper
7. Management discuss on draft report

Reporting

1. Understand **Auditee's operation, Legal obligations and Internal control system [ICS]**
2. Assessment of risk
3. Decide approach of the audit concert directing reliance on ICS.
4. Design detail audit procedure based on **Materiality, Value and Nature**
5. Perform Audit
6. Audit conclusion and form opinion

Essentials of Audit Plan

- i] Ensure High quality of audit
- ii] Document the Audit Plan
- iii] Club Inter-related steps
- iv] Finalize the type of Audit Plan
- v] Audit plan check by Experienced independent auditor
- vi] Audit plan should be flexible
- vii] Gather and analyze Facts and reach to conclusion
- viii] Staff should be trained and known to policies and Procedure

Details of Audit Plan

1. Introduction of Audit
2. Description of Audit
 - Regulatory framework of audit
 - Any changes that may affect Audit
3. Objective of the audit
4. Materiality
5. Risk included in Audit
6. Approach of Audit
7. Resources timetable documentation of Audit work

Key points to be kept in mind

- A] Auditor shall adhere to audit plan
- B] Plan maybe modified as per circumstances
- C] Plan documented in Audit file
- D] Approach audit with professional Skepticism [doubtfulness]

Risk Assessment

Risk

- 1. Threat / possibility of Action
- 2. Affect adversely
- 3. Organization's ability to achieve objective

Risk Assessment

- 1. It is a systematic process to evaluate 'Potential Risk'
- 2. CS AS 2 = Auditor Assess the risk during Audit engagement

Audit Risk Assessment

- Auditor Assess risk & categorize it by :-
 1. Consider underlying risk assessed by management
 2. Review policies & procedure to mitigate risk
 3. Have insight into objective key performance indicate, etc

Risk Assessment Process

A] Identify Key Risk Areas

- Gather info. With respect to :-
 1. Financial significance
 2. Directional Change
 3. Past Internal Audits
 4. Survey elected officials
 5. Interviews

C] Prioritize Identified Risk

- Identify and prioritize risk
- Define broad focus on Internal Audit
- Develop Initial Internal Plan

B] Evaluate Risk

- Evaluate & rank the risk
- Prioritize risk based on:-
 1. Control objective
 2. Consider vulnerabilities
 3. Likelihood, etc

D] Develop Internal Audit Plan

- Validate Internal Audit Plan
- Present it to Audit Committee
- Review the plan

Sample of internal Audit Risk
Assessment Questionnaire

- Risk Assessment completed during last year.
- Organization chart.
- A Copy of any report with results of the review.
- What would you do in place to manage this risk. Etc

Audit Checklist

- Should have systematic & comprehensive checklist
- Tool to ensure no compliance point is missed
- It provides structure to audit
- It provides place to record data for future reference
- Audit Team should be trained to use checklist

It Should

- 1] Promote overall planning
- 2] Ensure comprehension
- 3] Consistent Audit Approach
- 4] Avoid duplication of data
- 5] Ensure Audit Scope is being followed

Audit finding classified as under :-

A] Non-Conformity [Major]

B] Non-Conformity [Minor]

C] Opportunity for improvement



Collection & Verification of Audit Evidence

A] Document Security

- Scrutinize variety of documents such as :-
 1. Board Resolution
 2. Agenda etc

B] Testing Interview & Analysis

- Interviewing the staff of Auditee
- Review the process, procedure manuals
- Analyze the compliance

C] Questionnaires

- Seek info. Through issue of a Questionnaire

D] Third Party Confirmation

- Take reply from third party with regard to some particular information

E] Analytical Procedure

- It involves :-
 1. Comparing of data
 2. Investigating Fluctuation in records

Third party confirmation

It is a type of inquiry and obtain info from third party

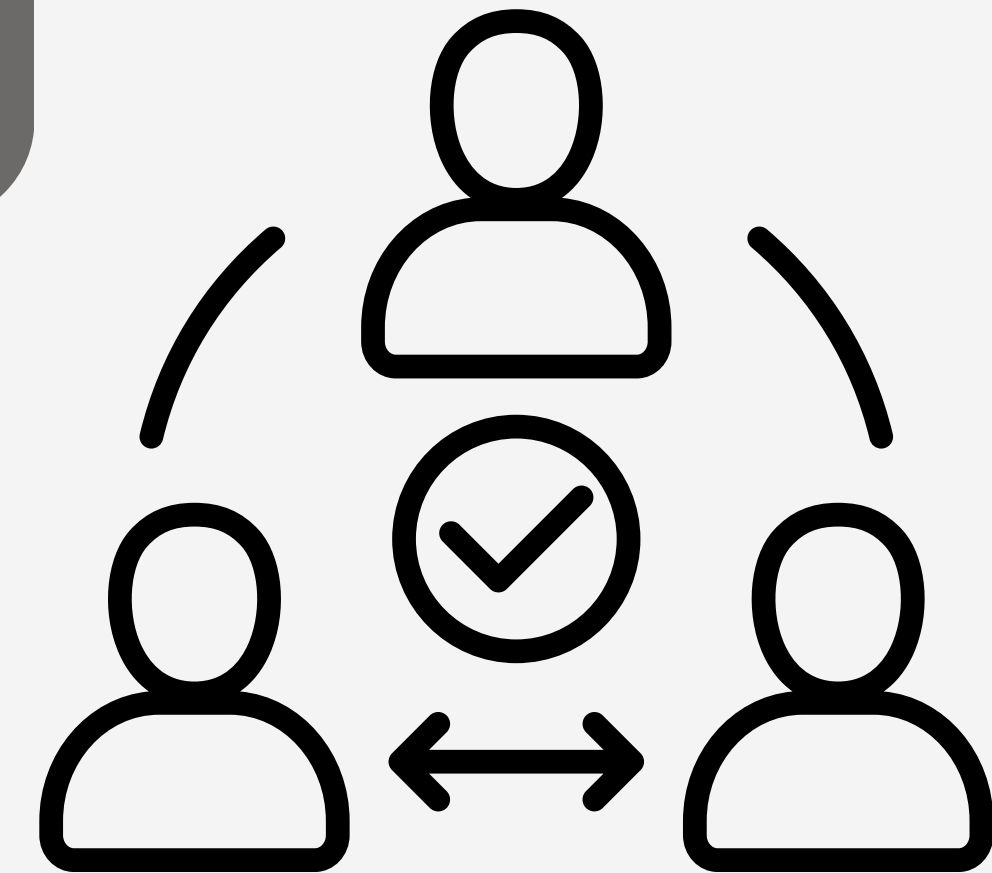
Procedure:-

1. Written request should be made to obtain the info
2. Direct written response to the auditor from third party
3. If difficult to obtain external confirmation , then auditor plan alternative procedure

Analysis of Audit Evidence

- Auditor evaluate Audit Evidence to arrive at the conclusion
- Obtain Competent, Relevant and Reasonable evidence to support auditors judgement
 1. Gather evidence
 2. Evaluate it as for its quality and quantity
 3. Re-assess risk and gather future evidence
- After Evaluation and considering materiality , auditor reach to conclusion
- If not enough evidence, then undertake alternate audit procedure

Case:- **Price Waterhouse & CO. VS SEBI**



Auditor document 'Audit Evidence' in working paper

Document:-

- 'Written / Printed paper bear original, Legal, official, form of something'

Reasons :-

1. Confirm & support Auditor's opinion
2. Increase efficiency & effectiveness of Audit
3. Help to Auditor's professional development
4. Facilitate Planning & supervision
5. Provide evidence of work done for future reference etc

Documentation:-

- 'Act of supplying documents or supporting records'

Public company Accounting oversight Board [PCAOB]

1. Documentation should be prepared in sufficient details to provide clear understanding of conclusion
2. It should take place throughout the Audit
3. Document shall be properly indexed & referenced

Case :- **Re. V. shankar Vs SEBI**

Board Characteristics of Audit Documentation

Completeness & Accuracy

Clarity & Conciseness

Legibility & Neatness

Ease of Reference

Relevance

Provide complete Audit Trail

Categories of Documentation

Static

- Appointment Letter
- Communication with previous Auditor
- Constitutional documents e.g MOA, AOA, etc
- Complete management details
- Copies of Audited financial statement of P. Y. etc

Current

- Audit review points
- Major weakness in ICS
- Confirmation from Auditee
- Communication with 3rd party
- Evidence of Audit planning process, etc

Record keeping & Retention

Auditor establish procedure to retain Audit Documents

It is collated for record within 45 Days from signing Audit Report

Retain For 8 years from signing of Audit Report

Purpose of Audit Documentation

1. Comply Legal requirements
2. To avoid liability
3. To support position in litigation
4. To protect from unnecessary expense
5. To control over discovery

Chapter 12

FORMING AN OPINION & REPORTING [CSAS-03]

Introduction

- Opinion forming is the most crucial part of the Audit
- Auditor form opinion after reviewing affairs of the company

Auditor have to evaluate:-

- 1 Company adequately disclosed all the relevant information
- 2 Followed all procedure or not
- 3 Company is in compliance with applicable law
- 4 Company is consistent with the applicable reporting framework
- 5 Company disclose to users to understand the effect of material transaction



Forms of opinion

A] Unmodified [Clean opinion]

- If :-
 1. There is no material mis-statement
 2. Compliance with Law
 3. Affairs managed as per Reporting framework

B] Modified

- If :-
 1. There is material mis-statement
 2. Non- Compliance with Law
 3. Affairs not as per Reporting framework

Qualified

- Auditor specifically point out Non-compliance

Adverse

- If affairs of the company are not in line

Disclaimer

- Opinion formed when Auditor unable to form opinion due to not being able to access document.

Emphasis on matter

- EOM is included in the Audit Report to make reader aware about the specific instances
- It is the part of :-
 1. Directors Report
 - OR
 2. Management Discussion & Analysis Report

Examples of EOM

- 1 Legal Uncertainty
- 2 Litigation certainty
- 3 Adoption of New Technology
- 4 Major catastrophe had a major effect on the financial position
- 5 Early adoption of accounting standard

Compliances Type

A] In Term of Timeliness

- It implies that comply law in specified period of time

B] In Term of progress

- Comply with the process / procedure given under the Act

Materiality

- It is concept relating to the importance of an amount, Transaction or discrepancy in the record of company
- Materiality is matter of 'Professional Judgement'
- It is threshold above which missing info. have impact on the decision of Auditor
- Materiality is applied at the time of planning and performing the Audit

Principles of Materiality

A] Completeness

- Consider all Audit evidence before giving report
- Auditor should not be selective in using available evidence

B] Objectivity

- Ensure all reports are correct
- Auditor should not allow malpractices in the Audit process

C] Timeliness

- Prepare Audit Report in due time

D] Contradictory process

- If two contradictory facts emerge then use additional evidence till one of the fact eliminates

Process of Forming of opinion

- Auditor consider materiality while forming opinion
- Adhere To :-
 1. Principle of Completeness
 2. Principle of Timeliness
 3. Principle of Contradictory
 4. Principle of Objectivity

Safeguard Against Threats

1. Auditor should behave with **integrity**
2. Within Audit firm there should be strong **peer pressure**
3. Establish strong **Internal control** over Auditor

Threats to Objectivity

Self Interest Threat

- Auditor have financial / Non-financial interest in the company

Advocacy Threat

- If Auditor represent auditee in any case as an advocate

Intimation Threat

- Dominating personality influence the Auditor

Self Review Threat

- Reviewing a previous year's audit assignment personally can threaten the auditor's objectivity.

Familiarity Threat

- If Auditor influenced by the personality of Directors of management

To form opinion Auditor may consider

1. Judgement, Clarification & Conflicting Interpretation
 2. Role of Precedence & Practice
- It is used by Auditor to form opinion as per the 'Historical Perspective'

Limitation

- If the appointing authority imposes limitations after accepting the audit and management refuses to remove the limitations then Auditor seeks alternative options to obtain evidence
- If Auditor does not obtain evidence then they should give 'Disclaimer of Opinion'

Third party opinion

- 'Third Party' = Person not having direct connection with audit but his inputs influence Audit conclusion
- Sometime due to certain factors, Auditor has to rely on Third party opinion
- It is one of the external source to obtain Audit Evidence

Auditor Adhere to following while forming opinion based on Third party Reports

1. Indicate that Third Party opinion is used and the necessity for it
2. Clarify that third party opinion is provided by Auditee
3. Consider Important findings of third party
4. If necessary carry out test to check veracity of the opinion

Auditor should consider, while using opinion

1. Independence of third party
2. Professional competence
3. Scope of third parties work
4. Determine cost effectiveness of work
5. Whether evidences are adequate

Management Representation Letter [MRL]

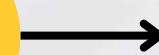
- Auditor take MRL from Auditee on the matters which are incapable of direct verification
- Signed by = MD/CS/Senior management

Opinion obtained by management

- Upon qualifying remarks, management submit their reply
- Auditor rely on their reply after professional judgement
- Auditor perform procedure to evaluate the given info. Is correct are not :-
 1. Test the Accuracy & Completeness of information
 2. Evaluate whether given information Is precise



Exit Conference

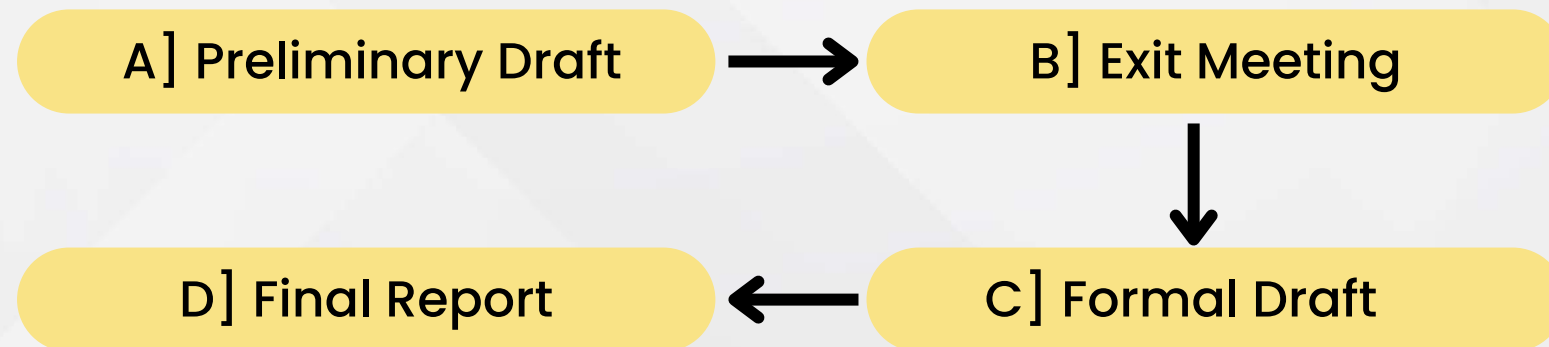


Last meeting between Auditor and Auditee for clarification

Evaluation of Audit Evidence & Forming opinion

- Evidence plays important role in forming opinion
- Impartial Evidence = Reliable

Different stages of communication



Auditor considers while evaluating evidence

1. Reliability of Documentary Evidence [More reliable]
2. Auditor have direct personal knowledge of evidence
3. External sources evidence are more reliable
4. Reliability on visual Evidence
5. Oral Evidence are least reliable
6. Photocopies Less reliable



Share Draft Report with the management

- After Exit meeting Auditor prepares Executive Summary of Audit which include :-
 1. Summary of Auditees operation
 2. Summary of the Regulatory Framework
 3. Summary of the key risk identified
 4. Commentary on Key balances
 5. Summary Audit result procedure
 6. Summary of matter carried forward to Next year Audit, etc

Auditors Responsibility

- Auditor Report include separate section = 'Auditors Responsibility'
- In which the Auditor expresses the opinion About :-
 1. Whether Audit conducted as per 'Accounting standard'
 2. Assurance that document taken from Auditee is free from mis-statement
 3. Auditor should comment on the Information received and Evidence obtained.
 4. Whether Auditee followed applicable Laws, Rules, etc

Format of Report

- 1 Report Prescribed is MR-3
- 2 If information not captured in paragraph then give it as annexure
- 3 Signature block specify Name of Audit Firm and Name of Auditor with PCS. No.
- 4 Mention Date and Place of signing of Report
- 5 In Audit report explain each and every Compliance & Non-Compliance, etc

PRE-REQUISITE OF REPORTING

Accurate

Objective

Clear

Concise

Constructive

Complete

Timely

Signing of Audit Report

A] Individual Auditor

- Name of Auditor
- Membership No
- Certificate of Practice [COP]
- Date & Place

B] Firm of Auditor

- Name of firm
- Membership No. & COP of Partner
- Date & Place of signing



Reporting with qualification

- Qualification stated in **Bold / Italics**
- If Auditor unable to make any opinion then he should state that 'He is unable' to make opinion
- If following limitations then state that :-
 1. Document with another persons custody OR
 2. In Government Custody
- If limitation is material then auditor state that due to absence of info. He is unable to make report
- BOD have to give explanation for such adverse remark in Board Report U/S 134(3) of Co. Act. 2013

Chapter 13

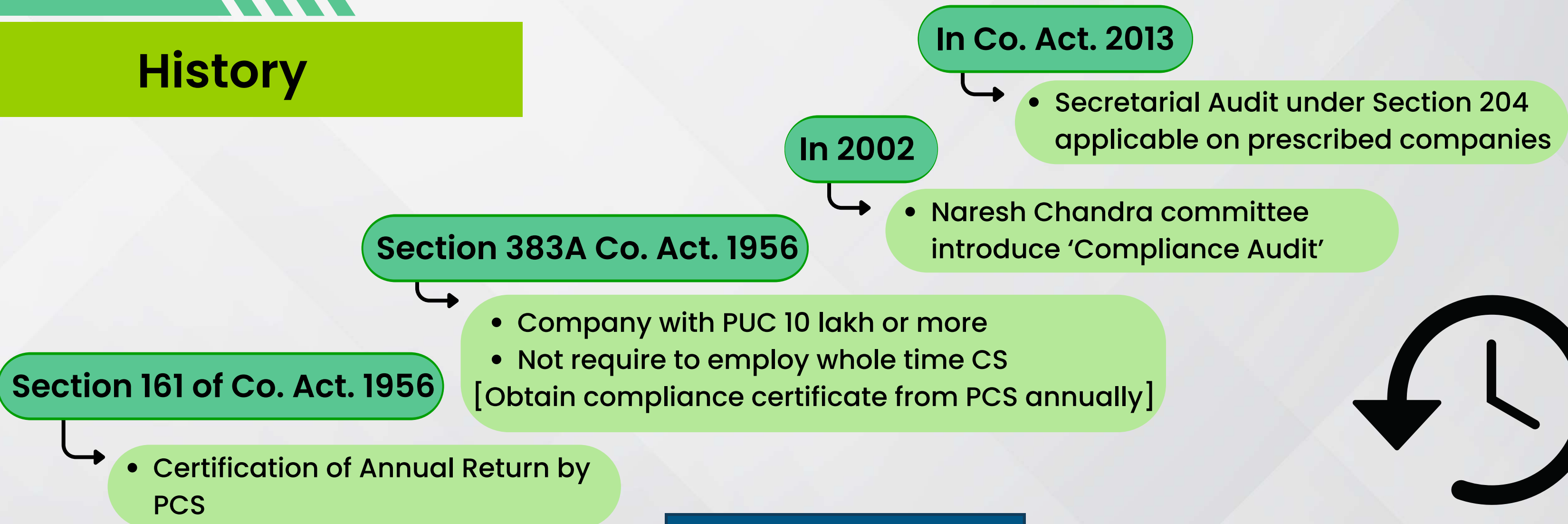
SECRETARIAL AUDIT

Introduction

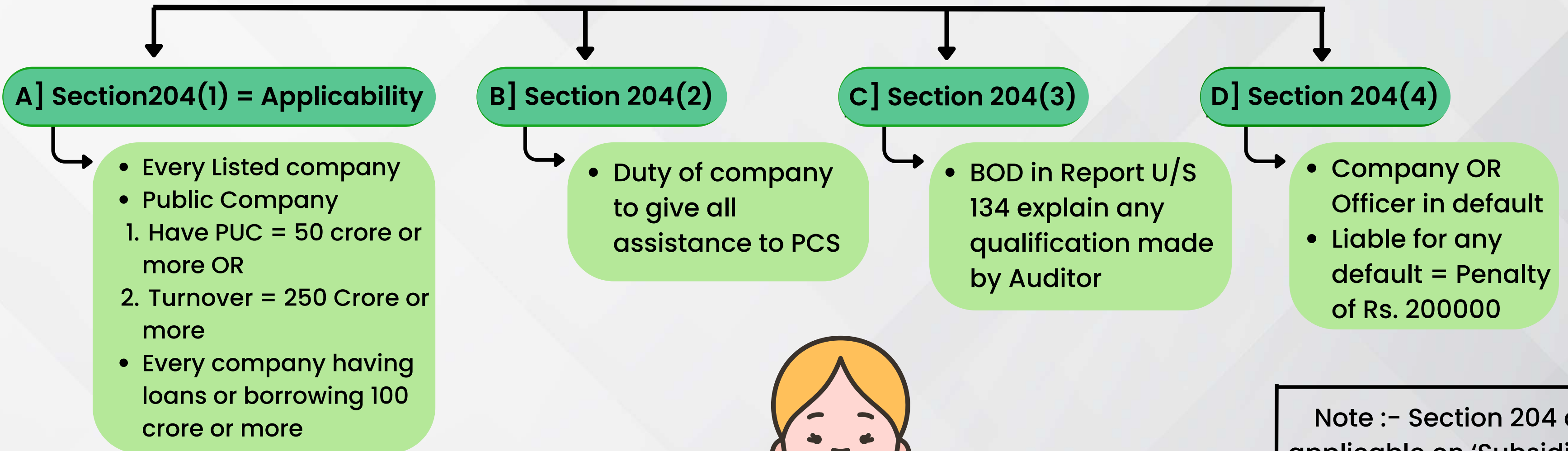
It is the Audit connected with the Non-financial aspects of the company

As per section 204 of Co. Act 2013 only CS in practice [PCS] can do Secretarial Audit

History



Section 204 of Co. Act. 2013



Note :- Section 204 also applicable on 'Subsidiary of public co.' Even though the subsidiary company is private company

Auditing Standard

- CSAS4 deals with secretarial Audit
- CSAS4 does not apply on :-
 1. Annual Secretarial compliance report issued in terms of SEBI
 2. Secretarial Audit done on voluntary basis

Secretarial Audit Under SEBI [LODR], 2015

Recommendations of UDAY KOTAK Committee in 2017 :-

i] Regulation 24A

A] Every Listed Company should undertake Secretarial Audit of its unlisted material subsidiary and annex its report in Annual Report

B] Listed Company submit 'Secretarial Compliance Report' to stock exchange in 60 days from end of financial year

- Exemption from Reg. 24A
 1. Listed company with paid up equity capital upto 10 crore and net worth upto 25 crore
 2. Listed entity listed its specified securities on SME Exchange

Concept

- Secretarial Audit gives assurance to Regulator and Stakeholder
- It is a tool of risk mitigation
- It helps to understand the level of compliance
- Pro-Active Secretarial Audit helps in initiating corrective measures

Advantages

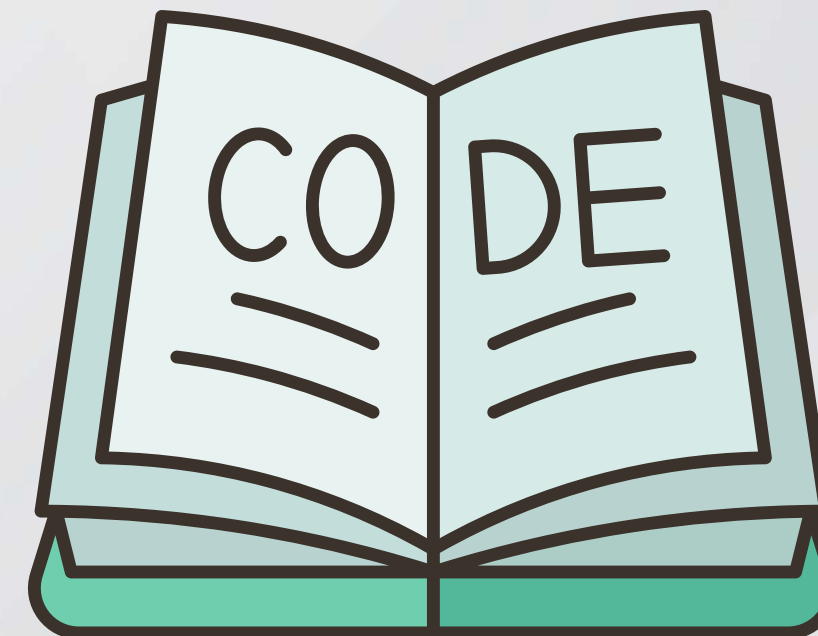
- Better compliance leads to reduction in number of frauds
- Protect the company from unintended Non-compliance
- Install professional Discipline
- Reduce workload of regulator
- Enhance quality of services to investor

Audit Audience

1. Promoters
2. Non-Executive Directors
3. Regulator
4. Investor
5. Other Stakeholders

Code of conduct

- Code of conduct is necessary component standard for individuals
- Principles that govern Conduct :-
 1. Integrity
 2. Independence
 3. Competence
 4. Objectivity
 5. Ethical behavior
 6. Confidentiality



Scope of Secretarial Audit

A] Check Following Acts

1. Companies Act. 2013
2. SEBI Act. 1992
3. Depositors Act. 1996
4. Securities Contract Regulation Act. 1956
5. Foreign Exchange Management Act. 1999

B] Check SEBI Regulation

1. SEBI [LODR], 2015
2. SEBI [IODR], 2018
3. SEBI [SAST], 2011
4. SEBI [PIT], 2015
5. SEBI [Buy Back], 2018

C] Check Secretarial standards

1. S. S. 1 = Board Meeting
2. S. S. 2 = General Meeting

D] Listing Agreement entered by company with stock Exchange

E] Reporting On :-

1. Board Properly constituted or not
2. Board meeting Notice properly given or not
3. Majority decisions carried through while dissenting members view recorded or not
4. Are there adequate system & process in the company

Process for Secretarial Audit

- Appointment of Secretarial Auditor
- Communication to earlier Incumbent
- Acceptance of Audit
- Preliminary Surveys
- Preliminary Meeting
- Finalize Audit Plan
- Testing Interviews & Analysis
- Working Papers
- Audit Summary for Discussion
- Submit secretarial Audit Report in MR-3



Segregation of Applicable specific or General Laws

- Principles :-
 1. Registration with various authorities
 2. Segment such as Manufacturing / Trading / Service etc.
 3. Status of company such as Listed / Unlisted
 4. Key financial parameters
 5. Type / class of company such as public, private company
 6. Agreements governing rights, obligation of shareholders, etc.

Verification of corporate conduct & Compliance of Law

A] Identification of Events

- Auditor identify events took place during Audit by reviewing the website of Auditee Regulator etc

B] Events/Corporate Action

- E.g. :-
 1. Alter charter documents of the company
 2. Change if capital structure
 3. Change in affairs of the company
 4. Change in licensing for the business operation.
 5. Casual Vacancy for director/Auditor etc

C] Identify Corporate action from

- Financial Statement
- Agenda / Notes of Agenda
- Minutes of meeting
- Reporting to Regulators
- Annual Report etc

D] Verification

- Verify from :-
 1. Auditees Record / Database
 2. Checklist
 3. Verify Based on the info. Gathered by Auditor etc

Board Composition

A] Verify Optimum Combination

- Section 149 of co. Act. 2013
- Company should have :-
 1. One Resident Director
 2. Independent Director
- Listed Co. 1/3 of Total Director
- Public Co. As many Prescribed
- 3. Women Director in :-
 - Listed Company
 - Other Public Company have
 - i] PUC 100 crore or more OR
 - ii] Turnover 300 crore or more
- 4. Top 1000 company should have 1 Independent women director
- 5. Top 2000 Co. = At least 6 Directors

B] Verify Disqualification of Director

- Section 164 of Co. Act. 2013 State circumstances for Disqualification

C] Verify constitution of committees

- As Per :-
 1. Sec 177 & 178 of Co. Act. 2013
 2. Reg. 18-21 of SEBI [LODR] 2015



Board Size as per Proxy Guidelines

- Board Size
 1. LIAS
 - 6 to 15 members
 - Guideline align with 'KOTAK Committee' threshold
 2. In Govern
 - 7 to 15 members
 3. SES
 - 6 to 15 members
 - Company provides rational if size is out of this

Board Process

- Section 118(10) = Mandate every co. to observe S.S. 01 for Board meeting
- Board Process may include :-
 1. Meeting of Board & Committee
 2. Meeting of Member
 3. Board Performance Evaluation & Training
 4. Appointment & Resignation of Board Member

Auditor's role to verify Board processes :-

- Auditor Verifies :-
 1. Notices
 2. Minutes
 3. Supporting Record
 4. Agenda, etc.
 5. Company complies with manuals or not
 6. If Transparent, Ethical and Responsible is being followed

System & Process

- System
It is the core element, company management implements in its business
- Process
It is the thing which company management do in order to system work more effectively
- Auditor Assess efficiency of system & processes by :-
 1. Reviewing Records
 2. Assess Compliance Mechanism
 3. Assess Compliance Manual etc

Detection of Fraud

- **Section 143 = Duty of Auditor to Report Fraud**
- Auditor exercise 'Professional Judgement' throughout the Audit to detect fraud
- Auditor Communicate directly to :-
 1. Internal Auditor
 2. Statutory Auditor
 to verify whether there is fraud or not
- If Auditor suspect any commissions of fraud then he try to collect further evidence

Transactions which may involve fraud

1. RPT
2. Insider Trading
3. Inter company transaction
4. IPO Frauds
5. Merger/Amalgamation, etc.



Fraud vs Non-Compliance



- **Fraud**
Section 447 of companies Act 2013
- **Non-compliance**
Failure to comply with any :-
 1. Laws
 2. Rules
 3. Regulation
- Fraud can be done by non-compliant as well as complaint entity

Reporting of Fraud [Section 143]

Amount Involve in Fraud is :-

A] 1 Crore or more

- Auditor report to Audit committee/BOD about
 1. Nature of Fraud
 2. Amount Involved
 3. Parties Involvedwithin 2 working days
- Within 45 days of receiving the auditor's report, they must:
- Send the report to the Central Government.
- If no response is received from the auditor within 15 days, proceed to forward the report to the Central Government along with a notice

B] Upto 1 Crore

- **Detect Fraud**
Immediately upon detecting fraud ensure that the fraud is reported within 2 days.
- **Report to BOD/Audit Committee about:-**
 1. Nature of fraud
 2. Amount involved
 3. Parties involved
- **Board Report Details**
 1. Nature of fraud
 2. Amount involved
 3. Parties Involved
 4. Remedial Action

Case :- Globe Motors Ltd. Vs Mehta Teja Singh

Consequences of failure to report

- **Listed Company** = Fine of 500000 Rupees
- **Others Companies** = Fine of 100000 Rupees

Which auditor is responsible for fraud reporting

Include:

- Statutory
- Secretarial
- Cost
- Branch

Not Include:

- Internal Auditor
- GST Auditor

Events having Major Bearing on Auditor's Affairs

A] Normal

- Future plans of merger/Amalgamation
- Revision in Rating
- Fraud by Promoter/Kmp
- Corporate debt Restructuring etc.

B] Additional Events as per SEBI [LODR]

- Default in Payment of:-
 1. Interest
 2. Preference Dividend
- Any Prohibitory order restrain from transferring Non-Convertible securities
- Action adversely affect interest payment/redemption
- Failure to create charge on Asset
- Events such as Strike, Lock-outs, etc.

Impact of Audit Report

Secretarial Audit :-

1. Helps the investor to take informed investment decision.
2. Helps to ensure compliance of Legal & Procedural requirements.
3. Provide a level of confidence to director & Kmp.
4. Strengthen the goodwill of the company.
5. It is 'Compliance Risk Management Tool.'
6. Helps investor in analysing compliance level of companies



Chapter 14

INTERNAL AUDIT & PERFORMANCE AUDIT

Introduction

Internal Audit is an Independent, Objectively Assuring and Consulting Activity which is designed to add value and improve organization's operations
– Institute of Internal Auditor

It Assesses

- Efficiency & Effectiveness of operations
- Integrity of financial and non-financial information
- Safeguarding of assets
- Compliance with laws and regulation

Nature of Internal Audit

- It is a Management Tool
- It is a Continuous Exercise
- It is a Control System
- It is a Risk Management Tool



Companies Act. 2013

Section 138 of Co. Act. 2013

Rule 13 of Co. [Accounts] Rule, 2014

Companies required to appoint Internal Auditor

A] Listed Co.

B] Unlisted Public Co.

1. PUC = 50 Crore or more
OR
2. Outstanding Borrowing = 100 Crore or more
OR
3. Turnover = 200 crore or more
OR
4. Outstanding Deposit = 25 crore or more

C] Private Co.

1. T/O = 200 Crore or more
OR
2. O/S Loan = 100 Crore or more

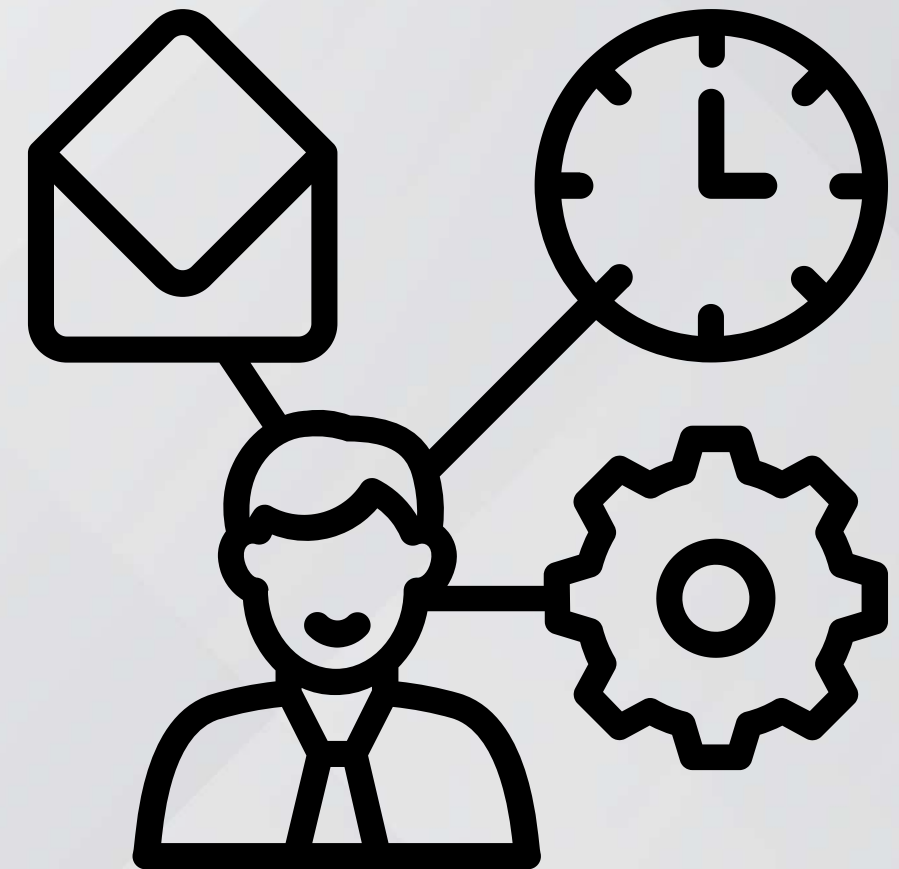
Penal Provision for default in above provision

- Company and Officer in default are punishable under Section 450 [Section 450 described in Chapter 6]

Case :- M/s Indu Nissan oxo Chemical Industries Limited

Role of CS as Internal Audit

- Ensure Proper following of accounting standards
- Ensure Audit of Companies' financial statement & Books of Accounts
- Ensure safe keeping of Records
- Provide advisory on litigation
- Prepare cost structure, etc.



Appointment of Internal Auditor

- Appoint by Board Resolution
- Resolution file to in 30 Days in MGT- 14
- Private Co = Exempted from filing MGT-14

Term of Reference

- It provide clarity about :-
 1. Strategy & Objective
 2. Roles & Responsibility
 3. Scope of work
 4. Accountability to Audit committee
 5. Reporting lines
 6. Accessibility to board



Internal Auditor's skill

A] General skill

- Technical Standard
- IT skills
- Positive Attitude
- Interviewing skill
- Reporting skill

B] Specific skill

- Planning Audit Engagement
- Team building
- Manage Audit engagement
- Knowledge Management

Other Skills

- Analytical thinking skills
- Data mining
- Good business Acumen
- Ability to trace out facts & figures
- Hard working etc.

Objective of Internal Audit

- Verify Accuracy of Accounts
- Detect Error & Fraud
- Review Internal check & control
- Adherence to AS
- Verify Assets & Liabilities
- Review Managerial function



Scope of Internal Audit

A] Review Internal Control System

- Determine ICS is in Consonance with organizational structure
- Reviewed in terms of cost & benefits

B] Reliability of financial & operating info

- Review info. System to evaluate reliability
- Examine accuracy of financials
- Examine reporting done with qualification or not

C] Economical use of Resources

- Examine if there are under utilized or over utilized resources

D] Compliance with Laws, Policies, Plan, Procedure

E] Review organizational structure

F] Accomplished of established goals

G] Review safeguarding of Asset

Internal Audit Core Principles

- Demonstrate Integrity
- Demonstrate Competence
- Independent & Objective exercise
- Align with the strategy
- Quality Demonstration
- Communicates effectively
- Provide Risk based Assurance etc.

Case :- Story of Internal Control & Netflix

Recommended control to detect fraud

Segregation of duties

Background checks

Reinforce Accountability

Rotation of duties

Whistleblower outline

Mandatory vacation

Use of Technology

Treat Employees well

Document Retention

Regular Audits

Code of conduct



Independence of Internal Auditor

- Independence

It is freedom of internal Auditor to carry out responsibility without being biased

- Objectivity

Judgement on Internal Auditor not influenced

CS Muskan Gupta - +91 95320 64262

- Internal Auditor may or may not be employee of the company

- He is responsible to board through Audit Committee

Factors that impair Independence

- Business relation with company
- Employment with Auditees client
- Prior work with Auditees client
- Gift & Hospitality
- Family & personal relationship
- Non Audit services to Audit clients

Case :- Toshiba = Internal Audit failure

Internal Audit Process

1. Establish & Communicate scope of Audit
2. Develop an understanding of business area
3. Describe key risk under the business
4. Identify control procedure to control each risk
5. Develop & execute risk based sampling
6. Report issues to management
7. Follow up on reported findings

Internal Audit Techniques

A] Review Operating Environment

- To Conduct audit effective auditor should understand operations of company
- It include review of Ethical values, Leadership style and Business practices

B] Review controls

- Auditor applies generally accepted A. S. to detect procedure to build controls
- Auditor refer previous years' working paper to determine employees who perform such controls

C] Test Controls

- Check control set up of the organization
- Controls put in a place to prevent error, fraud, etc.

D] Account Details

- Auditor performs test to ensure that financial statements are not materially mis-stated
- Check Account details if firms control are not proper

Evaluation of Internal Audit function by Auditor

- Secretarial Auditor rely upon Internal Audit report after considering :-

A] Organizational status

If Internal Audit is done by external agency then it is more reliable & independent

B] Scope of Audit Function

Auditor considers in how much depth the Internal Audit conducted

C] Technical competence

The qualification and expertise of Internal Auditor is also a factor to consider

D] Due professional care

External Auditor relies on Internal Auditor if he took due professional care

It is checked by working paper, manuals

E] Monitor Internal Control

If ICS is in place then external Auditor can rely

F] Examine financial & operating information

Check whether Internal Auditor [I. A.] Examine financial & operating information

G] Review of operating Activity & compliance with law

H] Risk Management

Whether Risk identification & mitigation measures are taken or not

I] Governance

Whether proper Governance has been followed or not

Role of Internal Audit in control mechanism

- Section 134 = 'Internal Financial Control' means Policies & procedure adopted by company for ensuring efficient conduct of business including Adherence to Companies policies, Safeguarding Asset and Prevention of fraud

Objective

- Ensure Transactions are authorized
- Transaction details are correct
- Assets should be secured by unauthorized access
- Identify the difference between recorded & actual asset



Examine effectiveness of Internal control

- Evaluation of control involve whether control preventing material mis-statement
- Implementation = Control exists & Company using it
- Manuals & Automated element in internal control varies with entity's use of I.T.

Case :- **Worldcom Scam**

Risk Management

- Internal Auditor monitor & evaluate entity's risk management process

Corporate Government

- Internal Audit is one of the 'Four Pillars' of corporate Governance
- Internal Auditor help Audit committee & BOD to perform their function effectively
- **4 pillars**
 1. BOD
 2. Management
 3. External Auditor
 4. Internal Auditor

Case :- **1] SATYAM SCAM**
2] OLYMPUS CORPORATION FRAUD. JAPAN



Objective & Process of Internal Audit Report

Objective

- Share all the significant findings with the Auditee
- Allow management to understand issue
- Leads to improve performance
- Follow up process to monitor progress

Process of Report

- What is wrong?
- Why it is wrong?
- How to correct it?
- What will be done?

Appraisal of Management Decisions

Management of the company is responsible to establish Internal control

Internal Audit has become important management tool for :-

- It is Specialized Service to look into the standard of efficient business operation
- It makes sure Internal control system is effective
- It is an integral part of 'Management by system'
- It ensure compliance of Accounting Procedure etc

Objective of Appraisal

- Whether decision taken by following process
- Whether decision met with organizations objective
- Whether decisions documented fairly or not

STEPS

STEP 1

Whether management decision are well defined

STEP 2

Objective output clearly defined or not

STEP 3

Did management considered cost or not

STEP 4

In case of major decisions, whether check opportunity cost

STEP 5

Whether the selected alternative implemented effectively

STEP 6

Ongoing review of management decision control

Performance Audit Assessment

- Review management's expectation and achievement
- It ensures high standard for Audit Strategy
- Helps organization to align Audit strategy with business strategy
- Key Benchmarks :-
 1. Feedback of Audit findings
 2. Duration of Audit
 3. Accuracy of Audit findings
 4. Value of Audit recommendation
 5. Value added by Internal Audit function



Chapter 15

PEER REVIEW & QUALITY REVIEW

Peer Review

- It is a process used for examining the work performed by peer
- After examining peer reviewer give suggestions to practicing unit for further improvement

OBJECTIVE OF PEER REVIEW →

1. Examination of system and approach of practicing unit
2. Examine whether practicing unit has adequate policies & procedure
3. Promotion of continuing quality improvement

MAIN OBJECTIVES →

1. Confirmation of compliance
2. Corrective Actions
3. Enhancement of quality of professional services
4. Enhanced credibility
5. Trust of clients

Benefits of peer review



It provide comfort to practicing unit that it has adhered to various regulatory requirement



Practicing unit get to know the deficiencies



Enhance credibility of P.U.



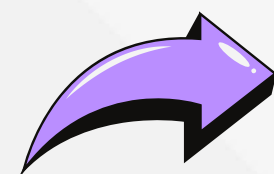
Increase the trust of client on P.U.

Assignments permitted only to peer reviewed practice units

- Secretarial Audit Report [u/s 204 of companies Act. 2013]
- Annual Secretarial compliance [Regulation 24A of SEBI (LODR) Regulation, 2015]
- Certification of Annual Return
- Compliance certificate
- Certificate U/Regulation [40(g) of SEBI (LODR) Reg. 2015]
- Quarterly certificate for Reconciliation of Share Capital [Regulation 76 of SEBI [D. P.] Reg. 2018]
- Internal Audit of Depository participants

Authority to administrate peer review

- Council of ICSI created discharge functions assigned to institute
- Council issued guidelines for = 'Peer Review'

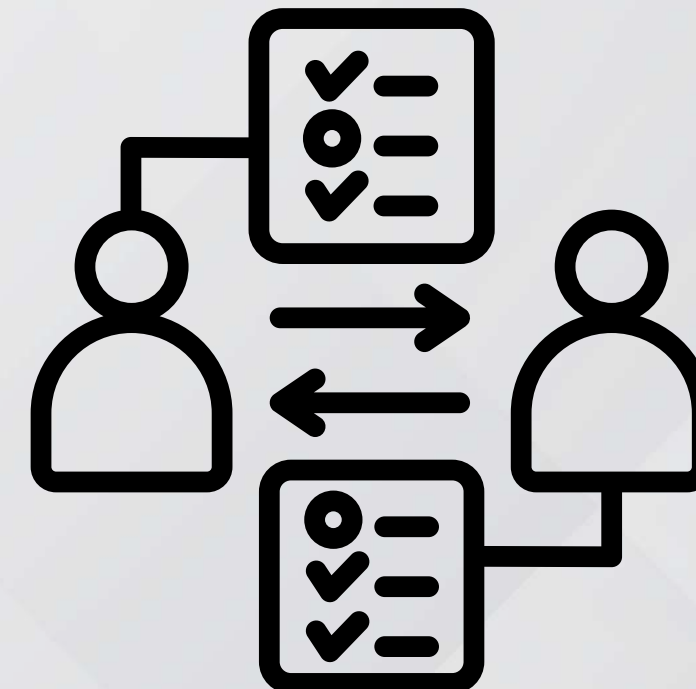


Guidelines

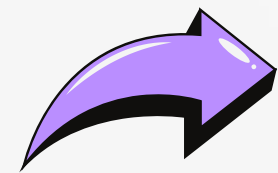
- Establish mechanism to ensure quality of professional services
- Guidelines about statutory power & obligation on parties in peer review
- Prescribe scope & procedure of peer review
- Establish expected conduct of members

Peer Review Board [PRB]

- Council Set up PRB to conduct peer reviews
- Power of PRB :-
 1. To call information from practice unit
 2. Maintain panel of peer reviewers
 3. Define Term of appointment of Reviewers
 4. Issue recommendation to practice unit
 5. Order further peer Review to be carried out
 6. Guide members best practices for peer review etc.



Authority of the Guidelines on Peer Review



**Guidelines
apply on**

Peer review mandate by Govt /Regulators /statutory Body

Peer Review is voluntary

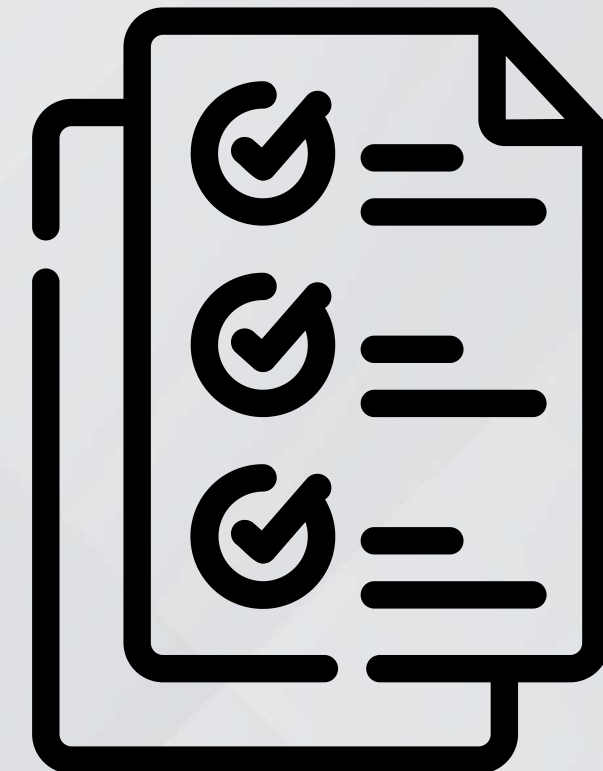
Done on the basis of random selection

Recommended by :-

1. Disciplinary Committee
2. Quality Review Board
3. Council of ICSI

Qualification for Peer Reviewer

1. Member of ICSI for 10 years +
2. Out of 10 years, In Practice for continuous 5 year +
3. Hold Certificate of Practice +
4. Undergone Training program for Peer Reviewer
 - Member shall not have :-
 - A] Disciplinary Action in past 3 year
 - B] Found guilty for professional misconduct
 - C] Convicted for moral Turpitude & punished with imprisonment



Approach of Reviewer

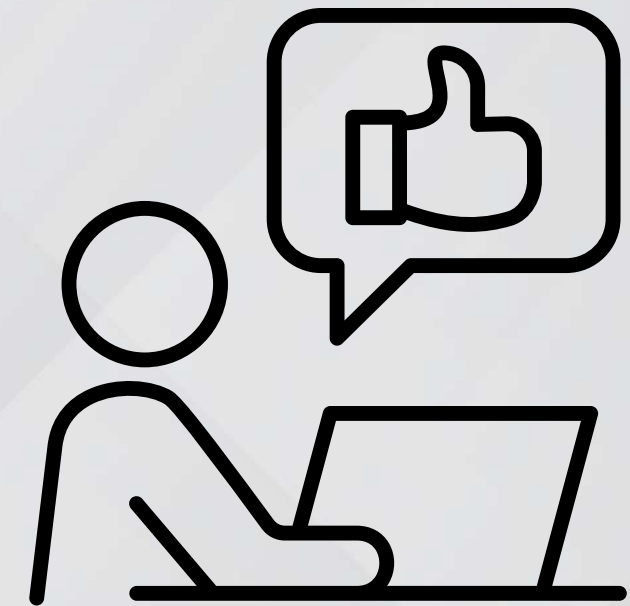
- He should be courteous professional & helpful
- He should appreciate good practice
- Adopt collaborative approach with P.U.
- Provide suggestions & value additions

Pre-Requisites for Reviewers

- He should be :-
- Well known to technical aspects of attestation
- Known to provision of code of conduct
- Knowledge of cases of code of conduct
- Aware of provision of CS Act. 1980. CS Regulation, 1982. Consumer protection Act, etc.
- Good in drafting & English

Review shall focus on

- Comply Guidance on office Administration
 - Quality of Reporting
 - Office system & procedure
 - Training for staff
- [Institute undertake training programmes for Reviewer]
- Peer reviewer empaneled for 5 years.
Then again have to undergo for training



Confidentiality

- Ensure secrecy of info. Attained during audit
 - Not communicate info. To other person
 - Not give possession of document to other person
- [If breach it = Liable u/s 22 of CS Act. 1980]

METHODOLOGY FOLLOWED FOR REVIEWER

- A] Offsite review
- B] Onsite review

Obligation on Practice Unit

- Provide access of necessary documents
- Give explanation/Additional info
- Provide document in legible format
- Allow reviewer to examine inspect, extract documents

VALIDITY



Cost of peer review

- It is borne by practice unit
- Pay within 30 Days of receipt of Invoice

Review Process

A] Preparation



Peer Review Board

- Questionnaire
- Panel of 5 or 10 P.R.
- If not out of above then request to give other state's P. R. Name



- Return Questionnaire in 7 Days



Practice Unit

B] Planning

- On Acceptance, send sample of attestation service to reviewer
- Mutually decide dates of on-site visit in 21 Days from assignment given to reviewer

C] Execution

- On site visit in the office of P. U. in maximum 3 Days
- Initial Meet is to discuss agenda and confirm response of questionnaire
- Compliance Review of Internal control system
- Final sampling of services
- Review by
 1. Compliance Approach
 2. Substantive Approach

Controls

- A] Independence
- B] Professional Skill
- C] Outside consultation
- D] Staff supervision
- E] Office Administration

D] Reporting

- Preliminary Report sent to P.U. for clarification

- Final Report sent to PRB

PRB convinced

Issue peer review certificate

Not convinced

- Reviewer gives recommendation
- Implement in 6 month
- If PRB convince then issue certificate

Office System & Process

Aspect which is examined :-

Document Management system include Filing Retrieval System and Record Storage

Assignment properly carried out or not

Attestation verified by proper Authority or not

Reviewer Reviewed in records to Training

• **Review :-**

1. Trainee maintain Training diary or not
2. Staff Induction process is in place
3. Attend any training program
4. Office has library
5. Overall decor of office is satisfactory

Dispute & Appeal

- If there is dispute between PR and PU then it is referred to PRB in 2 months
- PRB then :-
 1. Dispose it within 6 months
 2. Comply order in 30 days
 3. Communicate it within 15 days
- It is then referred to Council by PRB in 2 months

Quality Review Board

- **Constituted by GCI**
- **Purpose:-**
 1. Standardize practice followed by CS
 2. Enhance service render by CS
- **Section insert in CS[AMM] Act. 2006**

A] 29A

- QRB consists a Chairperson and 4 members out of which 2 are nominated by Council and 2 from CG

B] 29B

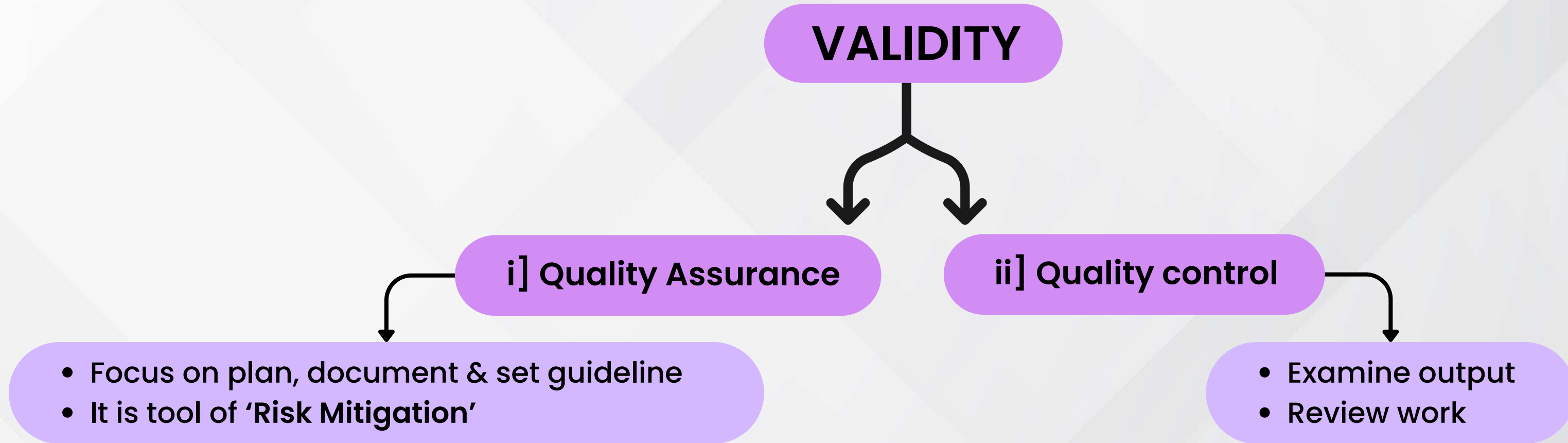
- **Functions of QRB :-**
 1. Recommend council for quality of service
 2. Review quality of service
 3. Guide Member to improve

C] 29C

- Procedure to be followed by Board

D] 29D

- Term of Chairperson & Members as specified
- Expenses of Board borne by council

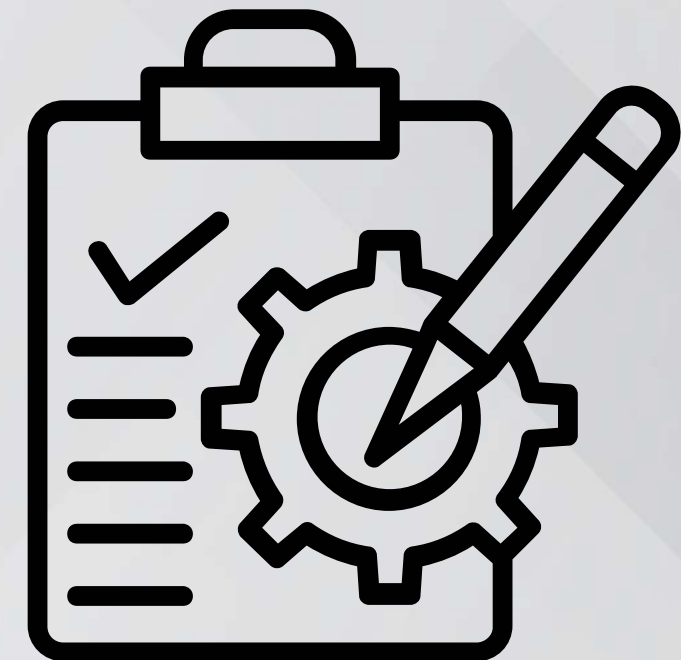


Quality Review

- In this Review QRB Assess :-

1. Compliance
2. Quality control frame work adopted by member
3. Quality of Reporting

- Eligibility of Quality Reviewer (Individual)
 1. FCS +
 2. 15 years experience +
 3. Currently in PracticeOR
 1. PCS complete 5 peer Review
 2. Not found guilty under CS Act 1980 in last 5 years



Process of quality Review

1. QRB select P.U. On selection ask P.U. to send information
2. This information is assigned to Reviewer
3. Reviewer communicate P.U. to discuss aspect as **Date of commence/Complete etc**
4. P.U. and Reviewer fix Terms & Condition
5. Reviewer send **Preliminary Report** to P.U.
6. P.U. send views on this Report
7. Including views make a final Report and send to QRB
8. QRB take actions on the basis of report

Quality Control in Quality Review

A] Expectation from P.U.

1. **Leadership Requirement**
 - Recommended Features :-
 - Communicate quality control policy to all team member
 - Procedure that everyone can express view on quality control (Q.C.)
 - Establish responsibility of partner in Q. C.
 - Document Q. C. policies

B] Responsibility of the quality Reviewer

1. **Quality of Review Affected by :-**
 - Knowledge & Experience of reviewer
 - Time Devotion
 - Composition of Team
 - Scope of work
 - Monitor supervision of Review Team

2. Ethical Requirement

- Independence
- Familiarity Threat
- Integrity
- Objectivity
- Professional competences & due care
- Confidentiality
- Professional conduct
- Technical standard

3. Human Resource

4. Performance Evaluation

5. Monitoring

2. Planning

• Well Planned Review :-

Give Attention to important Area.

Identify problem timely

Give Direction to team

• Initial planning include :-

- i] Procedure to accept Assignment
- ii] Evaluate Compliance
- iii] Understand terms of Assignment

• Consider while settling strategy

1. Scope of Review
2. Reporting objective
3. Significant factors in review
4. Nature, time & extent of Resource

Conduct Quality Review

- Reviewer examine procedure to ensure
 1. Compliance with Regulatory Requirement
 2. Implementation of controls with reference to applicable standard

Reviewer understand engagement by :-

- Going through questionnaire
- Obtain knowledge about service render by P.U.

Understanding of P.U. by :-

- Size of practice
- Legal form
- Services offered
- Geographical spread
- Governance structure
- Policies of P.U. etc.

Review Indicate

- Deficiencies in policy, procedure
- Procedure appropriate or not etc.

Event Indicate deficiency

- Non-Compliance
- Inefficient oversight by senior management or system control, etc

Characteristics to Document the finding

- Background information Is available
- Comply ICSI guideline
- Explanation given by P.U.
- Conclusion of Reviewer

Reporting

- Prepare preliminary report for approval by Project Unit (P. U.) within 3 weeks
- Obtain feedback from Project Unit (P.U.)
- Submit final report to Quality Review Board (QRB) within 3 months

Cost

- Reviewer get Rs. 25,000/- per review from QRB
- If review location is beyond 50 km of Residence of Reviewer then other expenses also become reimbursed

Chapter 16

DUE DILIGENCE

- It refers to investigation into the affairs of Target company before its

1. Acquisition
2. Restructuring
3. Fund Raising etc

It is an analysis of :-

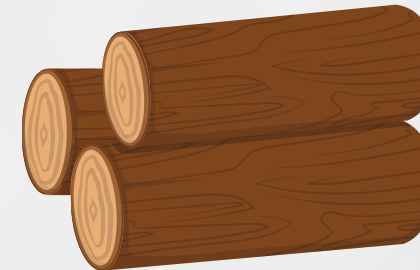
Financial Information



Legal Information



Material Information



Case :- Amazon Due Diligence

Due Diligence

- It has business-oriented approach, Not only accounting approach
- Analysis of info. On the basis of actual fact
- Consider Industry of target company
- Examine Business affairs having significant impact on the business
- Examine past, present, future aspect of the business etc.

Objectives

- Identify significant matters
- Discover Threats & Weaknesses
- Collect material information
- Good investment decision
- Develop shareholders confidence



SWOT Analysis

- SWOT analysis is carried out as a part of Due Diligence
- Due to assessing strength, weakness, opportunity & Threat of Target company, Buyer company can renegotiate the price & can take firm decision



Transactions require D.D.

1. Partnership
2. Merger & Amalgamations
3. Strategic Alliance
4. Business coalition
5. Outsourcing agreement
6. Public Issue etc.

Case :- Phone pay's D. D. on Zest Pay.

Need for Due Diligence

- To confirm that the business is what as it appears
- To reduce risk of past transaction
- To investigate into affairs of the company
- To confirm material facts
- To evaluate legal & financial risk
- To discover liabilities etc.

Scope

To determine Tax structure

To determine final value in investment

To assess commercial feasibility

To assess resource availability

To know about litigations etc.

Case :- **Silicon Valley**

Advantages/Benefits

Analyze who administer, run & own the organization

Examine Company and Market

Research about competitors

Review financial statements

Examine Rise & fall in profit of the company

Case :- **Zee Entertainment & Sony India merger**

Factors kept in mind during Due Diligence

A] Objective & Purpose

- Person doing D.D. should be clear about :-
 1. Expectations
 2. Consider resources
 3. Consider whether Business give chance to put your skill
 4. Learn about Industry

D] Risk Minimization

- Check to minimize risk :-
 1. Promoters Backgrounds
 2. Performance of Management
 3. Business Plan
 4. Infrastructure
 5. Risk Management etc.

B] Plan the schedule

- Plan :-
 1. Steps to be followed
 2. Areas to check
 3. Aspect check in Area
 4. Information request from seller

E] Information from external source

- Take information from :-
 1. Vendor
 2. Customer

C] Negotiation

- Negotiate for time with seller to check crucial information

F] Limit Report with material

- Include only material information

G] Structure the information

- Structure all the information



Stages of D.D.

A] Pre-Diligence

- Sign the Letter of Intent
- Execute Non-Disclosure Agreement
- Company receives checklist of Document & give list to agency as per checklist
- Identify the Issue
- Organize the papers required for Diligence
- Creating a data room
 1. Mark each module of checklist separately
 2. Keep register of who is checking
 3. Overview of placement file
 4. If some issues not reduced then admit it
 5. Introduction to the point person
- During diligence, hospitality should be taken
 - A] Be warm with professional
 - B] Enquire on the D. D. team
 - C] In any mistake happen then admit it & Rectify

B] Due Diligence

- After Diligence, Prepare a report which consists **Executive Summary, Main Body and Appendices**
- **Outcome = Deal :-**
 1. **Breaker** = Criminal Proceeding in company
 2. **Diluter** = Civil proceeding found in company
 3. **Cautioner** = Non-compliance in company
 4. **Maker** = Everything is fine in company

C] Post Diligence

- Rectify Non-compliance found during D. D.



Techniques of D. D. & Risk assessment

A] Evaluate the objective of the plan

- Determine main objective of the project which help to ascertain exact information

B] Know your client

- It is important to know your client so that company can easily assess or manage the risk

C] Examinations of financials

- It helps to assess financial position of the company
- Some of the items inspected are :-
 1. Balance sheet
 2. Future projection
 3. Revenue profit
 4. Debts, etc.

F] Respond to Incident

- Prepare proper plan to respond any incident

E] Actions to control any Risk

- Actions should be taken to minimize the risk
- Plan to minimize risk based on :-
 1. Monitor Risk
 2. Whistle blower Policy
 3. Address Non-Compliant behavior
 4. Put Internal Check

D] Inspection of Document

- Review all the Documents
- Get better understanding of the organization

Types of Due Diligence

A] Legal D. D.

Verify Document

Transactions covered

Scope

i] Copy of MOA & AOA	i] IPO/FPO	i] Company Law
ii] Minutes of Last 3 year Board Meeting	ii] Private equity	ii] Income Tax Law
iii] Minutes of all meeting	iii] Joint venture	iii] Labour Law
iv] Copy all material contract	iv] Merger and Amalgamation	iv] RERA
v] Return filed with ROV	v] Corporate restructuring	v] FEMA Act.
vi] RPT etc.	vi] Commercial Agreement	vi] I.P. Law, etc.
-	vii] Leveraged Buy out, etc.	-

B] D.D. in Merger & Amalgamation

Stage	Buyer	Seller
i] Preparation	• M&A Strategy • Prepare list of potential seller • Appoint Advisor • Short List • D.D.	• Structure Business Plan • List of potential buyer • Appoint Advisor • Short List
ii] Pre-Diligence	• Approach & Negotiate Target • Execute NDA	• Approach & Negotiate Buyer • Sign NDA • Create Data Room
iii] Due-Diligence	• Inspect Data Room • Analyze Document • Evaluate Risk & Return • Structure Term	• Assist in Data Room • Set Deadlines for offer
iv] Negotiation	• Negotiate & make final offer	• Select Best offer • Negotiate
v] Post-Diligence	• Integration & culture Adjustment	• Terminate Data room • Exchange ownership

Due Diligence under :-

A] Takeover

- Regulated by SEBI[SAST], 2011
- D.D. help company to avoid tragic end after takeover
- D.D. help buyer or seller to take decision
- D.D. give overall view of Target company
- D.D. conduct in following
 1. Financial
 2. Legal
 3. Social
 4. Tax, etc.

B] Issue of securities

- Issue regulated by :-
 1. SEBI [ICDR] Regulation, 2018
 2. SEBI [LODR] Regulation, 2015
- D.D. imported from :-
 - i] Legal & ii] Reputational stand Point
- D.D. help in understand material fact & help to avoid liability

D] Environment Law

- Important Statutes :-
 1. National Green Tribunal Act. 2010
 2. Environment Protection Act
 3. Wildlife Protection Act
 4. Forest conservation Act
- Review Environment permits, Correspondence with Regulators and Environment Liability

C] I.P. Law

- Objective is to know Target company's I. P. rights
- Check :-
 1. Schedule & Application of Patent, Copyright, Trademark, etc.
 2. Pending clearance
 3. Details of International I.P. etc.

E] Labour Law

- Statutes :-
 1. Payment of wages Act, 1936
 2. Minimum wages Act, 1948
 3. Factories Act, 1948
 4. Payment of Bonus Act, 1965
 5. Payment of Gratuity Act, 1972. etc
- Review Labour Law Agreements, Employment Contract, Maintenance of Records and Legal Declarations etc.

F] Competition Law

- D.D. under following heads :-
 1. D.D. of various Agreement
 2. D.D. of Dominance
 3. D.D. on Combination
- **Primary Component**
 1. Examine selected co. document
 2. Interview with personals
 3. Suggest competition law compliance programme
 4. How to go about process of D.D.

I] Other Business Law

- **Compliance Under :-**
 1. Pollution Control Law
 2. FEMA
 3. Insurance Law
 4. Real Estate Law
 5. Labour Law
 6. International Business Law

G] FEMA

- **Covered under FEMA D.D. :-**
 1. Capital Account Transaction
 2. Current Account
 3. Currency Transaction
 4. FDI Policy
 5. Liaison office, Branch office, etc.

J] Financial

- It checks financials showed in memorandum is correct or not
- **Focus Areas :-**
 1. Quality of Earning
 2. Quality of Assets
 3. Net Debts
 4. Potential Liabilities
 5. Related Party Transaction
 6. Separation / structuring

H] FCRA

- NGO can't receive funds from foreign until registered in FCRA
- Requirement under FCRA is submission of 'Annual Return'
- Submit Annual Return in 9 months

K] Bank D.D. objective

1. Verification of details of promoter / director
2. Compliances by the company
3. Knowing defaulting status of directors
4. Examine charges on the Assets of the company, etc.

L] Ethical D.D.

- It measures Ethical character of the company
- Help to know the partner is ethically viable or not
- Ethical D. D. can add depth into the target company

M] Strategic D.D.

- It checks strategic rational behind a proposed transaction
- It determines how much **adequate, realistic and attainable** is deal's value

N] Operational D.D.

- It diagnoses organization's historical & current operational structure
- **Benefits :-**
 1. Uncover aspect on operational weakness
 2. Verifies facilities owned by target company
 3. Verify cost buyer going to incur

O] Human Resource D.D. element

- List of employees & their salary
- Employment contracts
- Analysis of current employees
- Leaves Policy
- Employee Benefit scheme
- ESOP scheme
- Cultural issues etc

All the *Best!*

Highest Rankers Once Again



Proud of You!



Muskan is a graduate from ILS Law College, Pune. She Qualified as a Company Secretary at the age of 21 with AIR 15 in Foundation Programme. She has completed her masters in Constitutional Laws from Bhartiya Vidyapeeth, Pune.

She has worked with esteemed lawyrs and firms and has always shown great interest in subjects like CrPc, CPC, Constitution of India and Corporate Laws.

She has authored and published research papers in the field of Intellectual Property Rights, Cyber Law, Corporate Laws, etc.

She has an inherent passion for teaching and firmly believes - "Keep working hard, until you are insanly proud of yourself"