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COMPLIANCE MANAGEMENT, AUDIT & DUE DILIGENCE

CS ANOOP JAIN

THE CORPORATE LAW WIZARD

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LIST OF IMPORTANT FORM UNDER COMPANIES ACT, 2013

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PART- A 40 MARKS

COMPLIANCE MANAGEMENT

CHAPTER-1 COMPLIANCE MANAGEMENT & FRAMEWORK

1. A compliance management system is the method by which corporate manage the entire compliance process. It includes the
   - Compliance program
   - Compliance audit
   - Compliance report etc.

In other words it is called compliance solution.

2. Compliance with law and regulation must be managed as an integral part of any corporate strategy. The board of directors and management must recognize the scope and implications of laws and regulations that apply to the company.

NEED FOR COMPLIANCE

1. Corporate accountability is on everyone's mind today. Business executive face significant pressure to comply with multiple regulations.
2. Increased liability and regulatory oversight has amplified risk to appoint where it demands continuous evaluation of compliance management systems.
3. Furthermore, the multiplication of compliance requirements that organizations face increases the risk of non-compliance, which may have potential civil and criminal penalties.
4. This focused attention on compliances with spirit and details of laws **casts upon Company Secretaries an onerous responsibility** to guide the Corporates in this direction.
5. To enable companies to put in place an effective Compliance Management System, company secretaries should ensure that companies

• Adhere to necessary industry and government regulations,
• Change business processes according to legislative change,
• Realign resources to meet compliance deadlines,
• React quickly and cost-effectively if regulations change.

SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT

1. Better compliance of the law
2. Real time status of legal/statutory compliances
3. Safety valve against unintended non compliances/ prosecutions, etc.
4. Cost savings by avoiding penalties/fines and minimizing litigation

5. Better brand image and positioning of the company in the market
6. Enhanced credibility/creditworthiness that only a law abiding company can command
7. Goodwill among the shareholders, investors, and stakeholders.
8. Recognition as Good corporate citizen.

Benefits of Compliance with the requirements of law

1. Companies that go the extra mile with their compliance programs lay the foundation for the control environment.
2. Companies with effective compliance management programme are more likely to avoid stiff personal penalties, both monetary and imprisonment.
3. Companies that embed positive ethics and effective compliance management programme deep within their culture often enjoy healthy returns through employee and customer loyalty and public respect for their brand, both of which can translate into stronger market capitalization and shareholder returns.

Risk of Non-compliance

1. Cessation of business activities
2. Civil action by the authorities
3. Punitive action resulting in fines against the company/officials
4. Imprisonment of the errant officials
5. Public embarrassment
6. Damage to the reputation of the company and its employees
7. Attachment of bank accounts.

SCOPE OF CORPORATE COMPLIANCE MANAGEMENT (CCM)

CCM INCLUDE COMPLIANCE WITH THE FOLLOWING LAW

Pollution/Environment related Laws

- Air (Prevention and Control of Pollution) Act, 1981
- Water (Prevention and Control of Pollution) Act, 1974
- Water (Prevention and Control of Pollution) Cess Act, 1974
- Environment Protection Act, 1986

Corporate & Economic Laws

- Companies Act, 2013 and the Rules and Regulations framed there under,
- Secretarial Standards/Accounting Standards/Cost Accounting Standards issued by ICSI/ICAI/ICMAI, respectively.
- Foreign Exchange Management Act, 1999
- Foreign Contribution (Regulation) Act, 2010.
- Competition Act. 2002.

Fiscal Laws

- Income Tax Act, 1961
- Central Excise Act, 1944
- Customs Act, 1962
- Wealth Tax Act, 1957
- Central Sales Tax/State Sales Tax/VAT
- Service Tax.

Labour Laws

- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Employees' Provident Funds and (Misc. Provisions) Act, 1952
- Employees' State Insurance Act, 1948
- Factories Act, 1948
- Employees' Compensation Act, 1923

Securities Laws

- SEBI Act, 1992
- Securities (Contracts) Regulation Act, 1956 and rules made there under
- Various rules, regulations guidelines and circulars issued by SEBI
- Provisions of Listing Agreement
- Depositories Act, 1996

Commercial Laws

- Indian Contract Act, 1872
- Transfer of Property Act, 1882
- Negotiable Instruments Act, 1881

ESTABLISHMENT OF COMPLIANCE MANAGEMENT FRAMEWORK

1. *Compliance Identification*

This process involves the identification of compliances under various legislations applicable to the company, in consultation with the functional heads. The legal team has to identify the legislations applicable to the company and identify the compliances that are required under each legislation or rules and regulations made there under.

↓

2. *Compliance Ownership/*Compliance chart

The next important aspect of compliance management is ownership. The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner.

↓

3. *Compliance Awareness*

The next important step in establishing a legal compliance Management is creation of awareness of the various Legal Compliances amongst those responsible. Many a times compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important.

↓

4. *Compliance Reporting*

Compliances or non-compliances should be communicated to the Concerned. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person, Ex. Automated escalation emails in case of non compliance

PROCESS OF CORPORATE COMPLIANCE REPORTING (CCR)

A brief process of the CCR mechanism is as under -

1. Functional heads for the reporting of various laws have to be identified. For example the Company Secretary would be the functional head for reporting of company law, listing regulations and commercial laws. Similarly, the head of the Personnel Department could report the compliance of labour and industrial laws and the fiscal law compliance would be the domain of head of the finance/accounts departments.
2. Each of the functional heads may collect and classify the relevant information from the various units/locations pertaining to their department and consolidate them in the form of a report.
3. The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/non-compliances, as already circulated to the functional heads. Each of

	the functional heads should forward their respective compliance reports to the Company Secretary/Managing Director.
4.	The Company Secretary would then brief the Managing Director and with suitable inputs from the Company Secretary, the Managing Director would consolidate and present, under his signature, a comprehensive CCR to the Board for its information, advice and noting. The whole process of CCR is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

Role of Information Technology in Compliance Management Systems Through Web Based Compliance Systems

1. A critical component of an effective compliance program is the ability to monitor and audit compliance in a "real time manner." Yet, as companies cross geographical and industry boundaries, it is becoming harder to perform this role in the **traditional manner**. As a result, companies are increasingly seeking technology solutions.

2. Information Technology can play an effective role in implementation of a Corporate Compliance Management Programme across various departments of an organization in terms of real-time compliance reminders, generation of reports, sending warning signals, generation of compliance calendar etc.

3. Many companies are introducing comprehensive web-based compliance systems that links various offices/units for better co-ordination and continued compliance.

4. Web-based compliance software are available industry-wise and tailor made compliance software can also be made according to company specifications which has to be updated on continuous basis.

CATEGORIES OF COMPLIANCES

THREE CATEGORIES OF COMPLIANCES

APPARENT COMPLIANCE

It is a disguise form of non-compliance, which is worse than a non-compliance. The classic example for Apparent Compliances are generating documents such as notice, agenda, minutes on papers for board and general meeting which are not actually held.

ADEQUATE COMPLIANCE

It is compliance in letters. The aspects specified in law are complied in letters, without getting into the spirit of the law.

ABSOLUTE COMPLIANCES

It is in line with the spirit and intent of the law. A typical example in this regard is demonstrating shareholder democracy as prescribed by law. When a company complies with law in spirit it gains public confidence as well.

SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT SYSTEM

The compliance system and processes in a company are dependent mainly on the following factors

a) Nature of business
b) Geographical domain of its area of operation(s).
c) Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed.
d) Jurisdictions in which it operates.
e) Whether the company is a listed company or not.
f) Regulatory authority(ies) in respect of its business operations.
g) Nature of the company viz., private, public, government company, etc.

Based on the above the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company. For example, a multi-product / multi operation company is supposed to comply all the applicable corporate laws in addition to regulatory framework applicable at products/operations.

ROLE OF COMPANY SECRETARIES IN COMPLIANCE MANAGEMENT

1. A Company Secretary is the 'Compliance Manager' of the company. It is he who ensures that the company is in total compliance with all regulatory provisions.

2. Corporate disclosures, which play a vital role in enhancing corporate valuation, is the forte of a Company Secretary.

3. These disclosures can be classified into statutory disclosures, non-statutory disclosures, specifies disclosures and continuous disclosures.

4. A Company Secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

Systems Approach to compliance management

A well-designed compliance management programme has abilities to perform the following key functions across the enterprise:

Compliance Dashboard:

The compliance programme must provide a single enterprise-wide dashboard for all users to track and trend compliance events. All compliance events should be easily viewed interactively through the enterprise compliance dashboard. External auditors, internal auditors, compliance officers can use the dashboards to make decisions on the compliance status of the organization.

Policy and Procedure Management:

A well-designed document management system forms the basis of managing the entire lifecycle of policies and procedures within an enterprise. Ensuring that these policies and procedures are in conformity with the ever-changing rules and regulations is a critical requirement. The creation, review, approval and release process of the policy documents and SOPs (Standard Operating Procedures) should be driven by collaborative tools that provide core document management functionality.

Event Management:
The compliance management system must have ability to capture and track events, cases and incidents across the extended enterprise. Compliance officers, call center personnel, IT departments, QA personnel, ethics hotline should be able to log in any adverse event across the enterprise, upon which the necessary corrective and preventive actions are initiated.

Rules and Regulations:
A well-designed compliance management solution must offer capabilities for organization to continuously stay in sync with changing rules and regulations. As soon as there are regulatory changes, the various departments should be notified proactively through "email based" collaboration. This process critically enables the organization to dynamically change their policies and procedures in adherence to the rules and regulations. While tracking a single regulation may be manually feasible, it becomes an error-prone task to track all local, state, and central regulations including those taking place across the globe. A well-designed Compliance management programme offers up-to-date regulatory alerts across the enterprise.

Audit Management:
Audits have now become part of the enterprise core infrastructure. Internal audits, financial audits, external audits, vendor audits must be facilitated through a real-time system. Audits are no more an annual activity and corporations offer appropriate audit capabilities. Appropriate evidence of internal audits becomes critical in defending compliance to regulations.

Quality Management:
Most organizations have internal operational, plant-level or departmental quality initiatives to industry mandates like Six-sigma or ISO 9000. A well-designed compliance management program incorporates and supports ongoing quality initiatives. Most quality practitioners agree that compliance and quality are two sides of the same coin. Therefore, it is critical to ensure that compliance management solution offers support for enterprise-wide quality initiatives

Compliance management software/TOOL

Compliance management software is a tool that helps organizations comply with internal policies, regulatory and legal requirements, and industry standards to eliminate non-compliance risks. You can use the tool to: Automate compliance-related tasks and workflows. Address risk management issues

The objectives of Compliance Management Tool with respect to digitization, automation and compliances are:

Digitization

1) Robust compliance tool replaces spreadsheets and manual processes
2) Enhances visibility & accountability
3) Reduces the information & knowledge gap

Automation

1. Provides automated legal updates
2. Helps in automated compliance tracker with reminders and escalations
3. Showcase automated workflows, dashboards & reports

Compliances

1. Monitor the activities of the organisation
2. Ensures compliance with all applicable laws
3. Helps to avoid penalties, prosecutions & litigation
4. Helps implement better processes and controls enabled by technology
5. Helps in Audit Management

KINDS OF COMPLIANCE MANAGEMENT TOOL

- All-Purpose Compliance Management Platforms
- Industry-Specific Compliance Management Tools
- GRC Software

All-Purpose Compliance Management Platforms
These compliance Management Platforms can be used in any kind of the organisation but with low level of organisation focused at providing:

Risk remedy
Solving Technical issues
Corporate Governance

Industry-Specific Compliance Management Tools
These tools focus on the compliance of laws and regulations applicable to specific industry like health care industry, manufacturing, financial, etc. It is structured in specialised frameworks that complies with particular regulations and laws.

GRC Software
This software is a general compliance tool which focuses on the following:

Managing the risks
Monitoring the compliance risks
Handling corporate governance tasks
Streamline the compliance workflows and initiatives

BENEFITS OF COMPLAINCE MANAGEMETN TOOLS

• **Reduction in Manual Work:** The management of compliances and requirement in spreadsheet is time consuming and tedious work. Compliance management tools helps in the growth of the business and highlights where the improvements are required. It helps in easy task management and documenting the corrective steps.
• **Streamlining implementation:** With streamlining the implementation of various relevant frameworks, it reduces the compliance efforts. It facilitates the compliance audits and corrective steps.
• **Simplification in Monitoring and reporting**: It auto populates the compliances dates and give alerts pertaining to compliance issues. It helps the responsible persons to ask their subordinates to update the metrics in compliance with regulations and laws.
• **Risk in human errors reduced**: It helps in improving the compliance programs performance and it reduces the risk in human errors. It generates the reports quickly with detection of compliance failures.
• **Builds Organisation Reputation**: The more organisation can maintain compliance, the better its reputation is going to be. This includes both organisational reputation with its customer base and with its employees. The Customers only want to work with trustworthy organizations, which is why a record of compliance will boost its reputation.
• **Creates a Roadmap for Business**: One of the biggest benefits of a compliance management tool is that it shows you where to go. Compliance management tool maps out organisations regulatory requirements and tells where it need to improve. It tells everything Essentially, this "compliance calendar" helps you prioritize what needs to be fixed/resolved and when. This way, it can effectively map out your compliance activities to best drive compliance in the organization.

CASE STUDY

Compliance Management at Bharti Airtel Limited

The Company has in place a robust automated Compliance Framework based on the global inventory of all applicable laws and compliance obligations, which are regularly monitored and updated basis the changing requirements of law. Proactive automated alerts are sent to compliance owners to ensure compliance within stipulated timelines. The compliance owners certify the compliance status which is reviewed by compliance approvers and a consolidated dashboard is presented to the respective Business Leaders and the Managing Director & CEO. A certificate of compliance of all applicable laws and regulations along with exceptions report and mitigation plan, if any, is placed before the Audit Committee and Board of Directors on a quarterly basis. Additionally, the Company has centralised automated tool in place viz. Notice Management System to regularly monitor and update the legal notices and court cases.

Compliance Management -Maruti Suzuki Limited

- To ensure compliance with increasing regulatory requirements and enforcement, the Company has established systems and controls to continually ensure zero non-compliance with the law.

A compliance certificate is submitted to the Board on a quarterly basis. During the reporting period, over 3,500 applicable compliances were monitored through an electronic system and 78 compliance health checks were done covering all facilities. The tracking mechanism was enhanced to manage compliances more efficiently and productively. There was no significant non-compliance with applicable laws and regulations during the year. The Company observes an annual 'Compliance Month' reinforcing its commitment to doing business with compliance and integrity. Over the years, the Company has continued to enhance its compliance programme - from meeting statutory obligations to now being determined to excel through compliance and

- leveraging it as a competitive advantage for the business. In FY 2020-21, Compliance Month was organized virtually on the theme 'Being Compliant in the New Normal'. The event comprised panel discussions, training programmes and external speaker series covering topics such as increased relevance of privacy and cyber security, changing face of enterprise risk, compliance, corporate governance and learnings from the pandemic. As a first, the Company's Board members participated in the event along with senior leadership and shared their valuable thoughts on managing enterprise risk and compliance, especially in the face of the unprecedented pandemic situation. These sessions benefitted over 4,000 attendees.

SOME IMPORTANT QUESTIONS

1. Corporate laws are core competence areas of a Company Secretary and corporate compliance management broadly requires complete compliance of these laws. Comment.

Corporate laws are core competence areas of a company secretary and corporate compliance management broadly requires complete compliance of these laws which include.

a. Companies Act, 2013 and various rules and regulations framed there under.
b. MCA 21 requirements and procedures
c. Secretarial standards/Accounting Standards/Cost Accounting Standards issued by **ICSI/ICAI/ICWAI** respectively.
d. Foreign Exchange Management Act, 1999
e. Competition Act, 2002
f. Foreign Contribution Regulation Act, 1976
g. Intellectual property Laws
h. Prevention of Money Laundering Act, 2007
i. Micro Small and Medium Enterprises Development Act, 2006
j. Essential Commodities Act, 1955 etc.

2. Compliance with the requirements of law through a compliance management programme can produce positive results at several levels. Comment

Compliance with the requirement of law through a compliance management programme can produce positive results at several levels:

a. Companies that go the extra mile with their compliance programme lay the foundation for the control environment.
b. Companies with effective compliance management programme are more likely to avoid stiff personal penalties, both monetary and imprisonment.
c. Companies that embed positive ethics and effective compliance management programme deep with their culture often enjoy healthy returns through employee and customer loyalty and public respect for their brand, both of which can translate into stronger market capitalization and shareholders returns.

3. **Compliance solution providers adopt systematic approach for creating or enhancing an ethics and compliance program for companies in this age of information technology and outsourcing. Comment**

Compliance solution providers adopt following approaches for creating or enhancing an ethics and compliance program for companies –

1. Risk/Cultural Assessment
2. Program Design/Update
3. Policies and Procedures
4. Communication and Training and Implementation
5. Ongoing self – Assessment, Monitoring and Reporting

4. In the age of information technology and outsourcing where corporate solutions are available at every step and in respect of every matter, compliance solution providers adopt certain approaches for creating or enhancing an ethics and compliance program for companies. Comment

Compliance solution providers adopt following approaches for creating or enhancing an ethics and compliance program for companies:

1. Risk/Cultural Assessment
2. Program Design/Update
3. Policies and Procedures
4. Communication and Training and Implementation
5. Ongoing self – Assessment, Monitoring and Reporting.

5. Corporate compliance management can add substantial business value only if compliance is done with due diligence. Comment

Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation, which is nothing but due diligence exercise. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future. Compliance with law and regulation must be managed as an integral part of any corporate strategy.

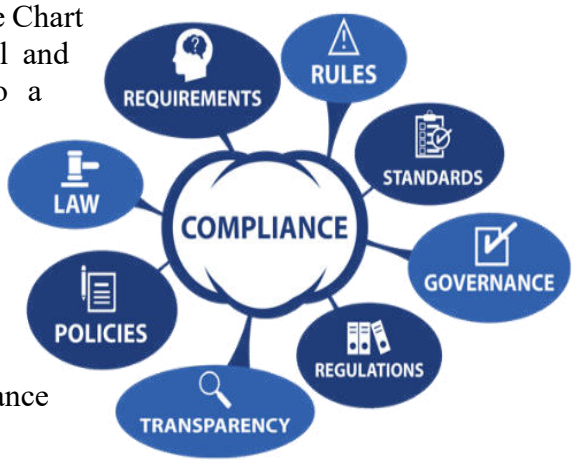
CHAPTER- 2 COMPLIANCE FRAMEWORK

CORPORATE COMPLIANCE FRAMEWORK

The Corporate compliance framework consists of three key components

1. Compliance Chart,
2. Compliance Advisory
3. Compliance Scorecard

The **Compliance Chart** is a vital part of the Framework. The Chart provides an overview of the relevant local, State, Central and international laws, regulations and standards relating to a business' operations.



The **compliance chart** also outlines how Compliance Risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured, the compliance chart help to a business in meeting its compliance obligations towards the customers, regulators, shareholders and Employees because it provides a centralize Compliance information of the company on a single chart.

The compliance chart also reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its Compliance Risks.

PREPARATION OF COMPLIANCE CHART

The compliance chart of the company is prepared after considering the operations and the structure of the company as the compliance requirement for an organization is based on the type of company, activity of the company, Industry, Sector in which the company operates and laws which are specifically applicable to the company.

Broadly, the compliance chart is prepared by considering the following activities:

• Identification of Compliance applicable Laws, Rules and Regulations
• Risk Assessment
• Risk Mitigation (includes Training and Education
• Compliance Monitoring (includes Action Tracking)
• Compliance Reporting (includes Incident Management)

Traditionally, the compliance chart are designed in a different era and with a different purpose keeping in mind, which largely known as an enforcement arm for the legal function of the company. Such Compliance chart left Companies at their own to devices or figure out the specific controls required to address regulatory requirements, which lead to a buildup of labor-intensive control activities with uncertain effectiveness. The role of company secretaries as a compliance manager in a company is now extended to create a compliance framework for translating the regulatory requirements into management actions of the company.

CONTENT OF COMPLIANCE CHART

The **Compliance Chart** of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor, this information includes:

o Reference to the key compliance-related laws, regulations, industry standards and compliance-related policies and standards of the company;
o Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
o Inherent and managed risk level (critical, high, medium, low) of the identified obligations;
o The business processes or people to which the compliance obligations are linked or on which they have an impact;
o Specific Compliance Risk mitigation activities and Compliance Risk tracking and monitoring for managing the compliance obligations;
o To whom and how frequently compliance-related results and findings are reported;
o Clear ownership of the processes, activities and obligations outlined in the Chart

ROLE OF COMPANY SECRETARY IN CREATION OF COMPLIANCE CHART

As the one of the core function of the company Secretary is to formation of the Compliance framework in association with the other functional heads of the company. Although the actual process of compiling the information under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations, a brief process for preparation of the Compliance chart is underlines as follows:

IDENTIFICATION OF APPLICABLE LAW, RULES AND REGULATIONS

The Compliance identification involves the identification of compliances requirement under various Laws applicable to the company, in consultation with the functional heads. The legal team of the company guides the functional heads in identification of the laws applicable to the company and to identify the compliances that are required under each law, rules and regulations applicable on the company. For preparation of such Compliance framework by a company secretary and to identify the Compliance & other requirements, it is necessary form him to get familiar with the business model of the company along with the environmental, health and safety aspects, and data security requirements. Further an periodically review the Compliance requirements in the light of the Regulatory updates is also necessary for the effective compliance management.

The Compliance Chart covering above applicable laws must be kept up to date and should also reflect the compliance obligations and associated risks that arise.

COMPLIANCE RISK ASSESSMENT: BASIS FOR COMPLIANCE MANAGEMENT

The compliance chart of the company oversees and objectively challenges execution, management, control and reporting of risk, however the management of the company has ultimate accountability for the effective control of risks affecting their business and the management should take ownership and responsibility for execution of risk assessments.

Risk assessments should be done according to the changes in the business' profile. Such changes may result because of new laws or regulations, new interpretations of existing laws or regulations, new theories of liability, a new activity of the business or changing social standards.

Risk assessments includes:

a) Identification areas of potential non Compliances
b) Identification areas of potential non Compliances
c) Assessing the outcomes to find the need for training, monitoring, internal controls, detailed reviews and corrective steps

An organisation assesses risks for identification of different types of organisation risks. While identifying inherent risks it need to consider the following risks drivers which can be categorised in the following:

Legal Effect: Non compliances by the organisation can leads to various penalties, fines, imprisonment, debarment, and seizing the products etc. against the organisation and its officers.
Financial Effect: Low share prices of the securities of the organisation, financial losses and low revenues and lowering the trust of the investors are some of its negative effects.
Business Effect: Shutdown of the factories can affect the business operations of the organisation.
Reputational Effect: Loss in customers' confidence in the brand of the organisation, bad media or social discussion can tarnish the reputation of the organisation.
In the risk assessment process, the company identifies the inherent risk of each obligation as critical, high, medium or low. The outcome determines the type of risk mitigation strategy

There are **two types** of risk assessments that can be performed by the company.

1. High level risk assessment
2. detailed risk assessments.

In the **High-Level Risk Assessment**, the risk identification procedures and its assessment and the detailed risk assessment results are required as inputs for high level risk assessment which are facilitated by representatives of Risk Management team. The current and anticipated critical and high Compliance Risks must be included in the high-level risk assessment process. The outcome of the risk assessment is the high-level risk assessment report. Reports from the detailed and high level risk assessments must include key Compliance Risks, with existing and approved risk mitigation activities. Assessment Reports must be discussed and signed off in accordance with the risk management procedure of the company. Risk assessment techniques can be a combination of desk assessments, interviews and/or workshops; however, they should be aligned with risk management standards of the company.

To ensure that risk is properly assessed and mitigated, a **detailed risk assessment** should be undertaken, particularly when further input is needed from support functions (i.e. outside experts) and/or to manage certain current and anticipated critical and high-risk areas.

Compliance Risk Mitigation

Compliance risk mitigation is the process of developing and implementing controls such as standards, policies, procedures and guidelines to prevent or minimise risks arising from compliance obligations. From time to time, Corporate Compliance may issue a policy that must be implemented at the local level. If a Corporate policy does not encompass local obligations of any unit of the company, a local policy to facilitate the effective management of the identified Compliance Risk must be developed. Framework components, policies and procedures must be developed and communicated and should be placed on the prominent places in the organization, so Employees understand their obligations (e.g. how to make a Whistleblower report, complaints handling process, gifts, entertainment and anti-bribery procedures, etc.

All documentation must be easily accessible to Employees. Maintenance of the material can be in the form of a manual, handbook or other physical or electronic means.

Various Risk of Non-compliance

o Cessation of business activities
o Civil action by the authorities
o Punitive action resulting in fines against the company/officials
o Imprisonment of the errant officials
o Public embarrassment
o Damage to the reputation of the company and its employees

- Attachment of bank accounts.

Compliance Monitoring - Ownership/ Allocation

The next important aspect of designing compliance framework is the compliance ownership. The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. Ex: Secretarial Officer /Asst Company Secretary may be primarily responsible and Group Company Secretary's responsibility is secondary.

COMPLIANCE REPORTING

Compliances or non-compliances should be communicated to the concerned authority. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person to reduce the compliance risk. **For example**, Automated escalation emails in case of non-compliance, POP ups for the Compliance Due dates etc. Although the actual process of compliance reporting under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations.

PROCESS OF THE COMPLIANCE REPORTING IS AS FOLLOWS

- Reporting by the Functional heads for which they have the compliance ownership. For instance, the CFO will report on the various Finance, Accounting and Taxation laws, the head of the Personnel Department could report the compliance of labour and industrial laws.
- Each of the functional heads may collect and classify the relevant information from the various units/locations pertaining to their department and consolidate them in the form of a report.
- The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/non-compliances, as already circulated to the functional heads.
- Each of the functional heads will forward their respective compliance reports to the Company Secretary/Managing Director.
- The Company Secretary would then brief the Managing Director and with suitable inputs from the Company Secretary, the Managing Director would consolidate and present, under his signature, a comprehensive Compliance report to the Board for its information, advice and noting.
- The whole process of Compliance Reporting is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

EFFECTIVE COMPLIANCE REPORTING REQUIREMENTS

- Language must be cleared
- Language to be concise
- Must contain an executive summary
- Listing actions to be taken
- Timelines for improving non compliance

- Necessary actions to be taken by the
- management of the organization

PERIODICAL COMPLIANCE MIS

Periodical compliance MIS is a type of reporting that occurs at a pre decided period, at least quarterly, if not monthly. This report contain the status of the various compliances need to be done by the company and any gap in the compliance and other incidents which are need to be reported to Board, Senior Management of the company.

COMPLIANCE RISK - REVIEW AND UPDATION

Compliance Risk monitoring makes it possible for the business to test if its risk mitigation activities are working properly and to identify new or changed risks. The plan for monitoring must be documented and reviewed and, if necessary, updated annually and more frequently based on other Framework activities and monitoring results.

The Compliance risk monitoring plan must include:

• Critical and high Compliance Risks, focusing on inherent and managed risk levels;
• Key Compliance Risk mitigation activities;
• Routine business transactions to which compliance obligations or risks are associated;
• The implementation / embedding of the Framework and all policies issued by the corporate compliance department;
• Compliance with the laws, regulations and standards included in the Chart, including the Company Values and
• The obligations that have been delegated to the Compliance Function (e.g. Complaints Handling, Privacy related obligations).

The plan for monitoring must include:

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Specific Compliance Risk mitigation activities for managing the compliance obligations;
4. The first line tracking (ongoing tracking as part of the normal course of business activities), second line monitoring (health check performed by the Compliance Function) and third line assurance (independent review performed by internal audit) for efficiency and / or effectiveness of first- and second-line activities)
5. Brief description of how tracking and monitoring activities are performed;
6. Frequency of tracking and monitoring activities

The following methodology may be adopted for accessing the compliance mechanism of the company:

Risk/Cultural Assessment: Through employee surveys, interviews, and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated. The basis

of this assessment is to identify gaps between company's current practices and the regulatory requirements.

Program Design/Update: In this approach the review of the guideline documents that outline the reporting structure, communications methods, and other key components of the code of ethics and compliance program is accessed. This encompasses review of all aspects of the compliance program, from grass root policies to structuring board committees that oversee the program.

Policies and Procedures: In this approach of compliance assessment, the company should review, develop or enhance the detailed policies of the program, including issues of financial reporting, antitrust, conflicts of interest, gifts and entertainment, records accuracy and retention, employment, the environment, global business, fraud, political activities, securities, and sexual harassment etc.

Communication, Training, and Implementation: In this stage of Compliance assessment, the Company focuses on the articulation, communication and reinforcement of the various policies and procedure of the company along with the philosophy behind such policies. Further Training programme on such policies help in the adoption of such policies in day-to-day realities and helps in incorporate it into the attitudes and behaviors of the employees of the company.

TRAINING AND IMPLEMENTATION

In Compliance framework, it is most important to create awareness of the various Compliances requirements amongst the individuals responsible for such compliances.

A strong Compliance training and education programme reinforces Company compliance culture. It builds awareness and understanding of Compliance standards, procedures, guidelines and issues. Specifically.

IT SHOULD BUILD AWARENESS AND UNDERSTANDING OF:

• Company Framework, including the four conduct-related integrity risk areas;
• Roles and responsibilities outlined in the policies and Framework;
• Critical and high compliance obligations identified in the Compliance Chart;
• The process for addressing compliance issues and reporting concerns and
• Consequences of failing to meet compliance obligations.

An annual plan for Compliance Risk related training and education must be developed and updated, as necessary, and should indicate the target audience and training delivery method. Compliance Risk related training programme should, to the extent possible, be integrated into the training plans.

The plans for compliance training and education programme must include:

- Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
- The business processes to which the compliance obligations are linked or on which they have an impact;
- Brief description of the training or education activity
- Target audience (refresher for existing Employees, induction for new Employees, or Adhoc when required);
- Frequency of training or education activity.

COMPLIANCE AUDIT

Compliance audits may be planned, performed and reported separately to the Board, senior management or Regulators, the compliance audit is completely different from the audit of financial statements and from performance audits. The compliance audits may be conducted separately on a regular basis, as distinct and clearly-defined audits each related to a specific subject matter.

As per **CAG Auditing Standards**, The Compliance audit is the independent assessment of whether a given subject matter is in compliance with applicable authorities identified as criteria. Compliance audits are carried out by assessing whether activities, financial transactions and information comply in all material respects, with the authorities who govern the audited entity.

COMPLIANCE AUDITING MAY BE CONCERNED WITH

Regularity - adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity
Propriety - observance of the general principles governing sound financial management and the ethical conduct of public officials

ESCLATION AND COMPLIANCE REPORTING

Compliance reporting allows Management and the Compliance function to assess whether Compliance Risks exceed the risk appetite of Company. Compliance Reporting also allows for communication and discussion of potential Compliance Risks. Management and the Compliance officer is responsible for gathering information, and the analyzing and communicating the results so that informed, timely decisions can be made. At least quarterly, reports should be discussed at the risk management committee meeting.

Broadly, there can be two primary types of reporting: **Cyclical Reporting and Incident Reporting.**

CYCLICALREPORTING

At least quarterly basis, the Compliance officer works with management and other risk functions to provide non-financial risk reporting.

INCIDENT REPORTING

The material compliance incidents are reported, which need to be handled through the risk management process.
Material compliance incidents are defined as events that have effect on the company's integrity, damaging company reputation, legal or regulatory sanctions, or financial loss, as a result of a failure (or perceived failure) to comply with applicable compliance related laws, regulations and standards

CASE STUDY

ABC Limited, A BSE limited company has made following cyclical reporting arrangements for compliance activities which includes:

Audit & Risk Management Committee:

Quarterly reports on the performance of the compliance programme will be submitted to the Audit and Risk Management Committee. These reports will include a high-level summary of activities by all functions undertaking significant compliance related activities.

Separate reports will also be submitted to the Audit and Risk Committee for major noncompliance incidents or emerging compliance issues.

Annual Certifications:

At the end of each financial year Responsible Officers will be required to provide an assurance that to the best of their knowledge, the ABC Limited has complied with the obligations relevant to their area of responsibility.

Assurance Maps:

To facilitate quarterly and annual reporting requirements an assurance mapping approach that is consistent with the model.

Regulatory Reporting

The regulatory reporting arrangements for compliance activities shall be accounted. The reporting of significant compliance issues which are required by law must be undertaken in accordance with the procedures.

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CHAPTER -3
COMPLIANCE BY VARIOUS TYPES OF COMPANIES

COMPLIANCES BY VARIOUS TYPES OF COMPANIES

ENTITY WISE COMPLIANCES

On the basis of the structure of the companies, the companies can be divided in to the listed company, Public company, Private company, Section 8 company, which is further categorized as One person company, Small company, Government company.

ACTIVITY WISE COMPLIANCES

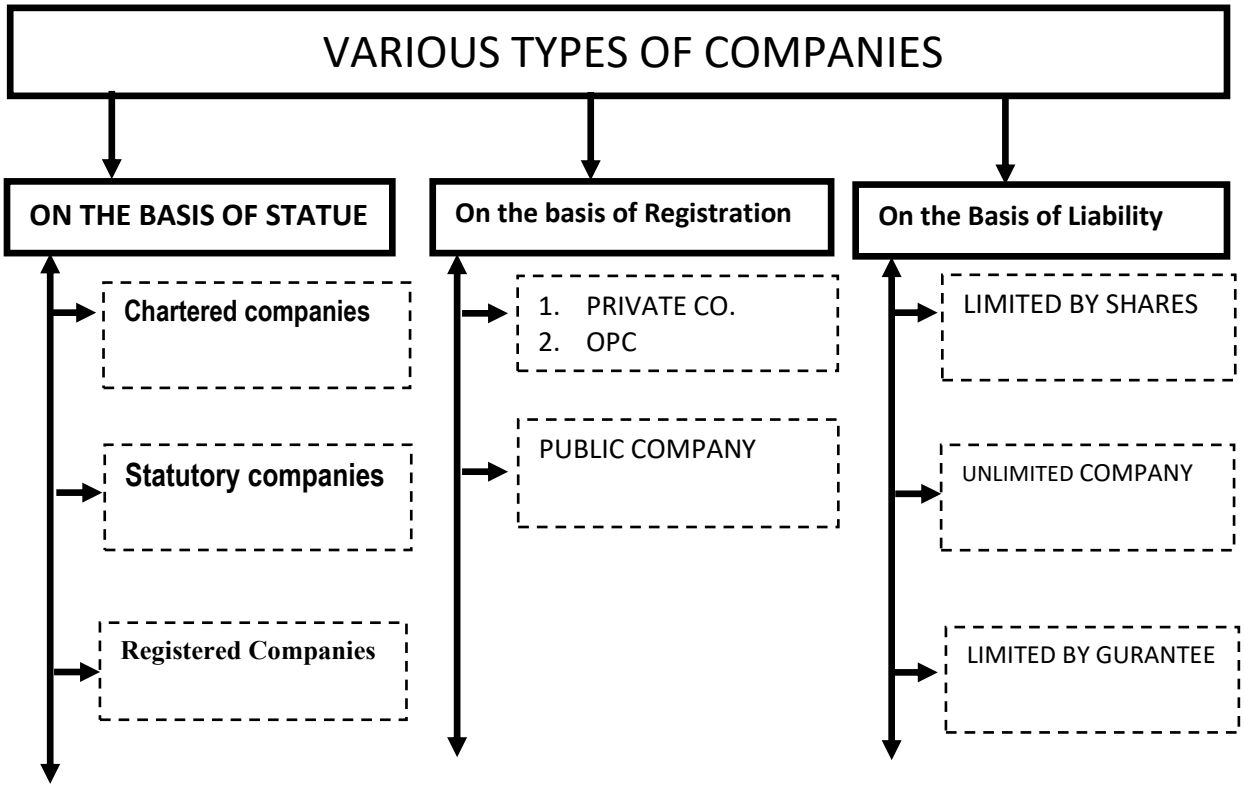
The activity wise compliances include the compliances relating to the Business Activities of the company such as Banking Company, Insurance Company, Housing Development Company, IFSC Company, NBFC, Section 8 Company, Producer Company, Chit Fund Company, Plantation Company etc.

SECTOR WISE COMPLIANCES

For the Sector wise compliances the Companies can be broadly divided in to the Agriculture & Allied Activities, Manufacturing, Construction, Power, Electricity; Gas & Water, Mining & Quarrying, Business Services, Real Estate and Renting, Trading, Community; personal & Social Services, Transport; storage & communications, Finance, Insurance etc. these companies are governed under the Companies Act, 2013 along with the sector specific laws, Rules, Regulations, policies, procedures and State and Local laws applicable to the company .

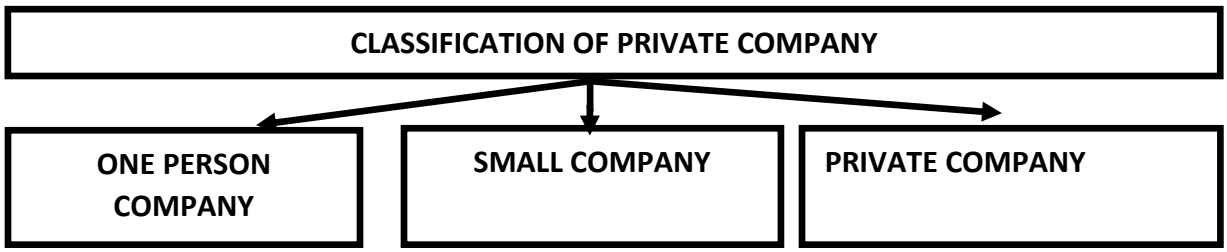
INDUSTRY SPECIFIC COMPLIANCES

For identification of the industries specific compliance, it is necessary to correlate the business activity of the company with the various laws applicable to such business activity. For example if the company is dealing cement industry, which is related to the Construction sector & Real estate, Mining, Supply, Distribution and Trading of raw material, Bye product etc.



VARIOS TYPES OF COMPANIES

S.NO.	SECTION	COMPANY
1	2(68)	Private Company
2	2(71)	Public Company
3	2(85)	Small Company
4	2(62)	One-person Company
5	2(46)	Holding Company
6	2(87)	Subsidiary Company
7	187	Wholly owned subsidiary Company
8	2(6)	Associate Company
9	2(45)	Government Company
10	2(10A) of the Insurance Act, 1938	Investment Company
11	2(42)	Foreign Company
12	8	SECTION 8 Company
13	General Meaning	Chartered Company
14	406	Nidhi Company
15	2(52)	Listed Company
16	366	Companies capable of being registered (part I company)
17	375	Unregistered company



PRIVATE COMPANY	SEC. 2(68)

Private Company means a Company which has a minimum paid-up capital ~~of one lakh rupees or such higher paid-up capital~~ as may be prescribed ***and*** its Articles

(a) Restriction on the right to transfer its shares if any
(b) Except in case of **ONE PERSON COMPANY** Limits the numbers of its members to 200 not including

- Persons who are in the employment of the company and
- Persons who having been formerly in the employment of the company were members of the company while in the employment and have continued to be members after the employment ceased**.**

(c) Prohibits any invitation to the public to subscribe **for any securities** of the company.

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the proposes of this definition, be treated as a single number.

Special note: Companies Amendment Act 2015 has omit the requirement of minimum paid up share capital of Rs. 1 lack

ANALYSIS ON SECTION 2(68) BY CS ANOOP JAIN

A private Company means a Company which has a **minimum paid-up capital** as may be prescribed and must contain in its Articles the following restrictions, limitations and prohibitions. (C.G. has power to prescribe the minimum paid up capital requirement).

a) Restriction on the right to transfer its shares: The articles must contain a provision restricting the right of members to transfer its shares freely. The right of transfer may be restricted in the following manner

- By authorizing the Directors to refuse transfer of shares to persons whom they do not approve.
- By compelling the shareholders to offer his shareholding to the existing shareholders first.

b) Limitation of membership: The Articles must contain a provision whereby the Company limits the number of its members to 200. The following persons are not considered in counting the number of members:

- Joint holders of shares shall be counted as on member only.

• Persons who are in employment of the Company.
• Ex-employees of the Company who have become members while in employment of the Company and have continued to be members even after termination of employment.

NOTE: The above restriction is only on the number of members. However, a private company may issue debentures to **any number** of persons though an invitation to the public to subscribe for debentures cannot be made.

Membership of Private Company

a) At least two persons are required to form a private company. Thus, two or more persons are required to subscribe their names to the Memorandum of Association of the Company.
b) Any person competent to contract can be a member of private company.
c) A Company being a legal person can subscribe but a partnership firm cannot.
d) A HUF is not a person and hence cannot subscribe. A Karta or manager of HUF may sign on its behalf.

COMPLIANCES REQUIREMENTS BY PRIVATE LIMITED COMPANY

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184 (1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Form MBP-1	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, should disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	Form DIR-8	Every director shall inform the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re-appointed.
3.	Annual Return	92 (4) & (1) & Rule 11 (1) of Companies (Management and Administration) Rules, 2014	E-form MGT-7	Every Company shall file its Annual Return within 60 days of holding the AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM. Annual Return of Every Private Company shall be signed by a director and the company secretary, or where there is no

				company secretary, by a company secretary in practice. **Section 92(1)** read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed Form MGT-7 and One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A**.containing the particulars as they stood on the close of the financial year regarding
4	Financial Statements	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4	Company is required to file its financial statements, including consolidated financial statement along with all the documents required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM. If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under subsection (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.
5	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS-2	Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard - 2.	
6	Sending of Notice of AGM	101 &SS - 2	Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member. In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.	

7	Board Meetings	173 & SS-1	Every Company shall hold a minimum number of 4 meetings of its Board of Directors every year in such a manner that maximum gap between two meetings should not be more than 120 days. Company should hold at least 1 Board Meeting in every quarter of each calendar year.
8	Notice of Board Meeting	173 (3) & SS-1	A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting of the Board may be called at shorter notice to transact urgent business.
9	Appointment of Company Secretary	203 & Rule 8A of the Companies (Appointment and Remuneration) Rules, 2014.	Private Company having paid up share capital of Rs. 10 crores or more is required to appoint a whole time Company Secretary.
10	Register of members	88 & Rule 3 of the Companies (Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2	**Company shall keep & maintain the following mandatory Registers:** Register of Members, Register of debenture-holders, Register of any other security holders.

Meaning of One Person Company Section 2(62)

As per definition provided under section 2(62) of the Companies Act, 2013, One Person Company (OPC) means a company which has only one person as a member.

An OPC is a new development in the Corporate history in India. This form enables a sole proprietor or sole partner to convert his firm into a limited liability company and derive the advantages of an incorporated company.

OPC shall be having status of a private limited company

Section 3(1) (*c*) provides that where the company to be formed is to be OPC it shall be considered as a Private Company.

Types of OPC

Section 3(2) of the Companies Act, 2013 provides that the OPC formed under section 3(1) may be either

a) A company limited by shares; or
b) A company limited by guarantee; or

c) An unlimited company.

AN ANALYSIS ON OPC

S.NO.	PARTICULARS	LIMIT
1	MINIMUM MEMBERS	1
2	MAXIMUM MEMBERS	1
3	MINIMUM NOMINEE	1
4	MAXIMUM NOMINEE	1
5	MINIMUM DIRECTOR (SECTION 149)	1
6	MAXIMUM DIRECTOR (SECTION 149)	15

RULE 3 COMPANIES INCORPORATION RULES 2014

(1) Only a natural person who is an Indian citizen whether resident in India or otherwise

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted

(2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

VARIOUS COMPLIANCE BY ONE PERSON COMPANY (OPC)

Sl. No.	**Title**	**Section & Rules**	**Particulars of Compliances**	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Form MBP-1	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of	Form DIR-8	Every director shall inform the company concerned about his disqualification under subsection (2) of section 164, if any, before he is appointed or re-appointed.

		Directors) Rules, 2014		
3.	Meaning of AGM for the OPC means "Resolution passed for the Ordinary Business entered into the Minute Book. In case of OPC, there is no need to hold AGM because there is only one Member.			
4.	Annual Return	92(4) & (1) & Rule 11(1) of Companies (Management and Administration) Rules, 2014	E-form MGT-7	OPC shall file its Annual Return within 60 days of entry of ordinary resolution in Minute Book. In Case of OPC, there is no need to hold AGM. Annual Return of every One Person Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company. **Section 92(1)** read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed Form MGT-7 and One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A**.containing the particulars as they stood on the close of the financial year.
5.	Financial Statement	137 & proviso 3 to Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4	One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
7.	Board Meetings	173 (5) & SS-1	Every One Person Company shall hold at least one (1) meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings shall not be less than 90 days. However, provisions of section 173 (5) and section 174 relating to quorum shall not apply to One Person Company in which there is only one (1) director on its Board of Directors.	
8.	Notice of Board Meeting	173 (3) & SS-1	A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting of the Board may be called at shorter notice to transact urgent business.	
9.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014	E-form ADT-1	Auditor shall be appointed for 5 years. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in e-Form ADT-1.
Notes:				

- In an OPC in which there is only one Director, Secretarial Standard- 1 will not apply.
- OPC is not required to hold AGM so Secretarial Standard- 2 is not applicable to OPC.
- Section 98 and Section 100 to Section 111 are not applicable on One Person Company.
- No need of preparation of Cash Flow Statement, in case of OPC.

SMALL COMPANY" (NEW PROVISIONS) SECTION 2(*85*)

Small company means a company, other than a public company

a. Paid-up share capital of which does not exceed 4 CRORE rupees or such higher amount as may be prescribed which shall not be more than **10 crore rupees**; **AND**

b. Turnover of which as per profit and loss account for the immediately preceding financial does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than **100 crore rupees.**

PROVIDED THAT NOTHING IN THIS CLAUSE SHALL APPLY TO

(*A*) A holding company or a subsidiary company

(*B*) A company registered under section 8 (non-profit organisation)

(*C*) A company or body corporate governed by any special Act

NATURE OF SMALL COMPANY AND NUMBER OF MEMBERS

It is clear from the definition that a small company shall be a private company limited by shares and hence it will limit its number of members to 200 as per Section 2(68)(ii).

RELAXATION FOR SMALL COMPANIES

Signing of annual return—Section 92(1) proviso

The annual return in the case of a small company shall be signed by the Company Secretary or where there is no Company Secretary, by the Director of the company.

Merger between two or more small companies—Section 233(1)

The provisions of Section 233 provide a simpler procedure of merger and amalgamation between small companies. It is, however, provided in sub-section (14) that a company covered by Section 233 may use the provisions of Section 232 for the approval of any scheme of merger or amalgamation.

Small Companies under the Companies Act, 2013

Sl. No.	Title	Section & Rules	Particulars of Compliances	
1.	Disclosures by a Director of his Interest	184(1) & Rule 9(1) of Companies (Meetings of Board	Form MBP-1	Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the

		and its Powers) Rules, 2014.		disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in other entities which shall include the shareholding.
2.	Disqualification of Directors	164(2) & 143(3)(g) & Rule 14(1) of Companies (Appointment of Directors) Rules, 2014	Form DIR-8	Every director shall inform to the company concerned about his disqualification under subsection (2) of section 164, if any, before he is appointed or re-appointed.
3.	Annual Return	92(4) & (1) & Rule 11 (1) of Companies (Management And administration) Rules, 2014	E-form MGT-7	Every Company shall file its Annual Return within 60 days of holding of AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM. Annual Return of every Small Company shall be signed by the company secretary, or where there is no company secretary, by the director of the company. **Section 92(1)** read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed Form MGT-7 and One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A**.containing the particulars as they stood on the close of the financial year regarding
4.	Extract of the annual return	92(3) & 134(3)(a) & Rule 12(1) of the Companies (Management and Administration) Rules, 2014.	Form MGT- 9	Every company is required to place annual return on the website of the company and the web address where annual return has been placed will be required to be mentioned in the Board's Report. Section 92 (3) shall not apply in case of Specified IFSC Private Company - vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017.

5.	Financial Statement	137 & Rule 12(1) of Companies (Accounts) Rules, 2014	E-form AOC-4 & E-form AOC-4 CFS	Company is required to file its financial statements, including consolidated financial statement along with all the documents required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM. If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under subsection (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.
6.	Board's Report	134 & Rule 8 of the Companies (Accounts) Rules, 2014	Board's Report shall be prepared mentioning all the information required to be included in it for Small Company under Section 134. It should be signed by the "Chairperson" authorized by the Board, where he is not so authorized by at least 2 Directors one of whom shall be a managing director or by the director where there is One (1) director. In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors. (refer Notification dated 4th January, 2017)	
7.	Circulation of Financial Statement & other	136 relevant documents	Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the (approved) Financial Statements (including consolidated Financial Statements, if any auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the Annual General Meeting. (Except in case of AGM is called on Shorter Notice pursuant to section 101(1).	

			In case of private company which is a small company, Section 101 shall apply, unless otherwise specified in respective sections or the articles of the company provide otherwise.	
8.	Notice of AGM	101 & Rule 18 of the Companies (Management and Administration) Rules, 2014 & SS- 2	Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard - 2.	
9.	Sending of Notice of AGM	101 & SS - 2	Notice of Annual General Meeting shall be sent to all the Directors, Members, Auditors, legal representative of any deceased member and the assignee of an insolvent member.	
10.	Board Meetings	173 (5) & SS-1	Every Small Company shall hold at least one (1) meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings shall not be less than 90 days.	
11.	Notice of Board Meeting	173 (3) & SS-1	A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting of the Board may be called at shorter notice to transact urgent business.	
12.	Appointment of Auditor	139(1) & Rule 4(2) of the Companies (Audit and Auditors) Rules, 2014.	E-form ADT-1	Auditor shall be appointed for 5 years in the AGM. The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen (15) days of the meeting in which the auditor is appointed in E-form ADT-1.
13.	Register of members	88 & Rule 3 of the Companies	Company shall keep & maintain the following mandatory Registers:	
		(Management and Administration) Rules, 2014. Form MGT.1 & Form MGT.2	• Register of Members, • Register of debenture-holders, • Register of any other security holders.	

PUBLIC COMPANY SEC. 2(71)

Public Company means a Company which

a. Is not a private company and

b. Has a minimum paid – up capital ~~of five lakhs rupees or such higher paid – up capital~~, as may be prescribed.

Provided that a company which is a subsidiary of a public company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues TO BE A PRIVATE COMPANY IN ITS ARTICLES

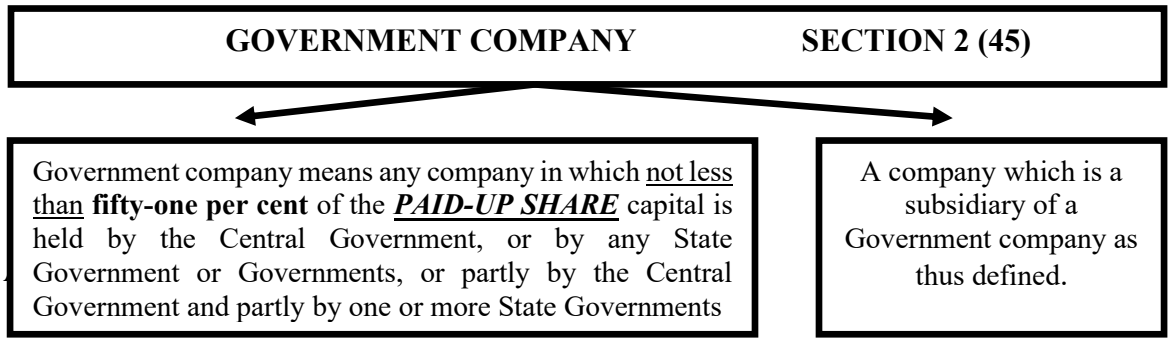
Special note: Companies Amendment Act 2015 has omit the requirement of minimum paid up share capital of RS. 5 lack.

GOVERNMENT COMPANY SECTION 2(*45*)

Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government Company.

Explanation. - For the purposes of this clause, the "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

GOVERNMENT COMPANY SECTION 2 (45)



GOVT. COMPANY-AUDIT SECTION 143 (5) AND 139 (7)

The auditor of a Government company shall be appointed or re-appointed by the **Comptroller and Auditor-General of India**

The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement within 60 days from the date of receipt of report, the audit report in such manner as he may think fit.

Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

FOREIGN COMPANY SECTION 2(42)

Foreign company means any company or body corporate incorporated outside India which

- Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- Conducts any business activity in India in any other manner.

SECTION 379

Where not less than *fifty per cent of the paid-up share capital*, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

Rule 12 registration of foreign companies Rules 2014

Action for improper use or description as foreign company.- If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

PROCEDURE TO REGISTER A FOREIGN COMPANY IN INDIA

Every foreign company shall, **within thirty days** of the establishment of its place of business in India, deliver to the Registrar for registration – (section 380)

a)	A certified copy of the charter, statute or memorandum and articles of the company or other instrument constituting or defining the constitution of the company and if the instrument is not in English language, a certified translation thereof in the English language;
b)	The full address of the registered or principal office of the company;
c)	A list of the directors and secretary of the company with particulars;
d)	The names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
e)	The full address of the office of the company in India which is deemed to be its principal place of business in India;
f)	Particulars of opening and closing of a place of business in Indian on earlier occasions;
g)	Declaration that none of the directors of the company or authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; or
h)	Other prescribed particulars.

The Foreign Company shall, within a period of thirty day of establishment of its place of business in India, **file Form FC – 1** of the Companies (Registration of Foreign Companies) Rules 2014. Along with the Companies Act, 2013 provision of Foreign Exchange Management Act 1999 and regulations made thereunder shall also be applicable.

SPECIAL POINTS

Where any alteration is made or occurs in the document delivered to the Registrar for registration under sub-section (1) of section 380, the foreign company shall file with the Registrar, a return in Form **FC-2** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

If any such document as is mentioned ABOVE is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

ACCOUNTS OF FOREIGN COMPANY SECTION 381

(1) Every foreign company shall, in every calendar year,

a) make out a balance sheet and profit and loss account and
b) deliver a copy of those documents to the Registrar:

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

The documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate:

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

(3) Every foreign company shall file with the Registrar, along with the financial statement, in Form FC.3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

ANNUAL RETURNS BY FOREIGN COMPANY SECTION 384

Every foreign company shall prepare and file, within a period of sixty days from the last day of its financial year, to the Registrar annual return in Form **FC 4** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars as they stood on the close of the financial year.

SECTION 8 COMPANY

Any person or an association of persons intending to register a limited liability company for objects specified below can opt to apply for registration of Section 8 Company. The following have to be proved to the satisfaction of the Central Government that:

- its objects includes promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- the company after incorporation intends to apply its profits, if any, or other income in promoting such objects only; and
- the company intends to prohibit the payment of any dividend to its members.

REGISTER, RETURNS, BOOKS AND OTHER RECORDS TO BE KEPT BY COMPANIES

Section/Rule	Particulars	Form
Section 42(9) and Rule 14(3) of Companies (Prospectus and Allotment of Securities) Rules, 2014	Maintenance of complete record of Private Placement Offers	PAS-5
Section 46(3) and Rule 6 (3) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Renewed and Duplicate Share Certificates- Entries made should be authenticated by company secretary or the person authorized by the Board for sealing and signing the share certificate under Rule 5(3) of Chapter IV.	SH-2
Section 54 and Rule 8(14) (a) of Companies (Share Capital and Debentures) Rules, 2014)	Register of Sweat Equity Shares-Entry shall be made forthwith on issue of sweat equity shares u/s.54. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-3
Section 62(1)(b) and Rule 12 (10) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Employees Stock Options-Entry shall be made forthwith on issue of shares to employees under employees' stock option scheme u/s. 62(b). Authentication of secretary or by any other person authorized by the Board in this behalf. The entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-6
Section 68(9) and Rule 17 (12) (a) of Companies (Share Capital and Debentures) Rules, 2014	Register of Shares or other Securities bought back. Authentication of the entries be made by company secretary or by any other person authorized by the Board in this behalf.	SH-10
Section 73, 76 and Rule 14 (1) of Companies (Acceptance of Deposits) Rules, 2014	Register of Deposits-Entry should be made within 7 days of the issue of duly authenticated receipt in this regard by director, secretary or the person authorized by the board in this behalf.	Particulars specified in Rule 14

Section 85 and Rule 10 (1) of Companies (Registration of Charges) Rules, 2014	Register of Charges	CHG- 7
Section 88 and Rule 3 (1), 5(1) & (2), 6, 8 & 15 of Companies (Management and Administration) Rules, 2014	Register of Members	MGT- 1
Section 88 and Rule 4 & 15 (2) of Companies (Management and Administration) Rules, 2014	Register of debenture holder and other security holders	MGT- 2
Section 88 and Rule 7 & 15 of Companies (Management and Administration) Rules, 2014	Foreign Register of Members	MGT- 1
Section 88 and Rule 7 & 15 of Companies (Management and Administration) Rules, 2014	Foreign Register of Debenture holders/other security holders with index of names	MGT- 2
Section 92 and Rule 11 & 15(3) of Companies (Management and Administration) Rules, 2014	Annual Return and attachments	MGT- 7
Section 105(7) and Rule 19 of Companies (Management and Administration) Rules, 2014	Proxy form	MGT-11
Section 184(1) and Rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Notice of interest by Director	MBP-1
Section 186(9) and Rule 12(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Loans, Guarantee, Security and in respect of Acquisition made by the company	MBP-2
Section 187(3) and Rule 14(1) of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Investment not held in its own name by the company	MBP-3
Section 189(1) and Rule 16 of Companies (Meetings of Board and its Powers) Rules, 2014	Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested	MBP-4

EXEMPTIONS TO PRIVATE COMPANIES

1. **Section 62(1)(a)(i) and (2)** The provision relating to keeping rights issue open for a minimum of 15 days and maximum of 30 days and also the provision that the letter of offer has to be sent at least 3 days before opening of the offer shall not apply in case of a Private Company, provided at least 90% of

the members agree in writing for a shorter period. (The time limits cannot be increased, they can only be reduced.)
2. **Section 62(1)(b):** A private Company can issue shares to its employees under a scheme of Employee Stock option by passing an **Ordinary resolution**. Earlier, special resolution was required to be passed.
3. Private Companies can accept deposits from its members up to 100% of its paid up share capital and free reserves without having to comply with the procedural requirements prescribed under **Section 73** like issuing circular, maintaining repayment reserve etc., provided details of the deposits so accepted is filed with the ROC in the manner to be specified.
4. **Section 101 to 107 and 109** shall apply unless otherwise specified in the respective sections or the articles of the company provide otherwise. ARTICLES OF A PRIVATE COMPANY MAY OVERRIDE PROVISIONS PERTAINING TO these sections
5. The requirement of filing e-form MGT 14 for resolutions passed by the Board in exercise of its powers u/s. **179(3)** is no longer applicable to a private company.
6. **Section 141 (3)(g):** While calculating the limit of **20 Companies** on which a person can be appointed as a statutory auditor, the following companies shall be excluded
• One person companies
• Dormant companies
• Small companies, and
• Private companies having paid up share capital less than Rs.100 crores
7. Various provisions of **Section 160** like seeking deposit of Rs. 1 Lakh, notice of candidature etc. shall not apply to a private company in case of appointment of a director in a general meeting.
8. **Section 162-** Now more than one director can be appoint via a single resolution
9. Provisions relating to kind of share capital, being only equity (with or without differential voting rights) and preference shall not apply to a Private Company (**Section 43**) Provisions relating to voting rights of equity shareholders and preference shareholders, as contained in Section 47, shall not apply to a Private Company. (then MOA & AOA prevail over the section 43 and 47)
10. **Section 180-** Restrictions on powers of Board Not Apply Now there is *no need to pass "Special Resolution*
11. Provisions of **Section 185** not apply to a private company if its fulfill the following below mention conditions-
• in whose share capital no another body corporate has invested any money;
• if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower
• Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.
12. Second proviso **to section 188 (1):** No member of the company shall vote on such Resolutions, to approve any contract or arrangement which may be entered into by the Company, if such member is related party. Now This proviso will not apply on Private Limited Company. Even if, Member is related then also he can vote on such resolution required to be pass u/s 188 in GM.
13. The following provisions of **Section 196** have been exempted for private companies
• Requirement of seeking approval of Central Government where such appointment/remuneration of managerial personnel is not in accordance with provisions of Schedule V.
• Requirement of filing return of appointment of managerial personnel within 60 days with the ROC

EXEMPTIONS TO GOVERNMENT COMPANIES

1.	The name of all Government Companies shall end with the word "Limited", be it Public or Private Company. **SECTION 4(1)**
2.	The AGM of a Government Company can either be held at the registered office or at any other place as approved by the Central Government. **sub-section (2) of section 96**
3.	The rules regulating declaration of dividend out of reserves in case of inadequacy or absence of profits and the provision relating to depositing the amount of dividend (including interim dividend) in a separate bank account within 5 days of declaration will not be applicable in case of those Government Companies which the entire paid up share capital is held by the Government. **sub-section (4) of section 123**
4.	The requirement of disclosing the Company's nomination and remuneration policy and the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors in the Board's report has been relaxed for government companies**. sub-section (3) of section 134**
5.	As per **Section 149(1) (b)** and first proviso to **Section 149(1),** a government company can have more than 15 directors. Such a company is now no longer required to pass a special resolution for appointing more than 15 directors.
6.	The requirement of seeking consent from a Director and filing the same within 30 days of appointment to ROC is relaxed where appointment of such director is done by the Central Government or State Government. **sub-section (5) of section 152**
7.	The provisions relating to appointment of directors to be voted individually **section 162,** principle of Proportional Representation for Appointment of Directors **SECTION 163** and Various provisions of **Section 160** like seeking deposit of Rs. 1 Lakh, notice of candidature etc. will not apply in case of following Government Companies
•	Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments
•	Subsidiary of a Government Company, referred in on (a) above
8.	The restriction that, a person being a director in any other Company which has not filed financial statements or annual returns for any continuous period of three financial years; or has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so, will not apply in case of appointment of a person as director in a Government Company**. SECTION 164 (2)**
9.	**Section 170 (**register of directors and KMP and their shareholding) and **171 (**members right to inspect) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments.
10.	**Sub-Sections (2), (3) and (4) of Section 178** (Nomination and remuneration and stakeholder relationship committee) shall not apply to Government Company except with regard to appointment of Senior Management.

11. The restrictions contained in **Section 185** regarding giving of loans/guarantees/securities etc. by a company to its directors and other entities in which a director is interested has been relaxed for government companies provided they seek prior approval of their administrative Ministry or Department for the proposed transactions.
12. The requirement of seeking member's approval by means of a special resolution for making loans/ investment or giving or guarantee / security in excess of the threshold limits specified in **Section 186** has been relaxed for government companies engaged in defence production and other unlisted government companies which seek prior approval of their administrative Ministry or Department for the proposed transactions.
13. The requirement of seeking member's approval by means of a **special resolution** for related party transactions as contained in **Section 188(1)** and the restriction on a member, being a related party, to vote thereon has been relaxed for transactions entered between two government companies and for transactions entered into by an unlisted government company with a company other than a government company, provided the unlisted government company seeks prior approval of its administrative Ministry or Department for the proposed transactions.
14. The following provisions of Section 196 shall not apply to government companies:
• Requirement of Appointment / Re-appointment of MD /WTD /Manager for a term not exceeding 5 years at a time.
• Requirement of seeking approval of Board and Members at a meeting for appointment of managerial personnel and also of Central Government where such appointment/remuneration of managerial personnel is not in accordance with provisions of Schedule V.
• Requirement of filing return of appointment of managerial personnel within 60 days with the ROC
15. All the provisions of Section 197 and related provisions of Schedule V relating to limits on Managerial Remuneration have been relaxed for government companies. Government Companies can remunerate their Managerial Personnel without having to comply with restrictive provisions of Section 197 and Schedule V

EXEMPTIONS TO COMPANIES REGISTERED U/S 8 OF THE COMPANIES ACT, 2013

1. The requirement of maintenance of minimum paid up capital of Rs. 1 Lakh/5 lakh by Private Companies/ public companies will no longer be applicable in case of Companies registered u/s 8 of the Act.
2. The date, time and place of Annual General Meeting can be predetermined by the board, if the shareholders have given directions to the board to this effect in the general meeting. **Section 96, sub-section 2**
3. General Meetings of a Section 8 Company can now be conducted with notice of 14 clear days instead of 21 days as prescribed earlier. Section 101
4. The entire provisions of **Section 118** relating to minutes of proceedings of general meetings, Board meetings etc. shall not apply except that in case the AOA of the Company provides, then in that case, the minutes have to be recorded within 30 days.
5. **Section 101**, which provides that notice of general meeting can be sent 14 days before the meeting instead of 21 days, amendment has also been made to Section 136 providing that copies of financial statements and documents to be annexed thereto can be sent to the members 14 days before the meeting instead of 21 days as was required before this amendment.

6. A company registered u/s 8 may have any number of Directors and the requirement of passing of special resolution for having more than fifteen directors will not be required. **Sub-section (1) of Section 149 and first proviso to sub-section** (1) shall not apply
7. Any of the provisions relating to requirement of having Independent Directors, their appointment, and manner of appointment etc shall not be applicable to Section 8 Companies. **Sub-sections 4 to 11 of Section 149, Clause (i) of sub-section 12 of Section 149, Sub-section 13 of Section 149, Section 150, SHALL NOT APPLY**
8. A person holding office as Director in more than 20 Companies can still be appointed as a Director in a Section 8 Company. **Section 165, sub-section (1) shall not apply.**
9. Requirement to have at least 4 meetings in a year and to hold board meeting within 120 days of previous board meeting is dispensed with. It is sufficient if the companies conduct at least one board meeting within every six calendar months **Section 173, sub-section (1)**
10. Quorum requirement for Board Meetings for Section 8 Companies has been changed as 8 directors or 1/4th of total strength whichever is lower subject to minimum of 2 directors. **Section 174, sub-section (1)**
11. whereby requirement of appointment of independent directors has been done away with, the requirement of audit committee to have majority as independent directors is also removed by virtue of this exemption. **SECTION 177**
12. Requirement of constitution of nomination and remuneration committee and related compliances u/s 178 has been removed.
13. The Director of a Section 8 company, being an interested director, is required to disclose his interest in a transaction, arrangement or contract and abstain from participating in the relevant Board meeting only if the value of such transaction exceeds Rs. 1 Lakh. **Section 184, sub-section 2**
14. Consequent to Amendment in Section 184(2), compliance requirement relating to this section also has been amended. The details are needed to be entered in the register only in case of interested contract or arrangement in which the value of transaction exceeds Rs. 1 Lakh. Section 189

EXEMPTIONS TO NIDHI COMPANIES

1. Section 20(2) Shall apply subject to the modification that in the case of a Nidhi, the document may be served only on members who hold shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital of the Nidhi's whichever is less. For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi.
2. Section 42 except sub- section(1), explanation (II) to sub-section (2), sub- sections(4), (6), (8), (9) and (10) Shall not apply.
3. Section 47(1)(b) Shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders. Note: Section 47(1)(b) deals with voting right on a poll to be in proportion with the paid-up share capital held. In Nidhi companies it shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent of total voting rights of equity shareholders.
4. Section 62 Shall not apply NIDHI Companies.
5. Section 67(1) Shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.

6. Section 123(5) Shall apply, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.
7. Section 127 Shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local news paper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.
8. Section 136(1) Shall apply, subject to the modification that, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by Public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy.
9. Section 160 ln sub-section (1), for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted. Note: Section 160(1) requires a deposit of Rs. 1 lakh for nomination of a director. For Nidhi companies such deposit is Rs 10,000/-.
10. Section 185 Shall not apply, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.

NEWSPAPER ADVERTISEMENTS REQUIRED TO BE GIVEN/ PUBLISHED BY THE PRIVATE COMPANIES UNDER THE PROVISIONS OF COMPANIES ACT, 2013

Section / Rule	Relevant Purpose	Mode
Section 12(5) read with Rule 28(2) (a) of the Companies (Incorporation) Rules, 2014	Change in registered office from the Jurisdiction of one Registrar to another within the same state.	Publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district.
Section 13(4) read with Rule 30(6) of the Companies (Incorporation) Rules, 2014	Change in registered office from One State or Union Territory to another.	Advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district at least 14 days before the date of hearing.
Section 73(2)(a) read with	Acceptance of Deposits.	Circular in Form DPT-1 may be published in English language in an English newspaper and in vernacular language in a

Rule 4(1) of the Companies (Acceptance of Deposits) Rules, 2014		vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. In case of private company - Clause la) to le) of Sub-section 2 of Section 73 shall not apply to Private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.(Notification No. G.S.R. 464(E) dated 5th June, 2015).
Section 88 (4) read with Rule 7(5) of the Companies (Management and Administration) Rules, 2014	Closure of Foreign Register.	A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept
Section 91(1) read with Rule 10(1) of the Companies (Management and Administration) Rules, 2014	Closure of Register of Members or debenture holders, Shareholders or other Security holders.	A company should publish a 7 days prior notice for the closure of the register of members or shareholders or other security holders at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated
Section 103 (2)		If the Quorum is not present within % an hour in respect of meeting of members Such Meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date, time and place as the Board may determine by giving not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. In case of private company, Section 103 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise vide Notification No. G.S.R.464(E) dated 5th June, 2015.

Section 108 read with Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014	Voting through Electronic means	A company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying the matters prescribed in the said sub-rule.
Section 110 read with Rule 22(3) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the matters prescribed in the said sub-rule.
Section 115 read with Rule 23(4) of the Companies (Management and Administration) Rules, 2014	Resolution requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the state where the registered office of the Company is situated
Section 230(3) read with Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules,2016	Power to compromise or make arrangements with creditors and members	The notice of the meeting under subsection (3) of section 230 of the Act shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal.

DISCLOSURES TO BE MADE AT WEBSITE OF THE COMPANY UNDER COMPANIES ACT 2013

It is not mandatory for a private company to maintain a website. In case, the company has maintained a website, then the following disclosures are required to be made at its website:

Section/ Rule	Purpose	Mode
Section 8 and Rule 22 of the Companies (Incorporation) Rules, 2014	Companies registered under section 8 seeking conversion into any other kind	Notice in Form INC-19 shall be published on the website of the Company, if any, and as may be notified or directed by the Central Government.
Section 12 and Rule 26 of the Companies (Incorporation) Rules, 2014	Publication of name by company	Every company which has a website for conducting on line business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/ home page of the said website.
Rule 4(3) of the Companies (Acceptance of Deposits) Rules, 2014	Circular For Inviting Deposits from the public	Every Company inviting deposits from the public shall upload a copy of the circular on its website, if any. In case of private company - Clause (a) to (e) of Sub section 2 of Section 73 shall not apply to Private Companies which accepts from its members monies not exceeding 100%, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification No. G.S.R.464 (E) dated 5th June, 2015. The requirement of publishing a circular pursuant to Section 73 (2) (a) also shall not apply in such a case.
Rule 10 of the Companies (Management and Administratio n) Rules, 2014	Closure of Register of Members or Debenture Holders or other Security Holders	Closure of Register of Members or Debenture Holders or other Security Holders. The company shall publish notice at least seven days prior to such closure as may be specified by SEBI in case of a listed company or intends to get its securities listed on the website as may be notified by the Central Government and on the website, if any, of the Company. Not applicable to a private company if the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.

Section 101 & Rule 18(3) (ix) of the Companies (Management and Administration) Rules, 2014	Notice of the General Meeting	The notice of the general meeting of the Company shall be simultaneously placed on the website of the Company and on the website as may be notified by the Central Government. In case of private company - Section 101 shall apply, unless otherwise specified in this section or the articles of the company provide otherwise. - (Notification No. G.S.R. 464(E) dated 5th June, 2015). Section 122 provides that the provisions of section 101 shall not apply to a One Person Company.
Section 110 & Rule 22 (4) & 22 (13) & 22 (16) of the Companies (Management and Administration) Rules, 2014	Postal Ballot	The notice of the postal ballot shall be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members. The results of the postal ballot shall be declared by placing it, along with the scrutinized report, on the website of the company. Note: One Person Company and other companies having members up to 200 are not required to transact any business through postal ballot.
Section 115 & Rule 23(4) of the Companies (Management and Administration) Rules, 2014	Resolutions Requiring Special Notice	Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, such notice shall be posted on the website, if any, of the company.
Section 124(2) Unpaid Dividend Account		The Company shall, within a period of 90 days of making any transfer of an amount under section 124(1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the Company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.
Section 135(4) and Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules,2014	Disclosures about Corporate Social Responsibility Policy (by a company to whom CSR is applicable)	The Board of every Company shall disclose contents of Corporate Social Responsibility Policy in its report and also place it on the Company's website, if any. In case of Specified IFSC Private Company - Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC private company (refer Notification No.G.S.R.9(E) Dated 4th January, 2017)

Section 136(1) Right of Member to Copies of Audited Financial Statement		Every company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any.
Section 168 & Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014	Notice of Resignation of director	The Company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.
Section 230(3) & Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules,2016	Advertisement of the notice of the meeting pursuant to exercise of power to Compromise or make arrangements with creditors and members.	The notice of the meeting under section 230(3) of the Act, shall be placed on the website of the company, if any in Form No. CAA.2 at least 30 days before the date fixed for the meeting and in case of listed companies, also on the website of SEBI and recognized stock exchanges where the securities of the company are listed.

CHAPTER-4
LIMITED LIABILITY PARTNERSHIP (LLP)

LLP-MEANING

Formation of LLP in India is a sequel to the recommendations of Naresh Chandra committee (2003) and Irani Committee (2005) as new form of business entity.

LLP is an incorporated partnership formed and registered under the **Limited Liability Partnership Act, 2008** with limited liability and perpetual succession. The Act came into force w.e.f 1st April, 2009.

An LLP is a hybrid between a company and a partnership firm. The LLP is a separate legal entity, where no partner is liable for the unauthorized action of the other partners, and whose liability is restricted to his own stake in the liability. Every partner would be agent of the LLP, but the LLP would not be bound by anything done by a partner.

LLP-FEATURES

Following are the features of a LLP:

(a) LLP is a body corporate with distinct legal entity and perpetual succession.
(b) LLP is applicable to any trade or business.
(c) LLP is created and registered under Limited Liability Partnership Act, 2008.
(d) LLP can be created by minimum 2 partners.
(e) LLP Act is administered by Ministry of Corporate Affairs.
(f) For registration, incorporation document is required to filed to Registrar of Companies.
(g) Every partner is the agent of the LLP.
(h) Liability of partner is limited except in case of fraud and negligence.
(i) Any person can become partner/member by subscribing to the incorporation document or by an agreement with existing partners/members.
(j) Right and duties of partners are governed by an agreement between partners or between LLP and its partners.

LLP-ADMINISTRATION

Ministry of Corporate Affairs, New Delhi is the administrative ministry for the LLP Act with a central Registrar at New Delhi and the Registrars of LLPs at the State level.

WHO CAN BE PARTNER IN LLP?

(a) An individual (other than one who has been found to be of unsound mind by court, an undischarged insolvent; has applied to be adjudged insolvent and application is pending)
(b) Indian private and/or Public Company.
(c) Foreign Company.

(d) Any other LLP.
(e) LLP registered outside India.

WHO CAN NOT BE A PARTNER IN LLP

(a) A corporation sole
(b) A co-operative society
(c) Any other person not specified in above para "who can be partner in LLP"

LLP AGREEMENT

The LLP Agreement determines the mutual rights and duties of the partners and their rights and duties in relation to LLP. This LLP Agreement is required to be filed to ROC.

CAPITAL / CONTRIBUTION

Partners of LLP can contribute in cash or in kind or even by agreeing to perform services. There is no requirement any of minimum / maximum capital contribution by partners. LLP Agreement to specify about nature and amount of contribution. Liability of partners is limited to extent of contribution agreed in the LLP Agreement.

PROCEDURE TO REGISTER A LIMITED LIABILITY PARTNERSHIP

1.1 PROCEDURE FOR INCORPORATION OF LLP

STEP 1: RESERVATION OF NAME (RESERVE UNIQUE NAME) (RUN LLP)

Go to MCA website and select RUN-LLP (WEB BASED PORTAL). Fill the Two Proposed name and Mention the Objects of the Proposed LLP and any other relevant document

1.2 STEP 2: APPLICATION FOR INCORPORATION

For the purposes of section 11, the incorporation document shall be filed in Form FiLLiP with the Registrar having jurisdiction over the State in which the registered office of the limited liability partnership is to be situated and maximum Two Partners shall apply the DPIN number in the form FILLIP.

ATTACHMENTS:

1	Proof of address of registered office of LLP If the registered office is taken on rent, rent agreement and a no objection certificate from the landlord has to be submitted. No objection certificate will be the consent of the landlord to allow the LLP to use the place as 'registered office'. Besides, anyone document out of utility bills like gas, electricity, or telephone bill must be submitted. The bill should contain complete address of the premise and owner's name and the document shouldn't be older than 2 months.

2	Subscribers' sheet including consent in form 9 pursuant to Section 7(3) of the LLP Act 2008.
3	Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner (if applicable).

1.3 STEP 3: REVIEW OF APPLICATION BY ROC

Where the Registrar, on examining Form FiLLiP, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form **within fifteen days** from the date of such intimation given by the Registrar.

After re-submission of the document, if the Registrar still finds that the document is defective or incomplete in any respect, he shall **give one more** opportunity of fifteen days' time to remove such defects or deficiencies:

Provided that the total period of re-submission of documents shall not exceed thirty days.

STEP-4 CERTIFICATE OF INCORPORATION:

The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16.

STEP 5 – DRAFTING & FILING OF LLP AGREEMENT

After incorporation of LLP, LLP agreement has to be drafted in consonance with LLP Act.

LLP agreement is to be filed within 30 days of incorporation of LLP. The Designated Partners has to file the information in Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein). The LLP agreement has to be uploaded as an attachment to Form 3 in the MCA portal. Once it gets approved all the formalities for registration of LLP is deemed to have been completed.

LLP AGREEMENT

Section 2(1)(O) of the Limited Liability Partnership Act, 2008 defines it as under:

Limited liability LLP Agreements mean any written agreement between the partners of the Limited Liability Partnership or between the Limited Liability Partnership and its partners which determines mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership [section 2(1)(0)].

It is compulsory to make and execute a LLP agreement within 30 days of the incorporation of LLP.

various Compliance Requirement under LLP Act, 2008

1	Section 32 of read with sub rule (1) of Rule 23	The contribution of each partner shall be accounted for and disclosed in the Accounts of the limited liability partnership along with nature of contribution and amount.
2	sub-rule (2) of Rule 23	The contribution of a partner consisting of tangible, movable or immovable or intangible property or other benefits brought or contribution by way of an agreement or contract for services shall be valued by a practising Chartered Accountant or by a practising Cost Accountant or by approved valuer from the panel maintained by the Central Government.
3	Section 34	The LLP shall maintain its books of accounts relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting. The LLP shall maintain its books of accounts at its registered office for a period of Eight years.
5	sub-rule (3) of Rule 24	The books of account of a limited liability partnership are required to be preserved for eight years from the date on which they are made.
6	sub-section (3) of Section 34 read with sub rule (4) Rule 24	Every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates.
7	Section 35	every LLP is required to file an Annual Return duly authenticated with the Registrar in 60 days of closure of financial year in Form 1
8	sub-rule (4) of Rule 34	every foreign limited liability partnership its Statement of Account and Solvency in Form 8 with the Registrar the in accordance with provisions of rule 24 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year
9	Statement of Account and Solvency of a LLP	The designated partners on behalf of the limited liability partnership are required to sign the Statement of Account and Solvency of a LLP.
10	sub-section (4) of Section 34 read with sub rule (8) of Rule 24,	The accounts of following limited liability partnerships, shall be required to get its accounts audited: •whose turnover in any financial year exceeds forty lakh rupees, or •whose contribution exceeds twenty-five lakh rupees

RECORDS TO BE PRESERVED BY LLP

Records to be preserved permanently

- Incorporation document
- Notice of situation of registered office
- Information with regard to Limited Liability Permanent Partnership Agreement or any changes made therein

Records to be preserved for 21 Years

All papers, registers, refund orders and correspondence relating to the limited liability partnership liquidation accounts to be preserved for 21 years.

Records to be preserved for 5 Years

copies of Government orders relating to limited liability

Records to be preserved for 3 Years

- All books, records and papers, other than those specified in other categories
- Routine correspondence regarding payment of fees, additional filing fees and correspondence about the return of documents

CHAPTER-5
DOCUMENTATION AND MAINTENANCE OF RECORDS

INTRODUCTION

The primary responsibility of a company secretary is to prepare and maintain the secretarial and other records, which are required to be kept by the company and in many cases the role is extended towards creating & execution of the critical corporate records. This require a good understanding of what documents need to be created, what is the purpose of such documentation, how much details are required to be disclosed in any documents etc.

PURPOSE OF DOCUMENTATION

1. **Client Service:** Documentation is a tool for professionals to serve better to their clients in a timely and effective manner.
2. **Communication:** Documentation is the base for better communication between professionals. Clear, complete, accurate and factual documentation provides a reliable, permanent record of client.
3. **Accountability:** Documentation demonstrates Professional accountability and records the work of the professional. It may be used in relation to performance management, internal inquiries, regulatory proceedings and/or legal proceedings.
4. **Professional Responsibility:** Documentation is an integral part of professional practice and forms the basis for evidence of professional conduct.
5. **Legal Requirement:** Professionals are required to make and keep records of their professional work in accordance with practice standards followed and Organisational policy. However, the laws mandates specific information to be recorded and maintained.

Essentials/Guiding Principles of Good Documentation

- Clear
- Concise
- Complete
- Contemporary
- Consecutive
- Correct
- Comprehensive
- Collaborative
- Client Centric
- Confidential

GOOD V/S POOR DOCUMENTATION PRACTICES

Poor Documentation Practices

The following are the some of the examples of poor documentations practices:

- Document with errors, correction, not signed/dated, and didn't include a reason for the correction;
- Write-overs, multiple line-through and use of White-out or other masking device;
- Recording of events is not in sequence & tabled

Good Documentation Practices

The following are the some of the examples of good documentations practices:

- Records should be completed at time of activity or when any action is taken;
- Superseded documents should be retained for a specific period of time;
- Concise, legible, accurate and traceable;
- Picture is worth a thousand words;
- Clear examples;
- Don't assume knowledge.

DOCUMENT MANAGEMENT SYSTEM

Document management refer the process of managing and tracking of the documents and records through an electronic or physical source of documents.

In an electronic repository, Document Management Systems (DMS) works by using a computer system and software to store, manage and track electronic documents and electronic images of paper-based information captured through the use of a document scanner.

Advantages of DMS

- Tracking on Check-in/check-out by various officers
- Locking and unlocking of Document
- Simultaneous editing
- Document Version Control
- Roll-back options / Retrieve option
- Ease in Audit trail
- Annotation and Stamps

Advantages of the electronic records

Cost Effective: Storing and maintaining records in digital form is much cheaper than in any other format. With the increase in the technology advancement, the Digital media costs drop every day. Today, digital storage costs a thousandth of what it cost just a few decades ago, so the storage costs are continually dropping for electronic images.

Ease of use: It's very easy to locate and share electronic documents through Computers aid searching now a days the process of filing doesn't exist anymore. The Document management system take care for finding and maintaining Records consistent locations.

Labor savings: The labor required to locate, manage and dispose of electronic documents is almost nil and minimum minuscule. With electronic documents, all the steps like filing collating, stapling etc. can be automated and that labor completely disappears.

Search ability: Electronic documents can be made searchable by doing OCR of a document and make the whole text keyword searchable. That is not possible with paper documents.

Portability: It's very easy to transport electronic documents. No more boxes of records and trucks and semi-trucks to haul records archives. They can easily be stored on a removable hard drive or thumb drive and taken to the courthouse or to the field office.

Disadvantage of Electronic records

Software risk: Storing records in an electronic document management system, have a risk that the system being no longer supported by the software company; that the company will cease to exist; and that the documents will be locked in an unsupported system and have to pay conversion costs to recover them. So the person is somewhat at risk to the software vendor that manages the records.

Format risk: When storing the records as an electronic record, A person run the risk of not being able to read them at some point.

Media compatibility: Some of the documents are stored in floppy disks and that the user knows that there is a document on them. But don't have a floppy disk drive anymore. It require that to maintain those images in a good, viable format, and have to maintain those images on media that the person can still access. Overcoming those problems is always a risk with electronic documents.

Conversion expense: It's very expensive to convert paper documents to digital images. The amount of labor it takes to prepare documents and analyze them so that they can be identified and indexed correctly is very large.

PHYSICAL REPOSITORY

The term Physical repository refers to a central place where data is stored and maintained. A repository can be a place where multiple databases or files are located for distribution over a network, or a repository can be a location that is directly accessible to the user without having to travel across a network. The comparison between the virtual and Physical data room is illustrated as under

PHYSICAL DATA ROOM AND VIRTUAL DATA ROOM

Particulars	Physical Data Room	Virtual Data Room
1. Form of document	Papers, files, boxes or any tangible thing	Electronic or soft copies of documents including video or audio
2. Time required for creation of data room	Longer time required	Shorter time required
3. Cost	High cost	Low cost
4. Convenience	Less convenient	More convenient
5. Accessibility to data room	Restricted time	Any time
6. Facility to restrict access of document access	Not there	Access can be restricted

CODING AND NOMENCLATURE

THE FILE NAMES CAN BE EITHER SELF-DESCRIPTIVE OR NON-DESCRIPTIVE.

The Descriptive file names are useful for small, well-defined projects with existing identification schemes that link the digital object to the source material.

Non-descriptive file names are usually system-generated sequential numerical strings or the system based, such as a digital ID number, combination of Date and time, name of original file and are often linked to meta data stored elsewhere.

THE FOLLOWING ARE BEST PRACTICES FOR FILE NAMING

The File names should:

- Be unique and consistently structured;
- Be persistent and not tied to anything that changes over time or location;
- Limit the character length to no more than 25-35 characters;
- Contain a file format extension;
- Use a period followed by a file extension (for example, .tif, .jpg, .gif, .pdf, .wav, .mpg);
- Use hyphens or underscores instead of spaces;
- Use standard date notation (YYYY-MM-DD or YYYYMMDD);
- Avoid blank spaces anywhere within the character string; and

SAFETY AND RETRIEVAL OF RECORDS

To assure the best quality of documents, it is to be assured that sufficient records are maintained to furnish evidence of the activities affecting quality. The records should incorporate the following:

1. **Operating logs:** the names of the individuals who all have worked on the same Documents
2. **Results of reviews:** the recording of the changes suggested by the each reviewer and basis of the rejection on Non-agreement
3. **Inspections:** list of individuals who have access of the records and have inspection rights of the same.
4. **Monitoring of work performance:** will ease in the monitoring of work performed by the person to whom the file is shared,
5. **Information analyses:** Provide ease in the Information system of the organization and tracking of files.

The care of records and archives is governed by three key concepts.

1. Keeping together

The records must be kept together according to the department / Section responsible for their creation or accumulation, in the original order established at the time of their creation. This gives them their 'evidential' nature and distinguishes them from other kinds of information.

2. Ensure life cycle

Every record follow a 'life-cycle', in that they are created, used for so long as they have continuing value and then disposed of by destruction or by transfer to an archival institution. Every record pass through three main phases, i.e. current phase, semi-current phase 2 non-current phase

In the **current phase**, they are used regularly in the conduct of current business and maintained in their place of origin or in the file store of an associated records office or registry.

In the **semi-current phase**, they are used infrequently in the conduct of current business and are maintained in a records center.

In the **non-current phase** they are destroyed unless they have a continuing value which merits their preservation as archives in an archival institution. The effective management of records throughout this lifecycle is a key issue in civil service reform.

3. Record Preservation

The care of records and archives is that the care should be managed through a coherent and consistent range of actions from the development of record-keeping systems, through the creation and preservation of records to their use as archives.

PRESERVATION OF RECORDS

Preservation of records refers to the implementation of strategies that enhance and prolong the useable life of records and archives. Preservation encompasses storage and handling.

POLICY ON PRESERVATION OF DOCUMENTS AND ARCHIVAL OF DOCUMENTS IN THE WEBSITE

[Under Regulation 9 AND 46 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

9	**PRESERVATION OF DOCUMENTS** The listed entity shall have a POLICY for preservation of documents, approved by its board of directors. Listed entity may keep documents in electronic mode. Company will classifying them in at least Two categories as follows- • Documents whose preservation shall be PERMANENT IN NATURE • Documents with preservation period of NOT LESS THAN EIGHT YEARS after completion of the relevant transactions

46	**DATA AVAILABLE ON WEBSITE OF LISTED COMPANIES** The listed entity shall maintain a functional website containing the basic information about the listed entity. The listed entity shall ensure that the contents of the website are correct. **Updations of change:** The listed entity shall update any change in the content of its website with in 2 working days from the date of such change in content. **Disclosures on website** • Details of its business • Terms and conditions of appointment of independent directors • Composition of various committees of board of directors • Code of conduct of board of directors and senior management personnel; • Details of establishment of vigil mechanism/Whistle Blower policy • Criteria of making payments to non-executive directors , if the same has not been disclosed in annual report; • Policy on dealing with related party transactions; • Policy for determining‘ material subsidiaries; • Details of agreements entered into with the media companies and/or their associates, etc; • The email address for grievance redressal and other relevant details • New name and the old name of the listed entity for a continuous period of one year, from the date of the last name change • With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings. • separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year

SETTING UP OF A RECORD ROOM

The Records room must be located at convenient location to the accesses of the record. The record room should be kept separate from other administrative units and should be large enough to house the relevant files. The accommodation must be secure and well maintained, and it must be of strong construction so that it can bear the weight of the records.

The following factors should be considered while setting up the Data Room:

1. **Humidity:** It's a very important factor. An excess of humidity creates fungus and produces a proliferation of corrosive insects. The lack of humidity, on the other hand, produces brittle and fragile sheets of paper. A controlled humidity between 30% and 40% is the best standard for

preservation. With the less possible variation, and the maximum of stability, because variations of humidity provoke more damages than a stable low or medium range.

2. **Temperature**: The lower is the temperature, the better is for preservation of Records, However, it is suggested to maintain normal temperature in the record room, which is required for comfortable standard for human beings in public places.
3. **Light**: Light has a considerable impact on document's preservation. Not only the visible light to the human eye, but the infrared or ultraviolet radiation, could cause damages. At the environments exposed to the daylight, should be installed curtains with UV filters. Documents exposed to more luminance, should be stored in dark places until its public exposition.

PRIVACY OF RECORD AND ITS CONTROL

For the managing the confidential and privacy, the first step in the process is to identify what constitutes confidential documents at the workplace, and what to share securely.

For any business house the following documents are primarily considered as confidential and need complete privacy:

1. Customer's & Employees' Information:

The Customer's & Employees Confidential Information includes discussions about employee relations issues, disciplinary actions, impending layoffs/reductions-in-force, terminations, workplace investigations of employee misconduct, etc.

2. Office Plans, Office IDs and Internal Procedure Manuals

For every organisation internal planning & procedures is the key aspect for controlling business and the organisation should ensure the protection of the same. It is important to place the documents with detailed office layouts throughout offices to identify key exits in case of emergency but the other documents and forms related to internal processes and procedures should be kept electronically on secure network drives and encourage employees to limit print-outs.

3. Contracts and Commercial Documents and Trade Secretes

In case of the business contracts, every detail of the arrangement should be treated with the utmost confidentiality for both organization itself and the third party's benefit. If the contract has a confidentiality agreement, it could be rendered obsolete if an unauthorised person got their hands on the physical copy of the contract. The contracts are full of commercially sensitive information such as the nature of the arrangement, the value of the services offered/received in the agreement, the names of the main contracting parties, etc.

SUGGESTIVE STEPS FOR PROTECTING CONFIDENTIAL INFORMATION

The company may adopt the following procedures for protecting confidential information:

1. All confidential documents should be stored in locked file cabinets or rooms accessible only to those who are authorized.
2. All electronic confidential information should be protected via firewalls, encryption and passwords.
3. Employees should clear their desks of any confidential information before going home at the end of the day.

4. Employees should refrain from leaving confidential information visible on their computer monitors when they leave their work stations.
5. All confidential information, whether contained on written documents or electronically, should be marked as "confidential.
6. Employees should refrain from discussing confidential information in public places.
7. Employees should avoid using e-mail to transmit certain sensitive or controversial information.

THE DATA (PRIVACY AND PROTECTION) BILL, 2019

The Personal Data Protection Bill, 2019 was introduced in Lok Sabha by the Minister of Electronics and Information Technology, Mr. Ravi Shankar Prasad, on December 11, 2019. The Bill seeks to provide for protection of personal data of individuals, and establishes a Data Protection Authority for the same.

Applicability: The Bill governs the processing of personal data by: (i) government, (ii) companies incorporated in India, and (iii) foreign companies dealing with personal data of individuals in India.

Obligations of data fiduciary: A data fiduciary is an entity or individual who decides the means and purpose of processing personal data. Such processing will be subject to certain purpose, collection and storage limitations. For instance, personal data can be processed only for specific, clear and lawful purpose.

Rights of the individual: The Bill sets out certain rights of the individual (or data principal). These include the right to: (i) obtain confirmation from the fiduciary on whether their personal data has been processed, (ii) seek correction of inaccurate, incomplete, or out-of-date personal data, (iii) have personal data transferred to any other data fiduciary in certain circumstances.

Grounds for processing personal data: The Bill allows processing of data by fiduciaries only if consent is provided by the individual. However, in certain circumstances, personal data can be processed without consent. These include: (i) if required by the State for providing benefits to the individual, (ii) legal proceedings, (iii) to respond to a medical emergency.

Social media intermediaries: The Bill defines these to include intermediaries which enable online interaction between users and allow for sharing of information. All such intermediaries which have users above a notified threshold, and whose actions can impact electoral democracy or public order, have certain obligations, which include providing a voluntary user verification mechanism for users in India.

Data Protection Authority: The Bill sets up a Data Protection Authority which may: (i) take steps to protect interests of individuals, (ii) prevent misuse of personal data, and (iii) ensure compliance with the Bill. It will consist of a chairperson and six members, with at least 10 years' expertise in the field of data protection and information technology.

Transfer of data outside India: Sensitive personal data may be transferred outside India for processing if explicitly consented to by the individual, and subject to certain additional conditions. However, such sensitive personal data should continue to be stored in India. Certain personal data notified as critical personal data by the government can only be processed in India.

Exemptions: The central government can exempt any of its agencies from the provisions of the Act: (i) in interest of security of state, public order, sovereignty and integrity of India and friendly relations with foreign states, and (ii) for preventing incitement to commission of any cognisable offence (i.e. arrest without warrant) relating to the above matters.

Offences: Offences under the Bill include: (i) processing or transferring personal data in violation of the Bill, punishable with a fine of Rs 15 crore or 4% of the annual turnover of the fiduciary, whichever is higher, and (ii) failure to conduct a data audit, punishable with a fine of five crore rupees or 2% of the annual turnover of the fiduciary, whichever is higher. Re-identification and processing of de-identified personal data without consent is punishable with imprisonment of up to three years, or fine, or both.

DOCUMENTS WHOSE PRESERVATION SHALL BE PERMANENT IN NATURE:

1. Property records including purchase and sale deeds, licences, copyrights, patents &trademarks
2. Corporate Records including Certificate of Incorporation, Common Seal, Minutes of Board, Committee and Shareholders' Meetings, Register of Members and other Statutory Records
3. Personal files of all live employees
4. Any other record as may be decided by the Chief Executive Officer of the Company from time to time.

DOCUMENTS WHOSE PRESERVATION PERIOD SHALL NOT BE LESS THAN EIGHT YEARS AFTER COMPLETION OF THE RELEVANT TRANSACTIONS:

1. Books of Accounts, Bank Statements and vouchers
2. Filings with Stock Exchanges, Registrar of Companies and other statutory authorities.
3. Payroll Records, Employee deduction authorisations, attendance records, employee medical records, leave records, Pension and retiral related Records, etc.
4. Corporate Social Responsibility Records
5. Sponsorship Projects Records
6. Correspondence and Internal Memoranda
7. Any other record as may be decided by the Chief Executive Officer of the Company from time to time.

DOCUMENTS WHOSE PRESERVATION SHALL BE FOR A MINIMUM PERIOD OF THREE YEARS AFTER COMPLETION OF THE EVENT:

1. Tender Documents
2. Lease Deeds and Contracts
3. Legal files
4. Insurance Records including policies and claims
5. All e-mail correspondence, internal & external
6. Documents under Secretarial Standard
7. Proof of sending Notice of the meetings of the Board and General meetings and its delivery
8. Proof of sending Agenda and Notes on Agenda and their delivery
9. Proof of sending and delivery of the draft of the Resolution

CASE LAW

In the matter of M/s Indiabulls Real Estate Limited, the Registrar of Companies, NCT of Delhi & Haryana, has passed an Adjudication order for non-compliance of the provisions of sub-section (10) of section 118 (mandatory observance of Secretarial Standards with respect of general and board meetings) of the Companies Act 2013 read with Secretarial Standards – 1 & 2.

As per section 206(5) of the Companies Act 2013, the Central Government carried out the inspection of the books of accounts of the company and after going through the records / documents of the company, the inspector, upon completion of the inspection observed that the company has not

complied with the provisions of section 118 (10) read with Secretarial Standards. The inspector while submitting the report pointed out that the company has not serially numbered their "Attendance Register" of board meetings and other meetings and also the "Attendance Register" maintained in loose-leaf form, not bound periodically, which is not in compliance with section 118 of the Companies Act 2013 read with Secretarial Standards issued by the Institute of Company Secretaries of India.

The Registrar of Companies, based on the report submitted by the inspector, issued a show cause notice to the company. The company in a reply to show cause notice stated that the company and its directors / officers accept that there has been an inadvertent mistakes and these have been rectified subsequent to the issue of the show cause notice. The company stated that there was no deliberate intention and no mens-rea with read to the offences and therefore the company, its directors / officers deserve to be excused.

The Registrar of Companies / Adjudicating Officer came to the conclusion after going through the application and also based on the oral and written submission made by the company at the time of the personal hearing and imposed penalty on the company and its officers.

CASE LAW

A Case Regarding Admissibility of Electronic Evidence

In the matter of Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantayal and Ors. civil appl no. 20825- 20826 of 2017, Civil Appeals were referred to a Bench of Judges of Supreme Court by a Division Bench, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 by two judgments. It was found by the court that a Division Bench judgment in Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 may need reconsideration by a Supreme Court Bench of a larger strength. In the case of Shafhi Mohammad (supra). it was observed by Supreme Court that it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

The Supreme Court observed that the major premise of Shafhi Mohammad (supra) that the certificate under section 65-B(4) cannot be secured by persons who are not in possession of an electronic device is incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) in cases in which such person refuses to give it.

MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM UNDER COMPANIES ACT, 2013

Section 120 of the Companies Act, 2013 (the Act) read with Rule 27 & 28 of the Companies (Management and Administration) Rule, 2014 provides for maintenance of documents in electronic form. The provisions also provide for inspection of documents maintained in electronic form. It states that any document, record, register, minutes, etc. that are required to be kept by a company or allowed to be inspected or copies to be given to any person by a company under the Act, may be kept or inspected or copies given, as the case may be, in electronic form.

Rule 27 provides that every listed company or a company having not less than one thousand shareholders, debenture holders and other security holders, may maintain its records in electronic form.

Section 2(36) of the said Act relates to the definition of "document" which includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of Companies Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

The term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the Rules made thereunder to be kept by a company. Therefore, such documents and records can also be maintained in electronic form.

However, the records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided that –

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;
(b the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;
(c) the records must be capable of being readable, retrievable and reproducible in printed form;
(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;
(e) the records, once dated and signed digitally, shall not be capable of being edited or altered;
(f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updating shall be capable of being recorded on every updating.

Security of Records Maintained in Electronic Form- Rule 28

(1) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

(2) The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;

(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered records;

(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;

(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

(h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

(i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

(j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;

(k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;

(l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and

(m) take necessary steps to ensure security, integrity and confidentiality of records.

The ten basic rules that could serve as a general guideline in structuring folder and file naming are:

S.No.	Particulars	Do's	Don'ts	Reason
1.	Avoid extra-long folder names and complex hierarchical structures but use information-rich filenames instead.	D:\ABC\FY\16-17\ AR\ MGT-7.doc	D:/ Alfa Botanicals Private\Financial Year\2016-2017\ Annual Return\ Form MGT-7.doc	Complex hierarchical folder structures require extra browsing at time of storage and at the time of file retrieval. By having all the essential information concisely in the file name itself, both the search and identification of the file is streamlined and more precise.
2.	Put sufficient elements in the structure for easy retrieval and identification but do not overdo it.	ABC_SearchReport_ Invoice 20.07.2018. pdf	ABC_Report_ Invoice.pdf	Precision targeted retrieval requires sufficient elements to avoid ambiguous search results but too much information adds undue effort at file naming time with little or no returns at retrieval time.
3.	Use the underscore (_) as element delimiter. Do not use spaces or other characters such as: ! # $ % & ' @ ^ ` ~ + , . ; =) (	SMITH-J_ AXA_7654-6_ POLICY_20120915. pdf || FUJITSU_	SMITH-J AXA 7654-6 POLICY 20120915.pdf || FUJITSU $S1500$	The underscore (_) is a quasi standard for field delimiting and is the most visually ergonomic character. Some search tools do not work with spaces and should be

		S1500_SPEC_ Scanner.pdf	SPEC$Scanner. pdf	especially avoided for internet files. Other characters may be interesting but visually confusing and awkward.
4.	Use the hyphen (-) to delimit words within an element or capitalize the first letter of each word within an element.	Smith-John_AIG _7654-6_POLICY_2009-09-15. pdf || WhitePaper_ Structured File Naming Strategy. doc	Smith John AIG 7654 6 POLICY 2009 09 15.pdf || White Paper Structured file naming strategy.doc	Spaces are poor visual delimiters and some search tools do not work with spaces. The hyphen (-) is a common word delimiter. Alternatively, capitalizing the words within an element is an efficient method of differentiating words but is harder to read.
5.	Elements should be ordered from general to specific detail of importance as much as possible.	FY2009_Acme-Corp _Q3_ TrialBal_20091015_ V02.xls || Production_ Paint-Shop_ WorkOrder_775-2. xls	TrialBal _ Q3_20091015_ Acme-Corp_V02_ FY2009.xls || Paint-Shop_775-2_ WorkOrder_ Production.xls	In general the elements should be ordered logically, in the same sequence that you would normally search for a targeted file.
6.	The order of importance rule holds true when elements include date and time stamps. Dates should be ordered: YEAR, MONTH, DAY. (e.g. YYYYMMDD, Y Y Y Y M M D D , YYYYMM). Time should be ordered: HOUR, MINUTES, SECONDS (HHMMSS).	RFQ375_CablesUnlimited _BID_20091015- 1655.pdf || 2009- 11-20_AMATProj _ Phase1_Report.doc	RFQ375_Cables Unlimited _ BID_10152009-1655. pdf || Nov-20-2009_ AMATProj_ Phase1_ Report.doc	To ensure that files are sorted in proper chronological order the most significant date and time components should appear first followed with the least significant components.
7.	Personal names within an element should have family name first followed by first names or initials.	Tate-Peter_SunLife _1-7566-2_ POLICY_10Yr Term. pdf || SmithJ_ ID3567_ADMIN_ WageReview. xls	Peter-Tate_SunLife _1-7566-2_POLICY_10 Year Term.pdf || JSmith_ ID3567_ ADMIN_Wage Review.xls	The family name is the standard reference for retrieving records. Having the family name first will ensure that files are sorted in proper alphabetical order.
8.	Abbreviate the content of elements whenever possible	RevQC _QST_2009-Q2.xls ||	Minister of Revenue Quebec _QuebecSales-	Abbreviating helps create concise file names that are easier to read and recognize.

		MCIM_ 27643 _POD. doc	Tax_2009-2ndQuarter. xls || MultiCIMTechnologiesInc_27643_ProofOf-Delivery.pdf	
9.	An element for version control should start with V followed by at least 2 digits and should be placed as the last most element. To distinguish between working drafts (i.e. minor revisions) use Vx-01->Vx-99 range and for final draft (i.e. major version release) use V1-00-> V9-xx. (where x =0-9)	MCIM_Proposal_ V09.doc || eXadox_ UserManual_ V1-02. doc	MCIM_Proposal_9. doc || eXadox_ UserManual_ V2FinalDraft.doc	The "V" helps denote that the element pertains to a version number. A minimum of 2 digits with a leading zero is required to ensure that search results are properly sorted. The intent is to avoid the situation where for example, a filename with a "V1-13" will wrongly appear before an identical filename with a "V1-2" version number when sorted in ascending alphabetical/numerical order. To distinguish between working, review and final draft a single digit prefix followed by hyphen "-" is preferred to facilitate proper sorting; using words in the file name such Final, Draft or Review in the filename affect the order and should be avoided.
10.	Prefix the names of the pertinent subfolders to the file name of files that are being shared via email or portable storage devices.	Prod_PS_AssL7_ W O _ Suzuki _ J3688-20090725. xls || FY2009_ Acme-Corp _Q3_ TrialBal_20091015_ V02.xls	WO_Suzuki_J3688-20090725.xls || Q3_ TrialBal_20091015_ V02.xls	Attached files and files shared through portable devices include only the file name and can be totally devoid of the context that is generally provided by the folder structure of origin. To compensate and avoid confusion it is sometimes essential to prefix the name of the subfolder(s) to such file names.

MODEL POLICY

The model policy on preservation of Documents and archival of documents is as under:

POLICY ON PRESERVATION OF DOCUMENTS AND ARCHIVAL OF DOCUMENTS IN THE WEBSITE

[Under Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

1. Purpose and Scope

The purpose of this document is to present a policy statement for (Company) regarding preservation of its documents and archival of documents on the website in accordance with the provisions of the Companies Act, 2013 and Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR").

The policy is framed for the purpose of systematic identification, categorization, maintenance, review, retention and destruction of documents received or created in the course of business. The policy gives guidelines on how to identify documents that need to be maintained, how long certain documents should be retained, how and when those documents should be disposed of, if no longer needed and how the documents should be accessed and retrieved when they are needed.

2. Classification of Documents to be Preserved / Retained

The Company's physical and electronic documents shall be classified for the purpose of preservation as follows:

A. Documents whose preservation shall be permanent in nature;

B. Documents whose preservation period shall not be less than eight years after completion of the relevant transactions;

C. Documents whose preservation shall be for a minimum period of three years after completion of the event.

3. Principle of Responsibility of Employees for Preservation of Documents

All the Employees in the permanent rolls of the Company are responsible for taking into account the potential impacts on preservation of the documents in their work area and their decision to retain/ preserve or destroy documents pertaining to their area.

4. Periodical Review of the Policy

The Chief Executive Officer/ Managing Director/ Whole-time Director of the Company is authorised to periodically review the policy and make such changes as considered necessary.

5. Suspension of Record Disposal in the Event of Litigation or Claims

In case the Company is served with any notice for request of documents or any employee becomes aware of a governmental investigation or audit concerning the Company or commencement of any litigation against the Company, any further disposal of documents connected with the matter shall be suspended until such time the investigation / litigation ends.

6. Statutory Requirements

If as per any other law of land including Information Technology Act, a physical or electronic record should be preserved for a longer period than what has been stipulated in this policy, then the document shall be preserved as per the applicable statutory stipulations.

7. Web Archival Policy

The Company shall disclose on its website all events or information which has been disclosed to stock exchange(s). <> We should be specific

Such disclosures shall be retained on the website of the Company for a minimum period of five years

Place:……

Date:…… ANNEXURE

CHAPTER-6 SIGNING AND CERTIFICATION

CONCEPT OF PRE-CERTIFICATION

1. Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013
2. Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the form or return are as per the books and records of the company and are true and correct.
3. This would mean that the Registrar can rely on the certification of the Company Secretary in practice and may take the document on record without further examination.
4. Thus, Pre-certification by a Company Secretary in practice ensures that no form or return is filed in the Office of Registrar of Companies which is defective or incomplete.

POINTS TO BE KEPT IN MIND WITH REGARD TO PRE-CERTIFICATION

1. It is duty of the Company Secretary in practice to check and verify thoroughly the correctness of the contents of the form before certifying it as correct.
2. The members in practice are, accordingly, expected to exercise due care, diligence and skill, while performing the duty of pre-certification.
3. Pre-certification of forms is, therefore, not a routine or mechanical exercise but a serious task and involves work calling for sound application of mind in verifying the averments made in the respective forms after due consideration of the provisions of the Act read with the relevant rules.

DO'S AND DON'TS WHILE FILLING AND FILING OF E-FORMS

- Before filling of e-forms, the professional should go through the instruction kit of the respective e-form provided by the MCA on MCA-21 portal.
- Ensure that latest version of the e-forms has been downloaded from the MCA Website;
- Digital Signature is mandatory and same shall be registered on the MCA Portal before it first use.
- Check Master Data of the company before filing any documents.
- The attachments to the e-forms should be complete and all pages of the attachment should be page numbers and shall be attached in order.
- Don't wait for the last days or the due date of the filing of e-forms.
- Don't fill up the forms in hurry, ensure that the all the entries in the forms are correct and as per the supporting documents to be attached.
- Don't forget to pay the filing fees before the expiry date of the challan as non-payment of fees liable for cancellation of transaction.
- Use various inbuilt utilities like "PREFILL" and complete the form by clicking on "CHECK" and "PRE-SCRUTINY" options.

COMMON ERRORS IN E-FILING

- Digital signature is not registered / expired.
- Payment of Challan not done before the expiry date
- Excess size of the form.
- Status of Resubmission of E forms

- Use of outdated version of Form;
- Incorrect particulars in the e-Form;
- Using older versions of Adobe and Java.

PREPARATION BEFORE CERTIFICATION

- Ensure that Letter of Engagement/Board Resolution authorizing the professional for the assignment by the company to be obtained
- Ensure that all relevant documents and attachments are legible & visible.
- Verification of the documents from the original records of the company.
- Correctness of the records and the material departure from the facts.
- The form to be digitally signed by the Director or person authorized by the company.
- Before certification of any form, the person should be aware about the relevant provisions under the Act and Rules made thereunder, Process to be followed by the company, approval if any required etc.

Rule 8(12) the Companies (Registration Offices and Fees) Rules, 2014

AUTHENTICATION OF DOCUMENTS

(1) An electronic form shall be authenticated by authorised signatories using digital signature.

(2) Where there is any change in directors or secretaries, the form relating to appointment of such directors or secretaries has to be filed by an continuing director or the secretary of the company.

(3) The authorised signatory and the professional, if any, who certify e-form shall be responsible for the correctness of the contents of e-form and correctness of the enclosures attached with the electronic form.

(4) Every person authorised for authentication of e-forms, documents or applications etc., which are required to be filed or delivered under the Act or rules made there under, shall obtain a digital signature certificate from the Certifying Authority for the purpose of such authentication.

(5) The electronic forms required to be filed under the Act or the rules thereunder shall be authenticated on behalf of the company by the Managing Director or Director or Secretary of the Company or other key managerial personnel.

(6) Scanned image of documents shall be of original signed documents relevant to the e-forms

(7) It shall be the sole responsibility of the person who is signing the form and professional who is certifying the form to ensure that all the required attachments relevant to the form have been attached completely and legibly as per provisions of the Act, and rules made thereunder to the forms or application or returns filed.

(8) Where any instance of filing document, application or return etc, containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.

(10) Without prejudice to any other liability, in case of certification of any form, document, application or return under the Act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the Central Government till a final decision is taken in this regard.

(11)(a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:-

INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT- 14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-1, NDH-2, NDH-3

ANNUAL RETURN SECTION 92

Section 92(1) read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed Form MGT-7 and One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A**.containing the particulars as they stood on the close of the financial year regarding

• its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
• its shares, debentures and other securities and shareholding pattern;
• its members and debenture-holders along with changes therein since the close of the previous financial year;
• its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
• meetings of members or a class thereof, Board and its various committees along with attendance details;
• remuneration of directors and key managerial personnel;
• penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
• matters relating to certification of compliances, disclosures as may be prescribed;

Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

Certification of annual returns in case of listed company

a)	The annual return, filed by a listed company or, by a company having paid-up share capital of 10 crore or more and turnover of 50 crore rupees or more, shall be certified by a Company Secretary in practice. The certificate shall be in **Form MGT-8**. [Rule 11(2)]
b)	The certificate shall state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Companies Act.
c)	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of section 92 or the rules made thereunder, he shall be punishable with fine which shall not be less than 50,000 but which may extend to 5 lakh.

Signing and certification of the Annual Return

a)	The annual return shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

b) In relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

While certifying the Form No. MGT 8, the practicing company secretary provide certification relating the following points:

1. the Annual Return discloses the facts as at the close of the financial year correctly and adequately;
2. the Company has complied with the provisions of the Act & Rules made there under during the financial year
3. Maintenance of registers/records & making entries therein within the time prescribed
4. Calling/ convening/ holding meetings of Board of directors or its committees if any
5. Closure of Register of Members / Security holders, as the case may be.
6. Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
7. Contracts/arrangements with related parties as specified in section 188 of the Act;
8. Issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
9. Signing of audited financial statement and report of directors is as per section 134 of the Act;
10. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;
11. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act
12. Acceptance/ renewal/ repayment of deposits;

Filing of the annual return with the Registrar

Section 92(4) provides that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014. [Rule 12(2)]

Filing annual return in absence of annual general meeting

Where no Annual General Meeting is held in a particular year, the annual return has to be **filed within 60 days** from the last day on or before which the meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting,

If an Annual Return has been filed and the Annual General Meeting was held later, in such cases filing of another Annual Return is not necessary.

PENALTY SECTION 92(5)

If any company fails to file its annual return under sub-section **(4),** before the expiry of the period specified therein such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case

of a company and fifty thousand rupees in case of an officer who is in default].(companies amendment Act 2020)

PUNISHMENT FOR FALSE STATEMENT SECTION 448

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,

- which is false in any material particulars, knowing it to be false; or
- which omits any material fact, knowing it to be material,

He shall be liable under section 447

PUNISHMENT FOR FALSE EVIDENCE SECTION 449

Save as otherwise provided in this Act, if any person intentionally gives false evidence

- upon any examination on oath or solemn affirmation, authorized under this Act;
- in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act

He shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

CONSEQUENCES OF NON-FILING ANNUAL RETURN

For the Director

(1) If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees. (Section 92)

(2) If the company has not filed its financial statement or Annual Return for continuous period of three financial years, then every person who is or has been director of that company shall not be eligible for re-appointment as Director of that company or appointed in any other company for a period of five years from the date on which the said company fails to do so. (Section 164(2))

(3) If in Annual Return, any Director or any Person makes a statement (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. (Section 448)

Under section 245, the class of shareholders or depositors may file an application with the Tribunal alleging that the management or conduct of the affairs of any company are being conducted in a manner prejudicial to the interest of the company, its members or depositors. Such class action may include suite against the company, its directors, officers, experts or any other person for

wrongful or fraudulent act. The order passed by the Tribunal shall be binding on the Company, its directors and officers.

For the Company

(1) If the company has not filed its Annual Return by which it should have been filed with fee and additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees (2) If the Company has defaulted in filing Annual Returns for the immediately preceding five financial years, the Company may be wound up by the Tribunal. (Section 271)

(3) If the Company has not filed its Annual Return for last two financial years, it will be termed as "inactive company" [Section 455(1)]

(4) If the Company has not filed its Annual Return for two financial years consecutively, the Registrar shall issue notice to the Company and enter its name in the Register of Dormant Companies. [Section 455(4)]

Provisions and procedure for compounding of offences, which are punishable under Companies Act, 2013 are stipulated under Section 441.

Under section 441 of the Companies Act, 2013, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by –

(a) The Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

Further, the offence punishable with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable and the offence which is punishable with imprisonment only or with imprisonment and also with fine are not compoundable.

Only those offences which are punishable with either penalty or with penalty or imprisonment are compoundable under Section 441. Therefore, offence which is specifically punishable only with imprisonment or with imprisonment and fine is non-compoundable.

Any offences punishable with fine only may be compounded by the Tribunal or where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorized by the Central Government.

Scope and Extent of work for Practicing Company Secretary

For the purpose of certification, PCS should carry out a scrutiny of the data available and check the correctness of the same. Since almost all the events happened between closure of two financial years i.e., between 1 April - 31 March or as approved by Tribunal are captured in the Annual Return, the PCS should be prudent in understanding the events and its impact and consequences, while certifying the same.

PCS should carry out a detailed scrutiny and cross verification of documents. For ensuring the correctness of information contained in the Annual Return, the primary source documents should

be looked into. While doing the detailed scrutiny, he may rely on certified copies of the resolutions, forms, and agreements as also certificates from the management.

Method of Verification

PCS should ask the company to give him access to various documents and books including the Annual Reports of the previous financial years, Register of Members/ debenture holders and all other statutory Registers, the Minutes Books, copies of forms and returns filed with the Registrar of Companies etc. and other documents which he considers essential for the purpose of verification.

Documents to be Obtained/ Verified before Certification of Annual Return by Company Secretary in Practice

1. Memorandum and Articles of Association.
2. Forms & receipts filed with the Registrar of Companies.
3. Statutory Registers
4. Record of Private Placement (Section 42)
5. Register of Members (Section 88)
6. Shareholders-MGT-1
7. Decuntureholder-MGT-2
8. Register of Directors & their Shareholding (Section 170)
9. Register of Key Managerial Personnel (Section 170)
10. Register of Related Party Contracts under MBP 4 (Section 188)
11. Register of Loan and Investment under SH-12 (Section 186)
12. Register of Deposit- (Section 73 and 76 read with rule 14)
13. Register of Employee Stock Option under SH-6 (Section 62)
14. Register of Buyback under SH-10 (Section 68)
15. Register of Sweat Equity shares under SH-3 (Section 62)
16. Minutes of the Meetings
17. Notices and agenda papers for convening meetings of the Board and Committees
18. Attendance Registers of all Meetings
19. Copy of Latest Financial Statements along with the Boards Report and Auditors Reports.
20. Shareholder List
21. Indebtedness Certificate signed by Company Secretary/ CFO/Statutory Auditors of the Company.
22. Board Resolution for any type of corporate actions taken by the Company.
23. List of Promoters

Certification with reservation /qualification /observations /adverse remarks

A PCS may certify the Annual Return subject to certain reservations /qualifications/ observations/adverse remarks by way of an annexure to his certificate. However, this course of action can only be resorted to in case where material facts are not stated correctly and completely in the Annual Return or where the company has not complied with the provisions of the Companies Act.

REGISTER OF CERTIFICATION

For the purpose of maintaining quality of attestation /certification services provided by Company Secretaries in Practice, every Practicing Company Secretary should maintain a register regarding attestation/certification services provided by him. The Practicing Company Secretary should maintain the register for the all attestation /certification services, which includes:

1. Signing of Annual Return (MGT-7)
2. Certification of Annual Return (MGT-8)
3. Issue of Secretarial Audit Report (MR-3)
4. Certification of E forms of MCA under Companies Act, 2013
5. Internal Audit of Depository Participants/ portfolio Manager/ Stock Broker
6. Annual Compliance auditor under SEBI (Research Analyst) Regulations, 2014
7. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges.
8. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/FITTC/Cir-16/2002 dated December 31,2002.
9. Conduct of Internal Audit of Operations of the Depository Participants.
10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015
11. Information relation to E forms certified and signed.
12. Register of various reports issued.

PEER REVIEW

It is a process for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement. Each Practice Unit would be required to be peer reviewed at least once in a block of five years. The Practicing Company Secretary/Firm may apply voluntarily to be peer reviewed or it may be done through random selection by the Peer Review Board.

The peer review includes the following services by the company secretaries in practice:

1. Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013.
2. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
3. Issuance of Certificate of Securities Transfers in Compliance with the LODR with Stock Exchanges.
4. Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31,2002.
5. Conduct of Internal Audit of Operations of the Depository Participants.
6. Compliance Certification under LODR.
7. Attestation services of Form AOC 4, MGT 7, DIR 12, SH7 and PAS 3 filed with the ROC.
8. Such other services as decided by the Council of ICSI under the scope of peer review from time to time.

CORPORATE GOVERNANCE CERTIFICATION

This certificate on the compliance of conditions of Corporate Governance by the Company, is issued under the regulations 17 to 27 and clauses (b) to (i) of regulation 46(2) and paras C and D of Schedule V of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the Listing Regulations).

The certificate can be issued either by the auditors or practicing company secretary and shall be annexed to with the director's report.

Further, Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of the quarter.

AUTHORITY TO INITIATE ACTION AGAINST PROFESSIONALS

1. MCA has clarified that Regional director/ ROC would initiate action under section 448 and 449 of the Act in the cases of submitting false or misleading or incorrect information.
2. Further, the cases u/s 448 and 449 may also be referred to the concerned Institute for conducting disciplinary proceedings against the errant member and the MCA may debar the concerned professional from filing any document on the MCA portal in future.
3. The **Disciplinary Directorate** of ICSI on receipt of any information or complaint arrive at a prima facie opinion on the occurrence of the alleged misconduct and Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he place the matter before the **Board of Discipline** and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he place the matter before the **Disciplinary Committee** of ICSI
4. In the matters, which are placed before the Board of Discipline, and where the board is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely

• reprimand the member
• remove the name of the member from the Register up to a period of three months;
• impose such fine as it may think fit which may extend to rupees one lakh.

5. In the matters, which are placed before the Disciplinary Committee, and Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

• Reprimand the member;
• Remove the name of the member from the Register permanently or for such period, as it thinks fit
• impose such fine as it may think fit, which may extend to rupees five lakhs

PROFESSIONAL MISCONDUCT COVERED UNDER THE FIRST SCHEDULE

PART I: Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he-

1. Allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
2. Pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.
3. Accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute
4. enters into partnership, in or outside India, with any person other than a Company Secretary in practice
5. secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:
6. solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:
7. accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
8. engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

PART II - Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person-

1. pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
2. accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PROFESSIONAL MISCONDUCT COVERED UNDER THE SECOND SCHEDULE

PART I - Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he

1. discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
2. certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice
3. permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast

4. expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest
5. fails to report a material mis-statement known to him and with which he is concerned in a professional capacity
6. does not exercise due diligence, or is grossly negligent in the conduct of his professional duties
7. fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion
8. fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice

PART II - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

1. contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
2. being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
3. includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
4. embezzles moneys received in his professional capacity.

FORMS & RETURNS WHICH REQUIRED PRE-CERTIFICATION UNDER THE COMPANIES ACT, 2013

S. No.	e-Form/ web Form	Purpose
1.	INC 20A	Application for Declaration prior to the commencement of business or exercising borrowing powers
2.	INC-22	Notice of situation or change of situation of registered office
3.	INC-28	Notice of Order of the Court or any other competent authority
4.	PAS-3	Return of Allotment
5.	SH-7	Notice of Registrar of any alteration of share capital
6.	CHG-1	Application for registration of creation, modification of charge (other than those related to debentures)
7.	CHG-4	Particulars for satisfaction of Charge
8.	CHG-9	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures
9.	MGT-14	Filing of Resolutions and agreements to the Registrar
10.	DIR-6	Intimation of change in particulars of Director to be given to the Central Government
11.	DIR-12	Particulars of appointment of Directors and the key managerial personnel and the changes among them
12.	MR-1	Return of appointment of MD/WTD/Manager
13.	MR-2	Form of application to the Central PCMA Government for approval of appointment or reappointment and remuneration or increase in

		remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors.
14.	MSC-3	Return of Dormant Company
15.	MSC-1	Application to Registrar for obtaining the status of Dormant Company
16.	MSC-4	Application for seeking status of active company
17.	GNL-1	Applications made to Registrar of Companies
18.	GNL-3	Details of persons/directors/charged/specified "officer who is in default"
19.	ADT-1	Information to the Registrar by Company for appointment of Auditor
20.	NDH-1	Return of Statutory Compliance
21.	NDH-2	Application for Not available extension of Time
22.	NDH-3	Half yearly Return
23.	MGT-7	Annual Return
24.	AOC-4	Form for filing financial statement and other documents with the Registrar
25.	DIR-3 KYC	KYC of Director

PRE-CERTIFICATION UNDER SEBI REGULATIONS

S. No.	Regulation	Purpose
1.	Regulation 40(9) (Listing Obligations and Disclosure Requirements) Regulations, 2015	The listed entity shall ensure that the Share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within thirty days from the end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/ allotment monies.
2.	Regulation 24A (Listing Obligations and Disclosure Requirements) Regulations, 2015	Secretarial audit report given by a company secretary in practice
3.	Regulation 55A SEBI (Depositories and Participants) Regulations, 2018	Every issuer shall submit to the Stock Exchanges, audit report by a practicing company secretary on a quarterly basis, for the purposes of reconciliation of the total issued capital.
4.	Regulation on 76 SEBI (Depositories and Participants) Regulations, 2018.	Reconciliation of Share Capital Audit Report

Other Certifications:

- Certificate regarding Compliance of Conditions of Corporate Governance (Schedule V, Clause E).
- Certificate under Schedule V (10)(i) pertaining to directors' disqualification. [Regulation 34(3)].
- Certification by PCS in case of Offer/allotment of securities to more than 49 to up to 200 investors (SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016).
- To issue certificate of compliance to an investment adviser under SEBI (Investment Advisers) Regulations, 2013.
- To conduct annual audit of Research analyst or research entity in respect of Compliance with SEBI (Research Analysts) Regulations, 2014.
- Certification of shareholding pattern for registration as authorised person & Board Resolution in case the applicant is a Corporate body/ Sharing Pattern of Profit/loss in case the applicant is Partnership Firm / LLP
- Certifications required during IPO's - certifying basis of allotment, allotment of shares from employees quota, etc
- Certifying that the SEBI (ICDR) Regulations, 2018 for bonus issue has been complied with.
- Certificate for receipt of money specifically certifying that the company has received the application/ allotment monies from the applicants of these shares.
- Quarterly certificate specifically certifying that the company has received the application/ allotment monies from the applicants of these shares.
- Certifying that the floor price for the proposed placement to QIBs is based on the pricing formula prescribed under Chapter VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- Certifying that debenture holders have provided their consent for changing the terms of the Debentures whereby mentioning the existing as well as revised terms.
- Listing of units of REITs-Certifying that:
    - Allotment of units has been made as per the basis of allotment approved by designated Stock Exchange.
    - All the funds have been received before the allotment of units of REITs.

The certificates corresponding to Securities under lock in have been enfaced with non-transferability condition.

CORPORATE GOVERNANCE CERTIFICATION BY PRACTICING COMPANY SECRETARY

This certificate on the compliance of conditions of Corporate Governance by the Company, is issued under the regulations 17 to 27 and clauses (b) to (i) of regulation 46(2) and para C and D of Schedule V of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI(LODR)']. The certificate can be issued either by the statutory auditors or PCS and shall be annexed to the director's report.

Clause E of Schedule V of the Regulations prescribes that a Compliance Certificate from either the auditors or Practicing Company Secretary regarding compliance of conditions of corporate governance shall be annexed to the directors' report. Besides listed entities are required to submit a quarterly compliance report on corporate governance in the specified format to the stock exchange within fifteen days from the close of each quarter. The listed entities are further required to file a half yearly compliance report and an annual compliance report with the stock exchanges in the prescribed format.

Further, Regulation 27(2) of SEBI(LODR), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognized Stock Exchange(s) within twenty one days from close of the quarter.

Accordingly, different formats for Compliance Report on Corporate Governance have been prescribed for Quarterly reporting, and the report to be submitted at the end of the financial year (for the whole of financial year) and also for reports which are to be submitted within six months from end of financial year.

In order to bring about transparency and to strengthen the disclosures around loans/ guarantees/comfort letters/ security provided by the listed entity, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them, SEBI has decided to mandate such disclosures on a half yearly basis, in the Compliance Report on Corporate Governance. The format of disclosure in this regard is specified vide Annex - IV of the said report and shall be effective from financial year 2021-22.

The format for compliance report on Corporate Governance shall be as under:

I. Annex - I - on quarterly basis;
II. Annex - II - at the end of a financial year;
III. Annex - III - at the end of 6 months from the close of financial year;
IV. Annex - IV - on a half yearly basis (w.e.f. first half year of the FY 21-22);

IMPORTANT POINTS RELATING TO CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC)

- In order that the PCS can carry out the necessary verification for the purpose of issuing Corporate Governance Compliance Certificate (CGCC), the Company should provide the PCS access to the registers, books of accounts, papers, documents, reports and records of the Company wherever kept.
- The CGCC from the PCS should relate to the financial year of the listed Company under Report.
- When a PCS is assigned the compliance certification work of the Company for the first time, he should communicate his appointment to the earlier incumbent, if a PCS, by registered post.
- The PCS who has issued the CGCC should make himself available at the Annual General Meeting to provide clarifications, on CGCC, if required.

- Any failure or lapse on the part of a PCS in issuing a CGCC, may not only attract disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980, but also make him liable for any injury caused to any person due to his negligence in issuing the CGCC.

MODE OF ISSUING CORPORATE GOVERNANCE COMPLIANCE CERTIFICATE (CGCC)

For issuing CGCC a three-step procedure needs to be followed:

(i) The PCS would first obtain from the listed entity its draft report on Corporate Governance.

(ii) PCS would examine relevant records relating to Corporate Governance and obtain necessary information and explanation from the management. An illustrative list of compliance inputs and checklists has been indicated in each paragraph in this Guidance Note. The list is however, not exhaustive.

(iii) PCS on the basis of the report and verification of such other records as well as information and explanation so obtained, would certify the compliance of the conditions of Corporate Governance and give his certification to the Board to be annexed to the Board's Report.

(iv) Where a Company has adopted the Voluntary Guidelines, the PCS would also certify the compliance thereof.

TYPES OF CERTIFICATION

The certification may be unqualified or qualified:

(a) Unqualified certificate: An unqualified certificate should be issued when the PCS forms the opinion that the conditions of Corporate Governance have been duly complied with by the Company.

(b) Qualified certificate: A qualified certificate should be issued when the PCS concludes that there are certain specific non-compliances or inadequacies. A qualified certificate should contain a brief description of non-compliances or inadequacies in compliances and the extent thereof.

• It is recommended that the qualifications, if any, should be stated in bold type or in italics in the CGCC.
• If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons therefor.
• If the scope of work required to be performed is restricted on account of limitations imposed by the client, or on account of other limitations (such as certain books or papers being in custody of another person or Government Authority), the certificate may indicate such limitations.

- If such limitations are so material that the PCS is unable to express any opinion, the PCS should state that "in the absence of necessary information and records, he is unable to certify compliance or otherwise of the conditions of Corporate Governance by the Company"

CHAPTER-7
VALUES ETHICS AND PROFESSIONAL CONDUCT

INTRODUCTION

In the world of intense competition, every professional work on certain principles and beliefs which are nothing but the values. Likewise, ethics is implemented in the organisation to ensure the protection of the interest of stakeholders like customers, suppliers, employees, society and government.

TYPES/BRANCHES OF ETHICS

NORMATIVE ETHICS deals with "norms" or set of considerations how one should act. Thus, it's a study of "ethical action" and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong.

META-ETHICS OR "ANALYTICAL ETHICS" deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions - what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics.

DESCRIPTIVE ETHICS deals with what people actually believe (or made to believe) to be right or wrong, and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other.

APPLIED ETHICS deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment.

KEY DIFFERENCES BETWEEN ETHICS AND VALUES

ETHICS	VALUES
Ethics refers to the guidelines for conduct, that address question about morality.	Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
Ethics is a system of moral principles.	In contrast to values, which is the stimuli of our thinking.
Ethics compels to follow a particular course of action.	On the other hand, Values strongly influence the emotional state of mind. Therefore it acts as a motivator.
Ethics are consistent in nature.	Whereas values are different for different persons, i.e. what is important for one person, may not be important for another person.
Ethics helps us in deciding what is morally correct or incorrect, in the given situation.	Values tell us what we want to do or achieve in our life.
Ethics determines to what extent our options are right or wrong.	As opposed to values, which defines our priorities for life.

To summaries ethics are consistently applied over the period and remains same for all the human beings. Ethics are moral principles that govern the behavior of individuals and organizations. Here are some examples of ethics:

1. Professional ethics: ethical standards that guide the conduct of professionals in various fields such as medicine, law, accounting, engineering, and journalism.
2. Business ethics: moral principles and values that guide the behavior of individuals and organizations in the business world.
3. Environmental ethics: ethical considerations related to the relationship between humans and the environment, and the responsibility to protect and preserve the natural world.
4. Social ethics: principles and values that guide the behavior of individuals and organizations in relation to social issues such as poverty, inequality, and social justice.
5. Religious ethics: moral principles and values that guide the behavior of individuals and organizations within religious contexts.

SOME EXAMPLES OF VALUES:

1. Respect: treating others with dignity and courtesy.
2. Integrity: acting in a way that is consistent with one's values and beliefs.
3. Responsibility: being accountable for one's actions and decisions.

4. Honesty: telling the truth, not lying or deceiving others.
5. Empathy: showing concern and understanding for others.
6. Courage: standing up for what is right even in the face of difficulty or opposition.
7. Fairness: treating people equally and impartially.
8. Diversity: valuing and respecting differences in culture, ethnicity, gender, and other characteristics.
9. Sustainability: promoting responsible use of natural resources to protect the environment for future generations.

ETHICAL PRACTICES

Beneficence: The principle of beneficence guides the decision maker to do what is right and good. This priority makes an ethical perspective and possible solution to a dilemma acceptable and resolvable.

Least Harm: This theory deals with situations in which no choice appears beneficial. In such cases, decision makers seek to choose to do the least harm possible and to do harm to the fewest people. This principle is mainly associated with the utilitarian ethical theory discussed below.

Utilitarian: This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other. As such, it moves beyond the scope of one's own interest and takes into account the interest of others

Autonomy: This principle states that decision making should focus on allowing people to be autonomous; that is, to be able to make decisions that apply to their own workplace or lives. In other words, people should have control over their own selves as much as possible because they are the only people who completely understand their chosen type of work/life style.

Justice: The justice ethical principle states that decision makers should focus on actions that are fair to all those involved. This means that ethical decisions should be consistent with the ethical theory unless extenuating circumstances that can be justified and exist in the case

PROFESSIONAL ETHICS

The professionals being exclusive custodian of expertise need to profess high ethical and moral values and to redeem their noble traditions. Every professional should desire for introspection and a dynamic movement to promote a value revolution with deeper conviction and creative consciousness, leading himself to be good professional. the collective wisdom prevail to inculcate highest standards of professional ethics and moral values and adherence to Professional code of conduct in its true letter and spirit.

The principles which govern the conduct of a professional broadly encompasses, Integrity, Professional independence, Professional competence, Objectivity, Ethical behavior, Conformance to technical standards, if any, and Confidentiality of information acquired in the course of professional work.

The professionals are expected to conduct themselves in such a manned so as to uphold the grace, dignity and professional standing of the institute.

MODEL ETHICAL PRINCIPLES FOR COMPANY SECRETARIES

Following are the Golden Rules of Professionalism for enjoying a reputable, professional and prosperous career in providing service to the client/ organization:

1. **Strive for excellence**: This is the first step to achieving greatness in whatever endeavor one undertakes; it is the quality that marks one's work to stand-out. Excellence is a quality of service which is remarkably good and so it surpasses ordinary standards, it should be made a habit to make a good impression on clients and colleagues

2. **Be trustworthy**: In today's society trust is an issue and one who exhibits trustworthiness is on a fast track to professionalism. It is all about fulfilling an assigned task, not letting down the client's expectations, it is being dependable and reliable when called upon to deliver service. In order to earn this trust, worthiness and integrity it must be sustainably proven over a time-span

3. **Be accountable**: It implies that one should be able to stand tall and be counted upon for all actions undertaken; this is also construed as a quality of being credible and responsible for actions performed and their consequences - good or bad

4. **Be courteous and respectful**: Courteousness is more than being friendly, polite and well-mannered with a gracious consideration towards others. It makes social interactions in the workplace run smoothly; avoid conflicts and earn respect. Respect is a positive feeling of esteem or deference for a person or organization; it is built over span of time and can be lost with one single inconsiderate action; continual courteous interaction is required to be maintained to enhance the respect gained

5. **Be honest, open and transparent**: Honesty is a facet of moral character that connotes positive and virtuous attributes such as truthfulness, straightforwardness, good conduct, loyalty, fairness, sincerity, openness in communication and generally operating in a manner for others to notice the perfection with which actions are performed; a virtue highly appreciated and valued by clients, employers and colleagues because it builds trust and personal reputation

6. **Be competent and improve continually**: Competence is the core ability of a professional to do a job properly. It is a combination of quality of knowledge, skill, acumen and behaviour used to perform. Competency grows through experience and to the extent one is willing to learn and adapt. Continuous self-development is a pre-requisite in offering professional service at all times

7. **Be ethical**: Ethical behavior is acting within certain moral codes in accordance with the generally accepted code of conduct or rules. It is always safe for a professional to "play by the rules" where the rule book is inadequate; and acting with a clear moral conscience is the right way to adopt

THE ICSA (UK) CODE OF PROFESSIONAL ETHICS AND CONDUCT

INTEGRITY

Integrity is the quality of being honest and having strong moral principles. The term has been described judicially as connoting "moral soundness, rectitude, and steady adherence to an ethical code". It requires that members are impartial, independent and informed. Displaying integrity includes:

• acting professionally in your business dealings;
• displaying a proper understanding and appreciation of your role and responsibilities;
• being respectful of others at all times;
• not accepting or offering improper gifts, hospitality or other inducements
• avoiding bringing the profession into disrepute.

HIGH STANDARD OF SERVICE/PROFESSIONAL COMPETENCE

A high standard of service or professional competence should be delivered throughout one's working life. This involves an understanding of relevant technical, professional and business developments. Professional competence also takes account of the wider implications and expectations of our members. This includes:

• maintaining professional knowledge and skills which are required to perform the role which you are employed to carry out;
• upholding the requirements of the Royal Charter and byelaws made under it; and
• respecting the confidentiality of information acquired through professional relationships save where there is a legal or regulatory requirement to disclose or report that information.

TRANSPARENCY

Transparency requires that members are clear and open in their business and professional conduct. This includes:

- being open and frank in any business dealings;
- not being underhand in any business transaction; and
- treating all work as if it was reported in the public domain

PROFESSIONAL BEHAVIOR

Professional behavior requires that members act in a way which conforms to the relevant laws of the jurisdiction in which they are residing and/or undertaking business transactions. It requires them also to pay regard to all regulations which may have a bearing on their actions and to adhere to the byelaws, specifically byelaw which states that the following actions or inactions may result in disciplinary proceedings:

• becoming bankrupt or insolvent;
• being convicted of an offence which might bring discredit on the Institute or the profession;
• failing to uphold the code of professional conduct and ethics;
• breaking any of the Institute's byelaws or Charter or Regulations;
• failing to comply or co-operate with a disciplinary investigation;

The Singapore association of the Institute of Chartered Secretaries and Administrators (ICSA) requires members to observe the highest standards of professional conduct and ethical behaviour in all their activities.

• Members are required to uphold the Institute's Charter and comply with the Bye-laws.
• Members shall at all times safeguard the interests of their employers, colleagues or clients provide
• that Members shall not knowingly be a party to any illegal or unethical activity.
• Members shall not enter into any agreement or undertake any activity which may be in conflict with the legitimate interest of their employer or client or which would prejudice the performance of their professional duties.
• Members shall ensure the currency of their knowledge, skills and technical competencies in relation to their professional activities.
• Members shall refrain from conduct or action which detracts from the reputation of the Institute.

ICSI CODE OF CONDUCT

Code of Conduct is a step towards ethical decision making in which strategic management decisions result from due deliberations and objective analysis of facts, distanced from personal biases, leanings, subjectivity or emotional perceptions.

The matters covered under the Code are of utmost importance to The Institute of Company Secretaries of India ("Institute"), its members, students and other stakeholders including Government, Regulators, Trade and Industry and other users of services of the Company Secretaries.

FUNDAMENTAL DUTIES OF PROFESSIONAL

Fair Dealing

Each member of the institute should endeavour to deal fairly with the Clients, other members and students. No Member of the Institute should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

In addition to strict compliance with all legal aspects, all members are expected to observe the highest standards of business and personal ethics.

Professional Opportunity

The professional should not exploit for their own personal gain, opportunities that are discovered through third party, information or position unless the opportunity is disclosed fully in writing and permits to pursue such opportunity.

Confidentiality

The client's confidential information is a valuable asset. All confidential information must be used for the benefit and in the best interest of client. Every professional must safeguard the confidentiality.

The confidential information, discussions, documents and data should be dealt with utmost care and should not be shared or passed on to any person/outsider under any circumstances, directly or indirectly without authorization.

Conflicts

Each professional should avoid any conflict of interests with that of the client. A 'conflict of interest' exists where the interests or benefits of one person or entity conflict with the interests or benefits of the client. The professional must avoid situations involving actual or potential conflict of interest.

Any situation that involves or may involve a conflict of interest must be promptly disclosed. No transaction, which involves an actual or potential conflict of interest, should be undertaken by professional

Client documents

A professional has a responsibility to return client documents as soon as reasonably possible when requested to do so by the client, unless there is an effective lien. A professional may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

Anti- discrimination and Harassment

A professional must not in the course of practice, engage in conduct which constitutes:

- discrimination;
- sexual harassment
- workplace bullying - "bully by proxy"

Dealing with the Media

- A professional must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice.
- To adhere to practice promotion, advertising and solicitation rules, codes and legislation in use and avoid Conflicts of interest
- Maintaining public confidence and faith in the profession

ETHICAL DILEMMA

Ethical dilemma is also known as moral dilemma. Ethical dilemmas make the situations too difficult. A person has to choose only one way from two of them - a moral or an immoral way. Ethical dilemmas can be seen everywhere in daily lives.

In ethical dilemma if we obey one decision then it would bring about disobeying another.

SOME EXAMPLES OF ETHICAL DILEMMAS INCLUDE:

• A secretary discovers her boss has been laundering money, and she must decide whether or not to turn him in
• A doctor refuses to give a terminal patient morphine, but the nurse can see the patient is in agony

COMMON CAUSES OF LOSS OF ETHICS AND VALUES

(a) Unclear Policies: in some cases, managers and employees exhibit poor ethical behaviour because the company does not offer a clear model of ethics. Some businesses have no formal ethical policy documents and offer no guidance at all. Others have policies that are unclear, vague, inconsistent or not consistently enforced.
(b) Conflict Between Organisational & Individual Goal: When the Organizational & Individual Goals overlap, it becomes difficult to balance things. The problem arises when one thing has to be sacrificed for the sake of others. To achieve Organisational goal, Individual goal, has to be compromised and vice versa so this leads to Ethical Dilemma.
(c) Cultural Value & Background: Every individual decision is based on background. For some people it may be ethical to give priority for self and then decide about others but for some others it may be other way round. Thus background & value system creates the ethical Dilemma.
(d) Dynamic & Different Human Nature: Ethical Dilemma arises due to difference of the opinion among the group of people. Whatever is ethical for one person, may be unethical for another.
(e) Pressure from Management: Each company's culture is different, but some companies stress profits and results above all. In these environments, management may turn a blind eye to ethical breaches if a worker produces results, given the firm's mentality of "the end justifies the means." Whistle-blowers may be reluctant to come forward for fear of being regarded as untrustworthy and not a team player. Therefore, ethical dilemmas can arise when people feel pressurised to do immoral things to please their bosses or when they feel that they can't point out their co-workers' or superiors' bad behaviours.
(f) Negotiation Skills: While these factors can cause ethical dilemmas for workers within their own companies, doing business with other firms can also present opportunities for breaches. Pressure to get the very best deal or price from another business can cause some workers to negotiate in bad faith or lie to get a concession.
(g) Conflicting Values: Ethical dilemmas may occur because of conflicting values between two or more people in an organization. One manager may value product quality over quantity while another may value thriftiness. These managers may discuss changing to a cheaper supplier for a material used in production because of the potential to save money. However, the first manager may object because he knows the cheaper material will produce a product of lesser quality, which is not good for customers. Without a culture of shared values, the least ethical choice may be approved.

HOW TO RESOLVE ETHICAL DILEMMA

Think about outcomes if you find yourself in a situation when this approach doesn't work, you can resolve a right versus right dilemma by finding the highest "right." Kidder wrote that there are three ways to make the best choice when faced with these types of dilemmas:

Ends-based: Select the option that generates the most good for the most people.
Rule-based: Choose as if you're creating a universal standard. Follow the standard that you want others to follow.
Care-based: Choose as if you were the one most affected by your decision. Once you've identified an ethical right versus right dilemma, lay out your options according to these three principles. One approach will immediately present itself as the "most right".

STRATEGY FOR OVERCOMING FROM THE EVILS

For any organization the systematic and rigorous approach coupled with efforts is necessary to keep governance standards at the highest level by nurturing of ethical values and standards well embedded from the inception of the organization. It needs further conscious cultivation during the growth phase. It is equally important to remember that organizations or institutions act through its own employees.

Technology is only a means — a handmaid available at the disposal of humans and it cannot be a substitute; even in the society of the future where robots will take a dominating and universal position. Therefore, the human beings need proper and rigorous grooming. Thus, it is necessary that any attempt to address ethical issues is to be handled by human beings and not machines.

The human traits and characteristics shape human behavior and a few probable solutions are explained below:

SATISFACTION

To achieve happiness, it is essential that the culture of 'being satisfied' is developed. However, the most challenging and unanswerable question on satisfaction is "How much is Enough" The issue is very difficult to resolve especially in the corporate field where expansion is the prime direction in which it is supposed to move; yet it is the need of the hour to understand and remain satisfied with what is achieved within the validly available means.

ENDS NOT TO JUSTIFY THE MEANS

It is often said that the results matter and what was done to achieve the same is of no consequence. The statement may appear encouraging; but reading between the lines it is not the intention to achieve results by compromising ethics and values. The need of compromising ethics and values arises when there is a dearth of valid means to achieve the end-result. The thirst to succeed, vaulting ambition and flawed education are equally responsible elements. It is essential to note that however worth the cause may be, the means to achieve the same should also be equally valid. An irregular or an unethical action leading to a good outcome may not necessarily justify the method of achieving the goal.

ETHICAL LEADERSHIP

The Professional should lead the organisation like Krishna as he led Pandvas to success by guiding them to fight morally. It is the duty of the leader driving the organization to ensure use of proper and ethical means in his conduct. It is equally essential that the leader walks the talk and sets an example of good governance and ethical leadership.

CHARACTER

Professional should always consider the old idiom: If Character Is Lost Everything Is Lost. The idiom amply highlights the importance of good character. Character is generally built or earned by virtues like courage, honesty, values and ethics. Great leaders and eminent personalities are judged by their character. A good character is synonymous to reliability.

Recent Cases on Values, Ethics and Professional conduct

1. Punjab National Bank Case

Punjab National Bank is one of the largest public sector banks in India. The scam of Rs. 11,300 crores in the Punjab National Bank scam has come into the limelight. The PNB scam and irregularities, forgery commenced in the year 2011 and continued for six long years with the knowledge of a few banking officials of PNB. It is a case where Letter of Undertaking (LOU) from Punjab National Bank was taken by

Nirav Modi without having a sanctioned credit limit or collaterals. The dispute mainly started due to illegal LOUs issued to Nirav Modi by few PNB banking officials.

The chronological dates on which the events and transaction concerning the scam took place is briefed as under:

• Punjab National Bank filed an FIR against Nirav Modi, Mehul Chowskhi and other charged with criminal conspiracy and cheating amounting to the tune Rs 11,300 Crores.
• Central Bureau of Investigation (CBI) was handed over the investigation into the matter.
• The Enforcement Directorate (ED) had registered a money laundering case against Nirav Modi and others under the provisions of PMLA based on the FIR registered by CBI under Sections 120-B r/w 420 of IPC, 1860 read with Section 13(2) read with 13(1)(d) of PC Act, 1988
• The Enforcement Directorate seized some movable assets like diamond, gold and jewellery worth Rs. 56.74 billion from the house of Nirav Modi and his office CBI after an investigation into the matter arrested two employees of Punjab National Bank and detained one representation of Nirav Modi Group. Simultaneously, Government of India suspended passport of Nirav Modi and Mehul Choskwi for the involvement in the PNB Scam.
• Subsequently, the Central Bureau of Investigation arrested the Chief Financial Officer (CFO) and two Senior Executives of Nirav Modi firm. It also sealed the Nirav Modi farmhouse at Alibaug, Mumbai.
• CBI seized nine luxurious cars which belong to Nirav Modi and his firm which worth crores of money.
• The Magistrate Court issued first bailable arrest warrant against Nirav Modi and Mehul Chowski. Enforcement Directorate on the same day filed a petition before the Special Court, Mumbai for seeking issuance of a non– bailable warrant (NBW) against the diamantaire – Nirav Modi and his firm.
• Enforcement Directorate moves before the Special Court to issue extradition proceeding against Nirav Modi.
• Government of India sent a letter requesting the UK authorities to initiate extradition proceeding against Nirav Modi.

• CBI officials requested Interpol Manchester to detain Nirav Modi about Nirav Modi presence in the country.
• UK authorities confirm the presence of the accused – Nirav Modi in the country.
• In a British newspaper named as UK Daily Telegraph which published a report on Nirav Modi presence and roaming in London streets. After knowing the incident Enforcement Directorate requested the Government of UK to take further action on the extradition proceeding of Nirav Modi in the UK court.
• Government of UK took action on the request of the Government of India and the Westminister Court, London issued an arrest warrant against Nirav Modi Nirav Modi was arrested in London by Scotland Yard Officers and produced before the Westminister Court. He applied for which was rejected by the Court. The accused Nirav Modi was sent to Her Majesty's Prison (HMP), Wandsworth till 29th March, 2019.
• The Westminister Court rejected the bail petition of the accused /fugitive offender – Nirav Modi on the ground that he may not appear before the Court on the fixed dates for further hearing of the matter. (29th March ,2019)
• After the plea made by Enforcement Directorate, Nirav Modi has been declared as Fugitive Offender by the Mumbai Court under the Fugitive Offender Act ,2018. Nirav Modi is currently in Wandsworth Prison in London, from where he is fighting for extradition charges.
ACTION TAKEN BY RBI AFTER DETECTION OF PNB FRAUD
• Reserve Bank of India discontinued the practice of LOUs/ FLCs for trade credits for imports into India.
• RBI also ordered all the banks to reconcile transactions in Nostro accounts on a real-time basis so that unrecorded and illegal transactions can be identified immediately.

2. YES Bank Crisis

YES Bank was once the country's fifth-largest private lender by market capitalization. YES Bank was founded by Rana Kapoor and Ashok Kapoor in 2004. Fraud led to the unexpected and sudden fall of YES Bank which was emerging as a good competition to other private banks. The bank had a differentiated business model, with focus on technology, branches network, retail loans etc. and was ranked number 1 bank in the Business TodayKPMG Best Banks Annual Survey 2008.

What has led to a crisis at YES Bank?

Promoter of the bank, Rana Kapoor had, over a short period of time, built an overwhelming image in the industry and had developed contacts with top industrialists of the country. Most of the decision making on key matters including large loans was centralised in his hands. He had the ambition to make YES Bank the largest private bank of the country. It was this

ambition which perhaps led to the sharp downfall in fortunes of the bank, steeper than its rise to an eminent position in the banking industry.

The bank's loan book on March 31, 2014, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2019. While deposit growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Yes bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risky businesses and facing some challenges in their business like the Anil Ambani-led Reliance group, DHFL and IL&FS. All this happened in Rana Kapoor's tenure. The exposure of loans to such bad performing companies was huge in Yes Bank's case, and to add up they were hiding the NPAs or misreporting the same. After the above fiasco, Ravneet Gill took charge of Yes Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Uttam Prakash Agarwal, resigned from the board in January 2020 citing governance issues.

Several reasons behind the crisis of YES bank were:

a**. NPAs:** YES Bank ran into trouble following the central bank's asset quality reviews in 2017 and 2018, which led to a sharp increase in its impaired loans ratio and uncovered significant governance lapses that led to a complete change of management. The bank subsequently struggled to address its capitalisation issues. YES Bank suffered a dramatic doubling in its gross NPAs between April and September 2019 to Rs 17,134 crore.

b. **NBFC crisis**: The crisis in India's shadow-banking space started with the unravelling of Infrastructure Leasing & Financial Services (IL&FS) and then extended to Dewan Housing Finance Limited (DHFL). YES Bank's total exposure to IL&FS and DHFL was 11.5 per cent as of September 2019. In April 2019, the bank had classified about Rs 10,000 crore of its exposures, representing 4.1 per cent of its total loans under watch list, as potential non-performing loans over the next 12 months.

c. **Governance issue**: YES Bank faced several governance issues that led to its decline. On January 10, independent director Uttam Prakash Agarwal quit citing deteriorating corporate governance standards and compliance failure at the lender. In 2018-19, the bank under-reported NPAs to the tune of Rs 3,277 crore, prompting RBI to dispatch R Gandhi, one of its former deputy governors, to the board of the bank. Rana Kapoor, who was instrumental in building YES Bank from scratch, was asked to step down as chief executive in January 2019.

d. **Excessive withdrawals:** YES Bank's financial condition dissuaded many depositors from keeping funds in the bank over a longer term. The bank showed a steady withdrawal of deposits, which burdened its balance sheet and added to its woes. The bank had a deposit book of Rs 2.09 trillion at the end of September 2019.

Steps taken by RBI against YES Bank

i. RBI has taken over the YES Bank management

ii. The central has imposed a moratorium on the lender

iii. RBI announced a draft 'Scheme of Reconstruction' that entails SBI investing capital to acquire a 49% stake in the restructured private lender.

3. Infrastructure Leasing & Financial Services Limited (IL&FS) Case

• IL&FS is a systemically important Core Investment Company with the Reserve Bank of India and is engaged in the business of giving loans and advances to its group companies (and holding an investment in such companies). IL&FS has a large number of group companies across various sectors such as Energy, Transportation, Financial Services.
• IL&FS Group, which had approximately over Rs. 91,000 crores in debt, was facing a severe liquidity crisis. Between July 2018 and September 2018, two of the subsidiaries of IL&FS Group reported having trouble in paying back loans and inter- corporate deposits to banks/lenders.
• In July 2018, the road arm of IL&FS was facing difficulty in making repayments due on its bonds. Further, in early September 2018, one of the subsidiaries of IL&FS Group was unable to repay a short-term loan of Rs. 1,000 crore taken from Small Industries Development Bank of India (SIDBI). Also, certain group companies defaulted in repayments of various short and long-term deposits, intercorporate deposits, and commercial papers.
• IL&FS failed continuously to service its debt and the imminent possibility of a contagion effect in the financial market led the Central Government to move an application under Sections 241 and 242 of the Companies Act, 2013 before the NCLT (National Company law Tribunal). Section 241 deals with the cases of mismanagement and oppression by company's management
• The NCLT suspended IL&FS board members and management and restrained the suspended members from alienating their personal assets.
• In view of the prima facie findings of ICAI and the SFIO interim report dated November 30, 2018, the Central Government filed a petition before the NCLT, Mumbai Bench under Section 130 of the Companies Act, seeking re-opening of the books of account of IL&FS and its group companies for the past five financial years. The NCLT vide its judgment dated January 1, 2019, allowed the petition of the Central Government.
• Upon an application filed by PTC India Financial Services Ltd, the NCLAT has, without going into the rival contention of the parties, made it clear that due to non-payment of dues by IL&FS or its entities including the 'Amber Companies', no financial institution will declare the accounts of IL&FS or its entities as NonPerforming Assets (NPA) without its prior permission.
• By its order dated May 2, 2019, NCLAT allowed the banks to declare as nonperforming assets the accounts of IL&FS and its group companies that have defaulted on payments.

However, the tribunal clarified that the banks cannot initiate the recovery process and debit money.
• On May 30, 2019 SFIO submitted a chargesheet against 30 parties, including two auditor firms, for concealing information by not flagging the alleged criminal conspiracy and misreporting the financial statements of the IL&FS firms.
• MCA moved against the auditors, Deloitte Haskins and Sells as well as BSR and Associates LLP and their former auditors, under Section 140(5) of the Companies Act, for their role in "perpetuating the fraud" at IFIN, a subsidiary of IL&FS. The Ministry sought debarment of these audit firms and their audit partners. It also sought interim attachment of their properties, including bank accounts and lockers.
• On June 4, the Supreme Court allowed the SFIO to reopen and recast accounts of IL&FS and two of its subsidiary companies for the last five years. The MCA had approached the Supreme Court seeking a vacation of the stay imposed by the Supreme Court through its order passed on April 29.

Reasons for Failure

- IL&FS hadn't disclosed bad loans on its books for years despite a big part of its loan book having soured.
- As it was the shadow bank or NBFC, "Unscrupulous, negligent and dormant management decisions were the main root cause of failure.
- Poor fund management and controls as IL&FS lent funds to insolvent entities and troubled projects.
- "Deficient audit" by the auditors as they failed to issue warnings.
- The auditors did not highlight the Reserve Bank of India's (RBI's) inspection report, which had labelled IFIN as over-leveraged, besides failing to report negative cash flows and adverse key financial ratios.
- RBI or any other entity did not strictly regulated NBFCs. The IL&FS crisis has raised concerns over the management of such entities.

Steps taken by RBI

- RBI is constantly monitoring NBFC's to prevent systemic shocks.
- RBI is monitoring top 50 NBFCs more closely. These 50 NBFCs represent 75% of the sector
- Wherever necessary, RBI is making deep dive into their books, their balance sheet and other numbers.

4. DHFL Case

Dewan Housing Finance Corporation Limited (DHFL) is a leading housing finance company, headquartered in Mumbai with branches in major cities across India. Mr. Rajesh Kumar Wadhawan is the Founder of DHFL.

• DHFL has sanctioned and paid funds in unsecured and dubious loans
• Loan amounting to thousands of crores of rupees were given to newly incorporated shell companies.
• The said loans were provided without any security or collateral and the proceeds were utilized by for private asset creation.
• DHFL has not adequately disclosed the terms of loan and repayment in the financial statements. They also ensured that most of the shell companies have hidden the name of the lender i.e. DHFL.
• Approximately 6 lacs dummy accounts were established at one branch, using the names of borrowers who had already repaid their loans. These accounts were used to issue loans to promoter firms, which were then used to syphon funds. These loans turned out to be non-recoverable in the end.
• The act of DHFL ensured that the recovery of such dubious loans would be impossible since the companies or their directors themselves do not own any assets.
• The promoters and their associates used these dubious loans to acquire personal assets which were completely ring-fenced from the recovery process since the companies or their directors themselves do not own any of these assets.
• Due to poor Corporate Governance concerns, the Reserve Bank of India (RBI) superseded the board of debt-laden DHFL.
• RBI has initiated the process of resolution of the Company under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Finance Service providers and Application to Adjudicating Authority rules, 2019.

Reasons for failure:

- DHFL case is absolute failure of Corporate Governance.
- The act of promotors in diversion of loan amounts to shell company without scrutiny or security shows a complete deviation from the corporate governance policies.

5. Hero MotoCorp

The country's largest two-wheeler maker Hero MotoCorp has sacked around 30 employees for violation of the company's code of conduct, These executives were found fudging travel expense bills, accepting personal favours, gifts and other benefits from some of vendors, suppliers and dealers in violation of the company's internal 'code of conduct'.

The executives were given marching orders after "thorough investigations" into the allegations against them, all due legal procedures were followed before taking the final action. Third-party independent investigators were appointed to look into these cases once the anomalies were detected in the activity record of these executives.

Stressing on the significance of the step, the official said," We have always had a clearly laid out Code of Conduct for all our employees and it is absolutely mandatory for everyone working at Hero to abide by it. Integrity and valuebased behaviour is a way of life at Hero and no one violating these principles has any place in this organisation".

Hero MotoCorp's management was unanimous in its view that the concerned employees could not continue in the company, once it was established. The employees were given due opportunities to present their cases. When confronted with evidence, they owned up to the wrongdoing, official said. He, however, declined to share the names and designations of the sacked employees.

CHAPTER-8
MEDIATION AND CONCILIATION

MEANING OF MEDIATION

The term "mediation" has been defined under black law dictionary as "an act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute".

MEANING OF CONCILIATION

The term "Conciliation" has been defined under black law dictionary as "The process of adjusting or settling disputes in a friendly manner through extra judicial mean.

DIFFERENCES BETWEEN MEDIATION AND CONCILIATION

Conciliation: Conciliator brings the disputants to agreement through negotiation. Further, the Conciliator is appointed only after the dispute has arisen. The decision of the Conciliator is called "award".

Mediation: Mediation is a structured process. The Mediator assists the disputants to reach a negotiable settlement. The Process results in signed agreement which decides the future behaviour of the parties. Further, the decision of the mediator is called "settlement".

It is the process by which the parties to a dispute have closed-door discussions on a contentious issue in the presence of neutral mediator(s). This is a voluntary process and is undertaken only if all the parties are willing to go by it. The mediator, who is specially trained, helps the parties move from their positions, towards assessing where their interests are. Then, s/he helps the parties determine how the matter can be settled, examining various options. Unlike formal adjudicatory processes, the mediation need not be confined to the issues raised in the case, but can go beyond to other matters the parties want resolved. They can also agree to disagree on some issues, while resolving the rest.

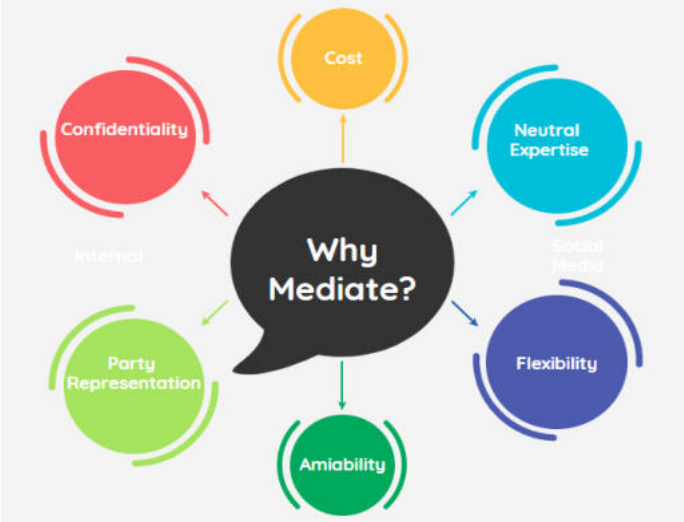
Mediation is a time-bound, private and confidential process. The information shared must be kept confidential by all parties, including the mediator. This facilitates a free and frank discussion on matters in dispute. Equally important, the discussions cannot be brought up before the court if the disputes are not resolved through mediation.

The conciliation process is similar to mediation. But the conciliator suggests terms for settlement on evaluation of the issues discussed by the parties.

MEDIATION AND CONCILIATION UNDER COMPANIES ACT 2013

MEDIATION AND CONCILIATION PANEL SECTION 442

1. The Central Government (R.D.) shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for **mediation between** the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.
2. Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (*1*).



3. The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.
4. Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

9th September, 2016 Companies (Mediation and Conciliation) Rules, 2016

S.NO.	PARTICULARS	PROVISIONS
Rule 3	**Panel of mediators or conciliators**	**1.** Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators in the respective regions and such panel shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be notified by the Central Government. **2.** The Regional Director may invite applications from persons in Form MDC-1. interested in getting empanelled as mediator or conciliator and possessing the requisite qualifications specified in Rule 4. **3.** The Regional Director shall invite applications from persons interested in getting empanelled as mediator or conciliator every year during the month of February and update the Panel which shall be effective from 1st of April of every year:

Rule 4	**Qualifications for empanelment.**	a. has been a Judge of the Supreme Court of India; or b. has been a Judge of a High Court; or c. has been a District and Sessions Judge; or d. has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force; or e. has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience; or f. is a qualified legal practitioner for not less than ten years; or g. is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary; or h. has been a Member or President of any State Consumer Forum i. is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.
Rule 5	**Disqualifications for empanelment**	a. is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending; b. has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude; c. has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government; d. has been punished in any disciplinary proceeding, by the appropriate disciplinary authority; or e. has, in the opinion of the Central Government, such financial or other interest in the subject matter of dispute or is related to any of the parties, as is likely to affect prejudicially the discharge by him of his functions as a mediator or conciliator.
Rule 6	**Application for appointment of Mediator or Conciliator and his appointment -**	a. The application to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to any proceeding pending before it for mediation or conciliation shall be in Form MDC-2 and shall be accompanied with a fee of one thousand rupees. b. The Central Government or the Tribunal or the Appellate Tribunal, as the case may be, before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel, if it deems fit in the interest of parties.
Rule 7	**Deletion from the Panel**	The Regional Director may by recording reasons in writing and after giving him an opportunity of being heard, remove any person from the Panel.
Rule 8	**Withdrawing name from Panel**	Any person who intends to withdraw his name from the Mediation and Conciliation Panel may make an application to the Regional Director indicating the reasons for such withdrawal and the Regional Director shall take a decision on such application within fifteen days of receipt of such application and update the Panel accordingly.
Rule 9	**Duty of mediator or conciliator to**	It shall be the duty of a mediator or conciliator to disclose to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be,

	disclose certain facts	about any circumstances which may give rise to a reasonable doubt as to his independence or impartiality in carrying out his functions. Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about existence of any circumstance mentioned above.
Rule 10	**Withdrawal of appointment**	The Central Government or the Tribunal or the Appellate Tribunal as the case maybe, upon receiving any disclosure furnished by the mediator or conciliator under rule 9, or after receiving any other information from a party or other person in any proceeding which is pending and on being satisfied that such disclosures or information has raised a reasonable doubt as to the independence or impartiality of such mediator or conciliator, may withdraw his appointment and in his place, appoint any other mediator or conciliator in that proceeding. The mediator or conciliator may, offer to withdraw himself from such proceeding and request the Central Government or the Tribunal or the Appellate Tribunal as the case may be to appoint any other mediator or conciliator.
Rule 30	**Matters not to be referred to the mediation or conciliation**	The following matters shall not be referred to mediation or conciliation, namely a. The matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Act; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties. b. Cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc. c. Cases involving prosecution for criminal and non-compoundable offences. d. cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be
Rule 11	**Procedure for disposal of matters**	**1.** For the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely a. he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present; b. he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree c. he may conduct joint or separate meetings with the parties d. each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties: Provided that in suitable or appropriate cases, the above mentioned period may be reduced

		at the discretion of the mediator or conciliator; e. each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved. **2.** Where there is more than one mediator or conciliator, the mediator or conciliators may first concur with the party that agreed to nominate him and thereafter interact with the other mediator or conciliator, with a view to resolve the dispute.
Rule 12	**Mediator or Conciliator not bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908**	The mediator or conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 while disposing the matter, but shall be guided by the principles of fairness and natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute
Rule 13	**Representation of parties**	The parties shall ordinarily be present personally or through an authorised attorney at the sessions or meetings notified by the mediator or conciliator: Provided that the parties may be represented by an authorised person or counsel with the permission of the mediator or conciliator in such sessions or meetings and the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall be entitled to direct or ensure the presence of any party to appear in person: Provided further that the party not residing in India may, with the permission of the mediator or conciliator, be represented by his or her authorised representative at the sessions or meetings.
Rule 14	**Consequences of non-attendance of parties at sessions or meetings on due dates**	If a party fails to attend a session or a meeting fixed by the mediator or conciliator deliberately or wilfully for two consecutive times, the mediation or conciliation shall be deemed to have failed and mediator or conciliator shall report the matter to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
Rule 15	**Administrative assistance**	In order to facilitate the conduct of mediation or conciliation proceedings, the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
Rule 16	**Offer of settlement by parties**	Any party to the proceeding may offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.
Rule 17	**Role of Mediator or Conciliator**	The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility

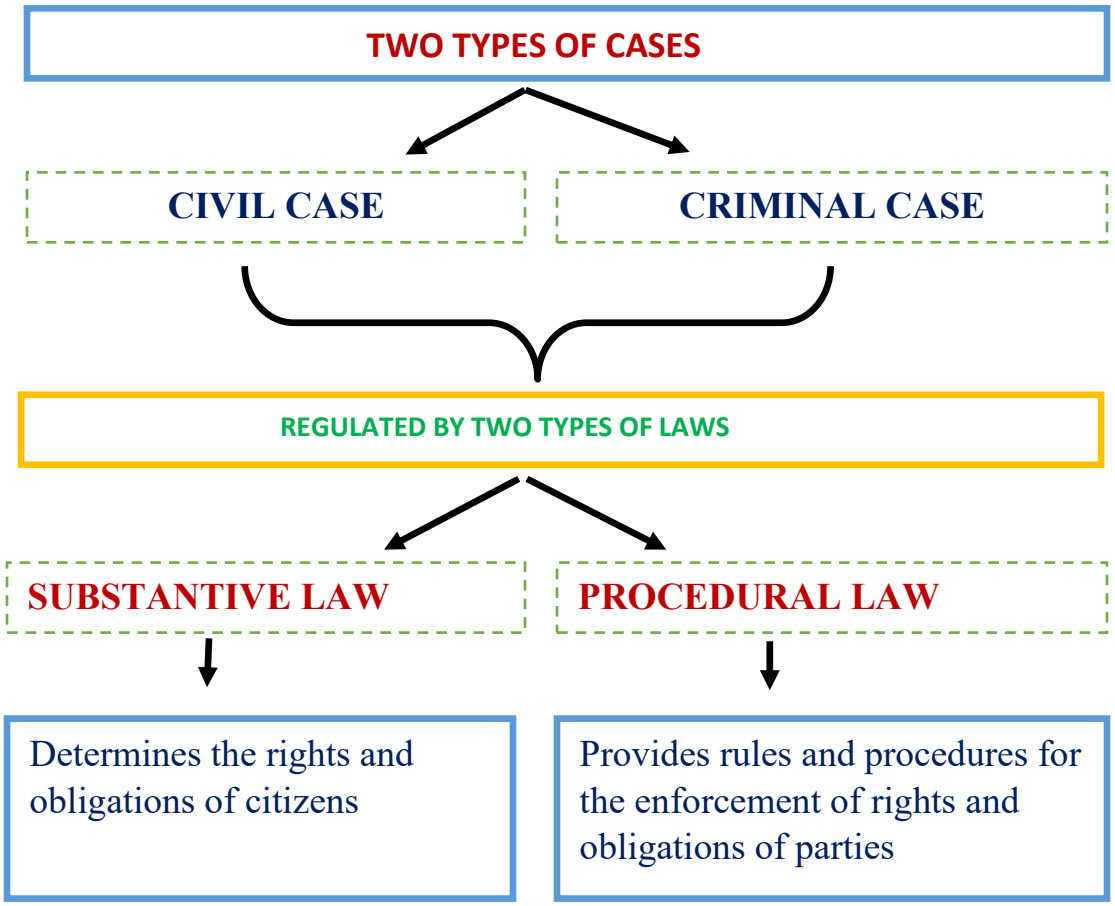
		of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties : Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.
Rule 18	**Parties alone responsible for taking decision**	The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.
Rule 19	**Time limit for completion of mediation or conciliation**	**1.** The process for any mediation or conciliation under these rules shall be completed within a period of three months from the date of appointment of expert or experts from the Panel. **2.** On the expiry of three months from the date of appointment of expert from the Panel, the mediation or conciliation process shall stand terminated. **3.** In case of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within three months, the Tribunal or as the case may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party to the proceedings, extend the period for mediation or conciliation by such period not exceeding three months.
Rule 20	**Parties to act in good faith**	All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.
Rule 21	**Confidentiality, disclosure and inadmissibility of information**	• When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate: • When a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party. • The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate Tribunal or as the case may be, or any other authority or any person or group of persons.

Rule 22	**Privacy**	The mediation or conciliation sessions or meetings shall be conducted in privacy where the persons as mentioned in rule 13 shall be entitled to represent parties but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.
Rule 23	**Protection of action taken in good faith**	No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, to testify regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.
Rule 24	Communication between mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal	In order to preserve the confidence of parties in the Central Government or the Tribunal or the Appellate Tribunal as the case may be and the neutrality of the mediator or conciliator, there shall be no communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in the subject matter. If any communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative. Communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall be limited to communication by the mediator or conciliator: o about the failure of the party to attend; o about the consent of the parties; o about his assessment that the case is not suited for settlement through the mediation or conciliation; o about settlement of dispute between the parties.
Rule 25	**Settlement agreement**	1. Where an agreement is reached between the parties in regard to all the issues or some of the issues in the proceeding, the same shall be reduced to writing and signed by the parties and if any counsel has represented the parties, the conciliator or mediator may also obtain the signature of such counsel on the settlement agreement. 2. The agreement of the parties so signed shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
Rule 26	**Fixing date for recording settlement and passing order**	**1.** The Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall fix a date of hearing normally within fourteen days from the date of receipt of the report of the mediator or conciliator under rule 25 and on such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is satisfied that the parties have settled their dispute, it shall pass an order in accordance with terms thereof. **2.** If the settlement disposes of only certain issues arising in the

		proceeding, on the basis of which any order is passed as stated in sub-rule (1), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall proceed further to decide the remaining issues.
Rule 27	**Expenses of the mediation and conciliation**	1. At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting. 2. The expense shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
Rule 28	**Ethics to be followed by Mediator or Conciliator**	**The mediator or conciliator shall** • follow and observe the rules strictly and with due diligence; • not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator; • uphold the integrity and fairness of the mediation or conciliation process; • ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process; • satisfy himself or herself that he or she is qualified to undertake and complete the assignment in a professional manner; • disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias • avoid, while communicating with the parties, any impropriety or appearance of impropriety • be faithful to the relationship of trust and confidentiality imposed in the Office of mediator or conciliator; • conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable law; • recognise that the mediation or conciliation is based on principles of self-determination by the parties and that the mediation or conciliation process relies upon the ability of parties to reach a voluntary • undisclosed agreement; and • maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

CHAPTER-9 ADJUDICATION, PROSECUTIONS, OFFENCES AND PENALTIES UNDER COMPANIES ACT

INTRODUCTION



Particulars	Civil Law	Criminal Law
Deals with	Private disputes or defaults.	Offences that are committed against the society.
Objective	To resolve or redress and to make good the loss or damages suffered by one party on account of any act or omission by other party.	To punish the offender and is reflection of the public policy of a country.
Power of Court	The court in such cases can only pass judgement to compensate for damage done to the aggrieved party.	In these cases the court is empowered to charge a fine, imprison the guilty of a crime, or discharge the defendant.

COMPANIES ACT, 2013 IS A CIVIL LAW OR CRIMINAL LAW?

Its mixture of both civil as well as criminal provisions with majority being criminal. The civil and criminal provisions under the Act can be identified by observing the language used by Act for consequences of non-compliances/contravention of its provisions. The words "**liable to penalties**" denote **civil nature** of non-compliances whereas the words "**punishable with fine** and/or imprisonment and/or both" denote criminal nature of non-compliances.

The Act has clearly laid down the mechanism and the forum for speedy and smooth administration of judicial activities under the Act.

The power of adjudication of **civil non-compliances** (defaults liable for penalties) is being vested with the ROC and the power of adjudication of **criminal non-compliances** (offences punishable with fine/ imprisonment) is being vested with the **special courts** with sub-delegation of power of compounding of offences to Regional Director and NCLT.

PENALTIES UNDER THE ACT

The Act has classified **35 instances of non-compliance** as **CIVIL DEFAULTS** liable for prescribed amount of penalties.

Further, in addition to imposing of penalties, the Act also contains certain provisions providing for civil liability of making good the loss or damages suffered by any person on account of any action or omission.

FOR E.G. SECTION 35 - civil liability for misstatement in prospectus

SECTION 147(3) - civil liability of auditors for misleading statement in audit reports etc.

It is important to note that the default or non-compliances of provisions of the Act also attracts restrictions, ineligibility or withdrawal of benefits provided under the Act in addition to liability to pay penalties. For e.g. default or failure in compliance with the provisions of section 92 (Annual Return) and/or 137 (filing of financial statements)

ADJUDICATION OF PENALTIES

SECTION 454 of the Act read with the Companies (Adjudication of Penalties) Rules, 2014 deals with the manner and procedure of **adjudication of penalties**. The Registrar of Companies (ROC) has been shouldered with the responsibility of adjudicating Officer for their respective jurisdiction.

The Act envisages a natural justice-based mechanism of adjudication of penalties whereby the ROC has been mandated to provide reasonable opportunity of being heard to the Company and Officer in default before imposing any penalty. In case any person is aggrieved by order of the ROC imposing penalties, **he may prefer** an appeal to the concerned regional director within a **period of 60 days** and the decision of regional director on the matter shall be final and binding.

OFFENCES UNDER THE ACT

Except for 35 instances of defaults listed herein, all other acts or omissions under the Act have been classified as offences punishable with

- fine only, or
- fine or imprisonment, or
- fine or imprisonment or both, or
- imprisonment only or
- fine and imprisonment as may be prescribed under the relevant sections.

Further, wherever any section of the Act is silent on quantum of punishment or penalty for non-compliances of such section, section 450 of the Act comes into play and makes all such non-compliances punishable with fine which may extend to Rs. 10,000 and in case of continuous contravention, a further fine of which may extend to Rs. 1,000 per day after the first during which the contravention continues.

TYPES OF OFFENCES UNDER COMPANIES ACT 2013

Broadly the offences under the Act are classified, for the purpose of punishment, into two categories, namely,

- offences involving frauds
- other offences.

The offences involving frauds are subject to punishment prescribed under section 447 of the Act.

There are 17 sections under the Act which refer to **section 447** for punishing fraudulent conduct.

COMPUNDABLDE AND NON-COMPOUNDABLE OFFENCE

Further, the offences under Act are also classified into a) compoundable offences and b) non-compoundable offence. In accordance with **section 441(6)** of the Act, an offence punishable under the Act with imprisonment only or with imprisonment and fi ne is a non-compoundable offence. Accordingly, all other offences, i.e., offences punishable with a) fine only, or b) fine or imprisonment and c) fi ne or imprisonment or both are compoundable offences under the Act.

LIST OF DEFAULTS/FAILURE ATTRACTING CIVIL PENALTIES

	SUBJECT MATTER/NATURE OF DEFAULT	QUANTUM OF PENALTY
4(5)	Reservation of name by furnishing wrong or incorrect information.	Where after reservation of name under clause (*i*), it is found that name was applied by furnishing wrong or incorrect information, then, **if the company has not been incorporated**, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees; **if the company has been incorporated**, the Registrar may, after giving the company an opportunity of being heard • either direct the company to change its name within a period of three months, after passing an ordinary resolution • take action for striking off the name of the company from the register of companies • make a petition for winding up of the company.
10A	Failure to file declaration of commencement of business	If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
12	Registered Office of the Company	Rs. 1,000 for every day subject to maximum of Rs. 1 Lakh **(company and officer in default)**
15	Failure to note alteration in copy of memorandum or articles	Rs. 1,000 for every copy circulated without noting alteration. **(company and officer in default)**
17	Failure to furnish copy of memorandum of articles	Rs. 1,000 for every day or Rs. 1 Lakh, whichever is less. **(company and officer in default)**
33	Issue of application without abridged prospectus or failure to furnish copy of prospectus	(Company) Rs. 50,000 for each default

42(9)	Failure to file return of allotment of private placement (PAS-3)	Rs. 1,000 for every day subject to maximum of Rs. 25 Lakh **(company, promoter and director)**
42(10)	Private placement of securities in contravention of section 42	Amount raised through private placement or Rs. 2 Crore, whichever is lower. **(company, promoter and director)**
53	Issue of shares at discount in non-compliance of section	Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.
60	(1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.	If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.
64	Failure/delay in filing of notice of alteration of share capital	company and every officer who is in default shall be liable to a penalty of five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default. (companies amendment act 2020)
91	Closure of register of members in contravention of section 91	the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

92	Failure/delay in filing of annual return (section 403 extension of 270 days removed)	If any company fails to file its annual return under sub-section **(4),** before the expiry of the period specified therein such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default].(companies amendment Act 2020)
94	Refusal of inspection or making of any extract of register of member and annual return	the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.
102	Failure to disclose interest in special business	if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher
105	Default in providing proxy clause in notice of general meeting	Rs. 5,000 (officer in default)
111	Failure to circulate members' resolution	If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.
117	Failure / delay in filing certain resolutions (MGT-14) (section 403 extension of 270 days removed)	If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees. SECTION **117(2)** (COMPANIES AMENDMENT ACT 2020)
118	Non-compliances relating to minutes of meetings	Rs. 25,000 (Company) and Rs. 5,000 (Officer in default)

119	Refusal of inspection or furnishing of copy of minutes of general meeting	For each default Rs. 25,000 (Company) and Rs. 5,000 (Officer in default)
121	Failure / delay in filing of report on AGM (section 403 extension of 270 days removed)	if the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees
136	Failure to send copy of annual report or to comply with other requirements laid down under section 136	Rs. 25,000 (Company) and Rs. 5,000 (Officer in default)
137	Failure/delay in filing financial statements (section 403 extension of 270 days removed)	If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees. **(COMPANIES AMENDMENT ACT 2020)**
140	Failure/delay by auditor in filing details of resignation	If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such

		failure continues, subject to a maximum **of 2 lakh rupees**. **(COMPANIES AMENDMENT ACT 2020)**
157	Failure/delay by company in intimating DIN of director (section 403 extension of 270 days removed)	If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
159	Contravention of sections 152/155	If any director of a company makes any default in complying with any of the provisions of section 152, section 155 such director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues
165	Acceptance of directorship beyond specified limit	If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees. (companies amendment Act 2020)
173	Failure to issue notice of board meetings	Rs. 25,000 (Person responsible for issuing notice)
189	Failure to comply with requirements relating to register of related party transactions	Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees
190	Failure to keep contract with MD/WTD at registered Office or to allow its inspection	If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
197	Managerial remuneration	If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.

203	Failure to comply with provision relating to KMP	If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.
238	Failure to register circular containing offer of scheme involving transfer of shares	The director who issue circular liable to penalty of Rs. 1,00,000 (refer section 235 and 238 takeover of unlisted company)

SPECIAL NOTE:

In case of OPC or Small Company, the amount of penalty shall not be more than one-half of the penalties prescribed under the specified sections.

SOME MORE PENALTIES AND PUNISHMENT UNDER COMPANIES ACT 2013		
Section	**Heading**	**Provisions**
447	**Punishment for fraud**	If **Any person who is found to be guilty of fraud involving an amount of at least 10 lakh RS. Or 1% of turnover of company whichever is lower** he is punishable with Imprisonment for a term which shall not be less than 6 months (3 years if fraud in question involves public interest.) but which may extend to 10 years and Fine which shall not be less than amount involved in fraud, but which may extend to 3 times amount involved in any fraud. Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to **FIFTY** lakh rupees or with both. **(This proviso inserted by companies' amendment act 2017)**
448	**Punishment for false statement**	If any person gives false statement or makes false material particular or omit any material fact in any of following documents with knowledge • Any return or certificate under Companies Act, 2013 • Prospectus under Companies Act, 2013 • Statement or other documents required to be made under Companies Act, 2013 He is liable to punishment as per section 447 of Companies Act, 2013:

449	**Punishment for false evidence**	Any person is liable for punishment, if he intentionally gives false evidence: ➢ Upon any examination on **oath** under act or ➢ In any affidavit or any documents deposited about winding up of company or ➢ Any matter arising under Companies Act. **HE IS PUNISHABLE FOR** ➢ imprisonment for period not less than 3 years but extend to 7 years and ➢ fine up to Rs. 10 lakh
450	**Punishment where no specific penalty is provided**	Where no specific penalty is provided under Act for contravention of any provision of the, Act or rules made there under. As per section 450 fine upto Rs. 10,000 plus a fine up to Rs. 1000 per day where the offence is of continuing nature.
451	**Punishment in case of repeated default**	If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of 3 years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence. This section is not applicable to the offence repeated after a period of three years from the commitment of first offence.
452	**Punishment for wrongful withholding of property**	➢ If any officer, employee or ex-employee of company has wrongfully obtained the possession of property or wrongfully withholding the property, including cash of company, he is punishable for fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 lakh.
453	**Punishment for improper use of "limited" or "private limited"**	If any person ➢ use name "limited" or "Private Limited" without registration of company. ➢ Omit word "limited" or private Limited" while entering into contract or acting on behalf of company. He is punishable with fine which shall not be less than Rs. 500 but may extend to Rs. 2000 for every day for which that name or title has been used.

ADJUDICATION

MEANING

"Adjudication" is the legal process by which an arbiter or judge reviews evidence and argumentation, including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved. As per Ramanathan's Law Lexicon "**Adjudication" is the determination of matters in dispute** by the decision of a competent Court, arbitration of the determination of such matters by the decision of arbitrators, whose decision may not be binding until confirmed by a higher Court or assented to by the parties.

ADJUDICATION OF PENALTIES SECTION 454

(For Connectivity with section 441 (refer next chapter compounding of offence)

(1) The Central Government may, by an order published in the Official Gazette, appoint as **many officers** of the Central Government, not below the rank of **Registrar**, as adjudicating officers for **adjudging penalty** under the provisions of this Act in the manner as may be prescribed.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order-

(a) **impose** the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein **any non-compliance** or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to **rectify the default**, wherever he considers fit.

(4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person

(5) Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer **an appeal** to the **Regional Director** having jurisdiction in the matter.

(6) Every appeal under sub-section (5) shall be filed within **sixty days** from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form **(FORM ADJ)**, manner and be accompanied by such fees as may be prescribed.

(7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(8)(i) Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a **period of ninety days** from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than **twenty-five thousand rupees** but which may extend to **five lakh rupees**.

(ii)Where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be within a period of **ninety days** from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to **six months** or with fine which shall not be less than **twenty-five thousand rupees** but which may extend to **one lakh rupees**, or with both.

ROLE OF COMPANY SECRETARY

The Company Secretary has a vital role to play in the event of invocation any action under the Act. The current regulatory scenario demands the Company Secretary be more vigilant and diligent specifically about the applicability of multiple laws and timely compliances there under.

(a) To ensure timely compliances of the provisions of the Act to avoid any action for default or failure;
(b) To represent the Company before the ROC, RD or NCLT, in the event of any action for default or

failure;

(c) To develop a robust internal compliance system which generates the details of compliances undertaken and any compliance lapses in a timely manner;

(d) To initiate the compounding procedure in the event of any non-compliance(s) comes to light and to avoid recurrence of such non-compliances in future,

(e) To ensure timely and appropriate disclosure pertaining to penalties or compounding offences or action by any authorities.

APPEAL AGAINST THE ORDER OF ADJUDICATING OFFICER {Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014)}

- Any person aggrieved by an order made by the adjudicating officer under sub-section (3) of the section 454 may prefer an appeal to the Regional Director having jurisdiction in the matter.
- Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought.
- Where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal.
- Further that an appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

REGISTRATION OF APPEAL {Rule 5 of the Companies (Adjudication of Penalties) Rules, 2014)}

- **Endorsement of Date on Appeal**: On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.
- **Registration/Admission**: If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number.
- Where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects.
- **If the appellant fails to rectify the defects**: The Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof.
- **Extension of period of rectification of defects**: The Regional Director may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

DISPOSAL OF APPEAL BY REGIONAL DIRECTOR

• **Copy of Notice to Adjudication officer**: On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice.
• Regional Director may, for reasons to be recorded in writing, extend the period referred above for a further period of twenty-one days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days.
• **Reply of Adjudication officer**: A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.
• **Intimation of Date of Hearing by RD**: The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing of the appeal.
• **Hearing by RD**: On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.
• **Ex-parte hearing**: In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal ex-parte.
• **Setting aside ex-parte order**: Where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his non-appearance, the Regional Director may make an order setting aside the ex-parte order and restore the appeal.
• **Order**: The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
• **Signing of Order**: Every order passed under this rule shall be dated and signed by the Regional Director.
• **Communication**: A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.
• **Fine:** Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

MCA Compliance Monitoring System - MCACMS Portal

Compliance Monitoring System (MCACMS Portal) is an Artificial Intelligence initiative under system in MCA 21 by Ministry of Corporate Affairs to make compliance process easier and to ensure regular enforcement of Compliance requirements under Companies Act. 2013.

MCACMS Portal by Ministry of Corporate Affairs is for issuing show cause notices electronically for non compliances under Companies Act, 2013 and submitting replies from companies / directors with their clarifications and submissions. Based on the replies / submissions, the Register of Companies, Ministry of Corporate Affairs shall initiate penal actions for violations referred in the show cause notices.

Following are the steps for filing reply to the SCN:

1. Visit the MCA CMS portal;
2. Click on 'Reply for Show Cause Notice Tab;
3. Click the relevant section for which SCN has been issued;
4. Fill the CMS Reference number written on the SCN & click search. The system will validate the number;
5. After validation click on 'Send OTP' tab.
6. OTP will be sent on the email id on which SCN was received;
7. Click on 'Submit Reply' tab and reply once submitted cannot be altered;
8. The system will show a confirmation message and the 'Action' tab will show reply status.

Question: Whether adjudicating officer can impose penalty on non-compliance or default under the provisions of Companies Act, 2013?

Answer: Yes, as per Section 454(3) Adjudicating officer can impose penalty on non-compliance or default under the provisions of Companies Act, 2013 and direct such Company, or officer who is in default, or any other person, as the case may be to rectify the default, wherever he considers fit.

Note: In case the default relates to non-compliance of Section 92(4) or Section 137 (1) or (2) and such default has been rectified either prior to, or within 30 days of, the issue of notice by the Adjudicating officer, no penalty shall be imposed in this regard and all the proceedings under this section in respect of such default shall be deemed to be concluded.

Question: On whom penalties may be imposed by adjudicating officer ?

Answer: Companies and officer in Default and any other person ("any other person" was inserted by Companies (Amendment) Act, 2019.

Question: Arun, an individual shareholder of M/s. BEL Ltd. is holding 2% of the voting rights. He made a complaint before the Adjudicating Authority that investments proposed to be made by the Company are without any adequate security and prayed for injunction to restrain the company from making such investments. Whether Arun will succeed in his attempt ? Explain with decided case law.

Answer: Where the directors representing the majority of shareholders perform an illegal or ultra vires act, an individual shareholder has right to bring an action. The majority of shareholders have no right to confirm an illegal or ultra vires transaction of the company. In such case a shareholder has the right to restrain the company by an order or injunction of the court from carrying out an ultra vires act.

In Bharat Insurance Ltd. vs. Kanhya Lal, A.I.R. 1935 Lah. 792, the plaintiff was a shareholder of the Bharat Insurance Company. One of the objects of the company was "To advance money at interest on the security of land, houses, machinery and other property situated in India..." The plaintiff complained that "several investments had been made by the company directors on behalf of the company without adequate security and contrary to the provisions of the memorandum and therefore, prayed for perpetual injunction to restrain it from making such investments".

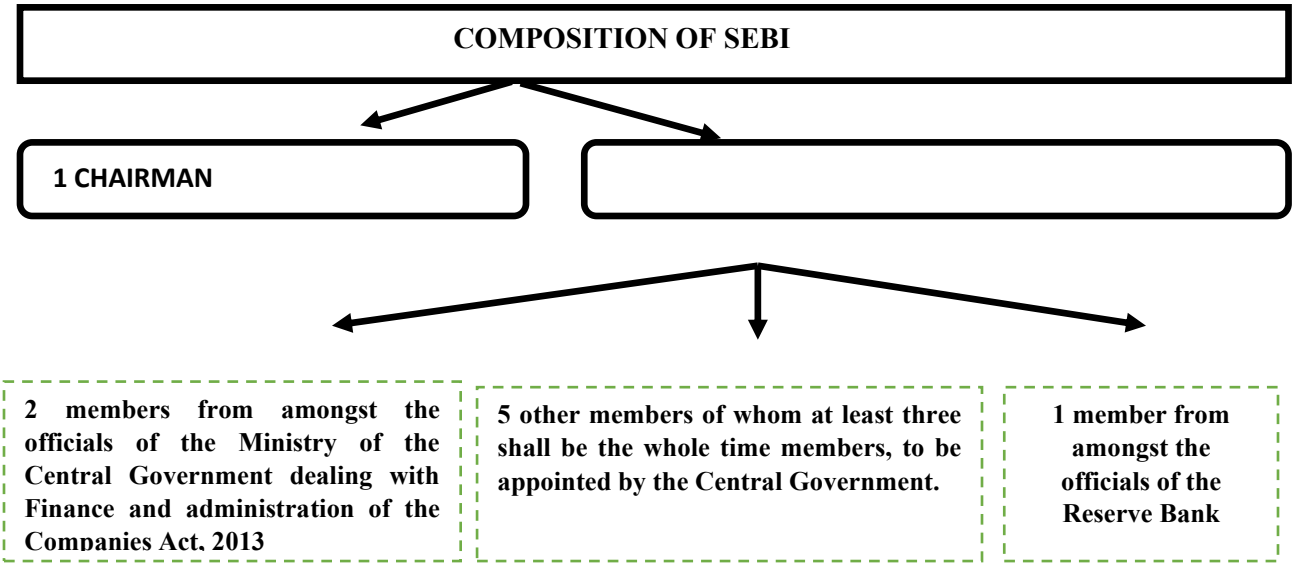
The Court observed: "In all matters of internal management, the company itself is the best judge of its affairs and the Court should not interfere. But application of assets of a company is not a matter of internal management. As directors are acting ultra vires in the application of the funds of the company, a single member can maintain a suit" Hence in the given case, Arun will succeed in his attempt.

CHAPTER-10 ADJUDICATION, PROSECUTIONS, OFFENCES AND PENALTIES UNDER SEBI LAWS

PART-A

SECURITIES AND EXCHANGE BOARD OF INDIA

1. The SEBI Act, 1992 establishes SEBI.
2. SEBI has its Head Office at Mumbai and has powers to establish its offices at other places in India.
3. SEBI presently has offices also in Kolkata, New Delhi and Chennai.
4. SEBI having status of body corporate.
5. The main functions of SEBI are to protect the interest of investors and to promote development of security market.



The Chairman and the other members are from amongst the persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to **SEBI.** The terms and conditions of service of Chairman and members are determined in the rules framed by Government in this regard.

The general superintendence, direction and management of the affairs of SEBI vests in a Board of members, which exercises all powers and do all acts and things which may be exercised or done by SEBI. Unless determined otherwise through regulations, the Chairman shall also have all these powers

POWERS AND FUNCTIONS OF SEBI

Section 11 of the Act lays down functions of Board

• Protecting the interests of investors in securities,
• Promoting the development of the securities market, and
• Regulating the securities market
• regulating the business in stock exchanges and any other securities markets;
• Registering and regulating the working of various market intermediaries.
• prohibiting fraudulent and unfair trade practices relating to securities markets;
• promoting investors' education and training of intermediaries of securities markets;
• prohibiting insider trading in securities;
• regulating substantial acquisition of shares and takeover of companies;
• calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries in the securities market;
• performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;

For carrying out the duties assigned to it under the Act, SEBI has been vested with the same **powers** as are available to a Civil Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters:

(a) The discovery and production of books of account and other documents at the place and time indicated by SEBI.
(b) Summoning and enforcing the attendance of persons and examining them on oath.
(c) inspection of any books, registers and other documents of any person listed in section 12 of the Act, namely stock brokers, sub brokers, share transfer agents, bankers to an issue, trustee of trust deed, registrar to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and other such intermediaries associated with securities markets.
(d) Issuing commissions for the examination of witnesses or documents.

INVESTIGATIONS PROCEDURE BY SEBI UNDER SEBI ACT 1992

Section **11C** of the Act provides that where SEBI has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or **any intermediary** or **any person associated with the securities market** has violated any of the provisions of this Act or the rules or the regulations made or directions issued by SEBI thereunder, **it may**, at any time by order in writing, direct **any person** specified in the order to **investigate** the affairs of such intermediary or persons associated with the securities market and to report thereon to SEBI.

The **Investigating Authority** may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

The **Investigating Authority** may keep in its custody any books, registers, other documents and record produced for **six months** and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced.

Any person, directed to make an investigation may, examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

PENALTY

If any person fails without reasonable cause or refuses to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce; or to furnish any information which it is his duty to furnish; or to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority; or to sign the notes of any examination, he shall be punishable with **imprisonment** for a term which may extend to **one year**, or **with fine**, which may extend to **one crore rupees**, or **with both**, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

APPLICATION TO MAGISTRATE

Where in the course of an investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to any, any intermediary or any person associated with securities market in any manner **may be destroyed, mutilated, altered, falsified or secreted**, the Investigating Authority may make an application to the **Magistrate or Judge** for an order for the **seizure of such books, registers, other documents** and records.

after considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designed Court, by order, authorize the investigating authority -

- to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept.
- to search that place or those places in the manner specified in the order and.
- to seize books, registers and other documents and records, it consider necessary for the purpose of the investigation.

CEASE AND DESIST PROCEEDINGS

Section 11D deals with the cease and desist powers of SEBI. If SEBI finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to **cease and desist** from committing or causing such violation.

INSPECTION OF NON- BANKING INSTITUTIONS

POWER OF INSPECTION OF RBI

According to Section 45N (1) of the Reserve Bank of India Act, 1934, the Reserve Bank may, at any time, cause an inspection to be made by one or more of its Officer s or employees or other persons (hereafter in this section referred to as the inspecting authority)-

(i) of any non-banking institution, including a financial institution, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to the Bank or for the purpose of obtaining any information or particulars; which the non-banking institution has failed to furnish on being called upon to do so; or

(ii) of any non-banking institution being a financial institution, if the Bank considers it necessary or expedient to inspect that institution.

DUTY OF DIRECTOR AND OFFICERS

According to section 45N(1), it shall be the duty of every director or member of any committee or other body for the time being vested with the management of the affairs of the non-banking institution or other Officer or employee thereof to produce to the inspecting authority all such books, accounts and other documents in his custody or power and to furnish that authority with any statements and information relating to the business of the institution as that authority may require of him, within such time as may be specified by that authority.

POWER OF INSPECTING AUTHORITY

According to Section 45N(3), the inspecting authority may examine on oath any director or member of any committee or body for the time being vested with the management of the affairs of the non-banking institution or other Officer or employee thereof, in relation to its business and may administer an oath accordingly.

CHAPTER-11 PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

APPOINTMENT OF ADJUDICATING OFFICER FOR HOLDING INQUIRY (RULE 3)

Whenever the Board is of the opinion that there are grounds for adjudging under any of the provisions in Chapter VI-A of the Act, it may appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.

HOLDING OF INQUIRY (RULE 4)

(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB,]15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections15A, 15B, 15C, 15D, 15E, 15EA, 15EB,15F, 15G8, 15HA and 15HB the Board or the adjudicating officer]shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative

(4) On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

ORDER OF THE BOARD OR THE ADJUDICATING OFFICER (RULE 5)

(1) If, upon consideration of the evidence produced before the Board or the adjudicating officer, the Board or the adjudicating officer is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1)of sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the Act , he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant section or sections specified in sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the Act.

(2) While adjudging the quantum of penalty under sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the Act], the Board or the adjudicating officer shall have due regard to the following factors, namely: –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

(3) Every order made under sub-rule (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) Every such order shall be dated and signed by the Board or the adjudicating officer.

(5) The Board or the adjudicating officer who has passed an order, may rectify any error apparent on the face of record on such order, either on its own motion or where such error is brought to his notice by the affected person within a period of fifteen days from the date of such order.

Explanation: For the purpose of this rule, "error apparent on the face of record" shall mean any typographical errors that creep in inadvertently into the order and includes such other errors that do not require a long drawn out reasoning process to ascertain such a mistake.

COPY OF THE ORDER (RULE 6)

The Board or the adjudicating officer shall send a copy of every order made under rules by it to the person concerned and to the Board.

SERVICE OF NOTICES AND ORDERS (RULE 7)

A notice or an order issued under these rules shall be served on the person in the following manner, that is to say, –

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by fax or electronic mail or courier or speed post with acknowledgement due or registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain:

Provided that a notice sent by Fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

CHAPTER-12 OFFENCE & PENALTIES UNDER SEBI LAWS

SEBI is empowered to levy penalties after adjudication of the matter if it finds that any such statutory contravention has occurred.

SEBI, in general practice, assesses factual circumstances and establishes whether or not an offense has been made by the assessee, and levies the penalty stipulated under chapter VIA of the SEBI Act, 1992.

The purpose of any adjudicatory proceeding, is not for a mere assessment of facts but must also be a determination of the gravity of the offense and imposing a penalty that is proportionate to the same.

Securities Appellate Tribunal is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the **stock exchange or adjudicating officer or any order of SEBI or IRDA or Pension fund regulatory and development authority.**

The Enforcement Department is responsible for handling Appeals against SEBI orders filed before the Hon'ble Securities Appellate Tribunal (SAT), Appeals filed against the SAT order in the Hon'ble Supreme Court, Criminal Complaints filed by SEBI in appropriate Courts and Settlement Proceedings. the Department Comprises of three divisions, namely:

1. SAT Litigation Division
2. Prosecution Division
3. Settlement Division

1. **SAT Litigation Division**

SAT Litigation Division of Securities and Exchange Board of India (SEBI) would be responsible for handling appeals against orders of SEBI or its Adjudicating Officers. While undertaking defence representation in contentious matters involving complex issues of law, the Division would liase with Senior Advocates, law firms, solicitors firms and represent the interest of SEBI at Securities Appellate Tribunal (SAT). The Division would also be an interface between SEBI and SAT, while collaborating with other departments of SEBI. It would also assist SEBI in filing affidavits/written submissions, as and when needed, while attending hearings.

2. **Division of Prosecution**

The division shall handle work related to filing prosecution proceedings through the courts and follow up to obtain conviction. The Division will also frame procedures for cooperation with public prosecutors, other agencies and for making referrals to prosecutors and other government agencies.

3. **Settlement Division**

"Settlement Division handles the Settlement Applications filed by the Applicant for the Settlement of the Specified Proceedings that have been initiated or may be initiated by SEBI. The Settlement Applications are processed as per SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 [Settlement Regulations] and if settlement is arrived at, the Settlement Orders are passed.

The Settlement Division is responsible for handling Registration of Settlement Application, Calculation of Settlement amount as per the Settlement Regulations, organizing Internal Committee Meeting between the Applicants and Internal Committee Members for formulating the settlement amount/terms, Organizing High Powered Advisory Committee (HPAC) Meeting, placing the recommendation of HPAC before the Panel of Whole Time Members for approval.

PENALTIES FOR FAILURES

Penalties for Failures

Section 15A lays down that if any person who is required under SEBI Act or any rules or regulations made thereunder:

• to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of **one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.**
• to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of **one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.**
• To maintain books of accounts or records, fails to maintain the same, **he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.**

Section 15B lays down that if any person who is registered as an Intermediary and is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to pay a penalty of **one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.**

Section 15C lays down that if any listed company or any person who is registered as an Intermediary, after having been called upon by SEBI in writing to redress the grievances of Investor, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to pay a penalty of **one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.**

PENALTIES FOR DEFAULT

Section 15D lays down that in case of mutual funds, if any person who is:

• registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty of **minimum one lakh rupees and maximum one crore rupees.**
• registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, **he shall be liable to penalty of minimum one lakh rupees and maximum one crore rupees.**
• registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch, **he shall be liable to a penalty minimum one lakh rupees and maximum one crore rupees.**
• registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he **shall be liable to a penalty of minimum one lakh rupees and maximum one crore rupees.**
• registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, **he shall be liable to a penalty of one minimum one lakh rupees and maximum one crore rupees.**

Section 15E lays down that where any asset management company of a mutual fund registered under SEBI Act fails to comply with any of the regulation providing for restrictions on the activities of such company, **it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.**

Section 15F provides penalties for default in case of stock brokers. As per the Section, if any person registered as a stock broker under SEBI Act -

• fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, **he shall be a penalty which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker**
• fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, **he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less**
• charges an amount of brokerage which is in excess of the brokerage specified in the regulations, **he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;**

PENALTY FOR INSIDER TRADING

Section 15G lays down that if any insider:

• either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
• communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
• counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price sensitive information,

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

PENALTY FOR NON-DISCLOSURE OF ACQUISITION OF SHARES AND TAKEOVERS

Section 15H lays down that if any person fails to:

• disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
• make such a public announcement to acquire shares at a minimum price, he shall be liable to a penalty not exceeding five lakh rupees;
• make a public offer by sending letter of offer to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher

Section 15HA provides that if a person indulges in fraudulent and unfair trade practices relating to securities, **he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.**

PENALTY FOR CONTRAVENTION SEC. 15 HB

Whoever fails to comply with any provision of this Act, the rules or regulations made or directions issued by the Board thereunder for which no separate penalty has been provided**, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees**

Penalties under Securities Contracts (Regulation) Act, 1956

SECTION	CAUSE	PENALTY
23(1)	**Any person who-** (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or (c) contravenes the provisions contained in section 17 or section 17A, or section 19; or	be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

	(d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30; (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or (i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act; shall, without prejudice to any award of penalty by the Adjudicating Officer or the Securities and Exchange Board of India under this Act, on conviction	
23(2)	Any person who enters into any contract in contravention of the provisions contained in section	punishable with imprisonment for a

	15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction	term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.
23A	**Penalty for failure to furnish information, return, etc.** **Any person who fails** to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who furnishes false, incorrect or incomplete information, document, books, return or report,	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure;
23B	**Penalty for failure by any person to enter into an agreement with clients.** If any person, who is required under this Act or any bye-laws of a recognised stock-exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement,	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.
23C	**Penalty for failure to redress investors' grievances** If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange	he or it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
23D	**Penalty for failure to segregate securities or moneys of client or clients** If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to	he shall be liable to a penalty which shall not be less than one lakh rupees but which may

	segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client	extend to one crore rupees.
23E	**Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.** If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof.	it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
23F	**Penalty for excess dematerialisation or delivery of unlisted securities.** If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognized stock exchange	he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
23G	**Penalty for failure to furnish periodical returns, etc.** If a recognised stock exchange fails or neglects to furnish periodical returns or furnishes false, incorrect or incomplete periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India	such recognised stock exchange shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
23GA	**Penalty for failure to conduct business in accordance with rules, etc.** Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act	the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such

		failure, whichever is higher.
23H	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided	shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

POWER TO ADJUDICATE Section 23I

23-I. (1) For the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Factors to be taken into account while adjudging quantum of penalty Section 23 J

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Recovery of amounts Section 23JB

- attachment and sale of the person's movable property
- attachment of the person's bank accounts
- attachment and sale of the person's immovable property
- arrest of the person and his detention in prison
- appointing a receiver for the management of the person's movable and immovable properties

- The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the above powers

Continuance of proceedings Section 23 JC

Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Crediting sums realised by way of penalties to Fund Section 23 K

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Appeal to Securities Appellate Tribunal Section 23 L

(1) Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under or sub-section (3) of section 23-I, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

POWER TO GRANT IMMUNITY Section 23 O

The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity: Provided further that the recommendation of the

Securities and Exchange Board of India under this sub-section shall not be binding upon the Central Government.

CASE STUDY

Ignorance of law is not an excuse for escaping from liability of violation of law

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Decision

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act. Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. 25 Crore, SAT finds that the penalty of Rs. 50 Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. 50 lakh is upheld and the appeal is dismissed.

CHAPTER-13 FEMA & PROSECUTION

OBJECT, EXTENT & APPLICATION OF FEMA ACT, 1999

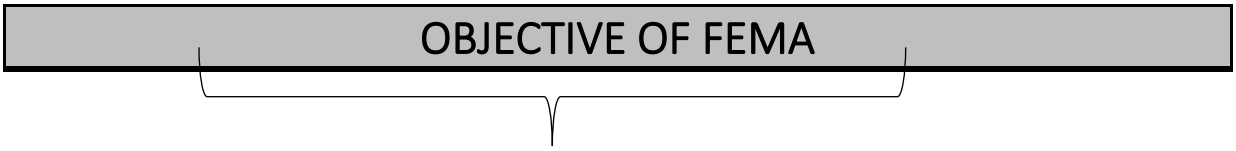
Commencement

FEMA has been brought into force with effect from **1st June, 2000** and repeal FERA Act 1974

Applicability

• FEMA is applicable to all parts of India.
• The act is applicable to all branches, offices and agencies outside India, owned or controlled, by a person who is a resident of India.
• It also applies to any contravention committed **outside India** by any person to whom this Act applies.

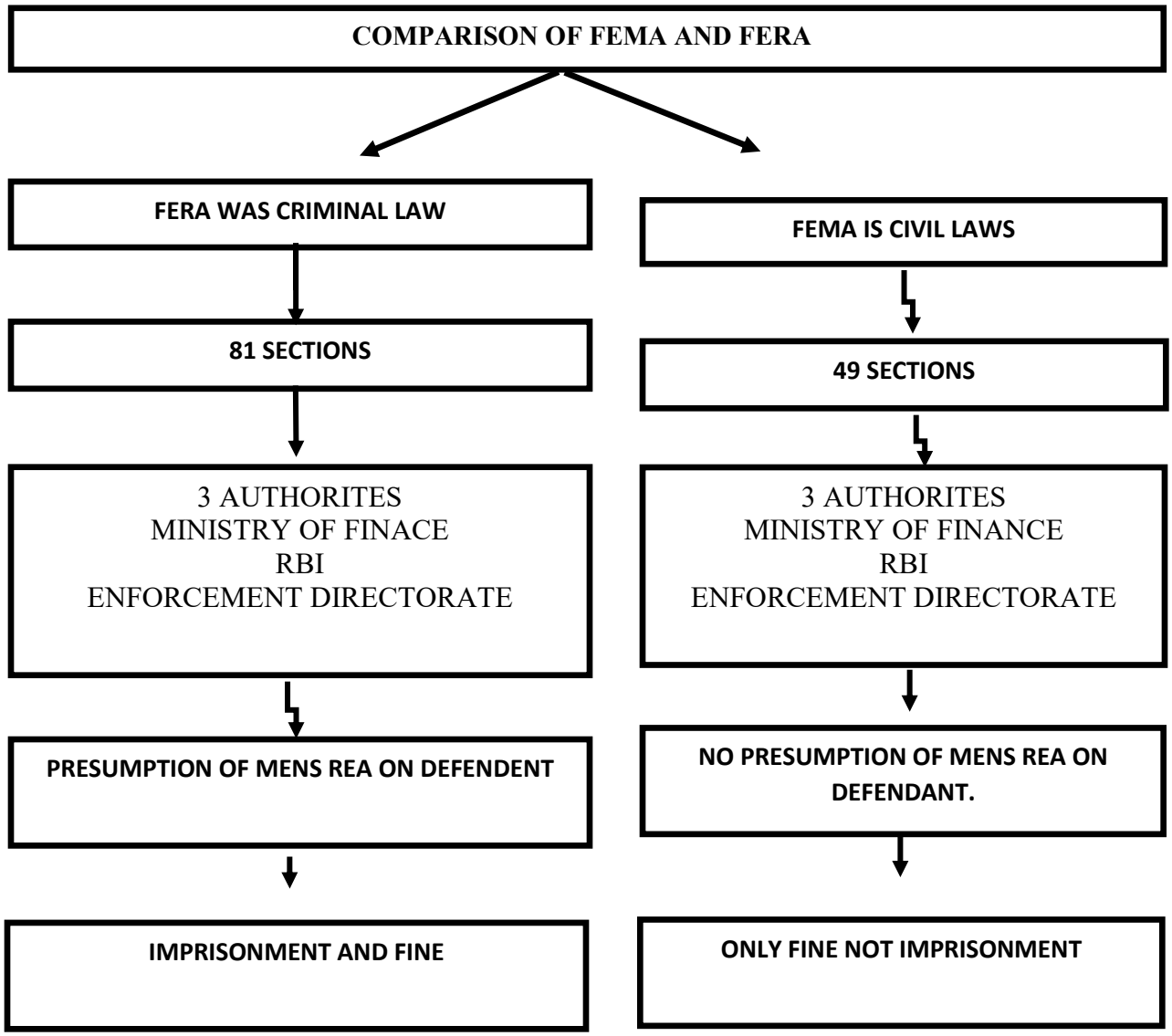
OBJECTIVE OF FEMA



Facilitating external and internal trade	Consolidate and amend the law	Promoting orderly development of foreign exchange market in India

Reason for replacement of FERA Act 1974

(a)	FEMA was introduced because the FERA didn't fit in with post- liberalisation policies.
(b)	A significant change that the FEMA brought with it, was that it made all offences regarding foreign exchange civil offences, as opposed to criminal offenses as dictated by FERA.
(c)	It also paved (foundation) the way for the introduction of the Prevention of Money Laundering Act 2002, which came into effect from 1 July 2005.
(d)	**Unlike other laws where *everything is permitted unless specifically prohibited,* under FERA *nothing was permitted unless specifically permitted*.**
(e)	Hence the tenor and tone of the Act was very drastic. It provided for imprisonment of even a very minor offence. The Concept of Rigorous imprisonment.
(f)	Under FERA, a person was presumed guilty unless he proved himself innocent whereas under other laws, a person is presumed innocent unless he is proven guilty.
(g)	FEMA has brought a new management regime of Foreign Exchange consistent with the emerging frame work of the World Trade Organisation **(WTO).**



DIFFERENCE BETWEEN FEMA AND FERA

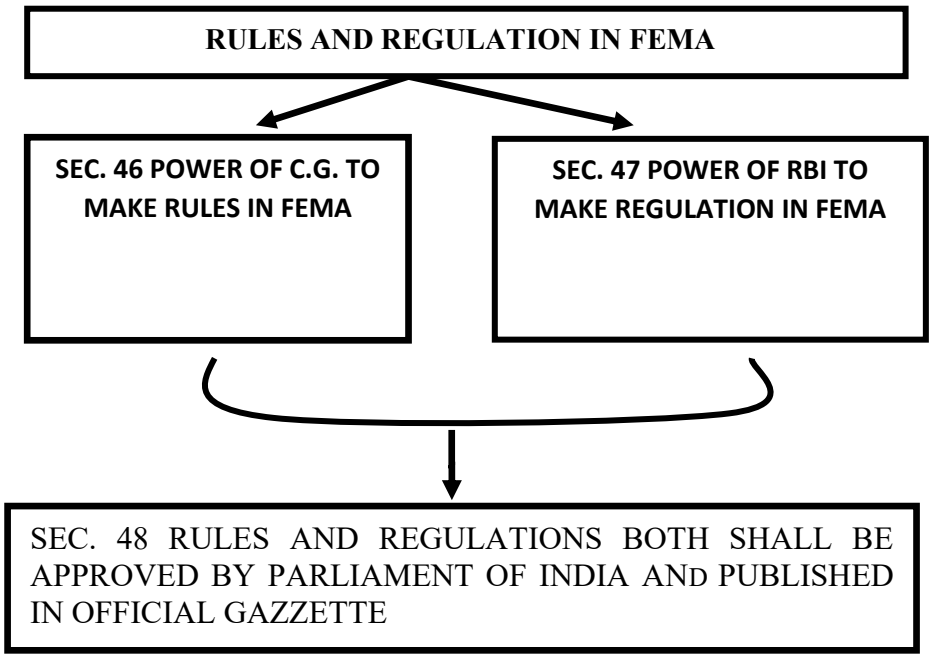
Basis	FERA	FEMA
Prohibition/ relaxation	In general Prohibited almost all the foreign exchange transaction unless a general or special permission was issued.	However in case of FEMA all the current account transactions are permissible except some transactions controlled by the rules.
Applicability	Applies to Citizen of India who were outside India, and whether or not they were resident in India.	FEMA does not any more apply to citizen of India who are outside India, unless they are resident in India.
Penalty	5 times of the sum involved plus imprisonment in most cases**.**	Limited to be 3 times the sum involved provided it is Quantifiable. If it is not quantifiable limit is up to Rs.2 lakh. If it is a continuing offence further penalty up to Rs. 5000 per day after the 1st day.

Compounding of Offences	No such powers were present.	Sec 15 of the Act seek to vest in Directorate of Enforcement and RBI.

AUTHORITIES UNDER FEMA

Reserve Bank of India is the overall controlling authority in respect of FEMA. In addition to RBI, Directorate of Enforcement has also been formed for the implementation of FEMA.

The FEMA head-office, also known as Enforcement Directorate is situated in New Delhi and is headed by a Director. The Directorate is further divided into 5 zonal offices in Delhi, Mumbai, Kolkata, Chennai and Jalandhar and each office is headed by a Deputy Director. Each zone is further divided into 7 sub-zonal offices headed by the Assistant Directors and 5 field units headed by Chief Enforcement Officer



AUTHORIZED PERSON (SECTION 10

Authorized person means an authorized dealer, moneychanger, off shore banking unit or any other person for the time being authorized for the following purposes

- To deal in or transfer any foreign exchange of foreign security to any person;
- To receive any payment by order or on behalf of any person resident outside India in any Name
- To sale or purchase foreign exchange for current account transactions;
- To sale or purchase foreign exchange for permissible capital account transactions.

AUTHORISED PERSON

AUTHORISED DEALER (ALL MAJOR BANKS) INVOLVED IN 2 ACTIVITIES

SALE AND PURCHASE OF FOREX
OPENING AND MAINTAING OF FOREIGN CURRENCY ACCOUNTS

MONEY CHANGER

1. FULL FLEDGED MONEY CHANGER (SALE AND PURCHASE OF FOREX)
2. RESTRICTED MONEY CHANGER (ONLY BUYS FOREX AND SURRENDER TO A.D.)

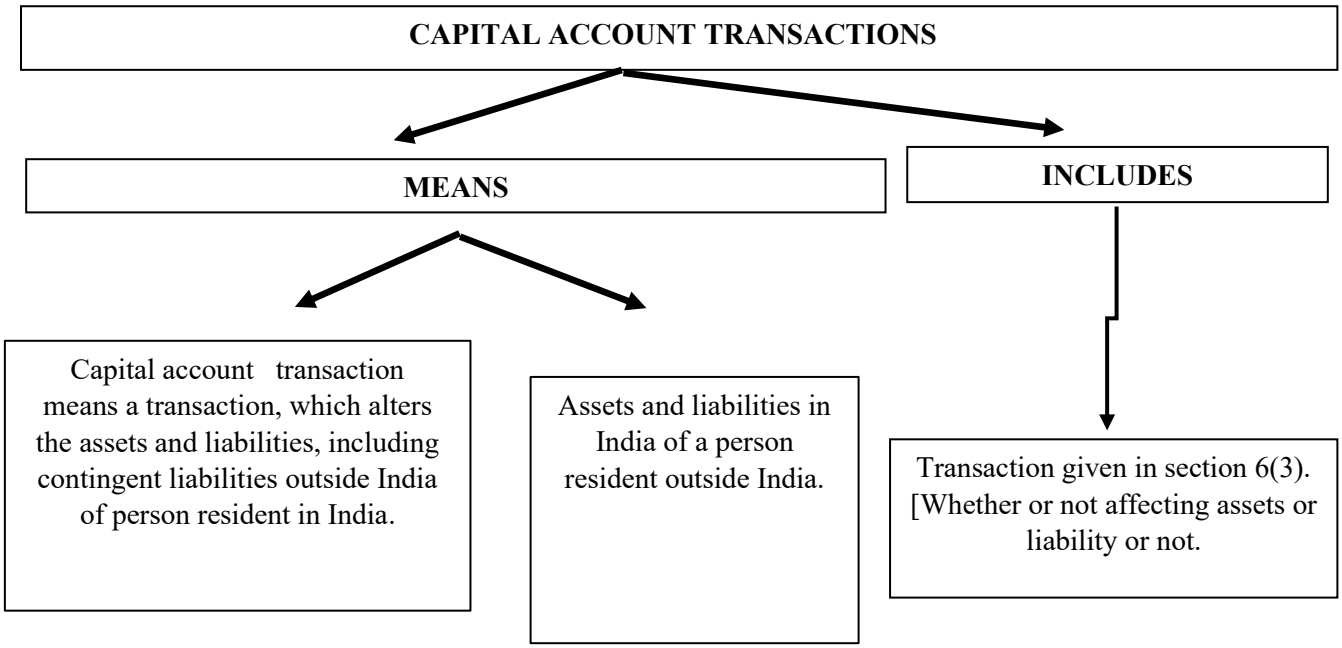
AUTHORISED BANKER

OPENING AND MAINTAING OF FOREIGN CURRENCY ACCOUNTS

OFF SHORE BANKING UNIT

OFF SHORE BANKING UNIT

CAPITAL ACCOUNT TRANSACTIONS [SECTION 2(e)]

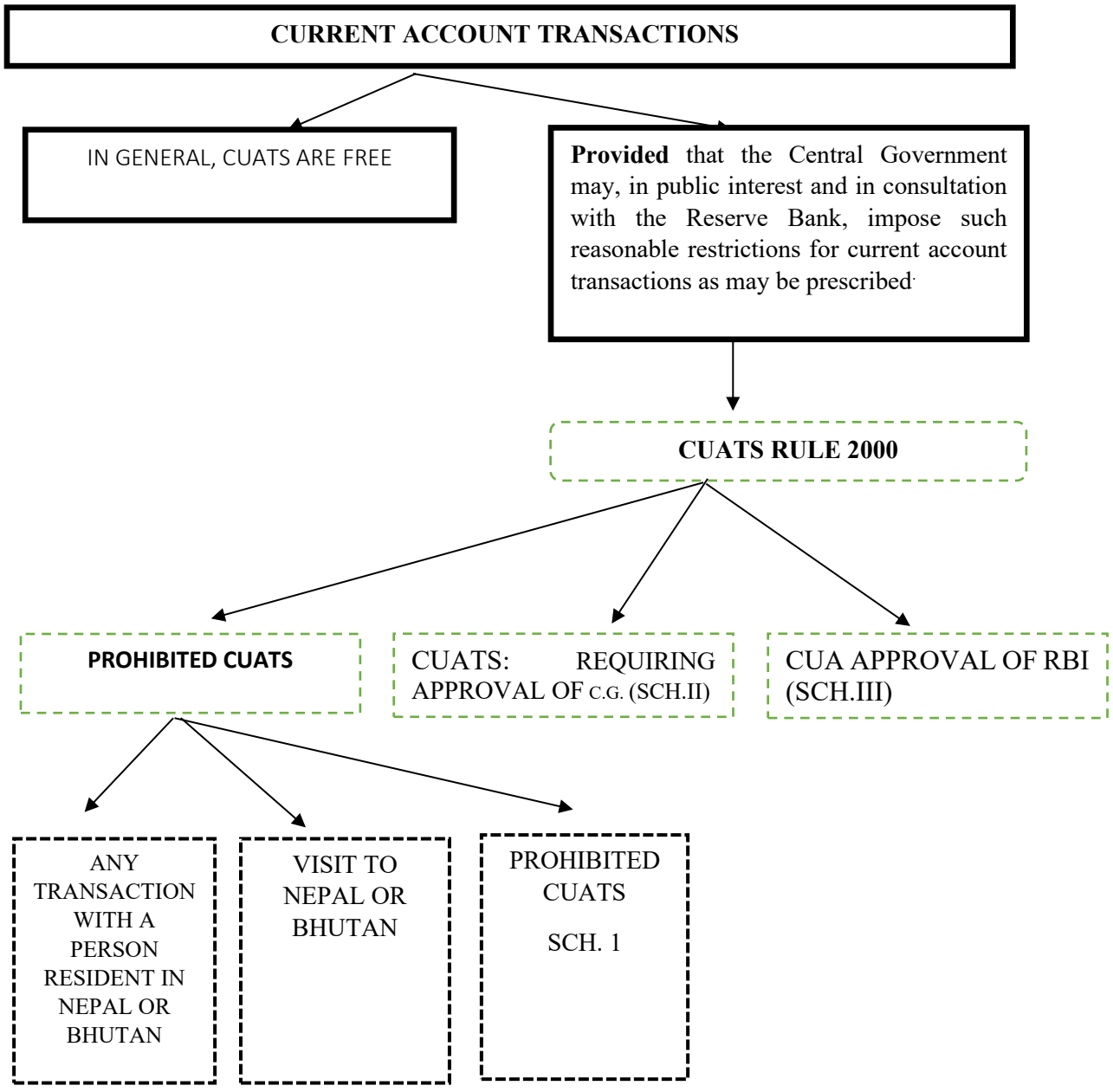


COMPARISON CHART BETWEEN CURRENT ACCOUNT AND CAPITAL ACCOUNT

BASIS FOR COMPARISON	CURRENT ACCOUNT	CAPITAL ACCOUNT
Meaning	An account which records the export and import of merchandise and unilateral transfers done during the year by a nation are known as Current Account.	An account which records the trading of foreign assets and liabilities during the year by a country is known as Capital Account.
Reflects	Net Income of the country.	Net change in ownership in national assets.
Components	Trade in goods and services, investment income, unrequited transfers	Foreign Direct Investment, Portfolio Investment, Government loans etc.
Deals with	Receipt and disbursements of cash and non-capital items.	Sources and application of capital.

PROVISIONS RELATING TO CURRENT ACCOUNT TRANSACTIONS

Any person may sell or draw foreign exchange to or from an Authorised person if such sale or Drawl is a current account transaction. **Provided** that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed. Thus, generally all current account transactions are free subject to reasonable restrictions, which may be imposed by Central govt. in consultation with RBI.


CURRENT ACCOUNT TRANSACTIONS
IN GENERAL, CUATS ARE FREE
Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed
CUATS RULE 2000
PROHIBITED CUATS
CUATS: REQUIRING APPROVAL OF C.G. (SCH.II)
CUA APPROVAL OF RBI (SCH.III)
ANY TRANSACTION WITH A PERSON RESIDENT IN NEPAL OR BHUTAN
VISIT TO NEPAL OR BHUTAN
PROHIBITED CUATS
SCH. 1

FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) RULES, 2000		
RULE 3	**Prohibition on Drawl of Foreign Exchange for Certain Transactions**	Prohibits the Drawl of foreign exchange for the purposes of transactions; (a) Specified in the Schedule I or (b) A travel to Nepal and/or Bhutan or a transaction with a person resident in Nepal or Bhutan. However, in the case of transaction with a person resident in Nepal and Bhutan, the prohibition may be exempted by RBI subject to such terms and conditions as it may consider necessary.
SCHEDULE I	**Situations in which the Drawl of foreign exchange is prohibited**	• Remittance out of lottery winnings; • Remittance of income from racing/riding etc. or any other hobby; • Remittance for purchase of lottery tickets, banned/prescribed magazine, football pools, sweepstakes, etc. • Payment of commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian Companies • Payment of Commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco. • Payment related to 'call back service' of telephone. • Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account
RULE 4	**Prior Approval of Government of India for Certain Transactions**	Requires prior approval of the Government of India for the transactions as specified in Schedule II. However, this does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter.
Schedule II	**Requires prior approval of the Government of India for the transactions as specified in Schedule II. However, this does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter.**	**In the following situations prior Central Government approval will be necessary** • For cultural tours, permission of minister of HRD (department of education and cultural) is required • Advertisements abroad by any public sector undertaking, State Government and central Government department for any purpose other than for promotion of tourism, foreign investment and for international bidding (exceeding US $10000) will require approval from ministry of Finance (Department of Economic Affairs • Payment for freight of vessels chartered by public sector undertakings (PSU) or import by a government department or a public sector undertaking can be made with the approval of Ministry of Shipping • Payment of import through ocean transport by government or a public sector undertaking on CIF basis requires approval of ministry of transport. • Multi-modal transport operators making payments to their

		agents abroad have to obtain registration certificate from Ministry of Transport • Remittance of hiring charges of transponders by TV channels should be approved by Ministry of Information and Broadcasting and remittance of hiring of transponders by Internet Service providers is required to be approved by Ministry of Communication and Information Technology • Remittance of container detention charges exceeding rates prescribed by Director General of Shipping requires approval from Ministry of Shipping • Remittance of prize money/sponsorship of sports activity abroad will require approval from Ministry of HRD (Department of Youth Affairs and Sports), if the remittance amount exceeds US $1lakh. It may be noted that aforesaid permission is not required irrespective of amount, if remittance is made by /National/ State level Sports Bodies.
RULE 5	**Prior approval of RBI for Certain Transactions. [LATEST AMENDMENT 2015]**	As per **Rule 5** of the **Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015**, every drawal of foreign exchange for transactions included in **Schedule III** shall be governed as provided therein: However, this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.
	Facilities for individuals-	An Individual, who can avail of foreign exchange facility for the following purposes within the limit of **USD 2, 50,000** only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India. i. Private visits to any country (except Nepal and Bhutan) ii. Gift or donation. iii. Going abroad for employment iv. Emigration. v. Maintenance of close relatives abroad. vi. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up. vii. Expenses in connection with medical treatment abroad. viii. Studies abroad. ix. Any other current account transaction. However for the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the **Liberalised Remittance Scheme,** if it is so required by a country of emigration, medical institute offering treatment or the university, respectively:

		It may be noted that if an individual remits any amount under the said **Liberalised Remittance Scheme** in a financial year, then the applicable limit for such individual would be reduced from **USD 250,000** by the amount so remitted:

FOREIGN DIRECT INVESTMENTS IN INDIA

MEANING & ELIGIBILITY

MEANING

- Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act (FEMA) 1999.
- Generally FDI in two form are allowed joint venture or wholly owned subsidiary.
- Meaning of FDI: FDI means investment made by non-resident entity or person resident outside India (PROI) in capital of Indian company or Indian entity.

Who can Make FDI

1. Any person who is PROI can make FDI
2. If that PROI is citizen of Pakistan or entity incorporated in Pakistan they can make FDI only under approval route in sectors other than defence, space and atomic energy.
3. PROI who is citizen of Bangladesh and entity of Bangladesh can make FDI with C.G. approval
4. NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis,
5. Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) may in terms of Schedule 2 and 2A of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, as the case may be, respectively, invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company.
6. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII/FPI investment, individually or in conjunction with other kinds of foreign investment, will not exceed sectoral/statutory cap.

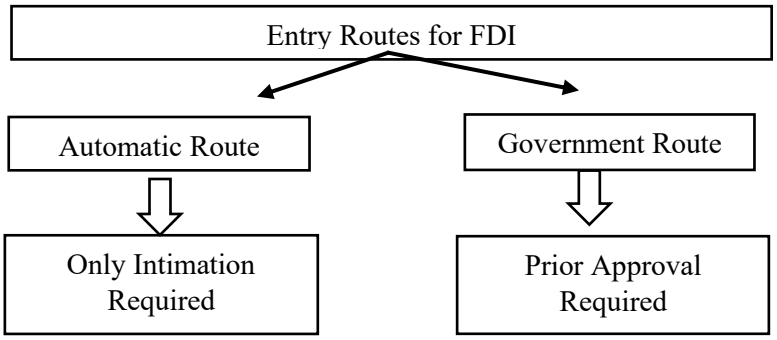
TYPES OF INSTRUMENTS

1. Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference.
2. Optionality clauses are allowed in equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares under FDI scheme, subject to the following conditions:

o There is a minimum lock-in period of one year which shall be effective from the date of allotment of such capital instruments.
o After the lock-in period and subject to FDI Policy provisions, if any, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as per pricing/valuation guidelines issued by RBI from time to time.

ENTRY ROUTES FOR INVESTMENTS IN INDIA

Foreign Direct Investments (FDI) can be made under two routes:



Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment. Only intimation is required to be given to RBI.

If the proposed foreign investment is beyond the sectoral limits stipulated and beyond which approval route is permitted or where automatic route is not permitted, prior approval of the Government of India, Ministry of Finance, Foreign Investment Promotion Board (FIPB) is required Under the Government Route.

INDUSTRIAL POLICY TOWARDS FDI

Foreign direct investment may be by way of investment in equity shares, fully compulsorily convertible preferences shares, fully compulsorily convertible debentures ADR/GDR and FCCB.

Foreign investment in shares in any industry up to 100% is permitted except the following:-

1.	Proposals falling under compulsory industrial licensing
2.	**Investment in defence sector** With the new changes in the FDI policy, foreign investment beyond 49 per cent has now been permitted through government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded. The condition of access to 'state-of-art' technology in the country has been done away with. The FDI limit for defence sector has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.
3.	Investments in Small Scale Industrial units: A foreign investor can invest in an Indian company which is a small scale industrial unit provided it is not engaged in any activity which is prohibited under the FDI policy. Such investments are subject to a limit of 24% of paid-up capital of the Indian company/SSI Unit.

PROHIBITION ON INVESTMENT IN INDIA

- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- 'Real estate businesses shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations (other than permitted activities).

REPORTING

<table>
<tr><td>Reporting of FDI</td><td>An Indian company receiving investment from outside India for issuing shares/ convertible debentures/preference shares under the FDI Scheme is required to report the details of the inflow to the Reserve Bank not later than 30 days from the date of receipt. Details to be reported are:<table><tr><td>Name and address of the foreign investor/s,</td></tr><tr><td>Date of receipt of funds in foreign currency and its rupee equivalent,</td></tr><tr><td>Name and address of the Authorised Dealer through whom the funds have been recei and</td></tr><tr><td>Details of Government approval for the investment, if any.</td></tr></table></td></tr>
<tr><td>Reporting of Issue of Shares</td><td>• After issue of shares/convertible debentures/preference shares, the Indian company is required to file Form FC-GPR not later than 30 days from the date of issue. Part A of Form FC-GPR has to be duly filled up and signed by the Authorised Signatory and submitted to the Authorised Dealer of the company, who is required to forward it to the Reserve Bank. While forwarding the Form, the Authorised Dealer is required enclose a KYC Report on the foreign investor.
• Along with Part A of FC-GPR, the following documents are required to be attached by the company
(a) A certificate from the Company Secretary of the company certifying that:<table><tr><td>a) All the requirements of the Companies Act, 1956 have been complied with;</td></tr><tr><td>b) Terms and conditions of the Government approval, if any, have been complied v</td></tr><tr><td>c) The company is eligible to issue shares under these Regulations; and</td></tr></table>(b) A certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
• Both the above reports have to be submitted to the concerned Regional Office of the Reserve Bank under whose jurisdiction the registered office of the company is situated.
• Part-B of FC-GPR is required to be filed on an annual basis with the Reserve Bank. This filing has to be done in the month of June every year, for all outstanding investment by way of FDI as well as Portfolio/other investments.</td></tr>
</table>

Reporting of ADR/GDR Issues	The Indian company issuing ADRs / GDRs has to furnish to the Reserve Bank, full details of such issue in the form prescribed, within 30 days from the date of closing of the issue. The company should also furnish a quarterly return to Reserve Bank within 15 days of the close of the calendar quarter.

DIRECT INVESTMENT OUTSIDE INDIA

DIRECT INVESTMENT OUTSIDE INDIA IN J/V / WHOLLY OWNED SUBSIDIARY Indian parties are prohibited from making investment in a foreign entity engaged in real estate or banking business.		
AUTOMATIC ROUTE	**An Indian party has been permitted to make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS)subject to following conditions**	**(a)** The total financial commitment of the Indian party should not exceed 400 per cent of the net worth of the Indian party (corporates) as on the date of the last audited balance sheet. **(b)** The Indian Party is required to report such acquisition in form ODI to the AD Bank for report to the Reserve Bank within a period of 30 days from the date of the transaction **(c)** The direct investment is made in overseas JV/WOS engaged in bonafide business activity. **(d)** The Indian party is not on RBI's caution list or under investigation of enforcement directorate. **(e)** The automatic route facility is not available for investment in Pakistan. **(f)** For every joint venture and wholly owned subsidiary RBI allots the **unique identification number.**
GENERAL PERMISSION IN CERTAIN CASES		Residents are permitted to acquire a foreign security, if it represents: –
Qualification shares	Qualification shares for becoming a director of a company outside India provided it does not exceed 1 per cent of the paid up capital of the overseas company. If Qualification Shares Are Beyond This Limit RBI Approval Required.	
Rights shares	Rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force; Investment Beyond Entitlement RBI Approval Required.	
Investment by resident individual in foreign shares	2 lack US dollar per calendar year up to this limit RBI approval not required.	
Investment in equity of company registered overseas	Listed Indian co., mutual fund and individuals can invest in equity shares, rated bonds/ fixed income securities of companies listed in foreign stock exchange. Investment of Indian listed co. shall not exceed 50% of its net worth as per last audited balance sheet. All mutual funds can invest up to extent of us $ 5 billion.	

ADJUDICATION AND APPEAL

Directorate of Enforcement

Section 36 of the act empowers the central government to establish a directorate of enforcement with a director and other officers or class of officers, for the purposes of the enforcement of the act.

Appointment of Adjudicating Authority [Section 2(A) Read with Sec 16 &13]

According to Section 2(a) 'Adjudicating Authority' means an officer authorised under Section 16(1) for the purposes of adjudication in respect of penalties under Section 13. Section 16 empowers the central government to appoint by notification in the official gazette as many adjudicating authorities as it may think fit for holding enquiries under section 13. The central government is, however under obligation to specify the jurisdiction of the adjudicating authority.

POWER OF SEARCH, SEIZURE (SECTION 37)

(1) The Director of Enforcement and other Officer s of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

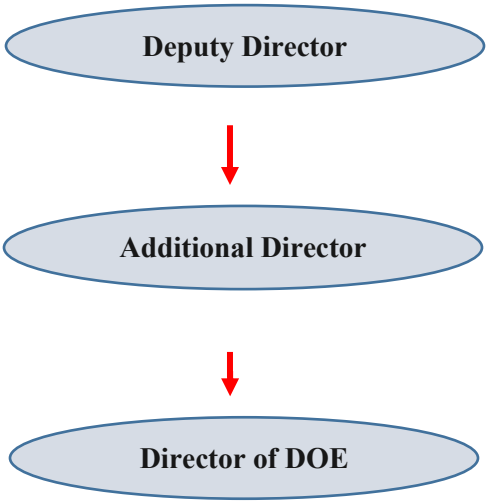
(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any Officer or class of Officer s in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The Officer s referred to in sub-section (1) shall exercise the like powers which are conferred on income- tax authorities under the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

IN THIS CONTEXT**, Foreign Exchange Management (Encashment of Draft, Cheque Instrument and Payment of Interest) Rules, 2000** provides that where investigation referred to in Section 37 of the Act is being taken up into any alleged contravention of any provisions of the Act or rule, regulation, direction or order or violation of any condition subject to which Reserve Bank of India gives authorisation, and any draft, cheque or other instrument relevant for such investigation, such officer shall send such draft, cheque or other instrument to the Reserve Bank of India or to an authorised person as the officer may specify for encashment. The Reserve Bank of India or the authorised person is required to take steps without delay for encashment of the draft, cheque or other instrument and to credit the proceeds of such encashment (less any commission and expenses incurred for such encashment) to a separate account in the name of the Directorate of Enforcement.

The Central Government is required to indemnify the Reserve Bank of India or an authorised person against any liability which may incur by reason of or in connection with the encashment of the draft, cheque or other instrument delivered to it.

There are 3 levels of Adjudicating Authorities



In the ascending order of hierarchy. The assistant Director of Directorate of Enforcement normally makes a complaint before the Adjudicating Authorities but sometimes he can also act as Adjudicating Authority.

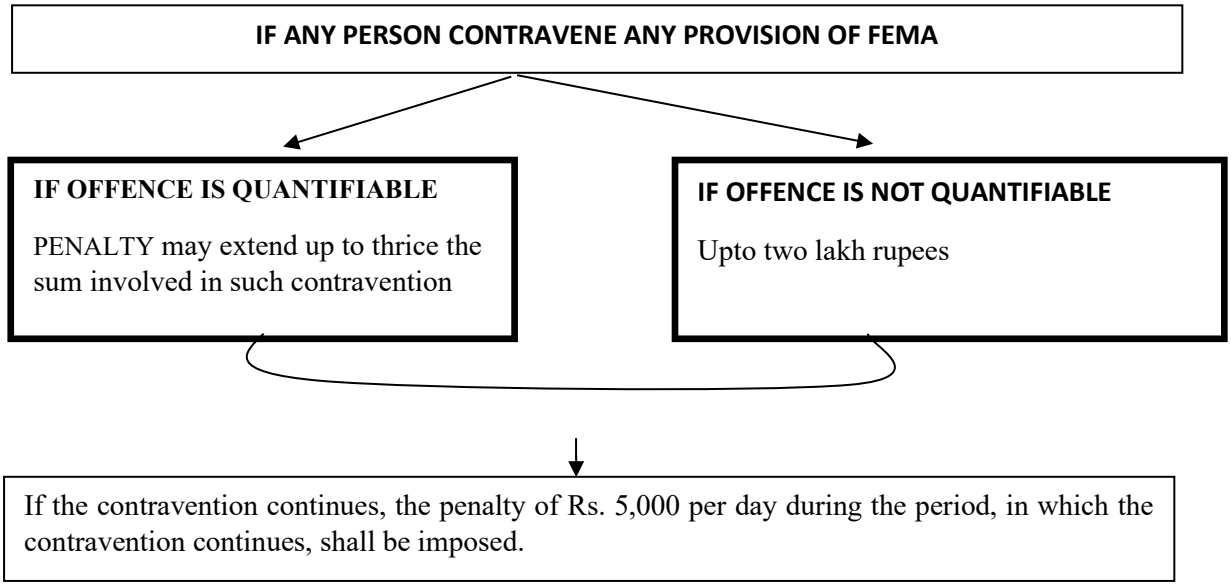
The jurisdiction of various Adjudicating Authorities is as follows:

Authority	Jurisdiction
Deputy Director	Cases involving amount up to Rs. 75 lakhs
Additional Director	Cases involving amount more than Rs. 75 lakhs and up to Rs.1 crore
Director	Cases involving amount more than Rs. 1 core

The adjudicating authority has been empowered to hold any enquiry on a complaint made in writing by an officer authorised by a general or special order by the central government. The officers so appointed shall exercise the like powers which are conferred on income tax authorities under the income tax act, 1961, subject to such conditions and limitations as laid down under that act.

In case, a complaint has been made in respect of a person alleged to have committed the contravention, such person shall be given a reasonable opportunity of being heard before imposing any penalty under section 13.

CONTRAVENTION AND PENALTIES



Contravention and Penalties

Section 13 provides that any person contravening any provision of the act, shall be liable for penalty upon adjudication, which may extend up-to thrice the sum involved in such contravention where such amount is quantifiable or up-to two lakh rupees where the amount is not quantifiable. If the contravention continues, the penalty of Rs. 5,000 per day during the period, in which the contravention continues, shall be imposed.

CONTRAVENTION AND PENALTIES, ADJUDICATION AND APPEAL UNDER FOREIGN EXCHANGE MANAGEMENT ACT, 1999

PENALTIES (SECTION 13)

(IA) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the Foreign exchange, foreign security or immovable property.

(IB) If the Adjudicating Authority, in a proceeding under sub-section (1A) deems fits, he may, after recording the reasons in writing, recommend for the initiation of prosecution and if the Director of Enforcement is satisfied, he may, after recording the reasons in writing, may direct prosecution by filing a Criminal Complaint against the guilty person by an Officer not below the rank of Assistant Director.

(IC) If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY (SECTION 14)

(1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 **within a period of ninety days** from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison

(3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the Officer arresting him, such Officer shall at once release him.

POWER TO COMPOUND CONTRAVENTION (SECTION 15)

(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other Officer s of the Directorate of Enforcement and Officer s of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

APPOINTMENT OF ADJUDICATING AUTHORITY (SECTION 16)

(1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many Officer s of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13 a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any Officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.

(5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and—

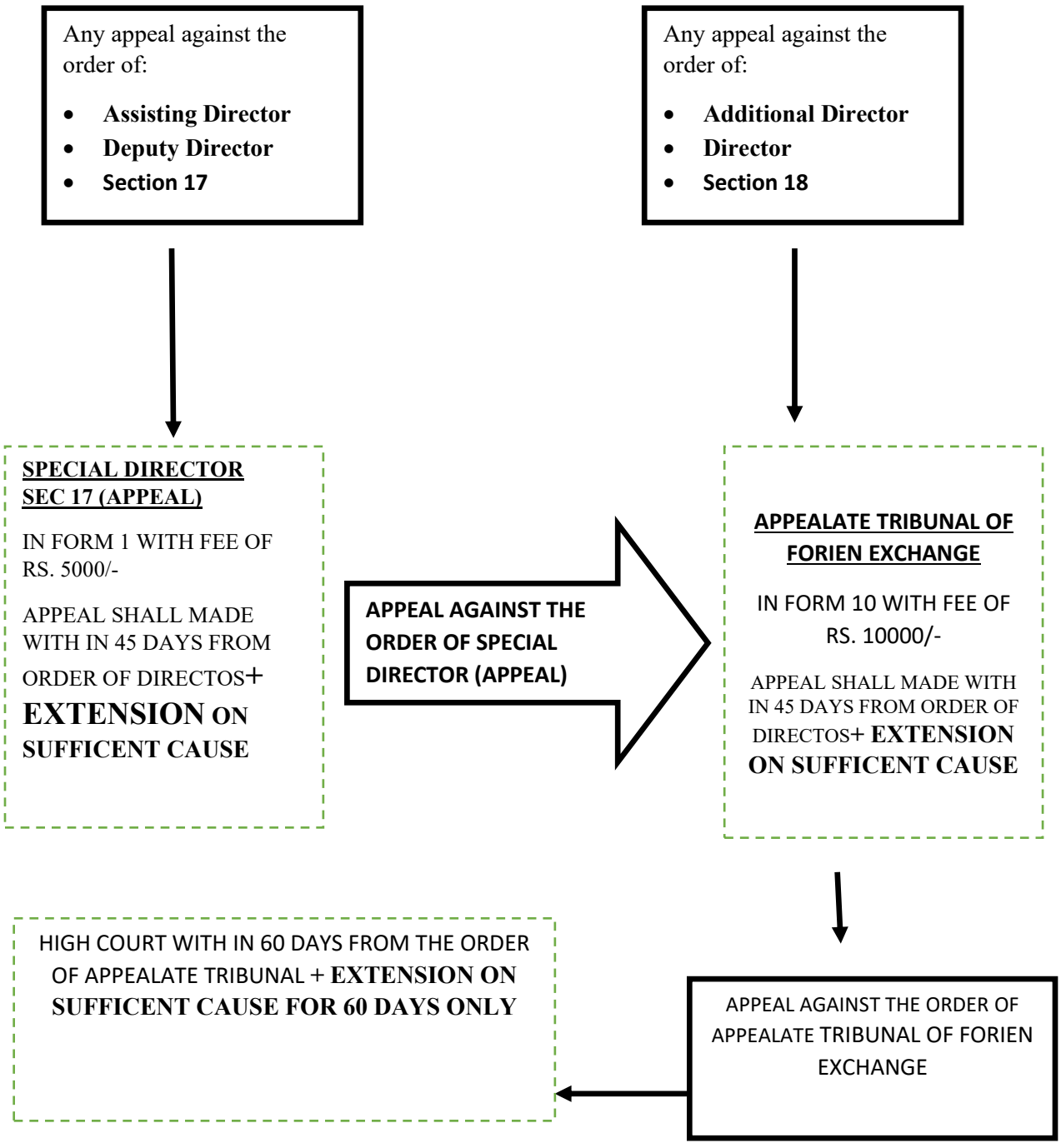
(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint:

Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

CONCEPT OF APPEAL



Appeal to Special Director (appeals) SECTION 17	• **Section 17** of the act provides for appointment of one or more special directors (appeals) to hear appeals against the orders of the adjudicating authorities. • The appeal shall be filed in **Form No. 1** (in triplicate) of Foreign Exchange Management Rules, 2000 along with a **fee of Rs. 5000** within **45 days** from the date of the receipt of the order by aggrieved person. • The special director (appeals) has however, been empowered to entertain appeal after the expiry of the said period of forty five days.
Establishment of Appellate Tribunal SECTION 18	• Under section 18, the central government is empowered to establish an appellate tribunal, by a notification in the official gazette, to hear appeals against the orders of adjudication authorities and special director (appeals). • The central government or any person aggrieved by the orders of adjudicating authority or special director (appeals) may prefer an appeal to the appellate tribunal
APPEAL TO APPELLATE TRIBUNAL (SECTION 19)	The Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal: Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not fi ling it within that period. On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
Appeal to High Court SECTION 35	A right to appeal to high court lies with the appellant who is aggrieved by the decision of the tribunal. Such appeal must be filed within **60 days** from the date of communication of the decision or order of the tribunal. The appeal to the high court can be made on any question of law arising out of such order. A relaxation for a maximum period of sixty days for making an appeal may be granted by the high court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period.

Procedure and powers of Appellate Tribunal and Special Director (Appeals) (Section 28)

The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice.

The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a)	summoning and enforcing the attendance of any person and examining him on oath;
(b)	requiring the discovery and production of documents;
(c)	receiving evidence on affidavits;
(d)	requisitioning any public record or document or copy of such record or document from any office;
(e)	issuing commissions for the examination of witnesses or documents;
(f)	reviewing its decisions;
(g)	dismissing a representation of default or deciding it ex parte;

CIVIL COURT NOT TO HAVE JURISDICTION (SECTION 34)

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Special provisions relating to assets held outside India in contravention of Section 4 of FEMA, 1999 (Section 37)

(1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

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

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

(3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person. Explanation. While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

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

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

POWER OF SEARCH, SEIZURE, ETC.

According to Section 37(1), the Director of Enforcement and other Officer s of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

According to Section 37(2), the Central Government may also, by notification, authorise any Officer or class of Officer s in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

Powers of these Officers

According to Section 37(3), the Officer s referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

Section 37 of the Act empowers the Director of Enforcement and other Officers below the rank of an Assistant Director to take up for investigation the contravention referred to in Section 13 of the Act. In addition, the Central Government may also authorise any Officer or class of Officer s in the Central Government, State Government, Reserve Bank of India, not below the rank of Under Secretary to Government of India, to investigate any contravention under Section 13 of the Act. The Officer s so appointed shall exercise the like powers which are conferred on income tax authorities under the Income Tax Act, 1961, subject to such conditions and limitations as laid down under that Act.

In this context, Foreign Exchange Management (Encashment of Draft, Cheque Instrument and Payment of Interest) Rules, 2000 provides that where investigation referred to in Section 37 of the Act is being taken up into any alleged contravention of any provisions of the Act or rule, regulation, direction or order or violation of any condition subject to which Reserve Bank of India gives authorisation, and any draft, cheque or other instrument relevant for such investigation, such Officer shall send such draft, cheque or other instrument to the Reserve Bank of India or to an authorised person as the Officer may specify for encashment. The Reserve Bank of India or the authorised person is required to take steps without delay for encashment of the draft, cheque or other instrument and to credit the proceeds of such encashment (less any commission and expenses incurred for such encashment) to a separate account in the name of the Directorate of Enforcement.

The Central Government is required to indemnify the Reserve Bank of India or an authorised person against any liability which may incur by reason of or in connection with the encashment of the draft, cheque or other instrument delivered to it.

Contravention by Companies

As per **Section 42** where the person committing the contravention of the act or rules happened to be a company, every person who at the time the contravention was committed, was **in charge** of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly. However, no such persons shall be deemed to be guilty of committing any offence if he proves that such contravention took place without his knowledge or that he exercised adequate steps to prevent such contravention. In case the contravention is committed by a company and it is proved that such contravention is committed with the knowledge, consent and connivance or is attributed to the neglect on the part of any **director, manager or**

secretary or other officer of the company, they will also be deemed to be guilty of contravention and liable to be proceeded against and punished accordingly

Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000

In exercise of the powers conferred by section 46 read with sub-section (1) of section 16, sub-section (3) of section 17 and sub-section (2) of section 19 of the Foreign Exchange Management Act, 1999 (Act), the Central Government has made the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 for holding enquiry for the purpose of imposing penalty and appeals under Chapter V of the said Act, namely:–

Appointment of Adjudicating Authority (Rule 3)

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding inquiry under the provisions of Chapter IV of the Act.

Holding of inquiry (Rule 4)

1) Issue of Show Cause Notice- For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

2) Content of Notice- Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

3) Date of Appearance- After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

4) Personal Hearing- On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, allowed to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, directions or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place.

5) Opportunity to produce Evidence-The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872

6) Power to summon and enforce attendance-While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person

acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.

7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.

8) Order by the Adjudicating Authority- If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act.

9) Every order made under sub-rule (8) of the rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, directions or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain reasons for such decisions.

10) Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority.

11) A copy of the order made under sub-rule (8) of rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @ Rs. 2 per page.

12) The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority.

Appeal to Special Director (Appeals) (Rule 5)

Form of appeal —

(1) Every appeal presented to the Special Director (Appeals) under section 17 of the Act shall be in the Form I signed by the applicant. The appeal shall be filed in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees five thousand in the form of cash or demand draft payable in favour of the Special Director (Appeals).

(2) The appeal shall set forth concisely and under distinct heads the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively; and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant.

(3) Where the appeal is presented after the expiry of the period of forty-five days referred to in subsection (3) of section 17, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty five days.

(4) Any notice required to be served on the applicant shall be served on him in the manner specified in rule 9 at the address for service specified in the appeal.

Procedure before Special Director (Appeals) (Rule 6)

1) On receipt of an appeal under rule 5, the Special Director (Appeals) shall send a copy of the appeal, together with a copy of the order appealed against, to the Director of Enforcement.

2) The Special Director (Appeals) shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.

3) On the date fixed for hearing of the appeal or any other day to which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.

4) Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned, the applicant or the presenting officer fail to appeal when the appeal is called for hearing, the Special Director (Appeals) may decide the appeal on the merits of the case within one hundred and eighty days from the date of such appeal.

Contents of the Order in appeal (Rule 7)

1) The order of Special Director (Appeals) shall be in writing and shall state briefly the grounds for the decision.

2) The order referred to in sub-rule (1) shall be signed by the Special Director (Appeals) hearing the appeal.

Representation of party (Rule 8)

Any applicant who has filed an appeal before the Special Director (Appeals) under section 17 of the Act, may appoint a legal practitioner or a chartered accountant to appear and plead and act on his behalf before the Special Director (Appeal) under the Act.

Service of notices, requisitions or orders (Rule 9)

A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,—

(a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person;

(b) by sending the notice or requisition or order to him by registered post with acknowledgment due to the address of his place of residence or his last known place or residence or the place where he carried on or last carried on, business or personally works or last worked for gain; or

(c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain and that written report thereof should be witnesses by two persons; or

(d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation of area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

Appeal to the Appellate Tribunal (Rule 10)

Form of appeal 1)

1) Every appeal presented to the Appellate Tribunal under section 19 of the Act shall be in the Form II signed by the applicant. The appeal shall be sent in triplicate and accompanied by three copies of the order appealed against. Every appeal shall be accompanied by a fee of Rupees ten thousand in the form of cash or demand draft payable in favour of the Registrar, Appellate Tribunal for Foreign Exchange, New Delhi:

Provided that the applicant shall deposit the amount of penalty imposed by the Adjudicating Authority or the Special Director (Appeals) as the case may be, to such authority as may be notified under the first proviso to section 19 of the Act:

Provided further that where in a particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

2) The appeal shall set forth concisely and under distinct head the grounds of objection to the order appealed against without any argument of narrative and such grounds shall be numbered consecutively; and shall specify the address for service at which notice or other processes may be served on the applicant, the date on which the order appealed against was served on the applicant; and the sum imposed by way of penalty under section 13 and the amount of fee prescribed in sub-rule (1) has been deposited or not.

3) Where the appeal is presented after the expiry of the period of forty-five days referred to in subsection (2) of section 19, it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the applicant, showing cause how the applicant had been prevented from preferring the appeal within the said period of forty-five days.

4) Any notice required to be served on the applicant shall be served on him in the manner prescribed in rule 14 at the address for service specified in the appeal.

Procedure before Appellate Tribunal (Rule 11)

1) On receipt of an appeal under rule 10, the Appellate Tribunal shall send a copy of the appeal together with a copy of the order appealed against, to the Director of Enforcement.

2) The Appellate Tribunal shall, then, issue notices to the applicant and the Director of Enforcement fixing a date for hearing of the appeal.

3) On the date fixed for hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the applicant as well as the presenting officer of the Directorate of Enforcement shall be heard.

4) Where on the date fixed, or any other day to which the hearing of the appeal may be adjourned the applicant or the presenting officer fail to appeals when the appeal is called on for hearing, the Appellate Tribunal may decide the appeal on the merits of the case.

Contents of the Order in appeal (Rule 12)

1) The order of Appellate Tribunal shall be in writing and shall state briefly the grounds for the decision. 2) The order referred to in sub-rule (1) shall be signed by the Chairman or Member of the Appellate Tribunal hearing the appeal.

Representation of party (Rule 13)

Any applicant who has filed an appeal before the Appellate Tribunal under section 19 of the Act may appoint a legal practitioner or a chartered accountant to appeals and plead and act on his behalf before the Special Director (Appeals) under the Act,

Service of notices, requisitions or orders (Rule 14)

A notice, requisition or an order issued under these rules shall be served on any person in the following manner, that is to say,—

a) by delivering or tendering the notice or requisition or order to that person or his duly authorised person,

b) by sending the notice or requisition or order to him by registered post with acknowledgment due to the address of his place of residence or his last known place or residence or the place where he carried on, or last carried on, business or personally works or last worked for gain, or

c) by affixing it on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided or carried on business or personally works or has worked for gain and that written report thereof should be witnesses by two persons, or

d) if the notice or requisition or order cannot be served under clause (a) or clause (b) or clause (c), by publishing in a leading newspaper (both in vernacular and in English) having wide circulation or area or jurisdiction in which the person resides or is known to have last resided or carried on business or personally works or last worked for gain.

Differences between Section 441 and Section 454 under the Companies Act, 2013

Compounding (Section 441)	Adjudication (Section 454)
Regional Director or on an authorized officer of the Central Government can compound offence upto Rs. 25 Lakhs; and NCLT can compound offence above Rs. 25 Lakhs	no monetary limits stipulated for exercising the powers by the adjudicating officers
The compounding order is delivered generally based on a consensus arrived at by both parties with the compounding authority having a final say on the outcome of the application and the quantum of penalty	the adjudicating officer's order is more arbitrary and not on consensus, though a reasonable opportunity may be given to the company and the officer in default as required u/s 454(4) before the imposition of any penalty.
compounding order is generally not appealable. Once he agrees on the compounding order, he cannot go on appeal against it.	adjudication order is appealable with the higher authorities as per the express provision provided in section 454, with the procedure being provided by the Rules,

CHA PTER-14 SPECIAL COURTS

SPECIAL COURTS UNDER COMPANIES ACT 2013

ESTABLISHMENT OF SPECIAL COURTS

435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,

who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

OFFENCES TRIABLE BY SPECIAL COURTS SECTION 436

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the **High Court** concerned;

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, **such Magistrate** may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a **Judicial Magistrate** and seven days in the whole where such Magistrate is an **Executive Magistrate**

Provided that where such Magistrate considers that the detention of such person upon or before the **expiry of the period of detention** is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not **exceeding three years:**

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding **one year shall be passed:**

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

APPEAL AND REVISION SECTION 437

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

APPLICATION OF CODE TO PROCEEDINGS BEFORE SPECIAL COURT SECTION 438

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

OFFENCES TO BE NON-COGNIZABLE SECTION 439

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(2) **No court** shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder [or a member] of the company, or of a person authorised by the Central Government in that behalf

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(4) The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

CHAPTER-15 INVESTIGATION BY SFIO

INSPECTION

Meaning of Inspection

Section **206 to 209** of the Companies Act, 2013 contains provisions in respect of inspection of books of accounts and other books and papers of every company. Inspection is neither audit of books of accounts, nor investigation into the affairs of a company. It can only be an appraisal of the overall activities of a company, except in complaint cases. Such appraisal cannot be done merely by inspecting the records on 'as is where is' basis but certain amount of verification and cross verification, on the style of auditing, is necessary.

Purposes of Inspection

Inspection can be carried out for the following purposes:

1. To determine concealment of income by falsification of accounts.
2. To secure knowledge about the mismanagement of the business of a company.
3. To ascertain whether statutory auditors have discharged their functions and duties.
4. To detect misapplication of funds.
5. To detect misuse of position by company's management for their personal advantage.

INVESTIGATION

Meaning of Investigation

Investigation, within the relevant provisions of the Companies Act, 2013, is a form of probe; a deeper probe; into the affairs of a company. It is a fact-finding exercise. The main object of the investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. The said expression also includes investigation of all its business affairs, profits and losses, assets including goodwill, contracts and transactions, investment and other property interests and control of subsidiary companies too.

KINDS OF INVESTIGATION

The Companies Act, 2013 provides for carrying out the following kinds of investigation:

1. Investigation of the affairs of the company if its necessary to investigate into the affairs of the company in public interest [Section 210]
2. Investigation by Serious Fraud Investigation Office directed by Central government under [Section 212]
3. Investigation on the order of Tribunal [Section 213]
4. Investigation about the ownership of a Company [Section 216]
5. Investigation of the affairs of related companies [Section 219]
6. Investigation of foreign companies [Section 228]

Establishment of Serious Fraud Investigation Office [Sections 211]

(1) This section mandates the Central Government to constitute Serious Fraud Investigation Office ('SFIO') through notification, to investigate frauds relating to a company.

(2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in

- banking;
- corporate affairs;
- taxation;
- forensic audit;
- capital market;
- information technology;
- law; or
- such other fields as may be prescribed.

(3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

Investigation into Affairs of Company by Serious Fraud Investigation Office [Sections 212]

(1) The Central Government **may refer** any matter for investigation into affairs of the company to the SFIO, if it is of the opinion that it is necessary to investigate, on the basis of:

a)	Receipt of a report of the **Registrar or inspector**
b)	Intimation of a **special resolution** passed by a company that its affairs are required to be investigate
c)	In the public interest
d)	A request from any Department of the Central Government or a State Government.

(2) Where any case has been assigned by the Central Government to the SFIO for investigation, no other investigation agency of Central Government or any State Government shall proceed with investigation.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

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

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

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

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government, has on the basis of material in his possession reason to believe that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9)The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall **within twenty-four hours**, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person; Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

The Director SFIO shall be the competent authority for all decisions pertaining to arrest.

Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government. Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.

The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty-four hours through the quickest possible means.

An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.

The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.

The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years a) from the date of judgment or final order of the Trial Court, in cases where the said judgment has not been impugned in the appellate court; or b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

CHAPTER-16 COMPUNDING OF OFFENCE

COMPOUNDING OF OFFENCES

COMPOUNDING

The Companies Act, 2013 does not define the word "compounding" or the terms "compounding or composition of offences". The dictionary meaning of the word "compounding' means "on prosecution, a prosecutor of an offence accepting anything of value, say a monetary fine, under an agreement not to prosecute the victim or to hamper the prosecution of an offence". To compound would simply mean "to come to a settlement or agreement".

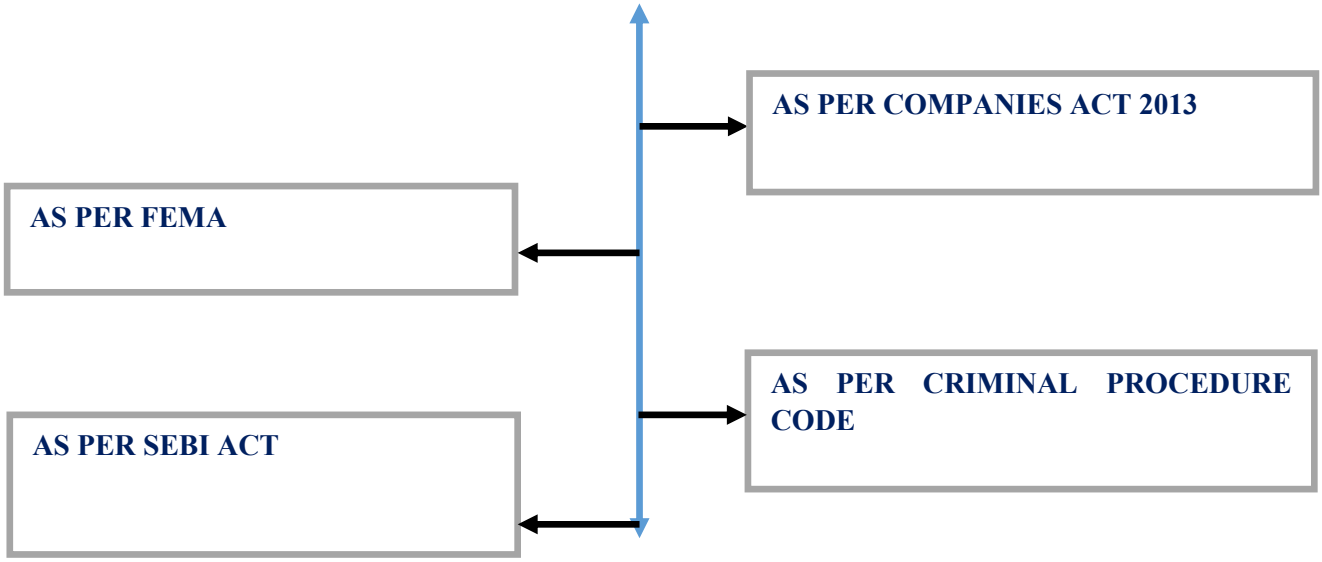
As per the Black's Law Dictionary, "to compound" means "to settle a matter by a payment of money in lieu of any other liability." This definition represents the concept of compounding as a Settlement Mechanism, a settlement by paying the fine to the concerned compounding authority in lieu of facing the prosecution for the offence committed.

However, on analysis of section 441 of the Companies Act, 2013, we can infer that compounding is nothing but **admission of guilt** by the person accused of violation of law.

BENEFITS OF THE COMPOUNDING OF OFFENCES

1. Buy peace of mind.
2. No need to appear before prosecution authorities. It provides comfort to individuals and corporates and persons connected with it
3. Amount paid as compounding fee under law for can be claimed as a tax deduction under the Income Tax Act while a penalty paid for contravention is not eligible for deduction.
4. Speedy disposal of offences
5. Judiciary can devote more time and concentrate on serious cases.

COMPOUNDING OF OFFENCES UNDER VARIOUS ACT



COMPOUNDING OF CERTAIN OFFENCES UNDER COMPANIES ACT 2013

SECTION 441

Three kinds of offences are permitted to be compounded under this section:-

(a)	An offence is punishable with fine only
(b)	An offence is punishable with imprisonment or fine
(c)	An offence which is punishable with imprisonment or fine or with both imprisonment

SPECIAL POINTS

1.	An offence punishable with imprisonment only or with imprisonment and fine is not compoundable under this section.
2.	The section empowers the **NCLT** to compound offences **without any limit** or where a maximum amount of fine which may be imposed by an offence does not exceed **Rs. 25, 00,000** it may be compounded by the **Regional Director**.
3.	Any offence covered under this section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.
4.	The offences committed by a company or its officer within a period of **three years** from the date on which the similar offence was committed by it or him was compounded under this section, are not compoundable
5.	Every application for the compounding of an offence shall be made to the Registrar of Companies who shall forward the same, together with its comments thereon, to the NCLT or the Regional Director, as the case may be. Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the Company, to the Registrar of Companies, within 7 days from the date on which the offence is so compounded.
6.	Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or

by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.
7. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
8. Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.
9. Any Officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any Officer authorised by the Central Government shall be punishable with imprisonment for a term which may extend to six months, or with fi ne not exceeding one lakh rupees, or with both.
10. No penalty or prosecution after compounding: - **In P P Varkey V. STO** was held that once an offence is compounded, penalty or prosecution proceeding cannot be taken for same offence.
11. In **S Viswanathan v. State of Kerala,** it was held that once the matter is compounded, neither department nor assessee can challenge the compounding order. Department cannot reopen the matter on the reason that actual suppression was much higher.
12. No appeal against order of composition: -A person having agreed to the composition of offence is not entitled to challenge the said proceeding by filing an appeal. (**S V Bagi v. State of Karnataka**

PERMISSION OF THE SPECIAL COURT

Before, the Companies (Amendment) Act, 2019, Section 441(6) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973,

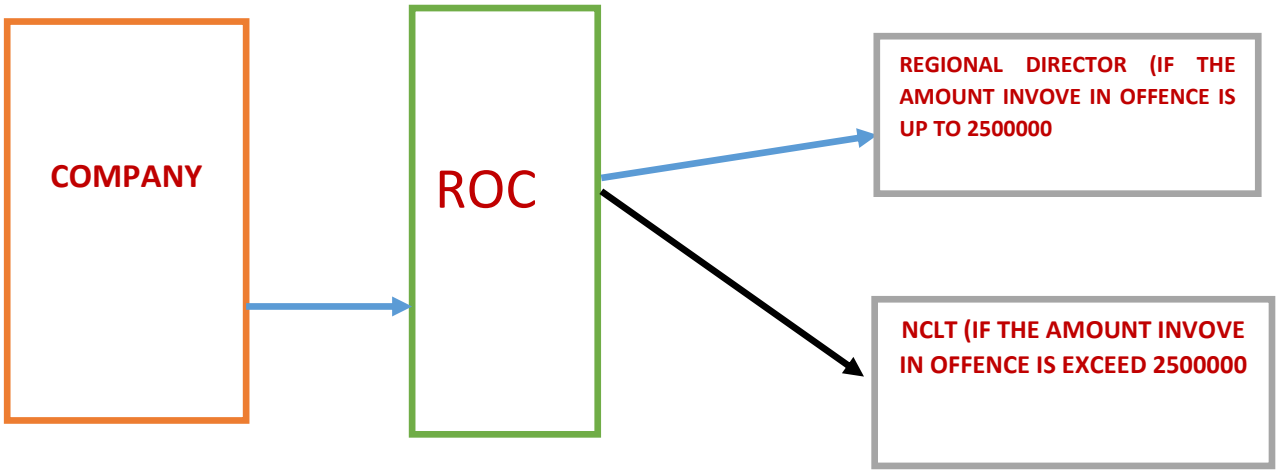
(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

However, the committee to review offences under the Companies Act, 2013, has recommended that such requirement of clause (a) of sub-section (6) of section 441 should be omitted with the following justification:

"*Clause (a) to sub-section (6) of section 441, which require the permission of the special court for compounding of offence, us a redundant provision. NCLT in its judgment dated 29.08.2017 in Cinepolis India Pvt. Ltd. V. ROC while relying on the interpretation of Section 621A if Companies Act, 1956. (corresponding to section 441 of CA, 2013) by Supreme Court in VLS Finance v. Union of India, held that a prior approval of Special court before compounding of offence by NCLT is not required*.

After, the amendment in section 441 in the Companies (Amendment) Act, 2019, now Section 441(6) read as under: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.



PROCEDURE FOR COMPOUNDING

S.No.	Procedure	Forms
Step 1	• Check the provisions under the Act, if such offence are compoundable or not. • Make the default good	
Step 2	• Before filing an application for compounding of offence, the company must hold a board meeting to consider, determine the offence and calculate the fine to be paid by the company and/or officer in default as per the relevant section. Pass the following Board resolution : ✓ For filing of the application for compounding; ✓ To authorize any Director or Officer of the company to sign and submit the application on behalf of the company; ✓ To appoint professionals (lawyer/CS/CA) to appear before the authority.	E-Form MGT-14 for filing of Board Resolution to ROC in case of Public Company
Step 3	Filing Application for Compounding of Offence with ROC (As Per NCLT Rules, 2016) • Detailed compounding application is required in Triplicate; • Board resolution passed for the purpose of making an application; • Affidavit verifying the application/petition; • General profile and history of the company containing details such as name, date of incorporation, main objects of the company;	E-Form GNL-1 With Fees of Rs. 1000

	• Memorandum of appearance or power of attorney; • Copy of notice received from ROC or any other competent authority in case application for compounding of offence is filed in pursuance to notice received from ROC or any other authority; • Other documents based on requirements *Note*: The application (e-form GNL-1) can be filed for Company, Director or Manager/Secretary or Others. Enter number of person(s) and their details excluding Company. Details of only 8 persons can be entered in the e-Form. If number of persons is greater than 8, then additional details can be provided in optional attachment.	
Step 4	• This application will be forwarded by ROC together with his comments thereon, to NCLT/Regional Director based on the amount of fine.	
Step 5	• Once the NCLT/RD receives the application for compounding, the concerned authority would send a notice to the company for personal hearing and the authorized representative of the company is liable to make their submission and admit the contravention committed under relevant sections of the Companies Act, 2013 and rules made thereunder.	
Step 6	• Payment of fees for compounding within the time period mentioned.	
Step 7	• Passing of order by the RD/Tribunal • Intimation of order of NCLT or RD to RoC within 7 days of receipt of order. ROC will take note of the same.	INC-28

List of offences Compoundable in nature (powers vested with Regional Director)

Section	Nature of offence	Fine/ Imprisonment
16(3)	Committing default in complying with the directions issued under sub-section (1) relating to rectification of name of company	If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

26(9)	Contravention of provisions relating to issue of a prospectus	If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable [~~with imprisonment for a term which may extend to three years or~~] with fine which shall not be less than fifty thousand rupees but which may extend to [three lakh rupee].
53(3)	Violation of provisions relating to issue of shares at discount	Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued
56(6)	Failure to comply with the provision relating to transfer and transmission of securities under sub-section (1) to (5)	Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees [**Section 56(6)]** (COMPANIES AMENDMENT ACT 2020).
68(11)	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board of India relating to buy back of securities	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (*f*) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable ~~with imprisonment for a term which may extend to three years or~~] with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees. (COMPANIES AMENDMENT ACT 2020)

86	Contravention of any provision of Chapter VI relating to Registration of Charges	any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. (COMPANIES AMENDMENT ACT 2020) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.
88(5)	Failure to maintain register of members or debenture-holders or other security holders as prescribed	If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees
89(5)	Failure to file declaration not holding beneficial interest in any share	If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
89(7)	Failure to file return relating to beneficial interest in any share before the expiry of the time specified under the first proviso to sub-section (1) of section 403	If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified [5][therein], the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues..
92(5)	Failure of company to file Annual Return	If any company fails to file its annual return under sub-section **(4),** before the expiry of the period specified therein such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each

		day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default].(companies amendment Act 2020)
92(6)	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
99	Default in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal	If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.
102(5)	Default in complying with the provisions of this section relating to statement to be annexed to notice	Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.
105(3)	If default is made in complying with sub-section (2) relating to proxies	Fine up-to Rs.5,000 on every Officer who is in default.
105(5)	If invitations to appoint a person as proxy or one of a number of persons specified in the invitations are issued	If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees Provided that an officer shall not be liable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request

		in writing to every member entitled to vote at the meeting by proxy. (COMPANIES AMENDMENT ACT 2020)
121(3)	Failure to fi le Report on annual General meeting	If the company fails to file the report under sub--section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees
124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
137(3)	Failure to file financial statements with the Registrar	If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

		(COMPANIES AMENDMENT ACT 2020)
140(3)	Non-compliance by auditor of sub-section (2) relating to fi ling of resignation information	If the auditor does not comply with the provisions section140(2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum **of 2 lakh rupees**.
147(1)	Failure of company to comply with the provisions of sections 139 to 146 with regard to auditors	If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees. **(COMPANIES AMENDMENT ACT 2020)**
165(6)	Acting as a director of more than 20 companies	if a person accepts an appointment as a director in contravention of sub-section (1), he shall be liable to a penalty of 2 thousand rupees for each day after the first during which such contravention continues and maximum limit 2 lakh rs.
166(7)	Default in complying with the provisions of this section relating to directors duties	If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
172	Contravention of the provisions of Chapter XI relating to appointment and qualifications of directors	If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default. companies amendment act 2020

178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination and Remuneration and Stakeholders Relationship Committee	In case of any contravention of the provisions of section 177 and this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees. (companies amendment act 2020)
186(13)	Contravention of the provisions of this section relating to loans and investment	If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
187(4)	Contravention of the provisions of this section relating to investment of company held in its name	If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. **(COMPANIES AMENDMENT ACT 2020)**.
197(15)	Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.	If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees
203(5)	Contravention of the provisions of this section relating to appointment of Key Managerial personnel	If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

204(4)	Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.	Every officer of the company or the company secretary in practice, who is in default, shall be **liable to a penalty of two lakh rupees.** (COMPANIES AMENDMENT ACT 2020)
206(7)	Failure to furnish any information during inspection or inquiry	If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues
238(3)	Failure to register the offer of Schemes involving transfer of shares.	The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be ~~punishable with imprisonment for a term which may extend to six months~~ or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees~~, or with both.~~ **(COMPANIES AMENDMENT ACT 2020)**.
247(3) Proviso	Contravention of the provisions of this section by the valuer	If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer **shall be liable to a penalty of fifty thousand rupees. (COMPANIES AMENDMENT ACT 2020)** Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

249(2)	Filing of application in restricted cases for removal of name	If a company files an application under sub-section (2)of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.
405(4)	Failure to furnish information or statistics, etc. by the companies required by the Central Government	Fine upto Rs.25,000 on company and every Officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fi ne which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.
450	No specific penalty or punishment is provided in the Act	Fine up to Rs.10,000 and further fine up to Rs.1,000 for each day of default in case of contravention continues.
451	Repeated default within 3 years	Twice the amount of fine for such offence in addition to any imprisonment provided for that offence.
452(1)	Punishment for wrongful withholding of property	Fine not less than Rs.1 lakh but may be extend to Rs.5 lakh on Officer or employee of the company.
453	Improper use of the words “limited” and “private limited”	Fine not less than Rs.500 but may be extended to Rs.'2,000 for each day of default.
454(8)	Failure to pay the penalty imposed by the adjudicating Officer or Regional Director	Fine not less than Rs.25,000 but may be extended to Rs.5 lakh on company
464(3)	Being a member of a company formed exceeding certain numbers	Fine upto Rs.1 lakh and liabilities incurred in such business.

List of offences compoundable in nature (powers vested with Special Court)

Section	Nature of offence	Fine / Imprisonment
8(11)	Committing default in complying with the requirements relating to formation of companies with charitable objects, etc.	If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default ~~shall be punishable with imprisonment for a term which may extend to three years~~ or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, ~~or with both~~
40(5)	Committing default in complying with the provisions of this section relation to securities to be dealt with in stock exchanges	If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable [~~with imprisonment for a term which may extend to one year or~~] with fine which shall not be less than fifty thousand rupees but which may extend to [three lakh rupees].
48(5)	Committing default in complying with the provisions regarding to variation of shareholders' rights	Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
128(6)	Failure to keep proper books of account	If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable [~~with imprisonment for a term which may extend to one year or~~] with fine which

		shall not be less than fifty thousand rupees but which may extend to five lakh rupees [~~or with both~~]. (COMPANIES AMENDMENT ACT 2020)
134(8)	Default in complying with the provisions regarding financial statement and Board's report	If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. (COMPANIES AMENDMENT ACT 2020)
167(2)	Functioning as a director after vacation of office	If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like Nomination, Remuneration and Stakeholders Relationship Committee	In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:
184(4)	Failure to disclose of director's interest and participation in Board meeting by interested director	If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be liable to a penalty of one lakh rupees. **(COMPANIES AMENDMENT ACT 2020)**
221(2)	Any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1)	In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty

		thousand rupees but which may extend to five lakh rupees, or with both.
222(2)	Securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1)	Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
242(8)	Contravention of the order of Tribunal relating to alterations in memorandum or articles	If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be ~~punishable with imprisonment for a term which may extend to six months~~ or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees~~, or with both.~~ **(COMPANIES AMENDMENT ACT 2020)**
284(2)	Failure to extend full cooperation to the company liquidator	If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
347(4)	contravention of any rule framed or an order made under sub- section (3)	If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.
348(7)	Wilful default by company liquidator	If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may

		extend to six months or with fine which may extend to one lakh rupees, or with both.
392	Contravention of the provisions of Chapter XXII by a foreign company	Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twentyfive thousand rupees but which may extend to five lakh rupees, or with both.
405(4)	Failure to furnish information or statistics, etc. by the companies required by the Central Government	If any company fails to comply with an order made under sub-section (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.
441(5)	Failure to comply with the order made by Tribunal or Regional Director in relation to Compounding of offences	Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.
454(8)	Failure to pay the penalty imposed by the adjudicating Officer or Regional Director	Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

		(Where an officer of a company or any other person] who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be]] within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

LIST OF OFFENCES NON-COMPOUNDABLE IN NATURE

Section	Nature of offence	Imprisonment and Fine
57	Deceitfully personating as an owner of any shares or interest in a company	If any person deceitfully personates as an owner of any *security* or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such *security* or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
67(5)	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares	If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
118(12)	Tampering with the minutes of the proceedings of meeting	If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees
127	Failure to distribute dividend within thirty days	Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a

		party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues
182(4)	Political contribution made in contravention of this section	If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
186(13)	Contravention of the provisions of this section relating to loans and investment	If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
207(4)	Disobeys the direction issued by the Registrar or inspector under this section	If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.
217(6)	Disobeys the direction issued by the Registrar or inspector under this section in relation to investigation	If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

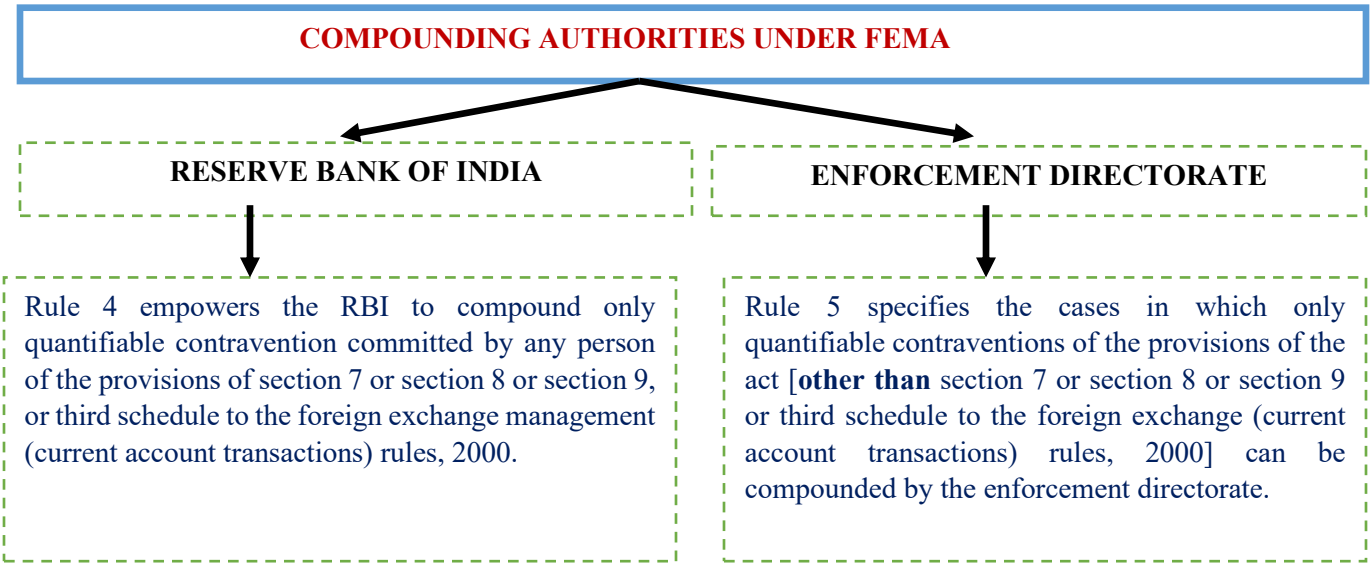
		If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.
247(3) Proviso	Contravention of the provisions of this section by the valuer	If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer **shall be liable to a penalty of fifty thousand rupees. (COMPANIES AMENDMENT ACT 2020)**
336(1)	Offences by Officers of companies in liquidation	Person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
336(2)	Offences by Officers of companies in liquidation covered under sub-section (viii) of Section (d) of sub-section (1)	Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.
337	Frauds by Officers	If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal under this Act (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; (b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not

		be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
338(1)	Failure to keep proper books of account before winding up	Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
447	Punishment for fraud If the fraud involves public interest	Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both
449	Intentionally gives false evidence	Save as otherwise provided in this Act, if any person intentionally gives false evidence— (a) upon any examination on oath or solemn affirmation, authorized under this Act; or

		(b)in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.
452(2)	Wrongful withholding of property	The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

Section 15 empowers the directorate of enforcement or officers of the directorate of enforcement and of the reserve bank to compound the offences. This section provides that contravention under section 13 may be compounded **within 180 days** from the date of receipt of application. Sub-section (2) provides that where the contravention has been compounded, the accused person is relieved from further proceedings for the contravention.



RBI CAN COMPOUND IN FOLLOWING MANNER

SUM INVOLVED IN CONTRAVENTION	ADJUDICATING AUTHORITY
10 lakhs rupees or below	Assistant general manager of the RBI
more than rupees 10 lakhs but less than rupees 40 lakhs	Deputy general manager of RBI
40 lakhs or more but less than rupees 1 crore	General manager of RBI
rupees 1 crore or more	Chief general manager of the RBI

The benefit of above provisions shall not be available in case a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

ENFORCEMENT DIRECTORATE CAN COMPOUND IN FOLLOWING MANNER

SUM INVOLVED IN CONTRAVENTION	ADJUDICATING AUTHORITY
5 lakh rupees or below	Deputy director of the directorate of enforcement
More than rupees 5 lakh but less than rupees 10 lakh	Additional director of the directorate of enforcement
10 lakh or more but less than rupees 50 lakh	Special director of the directorate of enforcement
Rupees 50 lakh or more, but less than rupees 1 crore	Special director with deputy legal advisor of the directorate of enforcement
1 crore rupees or more	Director of enforcement with special director of the enforcement directorate

The benefit of above provisions shall not be available in case a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

PROCEDURE FOR COMPOUNDING

1. Application is to be made to the compounding authority either suo moto or on being advised to compound as per format given in the Foreign Exchange (Compounding Proceedings) Rules 2000.
2. Every application for compounding any contravention under this rule shall be made in Form to the along with a fee of Rs. 5000/- by Demand Draft in favour of compounding authority.
3. The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings
4. The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application. If the Enforcement Directorate is of the view that the proceeding initiated before it relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under section 13 of FEMA.

5. Where any contravention is compounded before the adjudication of any contravention under section 16 of FEMA, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.
6. Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

Foreign Exchange (Compounding Proceedings) Rules 2000 ("Rules")

Central Government has notified the Foreign Exchange (Compounding Proceedings) Rules 2000 for the purpose of compounding of offences under section 15 of the FEMA Act, 1999. It contains the details for compounding.

Who are the Compounding Authorities/Who can Compound the Offence?

'Compounding Authority' means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely;

- **Officers of the Reserve Bank**: An officer of the Reserve Bank of India not below the rank of the Assistant General Manager.
- **Officers of the Enforcement Directorate (ED):** Officers of ED not below the rank of Deputy Director or Deputy Legal Adviser (DLA)

It may be noted that section 3(a) of FEMA prescribes the provisions for the dealing in or transfer any foreign exchange or foreign security to any person not being an authorised person (commonly dubbed as Hawala transaction).

Power of Enforcement Directorate to compound contraventions –

(1) If any Person contravenes provisions of Section 3(a) of Foreign Exchange Management Act.

(a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;

(b) in case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;

(c) in case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;

(d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;

(e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(3) Every officer of the Directorate of Enforcement specified under sub-rule (1) of this rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Director of Enforcement.

limit for Compounding

1. Time Limit: A contravention committed by any person within a period of 3 years from the date on which a similar contravention committed by him was compounded under these rules cannot be compounded.

Any second or subsequent contravention committed after the expiry of a period of 3 years from the date on which the contravention was previously compounded shall be deemed to be a first contravention and can therefore be compounded.

2. Filing of Appeal: No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of FEMA, 1999.

Procedure for Compounding

Application is to be made to the compounding authority either suo-moto or on being advised to compound as per format given in the Foreign Exchange (Compounding Proceedings) Rules, 2000

Every application for compounding for any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000 by DD infavour of the Compounding Authority.

The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.

The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application. If the Enforcement Directorate is of the view that the proceeding initiated before it relates to a serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation, the Compounding Authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under section 13 of FEMA.

Where any contravention is compounded before the adjudication of any contravention under section 16 of FEMA, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

Where the compounding of any contravention is made after making of a complaint under section 16(3), such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the p erson in relation to whom the contravention is so compounded shall be discharged.

Factors considered while considering Compounding Application

The following indicative factors, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- the amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

Payment of amount compounded and certificate of compounding

The sum for which the contravention is compounded as specified in the order of compounding shall be paid by demand draft in favour of the Compounding Authority within 15 days from the date of the order of compounding of such contravention.

In case a person fails to pay the sum compounded within the time specified, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.

On realization of the sum for which contravention is compounded a certificate in this regard shall be issued subject to the specified conditions, if any, in the order.

Contents of the order of the Compounding Authority

- Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contravention.
- Every such order shall be dated and signed by the Compounding Authority under his seal.
- One copy of the order shall be supplied to the applicant and the Adjudicating Authority as the case may be.

Late Submission Fee (LSF) -An alternative to Compounding under FEMA

LSF mechanism provides for a simple process of paying a prescribed late fee to regularise reporting delays of Foreign Investment, External Commercial Borrowing and Overseas Investment transactions. Prior to introduction of LSF, the reporting person/entity (Applicant) had no choice but to go through the cumbersome process of filing a compounding application and paying the penalty for delayed reporting after the compounding order was passed, which could take up to 180 days after the submission of compounding application.

The Reserve Bank of India (RBI) for the first time introduced the concept of Late Submission Fee (LSF) vide its Notification No. FEMA 20(R)/2017-RB dated November 07, 2017 (RBI Notification), in respect of the Foreign Investment (FI) transactions undertaken on or after November 7, 2017. Thereafter, LSF was made applicable to the reporting delays concerning External Commercial Borrowings (ECB) vide RBI A.P. (DIR Series) Circular No. 17 dated January 16, 2019 (ECB Circular), and Overseas Investment (OI) vide RBI A.P. (DIR Series) Circular No. 12 dated August 22, 2022 (OI Circular).

RBI brought uniformity in imposition of LSF across functions vide circular dated September 30, 2022. Prior to the RBI Circular, although LSF was applied for all the transactions, the manner of computation of LSF was not consistent across functions (i.e. FI, ECB and OI). While LSF was applied as a percentage of the amount involved for FI reporting delays, in case of ECB reporting delays, it was applied as a fixed amount which is linked to the period of delay occurred. Further, LSF which was recently applied for OI reporting delays under the OI Directions prescribed a different method of computation depending upon the nature of reporting involved.

The following matrix shall be used henceforth for calculation of LSF, wherever applicable(as per RBI Circular dated September 30, 2022):

Sr. No	Type of Reporting delays	LSF Amount (INR)
1.	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2.	FCGPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODIPart III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of nonfund transactions or any other transactional reporting	[7500+(0.025% × A × n)]

Notes:

a) "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
b) "A" is the amount involved in the delayed reporting.
c) LSF amountis per return. However, for any numberof Form ECB-2 returns, delayedsubmission for each LRN will be treated as one instance for the fixed component. Further, 'A' for any ECB-2 return will be the gross inflowor outflow (including interestand other charges), whicheveris more.
d) Maximum LSF amount will be limited to 100 per cent of 'A' and will be roundedupwards to the nearest hundred.
e) Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted.If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of "n".
f) The facility for opting for LSF shall be available up to three years from the due date of reporting/ submission. The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of Foreign Exchange Management (Overseas Investment) Regulations, 2022.
g) In case a person responsible for any submission or filing under the provisions of FEMA, neither makes such submission/filing within the specifiedtime nor makes such submission/filing along with LSF, such personshall be liablefor penal action under the provisions of FEMA, 1999

As a process, once the reporting of transaction (through Single Master Form (SMF) on RBI's FIRMS portal5 for FI transactions and in physical form for ECB and OI transactions) is completed, in the event of delay in reporting, such cases shall be forwarded by AD Bank to the RBI. The RBI shall then condone the delay and issue a conditional acknowledgment subject to payment of LSF within a stipulated timeframe. LSF is levied as per the computation matrix. Final acknowledgment of reporting shall be issued only upon payment of LSF by the reporting party. The amount once paid as LSF is not refundable in any manner.

LSF payment is an additional facility for regularizing reporting delays without undergoing the compounding procedure. Hence, an option to undergo the compounding process is always available when the reporting party decides not to avail LSF facility. Importantly, the LSF applies only for the reporting delays, and contravention of any other provisions under the FEMA would still be subject to adjudication or compounding with the RBI.

NEW UNIFORMED LSF MATRIX

In order to streamline and bring uniformity, the RBI Circular introduced a new uniformed LSF matrix (as below) ("New LSF") which shall apply to all the reporting delays on or after September 30, 2022, across functions.

Sr. No	Type of Reporting delays	LSF Amount (INR)
1.	Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2.	FC-GPR, FCTRS, Form ESOP, Form LLP(I), Form LLP(II), Form CN, Form DI, Form InVi, Form ODI-Part I, Form ODI-Part III, Form FC, Form ECB, Form ECB-2, Revised Form ECB or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting.	[7500 + (0.025% x A x n)]

Notes:

a. "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.
b. "A" is the amount involved in the delayed reporting.

COMPOUNDING OF OFFENCES UNDER CODE OF CRIMINAL PROCEDURE, 1973

1. Section 320 of the Criminal Procedure Code, 1973 permits compounding of various offences under Indian Penal Code. Such compounding can be done either before or after institution of prosecution. After payment of such composition amount, prosecution will not be launched, or if it was launched, it will be withdrawn.

2. Where the offences are essentially of 'a private nature and relatively not quite serious, the CRPC considers it expedient to recognize some of them as compoundable offences; and some others as compoundable only with the permission of the Court.

COMPOUNDING OF OFFENCES UNDER SEBI ACT 1992

THERE ARE TWO WAYS OF COMPOUNDING UNDER SEBI ACT

CONSENT ORDER

This is used where compounding is to be done for those offences punishable with fine only.

COMPOUNDING OF OFFENCE

This is used where compounding is to be done for those offences punishable

- Imprisonment only
- Imprisonment or fine
- Imprisonment and fine

PROCESS OF COMPOUNDING OF OFFENCE

1. Section 24A of SEBI Act, 1992 permits compounding of offences by the court, in respect of criminal prosecution proceedings.

2. Section 24A provides that any offence OTHER THAN punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a court before which such proceedings are pending. This Section has the overriding effect over the provisions of CRPC, 1973.

3. So far as process of compounding of offences is concerned, any party who wishes to compound an offence shall file an appropriate application before the court where complaint is pending with a copy addressed to the Prosecution Division, Enforcement Department of SEBI's Mumbai office which will forward the application/ request to be placed before the High-Powered Committee.

4. The terms of compounding as recommended by the Committee and approved by the Competent Authority would be placed before the court by the Prosecution Division by way of written submissions or application, as appropriate, for passing orders as the court deems fit.

5. The final acceptance of any offer of compounding will come in to effect only upon the court passing the compounding order.

CONSENT ORDERS OF SEBI

1. Consent Order means "an order **settling administrative** or **civil proceedings** between the regulator and a person (Party) who may prima facie be found to have violated securities laws.

2. Legislature has recognized SEBI and its Adjudicating Officers to pass Consent Orders for resolving the disputes in more smooth manner through negotiations and discussions instead of

lengthy litigation.

3. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.
4. After passing Consent Order, the Consent Order will be published through press release and would-be put-on SEBI website. In cases where a Party undertakes compliances, it has to comply with the same as per agreed schedule.
5. Violation of Consent Order by a Party would invite appropriate action, including for violating SEBI orders, besides revival of the pending action. In this context any proceeding which had been kept in abeyance pending the consent process will begin from such stage at which it was suspended.
6. If SEBI rejects the offer of settlement, the person making the offer shall be notified of the same and the offer of settlement shall be deemed to be withdrawn.

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE COMPOUNDING OF OFFENCES UNDER VARIOUS LAWS

1. Whether violation is intentional
2. Party's conduct in the investigation.
3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading
4. History of non-compliance.
5. Whether there were circumstances beyond the control of the party
6. Consideration of the amount of investors' harm or party's gain.
7. Party has undergone any other regulatory enforcement action for the same violation.

DIFFERENCES BETWEEN SECTION 441 AND SECTION 454

(A) Adjudication Order u/s 454 is appealable

While the adjudication order is appealable with the higher authorities as per the express provision provided in sub-section (5) of section 441, with the procedure being provided by the Rules, a compounding order is generally not appealable unless the victim is aggrieved by the compounding order. Once he agrees on the compounding order, he cannot go on appeal against it. The compounding order is delivered generally based on a consensus arrived at by both parties with the compounding authority having a final say on the outcome of the application and the quantum of penalty. **Unlike section 454, section 441** itself does not provide for any appeal.

In this connection, it would only be apt to draw reference to certain precedence. There cannot be any penalty or prosecution after compounding as was decided in **P P Varkey V. STO**. Here, it was held that once an offence is compounded, penalty or prosecution proceedings cannot be taken for the same offence.

In **S Viswanathan V. State of Kerala** it was held that once the matter is compounded, neither department nor the assesses can challenge the compounding order. Department cannot reopen the matter on the reason that actual suppression was much higher. No appeal shall lie against order of composition.

In **S V Bagi v. State of Karnataka** it was held that a person having agreed to the composition of offence is not entitled to challenge the said proceeding by fi ling an appeal.

However, an affected party can appeal in extra ordinary circumstances to a superior court if he is aggrieved with the compounding order. Therefore, the compounding authority nor the offender can appeal against the compounding order in the normal course.

(B) Adjudicating Officer 's order u/s 454 will be arbitrary and not on consensus

In the case of section 454, the adjudicating Officer 's order is more arbitrary and not on consensus, though a reasonable opportunity may be given to the company and the Officer in default as required u/s 454(4) before the imposition of any penalty. The emphasis in section 454(3) is on the quantum of penalty and the adjudication is not on the merits or demerits of the offence. The fact of existence of default would have been established by the adjudication Officer with the various communication with defaulting parties and from the responses of the show causes issued by him. In fact sub-section (3) to section 454 reads as under:

The adjudicating Officer may, by an order impose the penalty on the company and the Officer who is in default stating any noncompliance or default under the relevant provision of the Act.

Therefore, we find that the Adjudicating Officer 's function and role is defined and confined to arriving and imposing a penalty by stating the non-compliance or default under the provisions of the Act and that too by an order. In fact, the role of the adjudicating Officer has been clearly brought out in Rule 3(1) of the Companies (Adjudication of Penalties) Rules, 2014 which states as under:

The Central Government may appoint any of its Officers, not below the rank of Registrar, as adjudicating Officer s for adjudging penalty under the provisions of the Act.

Hence, the alleged offences has to be ascertained first and identified for him to state that there is a non-compliance or default and then proceed to arrive at the quantum of penalty as per the Act and use his discretion to levy this penalty within the parameters laid down under the relevant section alleged to have been violated having due regard to the following factors as provided under Rule 3(9) of the Companies (Adjudication of Penalties) Rules, 2014 reproduced hereunder:

While adjudging quantum of penalty, the adjudicating Officer shall have due regard to the following factors, namely

- the amount of disproportionate gain or unfair advantage wherever quantifiable made as a result of the default
- the amount of loss caused to an investor or group of investors or creditors as a result of the default
- the repetitive nature of the default."

Therefore, there is a boundary within which the adjudicating Officer has to operate which is confined to only adjudging the quantum of penalty. He cannot wander into the area of ascertaining the merits and demerits of the offence or whether there is a violation of the provisions of the Act at all in the capacity of an adjudicating Officer which is in stark contrast to the spirit of provisions of section 441 enabling compounding.

(C) Powers under Section 441 are exercised by different authorities in certain cases but the power of adjudication under Section 454 vests with only the Regional Director.

Section 441(1) of the Companies Act, 2013 splits the powers into two categories:

Power of Regional Director:

Where the maximum amount of fi ne which may be imposed for such offences does not exceed Rupees Five Lakhs (Rs.5,00,000) the power of compounding is vested with the Regional Director or on an authorized Officer of the Central Government. {Sec 441 (1)(b)}

Power of NCLT:

Where the amount of fi ne which may be imposed for such offences does not fall below Rupees Five Lakhs (Rs.5,00,000) the power of compounding is vested with the NCLT

Power to delegate Adjudication

The Central Government has exercised its powers conferred by Section 454 of the Companies Act, 2013 read with the Companies (Adjudication of Penalties) Rules, 2014, and has appointed various Registrar of Companies as adjudicating Officer s vide its notification dated 24-3-2015. There is no threshold monetary limit stipulated for exercising their powers for these adjudicating Officer s like the one which is drawn up for the Regional Director u/s 441 (1)(b). The RoCs can levy penalties at their discretion bearing in mind the provisions of the sections alleged to have been violated where the maximum and minimum penalties have been stipulated and also the provisions of Rule 3(9) of the Companies (Adjudication of Penalties) Rules, 2014. The concerned adjudicating Officer has the power to initiate adjudication and he need not wait for any orders from the concerned Regional Director for such initiation. The power of the Regional Director is con ned only to the appointment of the adjudicating Officer s and not initiating adjudication itself.

(D) Interval between Two Similar Offences for Compounding u/s 441.

If any offence which was committed by company or the Officer s was compounded under section 441, and an offence similar to what was compounded earlier is committed again by a company or its Officer s within a period of three years from the date on which the earlier offence was compounded, then the provisions of this Section will not be applicable and the company and the Officer s concerned will not be eligible for compounding again. In other words, similar offence can be compounded only once in three years. However, there is no such restriction imposed u/s 454 on adjudicating a penalty.

(E) Rules governing the sections

Rules framed for section 441 is confined to those offences where compounding will be done by NCLT. Technical compliances have to be gone through under the National Company Law Tribunal Rules, 2016. There are no specific rules which have been made by the Government where offences for compounding falls under the jurisdiction of the Regional Director or the authorized Officer under section 441 (1)(b). In practice the procedure followed in fi ling an application with NCLT is a guiding factor for application to be made to the Regional Director or the authorized Officer

However, in the case of Adjudication u/s 454, the Government has framed the Companies (Adjudication of Penalties) Rules, 2014, which governs the procedure to be adopted by the adjudicating Officer and is very elaborate.

(F) No compounding u/s 441 can be done when Investigation is in progress

The additional proviso to section 441(1) prohibits compounding of any offence under section 441 either by the NCLT or the Regional Director or by the authorized Officer if the investigation against such company has been initiated or is pending under the Act. There is no such restriction provided under section 454 or its Rules. Therefore, adjudication proceedings can be initiated and continued while investigation is in progress.

(G) Hearing is mandatory in case of adjudication u/s 454

Section 454(4) and Rule 3 (3) of the Companies (Adjudication of Penalties) Rules, 2014, provides that a reasonable opportunity of being heard has to be given to the defaulting company and the Officer who is in default before adjudication process is complete.

AFTER READING THE CHAPTER OF ADJUDICATION AND COMPOUNDING THE FOLLOWING QUERIES ARISE

S.NO.	QUESTION	ANSWER
1	Under what circumstances can an adjudication be ordered u/s 454? Or in short what triggers an action u/s 454? Is it on the findings of the MCA that an offence has occurred following an inspection u/s 206 or on scrutiny of the Balance Sheet or from the statutory auditors' report or from the secretarial audit report	a) There must have been a default or non-compliance of the provisions of the Companies Act, 2013 b) The default has to be ascertained and the nature of non-compliance must be identified by the concerned Office of the ROC or emanate from inspection/investigation or from the statutory auditor's report or the secretarial audit report. c) Fine is not the same as penalty. Penalty is a broader term which includes fi ne. Before initiating adjudication proceedings u/s 454, it has to be ascertained if the penal provisions in the section alleged to have been violated for which these proceedings are sought to be initiated are in the nature of fi ne or penalty. In general usage, a layman uses these two words synonymously. In fact, in the Companies Act, 2013, there are many sections which talk of "fi ne" and many other sections talk of "penalty". Those sections which have stipulated "fines" will necessarily be outside the purview of section 454 since S.454(3) clearly authorizes the adjudicating Officer with a power to impose only penalty and it is implied that he has to take cognizance of the penalty stipulated under the section which has been violated. In whichever have been stipulated, the defaulting parties can take recourse to seeking compounding of the offence whether a show cause notice is issued or not.
2	Who orders Adjudication Proceedings u/s 454? Can the ROC himself order? In which case can the Central Government appoint him as the adjudicating Officer?	Either the ROC himself on a scrutiny of documents filed with him and on his satisfaction has to come to a conclusion that there has been noncompliance of the provisions of the Act as arrived at under section 206(4) or has to come to a conclusion of such non compliances based on any report on inspection or investigation, if any, under the relevant provisions of the Companies Act, 2013, or on the qualifications of the statutory auditors in the Annual Report or by the secretarial auditors in their Secretarial Audit Report whereby he can ascertain and identify the nature of non-compliance or default. In all these cases, he himself cannot initiate any adjudicating proceedings

		if he is the adjudicating officer even as he may be clothed with a power of adjudication. Therefore, if adjudicating powers are under his jurisdiction, any other officer who is independent of his office has to identify the existence of violation as otherwise the adjudicating Officer, being the head of his Office may be biased. This is a grey area to be addressed by the Central Government as otherwise the adjudicating Officer will be sitting on a judgement of the findings of his own office. It is pertinent to point out here that it would, therefore, be only logical, prudent and wise for the concerned Regional Director not to appoint as the adjudicating Officer pursuant to sub-section (2) of section 454, the same jurisdictional Registrar of Companies whose Office has identified the violation.
3	When there is a provision for compounding u/s 441 how does section 454 come into play? Does S.454 override S.441 since it is a later section? Or do both sections play parallelly? Which section prevails over which?	Both these sections are independent of each other. The question of one section overriding the other does not arise. They operate concurrently but not parallelly. When we say parallelly it means simultaneously. The Regional Director cannot set the compounding process in motion u/s 441 and simultaneously the ROC cannot order adjudication u/s. 454. Section 441 deals with compounding and Section 454 deals with adjudication. Both are not same. The adjudicating Officer has no power to compound. The Regional Director alone can compound. If he has to authorize another Officer it has to be u/s 441 (1)(b) and not under 454. The adjudicating Officer u/s 454 can only adjudicate on the quantum of penalty. He has no right to go into the merits and demerits of the default. Within the parameters set under the sections which are under default he can wander. In fact, he can only revise the fee upwards not downwards as can be seen from the parameters set under Rule 3(9) of the Companies (Adjudication of Penalties) Rules, 2014. Whereas, the Regional Director or the NCLT can afford to give lot of concessions on the quantum of penalty depending on the facts of the case. The power to compound vested with the Regional Director or the NCLT is more subjective.

4	When a suo motto application for compounding is pending disposal, how does S.454 come into play?	The moot question here will be should the Regional Director or the NCLT take cognizance of adjudication proceedings u/s 454(2) when a suo motto application made by the defaulter for composition involving an offence, the nature of which the defaulter himself has identified, is pending with him/NCLT for disposal and stop the adjudication proceedings? Therefore, it appears that prima facie section 454 will not come into play. The RoC who has forwarded the compounding application to either of them with his report has to seek directions from the RD/NCLT in such a case. The Regional Director/NCLT may agree for adjudication after giving justifiable reasons for his choice for adjudication overriding the compounding application in a speaking manner. But this decision can be challenged before the same RD under section 454(5) by the applicants to a suo motto compounding application if the RoC, being the adjudicating Officer exercises his power u/s 454, on the grounds that the defaulting party itself has identified the non-compliance and none else and therefore, the offence will obviously come outside the purview of S.454.

To sum up, there is no contradiction **between section 441 and 454** as they operate under their own separate spheres. Earlier, the RoC could only initiate the launching of criminal proceedings to implement the penal provisions of the sections which have been violated and the Magistrate's court gave the verdict after trial. Section 454 read with its rules has now given powers to the adjudicating Officer s from the administrative machinery to

adjudicate the penalty instead of launching criminal proceedings before the Magistrate's Court as was being done earlier except when the offences fall under the appropriate Special Courts established under section 435 which is expected to speed up the delivery of justice. Compounding Powers continue to vest with the NCLT/ Regional Director in cases where the sections violated indicate fines.

CHAPTER-17

SEBI SETTLEMENT PROCEEDINGS

INTRODUCTION

To **enable pass consent orders** after arriving at a settlement, SEBI issued Circular No. EFD/ED/Cir-1/2007 containing guidelines for passing consent orders and for considering requests for composition of offences.

This circular was further amended by the Board's circular ref No. CIR/EFD/1/2012 dated **May 25, 2012.**

On 9th January, 2014, SEBI notified Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto, **rescinding the above two circulars**. These regulations were deemed to have come into force from 20th April 2007.

NEW REGULATIONS FOR SETTLEMENT AND SETTLEMENT PROCEEDINGS

With passage of time and as over two decades have lapsed from the issue of the first guidelines on 20th April 2007 for settlement /consent and passing of consent orders, SEBI has now issued a new set of regulations which have come into force from **1st day of January 2019** which are new /revised regulations to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto. These regulations were notified on November 31,2018 and is in force from **1st January 2019**.

SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

In exercise of the powers conferred by Section 15JB of the Securities and Exchange Board of India Act, 1992

Section 23JA of the Securities Contracts (Regulation) Act, 1956 and Section 19-IA of the Depositories Act, 1996 read with Section 30 of the Securities and Exchange Board of India Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996, the Securities and Exchange Board of India hereby makes the following regulations to provide for the **terms of settlement and the procedure of settlement** and matters connected therewith or incidental thereto, namely- Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. They shall come into force on the 1st day of January 2019.

APPLICATION FOR SETTLEMENT

APPLICATION (REGULATION 3)

A person against whom any **specified proceedings** have been **initiated** AND are **pending** or **may be initiated**, may make an application to the Board in the Form specified in Part-A of the **Schedule-I**

REGULATION 2(F) DEFINES SPECIFIED PROCEEDINGS AS FOLLOWS

*Specified proceedings means the proceedings that may be initiated by the Board or have been initiated and are pending before the Board or **any other forum**, for the violation of securities laws, under Section 11, Section 11B, Section 11D, sub-Section (3) of Section 12 or Section 15-I of the SEBI Act or Section 12A or Section 23-I of the Securities Contracts (Regulation)Act, 1956 or Section 19 or Section 19H of the Depositories Act, 1996, as the case may be*

(2) The application made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Part-B of **Schedule I**

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action.

(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned to the applicant.

(6) The applicant whose application has been returned under sub- regulation (5) may, within **fifteen days** from the date of communication from the Board, submit the complete and revised application that conforms to the requirements of these regulations.

LIMITATION (REGULATION 4)

(1) An application in respect of any **specified proceeding** pending before the Board shall not be considered if it is made **after sixty days** from the date of show cause notice.

(2) Notwithstanding anything contained in sub-regulation (1), the Board may consider the application, if satisfied that there was sufficient cause for not filing it within the specified period and it is accompanied with non refundable fees as specified in Part-B of the Schedule-I: Provided that, where the application is filed after **sixty calendar days** from the expiry of the period specified in sub-regulation (1), the settlement amount determined in accordance with Schedule-II of these regulations shall be increased by twenty five percent: Provided further that, no such delayed application shall be considered if the application is filed **after one hundred and twenty calendar days** from the expiry of the period specified in sub-regulation (1) or after the first hearing, whichever is earlier.

SCOPE OF SETTLEMENT

SCOPE OF SETTLEMENT PROCEEDINGS (REGULATION 5)

1. No application for settlement of any specified proceedings shall be considered, if:

- an earlier application with regard to the same alleged default had been rejected;
- the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or
- monies due under an order issued under securities laws are liable for recovery under securities laws.

2. The Board may not settle any specified proceeding, if it is of the opinion that the alleged default,
   - as market wide impact,
   - caused losses to a large number of investors
   - affected the integrity of the market.

3. Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may inter alia take into account the following factors,

   - whether the applicant has refunded the monies due, to the satisfaction of the Board;
   - whether the applicant has provided an exit option to investors in compliance with securities laws, to the satisfaction of the Board;
   - whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;
   - any other factor as may be deemed appropriate by the Board.

4. Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of

any fees due or penalty imposed under securities laws.

5. Nothing contained in these regulations shall be construed to restrict the right of the **Panel of Whole Time Members** to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High- Powered Advisory Committee.

REJECTION OF APPLICATION (REGULATION 6)

(1) An application may at any time be rejected on the following grounds:

(a) Where the applicant refuses to receive or respond to the communications sent by the Board;

(b) Where the applicant does not submit or delays the submission of information, document, etc., as called for by the Board;

(c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;

(d) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (2) of regulation 15 and/or does not abide by the undertaking and waivers.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

WITHDRAWAL OF APPLICATION (REGULATION 7)

(1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default: Provided that, as may be recommended by the High-Powered Advisory Committee, such an application may be considered subject to an increase of at-least fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

EFFECT OF PENDING APPLICATION ON SPECIFIED PROCEEDINGS (REGULATION 8)

(1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn: Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

TERMS OF SETTLEMENT

SETTLEMENT TERMS (REGULATION 9)

(1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

(2) The non-monetary terms may include the following:

(a) Suspension or cessation of business activities for a specified period;

(b) Exit from Management;

(c) Refraining from acting as a partner or Officer or director of an intermediary or as an Officer or director of a company that has a class of securities regulated by the Board, for specified periods;

(d) Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.

(e) Lock-in of securities;

(f) Provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;

(g) Submit to enhanced internal audit and reporting requirements.

(3) The settlement amount, excluding the legal costs, shall be credited to the Consolidated Fund of India.

(4) The application fee referred to in sub-regulation (2) of regulation 3 and the legal costs, if any, shall be credited to the Securities and Exchange Board of India General Fund.

Explanation. - Legal costs shall include liquidated costs, as may be determined by the Board, in respect of costs for obtaining appropriate orders from the Tribunal or Court under sub-regulation (2) of regulation 24.

FACTORS TO BE CONSIDERED TO ARRIVE AT THE SETTLEMENT TERMS (REGULATION 10)

While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited, to the following:

- conduct of the applicant during the specified proceeding, investigation, inspection or audit;
- the role played by the applicant in case the alleged default is committed by a group of persons;
- nature, gravity and impact of alleged defaults;
- whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
- the extent of harm and/or loss to the investors' and/or gains made by the applicant;
- processes that have been introduced since the alleged default to minimize future defaults or lapses;
- compliance schedule proposed by the applicant;
- any other factors necessary in the facts and circumstances of the case.

COMMITTEES

HIGH POWERED ADVISORY COMMITTEE (REGULATION 11)

(1) The Board shall constitute a High-Powered Advisory Committee for **consideration and recommendation of the terms of settlement.**

(2) The High-Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.

(3) The term of the members of the High-Powered Advisory Committee shall be three years which may be extended for a further period of two years.

(4) The quorum for a meeting of the High-Powered Advisory Committee shall be of three members. Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage.

INTERNAL COMMITTEE(S) (REGULATION 12)

Internal Committee(s) shall be constituted by the Board. The Internal Committee(s) shall comprise of an Officer of the Board not below the rank of Chief General Manager and such other Officer s as may be specified by the Board.

PROCEDURE OF SETTLEMENT

PROCEEDINGS BEFORE THE INTERNAL COMMITTEE (REGULATION 13)

(1) Save as otherwise provided in these regulations, an application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may:

(a) call for relevant information, documents, etc., pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

(b) call for the personal appearance of the applicant before it:

Provided that a duly authorized representative of the applicant may represent on behalf of the applicant:

Explanation. - Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.

(c) permit the applicant to submit revised settlement terms within a period not exceeding ten working days from the date of the Internal Committee meeting: Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount.

(3) The proposed settlement terms, if any, shall be placed before the High-Powered Advisory Committee

PROCEEDINGS BEFORE THE HIGH-POWERED ADVISORY COMMITTEE (REGULATION 14)

(1) The High-Powered Advisory Committee shall consider the proposed settlement terms placed before it along with the following:

- the application, undertaking and waivers of the applicant
- factors specified in regulation 10
- settlement terms or revised settlement terms proposed by the applicant;(d) any other relevant material available on record.

(2) The High-Powered Advisory Committee may seek revision of the settlement terms and refer the application back to the Internal Committee.

(3) The recommendations of the **High-Powered Advisory Committee shall be placed before the Panel of Whole Time Members**.

Action on the recommendation of High-Powered Advisory Committee (Regulation 15)

(1) The Panel of Whole Time Members shall consider the recommendations of the High-Powered Advisory Committee and may accept or reject the same:

Provided that where the recommendations of the High-Powered Advisory Committee to settle the specified proceedings are rejected, the panel of Whole Time Members shall record reasons for rejection of the recommendations: Provided further that where the recommendation of the High-Powered Advisory Committee to settle the specified proceedings are rejected, such decision of the panel of Whole Time Members shall be communicated to the applicant.

(2) remit the settlement amount forming part of the settlement terms, not later than [thirty] calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand

(3) Where the Panel of Whole Time Members does not accept the recommendation of the High-Powered Advisory Committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the Internal Committee and the High Powered Advisory Committee.

SUMMARY SETTLEMENT PROCEDURE (REGULATION 16)

(1) Notwithstanding anything contained in Chapter VI (procedure for settlement), before initiating any specified proceeding, the Board **may** issue a notice of summary settlement in the format as specified in Part-A of Schedule-III, calling upon the noticee to file a settlement application under **Chapter-II (application for settlement)** and submit the settlement amount and/or furnish an undertaking in respect of other non-monetary terms or comply with other non-monetary terms, as may **be specified in the summary settlement notice** in respect of the specified proceeding(s) to be initiated for the following defaults,- i. Delayed disclosures, including filing of returns, report, document, etc.; ii. Non-disclosure in relation to companies exclusively listed on regional stock exchange; iii. Disclosures not made in the specified formats; iv. Delayed compliance of any of the requirements of law or directions issued by the Board; v. Such other defaults as may be determined by the Board. Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner.

(2) Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action.

(3) The noticee may, **within thirty calendar days** from the date of receipt of the notice of settlement, -

(a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I;

(b) remit the settlement amount as specified in the notice of settlement;

(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be; and

Provided that, the Board may for reasons to be recorded, grant extension of time not exceeding a **further period of fifteen calendar days** for filing the settlement application, remittance of the settlement amount and/ or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the nonmonetary terms specified in the notice of settlement.

(4) Upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of the non-monetary terms or compliance with non-monetary terms, if any as detailed in the settlement notice, the Board shall pass an order of settlement under regulation 23.

SETTLEMENT NOTICE (REGULATION 18)

(1) A notice of settlement in the format as specified in Part-B of Schedule-III, indicating the substance of the probable charges and enforcement actions, may, except in cases covered under Chapter VII (summary settlement procedure), be issued by the Board prior to the issuance of the notice to show cause so as to afford the noticee an opportunity to file a settlement application under **Chapter-II, within fifteen calendar days** from the date of receipt of the settlement notice.

(2) Notwithstanding anything contained in the settlement notice, the Board shall have the right to modify the nature of the enforcement action to be initiated against the noticee and the charges stated in the notice shall not confer any right to seek settlement on the said basis or avoid any enforcement action due to modified charges.

(3) Where a noticee does not file the settlement application under this Chapter or withdraws the settlement application at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15, the specified proceedings may be initiated.

SETTLEMENT WITH CONFIDENTIALITY (REGULATION 19)

(1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or on going, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including -

(a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board;

(b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;

(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and

(d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation.

Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit.

(2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings

(3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case.

(4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws.

(5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing.

(6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant.

(7) The rejection of the application for confidentiality shall be communicated to the applicant.

PROCEDURE (REGULATION 20)

(1) The provisions of Chapters IV to VI (settlement procedure) of these regulations may be applied mutatis mutandis to a settlement application filed under this Chapter and a settlement order passed accordingly.

(2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board.

CONFIDENTIALITY AND ASSURANCE (REGULATION 21)

For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

CONFIDENTIALITY (REGULATION 22)

The following shall be treated as confidential,

(a) the identity of the applicant seeking confidentiality; and

(b) the information, documents and evidence furnished by the applicant under this Chapter:

Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if,

- the disclosure is required by law
- the applicant has agreed to such disclosure in writing
- there has been a public disclosure by the applicant

Settlement of the proceedings pending before the Tribunal or any court (Regulation 24)

(1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall mutatis mutandis apply to an application for settlement of any proceeding pending before the Tribunal or any court.

(2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.

SERVICE AND PUBLICATION OF SETTLEMENT ORDER (REGULATION 25)

Settlement orders shall be served on the applicant and shall also be published on the website of the Board:

Provided that settlement orders in matters relating to the con denasality shall not, directly or indirectly, disclose the identity of the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.

SETTLEMENT SCHEMES (REGULATION 26)

Notwithstanding anything contained in these regulations, the Board may specify the procedure and terms of settlement of specified proceedings under a settlement scheme for any class of persons involved in respect of any similar specified defaults.

Explanation. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.

Revocation of the settlement order (REGULATION 28)

(1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

Confidentiality of information (REGULATION 29)

(1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked or withdrawn under these regulations.

CHAPTER-18

NATIONAL COMPANY LAW TRIBUNAL

The Ministry of Corporate Affairs has issued notification for constitution of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with effect from today i.e. **1st June, 2016**.

Chairperson **(NCLAT)**	Hon'ble Justice S.J. Mukhopadhaya, Judge (Retd.), Supreme Court of India
President **(NCLT)**	Hon'ble Justice M.M.Kumar, Judge (Retd.)

Company Law Board (CLB) stands dissolved w.e.f. **1st June, 2016.**

BENCHES OF NCLT: Initially NCLT will have eleven Benches, as per list given below.

NO. OF BENCHES	PLACE
2	New Delhi
1	Ahmedabad
1	Allahabad
1	Bengluru
1	Chandigarh
1	Chennai
1	Guwhati
1	Hyderabad
1	Kolkata
1	Mumbai

NCLT can be considered as biggest Tribunal till date. Because NCLT will CONSOLIDATE the corporate jurisdiction of the followings:

- Company Law Board/ BIFR/AAIFR
- Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High courts

Advantages of NCLT & NCLAT:

1. It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR. AAIFR).
2. There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep.
3. This tribunal shall comprise of technical experts who will provide more concrete and precise decision.
4. There will be mixture of judicial and equitable jurisdiction while deciding matters.
5. There shall be reduction in period of winding up from 20-25 years to 2 years.

SOME MAJOR CHANGES AFTER CONSTITUTION OF NCLT/NCLAT

Winding up: The National Company Law Tribunal has also been empowered to pass an order for winding up of a company. Therefore Practicing Company Secretaries may represent the winding up case before the Tribunal.

Compromise and Arrangement: With the establishment of NCLT, a whole new area of practice will open up for Company Secretary in Practice with respect to advising and assisting corporate sector on merger, amalgamation, demerger, reverse merger, compromise and other arrangements right from the conceptual to implementation level. Company Secretaries in practice will be able to render services in preparing schemes, appearing before NCLT/NCLAT for approval of schemes and post merger formalities

SECTION 408 TO SECTION 433 DEALS WITH ADMINISTRATION OF NCLT AND NCLAT

408 constitution of (NCLT)
409 Qualification: (President/Member of NCLT)
410 constitution of appellate tribunal
411 Qualification: (Chairman/Member of NCLAT)
412 Selection of Members
413 term of office of president, chairperson and other members
414 salary and allowances
415. Acting President and Chairperson of Tribunal or Appellate Tribunal.
416. Resignation of Members.
417. Removal of Members.
418. Staff of Tribunal and Appellate Tribunal.
419. Benches of Tribunal.
420. Orders of Tribunal.
421. Appeal from Orders of Tribunal.
422. Expeditious disposal by Tribunal and Appellate Tribunal.
423. Appeal to Supreme Court.
424. Procedure before Tribunal and Appellate Tribunal.
425. Power to punish for contempt.
426. Delegation of powers.
427. President, Members, officers, etc., to be public servants.
428. Protection of action taken in good faith.
429. Power to seek assistance of Chief Metropolitan Magistrate, etc.
430. Civil court not to have jurisdiction.
431. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.
432. Right to legal representation.
433. Limitation.

CONSTITUTION OF (NCLT) SECTION 408

The Central Government shall, by notification, constitute, with effect from **(1 JUNE 2016)** a Tribunal to be known as the **National Company Law Tribunal** consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Qualification: (President/Member of NCLT) SECTION 409

S. No.	President	Judicial Member	Technical Member
1	Is/has been Judge of High Court ≥ 5 years	Is/has been Judge of High Court (any period)	Has Member of Indian Corporate Law Service /Indian Legal Service ≥ 15 years (and has been holding the rank of secretary or additional secretary to government of india)
2		Is/has been District Judge at least 5 years	Is/has been Practicing Chartered Accountant at least15 years
3		Has been Advocate of court OR held a judicial office or as member of a tribunal at least 10 years	Is/has been Practicing Cost Accountant at least 15 years
4			Is/has been Practicing **COMPANY SECRETARY** at least 15 years
5			**Person with proven ability, integrity and standing having special knowledge and experience ≥ 15 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.**
6			Presiding Officer of Labour Court/ Tribunal/ National Tribunal (under Industrial Disputes Act, 1947) at least 5 years

CONSTITUTION OF APPELLATE TRIBUNAL SECTION 410

The Central Government shall, by notification, constitute, with effect from such date **(1 JUNE 2016)** an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Tribunal or of or of the National Financial Reporting Authority

Qualification: (Chairman/Member of NCLAT) SECTION 411

National Company Law Appellate Tribunal, constituting of a Chairperson and not exceeding eleven members for hearing appeals against the orders of the Tribunal.

S. No.	Chairman	Judicial Member	Technical Member
1	Is/has been Judge of Supreme Court	Is/has been Judge of High Court	**Person with proven ability, integrity and standing having special knowledge and experience ≥ 25 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.**
2	Is/has been Chief Justice of High Court	Is a Judicial Member of Tribunal for at least 5 years	

Selection of Members SECTION 412

S. No.	President/ Chairman	Judicial Members of the Appellate Tribunal	Members of the Tribunal and the Technical Members of the Appellate Tribunal
1	Shall be Appointed after consultation with the Chief Justice of India.	Shall be Appointed after consultation with the Chief Justice of India.	shall be appointed on the recommendation of a Selection Committee.

TERM OF OFFICE OF PRESIDENT, CHAIRPERSON AND OTHER MEMBERS

SECTION 413

TERM OF OFFICE OF PRESIDENT, CHAIRPERSON AND OTHER MEMBERS

TERM OF PRESIDENT AND OTHER MEMBERS

NCLT

The President and every other Member of the Tribunal shall hold office as such for a term of **five years** AND shall be eligible for re-appointment for another term of **five years.**

TIME OF VACATION OF OFFICE

(*a*) In the case of the President, the age of **sixty-seven years**

(*b*) In the case of any other Member, the age of **sixty-five years**

TERM OF CHAIRPERSON AND OTHER MEMBERS

NCLAT

The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of **five years** AND shall be eligible for re-appointment for another term of **five years.**

TIME OF VACATION OF OFFICE

(*a*) In the case of the Chairperson, the age of **seventy years;**

(*b*) In the case of any other Member, the age of **sixty-seven years**

SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF MEMBERS SECTION 414

The salary, allowances and other terms and conditions of service of the Members of the Tribunal and the Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to their disadvantage after their appointment

ACTING PRESIDENT AND CHAIRPERSON OF TRIBUNAL OR APPELLATE TRIBUNAL SECTION 415

(*1*) In the event of the occurrence of any vacancy in the office of the President or the Chairperson by reason of his **death, resignation or otherwise**, the senior-most Member shall act as the President or the Chairperson, as the case may be, until the date on which a new President or Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(*2*) When the President or the Chairperson is unable to discharge his functions owing to absence, **illness or any other cause**, the senior-most Member shall discharge the functions of the President or the Chairperson, as the case may be, until the date on which the President or the Chairperson resumes his duties.

RESIGNATION OF MEMBERS SECTION 416

The President, the Chairperson or any Member may, by notice in writing under his hand addressed to the Central Government, resign from his office:

Provided that the President, the Chairperson, or the Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

REMOVAL OF MEMBERS SECTION 417

(*1*) The Central Government may, after consultation with the Chief Justice of India, remove from office the President, Chairperson or any Member, who

a.	has been adjudged an insolvent; or
b.	has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
c.	has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or
d.	has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or
e.	has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, the Chairperson or the Member shall not be removed on any of the grounds specified in clauses (*b*) to (*e*) without giving him a reasonable opportunity of being heard.

STAFF OF TRIBUNAL AND APPELLATE TRIBUNAL SECTION 418

(*1*) The Central Government shall, in consultation with the Tribunal and the Appellate Tribunal, provide the Tribunal and the Appellate Tribunal, as the case may be, with such officers and other employees as may be necessary for the exercise of the powers and discharge of the functions of the Tribunal and the Appellate Tribunal.

(*2*) The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.

BENCHES OF TRIBUNAL SECTION 419

(*1*) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(*2*) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(*3*) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

(4) The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016

ORDERS OF TRIBUNAL SECTION 420

(*1*) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(*2*) The Tribunal may, at any time **within two years** from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(*3*) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

APPEAL FROM ORDERS OF TRIBUNAL SECTION 421

(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section *(1)* shall be filed within a period of **forty-five days** from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of **forty-five days** from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section *(1)*, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL SECTION 422

(*1*) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal **within three months** from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(*2*) Where any application or petition or appeal is not disposed of within the period specified in sub-section (*1*), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing

of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (*1*) by such period not exceeding **ninety days** as he may consider necessary.

APPEAL TO SUPREME COURT SECTION 423

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within **sixty days** from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding **sixty days.**

PROCEDURE BEFORE TRIBUNAL AND APPELLATE TRIBUNAL SECTION 424

The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice **or of the Insolvency and Bankruptcy Code, 2016**, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act or **under the Insolvency and Bankruptcy Code, 2016**, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely

○ Summoning and enforcing the attendance of any person and examining him on oath
○ Requiring the discovery and production of documents; (*c*) receiving evidence on affidavits
○ Subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office
○ issuing commissions for the examination of witnesses or documents; (*f*) dismissing a representation for default or deciding it *ex parte*
○ Setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*
○ Any other matter which may be prescribed

Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein

POWER TO PUNISH FOR CONTEMPT SECTION 425

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—

(*a*) The reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(*b*) The reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

DELEGATION OF POWERS SECTION 426

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

MEMBERS, OFFICERS, ETC., TO BE PUBLIC SERVANTS SECTION 427

The President, Members, officers and other employees of the Tribunal and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code

PROTECTION OF ACTION TAKEN IN GOOD FAITH SECTION 428

No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

POWER TO SEEK ASSISTANCE OF CHIEF METROPOLITAN MAGISTRATE, ETC. SECTION 429

The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him

(*a*) Take possession of such property, books of account or other documents
(*b*) Cause the same to be entrusted to the Tribunal or other person authorised by it.

CIVIL COURT NOT TO HAVE JURISDICTION SECTION 430

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

VACANCY IN TRIBUNAL OR APPELLATE TRIBUNAL NOT TO INVALIDATE ACTS OR PROCEEDINGS SECTION 431

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be

RIGHT TO LEGAL REPRESENTATION SECTION 432

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be

LIMITATION SECTION 433

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

TRANSFER OF CERTAIN PENDING PROCEEDINGS SECTION 434

On such date as may be notified (1 JUNE 2016) by the Central Government in this behalf

- All matters, proceedings or cases pending before the Company Law Board shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act
- All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.
- Any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:
- Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act. No fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

COMPOUNDING OF OFFENCE SECTION 441

Three kinds of offences are permitted to be compounded under this section:-

(d)	An offence is punishable with fine only
(e)	An offence is punishable with imprisonment or fine
(f)	An offence which is punishable with imprisonment or fine or with both imprisonment

SPECIAL POINTS

1.	An offence punishable with imprisonment only or with imprisonment and fine is not compoundable under this section.
2.	The section empowers the **NCLT** to compound offences **without any limit** or where a maximum amount of fine which may be imposed by an offence does not exceed **Rs. 25, 00,000** it may be compounded by the **Regional Director**.

3. Any offence covered under this section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.
4. The offences committed by a company or its officer within a period of **three years** from the date on which the similar offence was committed by it or him was compounded under this section, are not compoundable.
5. Every application for the compounding of an offence shall be made to the Registrar of Companies who shall forward the same, together with its comments thereon, to the Company Law Board or the Regional Director, as the case may be. Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the Company, to the Registrar of Companies, within 7 days from the date on which the offence is so compounded.
6. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.
7. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
8. Any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
9. Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

CHAPTER-19

LEGAL FRAMEWORK FOR COMPANY SECRETARIES

INTRODUCTION

The need to have a profession of Company Secretaries was first felt in early 50's, when the business environment had started changing, that had necessitated the services of a professional to bring Corporate Discipline.

The Government set up an Advisory Board on a non-statutory basis, to help it in standardising the basic qualifications needed for manning the position of Company Secretaries and to hold the qualifying examination.

JOURNEY OF PROFESSION OF COMPANY SECRETARY

THE DEPARTMENT OF COMPANY AFFAIRS CONDUCTING EXAMINATION LEADING TO GOVERNMENT DIPLOMA IN COMPANY SECRETARY SHIP (GDCS), MARKED THE BEGINNING OF THE PROFESSION OF COMPANY SECRETARIES IN AN ORGANISED MANNER.

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LATER IN THE WAKE OF SUBSTANTIAL INCREASE IN THE NUMBER OF CANDIDATES FOR GDCS, THE INSTITUTE OF COMPANY SECRETARIES OF INDIA WAS SET UP AND REGISTERED AS A COMPANY ON 4TH OCTOBER, 1968 UNDER SECTION 25 OF THE COMPANIES ACT, 1956 (I.E. NOT FOR PROFIT COMPANY) WITH ITS REGISTERED OFFICE AT NEW DELHI

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In 1980, the Government moved the Company Secretaries Bill, 1980 to convert the Institute into a statutory body and company secretaries act 1980 came in to force

LEGAL FRAMEWORK

S.No	Acts/Regulations/Rules
1	The Company Secretaries Act, 1980
2	The Company Secretaries Regulations, 1982

SOME LEGAL TERMINOLOGIES AND INTERPRETATION

According to section 2(1)(c) of the Company Secretaries Act, 1980**"Company Secretary"** means a person who is a member of the Institute of Company Secretaries of India.

The role of the Company secretary is defined in various other legal enactments.
Under the Companies Act, 2013 Company Secretary has been defined under section 2(24) as: 'Company Secretary' or 'Secretary' means a Company Secretary as defined in clause (c) of sub section (1) of Section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of the Company Secretary under the Companies Act, 2013.

ASSOCIATES AND FELLOWS MEMBERS

The members of the Institute shall be divided into two classes designated respectively as Associates and Fellows.

Any person whose name is entered in the Register of members maintained by Institute of Company Secretaries of India shall be deemed to have become an Associate and as long as his name remains so entered, shall be entitled to use the letters "A.C.S." after his name to indicate that he is an Associate.	A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of fees, be entered in the Register as a Fellow.

CERTIFICATE OF PRACTICE

A member is entitled to continue the practice of Company Secretary, whether in India or elsewhere, only after obtaining a Certificate of Practice.

DEEMED "TO BE IN PRACTICE"

A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, he, in consideration of remuneration received or to be received,

1. engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
2. offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or
3. offers to perform or performs such services as may be performed by—

a share transfer agent,
an issue house,
a share and stock broker,
a secretarial auditor or consultant,

an adviser to a company on management, including any legal or procedural matters

4. issuing certificates on behalf of, or for the purposes of, a company; or
5. holds himself out to the public as a Company Secretary in practice; or
6. renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
7. renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

REGISTER OF MEMBERS

The Council shall maintain in the prescribed manner a Register of the members of the Institute. The Register shall include the following particulars about every member of the Institute, namely:

his full name, date of birth, domicile, residential and professional addresses;
the date on which his name is entered in the Register;
his qualifications;
whether he holds a certificate of practice; and
any other particulars which may be prescribed.

The Council shall cause to be published in the list of members of the Institute as on the 1st day of April of each year. Every member of the Institute shall, on his name being entered in the Register, pay annual membership fee as may be decided by the council from time to time.

REMOVAL FROM THE REGISTER OF MEMBERS

In the following cases the Council may remove from the Register the name of any member of the Institute—

who is dead; or
from whom a request has been received to that effect; or
who has not paid any prescribed fee required to be paid by him; or
who is found to have been subject at the time when his name was entered in the Register, or who at anytime thereafter has become subject, to any of the disabilities mentioned in section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

DISCIPLINARY MECHANISM

The member of the Institute is subject to the Disciplinary mechanism provided for under Chapter V of the Company Secretaries Act, 1980 (the Act).

DISCIPLINARY DIRECTORATE

Section 21 of the Act provides for the establishment of a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct. The Disciplinary Directorate shall follow such procedure as may be specified to make investigations under the Act.

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, the matter shall be placed before the Board of Discipline.
Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, the matter shall be placed the Disciplinary Committee.

BOARD OF DISCIPLINE

The Board of Discipline shall be constituted by the Council of the Institute under section 21A of the Companies Act, 1980. The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely
reprimand the member;
remove the name of the member from the Register up to a period of three months;
impose such fine as it may think fit which may extend to rupees one lakh.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

DISCIPLINARY COMMITTEE

According to Section 21B a Disciplinary Committee shall be constituted by the Council. The Disciplinary Committee shall consist of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

The Council may constitute more Disciplinary Committees as and when it considers necessary. The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second

Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may there after take any one or more of the following actions, namely:—

Reprimand the member;
Remove the name of the member from the Register permanently or for such period, as it thinks fit;
Impose such fine as it may think fit, which may extend to rupees five lakhs.

AUTHORITY, DISCIPLINARY COMMITTEE, BOARD OF DISCIPLINE AND DIRECTOR (DISCIPLINE) TO HAVE POWERS OF CIVIL COURT

Section 21C provides that for the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

summoning and enforcing the attendance of any person and examining him on oath;
the discovery and production of any document; and
receiving evidence on affidavit.

Explanation – For the purposes of sections 21, 21A, 21B, 21C and 22, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

APPEAL TO AUTHORITY

Under section 22A of the Act the Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act, subject to certain modifications.

Accordingly, any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in section 21A and section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary
Committee to the Authority if so authorised by the Council, within ninety days:

The Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) ofsection21B and may —

confirm, modify or set aside the order;
impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

PROVISIONS RELATING TO MISCONDUCT UNDER THE COMPANY SECRETARIES ACT, 1980

Professional misconduct in relation to members of the Institute is broadly structured under Schedule I and Schedule II of the Act:

Professional misconduct in relation to Company Secretaries in Practice. (Part I of the First Schedule)

Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule)

Professional misconduct in relation to members of the Institute generally. (Part III of the First Schedule)

Other misconduct in relation to members of the Institute generally (Part IV of the First Schedule)

Professional misconduct in relation to Company Secretaries in practice requiring action by disciplinary committee (Part I of the Second Schedule)

Professional misconduct in relation to members of the Institute generally, requiring action by disciplinary committee (Part II of the Second Schedule).

Other misconduct in relation to members of the Institute generally (Part III of the Second Schedule)

PROFESSIONAL MISCONDUCT IN RELATION TO COMPANY SECRETARIES IN PRACTICE (PART I OF THE FIRST SCHEDULE TO THE ACT)

CLAUSE (1)

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he Allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.

CLAUSE (2)

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

CLAUSE (3)

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part."

CLAUSE (4)

This clause prohibits a Company Secretary in Practice entering into partnership with any person other than a Company Secretary in Practice or a member of any other recognised profession. Even entering into partnership with persons, who are not members of the Institute, for the purposes of carrying on a business and not the profession of Company Secretaries, would attract the mischief of the clause.

Membership of Professional body for Partnership — (1) For the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely:

The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);

The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No. 23 of 1959);

Bar Council of India established under the Advocates Act, 1961 (No.25 of 1961);

The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;

The Indian Institute of Architects established under the Architects Act, 1972 (No.20 of 1972);

The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);

Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under sub-section (2) of Section 38 of the Act.";

CLAUSE (5)

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he secures, either through the services of a person who is not an employee of such Company Secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business.

This clause frowns upon discreditable practices in securing professional work. The clause covers instances of obtaining professional work by unethical means and by means which are not open to a Company Secretary.

Council has issued guidelines for advertisement by PCS. These guidelines were approved by the council in its 178th Meeting held on 29th of December, 2007. A PCS can therefore, within the parameters of the above guidelines issue advertisement / launch his own website.

Clause 5 of part I of first schedule is very clear that no member in practice should secure any professional business through propagation, etc., the member in practice have to be cautious that any kind of wording or message in the website created by them shall not indicate or imply securing/solicitation of business/client.

CLAUSE (6)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He solicits clients or professional work, either **directly or indirectly**, by circular, advertisement, personal communication or interview or by any other means: Provided that nothing herein contained shall be construed as preventing or prohibiting

any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice; or

a member from responding to tenders or enquires issued by various users of professional services a organisations from time to time and securing professional work as a consequence.

The word 'indirectly' used in this clause suggests that even innuendos would not be tolerated under this clause. If the overall message of the alleged act is solicitation of clients or professional work, though this lurks or lies beneath what has apparently been done, clause 6 would stand attracted.

Circular or advertisement in newspapers indicating the range of services offered by him.

A circular letter offering secretarial services and professional work.

Any circular, advertisement or communication which creates an impression that certain professional work would be done much more expeditiously than is normally the case. Like for instance, registration of a company in, say, two days' time or registration of a charge in one day's time, etc.

Circular, advertisement or personal communication highlighting any provision of any law, to person other than existing clients, which provides for certification/ authentication by a Company Secretary in Practice of any form/return/application/document.

Issuing hand bills covering matters in (1) to (4) above.

Publication in the telephone directory, name and address in extra bold typeface or opting for more than one listing. However, where separate sections are devoted in the telephone directory (yellow pages, for instance) for a classified list, publishing the name and address by a member in such sub-section in the directory would not be treated as misconduct. But any kind of message or writing which indicates tall claims, supremacy and superiority in professional attainments will tantamount to solicitation of clients, indirectly.

Communicating or holding out, as being prepared to provide professional services at fees that are less than reasonable and appropriate in the circumstances, in order to obtain professional work.

Communicating or describing himself as a 'specialist' in any branch of law/work or knowingly permits himself to be so described.

A member allowing a company to carry in its prospectus or other circular letters that 'Mr. X a specialist incorporate laws is the adviser to the company' would offend clause (6). However printing the name of Practicing Company Secretary as Secretarial Auditor in Annual Report will not violate the provisions of the Act.

Requesting his client(s) to recommend his/their acquaintances to him for professional work.

Frequent press announcements or circulars about his not being available for professional work for a certain period at the place whereat he normally has his office.

Highlighting or causing to be highlighted in public interviews over the television, AIR, etc. their professional attainments, more than just necessary or warranted by the circumstances of such an interview, making tall claims, indicating supremacy over other professional colleagues, etc. However sending bio data to organizers of the programmes/seminars, etc., where they have been invited as a faculty, is not violative of this clause.

Writing to any institution/agency that though, he is in the panel; no work has been allotted to him. Even approaching through a third person is violative of this clause.

Approaching any trade association/chamber of commerce/ business forum, communicating his ready availability for rendering any professional service to the constituents of any association or chamber.

Sending his profile to persons/companies/firms without any requisition for the same.

Including names of other professionals in his profile circulated to various persons.

However, the following would not fall into the mischief of clause (6):

publishing in the journal of the Institute or newspaper any change in the professional address;

publishing in professional journals, newspapers and magazines in any classified column, any advertisement for recruitment of staff without in any way giving an impression about the services that he can render, or in other manner smacking of solicitation of work;

publishing information regarding changes in the constitution of firm, provided the information contained therein is limited to bare facts and consideration given to appropriateness of the area in which the newspaper or magazine is circulating and the number of insertions

Sending New Year or any other seasonal greetings without narrating the list of services, professional attainments, supremacy or any kind of indication seeking clients.

Appearance in AIR, TV or any stage in private capacity as a speaker, actor or otherwise on programmes having no nexus with his profession. Any reference to him only as a Company Secretary and nothing beyond that in such programmes would not offend clause (6);

appearance or participation in professional capacity in the AIR/TV or other forums where a reasonable amount of biographical material may be given without in any way referring to the member as specialist in any branch of work;

editing/publishing any professional journal, newspaper and magazines;

writing articles/comments in professional journals, magazines and newspapers;

associating with charitable, other welfare associations and trade associations without in any way using such position to solicit clients/ professional work;

writing to his existing clients about implications/interpretations of any law or amendments thereof by way of any circular, newsletter or any personal communication or by way of print/electronic means of communication.

CLAUSE (7)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or signboards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council."

A PCS cannot include in his advertisement following particulars like the infrastructure available in his own office, details of Associate PCS, details of his networking in other places within &

outside India, infrastructure at such networked offices, number of trainees who have completed training from his office, certain landmark achievements like number of companies incorporated since he started his practice, number of appearances made before CLB/NCLT, CBDT, Tribunals , Regulatory Authorities, Commissions, number of Foreign Collaborations handled, number of Merger & Acquisitions handled, Number of due diligence carried out etc.

CLAUSE (8)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing."

CLAUSE (9)

provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act." which determine remuneration based on results. For instance, if the Company Secretary in Practice were to quote remuneration in an Excise Refund case, as a percentage of the final amount of refund that may be ordered by an appellate authority, it would be hit by this clause. The fundamental is that the fee should be more related to the expertise required and the time spent on a particular case without in any way linking the fee with the final results.

CLAUSE (10)

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act."

The Council has expressly permitted a PCS to take up following vocations:

Acting as Private tutor.
Authoring Books and Articles.
Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
Holding of public elective offices such as M.P., M.L.A., M.L.C. and others.
Honorary office-bearer ship of charitable, educational or other non-commercial organisations.
Acting as Justice of Peace, Special Executive Magistrate and the like
carrying out valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination
Acting as editor of professional journals

CLAUSE (11)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto."

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE IN SERVICE (PART II OF THE FIRST SCHEDULE)

Part II of First Schedule to the Act deals with professional misconduct of a member of the Institute (other than a member in practice) if he is an employee of any company, firm or person.

Part II of the First Schedule recognises the need for a member in employment also to observe a certain code of conduct. To be in 'employment' connotes to be in a 'contract of service' and not 'contract for service'.

There are four indicia of a contract of service, namely:

master's power of selection of his servant;
payment of wages or other remuneration;
master's right to control the method of doing the work; and
the master's right of suspension or dismissal.

A member in employment shall not share emoluments of the employment with any other person, not even a member. Both direct and indirect sharing of the emoluments is prohibited.

a member of the Institute (who is in service) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification."

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY (PART III OF THE FIRST SCHEDULE TO THE ACT)

Under this Part, three specific instances have been categorised as professional misconduct.

Clause (1) of Part lll of the First Schedule provides that a member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he not being a Fellow of the Institute, acts as a Fellow of the Institute.

Clause (2) of Part III of the First Schedule provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he does not supply the information called for or does not comply with the requirements asked for by the Institute, Council or any of its Committees, Director (Discipline) Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority."

Clause (3) of Part III of the First Schedule provides that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything, gives information knowing it to be false.

OTHER MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY (PART IV OF THE FIRST SCHEDULE)

CLAUSE 1 OF PART IV

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

CLAUSE 2 OF PART IV

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

Following may amount to misconduct under Clause 2 of Part IV of the First Schedule;

Sending an e-mail to number of members (e-groups) criticizing the decisions of the Council in derogatory and filthy language.

Discussing through e forums failures of the Council/ president/ secretary by using derogatory and filthy language.

Writing letter(s) in an aggressive, loud and filthy language to the Ministry of Corporate Affairs, about working of ROC offices/ MCA site, inability to upload forms etc.

Arranging DHARANA/ agitations at the gates of the Govt. Offices/Institute's offices in a manner not befitting a professional.

Instigating Students or other members by creating a pandemonium in or around Institute's offices by raising issues pertaining to syllabus, training, examination or any other reason what so ever.

Misusing the confidential data available with the offices of the Institute for personal purposes.

Inviting Govt. Officers for Chapter's / Regional Council's Programs by spending heavily on their travel & stay arrangements, with an intention to get personal mileage.

Tampering with the Books of Accounts/ Minutes of the meetings of the Managing Committees of Chapter/ Regional Councils.

Part I of the second schedule to the act section 21(3), 21(b)(3) and 22) where the matters are to be dealt with by the disciplinary committee constituted by the council

Part I of the Second Schedule to the Act deals with ten instances of professional misconduct in relation to members in practice, which require action by a Disciplinary Committee. The implications of various clauses in Part I of the Second Schedule are briefly explained herein below:

CLAUSE (1)
Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if
He Discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force."

CLAUSE (2)
Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if
He certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice.

CLAUSE (3)
Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if
He permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast."

CLAUSE (4)
provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if
he expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest;"

CLAUSE (5)
provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if
he fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement ina professional capacity."

CLAUSE (6)
Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He fails to report a material misstatement known to him and with which he is concerned in a professional capacity.

CLAUSE (7)

provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."This clause deals with due care that a member in practice has to exercise in the discharge of his professional duties. The words used in this clause "grossly negligent" imply that purely clerical errors or an omission to give more details in any recommended course of action will not fall within the sweep of this clause. What constitutes gross negligence would depend upon the facts and circumstances of each case.

CLAUSE (8)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion."

CLAUSE (9)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice."

CLAUSE (10)

Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if

He fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time."

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY (PART II OF THE SECOND SCHEDULE TO THE ACT)

Part II of Second Schedule to the Act covers professional misconduct in relation to members of the Institute generally. The implications of the four clauses included in this Part are explained herein below:

CLAUSE (1) OF PART II OF SECOND SCHEDULE

Provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council."

Following guidelines have been issued by the council so far

Display of particulars on website

Approving firm's name
Compulsory attendance at PDP
Dress Code
Issuing Compliance Certificate
Maintenance of Register of attestation services
Issue of advertisement by PCS
Change of Name of a Concern/Firm
Guideline for use of own Logo by PCS

CLAUSE (2) OF PART II OF SECOND SCHEDULE

Provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer.

CLAUSE (3) OF PART II OF SECOND SCHEDULE

Provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false."

CLAUSE (4) OF PART II OF SECOND SCHEDULE

a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he defalcates or embezzles moneys received in his professional capacity.

Part III of the second schedule

This part is about other misconduct in relation to members of the Institute generally if a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

Part III does not get attracted at the very first instance of being held guilty but it is attracted only after the final appeal, as it may be, is disposed off and the member is held guilty.

It may be observed that this clause does not provide that the offence for which a member is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months involves moral turpitude. Therefore even for an imprisonment for a term exceeding six months in an offense which does not involve moral turpitude would attract the consequences

COMPLAINTS AND ENQUIRIES RELATING TO PROFESSIONAL OR OTHER MISCONDUCT OF MEMBERS

Subject to the provisions of this regulation, any complaint received against a member of the Institute under Section 21 shall be investigated, and any enquiry relating to misconduct of such member shall be held, by the Disciplinary Committee.

Provided that if the subject matter of a complaint is, in the opinion of the President, substantially the same as or has been covered in any previous information of complaint received, the Secretary may file the complaint without any further action or inform the complainant, accordingly, as the case may be.

A complaint under Section 21 shall be made to the Council in the appropriate from, duly verified as required therein.

Every complaint shall contain the following particulars, namely-

the acts or omissions which, if proved, would render the member complained against guilty of any professional or other misconduct;

the oral and/or documentary evidence relied upon in support of the allegations made in the complaint.

Every complaint other than a complaint made by or on behalf of the Central or any State Government, shall be accompanied by a deposit of rupees fifty which shall be forfeited, if the Council, after considering the complaint, comes to the conclusion that no prima facie case is made out and, moreover, that the complaint is either frivolous or has been made with mala fide intention.

The Secretary shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars or which is not accompanied by the deposit of rupees fifty to the complainant for resubmission after compliance with such requirements and within such time as the Secretary may specify.

Ordinarily within sixty days of the receipt of a complaint under Section 21 the Secretary shall,-

if it is against an individual member send particulars of the acts of omissions alleged or a copy of the complaint, as the case may be, to such member at his address as entered in the Register;

if it is against a firm, send particulars of the acts or omissions or a copy of the complaint, as the case may be, to the firm concerned at the address of the head office of the firm as entered in the Register of offices and firms which a notice calling upon the firm of disclose the name(s) of the member(s) concerned and to send particulars of acts or omissions or a copy of the complaint, as the case may be to member(s).

Explanation-A notice shall be deemed to be a notice to all the members who are partner or employees of that firm.

A member who has been intimated of the complaint made against him under sub-regulation (6)(hereinafter referred to as the respondent) shall, within fourteen days of issue of such intimation or within such further time as the Secretary may allow, forward to the Secretary a written statement in his defence verified in the same manner as the complaint.

On a perusal of the complaint and written statement in any, the Secretary may call for such additional particulars or documents connected there with either from the complainant or the respondent, as he may consider necessary or as may be directed by the President, for perusal of the Council.

PROCEDURE IN ENQUIRY BEFORE THE DISCIPLINARY COMMITTEE

Applicable to the complaint or information pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to 17.11.2006.

It shall be the duty of the Secretary to place before the Disciplinary Committee all facts brought to his knowledge which are relevant for the purpose of any enquiry by the Disciplinary Committee.

The Disciplinary Committee shall have the power to regulate its procedure in such manner as it considers necessary and during the course of enquiry, may examine witnesses on oath and receive evidences on affidavits and any other oral or documentary evidence, exercising its powers as provided in Sub-section (8)of Section 21.

The Disciplinary Committee shall give the complainant and respondent a notice of the meeting at which the case shall be considered by the Committee.

Such complainant and respondent may be allowed to defend themselves before the Disciplinary Committee either in person or through a legal practitioner or any other member of the Institute.

Where, in the course of a disciplinary enquiry, a change occurs in the composition of the Disciplinary Committee, unless any of the parties to such enquiry makes a demand within fifteen days of receipt of a notice of a meeting of such Disciplinary Committee, that the enquiry be made de novo report of the Disciplinary Committee shall be called in question on the ground that any member of the Disciplinary Committee did not possess sufficient knowledge of the facts relating to such inquiry.

The Disciplinary Committee shall after investigation report the result of its enquiry to the Council for its consideration

PROCEDURE IN A HEARING BEFORE THE COUNCIL

The Council shall consider the report of the Disciplinary Committee and if in its opinion, a further enquiry is necessary, may cause such further enquiry to be made and a further report submitted by the Disciplinary Committee.

After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent is not guilty of any professional or other misconduct, it shall record its findings accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed as the case may be.

After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent has been guilty of a professional or other misconduct; it shall record its findings accordingly and shall proceed in the manner as laid down in the succeeding sub-regulations.

Where the finding is that the member of the Institute has been guilty of a professional or other misconduct, the Council shall afford to the member an opportunity of being heard before orders are passed against him in the case. The Council after hearing the respondent, if he appears in person or after considering the representations, if any, made by him, pass such orders as it may think fit, as provided under Subsection (4) of Section 21.

The orders passed by the Council shall be communicated to the complainant and the respondent.

ICSI (Guidelines for Advertisement by Company Secretaries), 2020

ICSI (Guidelines for Advertisement by Company Secretaries), 2020 became effective on and from 1st April, 2020 and shall be applicable to all advertisements by members of the Institute rendering any advisory, consultancy or representation services whether holding Certificate of Practice issued by the Council of the Institute or otherwise.

The following activities are permitted for a Company Secretary in Practice as means to advertise:

(i) Display the scope of work on his/her own website.
(ii) Creating a visual identity in compliance with the Guidelines for use of Individual Logo issued by the Council of ICSI
(iii) Display of Location and décor of the workplace, meeting rooms, etc.
(iv) Display of Firm name, Logo or any other identity on Uniform, Office/s, office stationary& equipments/ material and providing Training to Staff.
(v) Professional Updates and Write ups in any mode.
(vi) Appearing on local radio or television.
(vii) Giving speeches/lectures at any platform including Seminars, Conferences, training programmes, Workshops, Conventions, etc so organised by any forum.
(viii) Holding professional seminars, conferences and workshops.
(ix) Sponsoring any event (cultural, professional or otherwise) or helping with community programmes or doing voluntary work as a professional for charitable organizations.

(x) Use of social media like Facebook, Instagram, Linkedin, Twitter, Youtube, WeChat, Telegram and Whatsapp or and other media of similar nature.

ADVERTISEMENT RESTRICTIONS

The Advertisement shall:

(i) not be in violation of provisions of Company Secretaries Act, 1980;
(ii) not be false or misleading;
(iii) not claim superiority over any or all other Company Secretaries;
(iv) not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
(v) not contain fabricated or false testimonials or endorsements concerning the Company Secretary; (vi) not refer the Company Secretaries in the terms such as "specialists" or "experts"; Explanation: The advertisements shall not be self-laudatory and not include the words such as "best," "better" or "cheapest;"
(vi) not represent that the quality of the professional services to be performed is greater than the quality of professional services performed by other professionals. Statements comparing one professional's services to that of another are not allowed;
(vii) not constitute a guarantee, warranty, or prediction regarding the outcome of any professional assignment; (viii) in no way indicate that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of the desired outcome;
(ix) not contain any reference to past successes or results which indicates a guarantee, warranty or prediction of result of future professional assignments. eg. We made M/s. Xxx win the case, Meet the masters;
(x) not be designed for "pleasing customers," which might mislead or eventually harm customers or third parties;
(xi) not contain any humorous slogans. E.g. Save Rs. Xxxx Come to us, we will tell you how. The Company Secretary or a firm of Company Secretaries shall not list his/her service(s) on any aggregator website such as Sulekha, Olx, Urbanclap, JustDial, Quikr or any other aggregator of similar category

PROFESSIONAL LIABILITIES

Though a Company Secretary is entitled to enjoy some rights and powers as laid down in the Companies Act, yet his position is not free from liabilities. The Companies Act and other laws related to company management provide the framework of certain liabilities for the Company Secretary. Professional liabilities in context of Company Secretary means the Company Secretary shall be liable as the officer in default in context of the non-compliances with the provisions of statutes to which he/she is entrusted with. A Company Secretary may or may not be officer bearer as director, but they will often accounted for breach of duty in the same manner as Board of

Directors. The Companies Act, 2013 specifies certain duties to Board of Directors and Company Secretary.

Therefore, as an officer of the company, it is peculiar to work in interest of company and avoid situations leading to conflict of interest and always opt for independent judgment. The Company Secretary has many statutory and administrative responsibilities, including filing returns and ensuring compliance with the Companies Act.

Various sections in the Companies Act, 2013 provide that, where there is a failure of compliance, 'an offence is committed by every officer of the company who is in default'. If the Company Secretary is the person with main responsibility for the task, he will be the person in default and liable to the fine/penalty.

Statutory Liabilities

Statutory liabilities of the Company Secretary refer to those that the Company Secretary is legally bound to obey. The followings are some of the statutory liability of Company Secretaries: i) Maintenance of all records and documents of the company; ii) Arranging a statutory meetings of the company; iii) Issuing share certificates, dividend warrants, and bonus share certificates to the shareholders; iv) Preparation of minutes of various meetings and maintaining minute books, etc.

Contractual Liabilities

The Company Secretary has also to take care of his/her contractual liabilities. The Company Secretary has to enter into a service contracts with company or client. Therefore, the company secretary has some liabilities arising out of his service contract. Below mentioned are some of the contractual liabilities of the Company Secretary:
i) Liable for breaching or exceeding its authority;
ii) Liable for disclosing secret information of the company to outsiders;
iii) Liable for frauds etc.;
iv) Liable to abide by all terms and conditions of the service contract; v) Protect the interest of the company.

UDIN

UDIN is a 17 digit system generated number which is used to verify the authenticity of documents attested / certified by a Company Secretary in Practice. Quoting UDIN on certifications, w.r.t the professional services has been made mandatory w.e.f 1st October, 2019.

Illustration: A Certificate is signed on September 25, 2019. In such case, ideally the UDIN should be generated on September 25, 2019 but in exceptional cases, the UDIN may be generated 7 days in advance, i.e., any time during September 18, 2019 to September 25, 2019.

Thereby, providing a window of advance seven days for UDIN generation.

The UDIN Guidelines have been issued by the Institute of Company Secretaries of India ("ICSI") in order to-

Enable the stakeholders to verify the authenticity of various documents certified by Company Secretaries in Practice;
Prevent counterfeiting of various attestations / certifications;
Provide ease of maintaining the Register of Attestation /Certification services rendered by practicing members;
Ensure compliance of the Guidelines issued by the Institute w.r.t ceilings on the number of the various certification / attestation services that may be rendered by the practitioners; Auto-prefill details of Certification / Attestation services rendered by practicing members in of the form for renewal of Certificate of Practice.

Multidisciplinary Firm

According to Regulation 165A of the Company Secretaries Regulations, 1982 inserted by the Company Secretaries (Amendment) Regulations, 2020- A member in practice may form multidisciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of the Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

PART B

SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT

60 MARKS

CHAPTER -20 BOARD MEETINGS

BOARD MEETINGS [SECTIONS 173 TO 176]

Introduction

The affairs of a company are managed by the Board of Directors. It is, therefore, necessary that the directors should often meet to discuss various matters regarding the management and administration of the affairs of the company in the best interest of the shareholders and the public interest.

Essentials of a Valid Board Meeting

1. Proper constitution of the Board of Directors;
2. Due notice in accordance with the provisions of Section 173 of the Companies Act, 2013 must have been issued by an authorized person.
3. Presence of a properly elected or chosen person in the chair; and
4. Proper quorum must be present for due transaction of business.

Number of Board Meetings [Sec. 173(1) & (5)]

FIRST BOARD MEETING

The Act provides that the first Board Meeting of a company shall be held within thirty days of the date of incorporation.

SUBSEQUENT BOARD MEETING

In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.

It may be noted that the Central Government may, by notification, grant relaxation to any class or description of companies form the aforesaid provisions.

HOWEVER, IN CASE OF

1. One Person Company (OPC)
2. Small company
3. Dormant company
4. Start up company

At least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than ninety days. It may be noted that in the case of OPC, no Board Meeting is required to be held, if there is only one director on its Board.

Participation in Board Meetings [Sec. 173(2)

The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of

such meetings along with date and time

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

Matters not to be dealt with in a Meeting through Video-Conferencing or Other Audio-Visual Means

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

~~**Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014**, however, provides that the following matters shall not be dealt with in any meeting through video conferencing or other audio visual means :~~

~~1. The approval of the annual financial statements;~~
~~2. The approval of the Board's report;~~
~~3. The approval of the prospectus;~~
~~4. The Audit Committee Meetings for consideration of accounts; and~~
~~5. The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.~~

~~Provided that where there is quorum presence in a meeting through physical of directors, any other director may participate conferencing through video or other audio visual rneans~~

Notice of Board Meetings [Sec. 173(3) & (4)

The Act requires that **not less than seven days' notice** in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

In case the Board meeting is called at shorter notice, at least one independent director shall be present at the meeting. If he is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.

Every officer of the company, whose duty is to give notice and who fails to do so, shall be punishable with fine which may extend to Rs. 25,000/-

Quorum of Board Meetings [Section 174]

1) The quorum for a meeting of the Board of Directors of a company shall **be one-third** (any fraction contained in that one – third being rounded off as one) of its total strength or **two directors**, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
3) Where at any time the number of interested directors (as per Section 184) exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. IN CASE OF PRIVATE LIMITED COMPANIES: INTERESTED DIRECTOR MAY ALSO BE COUNTED TOWARDS QUORUM IN SUCH MEETING AFTER DISCLOSURE OF HIS INTEREST PURSUANT TO SECTION 184.
4) Where a meeting of the Board could not be held for want of quorum, **then, unless** the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

"Interested Director" means any director whose presence cannot be counted for the purpose of forming a quorum at a meeting of the board, at the time of discussion or vote on any matter, i.e. a contract or arrangement, in which he is in anyway, whether directly or indirectly concerned or interested. Thus, it follows that quorum at a board meeting must be a "disinterested quorum". In other words, it must consist of directors who are entitled to vote on the particular motion before the Board.

It may be noted that in case of Board Meetings, quorum is required throughout the meeting.

Resolution by Circulation [Section 175]

A resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, only if the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India

1. By hand delivery or
2. By post or by courier, or
3. Through such electronic means as may be prescribed

And has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

However, **where not less than one-third** of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

It may be noted that a resolution passed by circulation shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Validity of Acts of Directors [Section 176]

Acts done by a person, as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been noticed by the company to be invalid or to have terminated.

Appointment of Chairman

Most of the companies name, in their articles of association, the chairman of the meetings of the Board of directors. Certain other companies incorporate in their articles a provision corresponding to the provision of Regulation 70 of Table F of Schedule I to the Companies Act, 2013, which provides the following :-

1. The board may elect a chairperson of its meetings and determine the period for which he is to hold office.
2. If no such chairperson is elected or if at any meeting, the chairman is not present within 5 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Casting Vote of Chairman

Regulation 68 of Table F of Schedule I to the Companies Act, 2013 provides that in the case of an equality of votes, the Chairman of the Board shall have a second or casting vote.

Compliance with Secretarial Standards relating to Board Meeting

Section 118(10) of the Act reads as under:

Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.

Audit Committee [Section 177

The Board meetings are usually held once in three months. Generally, policy matters are discussed at the level of the Board. The Board does not have the benefit of in depth study of the affairs of the company, especially the financial matters. This has been rectified now to some extent by the constitution of Audit Committee.

Following are the important provisions pertaining to Audit Committee of Directors

The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement. 177(2)

The functions of the Audit Committee includes 177(4)

- the recommendation for appointment, remuneration and terms of appointment of auditors of the company

- review and monitor the auditor's independence and performance, and effectiveness of audit process
- examination of the financial statement and the auditors' report thereon
- approval or any subsequent modification of transactions of the company with related parties

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as prescribed under rule 6A of MBP Rules 2016.

Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

3. In addition to the auditor, the KMP shall also have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report, though they shall not have voting rights.

4. Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report genuine concerns or grievances (Rule 7)

a)	The companies which accept deposits from the public;
b)	The companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

5. The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee

6. In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

7. The Vigil Mechanism shall operate for directors and employees to enable them to bring to report genuine concerns. Further the said mechanism shall provide safeguards against victimization and provide for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

8. The details of establishment of the Vigil Mechanism is required to be disclosed by the company on its website, if any and in the Board's report.

Nomination and Remuneration Committee [Section 178(1) to (4)]

The Nomination and Remuneration Committee helps the Board of Directors in the preparations relating to the election of members of the Board of Directors, and in handling matters within its scope of responsibility that relate to the conditions of employment and remuneration of senior management, and to management's and personnel's remuneration and incentive schemes. The responsibilities of the Remuneration and Nomination Committee are defined in its policy document.

SPECIAL NOTE:

1. The companies shall consist of **three or more non-executive directors** out of which not less than one-half shall be independent directors. The chairperson of the company may be appointed as member, but shall not chair such committee.
2. The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance
3. The Committee shall formulate the criteria, for determining qualifications, positive attributes and independence of a director and recommend to the Board the **policy** relating to remuneration for directors, KMPs and other employees.

4. The Nomination and Remuneration Committee shall, while formulating the **policy** under sub-section (3) ensure that—

- the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully

- relationship of remuneration to performance is clear and meets appropriate performance benchmarks

- remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

Stakeholders Relationship Committee [Section 178(5) to (8)]

Section 178(5) of the Companies Act, 2013 provides for constitution of the Stakeholders Relationship Committee.

The company that has more than

1. One thousand shareholders,
2. Debenture-holders,
3. Deposit-holders
4. Any other security holders

At any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

The Chairperson of the Committee or, in his absence, any other member of the committee authorized by him in this behalf shall attend the general meetings of the company.

BOARD'S POWERS AND RESTRICTIONS THEREON [SECTIONS 179 TO 183]

General Powers of Board [Section 179(1) & (2)]

Subject to the provisions of the Companies Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. However, the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting **[Sec. 179(1)].**

However, in the following exceptional cases, the general body of shareholders is competent to act even in matters delegated to the Board, for the inherent residuary and ultimate powers of a company lie with the general body of shareholders:-

1. **Director acting mala fide:** The general body of shareholders can intervene when it is proved that the directors have acted for improper motive or arbitrarily or capriciously. [Satya Charan Lal v. Romeshwar Prasad Bajoria]

2. **Incompetent Board:** The general body of shareholders may exercise the powers vested in the Board when the Board is incompetent to act, for instance, where all the directors are interested in the transaction or the Board in unwilling to act, or when there are no validly appointed

directors functioning. Here, the shareholders in general meeting appointed a director in casual vacancy, as there was no validly appointed director. [Vishwanathan v. Tiffins B.A. and P. Ltd.]

3. **Deadlock in the Board:** If the directors are unable to act, on account of deadlock, the shareholders have the inherent power to act.

Here, the shareholders in general meeting appointed additional directors, as the two existing directors were not on talking terms. [Barron v. Potter]

The Board shall exercise any power subject to the regulations made by the company in general meeting. However, it may be noted that no regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made **[Sec. 179(2)].**

Certain Powers to be exercise by Board only at a Board Meeting [Sec. 179(3) & (4)]

Section 179(3) of the Companies Act, 2013 provides that the Board of directors of a company shall exercise the following powers on behalf of the company, and it shall to do so only by means of resolution passed at the meetings of the Board and not by circulation :-

a) To make calls on shareholders in respect of money unpaid on their shares
b) To authorize buy-back of securities under section 68
c) To issue securities, including debentures, whether in or outside India
d) To borrow monies
e) To invest the funds of the company
f) To grant loans or give guarantee or provide security in respect of loans
g) To approve financial statement and the Board's report
h) To diversify the business of the company
i) To approve amalgamation, merger or reconstruction
j) To take over a company or acquire a controlling or substantial stake in another company
k) Any other matter which may be prescribed.

The Board may, however, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (d), (e) and (f) to such an extent and on such conditions as the Board may prescribe.

It may be noted provisions of clauses (d), (e) & (f) are not applicable on a Banking Company.

Section 179(4) empowers the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (3).

Other Powers to be exercised at Board Meetings:

Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014

In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board:

1. To make political contributions
2. To appoint or remove key managerial personnel (KMP);
~~3. To take note of appointment(s) or removal(s) of one level below the Key Management Personnel~~
4. To appoint internal auditors and secretarial auditor
~~5. To take note of the disclosure of director's interest and shareholding~~
~~6. To buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company~~
~~7. To invite or accept or renew public deposits and related matters~~
~~8. To review or change the terms and conditions of public deposit~~
~~9. To approve quarterly, half yearly and annual financial statements or financial results as the case may be.~~

SECTIONS 179 AND 186 ARE NOT CONTRADICTORY

A HARMONIOUS APPLICATION OF THE TWO SECTIONS IS NEEDED

1. Section 179 is a "general" provision and provides, inter alia, that the Board may by resolution, exercise the power to invest funds or to make loans or give guarantees or provide security or where necessary, delegate the power to invest funds of the company and to make loans etc.
2. But this power has to be exercised subject to the specific requirement of Section 186. On the other hand, Section 186 contains "specific" provision as to how the Board shall carry out the power to make loan to anybody corporate, give guarantee or provide security or purchase the securities of anybody corporate and fix some limit for the Board.
3. Accordingly, for matters in respect of giving loan or security/guarantee to anybody corporate or making investment in securities of any other body corporate, the specific provisions of Section 186 have to be complied with by the Board and delegating these to other persons pursuant to Section 179 does not arise.
4. Making investments other than investment in securities of anybody corporate can be exercised by the Board or delegated under Section 179 which will not violate Section 186.

Restrictions on powers of Board [Section 180]

Section 180 shall not apply to private companies

1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a **special resolution**, namely:-

a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

For the purposes of this clause,

A. "Undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;
B. The expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

b) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation

c) To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves and **security premium,** apart from temporary loans obtained from the company's bankers in the ordinary course of business

Acceptance of deposits by banks not borrowing

The acceptance of deposits by a bank from the public in the ordinary course of business repayable on demand or otherwise or withdrawable by cheque or otherwise shall not be deemed to be borrowing by the banking company.

Meaning of temporary loan

The term "temporary loan" means loan repayable on demand or within six months from the date of the loan such as short-term cash credit arrangement, the discounting of bills, or short-term seasonal loans but does not include loan for the purpose of financial expenditure of capital nature.

d) To remit, or give time for the repayment of, any debt due from a director.

2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors

3) Nothing contained in clause (a) of sub-section (1) shall affect

a) The title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
b) The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

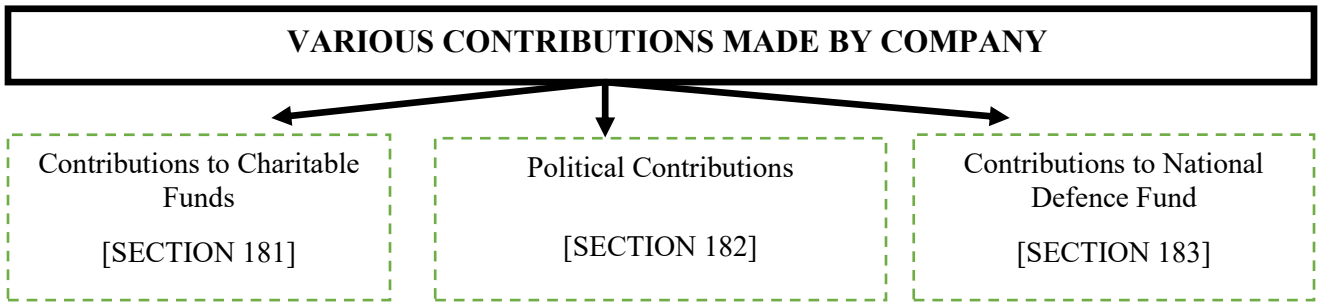
4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:
Provided that this sub-section shall not be deemed to authorize the company to effect any reduction in its capital except in accordance with the provisions contained in this Act

5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

CASE LAWS

CASE LAW

S.NO.	CASE NAME	PROVISONS
1	**International Cotton Corporation (P) Ltd. v. Bank of Maharashtra** **Meaning of disposal of undertaking as per Section 180(1)(a)**	The Court held the view that the property of a company, which is not connected with the essential part of the business activity of the company and parting which will not have the effect of affecting the business of the company, cannot be construed as either being the undertaking or a part of the undertaking within the meaning of Section 293(1)(a) in the previous Act. In view of the above decision, creation of a charge on some property of a company in favour of a lender will not attract Section 180(1)(a) of the Act if the said property is not connected with the essential part of the business of the company.



ANALYSIS OF 181 Vs 182 Vs 183

Heads	Charitable	Political	Defence
Section	181	182	183
Applicable	All Companies	All Companies	All Companies
Not allowed to	NA	1. To Government Companies 2. Companies incorporated less than 3 yrs	NA
Limit of Contribution	Upto 5% of average net profit of last 3 years	No Limit	No Limit
Approvals	Upto 5% = BR Above 5% = OR	BR	BR

LOAN TO DIRECTORS AND RPT

Disclosure of Interest, Loan to directors and Related Party Transactions

184. (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in FORM MBP-1

(2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be "liable to a penalty of one lakh rupees. **(COMPANIES AMENDMENT ACT 2020)**

(5) Nothing in this section

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

ANALYSIS ON SECTION 184

OBJECT OF DISCLOSURE OF INTEREST

The directors are in a position of trustees under common law and they have a fiduciary relation towards the company and its shareholders, so as to ascertain whether he is acting for his own benefit or in any way prejudice to the interest of the company.

REQUIREMENT FOR DISCLOSURE OF NATURE OF INTEREST WHETHER DIRECT OR INDIRECT

A director is said to be directly concerned or interested in a contract or arrangement, when he himself has personal interest in a particular contract or arrangement, whereas a director is said to be indirectly concerned or interested when any of his relatives and associates has got personal interest in the particular contract or arrangement.

REQUIREMENT FOR DISCLOSURE OF INTEREST IS APPLICABLE TO ALL COMPANIES

The section is applicable to all companies. The provisions section 184 of the Companies Act, 2013 are also applicable to directors nominated by the Government on the Board of any company. Therefore, all directors are required to give the notice of disclosure, in writing.

It is equally applicable to the alternate director including the directors appointed by the financial institutions and the Central Government.

METHOD OF DISCLOSURE BY A GENERAL NOTICE

Section 184(2) deals with the mode of disclosure.

A general notice given to the Board by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

CONTENTS OF NOTICE

1. He is a director of a specified body corporate(s).
2. He is a member of a specified body corporate(s).
3. He is a member of a specified firm. This also includes member of HUF, sole proprietary or charitable concern.
4. He has indirect interest as he is interested through his relatives in specified body corporate(s) or firm.

VALIDITY OF GENERAL NOTICE

Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further period of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire. [Section 184(1)]

GIVING OR READING OF GENERAL NOTICE AT BOARD MEETING.

Section 184 provides that no general notice as described under section 184, and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought upon and read at the first meeting of the Board after it is given.

FORM FOR DISCLOSURE

It should be made in the prescribed Form MBP-1

DUTY OF THE DIRECTOR TO SEE THAT HIS NOTICE OF INTEREST HAS BEEN DISCLOSED AT THE BOARD MEETING

Rule 9(2) provides that it shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

NOTICE OF DISCLOSURE NEEDS TO BE KEPT AT THE REGISTERED OFFICE AND ITS PRESERVATION

Section 184(3) read with Rule 9(3) which provides that all notices shall be kept at the registered office and such notices shall be preserved for a period of 8 years from the end of the financial year to which it relates and shall be kept in the custody of the secretary of the company or any other person authorized by the Board for the purpose.

REQUIREMENT OF DISCLOSURE IF A DIRECTOR BECOMES CONCERNED OR INTERESTED AFTER ENTERING INTO CONTRACT BY THE COMPANY

It has been provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

CONTRACTS WITHOUT DISCLOSURE OF INTEREST BY A DIRECTOR SHALL BE VOIDABLE AT THE OPTION OF THE COMPANY

Section 184(3) provides that a contract or arrangement entered into by the company without disclosure under section 184(2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

LOAN TO DIRECTORS, ETC. [SECTION 185]

THIS SECTION HAS BEEN SUBSTITUTED BY COMPANIES AMENDMENT ACT 2017

For section 185 of the principal Act, the following section shall be substituted, namely:

185 (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(b) any firm in which any such director or relative is a partner.

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—

(a) a special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or
security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

(a) any private company of which any such director is a director or member;
(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(3) Nothing contained in sub-sections (1) and (2) shall apply to—
(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or
(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

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

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

(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,-

(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees,

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and

the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both."

Section 185 applies to the loans, etc. given by a company 'directly or indirectly'

Section 185 applies to the loans, etc. given by a company 'directly or indirectly'. Indirect loan means that the company shall not give a loan through the agency of one or more intermediaries, the word 'indirectly' in the section cannot be read as converting what is not a loan into a loan. As such, a debt, which is not in the nature of loan cannot be said to be the case of an indirect loan. Fredie Ardeshir Mehta (Dr.) v Union of India.

Restrictions apply only at the time of entering into the transaction

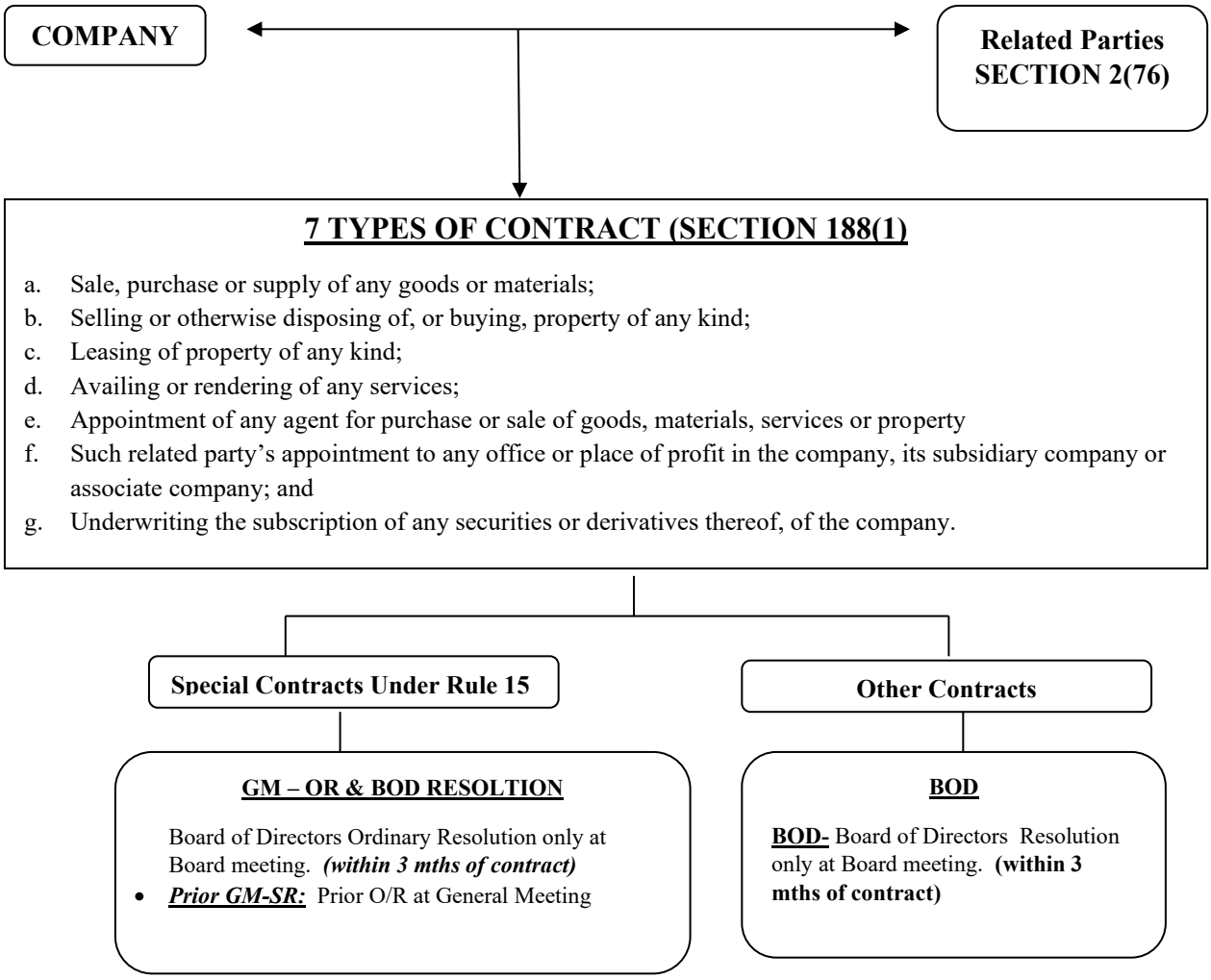
The section is applicable only at the time of granting the loan and any change in circumstances thereafter will not make the section applicable. Thus, section 185 will not be attracted in respect of a loan given to an employee, who does not fall within the ambit of specified persons as listed above, but who subsequently becomes a member of the Board, because at the time of the loan, no contravention was involved.

Non-applicability of the provisions of section 185 in certain cases

1. Any loan made to an employee of the company, who is not a relative of any director
2. Any loan or advance made to a trust in which directors are trustees
3. Any advance or deposit made in connection with leasing/hire-purchase transaction
4. Any advance payment of salary given to an employee who is a relative of a director as per the rules of the company; [M.R. Electronic Components Ltd. v Asst. Registrar of Companies]
5. Any investment made in acquiring residential accommodation for director(s) (whether by way of purchase or entering into a lease agreement)
6. House building loan given to a director subject to the guidelines issued for that purpose by the Central Government
7. Any loan made to a Registered Co-operative Society

RELATED PARTY TRANSACTIONS [SECTION 188]

CHART ANALYSIS ON SECTION 188



SECTION 188

1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a **related party** with respect to –

a) Sale, purchase or supply of any goods or materials;
b) Selling or otherwise disposing of, or buying, property of any kind;
c) Leasing of property of any kind;
d) Availing or rendering of any services;
e) Appointment of any agent for purchase or sale of goods, materials, services or property;
f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
g) Underwriting the subscription of any securities or a derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a ordinary resolution:

Provided further that no member of the company shall vote on such ordinary resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party. (This proviso is not applicable on private company)

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

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

SPECIAL NOTE: First and second proviso to subsection (1) of section 188

Shall not apply to - (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

The expression "office or place of profit" means any office or place

1.	Where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise
2.	Where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise

The expression "**arm's length transaction**" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a ordinay resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board **or, as the case may be, of shareholders** and if the contract or arrangement is with a related party to any director, or is authorised

by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.
5) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,

A. In case of listed company, liable to a penalty of twenty-five lakh rupees.
B. In case of any other company, "liable to a penalty of five lakh rupee. **(COMPANIES AMENDMENT ACT 2020)**

When prior approval of company by ordinary resolution required for related party transactions [Rule 15 of Companies (Meeting of Board and its Powers) Rules, 2014

S.NO.	TRANSACTION	WHEN ORDINARY RESOLUTION IS REQUIRED
1	Sale, purchase or supply of any goods or materials, directly or through appointment of agent,	Equal to or more than ten per cent. of the turnover of the company. ~~100 CRORE LIMIT~~
2	Selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent,	Equal to or more than ten per cent. of net worth of the company. ~~100 CRORE LIMIT~~
3	Leasing of property of any kind	Equal to or more than ten per cent. of turnover of the company ~~100 CRORE LIMIT~~
4	Availing or rendering of any services, directly or through appointment of agent,	Equal to or more than ten per cent. of the turnover of the company ~~100 CRORE LIMIT~~
5	Is for appointment to any office or place of profit in the company, its subsidiary company or associate company	At a monthly remuneration exceeding two and half lakh rupees
6	Is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company	Exceeding one per cent. of the net worth

Explanation.

The Turnover or Net Worth referred in the above sub-rules shall be computed on the basis of the Audited Financial Statement of the preceding Financial year.

The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely

(a) name of the related party
(b) name of the director or key managerial personnel who is related, if any

(c) nature of relationship
(d) nature, material terms, monetary value and particulars of the contract or arrangement
(e) any other information relevant or important for the members to take a decision on the proposed resolution

Meaning of 'Related Party: Section 2(76)	**Meaning of 'Relative: Section 2(77)**
i. A director or his **relative**; ii. A key managerial personnel or his relative; iii. A firm, in which a director, manager or his relative in a partner; iv. A private company in which a director or manager **or his relative** is a member or director; v. A public company in which a director or manager is a director ***and*** holds along with his relatives, more than two per cent. of its paid-up share capital; vi. Anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; vii. Any person on whose advice, directions or instructions a director or manager is accustomed to act: **Provided** that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity viii. any body corporate which is (*A*) a holding, subsidiary or an associate company of such company; (*B*) a subsidiary of a holding company to which it is also a subsidiary; or (*C*) an investing company or the venturer of the company;"; *Explanation.*—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate ix. such other person as may be prescribed. It may be noted that **for the purpose of sub-clause (ix) of clause (76) of Section 2,** a director **(other than an**	As per this, a person shall be deemed to a relative of another if, and only if 1. They are the members of a HUF 2. They are husband and wife; or 3. The one is related to the other in the manner indicated in **Rule 4 of Companies (Specification of definitions details) Rules, 2014.** As per aforesaid **Rule 4**, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely 1. Father (includes step-father); 2. Mother (includes step-mother) 3. Son (includes step-son) 4. Son's wife 5. Daughter 6. Daughter's husband 7. Brother (includes step-brother) 8. Sister (includes step-sister)

independent director) or key managerial person of the holding company or his relative with reference to a company, shall be deemed to be a related party. **[Rule 3]**	

Does section 188 apply to corporate restructuring decisions?

It is clarified vide General Circular no. 30/2014 dated 17th July, 2014 that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

New Rule 6A inserted vide Notification No. 14.12.2015

Companies (Meetings of Board and its Powers) Second Amendment Rules, 2015

All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions,

The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely

• Maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
• The maximum value per transaction which can be allowed;
• Extent and manner of disclosures to be made to the Audit the time of seeking omnibus approval
• Review, at such intervals as the Audit Committee may deem fit, related Party Transaction entered into by the company pursuant to each of the omnibus approval made;
• Transactions which cannot be subject to the omnibus approval by the Audit Committee.

The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely:

- Repetitiveness of the transactions (in past or in future);
- Justification for the need of omnibus approval.

The Audit Committee shall satisfies itself on the need for omnibus Approval for transaction of repetitive nature and that such approval is in the interest of the Company

The omnibus approval shall contain the following:

o Name of the related parties
o Nature and duration of the transaction
o Maximum amount of transaction that can be entered into

o The indicative base price or current contracted price and the formula for variation in the price, if any
o Any other information relevant or important for the Audit Committee to take a decision on the proposed transaction

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their value not exceeding **rupees one crore per transaction**

Omnibus approval shall be valid for a period not exceeding one financial year and shall require fresh approval after the expiry of such financial year.

Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the Company.
Any other conditions as the Audit Committee may deem fit.

Register of Contracts or Arrangements in which Directors are Interested [Section 189]

Every company, whether private or public, shall keep a Register and enter therein particulars of all contracts or arrangements to which section 189 applies as under

a) The date of the contract/arrangement
b) The name of the parties with whom the contract entered into
c) The principal terms and conditions thereof
d) The date on which the contracts were placed before the Board
e) The names of directors voting in favour or against the contract or arrangement and name of those remaining neutral

However, particulars of following contracts or arrangements need not be entered in the Register of contracts in which directors are interested

a. Any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value does not exceed 5,00,000 in the aggregate in any year
b. Any contract or arrangement by a banking company for the collection of bills in the ordinary course of its business or to any transaction referred to therein
c. Any transaction by a banking or insurance company in the ordinary course of business of such company with any director, relative, firm, partner of the firm referred to in section 188(c) of the Act

SPECIAL NOTE:

1. Every company is required to keep one or more registers in **Form MBP 4** giving separately the particulars of all contracts or arrangements to which Section 184 or Section 188 applies. Rule 16(1) of the Companies (Meetings of Board and its Powers) Rules, 2014
2. Such register is required to be placed before the next meeting of the Board, whenever a new entry is made in this Register, and shall be signed by all the directors present at the meeting.
3. Every director **within thirty days** of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.

4.	The register be kept at the registered office of the company and also open for inspection during business hours. The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page.
5.	Every director who fails to comply is liable to a penalty of twenty-five thousand rupees.

PROCEDURE FOR ENTERING INTO A RELATED PARTY TRANSACTION

1. A notice of Board meeting as per section 173 with additional requirement of Section 188(1). The notice of the meeting shall disclose the following agenda
   - Name of related party and nature of relationship;
   - Nature, duration and particular of the contract or arrangement;
   - Material terms of the contract or arrangement including value;
   - Any advance paid or received, if any;
   - Any other relevant information
2. Information that any directors who are interested in the related party transactions shall not be present at the meeting during the discussion
3. Where any transaction/paid up capital is under the threshold limits, the board shall pass a board resolution to approve the related party transaction
4. Where any transaction/paid up capital is above the following threshold limits, the board shall issue a notice for convening a general meeting as per Section 101 and 102 of the Act
5. All related party transaction to be discussed in the general meeting shall be passed as ordinary resolution

Contract of employment with managing or whole-time directions SECTION 190

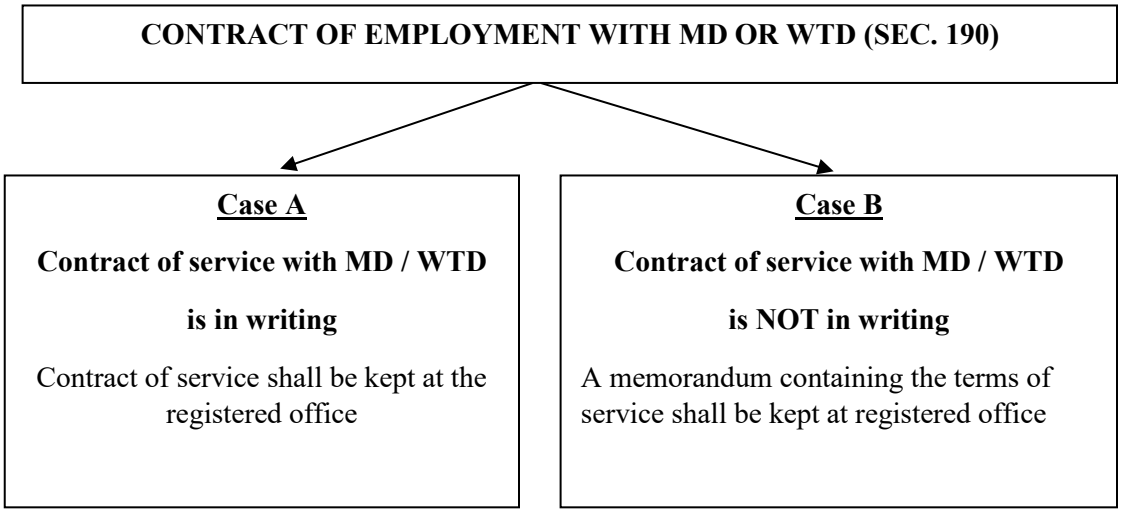
(*1*) Every company shall keep at its registered office

(*a*) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or (*b*) where such a contract is not in writing, a written memorandum setting out its terms.

(*2*) The copies of the contract or the memorandum kept under sub-section (*1*) shall be open to inspection by any member of the company without payment of fee.

(*3*) If any default is made in complying with the provisions of sub-section (*1*) or sub-section (*2*), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

(4) The provisions of this section shall not apply to a private company



Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares SECTION 191

(*1*) No director of a company shall, in connection with
(*a*) the transfer of the whole or any part of any undertaking or property of the company; or
(*b*) the transfer to any person of all or any of the shares in a company being a transfer resulting from—
(*i*) an offer made to the general body of shareholders;
(*ii*) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;

(*iii*) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or

(*iv*) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(*2*) Nothing in sub-section (*1*) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.

(*3*) If the payment under sub-section (*1*) or sub-section (*2*) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.

(*4*) Where a director of a company receives payment of any amount in contravention of sub-section (*1*) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.

(*5*) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(*6*) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

Restriction on non-cash transactions involving directors SECTION 192

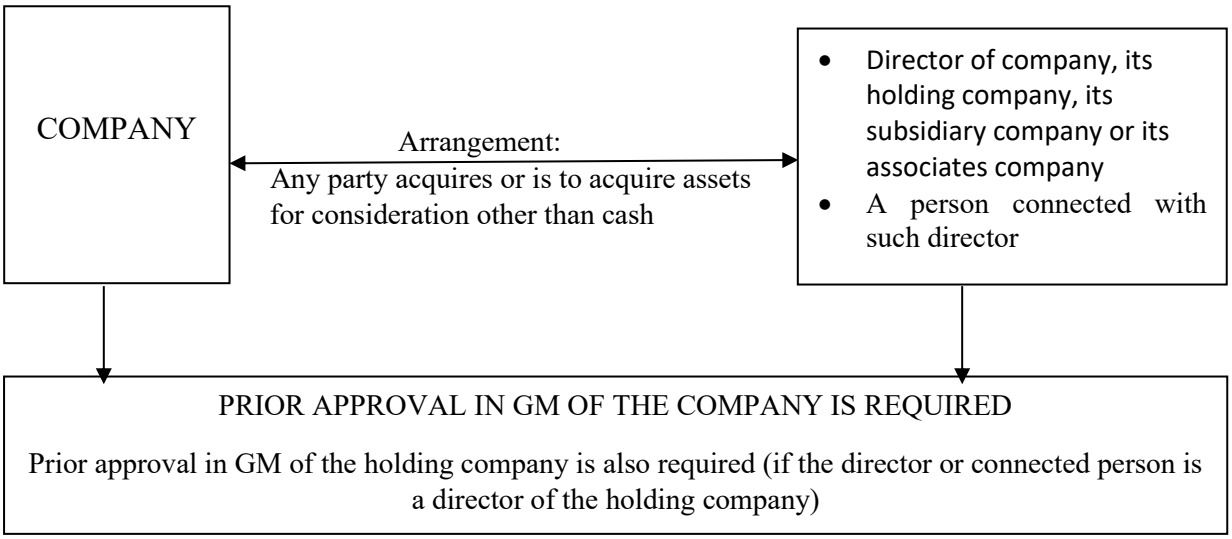
(*1*) No company shall enter into an arrangement by which—
(*a*) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
(*b*) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected,

unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(*2*) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (*1*) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(*3*) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—
(*a*) the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
(*b*) any rights are acquired *bona fide* for value and without notice of the contravention of the provisions of this section by any other person.

RESTRICTION ON NON-CASH TRANSACTIONS INVOLVING DIRECTORS (SEC. 192)



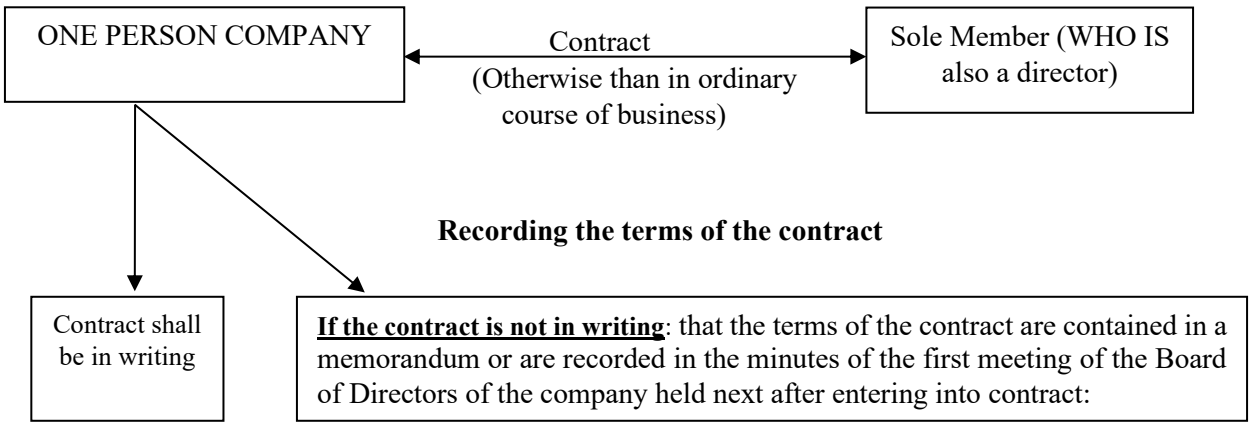
Contract by One Person Company SECTION 193

(*1*) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract:

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.

(*2*) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (*1*) within a period of fifteen days of the date of approval by the Board of Directors.

CONTRACTS BY ONE PERSON COMPANY (SEC. 193)



CHAPTER-21 KMP APPOINTMENT AND REMUNERATION

APPOINTMENT & REMUNERATION OF KEY MANAGERIAL PERSONNEL

Introduction

While the Board of Directors are responsible for providing the oversight, it is the key managerial personnel who are responsible for not just laying down the strategies as well as its implementation.

THIS CHAPTER DEALS WITH KEY MANAGERIAL PERSONNEL

APPOINTMENT OF KEY MANAGERIAL PERSONNEL	REMUNERATION OF KEY MANAGERIAL PERSONNEL
Section which deals with appointment	**Section which deals with remuneration**
Section 203 Section 196 Schedule-V (amended)	Section 197 Section 198 Schedule-V

Definition of Key Managerial Personnel (KMP) SECTION 2(51)

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per **Section 2(51) "key managerial personnel"**, in relation to a company, means

1. The Chief Executive Officer or the managing director or the manager
2. The Company secretary
3. The whole-time director
4. The Chief Financial Officer
5. such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
6. such other officer as may be prescribed

Definition & Meaning of Managing Director SECTION 2(54)

Managing Director' MEANS A DIRECTOR WHO IS ENTRUSTED WITH SUBSTANTIAL POWER OF MANAGEMENT.

The substantial powers of management can be entrusted to a managing director of a company in any of the following four ways (i.e. there are four modes of appointment of managing director)

1. By way of an agreement with the company;
2. By board resolution;
3. By general meeting resolution; and
4. By articles of association.

The administrative acts of a routine nature such as affixing common seal (if any), draw and endorse any cheque or negotiable instrument, signing share certificates, etc. are excluded from the sphere of substantial powers to be exercised by the managing director.

Further, the expression Managing Director shall also include a director occupying the position of a managing director, by whatever name called.

1. President,
2. Chief Executive Officer,
3. Chief Operating Officer, etc.

In the case of multinational companies shall be considered as the managing director for the purpose of Companies Act, although they are not designated as such.

SPECIAL POINTS

1. As per above definition, a person has to be a director before he can be appointed managing director. Therefore, if a company wants to appoint a person as managing director who is not a director of the company, he has first to be appointed as an additional director in accordance with the provisions of Section 161 of the Act.
2. Managing Director is vested with substantial powers of management, but he need not necessarily have the whole or substantially the whole of the affairs of a company under his management. A company may, therefore, have more than one managing director.

Definition & Meaning of Whole-time Director SECTION 2(94)

1. whole-time director" includes a director in the whole-time employment of a company.
2. This means that any person, who is a part-time director of the company as well as in the full-time employment of the company in some other capacity, shall be considered as a whole-time director.
3. They cannot accept the office of whole – time director in any other company.
4. They may, however, accept ordinary directorships with the limits prescribed by Section 165 of the Companies Act, 2013.
5. They are designated by various names viz., Executive Director, Technical Director, Financial Director, Whole – time Director, etc.
6. It may further be noted that a person has to be a director before he can be appointed whole – time director. Therefore, if a Company wants to appoint a person as whole – time director who is not a director of the company, he has first to be appointed as additional director u/s 161.

Definition & Meaning of Manager SECTION 2(53)

1. Manager" means an individual who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole or substantially the whole of the affairs of a company,
2. It includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.
3. It may be noted that the manager of a company need not be a director of that company.
4. He may be a director as well as the manager or simply the manager of a company.
5. Since a manager has the management of the whole of the affairs of a company, a company can have only one manager at a time.

6. It may be noted that, as per the provisions of Section 196, a company shall not have both Managing Director and Manager at the same time.

DISTINGUISH BETWEEN MANAGING DIRECTOR AND WHOLE TIME DIRECTOR

Managing Director	**Whole time director**
A managing director is entrusted with substantial powers of management which are not otherwise exercisable by a director	A whole time director means director in whole time employment of the company.
Managing director is not considered as whole time employee of company	Whole time director is considered in whole time employment of the company

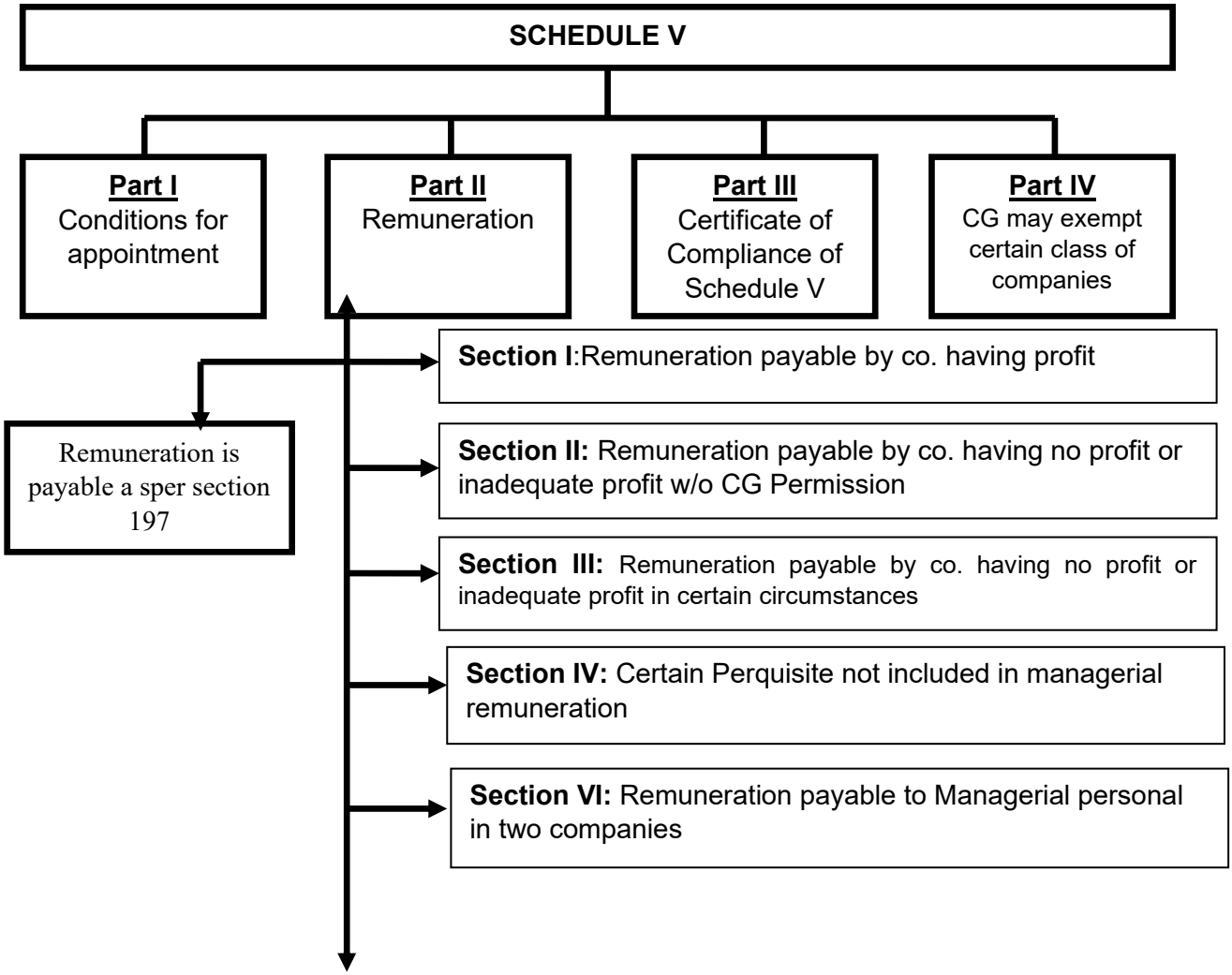
DISTINCTION BETWEEN MANAGING DIRECTOR AND MANAGER

Managing director - Section 2(54)	**Manager - Section 2(53)**
Managing director must be director	Manager need not be a director
Managing director exercises substantial power of management	Manager has the management of the whole or substantially the whole of the affairs of a company.
A managing director, on his ceasing to be a director, shall automatically cease to be the managing director as well.	A managing director can continue as a manager even though he crease to be a director.

Analysis of MD / WTD / Manager

Section	**Applicability & Understanding**
149(1)	1. MD/WTD is counted in min statutory limit of Pub-3, Pvt-2, OPC-1. 2. A woman can be appointed as MD/WTD/Manager
150	MD/WTD can be appointed from the Databank of ID.
151	Small shareholder director cannot be MD/WTD/Manager.
152(2)	MD/WTD can be appointed at GM.
152(6) & (7)	The MD/WTD be counted in total number of directors as per sec 152(6) & (7) for counting Rotational & Non Rotational directors.

SCHEDULE-V OF COMPANIES ACT 2013 DIVIDED INTO FOUR PARTS



Appointment of Key Managerial Personnel Section 203 (1)

Section 203 of the Companies Act, 2013 read with Rule 8 mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid- up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

1. Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;
2. Company Secretary; and
3. Chief Financial Officer

Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

RULE 8. APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel

RULE 8A APPOINTMENT OF COMPANY SECRETARIES IN COMPANIES NOT COVERED UNDER RULE 8.

A company other than a company covered under rule 8 which has a paid up share capital of 10 crore rupees or more shall have a whole-time company secretary.

RESTRICTIONS REGARDING APPOINTMENT OF KEY MANAGERIAL PERSONNEL

SECTION 203 PROVISO 1 OF COMPANIES ACT 2103

The same person should not act as both Chairman and Managing Director or Chief Executive Officer of the Company.

EXCEPTIONS

a. The articles of the company contain provision for appointment of same person, or
b. The company carries only a single business, or
c. The public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and has appointed one or more Chief Executive Officers for each such business

APPOINTMENT OF KMP BY BOARD RESOLUTION SECTION 203 (2)

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Whole time KMP not to hold office in more than one company SECTION 203 (3)

It has been provided under the Act that a whole-time key managerial personnel shall not hold office in more than one company at the same time,

EXCEPT:

1. In the company's subsidiary company,
2. As a director in any other company with the permission of the Board
3. As a MD, if he is the managing director or manager of one and of not more than one other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

Further, it has also been provided that a whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within

a period of 6 months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.

VACANCY IN OFFICE OF KMP **SECTION 203 (4)**

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

PENALTY **SECTION 203 (5)**

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees. (Companies Amendment Ordinance 2018)

Special note: All the provisions of Section 203, barring the penal provision contained in sub-section (5), like KMP not to hold office in more than one company at the same time, appointment of KMP to be made by a Board Resolution etc. will not apply to a managing director or chief Executive Officer or Manager and in their absence, a whole-time director of the GOVERNMENT COMPANY. These provisions will continue to apply to CFO and CS of GOVERNMENT COMPANIES, being KMP.

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER

1. **The appointment may be made with the approval of CG** (If appointment requires permission of Central Government, application is made in Form No. MR.2, within 90 days of appointment.

2. **The appointment may be made without CG approval, provided such appointment is accordance with Schedule V.** (*If appointment is made in accordance with Schedule V, a company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, ~~Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)~~ within 60 days of the appointment, with the Registrar in Form No. MR.1 - Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)*

Company to Fix Limit with Regard to Remuneration **SECTION 200**

A company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration,

THE COMPANY SHALL HAVE REGARD TO

a) the financial position of the company;
b) the remuneration or commission drawn by the individual concerned in any other capacity
c) the remuneration or commission drawn by him from any other company;
d) professional qualifications and experience of the individual concerned
e) such other matters as may be prescribed.

Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018.

PARAMETERS FOR CONSIDERATION OF REMUNERATION RULE 6

The company shall have regard to the following matters, namely:-

- The Financial and operating performance of the company during the three preceding financial years.
- The relationship between remuneration and performance.
- The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
- Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
- The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year

STEPS FOR APPOINTMENT OF MD

STEPS FOR APPOINTMENT OF MD		
S.No.	**Appointment of MD by complying Schedule V**	**Appointment of MD without complying of Schedule V**
1.	Convene a Board Meeting to appoint to appoint MD of the Company	Convene a board Meeting to appoint MD of the Company
2.	File e-form MR-1 (Return of Appointment) within 60 days of the date of appointment in the board meeting with regard to the appointment of whole-time Director.	Make Application is made in Form No. MR.2, within 90 days of appointment FOR CG approval.
2	fix date, time and place of the General Meeting in order to take the approval of the of the shareholders	fix date, time and place of the General Meeting in order to take the approval of the shareholders
4.	Obtain shareholders approval	Obtain shareholders approval

Section 196 of Companies Act, 2013

1) No company shall appoint or employ at the same time a managing director and a manager.
2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding **five years** at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

Disqualification employment of any person as managing director, whole-time director or manager Section 196 (3)

No person can be appointed as a as managing director, whole-time director or manager who

a) is below the age of twenty-one years or has attained the age of seventy years:
Provided *that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;*
Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made
b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

Appointment must be made at a meeting of the Board subject to the provision of the Articles and further approval of members

Section 196(4) provides that subject to the provisions of section 197 and part-1 of Schedule V of the Companies Act, 2013, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule.

APPOINTMENT WITH THE APPROVAL OF CENTRAL GOVERNMENT

In case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director (Whole-time director or manager) shall be made to the Central Government, **in e-Form No. MR 2.**

Filing of Form MR-1 within 60 days to the Registrar

Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that a company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, ~~Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)~~ within 60 days from the date of appointment, with the Registrar in Form MR-1 along with such fee as specified in the Companies (Registration Offices and Fees) Rules, 2014. **(NOW FILING OF FORM MR-1 IS NOT REQUIRED FOR APPOINTMENT OF CS, CEO AND CFO)**

Validity of the act done by the appointee Section 196(5)

If the appointment has not been approved by the members Section 196(5) provides that subject to the provisions of the Companies Act, 2013 where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid

Appointment may be made without CG approval, but in accordance with Schedule V

CONDITIONS TO BE SATISFIED IN SCHEDULE V

PART I OF SCHEDULE V TO THE COMPANIES ACT, 2013

Apart from this, Part I of Schedule V contains certain conditions, which must be satisfied by a person to be eligible for appointment as managing director/whole-time director/manager **without the approval of the Central Government.**

a. He had not been sentenced to imprisonment for any period, or to a fine exceeding Rs. 1,000, for the conviction of an offence under any of the following Acts, namely, Indian Stamp Act; Central Excises Act; IDRA; Prevention of Food Adulteration Act; Essential Commodities Act; Companies Act 2013; SCRA; Wealth-tax Act; Income-tax Act; Customs Act; Competition Act; FEMA; SICA; SEBI Act; FT (D & R) Act; and Prevention of Money Laundering Act, 2002, the Insolvency and Bankruptcy Code, 2016, the Goods and Services Tax Act, 2017, the Fugitive Economic Offenders Act, 2018

   Provided that where the Central Government has given its approval to the appointment of a person convicted, no further approval of the Central Government shall be necessary for the subsequent appointment of that person, if he had not been so convicted subsequent to such approval;

b. He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities, 1974

   Provided that where the Central Government has given its approval to the appointment of a person detained, no further approval of the Central Government shall be necessary for the subsequent appointment of that person, if he had not been so detained subsequent to such approval;

c. He has completed age of **21 years** but has not attained the age of 70 years.

   However, a person who has attained the age of 70 years can be appointed as a managerial person without the approval of the Central Government; provided his appointment is approved by a special resolution passed by the company in general meeting;

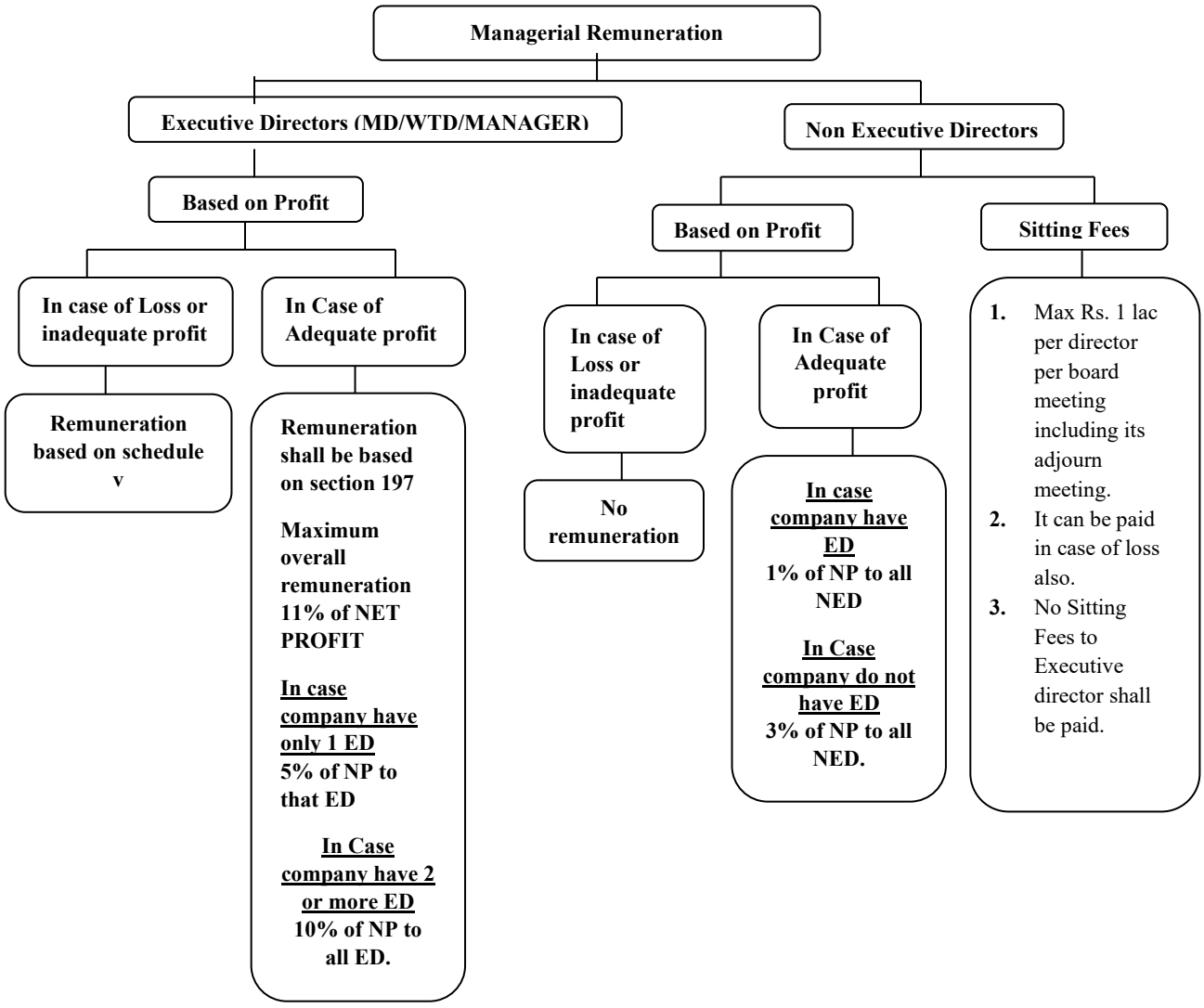
~~d. Where he is a managerial person in more than one company, he draws remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any of the companies of which he is a managerial person;~~

~~e.~~ He is resident of India. Here, resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India –

• for taking up employment in India; or
• for carrying on a business or vacation in India.

It may be noted that this condition shall not apply to the companies in **Special Economic Zones**.

MANAGERIAL REMUNERATION



MANAGERIAL REMUNERATION

The remuneration that a public company can pay to its managerial personnel falls under two categories, as follows, without approval of Central Government

a. **When the company makes profits**

The provisions in Section 197 and Section I of Part II of Schedule V deal with the remuneration payable by a company making profits. Section 197 does not apply on government companies

b. When the company makes no profits or its profits are inadequate

Sections II and III of Part II of Schedule V deal with several models of remuneration packages in different companies which make no profits or their profits are inadequate.

197. (*1*) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, ~~with the approval of the Central Government~~, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting, by special resolution—
(*i*) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
(*ii*) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(*A*) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;

(*B*) three per cent. of the net profits in any other case.

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

197(*2*) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (*5*).

197(*3*) Notwithstanding anything contained in sub-sections (*1*) and (*2*), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors

under sub-section (*5*) hereunder except **in accordance with the provisions of Schedule V** ~~and if it is not able to comply with such provisions, with the previous approval of the Central Government.~~

197(*4*) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—
(*a*) the services rendered are of a professional nature; and
(*b*) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (*1*) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

197(*5*) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

197(*6*) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

~~197(*7*) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (*5*), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.~~

197(*8*) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

197(*9*) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";

197(*10*) The company shall not waive the recovery of any sum refundable to it under sub-section (*9*) unless approved by the company by special resolution within two years from the date the sum becomes refundable

Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";

197(*11*) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule ~~and if such conditions are not being complied, the approval of the Central Government had been obtained.~~

197(*12*) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

197(*13*) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel: Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration

(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.(Companies Amendment Ordinance 2018)

(*16*) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed.

(*17*) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.

SECTION II OF PART II of SCHEDULE V

Remuneration payable by companies having no profits or inadequate profits pursuant to Section 197(3)

Remuneration payable by companies having no profit or inadequate profit

MGT 7a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person or other director not exceeding the limits under (A) and (B) given below:-

TYPE A

Where the effective capital (coloumn 1)	Limit of yearly remuneration payable shall not exceed (in Rupess) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in Rupess) in case of a other director
Negative or Less than Rs. 5 crore	Rs. 60 Lakhs	Rs. 12 Lakhs
Rs. 5 crores or more but less than Rs. 100 crores	Rs. 84 Lakhs	Rs. 17 Lakhs
Rs. 100 crores or more but less than Rs. 250 crores	Rs. 120 Lakhs	Rs. 60 Lakhs
Rs. 250 crores or more but	Rs. 120 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores	Rs. 120 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Provided that the remuneration in excess of above Iimits may be paid if the resolution passed by the shareholders is a special resolution.

Explanation.- It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

TYPE B

In case of a managerial person or other director who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person or other director is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company;

NOTE: OTHER DIRECTOR SHALL MEAN A NON-EXECUTIVE DIRECTOR OR AN INDEPENDENT DIRECTOR

Provided further that the limits specified under items (A) and (B) of this section shall apply, if-

1. Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of suction 178 also by the Nomination and Remuneration Committee;
2. The company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.
3. An ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.

Explanation : For the purposes of Section II of this part, "Statutory Structure" means any entity which is entitled to hold shares in any company formed under any statute. "

Section IV – Perquisites not included in Managerial Remuneration

Para 1

A managerial person shall also be eligible to the following perquisites, which shall not be included in the computation of the ceiling on remuneration specified in Section II above :-

a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income – Tax Act, 1961;
b) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
c) Encashment of leave at the end of the tenure.

Para 2

In addition to perquisites specified in para 1 above, an expatriate managerial person (including an NRI) shall be eligible to the following perquisites, which shall not be included in the computation of the ceiling on remuneration specified in Section II above:-

a) **Children education allowance:** In the case of children studying in India or outside India, an allowance limited to a maximum of Rs. 12,000/- per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
b) **Holiday passage for children studying outside India/family staying abroad :** Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India, if they are not residing in India with the managerial person.
c) **Leave travel concession:** Return passage for self and family in accordance with the rules specified by the company, where it is proposed that the leave be spent in home country instead of anywhere in India.

Here, '**family'** means the spouse, dependent children and dependent parents of the managerial person.

SECTION V OF PART II

Remuneration payable to a managerial person in two companies Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III OF SCHEDULE V

Provisions applicable to Parts I and II of this Schedule 1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

The Auditor or the Secretary of the company or where the company is not required to appoint a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196—Refer to Form MR-1

PART IV OF SCHEDULE V

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

Following points may be noted in regard to Section II of Part II of Schedule V:-

1. **'Remuneration'** means remuneration as defined in Section 2(78) and includes reimbursement of any direct taxes to the managerial person.

Section 2(78) provides that 'remuneration' means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.

2. For meaning of and working out the effective capital ----

Firstly, the aggregate of the following amounts should be found out ----

- Paid-up share capital (excluding share application money or advances against shares);
- Share Premium Account;
- Reserves and Surplus (excluding revaluation reserves);
- Long – term loans; and
- Deposits repayable after one year (excluding working capital loan, overdraft, etc.)

Then from the aggregate of the above, the aggregate of the following amounts shall be deducted:

- Investments (other than investments of an 'Investment Company');
- Accumulated losses, if any; and
- Preliminary expenses not written off, if any.

The 'effective capital' shall be calculated on the basis of the last audited Balance Sheet available for the financial year, preceding the financial year in which the appointment is made. Where,

however, the appointment is made in the year of incorporation of the company, the effective capital shall be calculated as on the date of appointment.

3. 'Negative Effective Capital' means the effective capital, which is calculated in the above manner and is less than zero.

4. 'Current Relevant Profit' means the profit as calculated under Section 198 without deducting the excess of expenditure over income referred to in Section 198(4)(1) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.

Rule 4 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

It may be noted that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors. It means that sitting fees for these directors may be higher than the sitting fees of other directors.

Procedural Aspects [Section 201]

The application to the Central Government, under Section 196 and/or 197, shall be made, within 90 days from the date of appointment of Director/MD/WTD/Manager, in **Form No. MR. 2** along with the fees prescribed under Companies (Registration Offices and Fees) Rules, 2014.

Before any application is made to the Central Government, a general notice shall be given to the members, indicating the nature of the application proposed to be made, by way of two newspaper advertisements, once in an English language newspaper and another in the principal language newspaper of the district in which the registered office of the company is situated.

PROCEDURES UNDER COMPANY LAW

Procedure to appoint Key Managerial Personnel

1. Hold the Board meeting in consideration with appointment of key managerial personnel and pass the Board resolution containing the terms and conditions of the appointment.
2. A whole time Key Managerial Personnel shall not hold office in more than one company except in its subsidiary at the same time
3. A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.
4. On vacation of the office of a whole time Key Managerial Personnel, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months.
5. File with the Registrar the Form MGT-14 and a return of appointment of a managing director, whole time director or manager in Form MR-1.
6. File DIR-12 along with the fee prescribed in Companies (Registration of Offices and Fees) Rules, 2014.

COMPENSATION FOR LOSS OF OFFICE SEC. 202

HEADING	PROVISONS
Compensation for loss of office	Section 202 states that no compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement, shall be paid by a company to any director other than Managing Director, Whole-time Director and Manager.
Prohibition of compensation in certain cases	**Prohibition of compensation in certain cases** 1. Where the director resigns his office on reconstruction or amalgamation of the company and is appointed as the managing director, manager or other officer of the reconstructed company or the body corporate resulting from the amalgamation 2. Where the director resigns his office other than on reconstruction of the company or its amalgamation thereof 3. Where the office is vacated under Section 167 4. Where the winding up of the company takes place due to his negligence or mismanagement 5. Where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the affairs of the company, or any subsidiary or holding thereof 6. Where the directors has instigated or has taken part in bringing about the termination of his office.
Amount of compensation	**PERMISSIBLE PERIOD:** Lower of The unexpired tenure *or* 3 years. **BASIS:** Average remuneration' shall be based on remuneration actually earned during –Immediately preceding 3 years; **OR** Such lesser period for which director was in office

Contract of Employment with Managing Director or Whole-time Director [Section 190]

Every company, which is not a private company, is required to keep the copy of contract if in writing with a managing director or whole-time director for contract of service or a written memorandum setting its terms, if not in writing.

The abovementioned copies required to be kept open to inspection for any member of the company free of cost.

The default in complying with the provisions of this section, the company is liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default liable to a penalty of five thousand rupees for each default.

Payment to Director for Loss of Office, etc. in connection with Transfer of Undertaking, Property or Shares [Section 191]

No director of a company shall receive any payment by way of compensation in case of transfer of the whole or any part of any undertaking or property of the company or the transfer to any person of all or any of the shares in a company; unless the certain prescribed particulars are disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount.

Any payment made by the company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as a consideration for retirement from office on in connection with such loss or retirement subject to the limit as set out under **section 202**.

No payment shall be made to the managing director or whole time director or manager of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if

a)	The company is in default in repayment of public deposits or payment of interest thereon;
b)	The company is in default in redemption of debentures or payment of interest thereon;
c)	The company is in default in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;
d)	The company is in default in payment of any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called;
e)	There are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company (other than in cases where the company has disputed the liability to pay such dues); and
f)	The company has not paid dividend on preference shares or not redeemed preference shares on due date.

If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.

CHAPTER- 22 ACCOUNTS OF COMPANIES

TOTAL SECTIONS: 128 TO 138
RULES USED: COMPANIES ACCOUNTS RULES 2014

The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more.

But they have every right to know as to how their money has been dealt with by the directors in a particular period. This is why perhaps compulsory disclosure through annual information to the shareholders by the directors about the working and financial position of the company enables them to exercise a more intelligent and purposeful control over the affairs of the company.

REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128 (1))

NATURE OF BOOKS TO BE KEPT

The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section **2(13)** of **the Companies Act, 2013**

"BOOKS OF ACCOUNT" as defined in **Section 2(13)** includes records maintained in respect of

1. All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place
2. All sales and purchases of goods and services by the company;
3. The assets and liabilities of the company; and
4. The items of cost as may be prescribed **under section 148** in the case of a company which belongs to any class of companies specified under that section.

FEATURES OF BOOKS OF ACCOUNTS

True and fair view

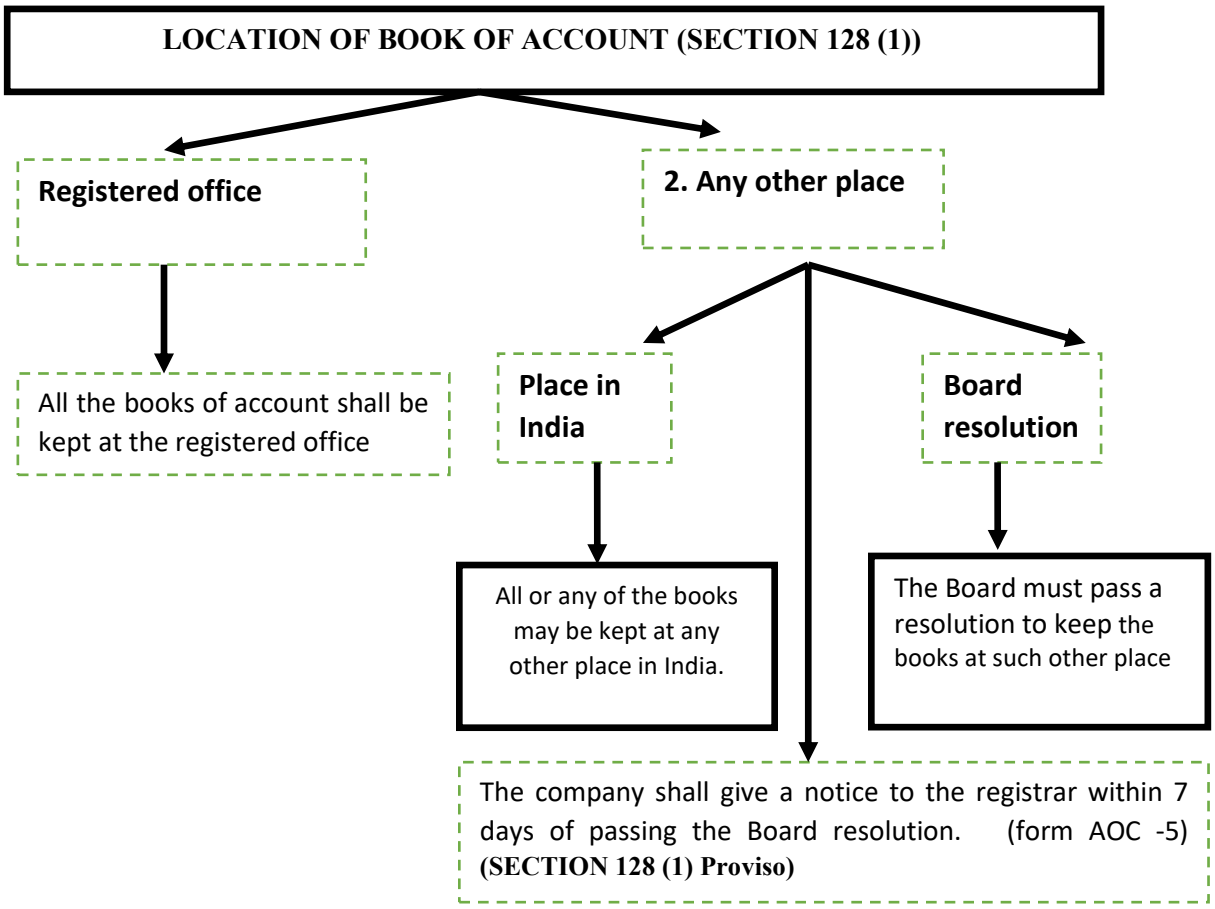
- The books must not suppress any transaction.
- The books must not contain any fictitious transaction.

Accrual basis

Cash basis of maintenance of books is prohibited.

Double entry

Single entry system of maintenance of books is prohibited



SECTION 128 (1) PROVISO 2

company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed

Rule 3 of the Companies (Accounts) Rules, 2014 prescribes the following manner

Manner of maintenance of books of account etc. in electronic form

The books of account and other relevant papers may be kept in electronic mode in following manner.

a) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
b) The books of account and other relevant books and papers shall be retained completely in the format in which they were originally generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.
c) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.
d) The information in the electronic record of the document shall be capable of being displayed in a legible form.
e) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

f) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.
g) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-

- The name of the service provider;
- The internet protocol address of service provider;
- The location of the service provider (wherever applicable);
- Where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

BOOKS OF ACCOUNT OF BRANCH SECTION 128 (2)

1. Nature of books

The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in **sub- section (1)**

2. Duties of the company

The branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.

INSPECTION BY DIRECTORS SECTION 128 (3)

1. Inspection of books of account

a) The books of account etc. maintained with India shall be open for inspection by any director-
   - At the registered office of the company or at such other place in India where the books have been kept;
   - During business hours.
b) In the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed.
c) The inspection of books of account of any subsidiary company shall be made only by the person authorized by a resolution of the Board of Directors.
d) It shall be the duty of every officer and employee of the company to give to the person making inspection all reasonable of the Board of Directors.

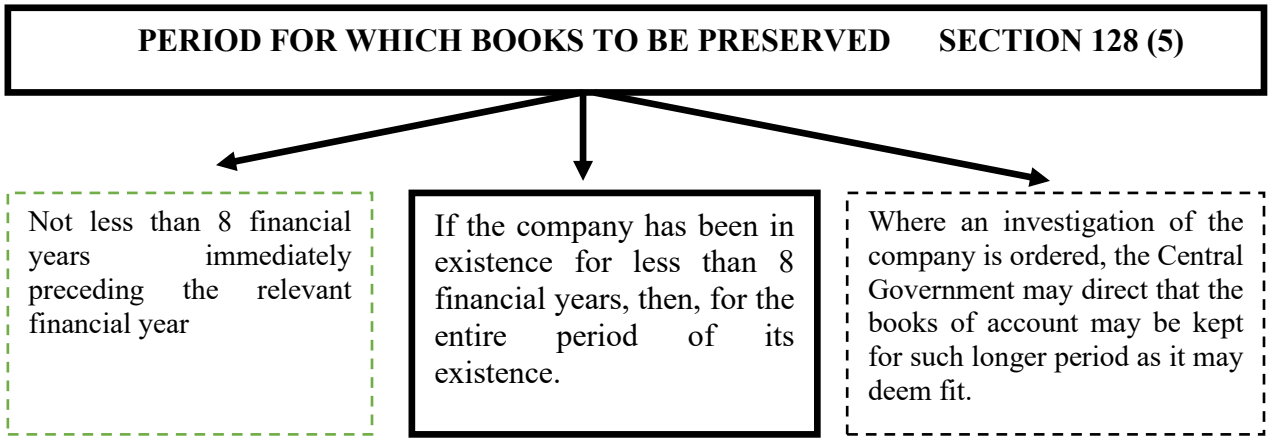
Rule 4 of the Companies (Accounts) Rule, 2014 makes the following provisions with respect to inspection of books of account:

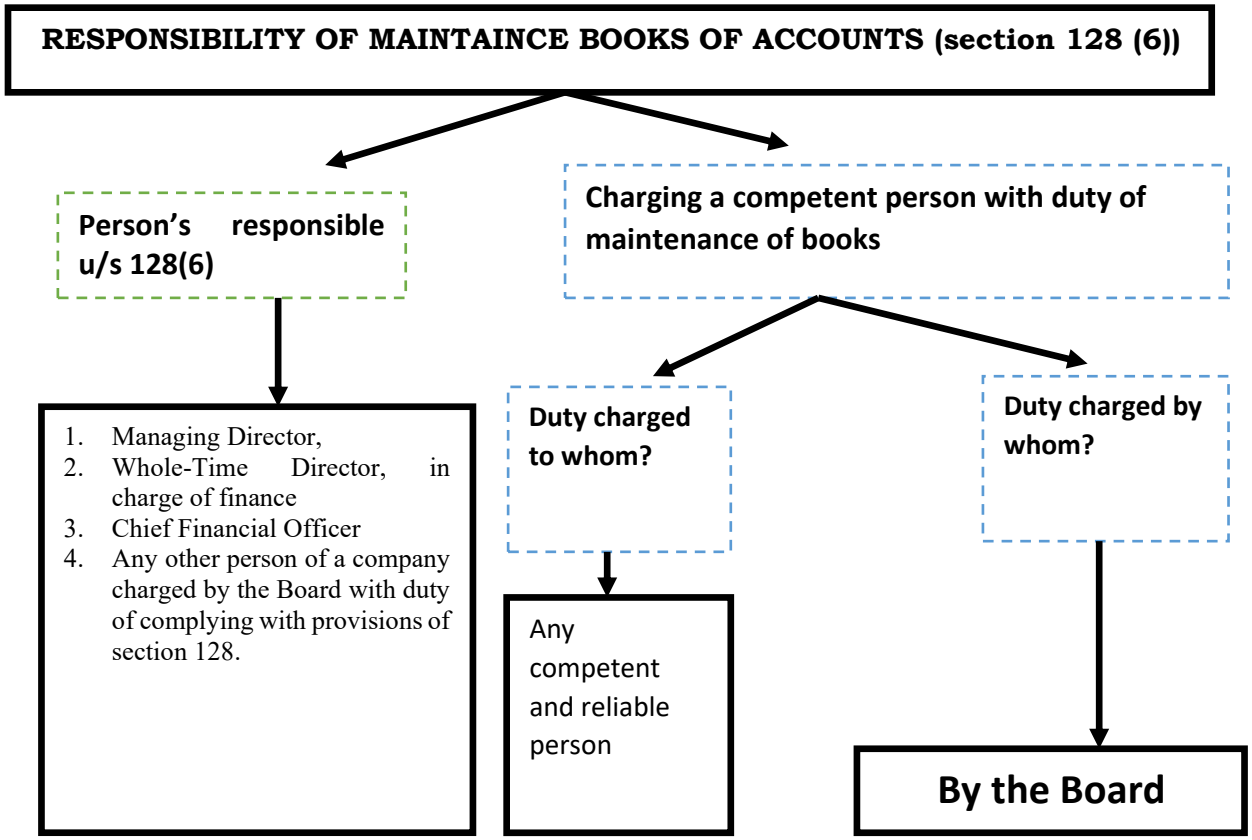
a) The summarised returns of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and kept open to directors for inspection.
b) Where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which such information is sought. The company shall produce such financial information to the director within 15 days of the date of receipt of the written request.

c) The financial information shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

ASSISTANCE IN CONNECTION WITH THE INSPECTION SECTION 128 (4)

Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give





PENALTY **SECTION 128 (6)**

In case the aforementioned persons referred to in **sub-section (6)** (i.e**. MD, WTD, CFO etc**.) fail to take reasonable steps to secure compliance of this section and thus, contravene such provisions, they shall in respect of each offence, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both

CONNECTIVITY OF LISTING REGULATIONS 2015

Regulation 9	**PRESERVATION OF DOCUMENTS** The listed entity shall have a POLICY for preservation of documents, approved by its board of directors. Listed entity may keep documents in electronic mode. Company will classifying them in at least Two categories as follows- • Documents whose preservation shall be PERMANENT IN NATURE • Documents with preservation period of NOT LESS THAN EIGHT YEARS after completion of the relevant transactions

SECTION 129 **FINANCIAL STATEMENT**

As per Section 2(40), financial statement includes:

1. Balance Sheet.
2. Profit and loss account or in the case of company not for profit, income and expenditure statement.
3. Cash flow statement.
4. Statement of changes in equity, if applicable.
5. Any explanatory note annexed to above documents.

However **the financial statement, with respect to One Person Company, small company, dormant company and private Company if such private Company is a start-up may not include the cash flow statement;**

The balance sheet should be in the form set out in **Part I of schedule III,** and Profit and loss account shall be as per **Part II Schedule III of Companies Act 2013.**

Legal requirements financial statement **[Section 129(1)]**

a) The financial statements shall give a true and fair view of the state of affairs of the company.
b) The financial statements shall comply with accounting standards notified under section 133.

If the financial statements do not comply with the accounting standards, the company shall disclose in its financial statements, - **[Section 129(5)]**

- The deviation from the accounting standards
- The reasons for such deviation; and
- The financial effects, if any, arising out of such deviation.

c) The financial statements shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

NON-APPLICABILITY

Nothing contained in section 129(1) shall apply to

a. Any insurance company; or
b. Any banking company; or
c. Any company engaged in the generation or supply of electricity; or
d. Any other class of company for which a form of financial for which a form of financial statement has been specified in the Act governing such class of company.

CONNECTIVITY OF LISTING REGULATION 2015 REGULATION 48

48	**Accounting Standards** The listed entity shall comply with all the applicable and notified Accounting Standards from time to time.

Laying of financial statements [Section 129(2)]

At every annual general meeting, the Board shall lay the following lay the following documents:

a) Financial statements of the company; and
b) Consolidated financial statement of the company and of all the subsidiaries, if any.

Consolidated financial statement [Section 129(3)]

Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (*2*), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiries and associate company or companies in such form as may be prescribed: **Rule 5 of the Companies (Accounts) Rules, 2014 prescribes Form AOC-1 for this purpose.**

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.".

Rule 6 of the Companies (Accounts) Rules, 2014 lays down the following manner of consolidation of accounts:

1. The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

2. In case of a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

3. 27th July, 2016 (Accounts) Amendment Rules, 2016. nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions

- it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements
- it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
- its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

Consolidated financial statement [Section 129(4)]

The provisions relating to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements.

Exemption [Section 129(6)]

a) The Central Government may, by notification, exempt any class or classes of companies from complying with any if the requirements of this section or the rules made thereunder.
b) The Central Government may grant such exemption on its own or on an application by a class or classes of companies.
c) The Central Government may grant such exemption if it considers necessary to grant such exemption in the public interest.
d) Such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

Persons responsible and Penalty [Section 129(7)]

Following persons shall be held responsible for ensuring compliance of the provisions of this section:

1. Managing director
2. Whole-tome director in charge of finance
3. Chief Financial Officer
4. Any other person of a company charged by the Board with such duty
5. All the directors, in the absence of any of the officers mentioned above.

In case of non-compliance of nay of the provisions of this section, all such persons shall be liable to –

1. Imprisonment up to 1 year; or
2. Fine: Minimum Rs. 50,000; Maximum Rs. 5,00,000; or
3. Both.

PERIODICAL FINANCIAL RESULTS.

129A. The Central Government may, require such class or classes of unlisted companies, as may be prescribed, —

(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.] (COMPANIES AMENDMENT ACT 2020)

RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDERS

Section 130 provides for provisions relating to re-opening or re- casting of books of accounts of the company. Accordingly,

1. **A company shall not re-open its books of accounts and shall not recast its financial statements, unless an application in this regard is made by any one or more of the following**

   a) The Central Government, or
   b) The Income-tax authorities, or
   c) The Securities and Exchange Board of India (SEBI), or
   d) Any other statutory regulatory body or authority or any person concerned, and
   e) An order in this regard is made by a court of competent jurisdiction or the Tribunal.

2. **The re- opening and recasting of financial statements is permitted only for the following reasons**

   a) The relevant earlier accounts were prepared in a fraudulent manner; or
   b) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

2. The accounts so revised or re-cast under this section shall be final.

3. It may be noted that the Tribunal will include National Company Law Tribunal (NCLT). This provision provides for both, reopening of books after accounts have been closed and recast of financial statements.

4. No order shall be made under sub-section (*1*) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (*5*) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

NCLT RULES 2016 RULE 76A

Application under section 130.

The Central Government, the Income-tax authorities, the Securities and Exchange Board of India, any other statutory regulatory body or authority or any person concerned may file an application in **Form No. NCLT. 9** for re-opening of books of accounts and for re-casting of financial statement of a company under section 130 of the Act

VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT Section 131

Section 131 allows the directors to prepare **REVISED FINANCIAL STATEMENT OR A REVISED BOARD'S REPORT** if it appears to them that the company's financial statement or the Board's Report did not comply with the requirements of Section 129 or Section 134, after obtaining approval of the Tribunal.

The company is required to apply to the Tribunal. The application to the Tribunal shall be made **within 2 weeks** of the decision taken by the Board.

RULE 77 OF NCLT RULES 2016 Application under section 131

1.	Where it appears to the directors of a company that the financial statement of the company or the report of the Board do not comply with the provisions of section 129 or section 134, the application shall be filed in **Form No. NCLT-1** within fourteen days of the decision taken by the Board.
2.	In case the majority of the directors of company or the auditor of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such facts in the application.
3.	The company shall at least fourteen days before the date of hearing advertise the application in accordance with rule 35.
4.	The Tribunal shall issue notice and hear the auditor of the original financial statement, if present auditor is different and after considering the application and hearing the auditor and any other person as the Tribunal may deem fit, may pass appropriate order in the matter.
5.	A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy..
6.	On receipt of approval from Tribunal a general meeting may be called and notice of such general meeting along with reasons for change in financial statements may be published in newspaper in English and in vernacular language.
7.	In the general meeting, the revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption of the revised financial statements.
8.	On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the Registrar of Companies within thirty days of the date of approval by the general meeting.

NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

Section 132 Through **Section 132** of the **Companies Act, 2013**, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (**NFRA**) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

The Companies Act, 1956 empowers the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (**NACAS**). This is now being renamed with enhanced independent oversight powers and authority as **National Financial Reporting Authority (NFRA).**

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority shall investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority.

Objective

The objectives of National Financial Reporting Authority inter alia shall be as follows:

1)	Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
2)	Monitor and enforce the compliance with accounting standards, monitor and enforce the compliance with auditing standards;
3)	Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service, and
4)	Perform such other functions as may be prescribed in relation to aforementioned objectives.

These objectives simply bring chartered accountants, cost accountants, management accountants, company secretaries as well as independent directors / members audit committees under jurisdiction of NFRA.

The National Financial Reporting Authority (Manner of Appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018.

In exercise of the powers conferred by sub-section (3) of section 132 of the Companies Act, the Central Government hereby makes the (NFRA RULES 2018).

COMPOSITION OF AUTHORITY RULE 3

(1) The Authority shall consist of the following persons to be appointed by the Central Government, namely:-

(a) a chairperson;

(b) three full time members; and

(c) nine part time members.

(2) The chairperson shall be a person of eminence, ability, integrity and standing and having expertise and experience of not less than twenty-five years in the field of accountancy, auditing, finance or law.

(3) A full-time member shall be a person of ability, integrity and standing and having expertise and experience of not less than twenty years in the field of accountancy, auditing, finance or law.

(4) A part-time member shall be a person who shall not, have any such financial or other interest as is likely to affect prejudicially his functions as a part-time member.

MANNER OF APPOINTMENT RULE 4

(1) The Central Government shall appoint the chairperson and a full time member referred to in rule 3 on the recommendation of a search-cum-selection committee consisting of

(a) Cabinet Secretary – Chairperson;

(b) Additional Principal Secretary to the Prime Minister — Member;

(c) Secretary — Ministry of Corporate Affairs— Member;

(d) Chairperson, National Financial Reporting Authority (for selection of full-time members) — Member;

(e) three experts of repute from a panel of experts in the field of accountancy, auditing, finance, law (to be nominated by the Central Government) – Members

(2) The Secretary, Ministry of Corporate Affairs shall be the convener of the search-cum-selection committee.

(3) The search-cum-selection committee shall determine its procedure for making its recommendation.

(4) No appointment of chairperson or a full time member shall be invalid merely by reason of any vacancy or absence in the search-cum-selection committee.

(5) The search-cum-selection committee shall make its recommendations in regard to appointment of chairperson or the members, as the case may be, to the Central Government within a period not exceeding one hundred and twenty days from the date of reference made to it by the Central Government.

(6) The following persons shall be appointed as part time members of the Authority namely

(i) one member to represent the Ministry of Corporate Affairs, who shall be an officer not below the rank of Joint Secretary, *ex-officio;*

(ii) one member to represent the Comptroller and Auditor General of India, who shall be an officer not below the rank of Accountant General or Principal Director, *ex-officio;*

(iii) one member to represent the Reserve Bank of India, who shall be an officer not below the rank of Executive Director, *ex-officio;*

(iv) one member to represent the Securities and Exchange Board of India, who shall be an officer not below the rank of Executive Director, *ex-officio;*

(v) President, Institute of Chartered Accountants of India, *ex-officio;*

(vi) Chairperson, Accounting Standards Board, Institute of Chartered Accountants of India, *ex-officio;*

(vii) Chairperson, Auditing and Assurance Standards Board, Institute of Chartered Accountants of India, *ex-officio;* and

(viii) two experts from the field of accountancy, auditing, finance or law.

NATIONAL FINANCIAL REPORTING AUTHORITY RULES, 2018

CLASSES OF COMPANIES AND BODIES CORPORATE GOVERNED BY THE AUTHORITY RULE 3

1. The authority shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely

(a)	companies whose securities are listed on any stock exchange in INDIA or outside INDIA
(b)	unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st march of immediately preceding financial year
(c)	insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special act for the time being in force or bodies corporate incorporated by an act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the act;
(d)	any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the authority by the central government in public interest; and
(e)	a body corporate incorporated or registered outside india, which is a subsidiary or associate company of any company or body corporate incorporated or registered in india as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty per cent. of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

2. every existing body corporate other than a company governed by these rules, shall inform the authority within thirty days of the commencement of these rules, in form NFRA-1, the particulars of the auditor as on the date of commencement of these rules.
3. every body corporate, other than a company as defined in clause (20) of section 2, formed in india and governed under this rule shall, within fifteen days of appointment of an auditor under sub-section (1) of section 139, inform the authority in form NFRA-1, the particulars of the auditor appointed by such body corporate. provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in form NFRA-1.
4. a company or a body corporate other than a company governed under this rule shall continue to be governed by the authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

FUNCTIONS AND DUTIES OF THE AUTHORITY RULE 4

The authority shall

(a)	maintain details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3;
(b)	recommend accounting standards and auditing standards for approval by the central government;
(c)	monitor and enforce compliance with accounting standards and auditing standards;
(d)	oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;

(e) promote awareness in relation to the compliance of accounting standards and auditing standards;
(f) co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and
(g) perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties

ANNUAL RETURN RULE 5

5. annual return. every auditor referred to in rule 3 shall file a return with the authority on or before 30th April every year in such form as may be specified by the central government.

RECOMMENDING ACCOUNTING & AUDITING STANDARDS RULE 6

For the purpose of recommending accounting standards or auditing standards for approval by the central government, the authority shall receive recommendations from the institute of chartered accountants of India on proposals for new accounting standards or auditing standards

ENFORCING COMPLIANCE WITH ACCOUNTING STANDARDS RULE 7

(1) For the purpose of monitoring and enforcing compliance with accounting standards under the act by a company or a body corporate governed under rule 3, the authority may review the financial statements of such company or body corporate, as the case may be, and if so required, direct such company or body corporate or its auditor by a written notice, to provide further information or explanation or any relevant documents relating to such company or body corporate, within such reasonable time as may be specified in the notice.

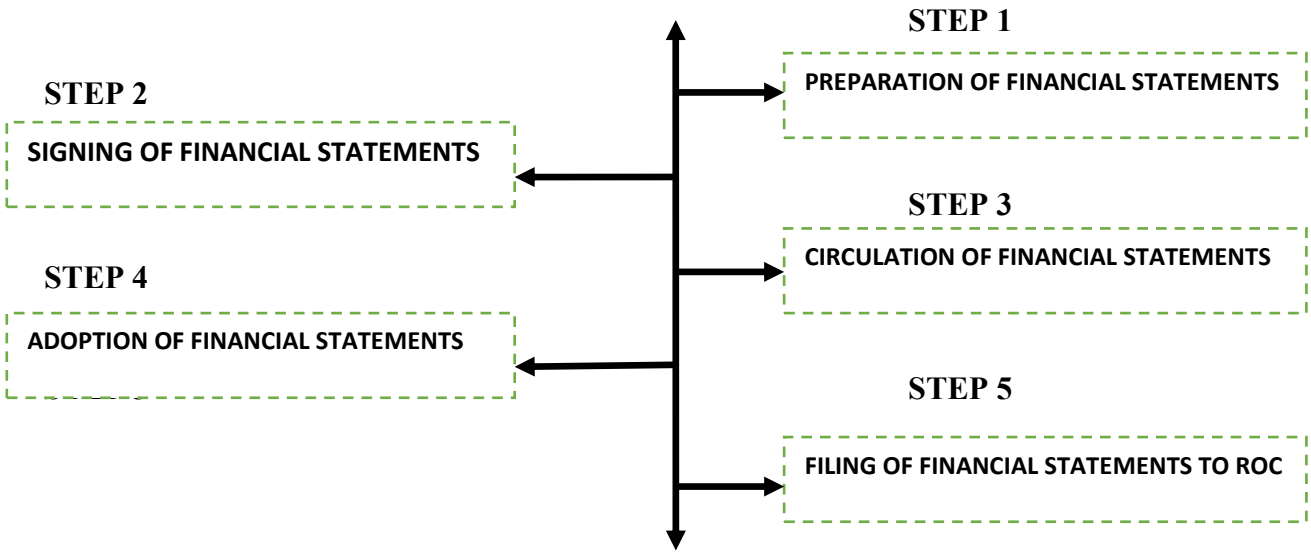
(2) The authority may require the personal presence of the officers of the company or body corporate and its auditor for seeking additional information or explanation in connection with the review of the financial statements of such company or body corporate.

SECTION 133: CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. Till the constitution of NFRA, National Advisory Committee on Accounting Standards (NACAS) is still empowered to do the work allocated to NFRA under new Act. The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are prescribed by the Central Government

FINANCIAL STATEMENTS, BOARD REPORT ETC. SECTION 134

IT INVOLVES 5 STAGES



STEP 1 PREPARATION OF FINANCIAL STATEMENTS

SECTION 134: FINANCIAL STATEMENT, BOARD'S REPORT ETC.

SECTION 134(1)

The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon

SECTION 134(2) The auditor report shall be attached to every financial statement

BOARD REPORT Section 134(3)

Section 134(3) of the Act provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include

DISCLOSURES BY BOARD OF DIRECTORS IN THE BOARD'S REPORT

Disclosures under Section 134(3)

a) the web address, if any, where annual return referred to in sub-section (*3*) of section 92 has been placed

b) Board report shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period.
c) Number of meetings of board
d) Director's responsibility statement
(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government
e) Statement on declaration given by independent director under section 149(6).
f) Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report; and by the company secretary in practice in his secretarial audit report;
g) Particulars of loan, guarantees or investments under section 186
h) The state of company's affairs
i) Particulars of contracts and arrangements with related parties in AOC-2
j) Statement relating to risk management policy
k) Statement on corporate social responsibility
l) The amount proposed to carry to any reserve conservation of energy,
m) Technology absorption,
n) foreign exchange earnings and outgo.
o) A disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained
p) A statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (*e*) or clause (j) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

134(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

Matters to be included in Board's Report for One Person Company and Small Company. RULE 8A OF Companies (Accounts) Amendment Rules, 2018

The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following

a. the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
b. number of meetings of the Board;
c. Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
d. details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
e. explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
f. the state of the company's affairs;
g. the financial summary or highlights;
h. material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
i. the details of directors who were appointed or have resigned during the year;
j. the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.
134(4) The board report to be attached to financial statement under this section shall, in case of OPC, mean a report containing explanations or comments by board on every qualifications, reservation or adverse remarks or disclaimer made by auditor in his report.

Directors' Responsibility Statement 134(5)

The Directors' Responsibility Statement referred to in **CLAUSE (c) OF SUB-SECTION (3) OF SECTION 134** shall state that –

a. In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
b. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
c. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
d. The directors had prepared the annual accounts on a going concern basis; and

e. The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
f. The directors, had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

FORMAL ANNUAL EVALUATION

According to Rule 8(4) of Companies (Accounts) Rules 2014; every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made.

REPORT ON CORPORATE GOVERNANCE UNDER LODR 2015

The company shall have a separate section on Corporate Governance in the Annual Report of the company with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement i.e. which is part of the listing agreements with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.

REPORTING OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

According to Rule 8 of the Companies (Corporate social Responsibility Policy) Rules 2014 the Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to these rules.

DECLARATION FROM INDEPENDENT DIRECTORS

Every Independent Director in his first board meeting participated after appointment and first board meeting in every financial year or whenever there is any change give declaration that he meets the criteria of independence as provided in sub-section (6) of Section 149 of the Companies Act 2013

The Company may obtain from every independent director a declaration to this effect as a matter of good practice. The declaration placed before the Board shall be reviewed and its decision recorded in the minutes.

Disclosure in Board's report by listed company

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Every listed company shall disclose in board report a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee who

• if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than one crore and two lakh rupees
• if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month

Other Disclosures under Companies Act, 2013

a) Disclosure about the composition of audit committee under section 177(8) and also the recommendation of audit committee
b) Details of establishment of vigil mechanism [section 177(9)]
c) Policies by the nomination and remuneration committee
d) Secretarial report given by a company secretary in practice.

STEP 2 SIGNING OF FINANCIAL STATEMENTS

Signing of Board's report (Sec. 134 (6))	**Case (a)** **The chairperson of the board is authorized by the Board to sign the Board's report** **The Board's report shall be signed by the chairman of the Board.**	**Case (b)** **In any other case** **The Board's report shall be signed by 2 directors (one of whom shall be MD, if there is one)** **The Board's report shall be signed by 1 director, if only 1 director is for the time being in India.**
Signing of Financial Statement (Sec. 134 (1))	**Case (a)** **The chairperson of the board is authorized by the Board to sign the FINANCIAL STATEMENT** **AND** chief executive officer, chief financial officer and company secretary, if any in the company	**Case (b)** **Any other case** o two directors of whom one should be the managing director, and o chief executive officer, chief financial officer and company secretary, if any in the company
OPC	One person company's financial statements shall be signed by only one director.	
SPECIAL NOTE	Such sign is required for submission of financial statements to the auditor for his report. Auditors report is required to be attached to every financial statement. Board report shall be attached to the statements laid before the company in general meeting.	

PENAL PROVISIONS SECTION 134(8)

If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees. (COMPANIES AMENDMENT ACT 2020)

MCA has clarified that approval of annual accounts (now financial statements under Companies Act, 2013) are placed before AGM before shareholders can't be treated as day to day work. Therefore it is duty of board of directors to consider the annual account and approve it. In view of the above clarification, it can be said that approval of financial statements can't be delegated to committee of directors or some of directors.

STEP 3 CIRCULATION OF FINANCIAL STATEMENTS

RIGHT OF MEMBER TO COPIES OF AUDITED FINANCIAL STATEMENT SECTION 136

Documents to be circulated

A copy of the following documents is required to be sent by the company:

- Financial Statement
- Consolidated Financial Statement, if any
- Auditor's Report
- All the documents which are required to be annexed or attached to the financial statement.

These documents are hereinafter referred to as 'financial statement and other documents'.

Persons entitled to receive financial statement and other documents

a) Every member of the company.
b) Every trustee for the holders of any debentures issued by the company.
c) All persons other than the member or debenture trustee, being the person so entitled.

Time limit for circulation

The aforesaid documents shall be sent least 21 days (14 days in case of section 8 companies) before the date of the meeting in which these are to be laid.

Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members

(*a*) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. Of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(*b*) having, if the company has no share capital, not less than ninetyfive per cent. of the total voting power exercisable at the meeting:

Circulation of financial statement and other documents in case of a listed company

In the case of listed company, it shall be a sufficient compliance with the provisions of section 136, if –

a) The copies of the financial statement other documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting; and
b) A statement containing the salient features of such documents in the prescribed form is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than 21 days before the date of the meeting, unless the shareholders ask for full financial statements.

As per Rule 10 of the companies (Accounts) Rules, 2014, such statement shall be in Form **AOC-3.**

Provided that the Companies which are required to comply with Companies (Indian Accounting statndards) Rules,2015 shall forward their statement in form AOC-3A

Manner of circulation in case of prescribed companies

The Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

Rule 11 of the Companies (Accounts) Rules, 2014 makes the following provisions in this regard

1. In case of above All listed companies; and
2. Public companies having net worth of more than Rs. 1 crore and turnover of more than Rs. 10 crore.

The financial statement shall be circulated –

- By electronic mode, in the following 2 cases

A. Where a member holds shares in dematerialised form and his email Id is registered with the Depository for communication purpose.
B. Where a member does not hold share in dematerialized form, but he has positively consented in writing for receiving such documents by electronic mode.

- By dispatch of physical copies through any recognized mode of delivery as specified under section 20 of the Companies Act, 2013, in all other cases.

Display of documents at the website

A listed company shall also place its financial statements and other documents on its website, which is maintained by or on behalf of the company.

Circulation and placing of separate audited accounts of subsidiaries

every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any: Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary

(*a*) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(*b*) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

Inspection of financial statement and other document

Every company shall allow every member and debenture trustee to inspect the financial statement and other documents at its registered office during business hours.

Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

STEP 4 ADOPTION OF FINANCIAL STATEMENTS

At AGM shareholders will adopt the financial statements.

STEP 5 FILING OF FINANCIAL STATEMENTS

FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR SECTION 137

Where financial statement are adopted at the AGM

a) Documents to be filed.

- Financial Statement
- Consolidated Financial Statement, if any
- The accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.
- All the documents which are required to be annexed or attached to the financial statement.

b) Time limit for filing. The 'financial statement and other documents' shall be filed with the Registrar within 30 days of the date of AGM.

Where financial statement are not adopted at the AGM

a) Filing of unadopted documents. Where the financial statements are not adopted at the AGM or adjourned AGM, such unadopted financial statements and other documents shall be filed with the Registrar within 30 days of the date of AGM.

b) Unadopted documents to be provisional. The Registrar shall take the unadopted financial statement and other documents in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

c) Filing of adopted documents. The financial statement and other documents adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM.

Where AGM is not held

Filing of document.

(i) The financial statements and other documents
(ii) Statement of facts and reasons for not holding the AGM

Time limit for filing

The 'financial statement and other documents' shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held.

Form and fees (Rule 12 of the Companies (Accounts) Rules, 2014)

Every company shall file the financial statements with Registrar together with Form AOC-4.

FILING BY OPC

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:

FINANCIAL STATEMENTS OF SUBSIDIARY OR SUBSIDIARIES

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

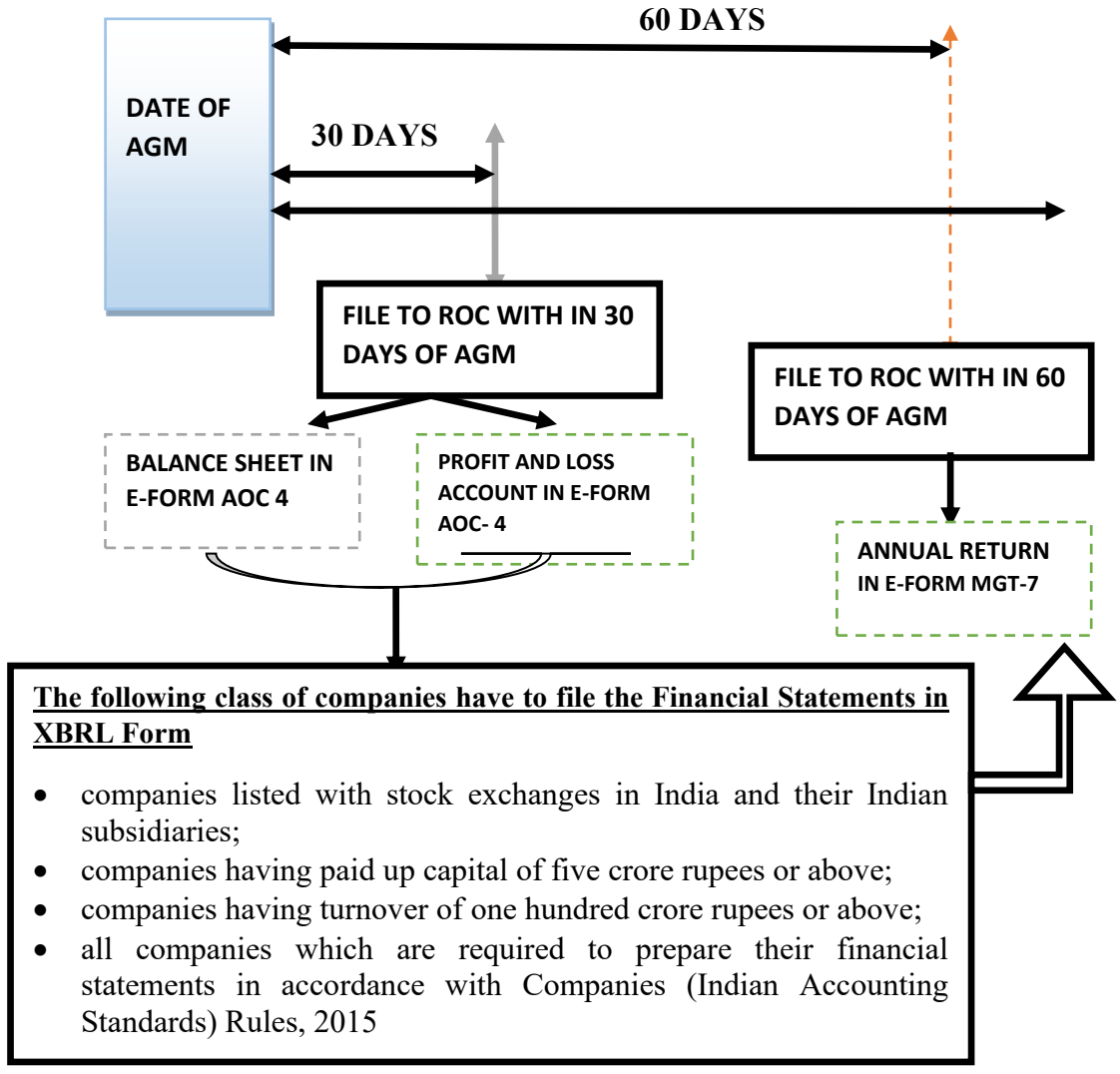
PENALTY **SECTION 137(3)**

If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees. **(COMPANIES AMENDMENT ACT 2020)**

ANNUAL FILING EVERY YEAR TO ROC

1. Financial Statement	**E-Form AOC – 4**
2. Annual Return	**E-Form MGT - 7**

ANNULA FILING EVERY YEAR TO ROC



Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015. 09th September, 2015

Extensible Business Reporting Language (XBRL), means a standardised language for communication in electronic form to express, report or file financial information by the companies under the Act;

Taxonomy means in XBRL, an electronic dictionary for reporting the business data as approved by the Central Government in respect of any documents or forms indicated in these rules.

These rules may be called the Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017.

FILING OF FINANCIAL STATEMENT WITH REGISTRAR

The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL

• companies listed with stock exchanges in India and their Indian subsidiaries;
• companies having paid up capital of five crore rupees or above;
• companies having turnover of one hundred crore rupees or above;
• all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015

Provided that the companies preparing their financial statements under the Companies (Accounting Standards) Rules, 2006 shall file the statements using the Taxonomy provided in Annexure-II and companies preparing their financial statements under Companies (Indian Accounting Standards) Rules, 2015, shall file the statements using the Taxonomy provided in Annexure-II A. Provided further that non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

FILING OF COST AUDIT REPORT

A company required to furnish cost audit report and other documents to the Central Government under sub-section (6) of section 148 of the Act and rules made there under, shall file such report and other documents using the XBRL taxonomy given in Annexure-III for the financial years commencing on or after 1st April, 2014 in e-Form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

CHAPTER-23 SECRETARIAL STANDARDS

SECRETARIAL STANDARDS - MEANING

1. Secretarial Standards are the policy documents relating to various aspects of secretarial practices in the corporate sector.
2. These Standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

Who formulates the Secretarial Standards The Institute of Company Secretaries of India (ICSI) constituted the Secretarial Standards Board (SSB) in the year 2000 for formulating Secretarial Standards.

Establishment of Secretarial Standards Board

1. The Institute of Company Secretaries of India, (ICSI) has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards in the year 2000.
2. The Secretarial Standards Board (SSB) formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent.

Composition of Secretarial Standards Board (SSB)

SSB having members from following authorities.

1. ICSI members working in Companies as well as in practice
2. Representatives of Ministry of Corporate Affairs,
3. Representatives of Securities and Exchange Board of India
4. Representatives of Institute of Chartered Accountants of India
5. Representatives of Institute of Cost Accountants of India.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, Corporates and other users.

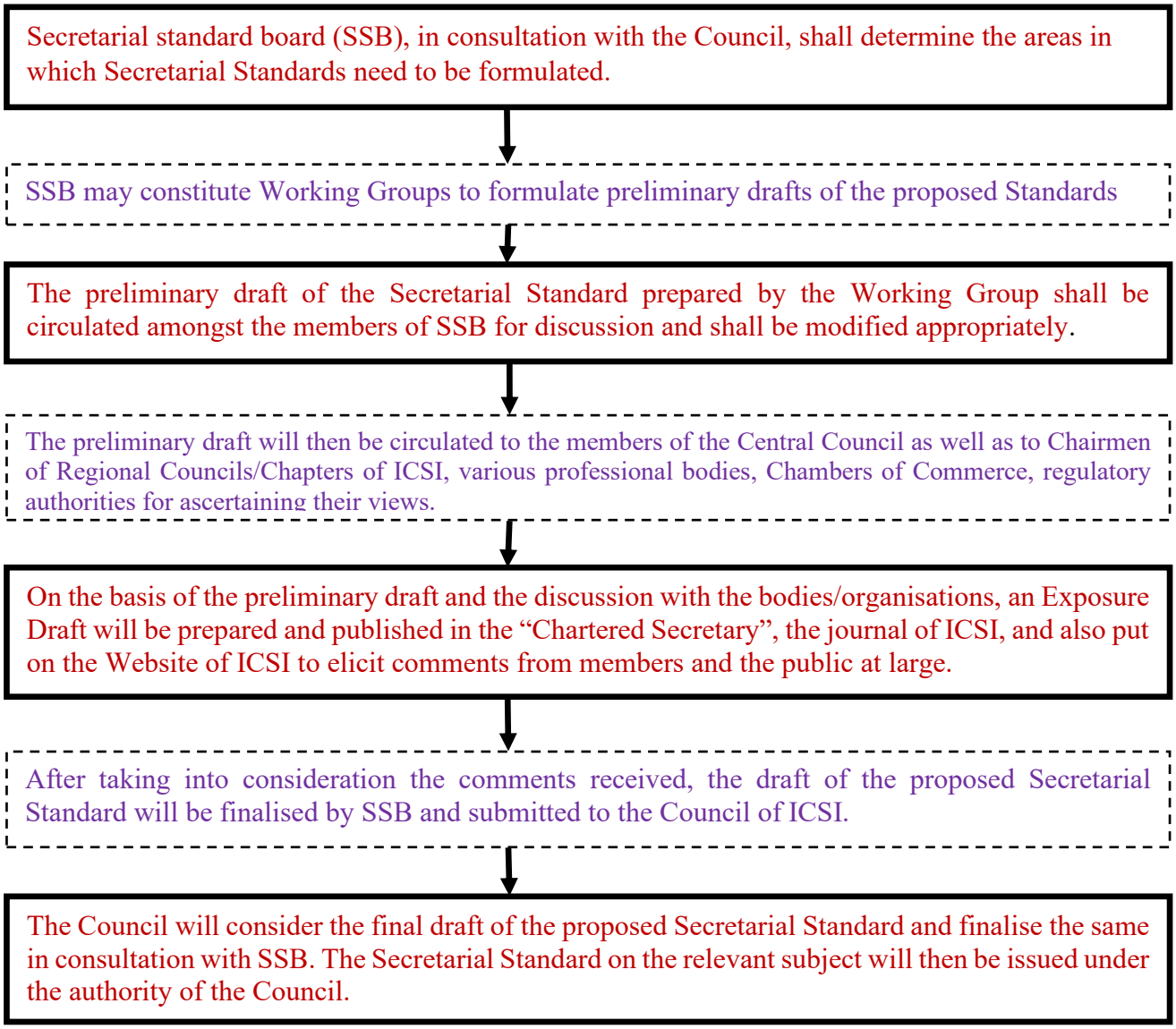
The main functions of SSB are

1. Formulating Secretarial Standards
2. Clarifying issues arising out of the Secretarial Standards
3. Issuing Guidance Notes
4. Reviewing and updating the Secretarial Standards

Scope of Secretarial Standards

1. The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under but, in fact, seek to supplement such laws, rules and regulations.
2. Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws.
3. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Procedure for issuing Secretarial Standards



SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013

Introduction and Need

The term 'Secretarial Standard' is defined as an explanation to **section 205** of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under **section 3 of the Company Secretaries Act, 1980** and approved by the Central Government. Thus, for the first time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

SECRETARIAL STANDARDS AND THE COMPANIES ACT, 2013

Is there any other country which has issued Secretarial Standards?

No. The formulation of Secretarial Standards by the SSB and its statutory recognition is a unique and pioneering step towards standardization of diverse **Secretarial** practices prevalent in the corporate sector. No similar Standards are in existence elsewhere in the world.

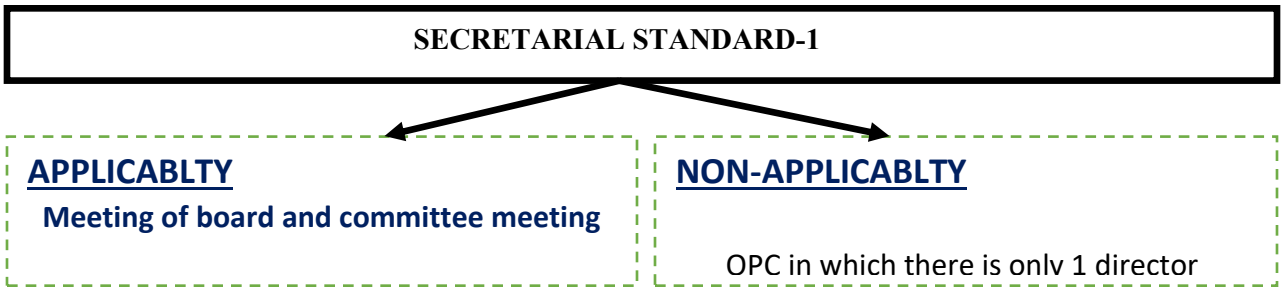
What will prevail in case of any variations in any provision of the applicable laws and the Secretarial Standards?

Generally, in addition to the Secretarial Standards, the requirements laid down under any other applicable laws and rules and regulations, need to be complied with. However, in case of variations in any provision of the applicable laws and the Secretarial Standards, the stricter provisions need to be complied with.

What would be the position if a particular Standard becomes inconsistent due to subsequent changes in the law?

If, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

SECRETARIAL STANDARD-1 BOARD MEETING



SOME IMPORTANT POINTS

- Calendar Year is 1st January and ends on 31st December
- *National Holiday"* means Republic Day i.e. 26thJanuary, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government
- Committee" means a Committee of Directors mandatorily required to be constituted by the Board under the Act. the provisions of SS-1 to the committees constituted by the Board under the Act and not to various other committees constituted under the other laws/Regulations.
- *Secretarial Auditor*" means a Company Secretary in Practice or a firm of Company Secretary(ies) in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company
- Timestamp" means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

CONVENING A MEETING

Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

DAY,TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING:

- Every Meeting shall have a serial number. Companies now required to serially Numbered there Minutes of Board Meeting
- A original meeting Meeting may be convened at any time and place, on ANY DAY.

NOTICE OF BOARD MEETING

Notice, Agenda and Notes of Agenda in writing of every Meeting shall be given to EVERY DIRECTOR by following ways

- By hand or By Speed Post or by Registered Post or

• By ~~Courier~~ or by fax or By Email or by any other electronic mode.
• Notice, Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post ~~**or by courier**~~ or by e-mail or by any other electronic means
• In case the company sends the notice, agenda and notes on agenda by speed post or by registered post ~~**or by courier**~~, an additional two days shall be added.
• Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter notice, the Company may choose an expedient mode of sending notice.
• Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting
• Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting
• **Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting~~.~~**
• The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company
• **Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting.**

ADDRESS FOR SENDING THE NOTICE TO DIRECTORS

Postal address or e-mail address, registered by the Director with the company; or In the Absence of such details or any change thereto, on the addresses appearing in the Director Identification Number (DIN) registration of the Director. If director specify the way of delivery of Notice, Agenda and Notes of Agenda, same shall be given to him by such means.

WHO WILL ISSUE NOTICE OF BOARD MEETING

Company Secretary or where there is no Company Secretary, any Director or any other person authorized by the Board for the purpose. Proof of sending Notice and its delivery shall be maintained by the Company. The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting. The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

TIME PERIOD FOR ISSUE OF NOTICE

NORMAL NOTICE

Notice, Agenda and Notes of Agenda convening a Meeting shall be given at least SEVEN days before the date of the Meeting, unless the Articles prescribe a longer period.

In case the company sends the Notice, Agenda and Notes of Agenda by Speed Post or by registered post or by courier, An Additional Two Days Shall be Added for the service of Notice.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

SHORTER NOTICE

To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above,

If at least one Independent Director, if any, shall be present at such Meeting.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on **Ratification Thereof By A Majority Of The Directors** of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company

SPECIAL NOTE:

In case the facility of participation through Electronic Mode is being made available, the Notice shall inform the Directors about the availability of such facility, and provide them necessary information to avail such facility.

- If Facility of participation through Electronic Mode provided the Notice shall seek advance confirmation from the Directors as to whether they will participate through Electronic Mode in the Meeting.
- In the absence of an advance communication or confirmation from the Director as above, it shall be assumed that he will attend the Meeting physically.

Participation of Director through Electronic Mode

The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year.

Any Director may participate through Electronic Mode in a Meeting, if the company provides such facility. But certain items can't be dealt at a meeting held though Video conferencing.

Matter which can't be dealt at a meeting held though Video conferencing ~~unless expressly permitted by the Chairman:~~

• Approval of the annual financial statements;
• Approval of the Board's report;
• Approval of the prospectus;
• Audit Committee Meetings for consideration of accounts; and
• Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

CHAIRMAN OF BOARD MEETING

1. The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board.
2. The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the Articles.
3. It would be the duty of the Chairman to check, with the assistance of Company Secretary, that the Meeting is duly convened and constituted in accordance with the Act or any other applicable guidelines, Rules and Regulations before proceeding to transact business. The Chairman shall then conduct the Meeting. The Chairman shall encourage deliberations and debate and assess the sense of the Meeting.
4. If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.
5. If the item of business is a related party transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.
6. The Chairman shall ensure that the required Quorum is present throughout the Meeting and at the end of discussion on each agenda item the Chairman shall announce the summary of the decision taken thereon. Unless otherwise provided in the Articles, in case of an equality of votes, the Chairman shall have a second or casting vote.

FREQUENCY OF MEETING

FREQUENCY OF MEETING

First board Meeting" should be held within 30 days of Incorporation of Company.

Meetings of the Board of Directors: (Except Small Company, One Person Company and Dormant):

- The company shall hold.
- At least 4 (four) Board Meetings in a calendar year.
- Maximum interval between two board meetings 120 days

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting.

MEETINGS OF THE INDEPENDENT DIRECTORS:

Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall meet at least once in a Calendar Year.

QUORUM

• The Quorum for a Meeting of the Board shall be One-third of the total strength of the Board or Two Directors Whichever is HIGHER. Any fraction contained in the above one-third shall be rounded off to the next one.
• Where the Quorum requirement provided in the Articles is higher than one-third of the total strength; the company shall conform to such higher requirement.
• If the number of Interested Directors exceeds or is equal to two-thirds of the total strength, the remaining Directors present at the Meeting, being not less than two, shall be the Quorum during such item.
• If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.
• Quorum shall be present not only at the time of commencement of the Meeting but also throughout the Meeting.
• Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law
• If a Director is interested in any resolution he shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.
• If the item of business is a related party transaction, then he shall not be present at the meeting, whether physically or through Electronic Mode, during discussions and voting on such item.

- Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee ~~constituted by the Board~~ is necessary to form the Quorum ~~for Meetings of such Committee unless otherwise stipulated in the Act or any other law or the~~ ~~Articles or by the Board~~.

- If a Meeting of the Board could not be held for want of Quorum, then, unless otherwise provided in the Articles, the Meeting shall automatically stand adjourned to the same day in the next week, at the same time and place or, if that day is **a National Holiday**, to the next succeeding day which is not a National Holiday, at the same time and place. If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled.

ATTENDANCE REGISTERS:

ATTENDANCE REGISTERS:

Every company shall maintain ~~separate~~ attendance registers for the Meetings of the Board. AND for the Meetings of the Committee. The pages of the ~~respective~~ attendance registers shall be serially numbered. If an attendance register is maintained in loose-leaf form, it shall be bound periodically at least once in every three years.

PARTICULARS OF ATTENDANCE REGISTER OF BOARD MEETING

- Serial number and date of the Meeting;
- Place of the Meeting; time of the Meeting;
- Names of the Directors and signature of each Director and their mode of presence, if participating through Electronic Mode
- Name and signature of the Company Secretary and Also of persons attending the Meeting by invitation.
- In case of Committee Meeting "name of the Committee" also be mentioned.
- The attendance register is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship
- The attendance register shall be preserved for a period of atleast eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board

SIGNING OF ATTENDANCE REGISTER:

- Every Director, Company Secretary who is in attendance and
- Every Invitee who attends a Meeting of the Board or Committee thereof shall sign the attendance register at that Meeting.
- The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes

The attendance register shall be ~~kept~~ in the custody of the Company Secretary.

- Where there is no Company Secretary, the attendance register shall be ~~kept~~ in the custody of any other person ~~Director~~ authorised by the Board for this purpose.

PASSING OF RESOLUTION BY CIRCULATION

The Act requires certain business to be approved only at Meetings of the Board. However, other business that requires urgent decisions can be approved by means of Resolutions passed by circulation. Resolutions passed by circulation are deemed to be passed at a duly convened Meeting of the Board and have equal authority.

The Chairman of the Board or in his absence, the Managing Director or in his absence, the Whole-time Director and where there is none, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation

Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board.

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

PROCEDURE

1. A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.
2. Proof of sending and delivery of the draft of the Resolution and the necessary papers shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.
3. The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.
4. An additional two days shall be added for the service of the draft Resolution, in case the same has been sent by the company by speed post or by registered post or by courier
5. The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.
6. The Resolution, if passed, shall be deemed to have been passed on the earlier of:

   (a) the last date specified for signifying assent or dissent by the Directors or

   (b) the date on which assent has been received from the required majority, provided that on that date the number of directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of directors

   and shall be effective from that date, if no other effective date is specified in such Resolution.

7. Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.

MINUTES

Every company shall keep Minutes of all Board and Committee Meetings in a Minutes Book. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

1. Minutes shall be recorded in books maintained for that purpose.
2. A distinct Minutes Book shall be maintained for Meetings of the Board and each of its Committees.
3. The pages of the Minutes Books shall be consecutively numbered.
4. Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.
5. Minutes book, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company.
6. Minutes BOOKS shall be kept at the Registered Office of the company or at such other place as may be approved by the Board.
7. Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement ~~and conclusion~~ of the Meeting.
8. Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.
9. Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book.
10. Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee for their comments **as on the date of the meeting,**
11. Proof of sending draft Minutes and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.
12. The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalised and entered in the Minutes Book within the specified time limit of thirty days.
13. If any Director communicates his comments after the expiry of the said period of seven days **, if so authorised by the Board,**, the Chairman shall have the discretion to consider such comments. In the event a Director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such Director.
14. A Director, who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.

15. Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
16. Minutes of the previous Meeting may be signed either by the Chairman of such Meeting at any time before the next Meeting is held or by the Chairman of the next Meeting at the next Meeting.
17. The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.
18. **Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the meeting and appointed thereafter, except to those directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes**
19. Proof of sending signed Minutes **and its delivery** shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.
20. A Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship. A Director is entitled to inspect the Minutes of the Meetings held during the period of his Directorship, even after he ceases to be a Director.
21. The Company Secretary in Practice appointed by the company, the Secretarial Auditor, the Statutory Auditor, the Cost Auditor or the Internal Auditor of the company can inspect the Minutes as he may consider necessary for the performance of his duties.
22. Inspection of Minutes Book may be provided in physical or in electronic form. While providing inspection of Minutes Book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the Minutes Book is not mutilated or in any way tampered with by the person inspecting.
23. A Member of the company is not entitled to inspect the Minutes of Meetings of the Board.
24. Minutes of all Meetings shall be preserved permanently in physical or in electronic form with Timestamp.
25. Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preserved permanently by the transferee company, notwithstanding that the transferor company might have been dissolved.
26. Minutes Books shall be kept in the custody of the Company Secretary.
27. **The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards.**
28. Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting **at which the minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent meeting** ~~in which such Minutes are sought to be altered~~
29. In respect of a Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.

30. Where the Minutes have been kept in accordance with the Act and all appointments have been recorded, then until the contrary is proved, all appointments of Directors, First Auditors, Key Managerial Personnel, Secretarial Auditors, Internal Auditors and Cost Auditors, shall be deemed to have been duly approved by the Board.

CONTENTS OF MINUTES:

(a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.
(c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.
(d) Record of election, if any, of the Chairman of the Meeting.
(e) Record of presence of Quorum.
(f) The names of Directors who sought and were granted leave of absence.
(g) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related party transaction such director was not present in the meeting during discussions and voting on such item.
(h) In case of a director participating through Electronic Mode, his particulars, the location from where he participated.

SECRETARIAL STANDARD - 2 GENERALMEETINGS

APPLICABLITY

This Standard is applicable to all types of General Meetings of all companies incorporated under the Act except One Person Company (OPC) and a company licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof ~~class or classes of companies which are exempted by the Central Government through notification~~.

FREQUENCY OF GENERAL MEETING

ANNUAL GENERAL MEETING

Every Company in each Calendar Year, hold a General Meeting called the Annual General Meeting.

FIRST AGM:

First AGM within 9 month from the date of closing of First Financial year of the Company. In case of First AGM, it is not necessary for the company to hold any AGM in the calendar year of its Incorporation.

Time period of First Annual General Meeting after Incorporation of Company **cannot be extended**.

SUBSEQUENT AGM:

Subsequent AGM shall be hold ***EARLIER*** of followings:

- Within SIX month from the end of each Financial Year or
- Within FIFTEEN month from the last Annual General Meeting.
- Extension of Subsequent AGM A period not exceeding 3 (three) Month with the Prior approval of **ROC**.

EXTRA ORDINARY GENERAL MEETING:

The Board may also, whenever it deems fit, call an Extra- Ordinary General Meeting of the Company.

The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition can call an Extra- Ordinary General Meeting,

1. In the case of Company having a Share Capital, not less than $1/10^{th}$ of the paid-up share capital carrying Voting Rights; OR
2. In the case of a Company not having share capital, not less than $1/10^{th}$ of total voting power of the Company.

SPECIAL NOTE:

- If, on receipt of a valid requisition having been made in this behalf, the Board, within twenty-one days from the date of such receipt, fails to call a Meeting on any day within forty-five days from the date of receipt of such requisition, the requisitionists may themselves call and hold

the Meeting within three months from the date of requisition, in the same manner in which the Board should have called and held the Meeting.

- Explanatory statement need not be annexed to the Notice of an Extra-ordinary General Meeting convened by the requisitionists and the requisitionists may disclose the reasons for the Resolution(s) which they propose to move at the Meeting.

- Such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot.

NOTICE

1. Notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.
2. In case of a Nidhi company, Notice may be served individually only on Members who hold shares of more than one thousand rupees in face value or more than one percent of the total paid-up share capital of the company, whichever is less. For other Members, Notice may be served by a public notice in newspaper circulated in the district where the Registered Office of the company is situated and by displaying the same on the notice board of the company.

WHERE THE COMPANY HAS RECEIVED INTIMATION OF DEATH OF A MEMBER

- where securities are held singly, to the Nominee of the single holder;
- where securities are held by more than one person jointly and any joint holder dies, to the surviving first joint holder;
- where securities are held by more than one person jointly and all the joint holders die, to the Nominee appointed by all the joint holders;
- In the absence of a Nominee, the Notice shall be sent to the legal representative of the deceased Member.
- In case of insolvency of a Member, the Notice shall be sent to the assignee of the insolvent Member.
- In case the Member is a company or body corporate which is being wound up, Notice shall be sent to the liquidator.

3. Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means

4. Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- if the company provides the facility of e-voting ;
- if the item of business is being transacted through postal ballot;

5. If a Member requests for delivery of Notice through a particular mode, other than the one followed by the company, ~~of those listed above,~~ he shall pay such fees as may be determined by the company in its Annual General Meeting and the Notice shall be sent to him in such mode.
6. **In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting.** In case of a private company, the Notice shall be hosted on the website of the company, if any, unless otherwise provided in the Articles..

7. Notice shall specify the day, date, time and full address of the venue of the Meeting. Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark for easy location. In case of companies having a website, the route map shall be hosted along with the Notice on the website.

8. **An Annual General** Meeting~~s~~ **and a Meeting called by the requisitionists** shall be called during business hours, i.e., between 9 a.m. and 6 p.m., on a day that is not a National Holiday.

   Annual General Meetings shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated, whereas other General Meetings may be held at any place within India. A Meeting called by the requisitionists shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

   In case of a Government company, the Annual General Meeting shall be held at its registered office or any other place with the approval of the Central Government, **as may be** required in this behalf.

9. Notice and accompanying documents shall be given at least twenty-one clear days in advance of the Meeting. For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted. Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice.

10. In case a valid special notice under the Act has been received from Member(s), the company shall give Notice of the Resolution to all its Members at least seven days before the Meeting, exclusive of the day of dispatch of Notice and day of the Meeting, in the same manner as a Notice of any General Meeting is to be given.

11. Notice and accompanying documents may be given at a shorter period of time if consent in writing is given thereto, by physical or electronic means, by not less than ninety-five per cent of the Members entitled to vote at such Meeting.

12. No business shall be transacted at a Meeting if Notice in accordance with this Standard has not been given.

13. Notice of Annual General Meeting shall also specify the serial number of the Meeting

14. The request for consenting to shorter Notice and accompanying documents shall be sent together with the Notice and the Meeting shall be held only if the consent is received prior to the ~~date~~ time fixed for the Meeting from not less than ninety five per cent of the Members entitled to vote at such Meeting. The company shall ensure compliance of provisions relating to appointment of proxy unless all the Members entitled to vote at such Meeting, consent to holding of the General Meeting at shorter notice.

15. Notice shall be accompanied, by an attendance slip and a Proxy form with clear instructions for filling, stamping, signing and/or depositing the Proxy form.

16. If notice send through email the company shall ensure that it uses a system which produces confirmation of the total number of recipients e- mailed and a record of each recipient to whom the Notice has been sent and copy of such record and any Notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as "proof of sending" for such period as decided by the Board, which shall not be less than three years from the date of the Meeting

17. Notice shall contain complete particulars of the venue of the Meeting including route map and prominent land mark**, if any,** for easy location**, except in case of :-**

(i) a company in which only its directors and their relatives are members,
(ii) a wholly owned subsidiary.

QUORUM OF GENERAL MEETING:

PRIVATE LIMITED:

Two Members Personally Present

PUBLIC LIMITED:

In case of Public Company "Minimum Present of Members required"

- 5 (five members) personally present if the number of Members as on the date of Meeting is up to 1000 (one thousand).
- 15 (Fifteen members) personally present if the number of Members as on date of Meeting is more than 1000 (one thousand) but upto 5000 (five thousand)
- 30 (thirty member) personally present if the number of members as on date of the Meeting exceeds 5000 (five thousand)

IMPORTANT PROVISIONS FOR QUORUM OF GENERAL MEETING

• Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.
• Company by provision in its Article can provide for larger number

• Presence of a duly authorized representative body corporate, president and governor deemed to be a Member personally present and enjoy all the rights of a Member present in person.
• One person can be an authorized representative of more than one body corporate. Even he will treat as more than one member for the purpose of Quorum but there should be at least one more member in personally present.
• A member who is not entitled to vote on any particular item of business being a related party, if present shall be counted for the purpose of Quorum.
• Stipulation of the presence of Quorum doesn't apply with respect to items of business transacted through postal ballot.
• Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be, counted for the purpose of Quorum

ADJOURNMENT OF MEETING:

WHO CAN ADJOURNED THE MEETING

- A duly convened Meeting shall not be adjourned unless circumstances so warrant. The Chairman may adjourn a Meeting with the consent of the Members, at which a Quorum is present, and shall adjourn a Meeting if so directed by the Members.

- Meetings shall stand adjourned for want of requisite Quorum.

- The Chairman may also adjourn a Meeting in the event of disorder or other like causes, when it becomes impossible to conduct the Meeting and complete itsbusiness.

HOLDING OF ADJOURNED MEETING

- If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with normal provisions of companies act 2013 (21 clear days notice).

- If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

- However, if a Meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the Meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned Meeting, the company may also opt to give Notice of such adjourned Meeting either individually or by publishing an advertisement, as stated above.

- If a Meeting is adjourned for want of a Quorum to the same day on the next week, at the same time and place or with a change of day, time or place, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

- If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

CAN AN ADJOURNED AGM BE HOLD ON NATIONAL HOLIDAY

- If a Meeting, other than an **Annual General Meeting** and a **requisitioned Meeting**, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the **same day**, in the next week at the same time and place or on such other day or at such other time and place as may be determined by the Board.

- An **adjourned Annual General Meeting**, adjourned for want of quorum or otherwise, shall not be held on a National Holiday, only if any item relating to filling up of vacancy of a director retiring by rotation is included in the agenda of such adjourned Meeting.

- At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered. Any Resolution passed at an adjourned Meeting would be deemed to have been passed on the date of the adjourned Meeting and not on any earlier date.

DISTRIBUTION OF GIFTS:

No gifts, gifts coupons, or cash in lieu of gifts shall be distributed to Member at or in connection with the Meeting.

Rescinding of Resolutions

A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

Modifications to Resolutions

Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

No modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman. No modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting

PRESENCE OF DIRECTOR, COMPANY SECRETARY AND AUDITORS AT GENERAL MEETING

WHO SHALL PRESENT IN GENERAL MEETING ALONG WITH SHAREHOLDERS

DIRECTOR:

If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting. The Director who attends the General Meeting shall seat with Chairman.

COMPANY SECRETARY:

The Company Secretary shall seat with Chairman AND shall assist the Chairman in conduction the Meeting.

CHAIRMAN OF COMMITTEE'S

The Chairman of Committee's and any other member of such Committee authorized by the Chairman of the Committee to attend on his behalf shall attend the General Meeting.

STATUTORY AUDITOR:

It is mandatory for the Auditor to attend General Meeting, Auditor can absent himself If it get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor

SECRETARIAL AUDITOR :(Annual General Meeting)

It is mandatory for the Auditor to attend General Meeting, Auditor can absent himself If it get exemption from the Company to attend General Meeting OR If his authorized representative attend the General Meeting PROVIDED Authorized representative should also be qualified to be an Auditor

The Chairman may invite the Secretarial Auditor to attend "Any Other General Meeting".

CHAIRMAN:

The Chairman of the Board shall take the Chair and conduct the Meeting. BUT If the Chairman is not present within 15 minutes after the time appointed for holding of Meeting, or If he is unwilling to act as Chairman of the Meeting THEN The Director present at the Meeting shall elect one of them to be the Chairman of the Meeting.

If no Director is present within 15 Minutes after the time appointed for holding of Meeting, or If no Director is willing to take the Chair. The Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Article.

DEMAND OF POLL FOR CHAIRMAN

If poll is demanded for election of Chairman It shall be taken forthwith in accordance with the provisions of the Act and The Chairman elected on a show of hands shall continue to be the Chairman as a result of the Poll, and such other person shall be the Chairman for the rest of the Meeting.

DUTIES OF CHAIRMAN:

The Chairman shall ensure that the Meeting is duly constituted in accordance with the Act and the Articles or any other applicable laws, before it proceeds to transact business.
The chairman shall then conduct the Meeting in a fair and impartial manner and ensure that only such business as has been set out in Notice is transacted.
The Chairman shall regulate the manner in which voting is conducted at the Meeting keeping in view the provisions of the Act.
The Chairman shall explain the objective and implications of the Resolutions before they are put to vote at the Meeting.

PROXY:

• A member entitled to attend and vote is entitled to Appoint Proxy.
• A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights.

SIGNING OF PROXY FORM

WHO WILL SIGN THE PROXY FORM

MEMBER IS INDIVIDUAL

BY THE MEMBER, or His attorney duly authorized in writing

MEMBER IS BODY CORPORATE

If the appointer is a body corporate than the instrument of Proxy should be under its seal and shall be signed by the: An officer, or An attorney duly authorized by it.

SOME SPECIAL PROVISONS ON PROXY

- An instrument of proxy is valid only if it is properly stamped as per the applicable law.

- Notice of a company which has a share capital or the Articles of which provide for voting at a Meeting by Proxy, shall prominently contain a statement that a Member entitled to attend and vote is entitled to appoint a Proxy, or where that is allowed, one or more proxies, to attend and vote instead of himself and that a Proxy need not be a Member.
- In case of a private company, the Notice shall specify the entitlement of a member to appoint proxy in accordance with this para, unless otherwise provided in the Articles
- Unstamped or inadequately stamped Proxies or Proxies upon which the stamps have not been cancelled are INVALID.
- The proxy-holder shall prove his identity at the time of attending the Meeting.
- If company receive multiple proxies for the same holdings of the Member and they are not dated or bear the same date without mention of time, all such multiple proxies shall be treated as invalid.
- If a company receives multiple proxies form the same holding of a member, the Proxy which is dated last shall be considered valid.
- It should be deposit with the Company at least 48 hour before the commencement of the Meeting
- Proxy form can be send either in Person or Through Post
- Unnamed Proxy Form AND Undated Proxy Form will be treated as invalid
- All the proxies shall be recorded chronologically in a register kept for that purpose.
- In case any proxy entered in the register is rejected, the reasons there for shall be entered in the remarks column.

REVOCATION OF PROXY:

- A proxy later in date can revoke the earlier dated proxies.
- Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned meeting.
- A notice of revocation of proxy shall be signed by the same Member(s) who had signed the proxy, in the case of joint membership.
- When both the Member and Proxy attend the Meeting, the proxy stand automatically revoked.

WHEN PROXY FORMS CAN BE INSPECTED

Proxies shall made available for inspection during the period beginning 24 hours before the commencement of the Meeting and Ending with the conclusion of the Meeting Between 9 a.m. to 6 p.m.

PASSING OF RESOLUTIONS BY POSTAL BALLOT

1. Every company, except a company having less than or equal to two hundred Members, shall transact items of business as prescribed, only by means of postal ballot instead of transacting such business at a General Meeting. Ordinary Business shall not be transacted by means of a postal ballot.

2. Notice of the postal ballot shall be given in writing to every Member of the company. Such Notice shall be sent either by registered post or speed post, or by courier or by email or by any other electronic means at the address registered with the company.

3. The Notice shall be accompanied by the postal ballot form with the necessary instructions for filling, signing and returning the same.
4. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified recipients.
5. In case of companies having a website, Notice of the postal ballot shall also be placed on the website.
6. Notice shall specify the day, date, time and venue where the results of the voting by postal ballot will be announced and the link of the website where such results will be displayed.
7. Notice of the postal ballot shall inform the Members about availability of e-voting facility, if any, and provide necessary information thereof to enable them to access such facility.
8. The postal ballot form shall be accompanied by a postage prepaid reply envelope addressed to the scrutiniser.
9. A single postal ballot Form may provide for multiple items of business to be transacted.

WHEN A POSTAL BALLOT FORM SHALL BE CONSIDERED INVALID

- A form other than one issued by the company has been used
- It has not been signed by or on behalf of the Member
- Signature on the postal ballot form doesn't match the specimen signatures with the company
- It is not possible to determine without any doubt the assent or dissent of the Member;
- Neither assent nor dissent is mentioned;
- Any competent authority has given directions in writing to the company to freeze the Voting Rights of the Member
- The envelope containing the postal ballot form is received after the last date prescribed
- It is received from a Member who is in arrears of payment of calls
- It is defaced or mutilated in such a way that its identity as a genuine form cannot be established

MINUTES

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

IMPORTANT PROVISONS

• Minutes shall be recorded in books maintained for that purpose.
• A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. The pages of the Minutes Books shall be consecutively numbered.
• Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume.

• Minutes Books shall be kept at the Registered Office of the company or at such other place, as may be approved by the Board.
• Minutes shall state, at the beginning the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the Meeting.
• Minutes shall record the names of the Directors and the Company Secretary present at the Meeting.
• The Company Secretary shall record the proceedings of the Meetings. Where there is no Company Secretary, any other person authorised by the Board or by the Chairman in this behalf shall record the proceedings.
• Minutes shall be written in third person and past tense. Resolutions shall however be written in present tense. Minutes need not be an exact transcript of the proceedings at the Meeting.
• Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting.
• Minutes of a General Meeting shall be signed and dated by the Chairman of the Meeting or in the event of death or inability of that Chairman, by any Director who was present in the Meeting and duly authorised by the Board for the purpose, within thirty days of the General Meeting.
• The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes.
• If the Minutes are maintained in electronic form, the Chairman shall sign the Minutes digitally.
• Minutes of all Meetings shall be preserved permanently in physical or in electronic form.
• Minutes Books shall be kept in the custody of the Company Secretary. Where there is no Company Secretary, Minutes shall be kept in the custody of any Director duly authorised for the purpose by the Board.

VOTING

1. Every Resolution shall be proposed by a Member and seconded by another Member.
2. Every company having its equity shares listed on a recognized stock exchange other than companies whose equity shares are listed on SME Exchange or on the Institutional Trading Platform and other companies as prescribed shall provide e-voting facility to their Members to exercise their Voting Rights.
3. Every company, which has provided e-voting facility to its Members, shall also put every Resolution to vote through a ballot process at the Meeting. Ballot process may be carried out by distributing ballot/poll slips or by making arrangement for voting through computer or secure electronic systems. Any Member, who has already exercised his votes through Remote e-voting, may attend the Meeting but is prohibited to vote at the Meeting and his vote, if any, cast at the Meeting shall be treated as invalid. A Proxy can vote in the ballot process.
4. A Member who is a related party is not entitled to vote on a Resolution relating to approval of any contract or arrangement in which such Member is a related party.
5. A Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.
6. Modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.
7. The qualifications, observations or comments or other remarks on the financial transactions or matters which have any adverse effect on the functioning of the company, if any, mentioned in the Auditor's

Report shall be read at the Annual General Meeting and attention of the Members present shall be drawn to the explanations / comments given by the Board of Directors in their report.
8. The qualifications, observations or comments or other remarks if any, mentioned in the Secretarial Audit Report issued by the Company Secretary in Practice, shall be read at the Annual General Meeting and attention of Members present shall be drawn to the explanations/ comments given by the Board of Directors in their report.

SECRETARIAL STANDARD-3 (SS-3) ON "DIVIDEND

Secretarial Standard-3 (SS-3) on "Dividend", issued by the Council of the Institute of Company Secretaries of India for voluntary adoption by companies

EFFECTIVE DATE:

This Standard shall come into effect from 1st January, 2018

INTRODUCTION

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest.
In commercial usage, the term "Dividend" refers to the share of profits of a company that is distributed amongst its Members.
The term "Dividend" has been inclusively defined in the Act to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between Interim and Final Dividend.
For the purposes of this Standard, capitalization of profits in the form of bonus shares is not Dividend.
Companies licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof are prohibited by their constitution from paying any Dividend to its Members.

DEFINITIONS

"Dividend" means a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose.

"*Final Dividend"* means the Dividend recommended by the Board of Directors and declared by the Members at an Annual General Meeting.

"Interim Dividend" means the Dividend declared by the Board of Directors.

"Free Reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as Dividend. However, the following amount shall not be treated as free reserves:

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

PROVISIONS REGARDING SECRETARIAL STANDARDS

1. **Dividend shall be paid out of the profits of the financial year for which such Dividend is sought to be declared and/or out of profits for any previous financial year(s) which remains undistributed after providing for depreciation in accordance with the provisions of the Act. Dividend may also be declared out of money provided by the Central Government or a State Government in pursuance of a guarantee given by such Government for this purpose.**
2. Dividend shall not be declared unless carried over previous losses and depreciation not provided in the previous year(s) are set off against the profit of the company for the current year. The company may, before declaration of Dividend, transfer such percentage of profits for that financial year, as it may consider appropriate, to its reserves.
3. **A company shall not declare Dividend on its equity shares in case of non-compliance of provisions relating to the acceptance of deposits under the Act, till such time the deposits accepted have been repaid with interest in accordance with the terms and conditions of the agreement entered with the depositors.**
4. A company shall also not declare any Dividend, if it has defaulted in –
    - Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,
    - Redemption of preference shares or creation of capital redemption reserve,
    - Payment of Dividend declared in the current or previous financial year(s), or
    - Repayment of any term loan to a bank or financial institution or interest thereon,
    - till such time the default is subsisting.
5. **Interim Dividend shall be declared and paid out of the surplus in the profit & loss account and/or out of profits of the financial year in which such Dividend is sought to be declared.**
6. The Board of Directors of a company may declare Interim Dividend during any financial year or at any time during the period from closure of financial year till holding of the Annual General Meeting.
7. While declaring the Interim Dividend, the Board shall consider the financial results for the period for which Interim Dividend is to be declared and should be satisfied that the financial position of the company justifies and supports the declaration of such Dividend. The financial results shall take into account –
    - depreciation for the full year,
    - tax on profits of the company including deferred tax for full year,

- other anticipated losses for the financial year, in this case Interim Dividend shall not be declared at a rate higher than average Dividend declared during the immediately preceding three financial years.
- Dividend that would be required to be paid at the fixed rate on preference shares.
- the losses incurred, if any, during the current financial year upto the end of the quarter, immediately preceding the date of declaration of Interim Dividend.

8. **Interim Dividend shall not be declared out of Free Reserves.**
9. **Dividend shall be declared only on the recommendation of the Board, made at a meeting of the Board.**
10. Unless the Dividend has been recommended by the Board, Members in Annual General Meeting cannot on their own declare any Dividend.
11. Where a company has an Audit Committee, this Committee shall consider the annual financial statements before submission to the Board. Dividend shall be recommended by the Board after consideration and approval of said financial statements. All requisite approvals shall be obtained before declaration of Dividend. Dividend shall not be declared subject to any condition such as the approval of financial institutions/ banks or foreign collaborators or compliance with any other contractual obligation.
12. Dividend shall relate to a financial year and shall be declared by the Members at the Annual General Meeting of the company after adoption of the financial statements of the company. Members may declare a lower rate of Dividend than the rate recommended by the Board but have no power to increase the amount or rate of Dividend recommended by the Board.
13. The Members may also decide not to declare the Dividend recommended by the Board. The Dividend, if declared, should be disclosed on per share basis.
14. **No Dividend shall be declared on equity shares for previous years in respect of which annual financial statements have already been adopted at the respective Annual General Meetings.**
15. **Interim Dividend shall be declared at a meeting of the Board.**
16. While Final Dividend is recommended by the Board and declared by the Members, approval of Members is not required for declaration of Interim Dividend. Where a company has an Audit Committee, this Committee shall consider the financial results which shall thereafter be submitted to the Board for its consideration and declaration of Interim Dividend.
17. **Distribution of discount coupons to all the Shareholders shall not be treated as deemed Dividend.**
18. **A company is prohibited to issue Bonus shares in lieu of Dividend.**
19. **Dividend to be paid only to the registered holders of shares entitled to Dividend or to their order or to their bankers.**

20. Dividend shall be paid (i) in respect of shares held in electronic form, to those Members whose names appear as beneficial owners in the statement of beneficial ownership furnished by the Depository(ies) as on the record date fixed by the company for this purpose; (ii) in respect of shares held in physical form, to those Members whose names appear in the **company"s Register of Members after giving effect to** all valid share transfers in physical form lodged with the company before the date of book closure or as on the record date, as the case may be.

21. The Dividend may also be paid to the order of the Member or to his banker.

22. Preference shares carry a preferential right as to Dividend in accordance with the terms of issue. However, this right is subject to the availability of distributable profits. Since the Dividend on preference shares is governed by the terms of issue already approved by the Shareholders, the Board may declare Dividend on such shares in accordance with the terms of issue.

23. If there are two or more classes of preference shares, the holders of the class which has priority are entitled to their preference Dividend before any Dividend is paid in respect of the other class, if the terms of issue so provide. However, if the terms of issue are silent, Dividend shall be distributed on pro-rata basis.

24. In the case of Interim Dividend, while Preference Shareholders need not necessarily be paid Dividend before Interim Dividend is paid to equity Shareholders, the Board should take into account such sum as would be necessary to pay Dividend to the Preference Shareholders before consideration of Interim Dividend.

25. Arrears of Dividend on cumulative preference shares shall be paid before payment of any Dividend on equity shares.

26. Dividend shall be deposited in a separate bank account within five days from the date of declaration and shall be paid within thirty days of declaration. The intervening holidays, if any, falling during such period shall be included.

27. The amount deposited in such bank account shall be utilised only for the payment of Dividend or for transfer to Unpaid Dividend Account/Investor Education and Protection Fund and for no other purpose.

28. To curb the practices of fraudulent encashment of Dividend, the company shall endeavour to pay Dividend directly to the bank accounts of the Members through any one of the electronic modes specified by the Reserve Bank of India viz. electronic clearing services (local, regional or national), direct credit, real time gross settlement, national electronic funds transfer etc. Where Dividend is remitted through electronic mode, the company shall send to the Member, a statement in writing showing the amount of Dividend paid.

29. Where payment of Dividend is not possible through any electronic mode, such Dividend shall be paid by way of cheque payable at par or Dividend warrant.

30. The cheque or warrant shall be sent to the registered address of the Member and, in the case of joint holders, to the registered address of the Member named first in the Register of Members or to such person or to such address as the Member or the joint holders have directed, in writing.

31. When payment is made by Dividend warrant, the name of the bank and account number, if available, shall be mentioned in the warrant after the name. In case these are not available, address of the Member shall be printed after the name.

32. In case of payment of Dividend through warrant or cheque payable at par, if the amount of Dividend exceeds one thousand and five hundred rupees, the company shall ensure to despatch such Dividend warrant or cheque either by speed post or registered post to the concerned Member at his registered address.

33. In case of a Nidhi company, where the Dividend payable to a Member is one hundred rupees or less, it shall be sufficient compliance if the declaration of Dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months.

34. A cheque or warrant for payment of Dividend shall be valid for a period of three months from the date of issue. Where such cheque or warrant remains unpaid after the initial period of validity, a fresh instrument shall be issued in lieu thereof, within fifteen days of the receipt of a valid request in this regard and such instrument shall also have a validity of three months from the date of its issue.

35. Particulars of every fresh cheque or warrant issued by the company shall be entered in a Register of Dividend Warrants kept for the purpose indicating the name of the person to whom the instrument is issued, the number and amount of such instrument and the date of issue.

36. A duplicate Dividend cheque or warrant shall be issued only after obtaining requisite indemnity/ declaration from the concerned Member and after ascertaining the encashment status of the original Dividend cheque or warrant.

37. In case of defaced, torn or decrepit Dividend cheque or warrant, a duplicate instrument may be issued on surrender of such defaced, torn or decrepit instrument to the company.

38. In case of non-receipt of Dividend warrant by the Shareholder and if the same is not returned undelivered to the company, a duplicate warrant may be issued by the company after verifying the encashment status.

39. Particulars of every duplicate Dividend cheque or warrant issued as aforesaid shall be entered in a Register of Duplicate Dividend Warrants kept for the purpose, indicating the name of the person to whom the instrument is issued, the number and amount of the instrument in lieu of which the duplicate instrument is issued and the number & date of issue of such duplicate instrument.

40. Dividend shall be paid proportionately on the paid-up value of shares.

41. Unless the Articles provide otherwise, Dividend shall be paid in proportion to the amount paid-up on the shares and for the portion of the period of the financial year in respect of which it is paid. If any shares are issued in between the financial year on the terms that they shall rank for Dividend from a particular date, Dividend on such shares shall be paid accordingly.

42. The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of its declaration shall be transferred to a special bank account titled as 'Unpaid Dividend Account' to be opened by the company in that behalf with any scheduled bank.

Such transfer shall be made within seven days from the date of expiry of the thirty days period from the date of declaration of Dividend.

43. The company shall within a period of ninety days of transferring such amount to "Unpaid Dividend Account" prepare a statement containing the names, last known addresses and the amount of Dividend to be paid to each of the Members. Such statement shall be uploaded on the website of the company, if any, and also on the website specified by the Central Government for this purpose. Such statement shall remain on the website(s) till such time the unpaid or unclaimed Dividend is transferred to the Investor Education and Protection Fund (the Fund) and be updated by the company at regular intervals.

44. Any person claiming to be entitled to any amount transferred to the Unpaid Dividend Account may apply to the company for payment of such amount.

45. The account of the Member, if the Dividend is not claimed within 30 days from the date of declaration of the Dividend.

46. Any amount in the Unpaid Dividend Account of the company which remains unpaid or unclaimed for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account, along with interest accrued, if any, shall be transferred to the Investor Education and Protection Fund.

47. Before transferring any unclaimed or unpaid Dividend to the Investor Education and Protection Fund, the company shall give an individual intimation to the Members in respect of whom such unclaimed Dividend is being transferred, at least three months before the due date of such transfer.

48. The company shall intimate the concerned Members individually of the amount of Dividend remaining unclaimed or unpaid which is liable to be transferred to the Fund and advise the Members to claim such amount of Dividend from the company before such transfer.

49. Any interest earned on the Unpaid Dividend Account shall also be transferred to the Investor Education and Protection Fund.

50. If the Unpaid Dividend Account is kept as a fixed deposit or in any account on which interest is earned, the interest earned shall also be transferred to the Fund.

51. Dividend cheques or warrants returned by the Bank, after payment thereof, and the Dividend Registers shall be preserved by the company for a period of eight years.

52. Where the company has given an undertaking to the Bank for preservation or safe keeping of paid Dividend cheques or warrants for a specified period, the said instruments shall be preserved for such specified period or eight years from the date of the instrument, whichever is longer.

53. The Dividend cheques or warrants so preserved shall be destroyed only with the approval of the Board or in accordance with the policy approved by the Board for this purpose.

54. Notes to Accounts forming part of the financial statements of the Company shall disclose the aggregate amount of Dividend proposed to be distributed to equity and Preference Shareholders for the financial year and the related amount of Dividend per share.

Arrears of fixed cumulative Dividend on preference shares shall also be disclosed separately.

55. The Balance Sheet of the company shall also disclose under the head 'Current Liabilities and Provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any.

56. The amount of Interim Dividend, if any, paid during the financial year and final Dividend recommended by the Board of directors shall be disclosed in the Board's Report.

57. The Annual Report of the company shall disclose the total amount lying in the Unpaid Dividend Account of the company in respect of the last seven years and when such unpaid Dividend is due for transfer to the Fund. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year shall also be disclosed.

ADDITIONAL COMPLIANCES APPLICABLE TO LISTED COMPANIES

• The equity shares allotted by the company shall rank *pari passu* with the existing equity shares for the purpose of payment of Dividend, if the same are in existence as on the record date/ book closure.
• The company shall not issue shares in any manner which may confer on any person, superior rights as to voting or Dividend vis-à-vis the rights on equity shares that are already listed.
• The company shall give prior intimation to the Stock Exchange(s) about the Board Meeting in which Dividend is proposed to be recommended / declared, atleast two working days in advance excluding the date of the meeting and the date of the intimation.
• The company shall intimate the Stock Exchange(s), the record date fixed for the purpose of payment of Dividend at least seven working days in advance excluding the date of the intimation and the record date.
• The company shall recommend or declare Dividend at least five working days before the record date fixed for the purpose. The said period of five working days is excluding the date of declaration/recommendation of Dividend and the record date fixed for the purpose.
• The company shall disclose the outcome of the Board Meeting held to consider the Dividend matters, to the Stock Exchange(s) within 30 minutes of closure of the meeting. In case of recommendation / declaration of Dividend, the intimation shall also include the date on which such Dividend shall be paid or Dividend warrant shall be dispatch.
• In case of payment of Dividend through warrant or cheque payable at par, if the amount of Dividend exceeds one thousand and five hundred rupees, the company shall dispatch such Dividend warrant or cheque by speed post to the concerned Member at the registered address.

SECRETARIAL STANDARD-4 (SS-4) REPORT OF THE BOARD OF DIRECTORS

EFFECTIVE DATE 1ST OCTOBER, 2018 (OPTIONAL)

The **Companies Act, 2013**, requires the Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.

The **Board's Report** is an important means of communication by the Board of Directors of a company with its stakeholders.

The **Board's Report** provides the stakeholders with both financial and non-financial information, including the performance and prospects of the company, relevant changes in the management and capital structure, recommendations as to the distribution of profits, future and on-going programmes of expansion, modernisation and diversification, capitalisation of reserves, further issue of capital and other relevant information.

The **Companies Act, 2013**, mandates certain disclosures to be made in the Board's Report. A listed company is also required to comply with certain additional requirements as stated under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Similarly, a company, whose securities are listed on an overseas stock exchange, is required to comply with additional requirements as may be specified by such stock exchange. Further, a company which is regulated under other laws, may also be required to make additional disclosures in its Board's Report as stated in the respective applicable laws.

The **Board's Report** should be based on the company's standalone financial statement and not on the consolidated financial statement and should relate to the financial year for which such financial statement is prepared.

The **Board's Report** should avoid repetition of information. If any information is mentioned elsewhere in the financial statement, a reference thereof should be given in Board's Report instead of repeating the same.

SCOPE

This Standard prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto. In case, a particular disclosure which is required to be made as per this Standard is not applicable to a particular company, the company need not disclose the same in the Board's Report except where the Standard requires specific disclosure in this respect. The Board's Report of a One Person Company (OPC) and Small Company shall be prepared in the abridged form as prescribed by the Central Government. This Standard is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, any part of this Standard becomes inconsistent with the Act, the provisions of the Act shall prevail

DEFINITIONS

ACT means the Companies Act, 2013 or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

COMMITTEE means a Committee of Directors mandatorily required to be constituted by the Board under the Act.

LISTING REGULATIONS means SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

REPORT means Board's Report or the Report of the Board of Directors.

SPECIFIED SECURITIES means the specified securities as defined in the Listing Regulations.

YEAR means the financial year to which the Board's Report relates.

SECRETARIAL STANDARD PART I: DISCLOSURES

THE REPORT SHALL, INTER ALIA, INCLUDE THE FOLLOWING:

1. COMPANY SPECIFIC INFORMATION

1.1 Financial summary and highlights/Financial Results

1.2 Amount, if any, which the Board proposes to carry to any reserves

The amount proposed to be transferred to any reserves of the company. If no amount is proposed to be transferred to reserves, a statement to that effect shall be included.

1.3 Dividend

• The amount of dividend per share and the percentage thereof which the Board recommends for the year and the dividend distribution tax thereon.
• The total amount of dividend for the year.
• Payment of dividend from reserves
• A statement on compliance with dividend distribution policy

1.4 Major events occurred during the year

• State of the company's affairs/Business Overview
• Change in the nature of business In case the company has commenced any new business or discontinued/sold or disposed off any of its existing businesses during the year, the Report shall disclose the details of the same highlighting the key focus areas.

- Material changes and commitments, if any, affecting the financial position of the company

1.5 Details of revision of financial statement or the Report

In case the company has revised its financial statement or the Report in respect of any of the three preceding financial years either voluntarily or pursuant to the order of a judicial authority, the detailed reasons for such revision shall be disclosed in the Report of the year.

2. GENERAL INFORMATION

- Overview of the industry and important changes in the industry during the last year;
- External environment and economic outlook;
- Induction of strategic and financial partners during the year; and

3. CAPITAL AND DEBT STRUCTURE

Any changes in the capital structure of the company during the year.

3.1 Issue of shares or other convertible securities

3.2 Issue of equity shares with differential rights

3.3 Issue of Sweat Equity Shares

3.4 Details of Employee Stock Options

3.5 Shares held in trust for the benefit of employees where the voting rights are not exercised directly by the employees

3.6 Issue of debentures, bonds or any non-convertible securities

3.7 Issue of warrants

4. CREDIT RATING OF SECURITIES

4.1 The disclosure shall be made regarding all basic details of whole process.

5. INVESTOR EDUCATION AND PROTECTION FUND (IEPF)

5.1 The disclosure shall include the following:

- details of the transfer/s to the IEPF made during the year
- details of the resultant benefits arising out of shares already transferred to the IEPF;

- year wise amount of unpaid/unclaimed dividend lying in the unpaid account upto the Year and the corresponding shares, which are liable to be transferred to the IEPF, and the due dates for such transfer;

6. MANAGEMENT

6.1 **Directors and Key Managerial Personnel**

The disclosure shall be made regarding names of the persons who have been appointed / ceased to be Directors and/or Key Managerial Personnel of the company during the year or after the end of the year and up to the date of the Report and mode of such appointment/cessation.

6.2 **Independent Directors**

The disclosure shall include the following: (a) in case of appointment of Independent Directors, the justification for choosing the proposed appointees for appointment as Independent Directors; and (b) in case of re-appointment after completion of the first term, the rationale for such re-appointment.

6.3 **Declaration by Independent Directors and statement on compliance of code of conduct**

6.4 **Board Meetings**

The number and dates of meetings of the Board held during the year shall be disclosed in the Report.

6.5 **Committees**

The Report shall disclose: (a) Composition of Committees constituted by the Board under the Act and the Listing Regulations as well as changes in their composition, if any, during the year; (b) The number and dates of meetings of such committees held during the year.

6.6 **Recommendations of Audit Committee**

Where the Board has not accepted any recommendation of the Audit Committee, a statement to that effect shall be disclosed in the Report along with the reasons for such non-acceptance.

6.7 **Company's Policy on Directors' appointment and remuneration**

The Report of every listed public company and other prescribed class of companies shall disclose company's policy on directors' appointment and remuneration and the criteria for determining qualifications, positive attributes and independence of a Director.

6.8 **Board Evaluation**

The Report of every listed company and other prescribed class of public companies shall include a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual Directors has been made.

6.9 **Remuneration of Directors and Employees of Listed Companies**

The following disclosures shall be made, either in the Report or by way of an annexure thereto:

• the number of permanent employees on the rolls of the company;
• the ratio of remuneration of each Director to the median remuneration of the employees of the company for the year;
• the percentage increase in remuneration of each Director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the year;
• average percentile increase already made in the salaries of employees other than managerial personnel in the last year.
• In addition to the above, the Report shall include a statement indicating: (a) names of top ten employees of the company in terms of remuneration drawn. Employees who have resigned / retired during the year shall also be considered for this purpose.
• In case of companies having less than ten employees, such statement shall include details of all employees (i) whether any such employee is a relative of any Director or Manager of the company and if so, the name of such Director or Manager.
• Particulars of employees posted and working in a country outside India, not being Directors or their relatives, **drawing more than sixty lakh rupees per year or five lakh rupees per month**, as the case may be, as may be decided by the Board, need not be circulated to the members in the Report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and the Report.

6.10 **Remuneration received by Managing/Whole time Director from holding or subsidiary company**

In case the Managing/Whole time Director of the company is in receipt of any commission from the company, and also receives any remuneration or commission from its holding company or subsidiary company, details of such remuneration or commission shall be disclosed in the Report.

6.11 **Directors' Responsibility Statement**

The Report shall include brief Directors' Responsibility

6.12 **Internal Financial Controls**

Details in respect of adequacy of internal financial controls with reference to the financial statement.

6.13 **Frauds reported by the Auditor**

Details in respect of frauds reported by the Auditor (Statutory Auditor, **Secretarial Audit**or or Cost Auditor) to the Audit Committee/ Board, as the case may be, and the frauds reported to the Central Government shall be disclosed in the Report.

7. **DISCLOSURES RELATING TO SUBSIDIARIES, ASSOCIATES AND JOINT VENTURES**

7.1 **Report on performance and financial position of the subsidiaries, associates and joint ventures**

In case of companies having subsidiaries, associates and joint ventures, the Report shall include a separate section highlighting the performance of each of the subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company.

7.2 **Companies which have become or ceased to be subsidiaries, associates and joint ventures**

During the year or at any time after the closure of the year and till the date of the Report, if the company has acquired or formed any new subsidiary, associate or joint venture, details of such companies shall be disclosed.

8. DETAILS OF DEPOSITS

8.1 The disclosure shall include the following:

• details of deposits accepted during the year;
• deposits remaining unpaid or unclaimed as at the end of the year;
• whether there has been any default in repayment of deposits or payment of interest thereon during the year
• details of deposits which are not in compliance with the requirements of the Act;
• any other relevant issues to be noted.

9. PARTICULARS OF LOANS, GUARANTEES AND INVESTMENTS

Particulars of the loans given, investments made, guarantees given or securities provided during the year and the purpose for which the loans / guarantees / securities are proposed to be utilised by the recipient of such loan / guarantee / security.

10. PARTICULARS OF CONTRACTS OR ARRANGEMENTS WITH RELATED PARTIES

The disclosure shall include contracts / arrangements / transactions with related parties which are not at arm's length basis; (b) material contracts / arrangements / transactions with related parties which are at arm's length basis; (c) contracts / arrangements with related parties which are not in the ordinary course of business and justification for entering into such contract. Such disclosure in the prescribed form shall be annexed to the Report.

11. CORPORATE SOCIAL RESPONSIBILITY (CSR)

The Report shall disclose about the CSR policy of the company and the CSR initiatives taken during the year.

12. CONSERVATION OF ENERGY, TECHNOLOGY ABSORPTION, FOREIGN EXCHANGE EARNINGS AND OUTGO

The disclosure shall include the following:

• **Conservation of energy**
• **Technology absorption**
• **Foreign exchange earnings and Outgo**.

In cases where such disclosures are not applicable, the Report shall include a statement to that effect

13. RISK MANAGEMENT

A statement indicating the development and implementation of a risk management policy for the company.

14. DETAILS OF ESTABLISHMENT OF VIGIL MECHANISM

Every listed company and other prescribed class of companies shall disclose in its Board's Report, details of establishment of a vigil mechanism.

15. MATERIAL ORDERS OF JUDICIAL BODIES /REGULATORS

Details of significant and material orders passed by any Regulator, Court, Tribunal, Statutory and quasi-judicial body, impacting the going concern status of the company and its future operations shall be disclosed.

16. AUDITORS

Names of the Statutory Auditor, Cost Auditor and **Secretarial Auditor** and details of any change in such Auditors, during the year and up to the date of the Report due to resignation / casual vacancy / removal / completion of term shall be disclosed in the Report.

17. SECRETARIAL AUDIT REPORT

The **Secretarial Audit** Report shall be annexed to the Report.

18. EXPLANATIONS IN RESPONSE TO AUDITORS' QUALIFICATIONS

The Report shall include explanations or comments on every qualification, reservation or adverse remark or disclaimer made in the Auditor's Report and the Secretarial Auditor's Report.

19. COMPLIANCE WITH SECRETARIAL STANDARDS

The Report shall include a statement on compliance of applicable Secretarial Standards and other Secretarial Standards voluntarily adopted by the company.

20. CORPORATE INSOLVENCY RESOLUTION PROCESS INITIATED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

The disclosure shall include the details of any application filed for corporate insolvency resolution process, by a financial or operational creditor or by the company itself under the IBC before the NCLT

21. FAILURE TO IMPLEMENT ANY CORPORATE ACTION

In case the company has failed to complete or implement any corporate action within the specified time limit, the Report shall disclose the same and the reasons for such failure.

22. ANNUAL RETURN

A copy of the annual return shall be placed on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Report.

23. OTHER DISCLOSURES

Other disclosures shall include the following: (a) a statement, wherever applicable, that the consolidated financial statement is also being presented in addition to the standalone financial statement of the company. (b) key initiatives with respect to Stakeholder relationship, Customer relationship, Environment, Sustainability, Health and Safety. (c) reasons for delay, if any, in holding the annual general meeting; (d) a statement as to whether cost records is required to be maintained by the company pursuant to an order of the Central Government and accordingly such records and accounts are maintained.

24. ADDITIONAL DISCLOSURES UNDER LISTING REGULATIONS

24.1 **Statement of deviation or variation**

Companies which have listed their specified securities shall furnish in the Report an explanation for any deviation or variation in connection with certain terms of a public issue, rights issue, preferential issue etc.

24.2 **Management Discussion and Analysis Report (MDAR)**

In case of companies which have listed their specified securities, the Report shall include an MDAR, either as a part of the Report or as an annexure to the Report.

24.3 **Certificate on Compliance of conditions of Corporate Governance**

Companies which have listed their specified securities, shall annex with the Report a certificate obtained from either the Statutory Auditor or a practicing Company Secretary regarding compliance of the conditions of corporate governance.

24.4 **Suspension of Trading**

In case the securities of the company are suspended from trading, the Report shall explain the reasons thereof.

25. DISCLOSURES PERTAINING TO THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

25.1 The disclosure shall include the following:

a statement that the company has complied with the provision relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

PART II: OTHER REQUIREMENTS

26. APPROVAL OF THE REPORT

The Report shall be considered and approved by means of a resolution passed at a duly convened meeting of the Board.

27. SIGNING OF THE REPORT

The Report shall be signed by the Chairman of the company, if authorised in that behalf by the Board or by two Directors one of whom shall be the Managing Director or in the case of a One Person Company, by one Director. The financial statement, including consolidated financial

statement, if any, shall be approved by the Board before they are signed on behalf of the Board. The statements so approved are required to be signed on behalf of the Board by the Chairman of the company if authorised in that behalf by the Board or by two Directors one of whom shall be the Managing Director and the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed or in the case of a One Person Company, by one Director. The financial statement so approved and signed on behalf of the Board are required to be submitted to the auditor(s) for their report thereon. The financial statement is thus signed by the auditor(s) and the audit report thereon is submitted to the Board after such approval.

The annexures to the Report shall be signed in the similar manner as the Report, except the Report on CSR activities of the company, which is required to be signed by the Chief Executive Officer or the Managing Director or any other Director of the company and by the Chairman of the CSR Committee of the company.

28. DISSEMINATION

28.1 Right of Members to have Copies of the Report

A copy of the Report along with the financial statement and the Auditor's Report shall be sent, either physically or in electronic form, to every member at least twentyone clear days in advance of the annual general meeting. The copies of the above documents can be sent less than twenty-one clear days in advance of the annual general meeting, if it is so agreed by members: (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than ninety-five per cent of the total voting power exercisable at the meeting. In case of section 8 companies, the said documents shall be sent to the members not less than fourteen clear days before the date of the annual general meeting.

28.2 Placing of the Report on the Website

The Report shall be placed on the website of the company, if any.

29. FILING AND SUBMISSION OF THE REPORT

29.1 The Report along with the audited financial statement of the company shall be filed with the Registrar of Companies. The resolution passed by the Board approving such Report shall also be filed with the Registrar of Companies. However private companies are not required to file such resolution with the Registrar of Companies.
29.2 Every listed company shall submit to the stock exchanges on which its securities are listed, its financial statement together with a copy of the Report within twenty-one working days of it being approved and adopted in the annual general meeting

CHAPTER-24 INTRODUCTION OF AUDITS

OVERVIEW AND INTRODUCTION OF VARIOUS AUDITS

An audit refer to a systematic and independent examination of books, accounts, statutory records, documents and vouchers of an organization to ascertain that how far the financial and non-financial statements and disclosures present a true and fair view of the Company.

Broadly, the audit can be classified in to two type of audit i.e. the Financial Audit and the Compliance Audit, the Financial Audit cover the Statutory Audit, Cost Audit and Internal Audit whereas the Compliance Audit cover the Secretarial Audit, CSR Audit, and Corporate Governance Audit, Take over Audit, Insider trading Audit, Labour law Audit, Cyber Audit, System Audit, Social Audit and Forensic Audit, Related Party Audit etc.

The Companies Act, 2013 contains the provisions relating to the following Audits:

1. Internal Audit (Section 138)
2. Statutory Audit (Section 139 to 147)
3. Cost Audit (Section 148)
4. Secretarial Audit (Section 204)

The brief description of the various audit prescribed under various legislations are provided below, However the detailed procedure of such audits are covered under the respective chapters of the study material.

CORPORATE GOVERNANCE AUDIT

Corporate governance audit is a strategic audit to ensure that all processes including the requirement under Laws, Policies, Procedures that are necessary for directing and controlling a business enterprise are implemented effectively. Audit of corporate governance processes provides assurance to the various stakeholders that all the required governance activities have been accomplished and what remains otherwise thereby assisting stakeholders in making an informed decision. Stakeholders don't like to receive surprises and audit of corporate governance activities shall ensure and effective check mechanism on the supervisory and managerial layers of a business enterprise. Corporate Governance Audit mechanism works primarily through Audit Committee and the Auditor.

Scope of Audit of Corporate Governance Activities

The scope of Corporate Governance Audit is wide and generally boundary less, as the subject covers:

1. Financial and non-financial stakeholders
2. Boards of Directors (Composition, Mix, Independence)
3. Committees of the Boards and terms of References
4. Control Environment (Accounting, Controls, Internal and External Audit)
5. Risk Management
6. Transparency and Disclosure of financial information and executive compensation

7. Strategic plans, programs and guidance on social responsibilities.

In Indian Companies, the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015 are the principle governing laws on Corporate Governance.

CSR AUDIT

A Corporate Social Responsibility audit aims at identifying environmental, social or governance risks faced by the organization and evaluating managerial performance in respect of those. Corporate Social Responsibility ("CSR") is a broad term however, for the purpose of addressing the scope of a CSR Audit, CSR is about managing and taking into consideration organization's operational, processes and behavioral impact on society and stakeholders from a broad perspective. Contrary to common belief CSR is more than basic legal compliance and is highly connected with and affects organization's bottom line.

PURPOSE OF CSR AUDIT:

- To ensure compliance with the provisions of Companies Act, 2013 with respect to constitution of the Committee, adoption of policy and appropriate spending towards CSR activities.
- To facilitate transparent monitoring mechanism and a mentor for the Company's CSR activities and implementation of CSR policy.
- To evaluate internal control and governance framework.
- To assess the project life cycle.
- To conduct financial review of projects to confirm the utilization of budgets for achieving desired outcomes.

Though the Companies Act, 2013 does not prescribed for the CSR Audit, but the Companies' voluntarily undertake the CSR Audits to measure effectiveness of the CSR Programmes of the company.

INSIDER TRADING AUDIT

In India the SEBI (Prohibition of Insiders Trading) Regulation, 2015 is the Primary Regulation which covers the insider trading activities.

The SEBI (Prohibition of Insider trading) Regulations, 2015 provides that the Board may appoint a qualified auditor to investigate into the books of account or the affairs of the insider or any other person as may be directed by the Board. The auditor so appointed shall have the same powers of the inspecting authority as stated in Insider trading regulations.

Also, SEBI has put in place a mechanism for preventing and controlling insider trading by putting primary responsibility to monitor and regulate insider trading activities on the company through the compliance officer and Audit Committee.

For the purpose of ensuring compliance with the insider trading regulations, the following would be some of the essential inputs to enable review and to report the status:

- Code of conduct, framed in the lines of Model code specified in the Schedule I of Insider Trading Regulations,

- appointment of compliance officer;
- responsibility discharged by the Compliance officer, preservation of Price sensitive information, closing of specific trading window;
- prior approval of trading;
- reporting requirement by the directors / officers / designated employees;
- restricted list for trading;
- disclosure by any person holding more than

LABOUR LAW AUDIT

Labour Law Audit is a process of facts findings and it is a continuous process. Labour Law Audit ensures a win - win situation for all the stakeholders. Audit under the Labour and Employment laws is an effective tool for compliance management of labour, employment and Industrial laws. Audit helps to detect non – compliance of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management.

Though Labour Law Audit is not compulsory, but it is highly recommendatory to conduct this audit. Audit helps to detect non-compliance of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management. Labor audits seek to determine employee attitudes toward the employer and to identify possible areas of vulnerability to a union organizing drive.

Labour audit cover all labour legislations applicable to an Industry/Business or any other commercial establishment, wherein audit is being conducted by the Labour Law Auditor.

CYBER AUDIT

1. In Cyber audit team of professional conducts an organizational review to ensure that the correct and most up to date cyber and IT processes and infrastructure are being applied.
2. A cyber audit also includes a series of tests that guarantee that information security meets all expectations and requirements within an organization.
3. In Cyber Audit the Internal auditors and risk management professionals have key roles to play in the Information Management function of the company.
4. In the era of global digital economy it is critical to protecting enterprise information from the insider as well as the outsider hackers.
5. The internal audit department plays a vital role in cyber security auditing in many organizations, and often has a dotted-line reporting relationship to the audit committee to ensure an independent view is being communicated to the board on the Data Security.
6. Audit helps enterprises with the challenges of managing cyber threats, by providing an objective evaluation of the controls and making recommendations to improve them as well as assisting the senior management and the board of directors understand and respond to cyber risks.

ENVIRONMENT AUDIT

Environmental audit is a general term that can reflect various types of evaluations intended to identify environmental compliance and management system implementation gaps, along with related corrective actions and it has a wide variety of meanings. Environmental Audit refers to verification and assessment of environmental measures in an organisation.

There are generally two different types of environmental audits: compliance audits and management systems audits. These audits are intended to review the site's/company's legal compliance status in an operational context. Compliance audits generally begin with determining the applicable compliance requirements against which the operations will be assessed. This tends to include Central Law, State Laws, permits and local laws. In some cases, it may also include requirements within legal action.

NEED FOR ENVIRONMENT AUDIT

- Business can assess the environmental impact of their operations.
- To ensure that the corporate decisions are not spoiling company's market for its products, destroying the source of essential supply, damaging or polluting the very infrastructure that makes usage and demand of the product grow.
- It highlights areas of inefficiencies in process e.g. where the amount of resources used are out of proportion to the amount of saleable items/ services produced.
- It highlights excessive wastes.
- It provides opportunity for business to decrease its wastes output and reduce the cost of waste treatment or waste disposal.

FORENSIC AUDIT

1. The term Forensic Audit refers to the specific guidance carried out in order to produce evidence. Forensic Audit task involves an investigation into the financial affairs of the entity and is often associated with investigation into the alleged fraudulent activity.
2. The object of forensic auditing is to relate the findings of audit by examining and gathering legally tenable evidence and producing it to the Court. In the process the corporate veil is lifted in case of corporate entities to identify the fraud and the persons responsible for it.
3. Forensic auditing involves application of audit skills to legally determine whether fraud has actually occurred.
4. The entire process includes planning, gathering evidence, reviewing the evidence and reporting of the same. In the process it aims at naming the person(s) involved in the fraud with a view to take legal action.
5. Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed.

SOCIAL AUDIT

A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness. It is a technique to understand, measure, verify, report on and to improve the social performance of the organization.

Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard. Social auditing is taken up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.

Social audit is a process of reviewing official records and determining whether the reported expenditures reflect the actual money spent on the ground. A social audit is a formal review of a company's endeavors in social responsibility.

IMPLICATIONS OF SOCIAL AUDIT

• Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard.
• Social auditing is taken up for the purpose of *enhancing local governance*, particularly for strengthening accountability and transparency in local bodies.
• Social Audit makes it sure that in democracy, the powers of decision makers should be used as far as possible with the consent and understanding of all concerned.

ICSI SOCIAL AUDIT STANDARDS

The Institute of Company Secretaries of India has approved the ICSI Social Audit Standards covering all the sixteen areas of activities listed by the Regulatory Authorities, where a Social Enterprise can operate to be eligible to register on the Social Stock Exchanges.

The Institute formulated the ICSI Social Audit Standards to provide guidance for conducting a Social Audit of Social Enterprises engaged in any of the activities as enumerated under Regulation 292E(2)(a) of SEBI (ICDR), Regulations, 2018.

The history of Social Stock Exchange (SSE) is not longer than a decade. It's a novel social and economic phenomenon. The object of introduction of SSE is to attract social investors to participate in financing Social Enterprise. SSE serves as a mediator between social enterprises that need funding and investors who are willing to invest their money for social causes. Thus, SSE provides a platform for trading of securities of Social Enterprise. Securities and Exchange Board of India (SEBI) with a view to improve visibility and knowledge, among stakeholders like investors, promoters, directors, officers of the Social Enterprise, regulators, government authorities, financial institutions, banks, creditors and common public, vide regulation 91E of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 introduced the concept of Social Audit.

Objectives

The main object of Social Audit is to ascertain the impact made by the Social Enterprise through its activities, intervention, programs or projects implemented during the reporting period. It will also analyse whether the implemented activities, intervention, programs or projects has addressed the challenges set at the implementation stage or those mentioned in the fund-raising documents. The impact report aims to highlight the positive impact made to the target area, unintended negative impact and gap between desired object and actual impact made by the Social Enterprise during the reporting period. The main objects of Social Audit are as follows:

- Assessing the impact made by the Social Enterprise through implementation of activities, intervention, programs or projects;
- Verifying the authenticity and validity of implementation of projects;
- To identify and report the gap between desired object and actual impact made by the Social Enterprise;
- Assessing the nature, intensity and duration of impact of the project;
- Evaluating the cost and efficiency of the projects/ interventions being carried out by the Social Enterprise;
- Evaluating the unintended effects and how to use the experience from the running projects to improve the design of future projects;
- Verifying whether all the statutory requirements are fulfilled or not.

Scope

Different projects may have a very different list of social issues. The Social Auditor is to exercise his own technical judgement to determine which issues should be subject to inquiry. The minimum issues which must be addressed by the Social Auditor are enumerated as under:

- Will the project significantly impact the economic, environment and social condition of the local community?
- Will there be a significant change in the general access that the communities have to natural resources, such as drinking water and energy?
- Does the local community have effective governance mechanisms to deal with the long-term effects of the project?
- Are there groups (indigenous groups, women, ethnic minorities, LGBTQIA+ and so on) who will be differentially impacted by the project?
- Will the project increase or decrease the demand for services, such as education or health?
- Will the project produce any population or demographic movement, such as the change in size of the communities affected by the project?

Above questions can help the auditor and the Enterprise to determine the extent of the impact, as well as any unmanageable social obstacles ahead of the project. This allows for the anticipation of any adverse significant social effects of the infrastructure and for avoiding, minimizing, or offsetting them.

Mandatory nature of framework and Standards

These Social Audit Standards are applicable to all Social Auditors empanelled with the ICSI Institute of Social Auditors who undertake the Social Audit assignment as per the relevant provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and other relevant provisions notified from time to time. The Standards are formulated for the effective assessment of impact made by the Social Enterprises through the projects identified and the eligibility criteria as notified by SEBI vide Regulation 292E (2) (a) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Eligibility Criteria

As per Regulation 292E (2) (a) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, in order to establish the primacy of its social intent, such Social Enterprise shall meet the following eligibility criteria: -

i. Eradicating hunger, poverty, malnutrition and inequality;

ii. Promoting health care including mental healthcare, sanitation and making available safe drinking water;

iii. Promoting education, employability and livelihoods;

iv. Promoting gender equality, empowerment of women and LGBTQIA+ communities;

v. Ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;

vi. Protection of national heritage, art and culture;

vii. Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;

viii. Supporting incubators of Social Enterprises;

ix. Supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;

x. Promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector;

xi. Slum area development, affordable housing and other interventions to build sustainable and resilient cities; xii. Disaster management, including relief, rehabilitation and reconstruction activities;

xiii. Promotion of financial inclusion;

xiv. Facilitating access to land and property assets for disadvantaged communities;

xv. Bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;

xvi. Promoting welfare of migrants and displaced persons

Social Audit Standards for other items, if any, identified by the SEBI or Government of India from time to time, will be notified as and when the items are notified by the SEBI or Government of India.

The Social Auditors empanelled under IISA shall maintain and preserve the records and evidences collected in the course of Social Audit for a minimum period of eight (8) years from the date of the respective Social Impact Assessment Report.

Benefits and Advantages of Social Audit

- Financial data on social activities/ programs/ interventions: Social Audit assesses the source of funding, its utilisation and appropriate reporting to the Governing Body of the Social Enterprise.
- Encourage for social performance: Social Audit assesses the impact of the activities undertaken and brings the social point of view to the attention of the management, and thus encourages the Social Enterprise to perform better
- Improve relationships with Stakeholders: By Implementing the auditors' recommended improvements, it helps the Social Enterprise to meet stakeholder expectations, enabling it to build a good relationship with them in the long term.
- Comparison of different activities: The Social Audit provides data for comparing effectiveness of different types of social welfare programmes undertaken and this further enables to assess which activity has better social impact.
- Enhances Social Reputation: Social Audit helps the organization to build up the image and reputation of the organization in the minds of the public.
- Sense of Social Responsibility among Shareholders and Community as a whole: Social Audit helps shareholders as well as other stakeholders realize the importance of socially beneficial programmes and extend their cooperation to the Social Enterprise's programmes of social welfare and development.

List of ICSI Social Audit Standards.

Sl. No.	Social Audit Standards
1	Social Audit Standard on eradicating hunger, poverty, malnutrition and inequality (ICSI SAS-01)
2	Social Audit Standard on promoting health care including mental healthcare, sanitation and making available safe drinking water (ICSI SAS-02)
3	Social Audit Standard on promoting education, employability and livelihoods (ICSI SAS-03)
4	Social Audit Standard on promoting gender equality, empowerment of women and LGBTQIA+ communities (ICSI SAS-04)

5	Social Audit Standard on ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation (ICSI SAS-05)
6	Social Audit Standard on protection of national heritage, art and culture (ICSI SAS-06)
7	Social Audit Standard on training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports (ICSI SAS- 07)
8	Social Audit Standard on supporting incubators of Social Enterprises (ICSI SAS-08)
9	Social Audit Standard on supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building (ICSI SAS-09)
10	Social Audit Standard on promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector (ICSI SAS-10)
11	Social Audit Standard on slum area development, affordable housing and other interventions to build sustainable and resilient cities (ICSI SAS-11)
12	Social Audit Standard on disaster management, including relief, rehabilitation and reconstruction activities (ICSI SAS-12)
13	Social Audit Standard on promotion of financial inclusion (ICSI SAS- 13)
14	Social Audit Standard on facilitating access to land and property assets for disadvantaged communities (ICSI SAS-14)
15	Social Audit Standard on bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection (ICSI SAS-15)
16	Social Audit Standard on promoting welfare of migrants and displaced persons (ICSI SAS-16)

TAKEOVER AUDIT

1. To provide the desired results to an investor and to ensure that the acquisition is executed in the most effective manner, the concept of the takeover audit has been evolved, the takeover audit provides a cost benefit analysis to suggest a strategic plan for the long-term investment strategy. The audit provides for the Acquisition Audit as well as the Inter se Transfer performed by the acquire

2. Takeover audit for merger/acquisition/ takeover could be done as three parts: pre-acquisition, post-acquisition and sell-side.

3. Internal auditors or professionals with this domain expertise can contribute significant value by ensuring that a vibrant due diligence process is in place and operating as intended. A rigorous audit vide due diligence process help companies take advantage of legitimate new business opportunities, while at the same time help minimize the risks.

4. A strong audit cum due diligence process is critical to ensure that the acquirer is fully aware of all aspects of the proposed transaction and provides access to vital intelligence that is used to negotiate the final price and integrate the new subsidiary more effectively.

FEW MANDATORY AUDITS UNDER SEBI

Circular No. & Date	Particulars	Purpose of Audit
CIR/CDMRD/DEICE/01/2015 dated November 16, 2015	Annual System Audit, Business Continuity Plan (BCP) and Disaster Recovery (DR)	Any events of disaster will disrupt trading systems adversely, thereby impacting the market integrity and the confidence of investors. Exchanges should therefore have robust Busin ess Continuity Plan (BCP) and Disaster Recovery (DR) to ensure continuity of operations.
SEBI/HO/CDMRD/DEICE/ CIR/P/2016/70 August 11, 2016	Annual System Audit of Stock Brokers / Trading Members of National Commodity Derivatives Exchanges	SEBI vide Circular No. CIR/MRD/ DMS/34/2013, dated November 06, 2013, has prescribed stock broker system audit framework and mandated Stock Exchanges to ensure conduct of system audit of its members as per the prescribed framework and monitor the same. It was decided to make the provisions of the aforesaid circular applicable to the Brokers/ Trading Members of the National Commodity Derivatives Exchanges.
SEBI/HO/IMD/DF2 CIR/P/2019/57 dated April 11, 2019	System Audit framework for Mutual Funds / Asset Management Companies (AMCs)	Considering the importance of systems audit in technology driven asset management activity and to enhance and standardize the systems audit
SEBI/HO/MRD1/ICC1/ CIR/P/2020/03 January 07, 2020	Annual System Audit of Market Infrastructure Institutions (MII)	The Systems Audit Report including compliance with SEBI circulars/ guidelines and exceptional observation format along with compliance status of previous year observations shall be placed before the Governing Board of the MII and then the report along with the comments of the

		Management of the MII shall be communicated to SEBI within a month of completion of audit Further, along with the audit report, MIIs are advised to submit a declaration from the MD / CEO certifying the security and integrity of their IT Systems

Following is an illustrative list of Audits which may be undertaken by a Company Secretary under various Statutes:

Type of Audit	**Act/Regulation**	**Section/ Regulation**	**Auditee**
Secretarial Audit	Companies Act, 2013	204	Company
Secretarial Audit	SEBI (LODR) Regulations, 2015	24A	Listed Entities
Internal Audit	Companies Act, 2013	138	Company
Audit of Depository Participants	SEBI (Depositories and Participants) Regulations 2018 read with SEBI circular no. SEBI/HO/ MRD/ DOP2-DSA2/ CIR/P/2019/22 dated January 23, 2019	76	Sole Proprietorship, Partnership Firm, LLP, Company
Internal Audit of Stock Brokers	SEBI (Stock and subbroker) Regulations, 1993	SEBI circular no. MIRSD/ DPSIII/ Cir-26/ 08	Sole Proprietorship, HUF, Partnership Firm, LLP, Company
Internal Audit of Investment Advisors	SEBI (Investment Advisors) Regulations, 2013	19(3)	Sole Proprietorship, Partnership Firm, LLP, Company
Internal Audit of Portfolio Managers	SEBI (Portfolio Managers)Regulations, 1993	SEBI circular no. IMD/ PMS/CIR/1/21727/ 03 dated November 18, 2003	Body Corporate
Internal Audit of Credit Rating Agencies	SEBI (Credit Rating Agencies) Regulations 1999	SEBI circular no.MRD/ C R A / C I R - 0 1 / 2 0 1 0 dated January 06, 2010	Public Financial Institution, Scheduled Commercial Bank, Foreign Bank operating in India with RBI approval, Foreign Credit Rating Agency recognised

			by or under any law, Company, Body Corporate
Internal Audit of Research Analysts	SEBI (Research Analysts) Regulation, 2014	25(3)	Sole, Proprietorship, Partnership Firm, LLP, Company

ICSI AUDITING STANDARDS

The Companies Act 2013 has introduced the concept of Secretarial Audit (Audit) for Bigger Companies in order to have third party professional assurance in the areas of governance, compliances and disclosures by the companies. ICSI members holding certificate of practice (PCS) have been casted an exclusive responsibility to undertake such audit of companies.

ICSI Auditing Standards

The Council of the Institute of Company Secretaries of India (ICSI) has approved the issuance of four ICSI Auditing Standards. The Standards are required to be observed by the Company Secretaries undertaking Audits. The Standards seek to promote best auditing practices, uniformity and consistency while conducting audits. The four Standards namely

CSAS-1: Auditing Standard on **Audit Engagement** which lays down the Auditor's role and responsibilities with respect to an Audit Engagement and the process of entering into an understanding/agreement with the Appointing Authority for the purpose of audit.

CSAS-2: Auditing Standard on **Audit Process and Documentation** which lays down the responsibilities and duties of the Auditor with respect to Audit Process in conducting audit and maintaining proper audit records

CSAS-3: Auditing Standard on **Forming of Opinion** covers the basis and manner for forming Auditor's opinion on subject matter of the audit

CSAS-4: Auditing Standard on **Secretarial Audit** covers the basis and manner for carrying out the Secretarial Audit

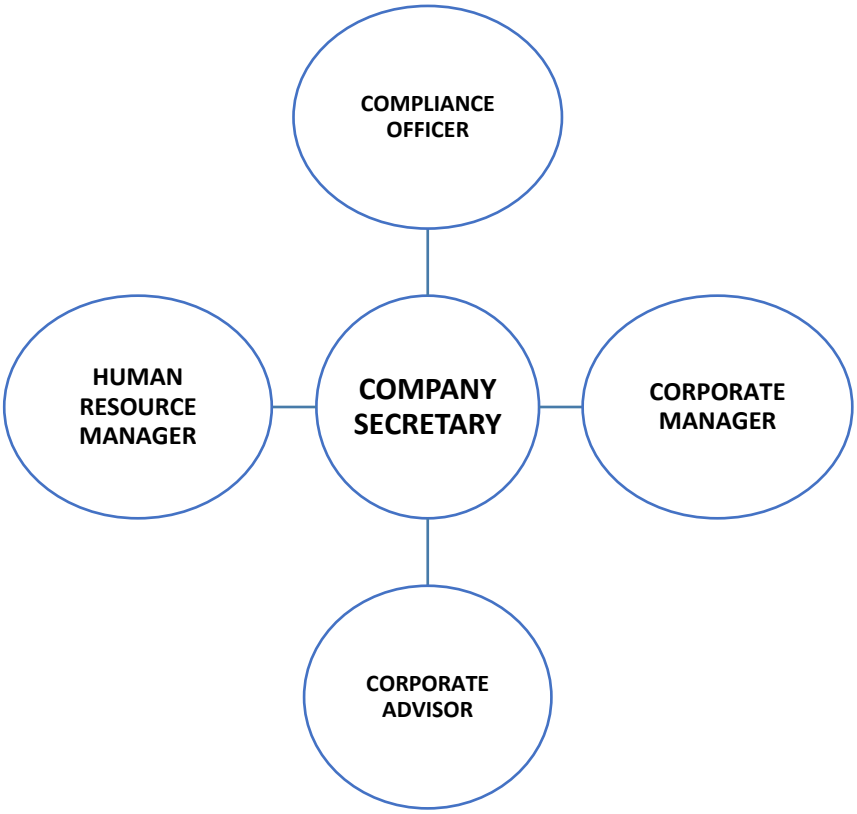
These standards are applicable on **recommendatory basis** on Audit engagements accepted by the Auditor on or after 1st July, 2019; and **mandatory for Audit engagements** accepted by the Auditor on or after 1st April, 2020

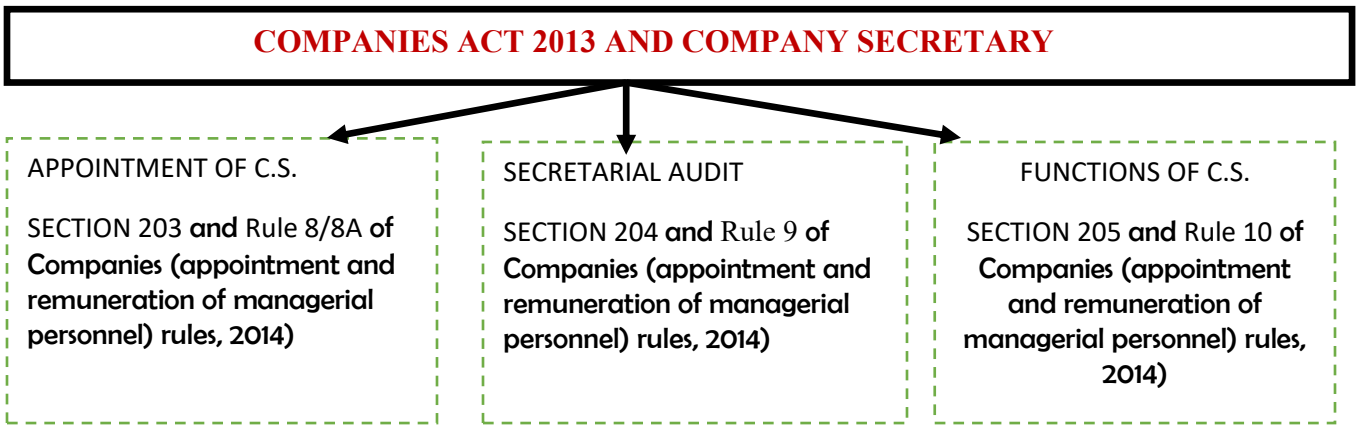
CHAPTER- 25 SECRETARIAL AUDIT

INTRODUCTION

Despite the name, the role of a Company Secretary is not a clerical or secretarial one in the usual sense. In fact, a Company Secretary is typically a senior managerial person in the corporate structure ensuring efficient administration of the company and certifying the company's compliance with the provisions of the Act. A Company Secretary helps the company to comply with the Act, avoiding failures to comply which can be very debilitating.

With the introduction of the Companies Act, 2013, the importance of Company Secretary in corporate operations is significantly increased.





MEANING OF COMPANY SECRETARY

COMPANY SECRETARY – DEFINITION SECTION-2(24)

Secretary means *a company secretary within the meaning of Section 2(1) (c) of the Company Secretaries Act, 1980.*

Section 2(1) (c) of the Company Secretaries Act, 1980 defines a company secretary as *a person who is a member of the* Institute *of Company Secretaries of India.*

APPOINTMENT OF COMPANY SECREATRY SECTION 203

Every listed company and every public company having paid up share capital 10 crore or more shall have whole time kmp **(Rule 8)**

Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary (**RULE 8A**)

Penalty for contravention Section 203

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees. (Companies Amendment Act 2019)

IN SHORT: Every Company (Private or Public) having paid up share capital 10 crore or more is required to appoint a whole time company secretary.

Appointment of KMP by the Board of directors

Section 203(2) provides that every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the **Board** containing the terms and conditions of the appointment including the remuneration.

Filing of Various Forms for appointment company secretary

- DIR-12 within **30 days** of their appointment
- MGT-14 within **30 days** of their appointment

Under section 2 (51) of the Companies Act, 2013, Company Secretary has been defined as KEY MANAGERIAL PERSON.

KMP as an officer in default

Under **section 2(59)** of the Companies Act, 2013 the KMP has also been included in the category of the officer of the company and shall be considered to be in default in complying with any provisions of the Companies Act, 2013 as per provisions of **section 2(60)** of the Act.

In addition to the Companies Act, other laws like Income-tax Act, Negotiable Instruments Act, SEBI Act, MRTP Act, FEMA Regulations, Central Excise and Customs Act, etc. have recognised the secretary as a principal officer of the company and have placed various responsibilities for compliance by him.

SUMMONS ON COMPANY

Summons to company in civil matters can be served on a secretary as per rule 2 of order 9 of Code of Civil Procedure, in case of suit against a corporation, summons can be served on

1. Company Secretary,
2. Director or
3. Other principal officer of the corporation

BY leaving it or by sending by post to registered office of the corporation.

SECRETARIAL AUDIT (A NEW PROVISION)

SECRETARIAL AUDIT REPORT SECTION 204

1. Every listed company
2. Every public company having a paid-up share capital **of fifty crore rupees** or more
3. Every public company having a turnover of **two hundred fifty crore rupees or more**
4. **Every company** having outstanding loans or borrowings from banks or public financial institutions of **one hundred crore rupees** or more Has to obtain secretarial audit report in form no. **MR 3** from P.C.S.

Penalty for contravention Section 204

Every officer of the company or the company secretary in practice, who is in default, shall be **liable to a penalty of two lakh rupees.** (COMPANIES AMENDMENT ACT 2020)

Such companies are required to annex a secretarial audit report with its board's report.

The Board's report shall give explanation on any qualification or observation or remarks by the Secretarial Auditors

Section 204(3) provides that the Board of Directors, in their report made in terms of sub-section (3) of **section 134,** shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under **section 204(1).**

Laying of the Secretarial Audit Report at the annual general meeting

There is no specific provision which requires that the Secretarial Audit Report needs to be laid by the company in its annual general meeting, however as an annexure to the Board Report it needs to be laid before the meeting.

IMPORTANT PROVISIONS REGARDING SECRETARIAL AUDIT

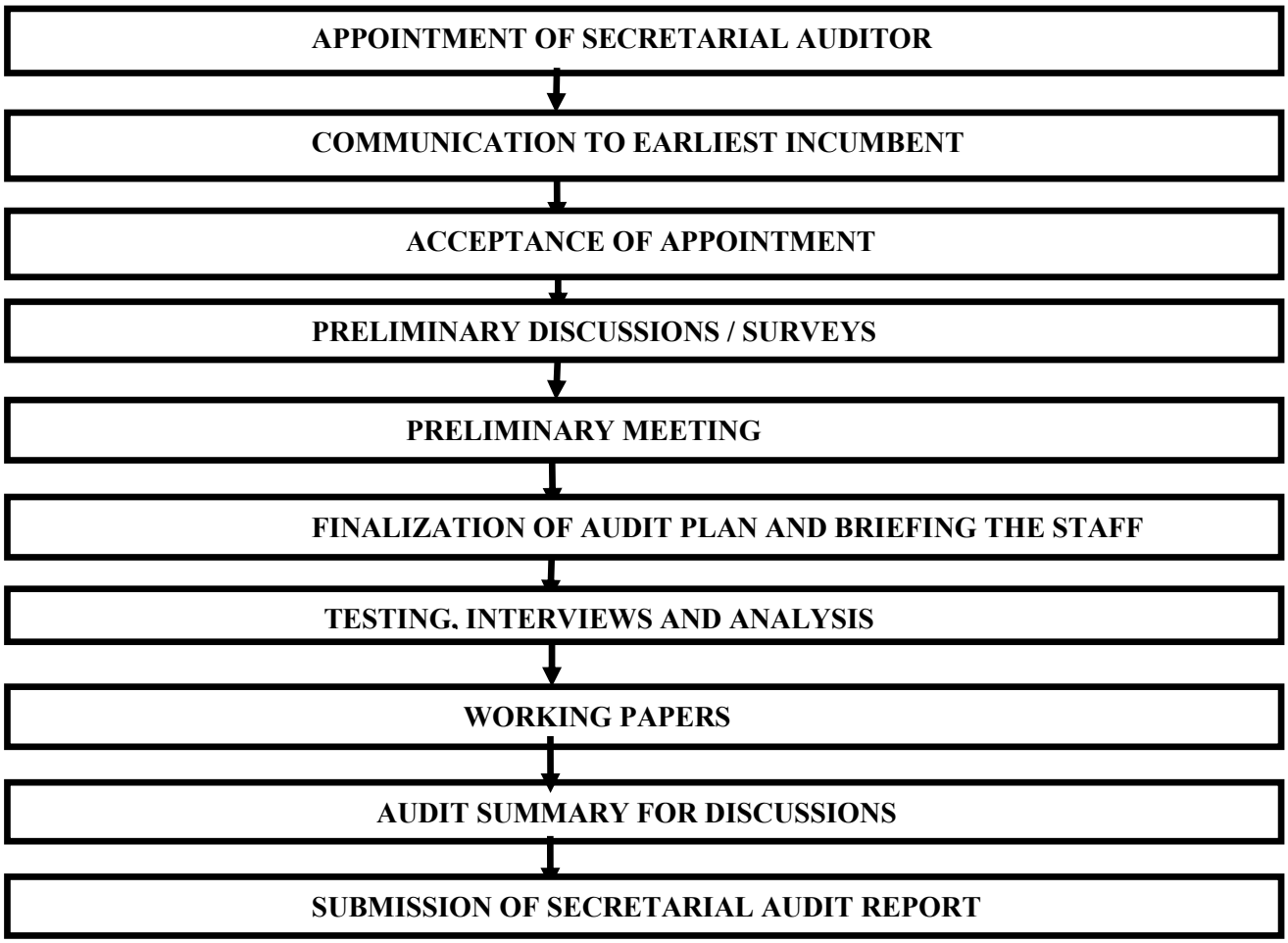
S.NO.	PARTICULARS	PROVISIONS
1	Matters to be specified in the Secretarial Audit	The scope of Secretarial Audit would comprise of verification and report of compliance of various requirements under the Companies Act and the Rules there under. The CSP should give his Security Audit Report only in respect of matters specified in the **Form MR-3** prescribed under the Companies (Appointment and Remuneration of Managerial Personnel) **Rules, 2014**. If any matter is not applicable, it should also be specified accordingly.
2	**Flexibility in the form of Compliance Certificate**	As mentioned in **Rule 9** of the Companies (Appointment and Remuneration of Managerial Personnel) *Rules, 2014* the Secretarial Audit Report shall be given in the **Form MR-3** which means that if any information required to be given in the Report does not fit into the format, necessary modifications may be made accordingly in the format of Secretarial Audit Report by the CSP.
3	***Verification of records and documents***	For issuance of the first Secretarial Audit Report, CSP should verify the various statutory registers, forms and other relevant records and documents maintained by the company from the first day of the financial year as well as for the previous period for his satisfaction. In case of any doubt on compliance specially for filing of various forms and returns the CSP should also check the proof for filing and receipts obtained from the Registrar and other authorities.
4	**Crucial area of the Secretarial Audit Report under companies act 2013**	There are certain clauses prescribed under the Secretarial Audit, in which probability for defaults that may be committed by the company and its director is more, due to various reasons, therefore proper care must be taken specifically in the matter of **COMPANIES ACT 2013** 1. Appointment of the KMP 2. Information filed with the ROC for change in the promoters and top 10 shareholders 3. Issuance of share certificate for the shares allotted in the earlier years

		4. Acceptance of deposits from the members and general public 5. Unsecured loans obtained from the various sources 6. Loan, given or guarantee or security provides to directors and their related concerns **7.** Approval of contracts in which directors are interested 8. Appointment in the office or place of profit 9. Registration of creation, modification and satisfaction of charges 10. Transfer of amount of dividend in a separate bank account 11. Payment of dividend **12.** Payment of managerial remuneration, etc.
5	**Crucial area of the Secretarial Audit Report UNDER SEBI RULES AND REGULATIONS**	The Depositories Act, 1996 The SEBI (Substantial Acquisition of Shares and Takeovers) 2011 The SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009
6	**Crucial area of the Secretarial Audit Report UNDER other laws**	• Foreign Exchange Management Act, 1999 and the rules and regulations made there under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings • Other laws (depending upon the nature of industry in which company deals (Mention the other laws as may be applicable specifically to the company) • All the Secretarial Standards issued by The Institute of Company Secretaries of India.
7	**Period of the Secretarial Audit**	The Secretarial Audit Report shall relate to the period pertaining to the financial year of the company.
8	**Disqualifications for appointment of the Secretarial Auditors**	**The Companies Act, 2013** does not provide any disqualifications for the appointment of the Secretarial Auditors. However, it should be considered that the Secretarial Auditor shows utmost integrity and independence of judgment in the performance of his duties; a person referred to in **section 144** of the Act, should not be appointed or re-appointed for giving Secretarial Audit Report to a company.
9	**Duty of the company to provide all assistance**	**Section 204(1)** provides that it shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.
10	**Objectives of Secretarial Audit**	• To check & Report on Compliances • To Point out Non-Compliances and Inadequate Compliances • To protect the interest of the Customers, employees, society etc. • To avoid any unwarranted legal actions by law enforcing agencies and other persons as well

Secretarial Audit & Company Secretary in Practice (PCS)

A Company Secretary in practice is considered to be a professional well-versed in matters of statutory, procedural and practical aspects of laws applicable to companies, both listed and unlisted public and private companies. A strong knowledge base makes him a competent professional to conduct Secretarial Audit. In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, **the Institute of Company Secretaries of India** has issued this guidance note.

SECRETARIAL AUDIT – THE PROCESS



SECRETARIAL AUDIT – THE PROCESS IN DETAIL

S.NO.	PARTICULARS	PROVISIONS
1	**Appointment of Secretarial Auditor**	**As per Rule 8** of the Companies (Meetings of Board and its powers) Rules, 2014, read with **section 179** of the Companies Act, 2013 secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.
2	**Communication to earlier Incumbent**	Whenever a company secretary in practice is engaged as a secretarial auditor in place of an earlier incumbent, he shall communicate to the earlier incumbent about the proposed engagement in writing to be sent

		by registered/speed post or any other mode of delivery, as may be recognised by the Institute of Company Secretaries of India.
3	**Acceptance of Appointment**	A formal letter for appointment should be issued by the company to the secretarial auditor along with the copy of the board resolution for appointment. The secretarial auditor shall confirm acceptance of appointment in writing.
4	**Preliminary Discussions/Surveys**	It is important to have relevant information about the company. The secretarial auditor is expected to take general overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.
5	**Preliminary Meeting**	The preliminary meeting with the senior management and the administrative staff involved in the audit will give a fair idea of what is expected and the manner in which audit activities are to be undertaken
6	**Finalization of Audit Plan and Briefing the Staff**	It is important to work out an audit plan. The plan involves briefing the audit staff as to allotment of work, fieldwork responsibilities and other roles. The audit plan should comprehensively outline the field work and usage of auditing tools.
7	**Testing, Interviews and Analysis**	The secretarial auditor may use a variety of tools and technology to gather information about the company's operations. The secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company.
8	**Working Papers**	Working papers are a vital tool of the audit process. They form the basis for expression of the audit opinion. They connect the management's records and information to the auditor's opinion. They are comprehensive and serve many functions
9	**Audit Summary for Discussions**	It is recommended that the findings during the course of audit are summarized and presented for initial discussions with the management for their views/ clarifications/replies.
10	**Submission of Secretarial Audit Report**	After considering the clarifications/replies of the management, the secretarial auditor shall prepare the secretarial audit report **in form MR. 3**. The report is addressed to the members but is to be submitted to the Board.

Benefits and Beneficiaries of Secretarial Audit

The Benefits

a) It can be an effective due diligence exercise for the prospective acquirer of a company or controlling interest or a joint venture partner.
b) It assures the owners that management and affairs of the company are being conducted in accordance with requirements of laws, and that the owner's stake is not being exposed to undue risk.
c) Instilling professional discipline and self-regulations.
d) Reduces the work load of the regulators due to better and timely compliances.

The beneficiaries

a) Promoters
b) Management
c) Non-executive directors

d) Government authorities/regulators
e) Investors
f) Other Stakeholders

Reporting with Qualification

Qualifications/reservations or adverse remarks, if any, should be stated by the secretarial auditor at the relevant places in his report in bold type or in italics. If the secretarial auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons there for.

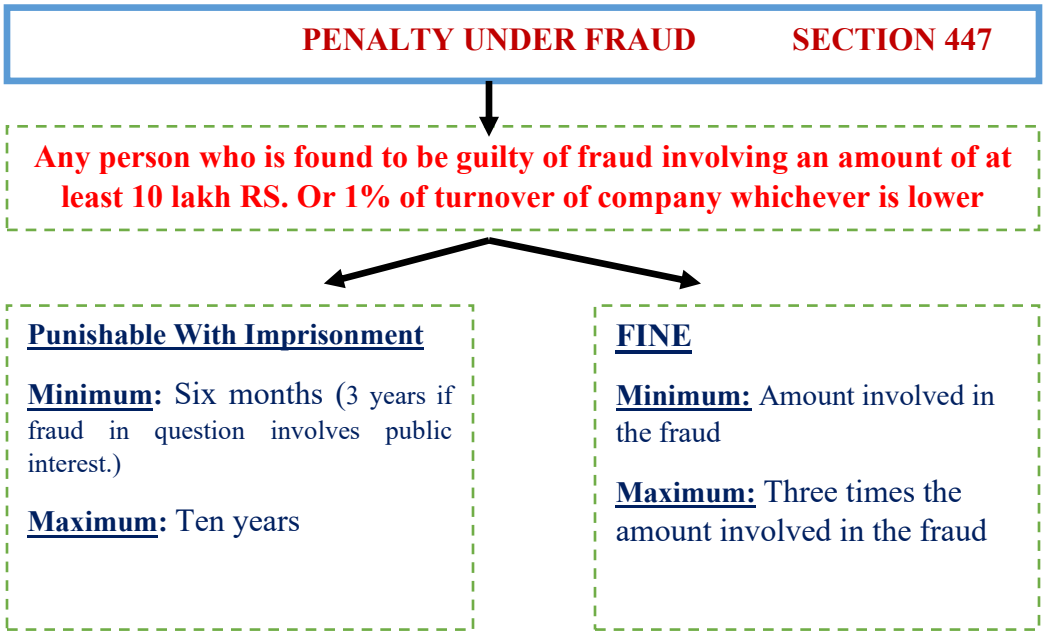
PROFESSIONAL RESPONSIBILITY AND PENALTY FOR INCORRECT AUDIT REPORT

PENALTIES UNDER COMPANY SECRETARIES ACT, 1980
Any failure or lapse on the part of secretarial auditor may attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

PENALTIES UNDER COMPANIES ACT, 2013
Further section 448 of Companies Act, 2013 deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,

a) which is false in any material particulars, knowing it to be false or
b) which omits any material fact, knowing it to be material

He shall be liable under **section 447 (Fraud)**.



Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to **50 lakh** rupees or with both. (This proviso inserted by companies' amendment act 2017)

In view of this, a company secretary in practice will be attracting the penal provisions of **section 448**, for any false statement in any material particulars or omission of any material fact in the Secretarial Audit Report. However, a person will be penalised under **section 448** in case he makes a statement, which is false in any material particulars, knowing it to be false, or which omits any material fact knowing it to be material.

SECTION 205 - FUNCTIONS OF COMPANY SECRETARY

The Functions of the company secretary shall include

a) To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company.
b) To ensure that the company complies with the applicable secretarial standards
c) To discharge such other duties as may be prescribed. (see Rule 10)

For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by the Central Government

RULE 10 OF COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

The duties of Company Secretary shall also discharge, the following duties, namely:-

- To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- To assist the Board in the conduct of the affairs of the company;
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- To discharge such other duties as have been specified under the Act or rules; and
- Such other duties as may be assigned by the Board from time to time.

LIMITS ON SECRETARIAL AUDIT

Limits for the issue of Secretarial Audit Reports for financial year 2016-17

The Council of the Institute at its 235th meeting held on February 11, 2016 reviewed the existing limits for the issue of Secretarial Audit Reports and decided as below:

• 10 Secretarial Audits per partner/ PCS, and
• An additional limit of 5 secretarial audits per partner/PCS in case the unit is peer reviewed.

These limits will be applicable for the Secretarial Audit Reports to be issued for the financial year 2016-17 Onwards

Annual Return

A member of the Institute holding a valid certificate of practice shall be entitled. To certify Annual Return pursuant to Section 92(2) of the Companies Act, 2013 for not more than 80 companies for each of the financial year under consideration. To sign Annual Return pursuant to Section 92(1) of the Companies Act, 2013 for any number of companies, for each of the financial year under consideration.

SCOPE OF SECRETARIAL AUDIT

In terms of Form **MR-3**, the Secretarial auditor needs to examine and report the compliance of the following:

1. The Companies Act, 2013 (the Act) and the rules made thereunder
2. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
3. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
4. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
5. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act')
6. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
7. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992/ SEBI (Prohibition of Insider Trading) Regulations, 2015;
8. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009/2018;
9. The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999/ SEBI (Share Based Employee Benefits) Regulations, 2014;
10. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
11. The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
12. The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009
13. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018;
14. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
15. Other laws as may be applicable specifically to the company.
16. Secretarial Standards issued by The Institute of Company Secretaries of India.

Further also the Secretarial Audit report also requires reporting on whether-

1. The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors, Independent Directors, and Women Director
2. The changes in the composition of the Board of Directors that took place during period under review were carried out in compliance with the provisions of the Act.
3. Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.
4. Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.
5. There are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with all applicable laws including general rules like labour laws, competition law, Environmental laws, regulations and guidelines.

VERIFICATION OF COMPLIANCES

COMPLIANCE UNDER COMPANIES ACT, 2013

Before commence with the Secretarial audit, the auditors shall go through the following documents, which will help in the identification of the various event held during the audit period, according to which the auditor can prepare the audit plan and can provide the list of document required for the audit purpose to the management of the company:

- Memorandum and Articles of Association
- Minutes of the Committee meetings, Board meeting, General meetings
- Directors reports
- Annual Returns of the previous year
- Filing with the MCA, ROC's, SEBI and Stock Exchanges
- Financial Statements
- Quarterly Compliance Reports.

Along with the aforesaid documents, the auditor should also go through the following documents during the audit:

1. Forms filed with the Registrar of Companies with receipts.
2. Index of Meetings held during the financial year.
3. Agenda papers, Noting of discussions, Minutes of the Board, its Committees and of General meeting.
4. Proof of Circulation of Notice and Agenda of Board meetings, Committee meetings and the General meeting
5. Proof of circulation of Draft Minutes and Final Minutes of meeting of Board and its Committees.
6. Attendance Register of Board and committee meetings
7. All statutory registers, Procedure for Maintenance of registers and records and compliances.
8. Copy of financial statement along with notes to accounts and Auditor Report.
9. Report of Internal Auditor.
10. Notices of annual and event-based disclosure of directors' interests.
11. Copies of contracts made between the company and any of the related parties

12. Shareholder List
13. Copy of Share Transfer Deeds.
14. Instruments creating, modifying or satisfying charges.
15. Forms relating to Disclosures from Directors.
16. Certified true Board Resolution for any type of corporate actions taken by the Company
17. Details of the Holding and Subsidiary Companies
18. Complete details of Shares and Debentures issued during the year.
19. Details with respect to maintenance of cost records and appointment of cost auditor.
20. Details of appointment of Auditor and Internal auditor.
21. The list of Related Party Transactions.
22. Indebtedness Certificate signed by Company Secretary/ CFO of the Company.
23. Listing and Trading Approval(s) from Stock Exchanges.
24. Corporate Action Forms filed by the Company with Depositories.
25. Equity Shareholding pattern and its break up as at the close of the financial year.

Compliances under Securities (Contract Regulation) Act, 1956

The Securities Contracts (Regulation) Act, 1956 (SCRA) defines various terms in relation to securities and provides the procedure for the stock exchanges to get recognition from Government/ SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors. The Central Government promulgated the Securities Contracts (Regulation) Rules, 1957 (SCRR) for carrying into effect the objects of the SCRA, 1956. A company listed on a stock exchange is required to comply with the provisions of SCRA and SCRR.

COMPLIANCES UNDER DEPOSITORIES ACT, 1996

According to section 2(e) of the Depositories Act, 1996, Depository means a company formed and registered under the Companies Act and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992.The Depository holds electronic custody of securities and also arranges for transfer of ownership of securities on the settlement dates.

Section 29 of the Companies Act, 2013 also mandates that every company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only in dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. However, unlisted company may convert its securities into dematerialized form or issue securities in physical or dematerialized form.

COMPLIANCES UNDER FOREIGN EXCHANGE MANAGEMENT ACT, 1999

The Reserve Bank of India by issuing Master Directions provides consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions. The RBI issuing one Master Direction for each subject matter covering all instructions on that subject. Any change in the rules, regulation or policy is communicated during the year by way of circulars/press releases. The Master Directions updated suitably and simultaneously whenever there is a change in the rules/regulations or there is a change in the policy.

COMPLIANCES UNDER SEBI REGULATIONS

The purpose of the Secretarial Audit, the following Regulations has been specifically prescribed under form MR-3

- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- SEBI (Prohibition of Insider Trading) Regulations, 2015;
- The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation 2018;
- The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999/ SEBI (Share Based Employee Benefits) Regulations, 2014;
- The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009
- The Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018;
- The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

IDENTIFICATION AND COMPLIANCE OF SPECIFIC APPLICABLE LAWS

The Secretarial Auditor may take note of various laws applicable to the Company as identified by the Management of the company; also the auditor shall carry his own efforts to identify various other laws as may be applicable to the company.

GUIDING CRITERIA FOR SEGREGATION OF SPECIFIC LAWS AND GENERAL LAWS

Segregation of laws applicable on the Company into the Industry specific and general is essential for Secretarial Audit. After considering the following factors the auditor should make the segregation of the same based on the laws being applicable on the Company:

- Key financial parameters such as Turnover, Paid-up share capital, Net worth, Borrowings, etc.
- Geographic location of registered office, units/divisions/plants/branches, etc.
- Status of company such as listed/unlisted
- Type/Class of company such as Private, Public, Holding, Subsidiary, Foreign, Nidhi, Producer, Section 8, etc.
- Registration with various authorities such as SEZ, Sectoral Regulators, etc.
- Segment such as Manufacturing/Trading/Service/e-commerce and Industry classification thereof
- Agreements governing rights, obligations of shareholders such as Joint venture, shareholders' agreements.
- Number, class and category of employees/workers such as women, contractual employees, etc.

REPORTING ON COMPLIANCE WITH THE APPLICABLE CLAUSE OF SECRETARIAL STANDARDS

Section 118 (10) of the Companies Act, 2013 provides that every company to observe Secretarial Standards with respect to General and Board meetings as specified by the Institute of Company Secretaries of India (ICSI). The Secretarial Auditor shall verify that the company has followed the applicable clause of the Secretarial Standards.

Secretarial Standards are in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) issued by the Institute of Company Secretaries of India (ICSI) are applicable to all companies w.e.f. 1st July, 2015 (except One Person Company in which there is only one director and class or classes of companies which are exempted by the Central Government through notification). The Company Secretary in employment as well as in practice are entrusted to ensure the compliance of applicable Secretarial Standards.

REPORTING ON THE CONSTITUTION OF THE BOARD

The Secretarial Auditor shall verify that during the year the Board of Directors of the Company is duly constituted with proportion of Executive Directors, Non-Executive Directors, Independent Directors, and Women Director as required under the applicable Laws, Rules & Regulations.

However, he should also confirm that the changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.

REPORTING ON BOARD PROCESSES

The Secretarial Auditor shall verify that during the year adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

Further, he should also confirm that the majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

REPORTING OF THE ADEQUACY OF SYSTEMS\PROCESSES

The Secretarial Auditor shall confirm that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

REPORTING ON THE SPECIFIC EVENTS

Secretarial Auditor is required to report and provide details of specific events and corporate actions that occurred during the reporting period having major bearing on the affairs of the company in pursuance of above referred laws/rules & regulations.

GUIDING CRITERIA FOR VARIOUS STAGES FOR CONDUCTING SECRETARIAL AUDIT

A. VERIFICATION OF EVENTS AND COMPLIANCES UNDER COMPANIES ACT, 2013

1. Documents relating to Boards and its committee which includes
- Notice of Board Meeting, Agenda, Notes on Agenda, Minutes
- Notice Committees Meetings Agenda, Notes on Agenda, Minutes
- Terms of References of the Committees

2. Documents Relating to Members Meeting which includes
- Annual General Meeting Notice, Agenda, Attendance, Minutes
- Extra Ordinary General Meetings Notice, Agenda, Attendance, Minutes
- Postal Ballot Notice, Agenda, Attendance, Minutes

3. Documents relating to Appointment, Resignation removal which includes
- Appointment of Auditors
- Appointment of Directors, Independent Directors
- Appointment of Company Secretary
- Resignation / Removal of Directors

4. Documents relating to Securities including shares, Debentures, Deposit which includes
- Shareholding Pattern
- Issue of Securities
- Buy back of Securities
- Conversion of Securities
- Acceptance and payment of Deposit

5. Documents relating to Managerial Remuneration
6. Documents relating to Registration, Modification and satisfaction of Charges
7. Documents relating to related party transactions
8. Statement on Transaction with Director and Loan to Directors
9. Statutory Register and other Registers
10. Disclosures submitted by Directors
11. Annual Return, Financial Statement
12. Filing of forms with the Registrar and attachment thereof
13. Information of the Regulatory action, order, pending cases
14. Information of the various filing to stock exchanges

B. Verification of Compliances under Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder which includes:

- Capital Structure of the company and Shareholding status
- Changes its capital structure during the period of Audit
- Compliance with Conditions of the SEBI (LODR) Regulations, 2015 relation to Listing of Securities.
- Issues relating to listing of securities /refusal of Listing of Securities by the stock exchange.

- Status of application if any filed before the central government or the Securities Appellate Tribunal against such refusal.
- Status of continuous listing requirement with the stock exchange.
- Immunity availed to the company by Central Government.
- Grounds for the delisting of Securities by the Stock exchange.

The following are the illustrative Compliances requirement under Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder:

- Check whether the company has issued securities to the public.
- Check whether the company has changed its capital structure during the period of Audit
- Whether the conditions of listing agreement/SEBI (LODR) Regulations 2015 have been complied with, on receipt of approval for listing of securities? (Section 21)
- Whether any application for listing of securities has been refused by the stock exchange.
- In case the stock exchange refused to list the securities, whether the company has made an appeal to the Central Government or the Securities Appellate Tribunal against such refusal.
- What was the outcome of the appeal?
- If listed, whether the company has complied with Rule 19A of SCRR with respect to continuous listing requirement with the stock exchange.
- Check whether the Company has been delisted by the Stock exchange.

C. Verification of the Compliances under the Depositories Act, 1996 and the Rules made thereunder which include:

- Agreement between depository and participant
- Registration of transfer of securities with depository
- Holding of Securities in depositories.
- Pledge or hypothecation of securities held in a depository
- Redressal of investors' grievances

The following are the illustrative Compliances requirement under the Depositories Act, 1996

- Check the Tripartite agreements entered into by the company with the RTA and depository for dematerialisation of securities. (NSDL/CDSL)
- Check that the provisions of section 29 of the Companies Act, 2013 and the rules made thereunder have been complied with.
- Check that the company has complied with clause 55A of SEBI (Depositories and Participants) Regulations, 1996 with respect to the reconciliation of share capital audit. The company shall file the Report within 30 days from the end of the quarter. i.e. April 30, July 30, October 30 and January 30 of every year.
- Check whether the Company or its RTA has ensured to establish continuous electronic means with the Depository, as required under regulation 56 of SEBI (Depositories and Participants) Regulations, 1996
- In case the company is aggrieved by the order of Board, may prefer an appeal to the Central Government or the securities appellate tribunal, as the case may be within a stipulated time as may be prescribed. (Section 23).
- Verification of quarterly audit report submitted to the stock exchange by the company with respect to reconciliation

VERIFICATION OF COMPLIANCES UNDER THE REGULATIONS AND GUIDELINES PRESCRIBED UNDER SEBI ACT, 1992

A. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 include the following activities
   - Direct Acquisition of Shares.
   - Indirect Acquisition of Shares
   - Direct Acquisition of Control.
   - Indirect Acquisition of Control
   - Voluntary offer
   - Pricing
   - Event base, Continual and Annual Disclosures
   - Disclosure of shares encumbered

B. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 include the following activities relating to:
   - Common Conditions for public issue and right issue
   - Right Issue
   - Bonus issue
   - Manner of disclosure in the offer documents
   - General obligations of an issuer and intermediaries with respect to public issue and right issue
   - Conditions and manner of providing exit opportunities to dissenting share holder
   - Institutional Placement programme
   - Listing on Institutional Trading Platform

C. The Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 include the following activities relating to

   - Schemes - Implementation and Process
   - Administration of Specific Schemes
   - Eligibility for participation in scheme
     - Employee Stock Option Scheme (ESOS)
     - Employee Stock Purchase Scheme (ESPS)
     - Stock Appreciation Rights Scheme (SARS)
     - General Employee Benefits Scheme (GEBS)
     - Retirement Benefit Scheme (RBS)

D. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 include the following activities relating to:

   - Issue requirement for public issue for debt securities
   - Disclosure in the offer documents
   - Filing of draft offer documents
   - Filing of shelf prospectus
   - Continuing listing conditions

- Trading of debt securities

E. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998, which includes the buy-back of shares or other specified securities by any one of the following methods: -

- From the existing security-holders on a proportionate basis through the tender offer;
- From the open market through -
  - Book-building process,
  - Stock exchange;

F. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 Which includes the

1. General Compliance relating to
   - Appointment of compliance officer &
   - RTA,
   - Rating agency etc.
   - Disclosures
   - Policies
   - Stakeholder grievances
   - Information placed on the Website
2. Corporate Governance Compliances
3. Other Compliances relating to
   - Equity Shares
   - Non-convertible debt securities
   - Non-convertible redeemable Preference Shares
   - Secured debt instrument
   - Mutual fund units

REPORTING ON THE COMPLIANCE OF THE APPLICABLE CLAUSES OF SECRETARIAL STANDARDS

The Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standards on General Meetings (SS-2) are mandatory as prescribed under Section 118(10) of the Companies Act, 2013, it is necessary to ensure the effective compliance of Secretarial Standards by the Companies and Company Secretaries in employment as well as in practice and accordingly the student are advised to go through the following clauses of the Secretarial Standards issued by ICSI.
REFER CHAPTER OF SECRETARIAL STANDARDS

VERIFICATION RELATING TO CONSTITUTION OF BOARD AND ITS PROCESSES

A. CONSTITUTION OF THE BOARD: SIZE AND COMPOSITION

Under the verification of the constitution and composition of the board includes the Compliance relating to the as applicable to the company status i.e. Private or Public and Listed or Unlisted etc:

- Minimum number of directors
- Maximum number of directors
- Optimum combination of executive and non-executive directors
- Appointment of woman director
- Chairperson of the Board

- Independent directors.
- Nominee Director
- Alternate Director
- Fulfilling qualifying criteria for independent director
- Declaration of independence by Independent Director
- Terms and conditions of appointment of Managing Director, Independent Director
- Remuneration to Independent Director
- Sitting fee
- Retire by Rotation of Directors
- Small Shareholder Director
- Removal of Director
- Resignation of Directors

B. BOARD PROCESSES

Under the verification of the board process the following check points shall be observed by the Secretarial Auditors:

- That the company held its first meeting in 30 days of incorporation and a minimum number of four meetings of its Board of Directors during the year in such a manner that there was gap of not more than one hundred and twenty days between two consecutive meetings of the Board.
- That the notice in writing was sent to every director at his address registered with the company either by hand delivery or by post or by electronic means at least seven days prior to the meeting. In case meeting of the Board was called by giving not less than seven days' notice ensure that at least one independent director, if any, was present at the meeting. In case of absence of independent directors from such a meeting of the Board, check that decisions taken at such a meeting were circulated to all the directors and are ratified by at least one independent director, if any. Check whether the notice to be supported by agenda giving write-up on each item.
- If the company provides audio-visual facility, check that the notice of the meeting informs that the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means, and also provide necessary information enable the directors to participate through video conferencing mode or other audio-visual means.
- The video conferencing is recorded and kept under safe custody
- That the quorum for a meeting of the Board of Directors of a company was present i.e. one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio-visual means was also counted for the purpose of quorum.
- That the independent directors of the company had at least one meeting in a financial year, without the attendance of non-independent directors and members of management.
- That in separate meeting of independent directors they reviewed the performance of non-independent directors and the Board as a whole and reviewed the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors and to assess, the quality, quantity and timeliness of flow of information between the company management and the Board which is necessary for the Board to effectively and reasonably perform its duties.

- That listed company and every other public company having a paid-up share capital of twenty-five crore rupees or more calculated at the end of the preceding financial year has in its Board's report made a statement indicating the manner in which formal annual evaluation [of the performance of the board, its committee and of individual director has been made by the Board of its own performance and that of its committees and individual directors.
- That every director discloses his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP-1, at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made.
- That the interested director has participated when such contract or arrangement was taken up for discussion and was not counted for the quorum for the same.
- That, in case of the listed company, all material transactions with related parties have been placed before the Audit committee and disclosed quarterly along with the Corporate Governance report filed with the Stock Exchanges.
- That the company has formulated a policy on materiality of Related Party Transaction and also on dealing with Related Party Transactions and the same is disclosed on its website and also in the Annual Report.
- That in case of listed company the all Related Party Transactions had prior approval of the Audit Committee.
- That the Audit committee has provided, omnibus approval for certain Related Party Transaction, ensure that the transaction are within the criteria of the approval and such approval shall not be provided for a period exceeding one year.
- That the audit committee reviewed, at least on a quarterly basis, the details of related party transactions entered into by the company pursuant to each of the omnibus approvals given by the Committee.
- That all Related Party Transactions have been approved by the shareholders. In case of a listed company ensure that the related parties have not voted on material related party transaction whether the entity is a related party to the particular transaction or not. (This shall not apply to transactions between wholly owned subsidiary and holding company and between two government companies.)
- That the Board periodically review the systems and processes followed by the company.
- Whether such systems and processes are adequately commensurate with its size and operations of the company whether the company has compliance management frame work to monitor and ensure compliance with applicable laws, rules, regulations and guidelines and that such systems and processes are operating effectively.
- That the board of directors has laid a code of conduct for all members of board of directors and senior management of the company.
- That the company has received the confirmation of compliance of the code of conduct form the Directors and officers of the company.
- That the Board periodically reviews compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of noncompliance.
- That the board has identified and keep a track on the high risk area and critical compliance of the company.

- That the Company has succession plan for his Key Managerial Personnel and senior officials. If so, whether the Board of the company satisfies with the existing succession plans in place.
- That the minutes of board/ committee meetings are properly maintained in accordance with the Act.
- That the company has complied with the Secretarial Standards (SS-1 &SS-2) issued by ICSI.

BOARD COMMITTEE: COMPOSITION AND PROCESSES

Under the verification of the Board Committee Compositions and Processes the following check points shall be observed by the Secretarial Auditors

a. That the any director is a member in more than ten committees or acting as Chairman of more than five committees across all companies excluding private companies, foreign companies and section 8 companies, in which he is a director.
b. Whether company constituted audit committee if fall under section 177
c. That the audit committee consists of a minimum of three directors with a majority of independent directors.
d. That In case of listed company Two-third of the total number of members of audit committee shall be independent directors.
e. That the board's report discloses the composition of an audit committee.
f. That the majority of members of Audit Committee including its Chairperson are persons with ability to read and understand the financial statement.
g. That, In case of listed company all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
h. That, In case of listed company, the Chairman of the Audit Committee is an independent director and that the Chairman of the Audit Committee was present at Annual General Meeting to answer the queries of shareholder/s.
i. That the Audit Committee of the company if any, in consultation with the Internal Auditor, has formulated the scope, functioning, periodicity and methodology for conducting the internal audit.
j. That the terms of reference (in addition to other items) of audit committee ensures overseeing the vigil mechanism of the company.
k. That In case of listed companies, the details relating to Related party transactions entered into by the company pursuant to each omnibus approval has been placed before the audit committee at least on quarterly basis.
l. That In case of listed company, the Audit Committee has met at least four times in a year and not more than one hundred days have elapsed between two meetings.
m. That In case of listed company, the quorum of audit committee was maintained in all meetings i.e. either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.
n. That any recommendation of the audit committee which is not accepted by the Board is disclosed in the Board's report.
o. That the Nomination and Remuneration Committee consists of at least three or more non-executive directors out of which not less than one-half are independent directors.
p. That the Chairman or a member of the nomination and remuneration committee was present at the Annual General Meeting, to answer the shareholders' queries.

q. That the board's report provides the salient features of the remuneration policy relating to the remuneration of the directors, key managerial personnel and other employees and the evaluation criteria of independent directors.
r. That such policy has been be placed on the website of the company.
s. That the remuneration to KMPs is as per the remuneration policy framed by the company
t. That where a company consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year has constituted a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided byte Board.
u. That the Chairman or a member of the Stakeholders Relationship Committee was present at the Annual General Meeting, to answer the shareholders' queries.
v. That every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year has constituted a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director
w. That the board's report discloses the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.
x. That the Corporate Social Responsibility Policy for the Company was approved by the board of directors and the contents of such Policy are disclosed in its report and also place it on the company's website.
y. That the composition of the all committees are also disclosed in the Board's Report.

ENVIRONMENTAL LAWS

India's economic development propelled by rapid industrial growth and urbanization is causing severe environmental problems that have local, regional and global significance. Recognising the need for regulating the factors which are affecting environment, Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms.

Further, India has an elaborate legal framework with number of laws relating to environmental protection. The List of the key national laws on environment protection, list of project require central government approvals and Industries which require industrial placed below:

Key Environment Protection Laws

- Water (Prevention and Control of Pollution) Act, 1974;
- Water (Prevention and Control of Pollution) Cess Act, 1977;
- Air (Prevention and Control of Pollution) Act, 1981;
- Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biodiversity Act,2002;
- The National Green Tribunal Act,2010;
- Plastic Waste Management Rules, 2016;
- Bio-Medical Waste Management Rules, 2016;
- Construction and Demolition Waste Management Rules, 2016;
- E-waste Management Rules, 2016;
- The Batteries (Management and Handling) Rules, 2001 made under the Act.

List of Projects Requiring Environmental Clearance from the Central Government

- Nuclear Power and related projects such as Heavy Water Plants
- Ports, harbours, airports
- Petroleum refineries including crude and product pipelines.
- Chemical fertilizers (nitrogenous and phosphatic other than single super phosphate).
- Pesticides (Technical).
- Bulk drugs and pharmaceuticals.
- Exploration for oil and gas and their production, transportation and storage.
- Synthetic rubber.
- Storage batteries integrated with manufacture of oxides of lead and lead antimony alloys.
- All tourism projects between 200-500 meters of High-Water Line and at locations with an elevation of more than 1,000 meters with investment of more than Rs. 5 crores.
- Thermal Power Plants.
- Mining Projects (major minerals) with leases more than 5 hectares.
- Highway Projects.
- Tarred roads in Himalayan and or Forest areas.
- Distilleries.
- Raw Skins and Hides

INDUSTRIES WHICH REQUIRE INDUSTRIAL LICENSING

- Coal and Lignite
- Petroleum (other than crude) and its distillation products.
- Distillation and brewing of alcoholic drinks.
- Sugar
- Animal fats and oils and their preparations
- Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
- Asbestos and asbestos-based products.
- Leather
- Tanned or dressed fur skins
- Electronic aerospace and defence equipment all types.
- Drugs and Pharmaceuticals (according to Drug Policy)
- Entertainment electronics

GUIDING PRINCIPLES OF GOOD CORPORATE CONDUCT AND PRACTICES

Every company should make disclosures and abide by its obligations in accordance with the following principles:

1. All Information relating to the company should be prepared and disclosed in accordance with applicable standards of accounting and financial and Non -financial disclosure
2. The company should implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.
3. The Company should refrain from misrepresentation and ensure that the information provided to investors is not misleading.
4. The Company should provide adequate and timely information to investors.

5. The Company should ensure that disseminations of information made are adequate, accurate, explicit and timely and presented in a simple language.
6. The Company shall abide by all the provisions of the applicable laws including the Corporate laws, securities laws and also such other guidelines as may be issued from time to time by the Regulators
7. The Company should respect the rights of stakeholders that are established by law or through mutual agreements.
8. To Company should provide opportunity to Stakeholders to obtain effective redress for violation of their rights.
9. Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process
10. The Company should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practice
11. The board of directors should provide strategic guidance to the Company, ensure effective monitoring of the management and shall be accountable to the Company and the shareholders.
12. The board of directors should encourage continuing directors training to ensure that the members of board of directors are kept up to date.
13. The board of directors should maintain high ethical standards and should take into account the interests of stakeholders.
14. The board of directors should exercise objective independent judgement on corporate affairs.

CASE LAW

Non-Reporting of related party transaction led Secretarial Auditor to pay penalty

In the matter of Sun Pharmaceutical Industries Ltd, Adjudication Order passed by RoC Gujarat, Dadra & Nagar Haveli dated 28.04.2023

Facts of the case:

On receipt of whistle blower compliant in respect of Related Party Transaction, money diversion from Sun Pharmaceutical Ltd to Aditya Medisales Ltd and other group companies, the Inquiry of M/s Sun Pharmaceutical Industries Ltd under section 206(4) of the Companies Act, 2013 was ordered by Ministry of Corporate Affairs for FYs 2014 to 2018. During the inquiry it was observed by the inquiry officer that Secretarial Auditor of the company has not reported "Aditya Medisales Ltd.' as related party.

As per section 204 of the Companies Act, 2013 the Secretarial Auditor plays a crucial role in laws for effective compliances. The object of Secretarial Audit is evaluation and form an opinion and to report to the shareholders as to whether, the company has complied with the applicable laws comprising various statutes, rules, regulations, guidelines, followed by board processes also to report on existence of compliance management system.

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. Also that, the ICSI has issued Guidance Note for Secretarial Audit. As per the Guidance Note the Secretarial Auditor is need to adhere the checklist to review the related party transaction.

In this matter, the instead of complying his duty as per the Guidance Note in respect of related party transaction u/s 188, the Secretarial Auditor has merely relied on the statutory Auditors' report, which led to non-compliance on his part pertaining to non-reporting of related party transaction.

Decision:

After considering the facts and submissions, the adjudicating officer had reasonable cause to believe that the Secretarial Auditor of the company has failed to discharge their duty as per provisions of section 143(14) read with section 188 and 204 of the Companies Act, 2013 read with ICSI Guidance Note on Secretarial Audit issued by ICSI and imposed a penalty on Secretarial Auditor.

CASE LAW

RoC imposes penalty on company, directors and company secretary for Non-compliance of SS-1

In the matter of M/s Polaris India Private Limited (ROC /D/ADJ Order /118(10)/ Polaris/ 328 to 333) adjudication order by the Registrar of Companies, NCT of Delhi & Haryana on 19th January 2022. The company was under obligation to comply with the Secretarial Standard -1 relating to meetings of the board of directors issued by the Institute of Company Secretaries of India which inter alia requires that the company shall hold at least four meetings of its board in each calendar year with a maximum interval of one and hundred and twenty days.

The company has failed to comply with Secretarial Standard – 1 in respect of holding at least four meetings of its board as well as the gap between board meetings. Upon realizing the default / non-compliance committed by the company, the company has suo-moto filed an application via e-form GNL-1 for adjudication of penalty.

Accordingly, Registrar of Companies, upon receipt of the application for adjudication received from the company, in the interest of natural justice, before imposing the penalty on the company, its directors who is in default, or any other person, as the case may be, a reasonable opportunity of being heard was given to them by issuing a notice for personal hearing. On the day of the personal hearing, the Company secretary of the company appeared before the authorities on behalf of the company and its directors / officers and explained that the defaults are of technical nature, which were committed inadvertently and without any mala-fide intentions.

The Registrar of Companies / Adjudicating Officer, in the exercise of the powers conferred on him and having considered the facts and circumstances of the case besides written and oral submissions, imposed penalty on the company and its officers including the Company Secretary amounting to Rs. 1.60 Lacs in total.

SYSTEM AND PROCESS

System and process broadly refer to the framework of legal and procedural compliances of the Auditee including but not limited to internal regulations, control, guidance and governance.

Meaning of systems and processes

A system is the core element, that company management has and/or implements in its business. It's something that helps the business run. The processes are all the things that company management do in order to make any given system work most efficiently. In other words, systems are designed to connect all of an organization's intricate parts and interrelated steps to work together for the achievement of the business strategy. System and process in the context of Secretarial Audit includes internal policies, decisions or procedures, etc. laid down by the Auditee for ensuring the compliance of the various laws, rules, standards and guidelines as may be applicable to the company. The Auditor should verify those policies, decisions, procedures, etc. of the Auditee to verify the adherence thereof and ascertain that the systems and processes are adequate and commensurate to its size and operations to ensure compliance with applicable laws, rules, regulations, standards, guidelines and defined internal processes.

The Auditor shall assess the efficacy and adequacy of the system and processes of the Auditee commensurate with its size and operation for verifying compliance of applicable laws, rules, regulations, standards, guidelines, and defined internal processes, if any by:

- Reviewing records maintained by the Auditee
- Understanding compliance responsibility centers, control points, matrix, the flow of information, escalation of non-compliances to different levels, reporting of any non-compliance.
- Assessing compliance mechanism and understanding its extent, coverage and severity mapping. The Auditor shall also assess compliance manual/ standard operating procedures, if any, available with the Auditee.
- Analysing instances of show cause notices received, prosecution initiated, fine or penalties levied, imprisonment ordered, qualification, adverse remark or observations in the statutory, internal or industry specific audit, orders passed by regulatory bodies or judicial/ quasi-judicial authorities.

Illustrations:

Below mentioned companies are observing certain best practices for Board Processes (2022):

1. Bharti Airtel Limited

- The company submits audited quarterly results to the Stock Exchange.

- Separate meeting of Independent Directors on a quarterly basis.

- The evaluation of the Board of Directors is done by an external agency

- Linkage of remuneration of MD & CEO and Senior Management with ESG/sustainability targets

2. Hindustan Unilever Limited

The Board of directors has adopted 'Corporate Governance Code' a statement of practices and procedures to be followed by the company and its officers and employees.

3. Mahindra Logistics Limited

- The company has voluntarily adopted the practice of scheduling its AGM within 5 month of end of financial year as a god governance measure.

- The company, voluntarily as a good governance practice, observes a 'silent/quiet period' for 15 days prior to the announcement of quarterly and annual financial results.

- The company has structured system-based PAN India compliance mechanism, with process management and end-to-end visibility for its compliance process.

4. AU Small Finance Bank Limited

The Executive Directors are duty bond with Malus and Claw back clause, which activates in the event of subdues or negative financial performance of the Bank.

CSAS-4 Auditing Standard on Secretarial Audit

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Secretarial Audit under Section 204 of the Companies Act, 2013 and rules made thereunder. The Standard deals with basis and manner for carrying out the Secretarial Audit.

Effective Date

The Standard is effective and recommendatory for Secretarial Audit accepted by the Auditor on or after 1st July, 2019 and mandatory for Secretarial Audit accepted by the Auditor on or after 1st April, 2020.

Adherence to other Auditing Standards

The Auditor shall adhere to the Auditing Standards on – (a) Audit Engagement (CSAS-1); (b) Audit Process and Documentation (CSAS-2); and (c) Forming of Opinion (CSAS-3).

Identification and segregation of applicable laws

The Auditor shall take note of the industry specific laws and other laws as may be applicable to the Auditee based on the identification/segregation by the Management and his own verification.

Verification of corporate conduct and compliance of laws

Identification of Events/Corporate Actions

The Auditor shall identify events/corporate actions that took place during the audit period. The identification shall be made by reviewing the website of the regulators, website of the Auditee, statutory records including books and papers, interaction with the Management and in any other appropriate manner.

Verification of Compliance

The Auditor shall verify all event and calendar-based compliances from the Records of the Auditee, database or website of the regulators and other relevant sources.

Board Composition

The Auditor shall verify compliance of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, agreement with Lenders/Investors, Articles of Association and provisions of other Acts / rules/ regulations, guidelines and policies, board decisions, shareholders decisions, as may be applicable to the Auditee with regard to:

- Overall composition of the Board including the minimum and maximum strength of the Board.
- Optimum combination of the Board including proportion of executive, non-executive, independent, non-independent, retiring, non- retiring, woman and nominee director.
- Eligibility criteria including disqualifications of directors.
- The constitution and composition of Committees of the Board.

Board Processes

The Auditor shall verify that the decisions of the Board and its Committees are taken and recorded in compliance with applicable laws, rules, regulations, guidelines, standards and defined internal processes, if any.

System and Process

System and process broadly refers to the framework of legal and procedural compliances of the Auditee including but not limited to internal regulations, control, guidance and governance.

The Auditor shall assess the efficacy and adequacy of the system and processes of the Auditee commensurate with its size and operation for verifying compliance of applicable laws, rules, regulations, standards, guidelines and defined internal processes, if any by:

- Reviewing records maintained by the Auditee.
- Assessing compliance mechanism and understanding its extent, coverage and severity mapping.
- Analysing instances of show cause notices received, prosecution initiated, fine or penalties levied, imprisonment ordered, qualification, adverse remark or observations in the statutory, internal or industry specific audit, orders passed by regulatory bodies or judicial/quasi-judicial authorities.

Detection of Fraud

- The Auditor shall exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of Section 143(12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014.
- During the course of the audit, if the Auditor suspects commission of any fraud, he shall endeavour to collect further evidence for the same. The suspicion may arise on perusal of

internal control systems, complaint under whistle blower mechanism and reports of the other auditors, etc.

- The Auditor shall ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the Auditee by its employees and officers.

Reporting of Fraud

- If the Auditor has sufficient reason to believe that there is commission of fraud and have justifiable grounds for the same, he shall report to Audit Committee/Board/Central Government as per the process laid down under the Companies Act, 2013 and include the same in Secretarial Audit Report.
- The Auditor shall verify whether the Audit Committee/ Board has given any comments on the fraud reported by the auditors in their report in terms of the provisions of the Companies Act, 2013.
- The Auditor shall verify if the fraud detected by other Auditor has been reported to the Audit Committee/Central Government and report the same in the Secretarial Audit Report.

Identification and Reporting of the events/actions having major bearing on Auditee's affairs

- It shall be the duty of the Auditor to identify and report in the Secretarial Audit Report all events/actions having major bearing on the Auditee's affairs in pursuance of the applicable laws, rules, regulations, guidelines, standards, etc.
- An event/action shall be considered as having major bearing on Auditee's affairs if it affects its going concern or alters the charter or capital structure or management or business operation or control, etc.

SOME IMPORTANT QUESTIONS AND ANSWERS

Sunil is a Company Secretary holding certificate of practice. He has accepted the assignment of secretarial audit of XYZ Ltd. For the financial year ended 31st March, 2015. He received the notice of his assignment of 15th April, 2016 and signed the audit report on 30th June, 2016. It is noticed that Sunil ceased to be a Company Secretary in practice from, 1st June, 2016. Examine the validity of the report dated 30th June, 2016 signed by Sunil.

Answer:

The Board appointed Mr. Sunil as Secretarial Auditor. He was company secretary holding certificate of practice. While Sunil received the notice on 15th April 2016 he was practicing company Secretary where as on the date of signing of Audit Report he was not company secretary in practice in terms of signing of Audit Report he was not company secretary in practice in terms of Company Secretary Act, 1980. Hence report submitted as company secretary in practice was not valid.

While conducting the secretarial audit of Rainbow Pharmaceuticals Ltd., it came to notice that a Board meeting held on 24th March, 2011 was convened and conducted by Jagat alone as a director of the company. On enquiry, it was found that except Jagat, all other directors of the company had resigned and in order to constitute the quorum and to carry out the business activities, two additional directors were appointed with immediate effect in the said single director Board meeting. Decide the validity of the Board meeting held on 24th March, 2011.

Answer:

As per Section 174 of the Companies Act, 2013, the quorum for a meeting of the Board o Directors of a company shall be one-third of its total strength or two directors, whichever is higher and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purpose.

Hence the board meeting would be considered valid and the appointment of two additional directors will also be valid. However decisions if any taken in that board meeting other than the constitutional of the board would be considered null and void even if it is in the interest of the company.

Write notes on the Secretarial audit and what are its objective?

ANSWER: Refer chapter 25

In what way can the secretarial audit be used as a tool for good governance of companies?

ANSWER: Refer chapter 25

Bright Vision Ltd. Wishes to appoint a secretarial auditor prepare a brief note for the Chairman of the company about the prerequisites for carrying out a secretarial audit.

ANSWER: Refer chapter 25

You are working as the whole-time company secretary in a large listed company draft a note to the Audit Committee of the Board highlighting the need for the appointment of Secretarial Auditor in the company.

Answer:

To the Audit committee of the board of directors ABC

Need for appointment of secretarial Audit

Need for Secretarial audit

Secretarial Audit is the process of independent verification, examination of level of compliance of applicable corporate laws to a company. The audit process if properly devised ensures timely compliance and eliminates any un-interred noncompliance of various applicable rules and regulations, an action plan of the corporate secretarial department is to be designed so as to ensure that all event based and time-based compliances are considered and acted upon. Secretarial Audit is to be on the principle of "Prevention is better than cure" rather than post mortem exercise and to find faults.

Broadly the need for secretarial Audit is:

1) Effective mechanism to ensure that the legal and procedural requirements are duly complied with.
2) Provides a level of confidence to the directors, officers in default, key managerial personnel etc.
3) Directors can concentrate on important business matters as Secretarial Audit ensures legal and procedural requirements.
4) Strengthen the image and goodwill of a company in the minds of regulators and stakeholders
5) Secretarial Audit is an effective compliance risk management tool.
6) It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.
7) Secretarial Audit is an effective governance tool.

CHAPTER-26 Internal Audit and Performance Audit

INTRODUCTION

Historically, internal auditing was confined to ensure that, the accounting and allied records have been properly maintained, the assets of the organization have been properly safeguarded and that the policies and procedures laid down by the management have been complied with.

With the changes in the economic conditions, Now the scope of internal auditing is not confined to financial transactions it is extended up to the minuet activity of the company, which may or may not be the cost center but have an impact on the efficiency on the company.

DEFINITION OF INTERNAL AUDIT

As defined by the Institute of Internal Auditors (IIA)
Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

The internal audit activity evaluates risk exposures relating to the organization's governance, operations and information systems, in relation to:

1. Effectiveness and efficiency of operations.
2. Reliability and integrity of financial and operational information.
3. Safeguarding of assets.
4. Compliance with laws, regulations, and contracts.

INTERNAL AUDIT UNDER THE COMPANIES ACT, 2013

SECTION 138: INTERNAL AUDIT

INTERNAL AUDIT: The following class of companies shall appoint internal auditor which may be either an individual or a partnership firm or a body corporate

APPLICABILITY ON COMPANIES

Every listed company

Every unlisted public company having

- Paid up share capital of **fifty crore rupees** or more during the preceding financial year; or
- Turnover of **two hundred crore rupees** or more during the preceding financial year; or
- Outstanding loans or borrowings from banks or public financial institutions exceeding one **hundred crore rupees or more** at any point of time during the preceding financial year; or
- Outstanding deposits of **twenty-five crore rupees or more** at any point of time during the preceding financial year; and

Every private company having

- **Turnover of two hundred crore rupees** or more during the preceding financial year; or
- Outstanding loans or borrowings from banks or public financial institutions exceeding **one hundred crore rupees or more** at any point of time during the preceding financial year.

Who can be an Internal Auditor

- A Chartered Accountant or
- A Cost Accountant or
- Such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.

SPECIAL NOTE:

An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule **within six months of commencement of such section.**

Internal auditor may or may not be employee of company.

Section 179 read with Rule 8 (4) of the Companies (Meeting of the Board and its Power), Rules 2014 provide that the appointment of the internal auditors shall be done only through a resolutions passed by the Board of Directors at the meetings of the Board.

Also, the resolution for appointment of the Internal Auditor shall be filed with the Registrar of Companies within 30 days from the passing of the said resolution pursuant to the provisions of Section 117 & 179 of the Companies Act, 2013.

Hence, it could be very well interpreted that the appointment of Internal Auditor can be made only at the meeting of the Board and whenever an internal auditor is appointed in a company, the resolution should be filed with the concerned Registrar of Companies vide e-Form MGT-14 within

30 days from the date of passing of the said resolution. In case of Private Companies, an exemption has been granted from filing of eForm MGT-14, vide notification issued by the Ministry of Corporate Affairs dated 5th June, 2015.

OBJECTIVE OF INTERNAL AUDIT

(a) Compliance with existing policy, plans and procedure documents within the Organisation.
(b) The extent of compliance with relevant statutory requirements
(c) Status of implementation of internal / external audit recommendations
(d) Determines the risk area of the organisation
(e) Establishes the risk management framework
(f) Identifies potential threats and assesses risks
(g) Decides on response to risks like implementation of control
(h) Monitors and coordinates the risk management processes
(i) Provides assurance on the effectiveness of risk management processes

SCOPE OF INTERNAL AUDIT

Review of Internal Control Systems and Procedures

The Internal Auditor should determine whether the internal control system is in consonance with the organizational structure. As far as possible, control should be in built in the operating functions, if they are cost effective.

Reliability and Integrity of Financial and Operating Information

The internal auditor should review the information systems to evaluate the reliability and integrity of financial and operating information given to management and to external agencies such as governmental bodies, trade organisations and labour unions.

Economical and Efficient Use of Resources

The Internal Auditor should check whether proper operating standards and norms have been established for measuring economical and efficient use of resources. They should be detailed enough to be identifiable with specific operating responsibilities and should be capable of being used by operating personnel for monitoring and evaluating their performance. The internal auditor should review the methods of establishing the operating standards and norms.

Compliance with Laws, Policies, Plans, Procedures, and Regulations

It is essential that the various functional segments of an enterprise comply with the relevant policies, plans, procedures, laws and regulations so that the operations are carried out in coordinated manner. The Internal Auditor should examine whether the management has a system by which its policies, plans and procedures are communicated to all concerned. He should examine whether management formulates the major accounting policies after due regard to their effect on the financial statements both present and future.

Review of Organizational Structure

The Internal Auditor should conduct an appraisal of the organisation structure to ascertain whether it is in harmony with the objectives of the enterprise and whether the assignment of responsibilities is in consonance therewith. For this purpose he should review the manner in which the activities of the enterprise are grouped for managerial control. It is also important to review whether responsibility and authority are in harmony with the grouping pattern.

INTERNAL AUDIT CORE PRINCIPLES

1. Demonstrates integrity.
2. Demonstrates competence and due professional care.
3. Independent and objective exercise.
4. Aligns with the strategies, objectives, and risks of the organisation.
5. Demonstrates quality and continuous improvement.
6. Communicates effectively.
7. Provides risk-based assurance.
8. Is insightful, proactive, and future-focused.
9. Promotes organisational improvement.

INDEPENDENCE OF INTERNAL AUDITOR

As per statutory provisions of Companies Act, 2013, Internal Auditor may or may not be an employee of the company, but he evaluates the functioning of the management at different levels. Therefore, to be efficient and effective, the internal auditor must have adequate independence. It may be noted that by its very nature, the internal audit function cannot be expected to have the same degree of independence as is essential when the external auditor expresses his opinion on the financial information. To ensure his independence he is made responsible directly to the Board of Directors through audit committee.

INTERNAL AUDIT TECHNIQUES

Review of Operating Environment

For carrying out the audit effectively, it is necessary for an internal auditor to understand how the company operates. He determines it by referring to departmental employees, external auditors report, and risk specialists. A firm's operating environment describes management's ethical qualities, leadership style and business practices. An internal auditor also could determine how a corporation operates by evaluating industry trends and regulations.

Review Controls

An internal auditor determines how a company's segment or departmental controls operate by reading prior audit reports or working papers and by inquiring from segment employees who perform such controls on a regular basis.

Test Controls

An internal auditor tests a business organization's controls, policies and guidelines to ensure that such controls are adequately designed and are operating effectively. Controls are mechanisms and

methodologies a corporation's management puts into place to prevent losses due to error, fraud, theft or breaks in technology systems.

Account Details

An internal auditor performs tests of account details to ensure that financial statements of a business entity are not "materially misstated." Tests of account details and account balances are referred to as substantive tests. An auditor conducts such tests if a firm's controls and processes are not adequate or not functioning properly. "Material" means significant or substantial in accounting and audit parlance; a misstatement could result from human errors, intentional fraud or technology system weaknesses.

INTERNAL AUDIT PROCESS: STEP WISE APPROACH

1. Establish and communicate the scope and objectives for the audit to appropriate management.
2. Develop an understanding of the business area under review. This includes objectives, measurements and key transaction types. This involves review of documents and interviews. Flow charts and narratives may be created if necessary.
3. Describe the key risks facing the business activities within the scope of the audit.
4. Identify control procedures used to ensure each key risk and transaction type is properly controlled and monitored.
5. Develop and execute a risk-based sampling and testing approach to determine whether the most important controls are operating as intended.
6. Report issues and challenges identified and negotiate action plans and solutions with management to address the problems.
7. Follow-up on reported findings at appropriate intervals. Internal audit departments maintain a follow up database for this purpose.

SECRETARIAL AUDIT AND INTERNAL AUDIT

During the performance of the Secretarial Audit, the secretarial auditor also needs to report on the adequacy of systems and process in the company. The internal audit function greatly assist the Secretarial auditor in determining the extent to which he can place reliance upon the work of the internal auditor. The Secretarial auditor should document his evaluation and conclusions in this respect. The important aspects to be considered in this context are:

1. **Organisational Status** - Whether internal audit is undertaken by an outside agency or by an internal audit department within the entity itself. The internal auditor reports to the management, in an ideal situation he reports to the highest level of management and is free of any other operating responsibility. Any constraints or restrictions placed upon his work by management should be carefully evaluated. In particular, the internal auditor should be free to communicate fully with the external auditor.

2. **Scope of Audit Function** - The external auditor should ascertain the nature and depth of coverage of the assignment which the internal auditor discharges for management. He should also ascertain to what extent the management considers, and where appropriate acts upon internal audit recommendations.

3. **Technical Competence** - The external auditor should ascertain that internal audit work is performed by persons having adequate technical training and proficiency. This may be accomplished by reviewing the experience and professional qualifications of the persons undertaking the internal audit work.

4. **Due Professional Care** - The external auditor should ascertain whether internal audit work appears to be properly planned, supervised, reviewed and documented. An example of the exercise of due professional care by the internal auditor is the existence of adequate audit manuals, audit programmes and working papers.

5. **Monitoring of internal control:** The internal audit function may be assigned specific responsibility for reviewing controls, monitoring their operation and recommending improvements thereto.

6. **Examination of financial and operating information:** The internal audit function may be assigned to review the means used to identify, measure, classify and report financial and operating information, and to make specific inquiry into individual items, including detailed testing of transactions, balances and procedures.

7. **Risk management:** The internal audit function may assist the organization by identifying and evaluating significant exposures to risk and contributing to the improvement of risk management and control systems.

8. **Governance:** The internal audit function may assess the governance process in its accomplishment of objectives on ethics and values, performance management and accountability, communicating risk and control information to appropriate areas of the organization and effectiveness of communication among those charged with governance, external and internal auditors, and management.

ROLE OF INTERNAL AUDIT IN ORGANIZATION CONTROL MECHENISM

1. Internal Control

The internal control may be defined as "The process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, safeguarding of assets, and compliance with applicable laws and regulations. The term "controls" refers to any aspects of one or more of the components of internal control.

Internal Control Mechanism

Internal Audit is a vital constituent of Internal Control Mechanism. It is important to constitute and maintain an Audit Committee that shall provide assistance to the Board of Directors in fulfilling their oversight responsibility to the shareholders relating to:

• the integrity of the financial statements and the financial reporting process and principles;
• internal controls;
• the qualifications, independence, remuneration, and performance of the independent auditors;
• staffing, focus, scope, performance, and effectiveness of the internal audit function;
• risk management; and
• compliance with legal, regulatory, and corporate governance requirements.

The Board defines clearly the roles and responsibilities of the Audit Committee. Management however, has primary responsibility for financial statements and reporting process, internal controls, legal and regulatory compliance and risk management

The Internal auditor should examine and contribute to the ongoing effectiveness of the internal control system through evaluation and recommendations. However, the internal auditor is not vested with management's primary responsibility for designing, implementing, maintaining and documenting internal control. Internal audit functions add value to an organization's internal control system by bringing a systematic, disciplined approach to the evaluation of risk and by making recommendations to strengthen the effectiveness of risk management efforts.

2. Risk management

Internal auditing professional standards require the function to monitor and evaluate the effectiveness of the organization's Risk management processes. Risk management relating to an organization objectives, and identification, analysis, and response to those risks that could potentially impact its ability to realize its objectives. Generally, the risks fall under strategic, operational, financial reporting, and legal/regulatory categories.

3. Corporate Governance

Internal auditing activity as it relates to corporate governance is generally informal, accomplished primarily through participation in meetings and discussions with members of the Board of Directors. Corporate governance is a combination of processes and organizational structures implemented by the Board of Directors to inform, direct, manage, and monitor the organization's resources, strategies and policies towards the achievement of the organizations objectives. The internal auditor is often considered one of the "four pillars" of corporate governance, the other pillars being the Board of Directors, management, and the external auditor.

A primary focus area of internal auditing as it relates to corporate governance is helping the Audit Committee of the Board of Directors (or equivalent) perform its responsibilities effectively. This may include reporting critical internal control problems, informing the Committee privately on the capabilities of key managers, suggesting questions or topics for the Audit Committee's meeting agendas, and coordinating carefully with the external auditor and management to ensure the Committee receives effective information.

APPRAISAL OF MANAGEMENT DECISIONS

The management for the company owns the responsibility for establishing and maintaining a system of internal controls within an organization. Internal controls are those structures, activities, processes, and systems which help management effectively mitigate the risks to an organization's achievement of objectives. Management is charged with this responsibility on behalf of the organization's stakeholders and is held accountable for this responsibility by an oversight body (e.g. board of directors, audit committee, elected representatives).

A dedicated, independent and effective internal audit activity assists both management and the oversight body (e.g. the board, audit committee) in fulfilling their responsibilities by bringing a systematic disciplined approach to assessing the effectiveness of the design and execution of the system of internal controls and risk management processes. The objective assessment of internal controls and risk management processes by the internal audit activity provides management, the oversight body, and external stakeholders with independent assurance that the organization's risks have been appropriately mitigated. Because internal auditors are experts in understanding organizational risks and internal controls available to mitigate these risks, they assist management in understanding these topics and provide recommendations for improvements.

INTERNAL AUDIT HAS BECOME AN IMPORTANT MANAGEMENT TOOL FOR THE FOLLOWING REASONS:

1.	Internal Auditing is a specialized service to look into the standards of efficiency of business operation.
2.	Internal Auditing can evaluate various problems independently in terms of overall management control and suggest improvement.
3.	Internal Audit's independent appraisal and review can ensure the reliability and promptness of MIS and the management reporting on the basis of which the top management can take firm decisions.
4.	Internal Audit system makes sure the internal control system including accounting control system in an organization is effective.
5.	Internal Audit ensures the adequacy, reliability and accuracy of financial and operational data by conducting appraisal and review from an independent angle.
6.	Internal Audit is an integral part of "Management by System".
7.	Internal Audit can break through the power ego and personality factors and possible conflicts of interest within the organization.
8.	It ensures compliance of accounting procedures and accounting policies.
9.	Internal Auditor can be of valuable assistance to management in acquiring new business, in promoting new products and in launching new projects for expansion or diversification of business.

STEPS IN APPRAISAL OF MANAGEMENT DECISION

In appraisal of management decision the following step should be considered by the auditor

1. Whether the management decision are well defined or not

2. Whether the Objectives and desired output has been set out clearly and relate explicitly with the policy or strategy adopted by the company to help in post event evaluation of the management decisions. Ideally the objectives of the every management decision should be specific, measurable, agreed, realistic and time-dependent.
3. While taking Decision, whether the management has considered the effect of the Associated Risk; Time Availability; Scale and location; Scope for Alternative arrangements with other public bodies; Degree of involvement of Regulators and Civic Bodies; Capacity of the market to deliver the required output; Alternative asset uses; Use of new or established technology; and Environmental Issues.
4. In case of the Major Investment decision, whether the various possible options were considered.
5. Whether such potential options are analyzed reviewed in terms of value, costs, benefits, risk and uncertainties of options.
6. Whether the options are selected after due analysis and a consensus decision is taken After a manager has analyzed all the alternatives,
7. Whether the selected alternative implemented efficiently.
8. Ongoing Review of management decision control and evaluation system actions need to be monitored

CASE STUDY

1. ABC Pvt. Ltd. having Rs. 90 lacs paid-up capital, Rs. 5 crores reserves and turnover of last three consecutive financial years, immediately preceding the financial year under audit, being Rs. 50 crores, Rs. 175 crores and Rs. 300 crores, but does not have any internal audit system. In view of the management, the internal audit system is not mandatory. Comment?

Solution:

Applicability of Provisions of Internal Audit: As per section 138 of the Companies Act, 2013, read with rule 13 of Companies (Audit and Auditors) Rules, 2014, every private company shall be required to appoint an internal auditor or a firm of internal auditors, having-

(i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year

Conclusion: In the instant case, ABC Pvt. Ltd. is having a turnover of Rs. 300 crores during the preceding financial year which is more than two hundred crore rupees. Hence, the company has the mandatorily statutory requirement to appoint an Internal Auditor and mandatorily conduct an internal audit.

2. Will the Partnership firm / Proprietary firm mandatorily required appointing an Internal Auditor?

Solution:

No, the Partnership firm / Proprietary firm is not mandatorily required to appoint an Internal Auditor. However, voluntary the Partnership firm / Proprietary firm can appoint an internal auditor of the organization.

3. The Management of XYZ Pvt. Ltd appointed Luthra and Co. (Chartered Accounting Firm) as an internal auditor of the company who is also a statutory auditor of the XYZ Pvt. Ltd. Is the appointment of Luthra and Co. (Chartered Accounting Firm) as an Internal Auditor of XYZ Pvt. Ltd. is valid?

Solution:

- As per section 138, the internal auditor shall either be a chartered accountant or a cost accountant (whether engaged in the practice or not), or such other professional as may be decided by the Board to conduct an internal audit of the functions and activities of the company.
- The internal auditor may or may not be an employee of the company. However, Statutory Auditor shall not be appointed as internal auditor of the Company.

Therefore, the appointment of Luthra and Co. (Chartered Accounting Firm) as an internal auditor of XYZ Pvt. Ltd. is not valid as Luthra and Co. is also a statutory auditor of XYZ Pvt. Ltd.

Question: Is there any penalty for non-compliance with respect to appointment of internal auditor?

Answer: Yes, If a company or any other officer of the company, contravenes the provisions of this section, then the company or any officer of the company who is in default is liable for punishment with a penalty of up to Rs.10,000. In case of continuation of default in complying with the above section further fine of Rs.1,000 per day will be imposed subject to a maximum of Rs. 2,00,000 in case of a company and Rs. 50,000 in case of an officer who is in default or any other person.

CASE LAW

In the matter of M/s. Indu Nissan Oxo Chemical Industries Limited, ROC-GJ/ADJ-order/Section 454 /Indu Nissan /Sec.138/ 2022-23 /6504 – 6506 dated 02.01.2023 ROC Gujarat has passed an adjudication order pertaining to consequences of default while complying with the provisions of section 138(1) of the Companies Act 2013 relating to the appointment of internal auditor in specified class (es) of companies.

Facts of the case:

The Ministry of Corporate Affairs has ordered to inquiry of the subject company under section 206 of the Companies Act 2013. During the course of an inquiry, it was observed that the company is the eligible company to appoint an internal auditor and the company failed to appoint an internal auditor which is the mandatory requirement under section 138 of the Companies Act 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014. The company has failed to appoint an internal auditor for the period from 1st April 2014 to 31 March 2021 (for seven financial years) and violated the provision of section 138 of the Companies Act 2013.

Consequently, ROC issued a show cause notice to the company and its directors. The company replied that the company has been shut down since 1999 and it had stopped its production completely and the company had been a sick unit since the year 2002. Further the company was also registered with Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act 1985.

The ROC issued Personal hearing notice to give a reasonable opportunity of being heard to the company and its directors. On the scheduled date of the hearing neither the company nor KMP had appeared for the hearing and also not submitted any reply / letter, in spite of further reminder / written notice issued to the company / its director. Hence, the Registrar of Companies / Adjudicating Officer proceeded on the matter in the absence of a reply of the company / non-appearance of any of the company officials even after providing the sufficient opportunity to the Company / director.

Decision:

Based on the forgoing facts and circumstances, the Registrar of Companies/ Adjudicating Officer came to the conclusion that the company and its director committed the default of section 138 by not appointing an internal auditor for a period of seven years and therefore, it is concluded that the company and its director in default were liable for penalty under section 454 of the Companies Act 2013 for default under section 138 of the Companies Act 2013.

Since none of the company officials appeared and presented themselves for the personal hearing in spite of reminders and in the absence of any response from the company, the Registrar of Companies / Adjudicating Officer went ahead on this matter ex-parte and passed the adjudicating order as per the provisions of Section 454 (3) of the Companies Act 2013 read with sub-rule 11 of Rule 3 of the Companies (Adjudication of Penalties) Rules 2014.

The Registrar of Companies / Adjudicating Officer imposed penalty on the company and its directors amounting to Rs. 1.4 lacs.

APPOINTMENT OF INTERNAL AUDITOR

Section 179 of Companies Act, 2013 read with Rule 8 (4) of the Companies (Meeting of the Board and its Power), Rules 2014 provide that the appointment of the internal auditors shall be done only through a resolutions passed by the board of directors at the meetings of the board.

Test Yourself:

Question: Internal Auditor is appointed by the _____

a) Shareholders of the Company

b) Statutory Auditor

c) Institute of Internal Auditors of India

d) Board of Directors of the Company

Correct Option: d) Board of Directors of the Company

Certain best practices adopted by companies in terms of Internal Audit (2022):

Bharti Airtel Limited

The Company has 100% Independent Audit Committee. The Company has a robust Internal Assurance Group (IAG) led by Chief Internal Auditor supported by reputed independent firms.

Cipla Limited

Independent Assurance Report on the non-financial/ sustainability performance

The audit committee reviews and approves the non-audit services availed from the Statutory Auditor and confirmed that such services did not affect the independence of the auditor in any manner.

UNO Minda Limited

The company rotates Internal Auditors at regular intervals.

ONGC Videsh Limited

Statutory Auditors and Internal Auditors are invited for their remarks and observations at the quarterly audit committee meetings.

Tata Chemicals Limited

The company conducts internal audit through an independent external agency on a continuous basis.

RECOMMENDED CONTROLS TO PREVENT AND DETECT FRAUD AND EDUCATE TO IMPROVE THE ORGANIZATION'S FRAUD AWARENESS

There are several controls that an organization can implement to prevent and detect fraud, and education is a crucial component in improving an organization's fraud awareness.Here are some recommendations for controls and educating across the entity:

1. Segregation of duties: Ensure that no single person has control over multiple aspects of a process or transaction. For example, the person who approves a purchase should not be the same person who pays for it. Maker, Checker and Approver is an excellent tool to prevent errors and frauds.

2. Rotation of duties: Ensure that there is periodical rotation of duties for key positions. We saw in the largest municipal fraud that in the absence of rotation of duties, huge fraud perpetrated by one employee gone unnoticed. Punjab National Bank fraud also happened due to absence of mandatory job rotation or transfer of few employees of the branch.

3. Mandatory vacation: Having a HR policy for giving mandatory vacation to key employees helps the employees to come fresh after vacation and also prevents employees from hiding their tracks of crime.

4. Treat employees well: It has been observed that if the employees are treated well by giving timely rewards and recognition for their work, they feel motivated. If they are treated badly like being underpaid or overlooked for promotion, they look for the opportunity and rationalise to do frauds to take revenge on their employers.

5. Regular audits: Conduct regular internal audits especially at remote locations where there are significant projects being executed or manufacturing facilities are run to identify potential fraud and ensure compliance with internal controls.

6. Background checks: Conduct thorough background checks on employees, especially those in positions of trust or responsibility.

7. Whistleblower hotline: Implement a confidential hotline for employees to report suspicious activity without fear of retaliation.

8. Use of technology: Implement fraud detection software and use data analytics to identify patterns of suspicious activity.

9. Fraud awareness training: Provide periodical training to all employees on the types of fraud that can occur, how to identify it, and how to report it. Also ensure that adequate documents are kept in HR as evidence to prove that the employee participated in the training and understood it. This will help on a later date if the fraudulent employee feigns ignorance.

10. Code of conduct: Establish a code of conduct that clearly defines ethical behavior and expectations for employees.

11. Management oversight and Tone at the top: Ensure that management regularly reviews and approves transactions and financial statements. Ensure that independent directors are really independent.

12. Reinforce accountability: Hold employees accountable for their actions and ensure that consequences are enforced when necessary.

13. Document retention: Establish policies for the retention and destruction of records to ensure that important documents are not lost or destroyed.

Communicate all key changes to Policies and Procedures of the entity to all stakeholders like employees, vendors, customers and document evidence in support of the same that these stakeholders have read and understood the implications of changes made.

By implementing the above controls and providing education on fraud prevention and detection, organizations can help protect themselves against potential fraud and improve their overall fraud awareness.

CASE STUDY

Toshiba – a case of internal audit failure

In July 2015, Toshiba Corp president Mr. Hisao resigned after investigations found that the company inflated earnings by $1.2 billion during the period 2009-2014. The company Toshiba was one of the early adopters of corporate governance reforms initiated in Japan.

Some of the observations of the independent investigation committee of the company on internal audit demand discussion and debate.

The investment committee observed:

a) The fault in internal audit in Toshiba was that it focused on consultation service rather than assurance service.

b) In Toshiba, the audit committee was neither capable nor independent. Internal Audit can function independently only if audit committee is capable, independent and effective, and internal auditor reports to the audit committee.

The three external members of audit committee had no knowledge of finance and accounting. The ex-CFO, who was the CFO during the timeframe when accounting irregularities occurred, was the only whole time member of the audit committee.

c) A corporate culture existed in Toshiba whereby employees could not act contrary to the intent of their superiors. In such a culture an upright internal auditor cannot survive, particularly if he is not independent of the management.

Internal auditor is the ‘eyes and ears’ and ‘go-to man’ of the audit committee. Therefore, internal audit failure leads to corporate governance failure.

CHAPTER-27 STATUTORY AND COST AUDIT

STATUTORY AUDIT

Audit is an examination of accounting records undertaken with a view to establish the correctness or otherwise of the transactions reflected therein. It involves the intelligent scrutiny of the books of account of a company with reference to documents, vouchers and other relevant records to ensure that the entries made therein give a true picture of the business conducted during the period under review.

The main object of audit is to

(i)	Detection and prevention of errors.
(ii)	Detection and prevention of fraud.

CASE LAWS

S.NO.	CASE NAME	PROVISONS
1	In case of Kingston Cotton Mills Co	An auditor is not bound to be a detective or to approach his work with a foregone conclusion that there is something wrong. He is a watch dog but not a blood hound. He is justified in believing the servants of the company in whom confidence is placed by the company
2	Institute of Chartered Accountants of India v. P.K. Mukherjee	Auditor is expected to examine the accounts maintained by the Directors with a view to inform the shareholders of the true financial position of the accounts of the company.
3	In case of London & General Bank	Auditors are not advisers: It is no part of an Auditor's duty to give advice either to the Directors or to the shareholders as to what they ought to do.

APPOINTMENT OF FIRST AUDITOR

SECTION 139(6) AND 139(7) OF THE COMPANIES ACT, 2013

[**Section 139(7)**] In case of Government **Company** or any other company owned or controlled, directly or indirectly, by the Central Government, or by one or more State Government, or partly by the Central Government and partly by one or more State Government:

a) The first auditor shall be appointed by CAG within 60 days of registration of the company.
b) In case, CAG does not appoint the first auditor the Board shall appoint the first auditor within next 30 days.
c) In case of failure of the Board to appoint the first auditor within the said period of 30 days, the Board shall inform the members of the company who shall appoint the first auditor within 60 days at an extraordinary general meeting.

[Section 139(6)]: In case any other Company:

a) The first auditor shall be appointed by the Board of directors within 30 days of registration of the company.

b) In case of failure of the Board to appoint the first auditor within the said period of 30 days, the Board shall inform the members of the company who shall appoint the first auditor within 90 days at an extraordinary general meeting.

APPOINTMENT OF SUBSEQUENT AUDITOR SECTION 139(5) AND 139 (1)

SUBSEQUENT AUDITOR

In case of a Government Company or any other company owned or controlled, directly or indirectly, by the Central Government; or One or more State Government; or Partly by the Central Government and partly by one or more State Government. Section 139(5)

Appointment or reappointment of auditor

1. In case of aforementioned companies, CAG shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within 180 days from the commencement of the financial year.

2. The auditor shall hold office till the conclusion of the AGM.

Other than Government Company Section 139(1)

a) At the 1st AGM, every company shall appoint an individual or a firm as an auditor. The auditor so appointed shall hold office from the conclusion of 1st AGM till the conclusion of 6th AGM.

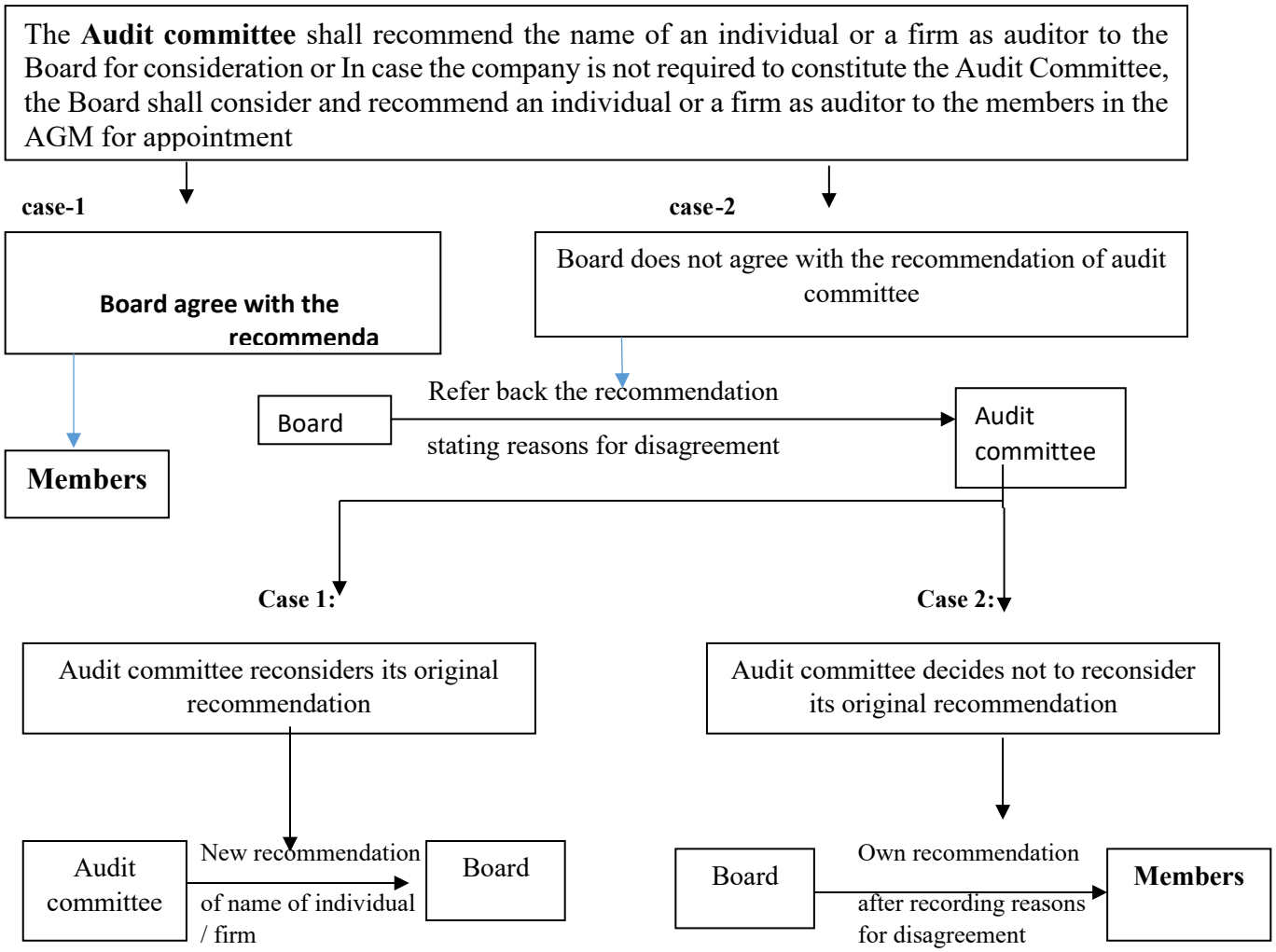
b) After the 1st AGM, when any appointment of auditor is made at any AGM, the auditor so appointed shall hold office till the conclusion of 6th AGM, with the AGM wherein such appointment has been made being counted as the first AGM [Section 139(1) read with Rule 3(7)].

~~c) At every AGM the appointment of auditor shall be ratified by the members.~~

~~d) If the appointment is not ratified at any AGM, the auditor shall have to vacate his office, and such vacancy shall amount to casual vacancy. The Board shall fill such casual vacancy in accordance with sub-section (8) of section 139.~~

Manner and procedure of selection of auditors (Rule 3)

Rule 3 of the Companies (Audit and Auditors) Rules, 2014 prescribes the following procedure:



SPECIAL POINTS

1. While considering the appointment, the Board / Audit Committee shall have due regard to
   a) Any order of professional misconduct passed against the proposed auditor; and
   b) Any proceedings of professional misconduct pending against the proposed auditor.

2. In case of Government Companies, the appointment of Auditor is done by the CAG and accordingly, the requirement of the Audit Committee to recommend the appointment and terms of appointment of Auditor in case of Government Company has been done away with

Special note: In case of Government Companies, the appointment of Auditor is done by the CAG and accordingly, the requirement of the Audit Committee to recommend the appointment and terms of appointment of Auditor in case of Government Company has been done away with.

Reappointment of retiring auditor [Section 139(9) & 139(10) of the Companies Act, 2013]

Reappointment of retiring auditor

A retiring auditor may be re-appointed at an AGM, if

1. He is not disqualified for re-appointment;
2. He has not given to the company a notice in writing of his unwillingness to be re-appointed; and
3. A special resolution has not been passed at the AGM appointing some other auditor or providing expressly that he shall not be re-appointed.

No auditor is appointed or reappointed at AGM – Consequences

Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

Rotation of auditors [Section 139(2) and 139(4) of the Companies Act, 2013]

Applicability of concept of rotation of auditors [Section 139(2)]

1. The concept of rotation of auditors is applicable to –
   a) Listed companies; and
   b) All companies belonging to such class or classes of companies as may be prescribed.

2. Following classes of companies have been prescribed for the purpose of rotation of auditors [**Rule 5 of the Companies (Audit and Auditors) Rules, 2014**]:
   a) All unlisted public companies having paid up share capital of Rs. 10 crore or more;
   b) All private limited companies having paid up share capital of Rs. 50 crore or more;
   c) All companies having paid up share capital below the limits mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of Rs. 50 crore or above.
3. The concept of rotation of auditors shall not apply to One Person Companies or Small Companies.

Manner of rotation of auditors

In case, the auditor is an individual.

a) No individual shall be appointed or reappointed as auditor for more than 1 term of 5 consecutive years.
b) An individual auditor who has completed his term of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term.

In case, the auditor is a firm.

a) No audit firm shall be appointed or reappointed as auditor for more than 2 terms of 5 consecutive years.
b) An audit firm which has completed its 2 terms of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such terms.

Restriction on other audit firm(s) having common partner(s)

An audit firm having one or more common partner to the other audit firm, whose tenure has expired, shall not be appointed as the auditor of the same company for a period of 5 years.

Right of removal or resignation not affected

a) The right of the company to remove an auditor before expiry of one/two term(s) of 5 consecutive years shall not be affected due to any provision contained in Section 139(2).

b) The right of the auditor to resign from the office of auditor before expiry of one/two terms(s) of 5 consecutive years shall not be affected due to any provision contained in Section 139(2).

Certificate and consent by auditor, and notice of appointment by company (Section 139 of the Companies Act, 2013)

Certificate and Consent to be given by the Auditor

Before any appointment of auditor is made, the auditor shall furnish to the company –

1. His written consent for such appointment; and
2. A certificate that –
   a) The appointment, if made, shall be in accordance with the conditions as may be prescribed; and
   b) The auditor satisfies the criteria provided in section 141.

Conditions prescribed for appointment and notice to Registrar (Rule 4)

The auditor proposed to be appointed shall submit a certificate that

1. The individual or the firm is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
2. The proposed appointment is as per the term provided under the Act;
3. The proposed appointment is within the limits laid down by or under the authority of the Act;
4. The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Notice of Appointment to be given by the company

The Company shall inform the auditor concerned of his or its appointment and also file a notice of such appointment with the Registrar in **Form ADT-1** within **15 days** of the meeting in which the auditor is appointed.

CASUAL VACANCY IN THE OFFICE OF AUDITOR – Section 139 (8)
Meaning of casual vacancy

1. The term 'casual vacancy' has not been defined under the Companies Act, 2013. It generally means a vacancy caused by the auditor ceasing to act as such after accepting a valid appointment, e.g. due to death, disqualification, resignation, etc.
2. Where no auditor is appointed or reappointed it does not result in a casual vacancy.

3. It must be noted that a vacancy created because of resignation of an auditor falls within the meaning of 'casual vacancy' as explained above. However, such a casual vacancy shall be filled up by the Board and shall be approved by the members in general meeting.

Filling of casual vacancy in the office of auditors [Section 139(8) of the Companies Act, 2013]

The casual vacancy arises in a company whose accounts are subject to audit by an auditor appointed by CAG.

1. Such casual vacancy shall be filled within 30 days by CAG.
2. In case, CAG does not fill the casual vacancy within 30 days, the Board shall fill the casual vacancy within next 30 days.

The casual vacancy arises in any other company.

1. Such casual vacancy shall be filled within 30 days by the Board of directors.
2. In case the casual vacancy arose due to the resignation of auditor, it shall be filled within 30 days by the Board of directors, and the appointment made by the Board shall be approved in a general meeting convened within 3 months of the recommendation of the Board

Any auditor appointed to fill a casual vacancy shall hold office till the conclusion of the next AGM.

REMOVAL OF AUDITOR- Section 140 (1) and Rule 7

The auditor appointed under section 139 may be removed from his office before the expiry of the term only by –

1. Obtaining the prior approval of the Central Government (R.D.) by filling an application in form **ADT-2** within **30 days** of resolution passed by the Board
2. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
3. The auditor concerned shall be given a reasonable opportunity of being heard.

Particulars	Removal of Auditor	Provisions
Authority to Remove	Company in General Meeting	Special resolution
Approval of C.G.	C.G. APPROVAL	Form ADT-2

RESIGNATION OF AUDITOR Section 140 (2) and Rule 8

The auditor who has resigned from the company shall file a statement in Form ADT-3 indicating the reasons and other facts as may be relevant with regard to his resignation as follows:

1. In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.

2. In case of Government Company or government-controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

PENALTY FOR CONTRAVENTION OF SECTION 140(2) Section 140 (3)

If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum **of 2 lakh rupees**. (COMPANIES AMENDMENT ACT 2020)

Special Notice for not reappointing the retiring auditor [Section 140(4)]

Requirement of special notice

At an AGM, special notice shall be required for –

- Appointing as auditor a person other than the retiring auditor; or
- Providing expressly that the retiring auditor shall not be re-appointed.

However, special notice shall not be required if the retiring auditor has completed consecutive tenure of 5 years / 10 years, as provided under section 139(2).

Copy to be sent to the retiring auditor

On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

Right of auditor to make a representation and to get it circulated

- The retiring auditor is entitled to make a representation against his removal. The representation (not exceeding a reasonable length) shall be in writing and shall be sent to the company,
- He may request the company to circulate the representation to the members of the company.

Duties of the company

- The company shall state the fact that the retiring auditor has made a representation against his removal, in any notice of the resolution that is given to the members of the company.
- The company shall send a copy of the representation to every member of the company to whom notice of the meeting is sent (unless the representation is received by the company too late).
- If a copy of the representation is not sent because it was received too late or because of the company's default, then –

➢ The auditor may require that the representation shall be read out at the meeting;
➢ A copy of the representation shall be filed with the Registrar.

POWERS OF TRIBUNAL- Section 140 (5)

A National Company Law Tribunal (NCLT) can either

1. Suo Moto or
2. on an application from Central Government, or
3. on an application from person concerned

Can direct the company to change the auditor if it is satisfied that the Auditor of a Company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers.

In the case of application being made by the Central Government and the NCLT being satisfied that change of auditor is required, it shall within 15 days of the receipt of such application, make an order that the Auditor shall not function as an auditor of the company and the Central Government may appoint another auditor in his place. This will happen only when an application is made by the Central Government and not by any other person.

NCLT RULES 2016 RULE 78

Application under Section 140.

(1) An application may be filed by the director on behalf of the company or the aggrieved auditor to the Tribunal in **Form NCLT-1**

(2) Where the Tribunal is satisfied on an application of the company or the aggrieved person that the rights conferred by the provisions of section 140 are being abused by the auditor, then, the copy of the representation need not be sent and the representation need not be read out at the meeting.

(3) If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application make an order that the auditor shall not function as an auditor and the Central Government may appoint another auditor in his place.

REMUNERATION OF AUDITOR – Section 142

Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it. The remuneration will be in addition to the out of pocket expensed incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

POWERS AND DUTIES OF AUDITORS SECTION 143(1)

Section 143(1) provided that Every auditor can access at all times to the books of accounts, vouchers and seek such information and explanation from the company and enquire such matters as he considers necessary. It is the duty of every auditor to make proper enquiry regarding these matters, besides other matters and if he is satisfied, it is not necessary to disclose this fact in his report. However, on enquiry, if he finds some adverse features, it is his duty to report the same.

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies

AUDIT REPORT SECTION 143 (2)

Section 143 (2) prescribed that auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting of the company. The Audit report should take into consideration the provisions of this Act, the Accounting and Auditing standards and matters which are required under this Act or rules made thereunder or under any order made U/S 143(11).

The Audit report should state that to the best of his information and knowledge, the said accounts and financial statements give a true and fair view of the state of the company's affair as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed.

Companies (Audit and Auditors) Amendment Rules, 2014.

For the purposes of clause (i) of sub-section (3) of section 143, for the financial years commencing on or after 1st April, 2015, the report of the auditor shall state about existence of adequate internal financial controls system and its operating effectiveness.

BRANCH AUDIT – SECTION 143 (8) AND RULE 12

Branch Auditor: Accounts of branch office can be audited by

The following Persons Are Eligible For Appointment Of Branch Auditors

IN CASE OF LOCAL BRANCHES	IN CASE OF FOREIGN BRANCHES
1. Company's auditor **2.** Another qualified auditor	1. Company's auditor **2.** Another qualified auditor **3.** A person qualified to audit accounts according to laws of that country

Report of Branch Auditor

- The branch auditor shall prepare a report on the accounts of the branch examined by him.
- The branch auditor shall send his report to the auditor of the company.
- The auditor of the company shall deal with the report of the branch auditor, in his report in such manner as he considers necessary.
- The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

AUDITING STANDARDS – SECTION 143 (9) & (10)

Every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA). Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the auditing standards.

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall, — (a) in case of a listed company, be liable to a penalty of five lakh rupees; and (b) in case of any other company, be liable to a penalty of one lakh rupees. Section 143(15) **(COMPANIES AMENDMENT ACT 2020)**

SIGNING OF AUDIT REPORTS – Section 145

Auditor shall sign the auditor's report of the company. Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

AUDITOR'S RIGHT TO ATTEND GENERAL MEETING Section 146

All notices of any general meeting shall be forwarded to the auditor of the company and he must attend any general meeting either by himself or through his authorised representative (qualified to be an auditor) and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

PUNISHMENT FOR CONTRAVENTION – Section 147

Punishment for contravention (Section 147 of the Companies Act, 2013)

S.NO.	contravention	Penalty
1	**Section 147(1) Punishment for contravention of Section 139 to 146**	If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable Omitted with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees. **(COMPANIES AMENDMENT ACT 2020)**
2	**Section 147(2) Punishment for contravention of Section 139, 143, 144, or 145**	(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the

		auditor, whichever is less. **(COMPANIES AMENDMENT ACT 2020)**
3	**Section 147(3) Refund of remuneration by auditors**	Where an auditor has been convicted under sub-section (2), he shall be liable to (i) refund the remuneration received by him to the company; and (ii) pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report. **(COMPANIES AMENDMENT ACT 2020)**

COST RECORDS & AUDIT SECTION 148

Order by the Central Government for maintenance of Cost records

Maintenance of cost records is mandatory only if such an order is made by the Central Government.

Order for which companies

• Such class of companies as are engaged in the production of such goods as may be prescribed.
• Such class of companies providing such services as may be prescribed.

Nature of cost records to be maintained

• The utilization of material;
• Labour; and
• Other items of cost.

Order by the Central Government for conduct of cost audit

Conduct of cost audit is mandatory only if such an order is made by the Central Government.

Order for which companies

Such class of companies –

1. For which the central Government has made an order for maintenance of cost records; and
2. Which have –
   - Net worth of such amount as may be prescribed; or
   - Turnover of such amount as may be prescribed.

Appointment of Cost Auditor by Board [Section 148(3)]

▪ Cost audit shall be conducted by a Cost Accountant.
▪ Only a Cost Accountant in practice or a firm of Cost Accountants can be appointed as a cost auditor.
▪ The Cost Auditor shall be appointed by the Board.
▪ The Cost audit shall be in addition to the audit conducted under section 143.
▪ The auditor appointed under section 139 shall not be appointed as the Cost Auditor.

▪ The remuneration of the Cost Auditor shall be determined by the members in such manner as may be prescribed.
▪ The company shall give all assistance and facilities to the cost auditor.

Procedure for appointment and fixation of remuneration of the Cost Auditor (Rule 14)

The company is required to constitute an audit committee

▪ The Board shall appoint the cost auditor on the recommendations of the Audit Committee.
▪ The Audit Committee shall recommend the remuneration of the cost auditor.
▪ The remuneration of the cost auditor shall be considered and approved by the Board and ratified subsequently by the members.

The company is not required to constitute an audit committee

▪ The Board shall appoint the cost auditor.
▪ The remuneration of the cost auditor shall be fixed by the Board and ratified subsequently by the members.

Compliance with Cost Auditing Standards

- The cost Auditor shall comply with the cost auditing standards.
- 'Cost auditing standards' mean such standards as are issued by the Institute of Cost and Works Accountants of India, with the approval of the Central Government.

Disqualifications, rights and duties of cost auditor

The qualifications, disqualifications, rights, duties and obligations applicable to auditors under sections 141 and 143 shall, so far as may be applicable, apply to the cost auditor.

Cost Audit Report

- The cost auditors shall submit his report to the Board of directors.
- Within 30 days of receipt of cost audit report, the company shall furnish to the Central Government

a) A copy of the cost audit report; and
b) Along with full information and explanation on every reservation or qualification contained in the cost audit report.

- The Central Government may call for such further information and explanation as it may deem fit.
- The company shall furnish such further information and explanation within such time as may be specified by the Central Government.

Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestion, if any in **FORM CRA-3**.

CHAPTER-28

CORPORATE-GOVERNANCE AUDIT

Corporate governance is a strategic activity that ensures that all processes that are necessary for directing and controlling a business enterprise are implemented effectively. It is about ethical conduct in business. Corporate Governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. It is about openness, integrity and accountability.

Need for Corporate Governance Audit (CGA)

The audit serves as a monitoring device and is essential in corporate governance also. The auditors view management as the primary driver of corporate governance and to ensure commitment of the Board in managing the company in a transparent manner.

The history indicates that well-governed companies receive higher market valuations. Improving corporate governance will also increase capital flows to companies; from domestic and global capital; equity and debt; and from public securities markets and private capital sources even the increased customer base.

Scope of Audit of Corporate Governance Activities

The scope of Corporate Governance Audit is wide and generally boundary-less, as the subject covers

1. Financial and non-financial Information's and disclosures
2. Rights of Stakeholders;
3. Boards of Directors (Composition, mix, independence);
4. Control Environment (Accounting, Controls, Internal and External Audit);
5. Risk Management;
6. Transparency and Disclosure of financial information and executive compensation;
7. Strategic plans, programs and guidance on social responsibilities.

REGULATION 17 TO 27 OF LODR-2015 DEALS WITH GOOD CORPORATE GOVERNANCE

Reg.	PROVISONS
17	**BOARD OF DIRECTORS** The ***Composition of Board of*** directors of the listed entity shall be as follows:(17)(1) Board of Directors shall have an optimum combination of executive and non-executive directors o One Women Director o At least 50% of Board of Directors shall comprise of Non-Executive Director. o If Chairman of the Board is Non-Executive director at least (1/3) one-third of the board of directors shall comprise of independent directors. o Where the listed entity does not have a regular non-executive chairperson at least (1/2) half of the board of directors shall comprise of independent directors o where the regular non-executive chairperson is a promoter of the listed entity; or is related to any promoter; or is related to person occupying management positions at the level of board of director; or is related to person occupying management positions at one level below the board of directors; at least (1/2) half of the board of directors of the listed entity shall consist of independent directors. o Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020; Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year." o The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors. Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year." o **where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors** 17(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person. ~~17(1B). With effect from April 1, 2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -~~ ~~(a) be a non-executive director;~~

~~(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term "relative" defined under the Companies Act, 2013:~~

~~Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.~~

17(1C)). The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

Provided that the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders: Provided further that the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment.

Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year."

Quorum of board meeting **17(2)**

The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.
17(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director
Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year."

Frequency of Meeting:

- At least 4 Board Meetings in a Year

- Maximum Gap B/w Two Meetings 120 days.

Duties of Board of Director:

- The board of directors shall lay down a Code of Conduct for all members of board of directors and senior management of the listed entity.
- The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.
- The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity.
- The board of directors shall periodically review steps taken by the listed entity to rectify instances of non-compliances

FEES/COMPENSATION:

- The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors.
- After Recommendation of Board of Directors approval of Shareholder through Ordinary Resolution in General Meeting Required. There is no need to obtain approval of Shareholder for payment of sitting fees to Non-executive Director, If sitting fees paid according to the limit prescribed under Companies Act, 2013.
- Independent Director not entitled to any Stock Option
- The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.
- The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:
Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013

Risk Management Plan:

The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

	Listed entity shall lay down procedure to inform members of the Board about risk assessment and minimization process. **Performance evaluation of Independent Director:** The evaluation of independent directors shall be done by the entire board of directors which shall include - (a) performance of the directors; and (b) fulfillment of the independence criteria as specified in these regulations and their independence from the management: Provided that in the above evaluation, the directors who are subject to evaluation shall not participate. The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.
17A	**Maximum number of directorships** The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time – (1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020: Provided that a person shall not serve as an independent director in more than seven listed entities. (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities. EXPLANATION: For the purpose of this sub-regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.”

18	**AUDIT COMMITTEE:** 1. Every listed entity shall constitute a qualified and independent audit committee 2. Minimum 3 directors SHALL BE MEMBERS OF AUDIT COMMITEE 3. 2/3RD SHALL BE INDEPENDENT DIRECTOR 4. **In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors** 5. All members shall be financial literate and at least 1 member shall have accounting and financial management expertise 6. The chairperson of the audit committee shall be an Independent Director. 7. He/SHE shall be present at Annual general meeting to answer shareholder queries 8. The Company Secretary shall act as the secretary to the audit committee. 9. The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee **Frequency of Meetings:** • At least 4 Board Meetings in a Year • Maximum Gap B/w Two Meetings 120 days. **Quorum of Meetings:** 2 Members or 1/3 Members of audit committee and at least 2 independent directors **Powers of Committee:** The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary. **Financially Literate** shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows. a member shall be considered to have *accounting or related financial management expertise* if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities
19	**NOMINATION & REMUNERATION COMMITTEE:**

	1. Board of Directors shall constitute the nomination and remuneration committee. Constitution of N&R Committee will be as follow: 2. Minimum 3 directors SHALL BE MEMBERS OF COMMITTEE **3.** 50% SHALL BE INDEPENDENT DIRECTOR **4. In case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors** **5.** THE CHAIRMAN SHALL BE INDEPENDENT DIRECTOR **6.** Chairman of the company shall not Chair such Committee. **7.** Chairman of Company can appoint as Member of committee. **8.** Chairperson of Committee may be present at the Annual General Meeting. **9.** The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance **10.** The nomination and remuneration committee shall meet at least once in a year."
20	**STAKE HOLDER RELATIONSHIP COMMITTEE:** • The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the **various aspects of interest** of shareholders, debenture holders and other security holders. • The chairperson of this committee shall be a non-executive director. • The board of directors shall decide other members of this committee. • At least three directors, with at least one being an independent director, shall be members of the Committee • **In case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors** • **In case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise of independent directors** • The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders • The stakeholder's relationship committee shall meet at least once in a year
21	**RISK MANAGEMENT COMMITTEE:** (1) The board of directors shall constitute a Risk Management Committee. (2) The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors. (3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

	(3A) The risk management committee shall meet at least twice in a year. (3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance. (3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings. (4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II. (5) The provisions of this regulation shall be applicable to top 1000 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year. (6) The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.
22	**VIGIL MECHANISM:** • The listed entity shall formulate a vigil mechanism/WHISTLE BLOWER POLICY for directors and employees to report genuine concerns. • The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism. • The Vigil Mechanism also provides for direct access to the chairperson of the audit committee in appropriate or exceptional cases.
23	**RELATED PARTY TRANSACTIONS.** 1. The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions 2. All related party transactions shall require prior approval of the audit committee. 3. Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity

	4. All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve on such resolutions whether the entity is a related party to the particular transaction or not. 5. The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases: • Transactions entered into between two government companies; • Transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval. 6. For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not. 7. The listed entity shall submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format specified in the relevant accounting standards for annual results to the stock exchanges and publish the same on its website.
24	**<u>Corporate governance requirements with respect to subsidiary of listed entity</u>** o At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not. **Explanation** For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. o The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary. o The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity. o The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. o A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than OR EQUAL TO fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of

	arrangement duly approved by a Court/Tribunal **or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved** o Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal or under **a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.** o Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned. **Explanation**. For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year. **MEANING OF MATERIAL SUBSIDIARY (REGULATION 16(1)(c)** Material Subsidiary shall mean a subsidiary, whose income or net worth exceeds 20 percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.
24A	**SECRETARIAL AUDIT AND SECRETARIAL COMPLIANCE REPORT** (1) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity (2) Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.
25	**Regulation 25- OBLIGATIONS WITH RESPECT TO INDEPENDENT DIRECTORS:** **IMPORTANT PROVISONS ON INDEPENDENT DIRECTORSHIP** • Max 7 listed Companies (3 Companies if a person is already a WTD in any listed company) • Maximum tenure of independent director: 2 consecutive terms of 5 years and special resolution is required for appointment of 2nd term. • An independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his knowledge and attributable through processes of board of directors, and with his

consent or connivance or where he had not acted diligently with respect to the provisions contained in these regulations.

- Any Intermittent Vacancy of an Independent director shall be filled-up by the Board of Directors at the earliest but not later than Immediate Next Board Meeting or 3 (Three) Months from the date of Such Vacancy, Whichever Is Later:
- No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018

Meeting of Independent Director:

- The independent directors of the listed entity shall hold at least one meeting in a FINANCIAL year.
- Non-Independent Director will not present in such Meeting.
- Members of the Management will not present in such Meeting.
- All the Independent Directors shall strives to present in such Meeting.

DUTIES OF INDEPENDENT DIRECTOR:

- Review the performance of non-independent directors and the board of directors as a whole.
- Review the performance of the chairperson of the listed entity.
- Taking into account the views of executive directors and non-executive directors
- Assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties
- Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

D AND O INSURANCE

With effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors

26	**OBLIGATIONS WITH RESPECT TO DIRECTORS AND SENIOR MANAGEMENT:** • A director shall not be a member in more than 10 committees or act as chairperson of more than 5 committees across all listed entities in which he/she is a director • The limit of the committees (audit committee and the Stakeholders' Relationship) on which a director may serve in all public limited companies, whether listed or not, shall be included • All other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded • Every director of Listed entity shall inform the Board about his position in committees of other Listed entities and intimate if there is any change and the date when these position take place. • All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis. • Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large • No employee Including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution
27	**OTHER CORPORATE GOVERNANCE COMPLIANCE REQUIREMENT:** Quarterly Compliance Report on Corporate Governance*:* • The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s) **within 21 days from end of the quarter.** • Details of all material transactions with related parties shall be disclosed. Report shall be sign Either by Compliance officer or Chief Executive officer.
28	**Regulation 28 IN-PRINCIPLE APPROVAL OF RECOGNIZED STOCK EXCHANGE(S)** 1. The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:

	a. Where the securities are listed only on recognised stock exchange(s) having nationwide trading terminals, from all such stock exchange(s) b. Where the securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchange(s) in which the securities of the issue proposed to be listed c. Where the securities are listed on recognised stock exchange(s) having nationwide trading terminals as well as on the recognised stock exchange(s) not having nationwide trading terminals, from all recognised stock exchange(s)having nationwide trading terminals 2. The requirement of obtaining in-principle approval from recognised stock exchange(s), shall not be applicable for securities issued pursuant to the scheme of arrangement for which the listed entity has already obtained No-Objection Letter from recognised stock exchange(s) in accordance with regulation 37.
29	**PRIOR INTIMATIONS** 1. The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:
	a. Financial results viz. quarterly, half yearly, or annual, as the case may be
	b. Proposal for buy back of securities
	c. Proposal for voluntary delisting by the listed entity from the stock exchange(s);
	d. Fund raising by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price(Provided that intimation shall also be given in case of any annual general meeting or extraordinary general meeting or postal ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.)
	e. Declaration/ recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.
	f. The proposal of declaration of bonus
	2. The intimation required under sub-regulation (1), shall be given at least **TWO WORKING DAYS** in advance, excluding the date of the intimation and date of the meeting: Provided that intimation regarding item specified in clause (a) of sub-regulation (1), to be discussed at the meeting of board of directors shall be given **AT LEAST FIVE DAYS** in advance (excluding the date of the intimation and date of the meeting), and such intimation shall include the date of such meeting of board of directors. 3. The listed entity shall give intimation to the stock exchange(s) at least **ELEVEN WORKING DAYS** before any of the following proposal is placed before the board of directors o Any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.

	o Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

Illustrative Checklist for Auditing Corporate Governance System in a Company

(A) Accountability

- Check there is separation of ownership and control.
- Check whether executive management is accountable to Board.
- Check whether board is accountable to shareholders.
- Check whether there is a board / audit committee charter/ policies.
- Check whether the independent directors have powers to play their role effectively

(B) Fairness

- Check whether all shareowners, including minorities are treated equitably.
- Check whether there are defined procedure for effective resolutions of violations.
- Check whether the company has pricing policy and fair market practice code.

(C) Transparency

- Investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.
- Check whether there is a timely, accurate disclosure on all material matters, including: financial and non-financial information, performance, ownership, frauds, going concern crisis and governance.
- Check whether the company has a policy for making political contributions.
- Check whether the company has comprehensive insider trading disclosure and compliance practices.

(D) Responsibility

- Check whether the company has policy on stakeholder's rights, social responsibility and business sustainability requirements.
- Check whether the board's responsibility includes review and guiding of corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

COMPLIANCES UNDER SEBI (LODR) REGULATIONS, 2015

Common Obligations to Listed Entity

Sl. No.	Compliance	Reg.	Time Period	Event

1	Submission of Compliance Certificate to the Exchange	7(3)	Within one month of end of each half of the financial year,	Submission of Compliance Certificate to Stock Exchange certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.
2	Appointment/ Alteration of Share Transfer Agent	7(5)	Intimate to the Stock Exchange such appointment or alteration within 7 days on entering into agreement Shall be placed before the Board of Directors in subsequent Meeting.	Company can manage in house Share Transfer Facility. But as and when the total number of holders of securities of the listed entity exceeds one lac, the listed entity shall appoint Share Transfer Agent.

Obligations of listed entity which has listed its specified securities i.e. equity or convertible securities.

SI. No.	Compliance	Reg.	Time Period	Event
1.	Annual Secretarial Compliance report	24A	Within 60 days of the end of the financial year.	The annual secretarial compliance report in the prescribed format shall be submitted by the listed entity to the stock exchanges.
2	**Quarterly Compliance Report on Corporate Governance**	27(2)	Within 15 days from the closure of quarter.	The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board. Details of all material transactions with related parties shall be disclosed. Report shall be sign either by compliance officer or chief executive officer
6	**Quarterly Financial Result**	33(3)(a)	Within 45 days of end of each quarter, other than the last quarter.	The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange

7	**Annual Financial Result**	33(3)(d) & (e)	Within 60 days from the end of the financial year.	The listed entity shall submit audited standalone financial results for the financial year,
8	**Half Yearly Financial Result**	33(3)(f)	Half yearly submission.	submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities
9	**Annual Report**	34(1)	Within 21 working days of it's being approved & adopted in AGM.	Annual Report to RSE containing Audited Financial Statement, director's report, MDAR.
10	**Draft scheme of Arrangement & Scheme of Arrangement.**	37(1)	Before filling with Tribunal/ court as the case may be.	listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement,
11	**Issue of Share Certificates**	39(3)	Within 2 days of getting its information.	Information regarding loss of share certificates and issue of duplicate certificates.
12	**Certificate from Practicing Company Secretary (PCS)**	40(9)/(10)	Within 1 month of the end of each half financial year.	Certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies.
13	**Record Date**	42(2)	At least 7 working days before the record date excluding the date of intimation & record date.	Notice to Stock Exchange for the record date and specifying the purpose of record date.

Obligations of Listed Entity Which has Listed Its Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or Both

SI. No.	Compliance	Reg.	Time Period	Event
1	**Interest/ Redemption due**	50(1)	At least 11 working days before the date on which interest/ redemption amount of redeemable	The listed entity shall give prior intimation to the stock exchange(s) regarding interest due and redemption due

			shares/ debentures shall be payable.	
2	**Intimation to raise fund**	50(2)	prior to the meeting of board of directors	Intimation to raise funds to the stock exchange(s) wherein the proposal to raise funds through new non convertible debt prior to the meeting of board of directors securities or non-convertible redeemable preference shares shall be considered
3	**Half yearly Result**	52(1)	Within 45 days at the end of Half financial year	The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board
4	**Annual Result**	52(2)(a) proviso	Within 60 days at the end of financial year	The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board
5	**Certificate**	57(1)	Within 2 days of interest due	Certificate Regarding Payment of Interest and Principal.

Obligations of Listed Entity which has Listed its Indian Depository Receipts

SI. No.	Compliance	Reg.	Time Period	Event
1	**Indian Depository Receipt holding pattern & Shareholding details**	69(1)	Within 15 days at the end of each quarter.	The listed entity shall file with the stock exchange the Indian Depository Receipt holding pattern on a quarterly basis
2	**Financial Result**	70(1)	within such time as per the listing requirements of the home country	The listed entity shall file periodical financial results with the stock exchange
3	**Annual Report**	71(1)	at the same time as it is disclosed to the security holder in its home country	The listed entity shall submit to stock exchange an annual report
4	**Corporate Governance**	72(2)	within such time as per the listing requirements of the home country	The listed entity shall submit to stock exchange a comparative analysis of the corporate governance provisions that are applicable in its home country

CHAPTER-29

CORPORATE SOCIAL RESPONSIBILITY (CSR) AUDIT

Corporate Social Responsibility (CSR) includes various social and environmentally responsible guidelines, essential for companies that want to maintain a strong connection to the marketplace. Corporate Social responsibility includes the way a company treats and proactively contributes to its community, promotes fair working conditions and a non discriminatory environment, conveys transparent and honest accounting reports, and generally earns a reputation of trust and integrity in the society where it serves.

CSR has become a mandatory part of many Companies vide introduction in Companies Act, 2013 and has changed the dynamics of CSR. An increased emphasis on governance, stricter monitoring and reporting obligations require companies to be more accountable, disciplined and strategic in their CSR approach.

CSR UNDER COMPANIES ACT, 2013

SECTION 135: CORPORATE SOCIAL RESPONSIBILITY (CSR)

CORPORATE SOCIAL RESPONSIBILITY

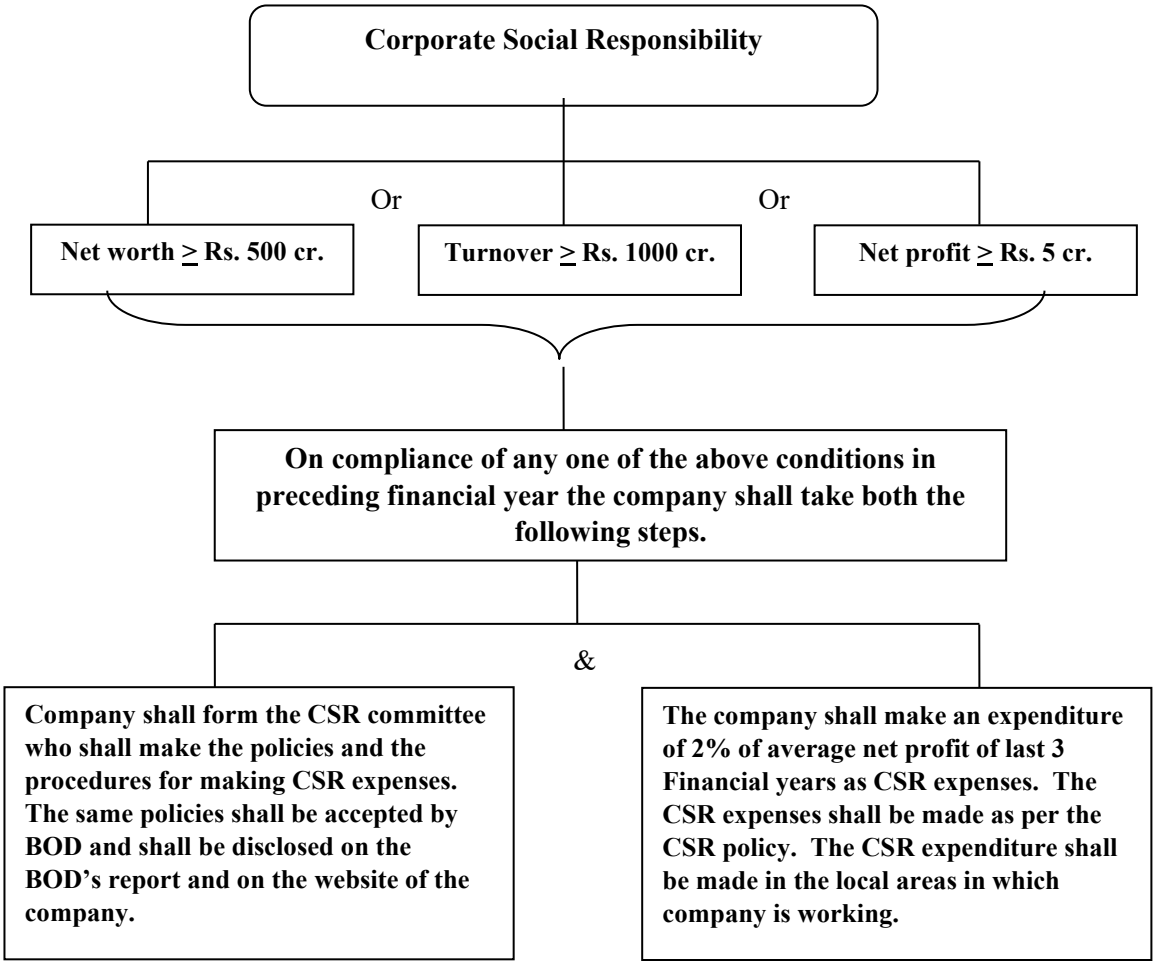
CONCEPT OF CSR

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (**whether towards environmental causes, educational promotion, social causes etc**.) along with the reinforced duty to conduct the business in an ethical manner.

It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

BENEFITS OF CSR

1. Strengthened brand positioning
2. Enhanced corporate image and reputation
3. Satisfaction of economic and social contribution to society
4. Contribution to the surrounding society
5. Increased ability to attract, motivate and retain employees
6. Enhanced sales and market share
7. Increased appeals to investors and financial analysts



SECTION 135: CORPORATE SOCIAL RESPONSIBILITY (CSR)

SECTION 135: CORPORATE SOCIAL RESPONSIBILITY (CSR)

135. (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(2) The Corporate Social Responsibility Committee shall

a. formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII

b. recommend the amount of expenditure to be incurred on the activities referred to in clause (a)
c. monitor the Corporate Social Responsibility Policy of the company from time to time.

(3) The Board of every company referred to in sub-section (1) shall

a. after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed

b. ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(4) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed. **(COMPANIES AMENDMENT ACT 2020)**

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

(5) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year

(6) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every

officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less. **(COMPANIES AMENDMENT ACT 2020)**

(7) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

(8) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company. **(COMPANIES AMENDMENT ACT 2020)**

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2021

RULE-4 CSR IMPLEMENTATION.

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through - (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or (c) any entity established under an Act of Parliament or a State legislature; or (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021: Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021. (b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

RULE 7. CSR EXPENDITURE

(1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that – (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule. (ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by - (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or (c) a public authority: Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

Activities not amounting to CSR

As per Rule 4 and Rule 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, following shall not amount to CSR Activities for the purpose of Section 135

a) The CSR projects or programs or activities undertaken outside India.
b) The CSR projects or programs or activities that benefit only the employees of the company and their families.
c) Contribution of any amount, directly or indirectly, to any political party under section 182 of the Companies Act, 2013.
d) Any activity undertaken in pursuance of normal course of business of a company.

SOME CIRCULARS BY MCA ON CSR

1. The Ministry of Corporate Affairs vide Circular No. 21/2014 dated June 18, 2014 has clarified that expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian Subsidiary.
2. MCA vide General Circular No. 21/2014 dated June18, 2014 has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable areas or subject specified in VII of the Companies Act 2013. However, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.
3. The Ministry of Corporate Affairs Circular No. 21/2014 dated June 18, 2014 has clarified that expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws etc.) would not count as CSR expenditure under the Companies Act, 2013.
4. The Ministry of Corporate Affairs has vide General Circular No. 21/2014 dated June 18, 2014 has clarified that Contribution to Corpus of a Trust/ Society/ Section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ Society/ Section 8 company etc. is created exclusively for undertaking CSR activities
5. 16 may 2016 general circular 05/2016 While undertaking CSR activities companies shall not contravene any other prevailing law of land including cigarettes and other tobacco products act (cotpa), 2003

Purpose of CSR Audit

- To ensure compliance with the provisions of Companies Act, 2013 with respect to constitution of the Committee, adoption of policy and appropriate spending towards CSR activities.
- To facilitate transparent monitoring mechanism and a mentor for the Company's CSR activities and implementation of CSR policy.
- To evaluate internal control and governance framework
- To assess the project life cycle
- To conduct financial review of projects to confirm the utilization of budgets for achieving desired outcomes.

Conducting CSR Audit

The CSR audit may be conducted internally by the company or engage external agencies having expertise in CSR projects. However the companies publish periodical report on their social initiatives and through the Website. However, according to provisions of Companies Act, 2013, Companies are required to annex report on the corporate social responsibilities with the Board report of the company.

Checklist for Corporate Social Responsibility provisions under Companies Act, 2013

1. Check if the constitution of CSR Committee is applicable to company.
2. If yes, whether the company has constituted Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director is an independent director. In case where a Company is not required to appoint an Independent Director under sub-section (4) of 149, it shall have in its Corporate Social Responsibility Committee two or more Directors.

3. Whether the Company has CSR Policy approved by the CSR Committee.
4. Whether the CSR Committee has recommended list of CSR projects or programme within the purview of schedule VII.
5. Whether the monitoring process of such projects or programme has been established by the company.
6. The Composition of CSR Committee is disclosed in the Board's Report.
7. Check whether the CSR activities were under taken as per CSR policy and projects, programs or activities excludes activities undertaken in pursuance of its normal course of business
8. Corporate social Responsibility Committee has recommended the amount of expenditure to be incurred on the activities referred in the Corporate Social Responsibility policy.
9. The company has instituted a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
10. The company has disclosed the contents of the policy in Board's report and at its website, if any.
11. The Board's report includes an annual report on CSR containing prescribed particulars.
12. In case the company does not spend the specified amount (i.e. at least two percent of the average net profits made during the three immediately preceding financial years), Board's report specifies the reason for not spending the amount.

COVERAGE OF CSR AUDIT

The CSR audit cover the CSR activities relating to human rights, fundamental human rights, freedom of association and collective bargaining, nondiscrimination, forced labor, child labor, health and safety, career development and training, environmental issues and issues relating to community development and social wellbeing. However the Schedule VII of the Companies Act, 2013 provides the list of activities which could be taken by the company as their CSR Activities. These activated cover the following activities:

1. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
2. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
3. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.
5. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

CHAPTER-30 INSIDER TRADING AUDIT

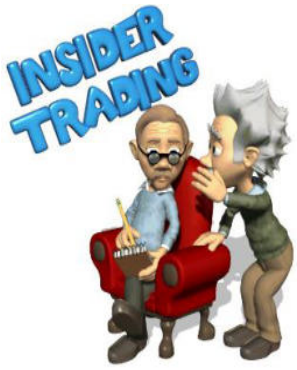
SEBI (Prohibition of Insider Trading) Regulations, 2015

CONCEPT OF INSIDER TRADING

When insiders, e.g. key employees or executives who have access to the strategic information about the company, use the same for trading in the company's stocks or securities, it is called **insider trading** and is highly discouraged by the Securities and Exchange Board of India to promote fair trading in the market for the benefit of the common-investor.

Insider trading is an unfair practice, wherein the other stock holders are at a great disadvantage due to lack of important insider non-public information. However, in certain cases if the information has been made public, in a way that all concerned investors have access to it, that will not be a case of illegal insider trading.

EXAMPLES OF INSIDER TRADING



1. A company would go for a merger in few months. An executive of the company gets to know about this. And to benefit from this, he purchases the shares of the company before the announcement of the merger is actually made public. This is called illegal insider trading.

2. Mr H is an employee of an organization. He has been attending a meeting where the CFO of the company has been talking about how the company would go toward bankruptcy within few short months. Knowing this Mr H secretly calls his friend who owns a large number of shares of the company and warns that the company would go toward bankruptcy and his friend should sell the shares of the company immediately.

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Five Chapters	Two Schedules
Chapter I	Definitions
Chapter II	Restrictions on communication and trading in securities by insiders
Chapter III	Disclosures of trading by insiders.
Chapter IV	Codes of fair disclosure and conduct to be followed by listed companies and other entitites, disclosure requirements
Chapter V	Miscellaneous matters like sanction for violation, power to remove difficulties, repeal and savings

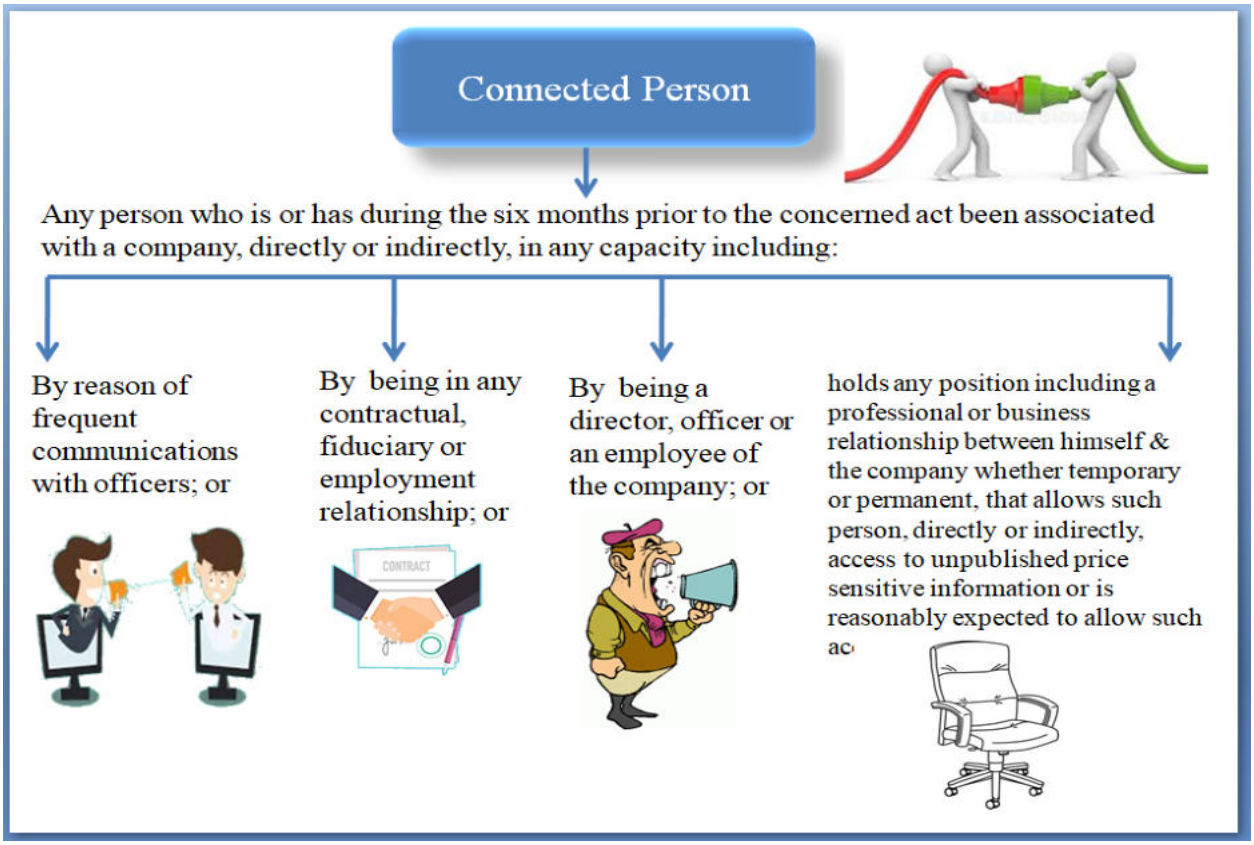
DEFINITIONS

1. INSIDER

INSIDER MEANS ANY PERSON WHO IS:

- A connected person; or
- In possession of or having access to unpublished price sensitive information.

2. CONNECTED PERSON



3. PERSON DEEMED TO BE CONNECTED PERSON

"Person is deemed to be a connected person", if such person –

(a)	an immediate relative of connected persons; or
(b)	a holding company or associate company or subsidiary company; or
(c)	an intermediary as specified in section 12 of the SEBI Act or an employee or director thereof; or
(d)	an investment company, trustee company, asset management company or an employee or director thereof; or

(e)	an official of a stock exchange or of clearing house or corporation; or
(f)	a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
(g)	a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
(h)	an official or an employee of a self-regulatory organization recognised or authorized by SEBI; or
(i)	a banker of the company; or
(j)	a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest;

4. TRADING

Trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.

UNPUBLISHED PRICE SENSITIVE INFORMATION

Unpublished price sensitive information means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following–

- Financial results;
- Dividends;
- Change in capital structure;
- Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
- Changes in key managerial personnel; and
- Material events in accordance with the listing agreement.

5. COMPLIANCE OFFICER

Compliance Officer means:

- any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,
- who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and
- who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,
- monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

COMMUNICATION OR PROCUREMENT OF UNPUBLISHED PRICE SENSITIVE INFORMATION REGULATION 3

Any person shall not

- communicate, provide, or allow access to any unpublished price sensitive information or
- procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed or proposed to be listed except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

However, above provisions shall not applicable to any unpublished price sensitive information which may be communicated, provided, allowed access to or procured, in connection with a transaction that would:

- entail an obligation to make an open offer under the takeover regulations or
- not attract the obligation to make an open offer under the takeover regulations
- Where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and
- the information that constitute unpublished price sensitive information is disseminated to be made generally available at least 2 trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

The board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

TRADING WHEN IN POSSESSION OF UNPUBLISHED PRICE SENSITIVE INFORMATION (UPSI) REGULATION 4

Regulation 4 prescribes that an insider shall not trade in securities, which are listed or proposed to be listed on stock exchange when in possession of unpublished price sensitive information. However, there are certain exemptions:

1. When there is an off-market transfer between promoters who are aware of price sensitive information without being in breach of regulation 3 and Both parties had made a conscious and informed trade decision; or

2. In the case of non-individual insiders

- The individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and
- Such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
- Appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals
- Possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

3. The trades were pursuant to a trading plan set up in accordance these regulations.

Note: In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on SEBI. SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

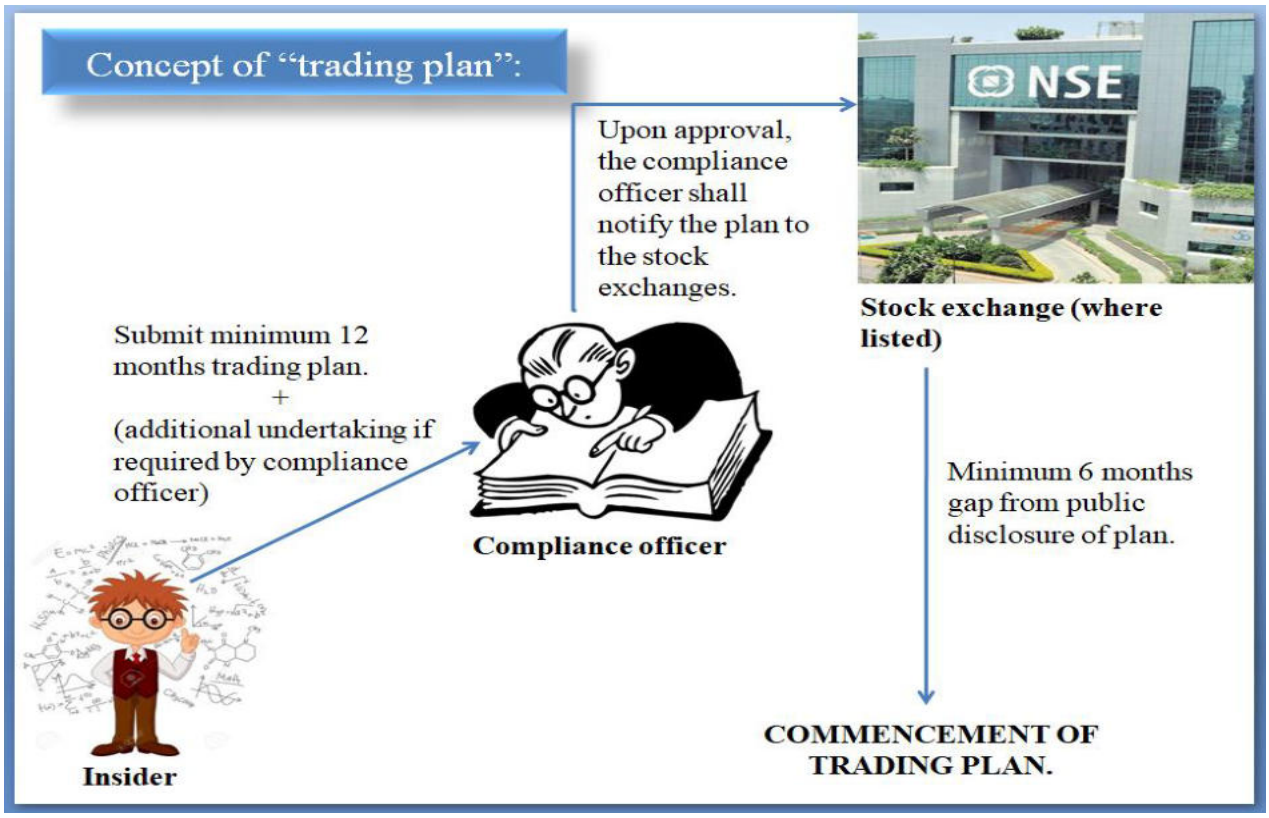
TRADING PLANS **REGULATION 5**

An insider would be required to submit trading plan in advance to the compliance officer for his approval. The compliance officer is also empowered to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the stock Exchanges, where the securities of the company are listed.

The trading plan shall comply with requirements as follows:

- It shall be submitted for a minimum period of 12 months.
- No overlapping of plan with the existing plan submitted by Insider
- It shall set out either the value of trades to be effected or the number of securities to be traded along with:
  - the nature of the trade and
  - the intervals at, or
  - dates on which such trades shall be effected.
- Trading can only commence only after 6 months from public disclosure of plan. No trading between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
- Compliance officer to approve the plan.
- The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

  (Except in few case like where insider is in possession of price sensitive information at the time of formulation of the plan and such information has not become generally available at the time of the commencement of implementation)
- Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.



DISCLOSURES OF TRADING BY INSIDERS REGULATION 6

Regulation 6 deals with general provisions of disclosures:

- The disclosures made by person shall also include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.
- The disclosures of trading in securities shall also include trading in derivatives of securities if permitted under law.
- Such disclosure shall be preserved for 5 years.

DISCLOSURES BY CERTAIN PERSONS REGULATION-7

INITIAL DISCLOSURES 7(1)

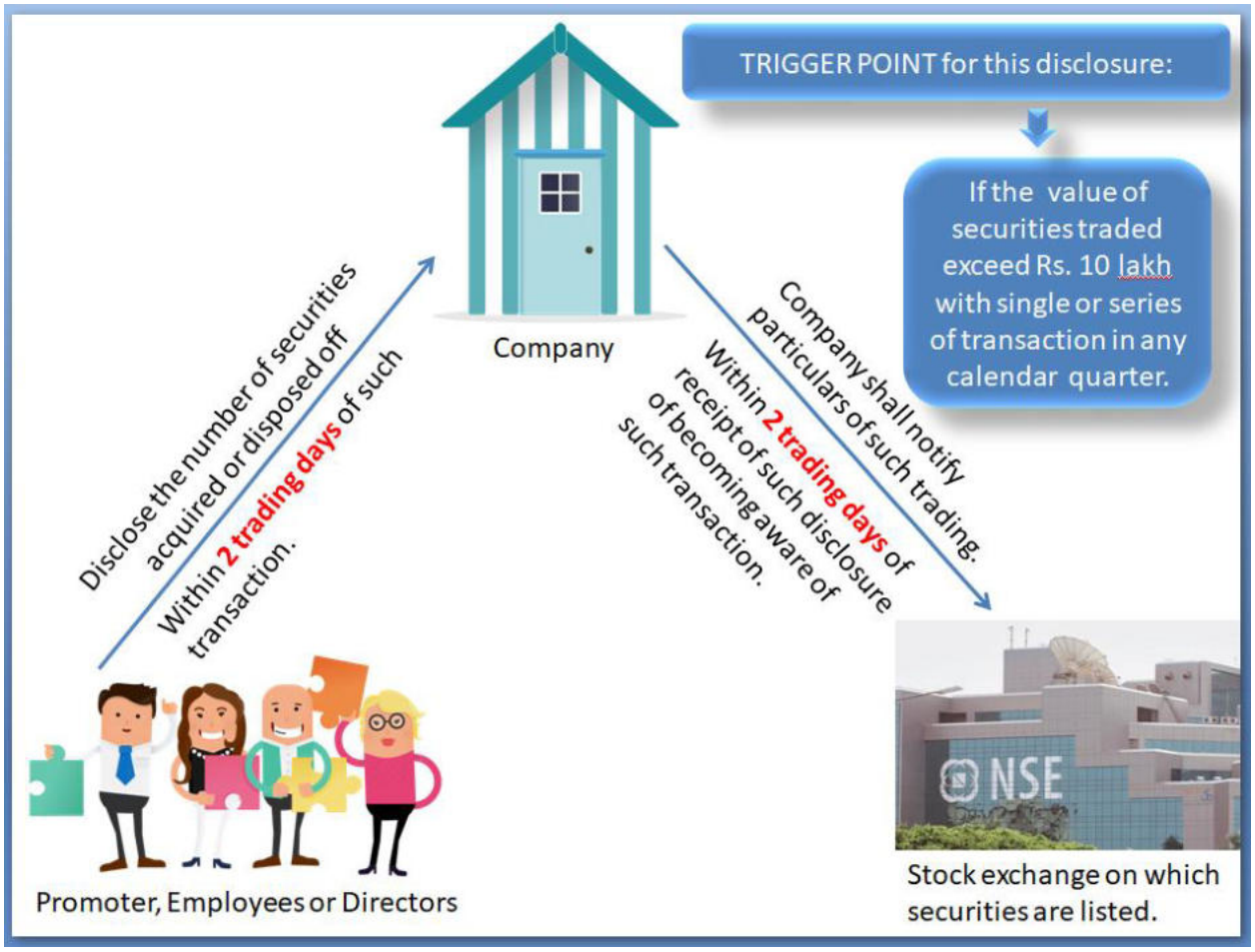
~~Every promoter, member of the promoter group, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect~~

Every person on appointment as key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

CONTINUAL DISCLOSURES 7(2)

Every promoter member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. Explanation. It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).



DISCLOSURES BY OTHER CONNECTED PERSONS 7(3)

Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

CODES OF FAIR DISCLOSURE REGULATION-8

The board of directors of the company shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information.

Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

PRINCIPLES AND PROCEDURES OF FAIR DISCLOSURE

Schedule A of these regulations lays down the following principles of fair disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information

1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.
2. Uniform and universal dissemination of unpublished price sensitive information to avoid selective disclosure.
3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.
4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.
5. Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities.
6. Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
7. Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.
8. Handling of all unpublished price sensitive information on a need-to-know basis.

CODE OF CONDUCT REGULATION-9

The board of directors of listed company and market intermediary or every other person who is required to handle unpublished price sensitive information in the course of business operations. Shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance and adopt the minimum standards set out in Schedule B to these regulations.

Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

MINIMUM STANDARDS FOR CODE OF CONDUCT

Schedule B of these regulations lays down the following minimum standards for Code of Conduct to regulate, monitor and report trading by insiders

1. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors.

2. All information shall be handled within the organisation on a need-to-know basis and no unpublished price sensitive information shall be communicated to any person except in furtherance of the insider's legitimate purposes, performance of duties or discharge of his legal obligations.

3. The code of conduct shall contain norms for appropriate Chinese Walls procedures, and processes for permitting any designated person to "cross the wall".

4. Employees and connected persons designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct governing dealing in securities.

5. The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation.

6. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons.

7. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.

8. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

9. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

10. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting, or advising the company.

11. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

12. The compliance officer shall confidentially maintain a list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.

13. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information.

14. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

15. The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

16. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The

compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by SEBI under the Act.

17. The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed, reporting of decisions not to trade after securing pre-clearance, recording of reasons for such decisions and for reporting level of holdings in securities at such intervals as may be determined as being necessary to monitor compliance with these regulations.

18. The code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension etc. that may be imposed, by the persons required to formulate a code of conduct for the contravention of the code of conduct.

19. The code of conduct shall specify that in case it is observed by the persons required to formulate a code of conduct, that there has been a violation of these regulations, they shall inform SEBI promptly.

PENALTY PROVISIONS FOR VIOLATIONS OF THE REGULATIONS

If any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the SEBI Act.

Regulation 11 & 14 of the Insider regulations empowers the SEBI to issue following directions to the violators without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of the SEBI Act, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulation made there under issue any or all of the following order, namely:

(a) directing the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act not to deal in securities in any particular manner;

(b) prohibiting the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act from disposing of any of the securities acquired in violation of these regulations;

(c) restraining the insider to communicate or counsel any person to deal in securities;

(d) declaring the transaction(s) in securities as null and void;

(e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller:

However, in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher, shall be paid to the seller;

(f) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a recognised stock exchange.

PENALTY FOR INSIDER TRADING UNDER SECTION 15G OF SEBI ACT, 1992

If any insider who, –

- either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information.

He shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher

ROLE OF COMPANY SECRETARY AS COMPLIANCE OFFICER

1. Ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.
2. Frame a code of fair disclosure and conduct in line with the model code specified in the Schedule A of the regulations and get the same approved by the board of directors of the company.
3. Frame "minimum standards for Code of Conduct" to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.
4. Receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter shall disclose its shareholding in the prescribed form within
    - 30 days from these regulations taking effect or
    - 7 days of such appointment or becoming a promoter
5. Ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.
6. Approve the trading plan and after the approval of the trading plan, as compliance officer shall notify the plan to the stock exchanges on which the securities are listed.
7. Maintain records, as a Compliance Officer, of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.
8. Take additional undertakings, as a compliance officer, from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the company are listed.
9. Frame and then to monitor adherence to the rules for the preservation of "Price sensitive information".
10. Suggest any improvements required in the policies, procedures, etc. to ensure effective implementation of the code.
11. Assist in addressing any clarifications regarding the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the company's code of conduct.
12. Maintain a list of all information termed as 'price sensitive information'.
13. Maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.

14. Keep records of periods specified as 'close period' and the 'Trading window'.

15. Ensure that the "Trading Window" is closed at the time of:

(a) Declaration of financial results (quarterly, half-yearly and annual)

(b) Declaration of dividends ("interim and final)

(c) Issue of securities by way of public/right/bonus etc.,

(d) Any Major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back

(f) Disposal of whole or substantially whole of the undertaking

(g) Any change in policies, plans or operations of the company

The Insider Trading audit includes the compliances requirements (event based /continuous disclosures) under the SEBI (Prohibition of Insider Trading) Regulations, 2015 which includes:

- Initial disclosures of trades which is to be made by only the promoters, key managerial personnel, directors internally;
- Continual disclosures which is to be made by every promoter, employee or director in case value of trade exceed monetary threshold of ten lakh rupees over a calendar quarter; company to accordingly notify stock exchanges within 2 trading days;
- Submission of Trading Plans
- Appointment of Compliance Officer
- Pre-clearance for trading
- Codes of Fair Disclosure and Conduct
- Role of the Designate person
- Manner of dealing with UPSI (unpublished price sensitive information)

Checkpoints for Compliance under the SEBI (Prohibition of Insider Trading) Regulations, 2015

1. The company has appointed a compliance officer

2. the company has designate a officer to administer the code of conduct and other requirements under Insider trading regulations. (Regulation 9)

3. the Board of Directors of has formulated a code of practices and procedures for fair disclosure of unpublished price sensitive information as per Schedule A of Insider trading regulation.

4. the Code has been hosted on the website of the company and a copy of the same must be sent to the stock exchange.

5. the Company has appointed a Chief Investor Relation Officer, who is also a senior officer of the company to deal with dissemination of information and disclosure of unpublished price sensitive information, as per the principles set out in Schedule A of Insider trading regulations.

6. The Company has formulated code of conduct to regulate, monitor and report trading by insiders as per Schedule B of these regulations.

7. The Company has formulated an internal code of conduct for governing dealing in securities as per the minimum standards set out in Schedule B of Insider trading regulations.

8. Every such code of practices and procedure relating to unpublished price sensitive information and every document thereto has been promptly intimated to the stock exchange where the securities are listed.

9. the trading plan has been formulated in compliance with Regulation 5. If yes, whether necessary compliances have been made.
10. the disclosures were taken from the KMPs of the Company and from those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions. (Regulation 6)
11. the connected person or class of connected persons have made disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations. (Regulation 7)
12. every code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto has been promptly intimated to the stock exchanges where the securities are listed. (Regulation 8)
13. any action has been sanctioned by the Board for the violation/ contravention of the provisions these regulations. (Regulation 10)
14. The Compliance officer has reviewed and monitored the trading plans if any, submitted by any insider and approved the trading plan that it has not violated these regulations.
15. The Compliance officer has received undertaking or declaration from insider with respect to the trading plan, as the case may be.
16. 16, The Compliance officer has notified the trading plan to the stock exchange(s), If any.
17. The Company maintains the record of the said disclosures as required for a minimum period of five years.
18. The Company has received the initial disclosure from every promoter, Key Managerial Personnel (KMP) and Directors with respect to the securities held by them in Company.
19. The Company receives disclosure by every person on appointment as KMP or Director or upon becoming a promoter within seven working days of such appointment or becoming promoter.
20. The Company is regular in receiving continual disclosure from the promoter(s), employees and directors with respect to the number of securities acquired or disposed of within two trading days of such transaction, if such transactions exceed Rs.10,00,000 or such other value as may be specified in a calendar quarter.
21. The Company has notified the particulars of such trading to the stock exchange(s) within two trading days of receipt of the disclosure or from becoming aware of such information.
22. The Company is regular in receiving disclosures of holding & trading of securities of the company by any other connected person or class of connected persons, held or traded by them. The Company has in its discretion require this information & set out the frequency for seeking such information.
23. The Compliance officer has provided reports of trading to the Chairman of Audit Committee, if any or to the Chairman of the Board of Directors as per the frequency stipulated by the Board of Directors.
24. The Company follows Chinese wall procedures & processes as per the norms contained in the code of conduct, wherever applicable.
25. The Compliance officer determines the timing of closure of the trading window and re-opening of the trading window.
26. The Compliance officer has put in place appropriate procedure for pre-clearance of trades for its employees.
27. The Designated Person have not entered into any contra trade as per the specified period as mentioned in the code of conduct which shall be not less than six months from the date of trade in securities of the Company.

28. The profit arises from the Contra trade, if executed inadvertently or otherwise, has been liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund administered by the SEBI under the Act.
29. Any action has been initiated by SEBI against the company or any of its promoter, director, Key Managerial Personnel, officer or employee under the PIT regulations in the past or present.
30. The company or any of its promoters, director, Key Managerial Personnel, officer or employee has been convicted by SEBI with respect to Insider Trading in the past or present. (Note: Please mention the action taken by SEBI in the audit report as qualification)
31. Any action taken against persons responsible for non- adherence with respect to formulation of code of conduct.
32. Any other prevention mode with respect to insider trading as adopted by the Company.

CHAPTER-31 OTHER AUDITS

TAKEOVER AUDIT **(REFER THE CHAPTER STC 2011)**

The Takeover audit includes the compliances relating disclosure requirements (event based /continuous disclosures), Pricing, Open offer and verification of the compliance of various stage of takeover process etc., under the provision of the Companies Act, 2013 and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. However, the takeover audit primarily includes:

• Identify and Categorises of acquirer i.e. Promoter, Promoter group, Person in control, Persons acting in concert, Associates, Immediate Relatives etc.
• Ensuring that the timely disclosures have been made by promoters, members of Promoter Group and PACs relating to Acquisition, Transfer and encumbrance.
• Effective Monitoring of the holdings of promoters, members of Promoter Group and PACs and take necessary action as required
• Ensuring that timely intimation is sent to stock exchanges in respects of transfers exempt under SEBI (SAST) Regulations.
• Ensuring that timely reports are filed in respect of transfers exempt under SEBI (SAST) Regulations with Stock Exchanges and SEBI, if applicable.
• Thoroughly examine the takeover regulations through checklist and timeline for compliances.

Consequences of Violation of obligations SEBI (SAST) Regulations, 2011

SAST Regulations, 2011 have laid down the general obligations of acquirer, Target Company and the manager to the open offer. For failure to carry out these obligations as well as for failure / non-compliance of other provisions of these Regulations, penalties have been laid down there under.

THESE PENALTIES INCLUDE:

• directing the divestment of shares acquired;
• directing the transfer of the shares / proceeds of a directed sale of shares to the investor protection fund;
• directing the acquirer not to exercise any voting or other rights attached to shares acquired;
• debarring person(s) from accessing the capital market or dealing in securities;
• directing the acquirer to make an open offer at an offer price determined by SEBI in accordance with the Regulations;
• directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries unless mentioned in the letter of offer;
• directing the acquirer to make an offer and pay interest on the offer price for having failed to make an offer or has delayed an open offer;
• directing the acquirer not to make an open offer or enter into a transaction that would trigger an open offer, if the acquirer has failed to make payment of the open offer consideration;

- directing the acquirer to pay interest of for delayed payment of the open offer consideration;
- directing any person to cease and desist from exercising control acquired over any target company

CYBER AUDIT

Cyber security is an attempt to minimising any risk of financial loss, disruption or damage to the reputation of an organisation that may arises from the failure of its information technology systems. The objective of the cyber audit is to provide an assessment of the operating effectiveness of cyber security policies and procedures, identify, protect, detect, respond and recover processes and activities to the board. The Cyber audit program generally covers sub-processes such as asset management, awareness training, data security, resource planning, recover planning and communications, in order to identify internal control and regulatory deficiencies that could put the organization at risk.

The security and control issues which deals under cyber security audits includes

1. Protection of sensitive data and intellectual property
2. Protection of networks to which multiple information resource are connected
3. Responsibility and accountability for the device and information contained in it

The scope of a cyber security audit includes:

1. Data security policies relating to the network, database and applications in place
2. Data loss prevention measures deployed
3. Effective network access controls implemented
4. Detection/prevention systems deployed
5. Security controls established
6. Incident response program implemented.

CHECKPOINT ON THE CYBER SECURITY AUDIT

Personnel Security

1. Whether the staff wears ID badges?
2. Whether it is a current picture part of the ID badge?
3. Are authorized access levels and type (employee, contractor, visitor) identified on the Badge?
4. Whether the credentials of external contractors are checked?
5. Whether the company has policies addressing background checks for employees and contractors?
6. Whether the Company has a process for effectively cutting off access to facilities and information systems when an employee/contractor terminates employment?

PHYSICAL SECURITY

1. Whether the Company has policies and procedures that address allowing authorized and limiting unauthorized physical access to electronic information systems and the facilities in which they are housed?
2. Whether the Company's policies and procedures specify the methods used to control physical access to your secure areas, such as door locks, access control systems, security officers, or video monitoring?
3. Whether the access to the computing area is controlled (single point, reception or security desk, sign-in/sign-out log, temporary/visitor badges)?

Account and Password Management

1. Whether the Company has policies and standards covering electronic authentication, authorization, and access control of personnel and resources to your information systems, applications and data?
2. Whether the Company ensures that only authorized personnel have access to the computers?
3. Whether the Company requires and enforces appropriate passwords?
4. Are your passwords secure (not easy to guess, regularly changed, no use of temporary or default passwords)?

Confidentiality of Data

1. Whether the Company is exercising responsibilities to protect sensitive data under their control?
2. Whether the most valuable or sensitive data encrypted?
3. Whether the Company has a policy for identifying the retention of information (both hard and soft copies)?

Compliance and Audit

1. Whether the Company reviews and revises the security documents, such as: policies, standards, procedures, and guidelines, on a regular basis?
2. Whether the Company audits the processes and procedures for compliance with established policies and standards?
3. Whether the Company test the disaster plans on a regular basis?
4. Does management regularly review lists of individuals with physical access to sensitive facilities or electronic access to information systems.

ENVIRONMENT AUDIT

According to **Section 2(a) of the Environmental Protection Act, 1986**, 'Environment' includes Water, air and land. The inter-relationship which exists among and between, (i) water, air, land, and (ii) human beings, other living creatures, plants, microorganisms and property.

Environmental audit in general term reflect various types of evaluations intended to verify the environmental compliance and management system implementation gaps, along with related corrective actions and it has a wide variety of meanings. Environmental Audit refers to verification and assessment of environmental measures in an organisation.

Objectives of environmental audit are to evaluate the efficacy of the utilization of resources of man, machine, materials, and to identify the areas of environmental risks and liabilities and weaknesses of management system and problems in compliance of the directives of the regulatory agencies and control the generation of pollutants and / or waste.

An environmental audit from a financial perspective is conducted to ensure that public funds were spent efficiently and for their intended purposes. During an audit of financial statements related to environmental matters, the following issues will merit special attention:

• Initiatives to prevent, abate, or remedy damage to environment;
• Conservation of renewable and non-renewable resources; (Mentioned In Director's Report)
• Consequences of violating environment laws, rules and regulations;
• Consequences of vicarious liability imposed by the government, courts etc.

There are generally two different types of environmental audits: **Compliance audits** and **Management systems audits**. As the name implies, these audits are intended to review the site's/company's legal compliance status in an operational context. Compliance audits generally begin with determining the applicable compliance requirements against which the operations will be assessed. This tends to include Central Laws, state laws, and local Laws, Rules and Regulations.

ENVIRONMENTAL COMPLIANCE AUDITS:

Compliance audit with respect to environmental issues will relate to providing assurance that governmental and private companies activities are conducted in accordance with the relevant laws, rules, notifications, regulations and standards as also policies and strategies. The audit have limited scope which is pre-defined under various legislations. Further the Audits are also focused on operational aspects of a company/site, rather than the contamination status of the real property.

THE FOLLOWING LAW COVERED UNDER THE ENVIRONMENT COMPLIANCE AUDIT:

Air Pollution

1. The Indian Boilers Act, 1923.
2. The Motor Vehicle Act, 1939 (Repealed by Act No. 59 of 1988).
3. The Mines and Minerals (Regulation and Development) Act, 1947.
4. The Factories Act, 1948.
5. The Industries (Development and Regulation) Act, 1951.
6. The Air (Prevention and Control of Pollution) Act, 1981.

Water Pollution

7. The River Boards Act, 1956.
8. The Merchant Shipping (Amendment) Act, 1970.
9. The Water (Prevention and Control of Pollution) Act, 1974
10. The Water (Prevention and Control of Pollution) Cess Act, 1977

Radiation

11. The Atomic Energy Act, 1962.

Pesticides
12. The Poison Act, 1919.
13. The Factories Act, 1948.
14. The Insecticides Act, 1968.

Miscellaneous
15. The Indian Fisheries Act, 1897.
16. The Indian Forest Act, 1927.
17. The Prevention of Food Adulteration Act, 1954.
18. The Ancient Monuments and Archaeological Sites and Remains Act, 1958.
19. The Wildlife (Protection) Act, 1972
20. The Urban Land (Ceilings and Regulation) Act, 1976.
21. The Forest (Conservation) Act, 1980
22. The Environment (Protection) Act, 1986.
23. The Public Liability Insurance Act, 1991.

ENVIRONMENTAL MANAGEMENT SYSTEMS AUDIT:

ISO 14001 is a voluntary international standard for *environmental management systems* ("EMS"). An EMS meeting the requirements of ISO 14001:2004 is a management tool enabling an organization of any size or type to:

1.	Identify and control the environmental impact of its activities, products or services;
2.	Improve its environmental performance continually, and
3.	Implement a systematic approach to setting environmental objectives and targets, to achieving these and to demonstrating that they have been achieved.

PROCESS OF ENVIRONMENT AUDIT

1. Understanding the industrial activity and Pre-audit or planning stage
Collection of background information about the entity, definition of objectives and scope of audit, formation of audit team and development of audit plan and protocols.

2. On-site or Field Audit
Communicate the objectives of the audit to key faculties and schedule necessary meetings and interviews, identify areas of concern, site / facility inspection, evidence / records / document review, staff interviews, initial review of findings.

3. Assessing the impact and post-audit
Final evaluation of findings, submit preliminary report with type and magnitude of impact on the environment, get approval of management, introduce the findings to the auditees, submit final environment audit report along with short/ long term acceptability.

4. Follow up or review
Verify the action taken on audit findings and recommendations.

INDUSTRIAL AND LABOUR LAW AUDIT

Industrial and labour law Audit is an effective tool for compliance management of labour, employment and Industrial laws.

Audit helps to detect non-compliances of labour and employment laws applicable to a business and take corrective measures to avoid any unwarranted legal actions by the regulators against the business and its management.

Labour Law audit is useful in promoting cordial relations between employees and employers and also lead to better governance and value creation for the business.

Labour Law Audit envisages a systematic scrutiny of records prescribed under labour legislations by a professional like Company Secretary, who shall report to the compliance and non-compliance/extent of compliance and conditions of labour in the Indian Industry/Business and in any commercial establishments.

Scope of Industrial and labour Audit

The Labour law auditor cover all labour legislations applicable to an Industry/Business or any other commercial establishment, wherein audit is being conducted by the Labour Law Auditor. Scope of labour law audit will certainly differ from business to business which is based on the nature of business, size of business, location of Business and Number of Manpower etc.

Though the Industrial and Labour audit include the various State and Local Laws along with the central Laws.

Illustrative list of the Compliance requirement under the various central law has been provided below:

Factories Act, 1948

1. The Factories Act, 1948 is applicable to the company. if yes
2. The occupier has at-least fifteen days before occupying or using any premises as a factory, sent to the Chief Inspector a written notice as contained in section 7.
3. The company has renewed the licence on an yearly basis within 2 months from the expiry of the licence as contained under Section 7.

4. The provisions regarding registration / licence as prescribed in section 6 have been complied with.
5. The employer has appointed the manager/ occupier of the factory under the Act and sent notice to the competent authority.
6. Under the Factories Act, 1948 Registers, Return & Abstracts.
    - Register of Compensatory Holidays - Form -8
    - Register of Adult Workers - Form-11
    - Register of Leave with Wage Register - Form-14
    - Register of Accident & Dangerous Occurrences - Form-23
    - Inspection Book
    - Accident & Dangerous Occurrences - Form - 23 (Every Month)
    - Combined Annual Returns - Form - 20, (Before January every year
    - Notice of Adult workers - Form – 10
    - Abstract of Factories Act, 1948

Industrial Disputes Act, 1947

1. The Company is an industrial establishment, having one hundred or more workmen. If yes, the company has constituted Works Committee as required under Section 3 of the Act.
2. Any change in the conditions of service applicable to any workman in respect of any matter specified in the fourth schedule of the Act, has been made after giving 21 days notice to the workmen, of such intention in Form E, as required under Section 9-A of the Act, read with Rule 34.
3. The company has twenty or more workmen. If yes, the company has constituted Grievance Redressal Committee as required under Section 9-C of the Act.
4. The Company is a Public Utility Service. If yes, the lockout if any has been carried out after giving sufficient notice in Form N, as required under Section 22(3) of the Act read with rule 73.
5. The Company has complied with the conditions precedent to the retrenchment of workmen, as required under Section 25-F and Section 25-N, as applicable.
6. The Company maintains a muster roll for its workmen as required under Section 25-D.
7. The Company has compensated for being laid off, the workmen, whose name is in the muster rolls and has completed not less than one year of continuous service.(Rule 25C)
8. The company has compensated the workmen in case of closing down of undertakings, as prescribed in section 25-FFF.

The Payment of Wages Act, 1936

1. The payment of wages is made before:

a.	before the expiry of the 7th day of the following month, when less than 1000 persons are employed.
b.	before the expiry of the 10th day of the following month, when more than 1000 workers are employed.

2. The deductions made from the wages of the employee are in accordance with section 7 of the Act.
3. Any deduction has been made on account of damage or loss.
4. If any deduction has been made on account of damage or loss, show cause notice has been given to the employee.
5. In case any deduction has been made for unauthorized absence, opportunity of being heard is given.
6. The registers and records giving particulars of persons employed, the work performed by them, the wages paid to them, the deductions made from their wages and the receipts given by them are maintained and preserved for a period of 3 years or more.
7. The employer has displayed the abstract of the Act and Rules made thereunder in the manner prescribed under section 25.

The Minimum Wages Act, 1948

1. The company has been paying the minimum wages as notified from time to time by the appropriate Government under the Act.
2. The company has paid wages in cash. If not, the wages in kind has been paid after following the procedure prescribed under section 11 of the Act.
3. The company follows the conditions prescribed with regard to working hours, working day under section 13 of the Act.
4. The company has paid overtime rate as prescribed under section 14 of the Act read with rule 25.
5. The company has maintained all registers and records that are required to be maintained under section 18 of the Act and rule 26.
6. The company has followed the procedure prescribed with respect to payment of undisbursed amounts due to employees, for reasons such as death, whereabouts not known etc.
7. The company has followed the procedure prescribed in rule 21 with respect to deductions made from the wages.
8. The company has followed time and conditions of payments of wages prescribed in rule 21.

Employees' State Insurance Act, 1948

1. The factory or establishment to which the Act applies has been registered.
2. The rate of contribution of the employer and employee is in accordance with the Act. [Rule 51 of ESI (Central) Rules, 1950.]
3. The manner and time Limit for making payment of contribution is in accordance with the Act.
4. The employer has maintained the register of employees in Form No. 6.
5. Submission of returns/reports:
    a. Annual return in Form No. 01-A;
    b. Return of contributions in Form No. 5;
    c. Report of accident in Form No. 12;
    d. Report of death of insured persons.
6. The benefits provided in Chapter V of the Act were made available to the applicable employee.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

1. The contributions made by the employer and the employee and payment thereof are in accordance with para 29 and 30 of the Employees' Provident Funds Scheme, 1952.
2. The employer has obtained declarations from the persons taking up the employment. (Para 34 of the scheme)
3. The employer has prepared the contribution card in Form No. 3 or 3-A as appropriate in respect of every employee in his employment.
4. The employer has sent to the Commissioner:
    - **a.** Consolidated return in the form specified by the commissioner.
    - **b.** Monthly return in Form No. 5 together with declaration in Form No. 2.
    - **c.** In such form as the commissioner may specify of employees leaving service of the employer during the preceding month.
    - **d.** Inspection note book in such form as the commissioner may specify, is maintained.
    - **e.** Accounts relating to amount contributed to the fund by the employer and by the employee have been maintained. (Para 36 of scheme)
5. The employer has furnished particulars of ownership in Form No. 5-A to the Regional Commissioner.
6. The employer has forwarded the monthly abstract to the commissioner. [Para 38 (2) of scheme]
7. Consolidated annual contribution statement in Form No. 6-A was sent to the commissioner. [Para 38(3) of scheme]
8. Submission of contribution card to the commissioner with a statement in Form No. 6.
9. Any proceedings under the Act have been initiated against the Directors for recovery of dues.
10. If the Employer has created its own trust, whether the terms of trust are more beneficial than those provided under the trust.
11. The conditions imposed by PF Commissioner for the creation of Trust are satisfied.
12. The provisions relating to Employees' Pension Scheme, 1995 have been complied with.
13. The provisions relating to Employees' Deposit Linked Insurance Scheme, 1976 have been complied with.

The Payment of Bonus Act, 1965

1. Computation of available surplus, allocable surplus and bonus are correctly arrived at.
2. Any amount has been deducted from bonus and if so, whether they are in accordance with the provisions of section 18.
3. Bonus is paid to the eligible employees.
4. The minimum or maximum amount of bonus paid is in accordance with section 10 or section 11, as the case may be.
5. The company has paid bonus to the employee:
    - **(a)** Where there is a dispute regarding payment of bonus pending before any authority under section 22- within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
    - **(b)** In any other case-within a period of eight months from the close of the accounting year.
6. The company has maintained the registers as provided in rule 4.
7. The company has submitted the annual return of payment of bonus to the Inspector in Form No. D within thirty days after the expiry of the time limit prescribed in section 19.

The Payment of Gratuity Act, 1972

1. There are employees who have worked for a continuous period of 5 years or more.
2. Any gratuity has been paid to any employee. If yes, whether it has been paid within 30 days.
3. The employer has displayed a notice as provided in rule 4, specifying the name of the officer with designation who is authorised to receive notice under the Act or the rules made thereunder.
4. The employer has complied with the provisions related to nominations as specified in rule 6.
5. Gratuity of any employee has been forfeited. If yes, whether an opportunity of being heard is given?
6. The gratuity has been forfeited for the reasons as specified in the Act.
7. The employer has displayed the abstract of the Act and rules made thereunder at or near the main entrance of the establishment, as specified in rule 20.
8. The employer has obtained insurance for liability of payment of gratuity as specified in section 4A of the Act.

The Maternity Benefit Act, 1961

1. The Maternity Benefit Act, 1961 is applicable to the company.
2. The employer has knowingly employed a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of her pregnancy.
3. Any pregnant woman has made any request not to give her any work which is of an arduous nature or which involves long hours of standing, etc. during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery.
4. Any woman employee is entitled for maternity benefit, medical bonus and nursing break and if yes, whether payment has been made and nursing break was allowed in accordance with the Act.
5. The employer exhibited the abstract of the provisions of the Act and the rules made thereunder in accordance with section 19 of the Act.
6. Whether the employer has maintained muster rolls, registers and records as prescribed, if any, by the appropriate Government.
7. Whether the employer has submitted annual return in the form prescribed, if any, by the appropriate Government.

The Child Labour (Prohibition and Regulation) Act, 1986

1. The Child Labour (Prohibition and Regulation) Act, 1986 is applicable to the company.
2. 2, The occupier has sent notice to Inspector as per section 9 when a child is employed or permitted to work.
3. The employer has employed any child labour in occupations set forth in Part-A or Process set forth in Part-B of the Schedule to the Act.
4. The employer has maintained the register in Form No. A in respect of children employed or permitted to work as specified in section 11.
5. The occupier has displayed notice containing abstract of sections 3 and 14 as specified in section 12.

The Industrial Employment (Standing Orders) Act, 1946

1. The Industrial Employment (Standing Orders) Act, 1946 is applicable to the company.
2. One hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
3. The industrial establishment has submitted to the Certifying Officer, five copies of the draft Standing Orders proposed by it for adoption in the establishment.
4. The text of the Standing Orders as finally certified has been prominently posted by the company in English and in the language understood by the majority of workmen on special boards to be maintained for the purpose.
5. The industrial establishment has modified the Standing Orders on agreement between the employer and the workmen or a trade union or other representative body of the workmen.
6. Any workman was suspended by the industrial establishment pending investigation or inquiry into complaints or charges of misconduct.
7. The industrial establishment has paid any subsistence allowance to any suspended employee.

The Employees' Compensation Act, 1923

1. The Employees' Compensation Act, 1923 is applicable to the company.
2. Any personal injury is caused to an employee by an accident arising out of or in the course of employment. If yes, the company has paid compensation as prescribed under Section 4 of the Act.
3. The company has maintained notice book in its premises, for reporting notice of accidents as prescribed in Section 10(3) of the Act.
4. The company has reported of fatal accident or serious bodily injuries in Form No. E-E to the Commissioner, as prescribed in section 10-B read with Rule 11 of the rules.
5. The company has deposited compensation with the Commissioner in respect of the workman whose injury has resulted in death and has furnished statement in Form No. A, OR In other cases company shall furnish statement in Form 'AA', as prescribed in section 8(1) read with rule 6(1). (As Applicable)
6. The company has furnished a statement in Form 'D', while depositing compensation, as required under section 8(2) read with rule 9.
7. The company has sent a return as to compensation paid during the previous year. (As specified by the State Government in respective state law)
8. On settlement of compensation amount in between company and workman, company executed a memorandum of agreement with the workman in Form No. K, L or M, as the case, may be and submitted such agreement along with an application to register it to the Commissioner, as prescribed in rule 48.
9. The provisions for reservation of apprentice training places for SC/ST/OBC have been made in designated trades.
10. The contract of apprenticeship was sent by the employer to the apprenticeship advisor/entered on the port-site within 7 days for verification & registration.

Equal Remuneration Act, 1976

1. Equal Remuneration Act, 1976 is applicable to the Company.
2. Payment of equal remuneration has been made to all for same work or work of similar nature and there is no discrimination between men and women while recruiting or subsequent to recruitment, promotion etc. (As per Section 4 read with section 5)
3. The company has maintained register in relation to workers in Form No. D as required under rule 6.

The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959

1. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is applicable to the company.
2. The company has notified the vacancies to employment exchanges, as prescribed in section 4 of the Act read with rule 5.
3. The company has furnished quarterly returns in Form No. ER-1, biennial return in Form No.ER-II to local employment exchange as prescribed in rule 6.

INFORMATION SYSTEMS AUDIT

Information systems auditing or systems audit is an ongoing process of evaluating controls, collecting and evaluating evidence to determine whether a computer system safeguards assets, maintains data integrity, allows organizational goals to be achieved effectively, and uses resources efficiently. Thus, information systems auditing supports traditional audit objectives; attest objectives (those of the external auditor) that focus on asset safeguarding and data integrity, and management objectives (those of the internal auditor) that encompass not only attest objectives but also effectiveness and efficiency objectives.

An information systems audit performed in an organisation is a comprehensive examination of a given targeted system.

The audit consists of an evaluation of the components which comprise that system, with examination and testing in the following areas:

• High-level systems architecture review
• Business process mapping (e.g. determining information systems dependency with respect to user business processes)
• End user identity management (e.g. authentication mechanisms, password standards, roles limiting or granting systems functionality)
• Operating systems configurations (e.g. services hardening)
• Application security controls
• Database access controls (e.g. database configuration, account access to the database, roles defined in the database)
• Anti-virus/Anti-malware controls

• Network controls (e.g. running configurations on switches and routers, use of Access control lists, and firewall rules)
• Logging and auditing systems and processes
• IT privileged access control (e.g. System Administrator or root access)
• IT processes in support of the system (e.g. user account reviews, change management)
• Backup/Restore procedures

During the System audit, the auditors are required to understand and evaluate the overall control environment. The control environment reflects the overall attitude of, awareness of, and actions by the board of directors, management, and others concerning the importance of internal controls in the enterprise.

SYSTEM AUDIT AND SEBI

In order to bring stability and integrity in the securities market, and in view of the various technological developments and innovations, for bringing efficiency to the markets, SEBI vide Circular No. CIR/MRD/DMS/34/2013, dated November 06, 2013, has prescribed stock broker, who use Algorithmic Trading or provide their clients with the facility of Algorithmic Trading system audit framework and mandated Stock Exchanges to ensure conduct of system audit of its members as per the prescribed framework and monitor the same.

FORENSIC AUDIT

Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science applied to legal matters especially criminal matters.

"Forensic" means suitable for use in the court of law. The examination a company's financial records to derive evidence which can be used in a court of law is a Forensic Audit. It includes the use of accounting, auditing and investigative skills to assist in the legal matters.

FORENSIC AUDIT IS DONE IN TWO-PHASES.

1. **Investigation Services** – At first the auditor begins with an investigation; looking into the accounts and statement, and identifying defects in it. It then moves on to find ways to deal with such defects, which is a reactionary function.

2. **Litigation Services** – It is entirely possible the frauds detected be resolved within the company itself. However, there are times when they need to be resolved through legal channels. During such situations, forensic auditors give litigation support to the advocates. Their advice and consultation about the legalities of commercial disputes are very essential. Moreover, they also provide research assistance by giving relevant documents and facts to support a legal claim, and also help decide the extent of damage that is required. They are also called up by the Court as an expert witness for further investigation.

FORENSIC AUDITS ARE DONE IN FOLLOWING AREAS:

- Criminal investigations
- Professional negligence cases
- Arbitration cases
- Fraud investigation and risk /control reviews
- Settlement of insurance claims
- Dispute settlement

PURPOSE OF FORENSIC AUDIT

1. CORRUPTION

In Forensic audit, while investigating fraud, auditor would look out for:

Conflicts of interest – When fraudster used his/her influence for personal gains detrimental to company. For example, if a manager allows and approves inaccurate expenses of employee with whom he has personal relations. Even though the manager is not benefitted from this approval but he is likely to receive personal benefits after making such inappropriate approvals.

Bribery – As the name suggest offering money to get things done or influence a situation one's favour would be bribery.

Extortion In above example, if someone demands money so as to award Tender to other party then it would amount to extortion

2. ASSET MISAPPROPRIATION

This is the most common and prevalent fraud carried out by fraudsters. Misappropriation of cash, raising fake invoices, payments made to non-existing suppliers or employees, misuse of assets or theft of Inventory are few examples of such asset misappropriation.

3. FINANCIAL STATEMENT FRAUD

Companies get into such type of frauds so as to show a better performance of the company than what it is actually. This is done so as improve liquidity or ensure top management keep earning the bonuses or due to market pressure on performance.

Some examples of such frauds are – Intentional forgery of accounting records; omitting transactions – either revenue or expense transactions, non-disclosures of relevant details from the financial statements; or not applying the requisite financial reporting standards.

PROCEDURE OF FORENSIC AUDITING INVESTIGATION

STEP 1 – ACCEPTING THE INVESTIGATION

A forensic audit is always assigned to an independent firm/group of investigators in order to conduct an unbiased and truthful audit and investigation. Thus, when such a firm receives an invitation to conduct an audit, their first step is to Understand the business, Identify possible frauds that could exist and determine whether or not they have the necessary tools, skills and expertise to go forward with such an investigation.

They need to do an assessment of their own training and knowledge of fraud detection and legal framework. Only when they are satisfied with such considerations, can they go ahead and accept the investigation.

STEP 2 – PLANNING THE INVESTIGATION

Planning the investigation is the key step in a forensic audit. The auditor(s) must carefully ascertain the goal of the audit so being conducted, and to carefully determine the procedure to achieve it, through the use of effective tools and techniques. Before planning the investigation, they should Catalog possible fraud symptoms,

SYMPTOMS OF FRAUD

- Delayed submission of returns information etc.;
- Delayed remittances into Bank;
- Delay or non-preparation of Bank reconciliation statements;
- Lifestyle of promoters/directors and key employees;
- Continued internal control lapses and not following norms of corporate governance

FRAUD TRIANGLE AND FRAUD RISK

A fraud triangle is a tool used in forensic auditing that explains three interrelated elements that assist the commission of fraud- Pressure (motive), opportunity (ability to carry out the fraud) and rationalization (justification of dishonest intentions). Fraud risk is the vulnerability a company/organisation has to those who are capable of overcoming the three elements in the fraud triangle. Fraud risk assessment is the identification of fraud risks that exist in the company/organisation. The planning involves the formulation of techniques and procedures that align with the fraud risk and fraud risk management.

Planning also includes the identification of the best way/mode to gather evidence. Thus, it is necessary that ample research should be done regarding certain investigative, analytical, and technology-based techniques, and also related legal process, with regard to the outcome of such investigation.

STEP 3 – GATHERING EVIDENCE

In forensic auditing specific procedures are carried out in order to produce evidence. Audit techniques and procedures are used to identify and to gather evidence to prove, for example, how long have fraudulent activities existed and carried out in the organization, and how it was conducted and concealed by the perpetrators. In order to continue, it is pertinent that the planning stage has been thoroughly understood by the investigating team, who are skilled in collecting the necessary evidence.

It is also important to keep clear sequence of custody until the evidence is presented in court. A logical flow of evidence helps in understanding the fraud and evidence presented in a better manner. If the same is not done then the evidence can be challenged in court, or the court would not admit it.

STEP 4 – REPORTING

The reporting stage is the most obvious element in a forensic audit. After investigating and gathering evidence, the investigating team is expected to give a report of the findings of the investigation, and also the summary of the evidence and conclusion about the loss suffered due to the fraud. It should also include the plan of the fraud itself, and how it unfolded, basically the whole trail of events, and suggestions to prevent such fraud in the future.

STEP 5 – COURT PROCEEDINGS

The last stage expands over those audits that lead to legal proceedings. Here the auditors will give litigation support to the Company/Regulators. The auditors are called to Court, and also included in the advocacy process. The understanding here is that they are called in because of their skill and expertise in commercial issues and their legal process. It is important that they lay down the facts and findings in an understandable and objective manner for everyone to comprehend so that the desired action can be taken up. They need to simplify the complex accounting processes and issues for others to understand the evidence and its implications.

FORENSIC AUDIT REPORT

Forensic Audit Report is statement of observation gathered & considered while proving conclusive evidence. It is a medium through which an auditor expresses his opinion under audit after the forensic audit investigation is completed.

SOCIAL AUDIT

A social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. A social audit helps to narrow gaps between vision/goal and reality, between efficiency and effectiveness. It is a technique to understand, measure, verify, report on and to improve the social performance of the organization.

A social audit is an official evaluation of an organization's involvement in social responsibility projects or endeavors. For example, a local family store makes a clothing donation to a local church that has a homeless shelter for women and children. The store makes a similar donation three times a year. This is something that a social audit might uncover. Factors examined by a social audit include records of charitable contributions, volunteer events, efficient utilization of energy, transparency, work environment, and employees' wages.

IMPLICATIONS OF SOCIAL AUDIT

- Social auditing creates an impact upon governance. It values the voice of stakeholders, including marginalized/poor groups whose voices are rarely heard
- Social auditing is taken up for the purpose of enhancing local governance, particularly for strengthening accountability and transparency in local bodies.
- Social Audit makes it sure that in democracy, the powers of decision makers should be used as far as possible with the consent and understanding of all concerned.

OBJECTIVES OF SOCIAL AUDIT

1. Assessing the physical and financial gaps between needs and resources available for local development.
2. Creating awareness among beneficiaries and providers of local social and productive services.
3. Increasing efficacy and effectiveness of local development programmes.
4. Scrutiny of various policy decisions, keeping in view stakeholder interests and priorities, particularly of rural poor.
5. Estimation of the opportunity cost for stakeholders of not getting timely access to public services.
6. Provision of information needed to improve the effectiveness of programs designed to enhance community development.

IMPLEMENTATION OF SOCIAL AUDIT

Empowerment of people: Social audit is most effective when the actual beneficiaries of an activity are involved in it. However, people can only get involved in the process when they are given appropriate authority and rights. To this end, the 73rd amendment of the constitution has empowered the Gram Sabha to conduct social audit. This is relevant only in the villages. In the cities, the Right to Information Act empowers the people to inspect public records.

Proper Documentation: Everything right from the requirement gathering to planning to implementation must be properly documented. Some of the documents that should be made mandatory are:

- Applications, tenders, and proposals
- Financial statements, income - expense statements.
- Registers of workers
- Inspection reports.

Accessibility of Documents: Merely generating documents is useless if they are not easily accessible. In this information age, all the documents must be put on line.

Punitive Action: The final and most important provision, about which nothing is being done yet is to have punitive actions for non-conformance of the process of social audit. Unless there is legal punishment, there will be no incentive for the people in authority to implement the processes in a fair manner.

STEPS FOR SOCIAL AUDIT

• Clarity of purpose and goal of the local elected body.
• Identify stakeholders with a focus on their specific roles and duties. Social auditing aims to ensure a say for all stakeholders. It is particularly important that marginalized social groups, which are normally excluded, have a say on local development issues and activities and have their views on the actual performance of local elected bodies.

• Definition of performance indicators which must be understood and accepted by all. Indicator data must be collected by stakeholders on a regular basis.
• Regular meetings to review and discuss data/information on performance indicators.
• Follow-up of social audit meeting with the panchayat body reviewing stakeholders' actions, activities and viewpoints, making commitments on changes and agreeing on future action as recommended by the stakeholders.
• Establishment of a group of trusted local people including elderly people, teachers and others who are committed and independent, to be involved in the verification and to judge if the decisions based upon social audit have been implemented.
• The findings of the social audit should be shared with all local stakeholders. This encourages transparency and accountability. A report of the social audit meeting should be distributed for Gram Panchayat auditing. In addition, key decisions should be written on walls and boards and communicated orally.

CHECKLIST ON SOCIAL AUDIT:

- Whether the Company has well defined policies for development of the society especially the poor and rural people?
- Whether on regular basis the scrutiny of fulfillment of the policy is done?
- Whether the physical and financial gaps between needs and resources available for local development are assessed on regular intervals?
- Whether the voice of the minority shareholders are considered? Are necessary actions taken over them?

CHAPTER-32 AUDIT ENGAGEMENT

MEANING OF AUDIT ENGAGEMENT

The audit engagement is a contractual arrangement by way of the **Audit Engagement letter** between the auditee and the auditor.

An auditor may be appointed either as a result of one to one communication between the auditor and the Management or through a tendering process followed by the Management.

POINTS TO BE KEPT IN MIND BY AUDITOR

In case the auditor is to be appointed by the management on one to one basis

- Selection or screening of prospective auditee
- Communicating his willingness to take up the audit assignment.
- Conducting a pre- engagement meeting with the Management to discuss about the terms of engagement
- Signing the engagement letter with the Management.

In case where the appointment of auditor is through a tendering process by the management

- Pre-bid meeting with the management to discuss upon various aspects of the tender,
- Submission of Technical Bid as per the requirements of the tender document of the Management.
- Signing the engagement letter with the management.

APPOINTING AUTHORITY

S.NO.	KIND OF AUDIT	APPOINTING AUTORITY
1	Statutory audit (SEC. 139)	Ist auditor (BR) subsequent auditor (O/R)
2	Secretarial audit (SEC. 204)	Board Resolution (BR)
3	Internal audit (SEC. 138)	Board Resolution (BR)
4	Cost auditor (SEC. 148)	Board Resolution (BR)

Communication to Previous Auditor

As a measure of the professional etiquettes, while taking up the any audit engagement, the auditors shall give intimation to the previous auditor, intimating his engagement as auditors of the company. The term Predecessor or Previous Auditor can be defined as an Auditor who has conducted the most recent audit assignment of the Auditee of the same nature and submitted report thereon prior to the incumbent Auditor or was engaged but did not complete the audit assignment due to his resignation, termination or otherwise.

In case whenever a practicing company secretary is appointed as Secretarial Auditor in place of the existing Secretarial Auditor, he should communicate the appointment to the earlier incumbent

in writing, in view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 and the relevant pronounced judgments.

Terms and Conditions of Audit engagement

The objective and scope of every audit is dependent on the four corners of the terms and conditions which also include the scope of audit as agreed by and between the auditee and the auditors of the company. This requires the specific attention of the auditors and auditee on the following points:

- The objective and purpose of the audit
- The responsibilities of the auditor
- The responsibilities of management/ Auditee
- The Audit risk
- The Audit Limitation
- The Audit plan

AUDIT FEE & EXPENSES

Audit fees should be a fair reflection of the value of the work performed for the auditee, taking into account the above-mentioned factors.

Audit fee which is to be charge by the auditor depends on several factors, which includes:

- Size of the organization;
- Nature of business;
- Internal Controls systems & Technology adopted
- Scope of audit;
- Frequency of audit etc.

In case of **Statutory Auditors**, Section 142 of the Companies Act, 2013 provides that the remuneration to the Auditors shall be fixed in the general meeting of the company, also the auditor can claim the expenses incurred by him in connection with the audit of the company.

Similarly, in case of the **Secretarial Audit** and the Internal Audit, the Audit fee shall be decided by the Audit committee or by the board of the company.

INDEPENDENCE AND CONFLICT OF INTEREST

As the audit refers to the independent verification and it is most important to maintain the Independence of the Auditor and to avoid such conflict of Interest of the Auditors.

Following are certain examples where an auditor shall assumed to have interested in the auditee's business or enterprise:

1) Holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

2) Indebtedness to the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
3) Has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
4) Having business relationship (direct or indirect) with the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
5) Any relative of the auditor is a director or is in employment of the company as a director or key managerial personnel

Examples of situations in which conflicts of interest may arise include:

• Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.
• Auditing two clients at the same time who are competing to acquire the same company where the audit report might be relevant to the parties' competitive positions.
• Taking audit assignment of two clients regarding the same matter, who are in a legal dispute with each other.
• Providing an audit report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable.

CONFIDENTIALITY

The Auditors of a company while performing the audit assignment access the various confidential information of the company and it is most required for the auditors to maintain the confidentiality of the auditee information.

The principle of confidentiality imposes an obligation on the auditor to refrain from:

• Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
• Using information acquired as a result of professional relationships to their personal advantage or the advantage of third parties.
• An auditor should maintain confidentiality even in a social environment. The auditor should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative.
• An auditor should also maintain confidentiality of information disclosed by a prospective client or employer.
• An auditor should also consider the need to maintain confidentiality of information within the firm or employing organization.

- An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respect the auditor's duty of confidentiality.

Preconditions of accepting/continuing any professional engagement

Prior to acceptance of any Audit engagement, the auditor, in order to establish whether the preconditions for accepting professional assignment are present, the auditor should check that:

Whether the management is in agreement to acknowledge and understands its responsibility relating to:

- Preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework, including their fair presentation;
- Development of internal control/systems/procedure to enable the preparation of secretarial/ nonfinancial statements which are free from material misstatement, whether due to fraud or error; and
- Providing access to all information of which management is aware that is relevant to the preparation/audit/review etc. of the secretarial/ non-financial statements such as records, documentation and other matters;

Limitation on Scope Prior to Engagement Acceptance

If management or appointing authority impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the Secretarial records/non-financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

Other factors affecting Engagement Acceptance

If the preconditions for an audit/professional assignment are not present, the auditor should discuss the matter with management. Unless required by law or regulation to do so, the auditor should not accept the proposed audit engagement:

(a) If the auditor assesses that the reporting framework to be applied in the preparation of the secretarial records/non-financial statements is unacceptable, or
(b) If the agreement has not been concluded.

Agreement on Engagement Terms

The auditor should agree upon the terms of engagement with the management or those charged with governance, as appropriate. **The agreed terms of the engagement should be recorded in an engagement letter or other suitable form of written agreement and includes**:

- The objective and scope of engagement;
- The responsibilities of the firm;

• The responsibilities of management;
• Identification of the applicable financial reporting framework; and
• Reference to the expected form and content of any reports and a statement that there may be circumstances in which a report may differ from its expected form and content.

If any law or regulation prescribes sufficient detail of the terms of the engagement referred to above, there is no need to record them in a written agreement, except for the fact that such law or regulation applies and that management acknowledges and understands its responsibilities.

Criteria for declining and withdrawing from an Engagement

Based on the evaluation of client information and the following factors, the auditor should determine and document the conditions beyond which it would be prudent to decline, or withdraw from an engagement:

• Client's status/information that is likely to impact adversely on the independence of the firm.
• Ability of the firm to provide appropriate service to the client, considering needs for technical skills, knowledge of the industry and personnel.
• Consider circumstances which would cause the firm to regard the engagement as one requiring special attention or presenting unusual risks.

Limits on Audit Engagements

An auditor shall not accept audit engagement beyond the limits of number of audits, if any, as may be specified under applicable laws or any other body governing such profession. Violation of the limits by the auditor may attract disciplinary actions against the auditor.

LIMITS ON SECRETARIAL AUDIT

Limits for the issue of Secretarial Audit Reports for financial year 2016-17

The Council of the Institute at its 235th meeting held on February 11, 2016 reviewed the existing limits for the issue of Secretarial Audit Reports and decided as below:

• 10 Secretarial Audits per partner/ PCS, and
• An additional limit of 5 secretarial audits per partner/PCS in case the unit is peer reviewed.

These limits will be applicable for the Secretarial Audit Reports to be issued for the financial year 2016-17 Onwards

Audit Engagement Letter

It is in interest of both the Management and the auditor that the auditor should get an audit engagement letter before the commencement of the audit to help avoid misunderstandings with respect to the terms of engagement.

It should be reviewed every year to ensure that it is up to date but does not need to be reissued every year unless there are changes to the terms of the engagement. The auditor shall obtain a new engagement letter if the scope or context of the assignment changes after initial appointment.

Form and Content of Audit Engagement Letter

• Elaboration of the scope of audit, including reference to applicable legislation, regulations and ethical and other pronouncements of professional bodies to which the auditor adheres.
• The form of any other communication of results of the audit engagement.
• Arrangements regarding the planning and performance of the audit, including the composition of the audit team.
• Written representations to be provided by the management to the auditor.
• The agreement of management to make available to the auditor adequate records, reports and other information in time to allow the auditor to complete the audit in accordance with the proposed timetable.
• The agreement of management to inform the auditor of events occurring or facts discovered subsequent to the date of the financial statements, of which management may become aware, that may affect the status of compliance by the under any law.
• Period within which (with Milestones) audit report should be submitted by the auditor. Audit fees and any billing arrangements including out of pocket expenses for sight visit etc.

CSAS-1 Auditing Standard on Audit Engagement

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit Engagement under any statute. The Standard deals with the Auditor's role and responsibilities with respect to an Audit Engagement and the process of entering into an understanding/agreement with the Appointing Authority for the purpose of audit.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to prescribe for the Auditor, principles and procedures to be followed while accepting or continuing with an Audit Engagement by agreeing to the terms of engagement with the Appointing Authority or any changes therein and matters relating thereto.

Definitions

Appointing Authority means any person having authority to appoint the Auditor.

Audit Engagement means detailed terms of reference of appointment including scope of audit, remuneration and limiting conditions, if any.

Auditee means a person subject to audit.

Auditor means a Company Secretary who is deemed to be in practice under sub-section (2) of Section 2 of the Company Secretaries Act, 1980 including a firm or Limited Liability Partnership (LLP) registered with ICSI undertaking the Audit.

Audit Engagement Process

The Auditor shall undertake the following steps with respect to the Audit Engagement:

1. The appointment of Auditor shall be made in the manner prescribed in the applicable laws, act, rules, regulations, standards and guidelines or in case no such manner has been prescribed, such appointment shall be made in the manner determined by the Appointing Authority.
2. The Auditor shall submit a Certificate to the Appointing Authority confirming eligibility for appointment as Auditor.
3. The Auditor shall obtain an Audit Engagement Letter along with a copy of the resolution, if any, passed by the Appointing Authority and shall provide acceptance to the Appointing Authority.
4. Audit Engagement Letter

   The Audit Engagement Letter shall inter alia include:

   a. The objective and scope of the audit;

   b. The responsibilities of the Auditor and the Auditee;

   c. Written representations provided and/or to be provided by the Management to the Auditor, including particulars of the Predecessor or Previous Auditor;

   d. The period within which the audit report shall be submitted by the Auditor, along with milestones, if any;

   e. The commercial terms regarding audit fees and reimbursement of out of pocket expenses in connection with the audit; and

   f. Limitations of audit, if any.
5. The Auditor shall intimate in writing to the Predecessor or Previous Auditor, if any, before accepting the Audit Engagement.

Limits on Audit Engagements

The Auditor shall accept Audit Engagements within the limits of number of audits, if any, as may be prescribed under any law for the time being in force or by the ICSI from time to time.

Conflict of Interest

The Auditor shall not have any substantial conflict of interest with the Auditee. Any conflict of interest, other than substantial conflict of interest, must be disclosed by the Auditor before accepting the Audit Engagement or as soon as the Auditor becomes aware of the same, as the case may be.

Explanation: *Conflict of Interest means:*

Ownership*: Where the Auditor singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, holds more than 2% in the paid up share capital or shares of nominal value of Rs. 50,000, whichever is lower or more than 2% voting power, as the case may be, the same shall be considered as substantial conflict of interest.*

Financial Interest*: Where the Auditor is indebted to the Auditee for an amount of five lakh rupees or more. However, financial indebtedness arising out of ordinary course of business will not constitute conflict of interest. Indebtedness that may seriously impair the independence of the Auditor shall be considered as substantial conflict of interest.*

Past Employment Relationship*: Where an Auditor was in employment of the Auditee, its holding or subsidiary company and 2 (two) years have not lapsed from the date of cessation of employment, the same shall be considered as substantial conflict of interest.*

Confidentiality

1. The Auditor shall not disclose the information obtained during the course of Audit without proper and specific authority or unless there is a legal obligation or duty to disclose.
2. The Auditor shall not use or share with any person any information obtained except for the purposes of audit.
3. The Auditor shall take all reasonable steps to ensure that employees, staff and other team members of the Auditor and persons engaged by the Auditor to provide advice or assistance during the conduct of audit, shall also adhere to the Auditor's duty of confidentiality.

CASE STUDY

In Re R. Swarup Reddy Vs. M.N Pratap Reddy, NCLAT New Delhi, Company Appeal (AT) Nos. 77 & 121 Of 2018, in this matter CLB appointed Independent auditors for auditing books of account the company. Auditors completed their work and claimed fees of Rs. 36.16 lakh. The director company stated that fees claimed by auditors was on higher side and at best they were entitled for a fees of Rs. 8 lakh.

The Court observed that said auditors had not only done audit but also did investigation, particularly with reference to related party transactions entered at instance of appellant with its two sister companies for period from 1-4-2007 to 31-3-2014. Further, amount claimed by said auditors was supported by number of days spent and composition of people working on assignment. It was

also observed that appellant had paid nearly Rs. 62 lakh for auditing of sister concerns for same period. Therefore, fees claimed by auditors were reasonable. Court was justified in directing the company to remit to said auditors entire claimed amount.

The clause pertaining to Audit fees and expenses in the Audit Engagement Letter may be reflected as:

"V. Commercial Terms

Audit fees for the F.Y. 20XX-XX is fixed at Rs. XXXXXXX plus applicable taxes. Fees will be billed as the work progresses.

Out–of-pocket expenses by the Auditor shall be reimbursed on actual basis"

While auditing under any of the statutes, the Auditors are required to examine the Records, documents and information from the Auditee to express an independent opinion. Therefore, it becomes very important to understand the scope of audit.

CASE LAW

In Re, Ssay & Associates v. Institute of Chartered Accountants of India, HC of Delhi W.P. NO. 7674, it was held that there is no requirement for an auditor to secure a no objection certificate from previous auditor as only requirement is that auditor, who accepts position as an auditor, must communicate with previous auditor about same.

In case whenever a practicing company secretary is appointed as secretarial auditor in place of the existing secretarial auditor, he should communicate the appointment to the earlier incumbent in writing.

Illustration

Mr. P was appointed as the Secretarial Auditor of ABC Ltd. for the F.Y. 2019-20. However, during the course of audit, he intimated the Appointing Authority his inability to complete the audit of ABC Ltd. and therefore cannot give audit report thereon. ABC Ltd. accepted the request of Mr. P and approached Mr. Q to become the secretarial Auditor for F.Y. 2019-20.

In such case, Mr. Q has to first communicate to the Predecessor Auditor i.e. Mr. P of his intention to accept the secretarial audit assignment of ABC Ltd. and wait for 7 days from the date of intimation to Mr. P, before accepting the secretarial audit of ABC Ltd. for F.Y. 2019-20.

CASE STUDY

XYZ Limited is a listed company and recently hired a new secretarial auditor firm (M/s AA & Associates) to replace the previous auditor firm (M/s BB & Associates), who had been serving the company for two years. The M/s AA & Associates was made responsible for ensuring compliance with various regulations and guidelines and preparing audit report.

To uphold the quality of services rendered by members of the Institute, the Institute has issued the following guidelines:

Guidelines	Guidelines Issued at
Limits for the issue of Secretarial Audit Reports: • 10 Secretarial Audits per partner/ PCS, and • an additional limit of 5 Secretarial Audits per partner/PCS in case the unit is peer reviewed. The limits will be applicable for the Secretarial Audit Reports issued for the FY2016-17 onwards)	235th meeting of the Council held on 11th February, 2016
Number of Annual Secretarial Compliance Reports to be issued by PCS are 5 (five) reports individually / per partner in each financial year w.e.f. 1st April, 2020 and an additional limit of 5 (five) ASCR individually/ per partner in case the unit has been Peer Reviewed.	260th meeting of the Council held on 4-5 May, 2019
In case of the following, Secretarial Audit/ Secretarial Compliance Report to be done by Peer Reviewed Units only: • Top 100 companies as per market capitalization w.e.f April 1, 2020 • Top 500 companies as per market capitalization w.e.f April 1, 2021 • All listed companies w.e.f April 1, 2022 • All companies w.e.f April 1, 2023	259th meeting of the Council held on 16th March, 2019

CONFLICT OF INTEREST

CSAS-1 (Auditing Standard on Audit Engagement) effective from 1st April, 2021, defines: "Conflict of Interest" as: The Auditor shall not have any substantial conflict of interest with the Auditee. Any conflict of interest, other than substantial conflict of interest, must be disclosed by the Auditor before accepting the Audit Engagement or as soon as the Auditor becomes aware of the same, as the case may be.

The term conflict of interest term is defined below. It is expected that the Auditor shall not have any conflict of interest with the Auditee. If the Auditor has any such interest, it is the duty of the Auditor to disclose such interest/ conflict of interest to the Auditee before accepting the Audit Engagement.

The conflict of interest with the Auditee explained below shall not be construed as a substantial conflict of interest:

- Auditor holding not more than 2% paid up share capital or shares of nominal value of Rs. 50,000, which ever is lower or more than 2% voting power.

- Auditor indebted to the Auditee for an amount not exceeding Rs. 5,00,000.
- Auditor was in employment of the Auditee more than 2 year ago

In above cases, the Auditor shall be eligible for undertaking the Audit Engagement only if he discloses such fact in writing before accepting the Audit Engagement or as soon as he becomes aware of the same, as the case may be.

In following cases, it shall be construed that the Auditor has a substantial conflict of interest with that of the Auditee and he shall not accept any Audit Engagement from the Auditee.

- Auditor holding not more than 2% paid up share capital or shares of nominal value of Rs. 50,000 or holding not more than 2% voting power.
- Auditor indebted to the Auditee for an amount not exceeding or equal to Rs. 5,00,000 indebtedness that may seriously impair the independence of the Auditor, irrespective of the amount.
- Auditor was in employment of the Auditee more than 2 year ago.

In above mentioned cases, the Auditor is debarred from accepting such Audit Engagement.

Question: Can an auditor accept Audit engagement even if there is conflict of interest?

Answer: Yes. The Auditor can accept audit engagement where there is conflict of interest with the Auditee by making disclosure before accepting audit engagement or on becoming aware of such conflict. However in case of substantial conflict of interest Auditor cannot accept Audit engagement.

Explanation

Substantial Conflict of Interest means:

Holding of more than 2% in the paid up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power, as the case may be, by the Auditor singly or along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

Before accepting the audit, the Auditor shall disclose that there is no conflict of interest of ownership as specified in this Standard or prescribed in any law, act, rules and regulations under which the audit is being carried on.

Where there exists a substantial conflict of interest in the Auditee organisation, the Auditor cannot accept the Audit Engagement.

The limit of holding of more than 2% in the paid-up share capital or shares of nominal value of rupees fifty thousand, whichever is lower or more than 2% voting power shall be applied based on combined holding of the Auditor along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

Illustration 1

Mr. A, Mr. B and Mr. C are partners in ABC, LLP, a firm of Practicing Company Secretaries. Mr. B holds 1% paidup share capital in a company XYZ Ltd. Wife and daughter of Mr. A, who are financially dependent on him hold 1% paid-up share capital in XYZ Ltd. each.

Mr. A has been offered the Secretarial Audit of XYZ Ltd.

In this case, Mr. A is not directly holding any interest in XYZ Ltd. However according to para 3.1 of CSAS-1, Mr. A is having a substantial conflict of interest in XYZ. Ltd. as the aggregate value of paid-up share capital held by his wife, daughter and partner in XYZ Ltd. is 3%. Hence, he is not eligible to become Secretarial Auditor of XYZ Ltd.

Illustration 2

Mr. A, Mr. B and Mr. C are partners in ABC, LLP, a firm of Practicing Company Secretaries . Mr. A holds 1% paidup share capital in a company XYZ Ltd. and Mr. B holds shares of nominal value of Rs. 60,000 in XYZ Ltd.

Mr. A has been offered the Secretarial Audit of XYZ Ltd.

In this case, though Mr. A holds only 1% of the paid up share capital in XYZ Ltd. But according to para 3.1 of CSAS-1, he is having a substantial conflict of interest in XYZ. Ltd. as his partner Mr. B is having a share capital of nominal value of more than Rs.50,000 in XYZ Ltd. and therefore Mr. A is not eligible to become Secretarial Auditor of XYZ Ltd

Illustration 3

Mr. A, Mr. B and Mr. C are partners in ABC, LLP, a firm of Practicing Company Secretaries. Mr. A & Mr. B each holds 0.5% paid-up share capital in a company XYZ Ltd. Nominal value of such shares held by each of them is Rs. 20,000. Mr. A has been offered the Secretarial Audit of XYZ Ltd.

In this case, though Mr. A is having a conflict of interest in XYZ Ltd. The same will not be considered as a substantial conflict of interest. Therefore, Mr. A can accept the Secretarial Audit of XYZ Ltd. In this case he shall disclose to the Appointing Authority the fact that he has a conflict of interest with the company, but the same is not substantial conflict of interest in accordance with CSAS-1.

Illustration 4

Mr. A, Mr. B and Mr. C are partners in ABC, LLP, a firm of Practicing Company Secretaries. Mr. A holds 1% of the paid-up share capital in company XYZ Ltd. Nominal value of such shares is Rs. 60,000. The market value of the shares held by Mr. A is Rs. 40,000. Mr. A has been offered the Secretarial Audit of XYZ Ltd.

In this case, there will be a substantial conflict of interest between Mr. A and the company XYZ Ltd. as the nominal value of shares held by Mr. A is more than Rs. 50,000, therefore he cannot

accept the Secretarial Audit of XYZ Ltd. The market value of the shares is irrelevant while deciding the conflict of interest based on ownership in accordance with CSAS-1.

Illustration 5

Mr. A, Mr. B and Mr. C are partners in ABC, LLP, a firm of Practicing Company Secretaries. Mr. A holds 1% of the paid-up share capital in company XYZ Ltd. Nominal value of such shares is Rs. 60,000. XYZ Ltd. wants to give its Internal Audit assignment to ABC, LLP

In this case, there exists a substantial conflict of interest of ABC, LLP with the company XYZ Ltd. due to the fact that one of the partners of the LLP is holding shares of a nominal value of more than Rs. 50,000 in XYZ Ltd. Therefore, it will not be eligible to undertake the internal audit assignment of XYZ Ltd. as per CSAS-1.

Indebtedness of the Auditor for an amount exceeding rupees five lakh other than that arising out of ordinary course of business of the Auditee:

Provided that any indebtedness that may seriously impair his independence shall also be considered as substantial conflict of interest.

Before accepting the audit the Auditor shall disclose that there is no conflict of financial interest as specified in this standard or prescribed law under which the audit is carried on.

The limit of rupees five lakh as specified shall be applicable to the combined indebtedness of the audit firm including indebtedness by the partners in their individual capacity.

The term “ordinary course of business” has not been defined. An assessment of whether a transaction is in “ordinary course of business” can be subjective and may vary on case-to- case basis.

For example, a banking company which in ordinary course of business provides loan or gives guarantees/ securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the prevailing lending rate , may extend loan to its Auditor as per the terms and conditions of the company and such loan shall not be treated as conflict of financial interest.

Illustration 1

Mr. A is a Practicing Company Secretary. He has taken a personal loan of Rs. 5,00,000 from a XYZ LLP wherein Mr. B, who is the designated partner is friend of Mr. A. The payment of such loan is still outstanding in full. Mr. A has been offered to undertake the Internal Audit of XYZ, LLP.

In the given case, Mr. A has a conflict of interest in XYZ LLP, but it doesn’t debar Mr. A from undertaking the Internal Audit of XYZ LLP. Mr. A shall disclose the fact to the Appointing Authority before accepting such Audit.

Illustration 2

Mr. A is a Practicing Company Secretary. He had taken a personal loan of Rs. 5,00,000 from XYZ Ltd. wherein his uncle is Managing Director. Mr. A has been offered to undertake the Secretarial Audit of XYZ Ltd.

In the given case, Mr. A has conflict of interest with the Auditee, as the amount of indebtedness is Rs. 5,00,000, but the same is not considered as substantial conflict of interest. In this case, he is required to make disclosure of the fact to Appointing Authority

Illustration 3

Mr. P is a Practicing Company Secretary and is offered to conduct the Secretarial Audit of ABC Ltd. Mr. P is indebted to the Director of the company for an amount Rs. 6,00,000. Whether he can accept the Secretarial Audit Engagement of ABC Ltd.

In the given case, Mr. P has a substantial conflict of interest in ABC Ltd. And therefore he can't accept the secretarial audit assignment.

Illustration 4

Mr. A is a Practicing Company Secretary. He had taken a personal loan of Rs. 25,00,000 from XYZ Ltd.. He has used such loan towards purchase of his house which has been mortgaged with XYZ Ltd. Due to some financial crisis, Mr. A has not been able to repay any amount towards the loan since past 2 years. Mr. A has been offered to undertake the Secretarial Audit of XYZ Ltd.

The circumstances of the case suggest that indebtedness of Mr. A towards XYZ Ltd. is such that , if he accepts the Audit of XYZ Ltd., it may substantially impair the independence of Mr. A while forming an opinion on the basis of his audit findings and therefore considered as substantial conflict of interest . Therefore in this case, Mr. A shall be debarred from accepting the Secretarial Audit assignment of XYZ Ltd.

Where an Auditor was in employment of the Auditee, its holding or subsidiary company and 2 (two) years have not lapsed from the date of cessation of employment, the same shall be considered as substantial conflict of interest.

A PCS or member/partner of a PCS firm cannot undertake the audit of that undertaking where the member was in employment prior to holding the Certificate of Practice, unless two years have lapsed from the date of cessation of employment. The PCS shall disclose the fact that two years have not lapsed from the date of cessation of his employment to the Auditee

Holding and Subsidiary company shall have the same meaning as defined under section 2 (46) and 2(87) of the Companies Act, 2013.

Illustration 1

Mr. A was the Company Secretary of PQR Ltd. from 1st October, 2015 till 31st May, 2018. He left the job w.e.f. 31st May, 2018 and joined in ABC and Associates (CS Firm) as a partner. On

1st January 2020, ABC and Associates has been offered to conduct Secretarial Audit of ST Ltd. for the F.Y. 2020-21. ST Ltd. is the wholly owned subsidiary of PQR Ltd.

According to para 3 of CSAS-1, Mr. A or ABC and Associates, in which he is a partner cannot undertake any audit assignment in PQR Ltd. and/or its holding or subsidiary companies till 31st may, 2020, i.e. two years from the date of cessation of his employment in PQR Ltd. Therefore, ABC and associates cannot undertake the Secretarial Audit assignment of ST Ltd. for the F.Y. 2020-21.

Illustration 2

Mr. A was the Company Secretary of PQR Ltd. from 1st October, 2015 till 31st May, 2018. He left the job w.e.f. 31st May, 2018 and joined ABC and Associates (CS Firm) as an employee. On 1st January 2020, ABC and Associates has been offered to conduct Secretarial Audit of ST Ltd. for the F.Y. 2020 -21. ST Ltd. is the wholly owned subsidiary of PQR Ltd.

Since Mr. A has joined ABC and Associates in the capacity of an employee, ABC and associates can undertake the Secretarial Audit assignment of ST. Ltd. for the F.Y. 2020-21.

Effect of Substantial Interest

The Company Secretaries Act, 1980 (the Second Schedule, Part I, paragraph 4) makes it an act of misconduct for a Company Secretary to express an opinion on any report or statement of a business or enterprise in which he or his firm or a partner of his firm has a substantial interest, unless he discloses the interest also in his report. Such restriction will put the stakeholders on guard against any possibility of an impairment of the independence of the professional signing the report.

The Companies Act, 2013 does not define the phrase "substantial interest". This should be left to the judgment and discretion of the professional to determine the extent of interest which would affect his independence. He would be well advised to satisfy himself that the decision in this regard is such as would be taken as reasonable by an objective third party in the circumstances of the case. The professional must take care to see that he does not get into situations where there could be a conflict of interest and duty.

A practicing professional in practice may face a conflict of interest situation while performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- The professional provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- The interests of the professional with respect to a particular matter and the interests of the client for whom the professional provides a professional service related to that matter are in conflict.

An auditor shall not allow a conflict of interest to compromise professional judgment.

Examples of situations in which conflicts of interest may arise include:

Transaction advisory service - Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.

Auditing competitive clients - Auditing two clients at the same time who are competing to acquire the same company where the audit report might be relevant to the parties' competitive positions.

Auditing clients in legal dispute - Taking audit assignment of two clients regarding the same matter, who are in a legal dispute with each other.

Audit report for Licensor and Licensee - Providing an audit report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable.

Before accepting a new client relationship, engagement, or business relationship, an auditor shall take reasonable steps to identify circumstances that might create a conflict of interest, including identification of:

1. The nature of the relevant interests and relationships between the parties involved; and
2. The nature of the service and its implication for relevant parties.

It is expected that the Auditor shall not have any conflict of interest with the Auditee. If the Auditor has any such interest, it is the duty of the Auditor to disclose such interest/ conflict of interest to the Auditee before accepting the Audit Engagement.

CONFIDENTIALITY

The Auditors of a company while performing the audit assignment access the various confidential information of the company and it is most required for the auditors to maintain the confidentiality of the auditee information.

The principle of confidentiality imposes an obligation on the auditor to refrain from:

Disclosing information - Disclosing information acquired as a result of professional relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

Using information for personal advantage - Using information acquired as a result of professional relationships to their personal advantage or the advantage of third parties.

Inadvertent disclosures - An auditor should maintain confidentiality even in a social environment. The auditor should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative.

Information disclosed by a Prospective client - An auditor should also maintain confidentiality of information disclosed by a prospective client or employer.

Confidentiality within the firm - An auditor should also consider the need to maintain confidentiality of information within the firm or employing organization.

Control of Staff - An auditor should take all reasonable steps to ensure that staff under the auditor's control and persons from whom advice and assistance is obtained respectt the auditor's duty of confidentiality.

Clause (1) of Part I of the Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in practice shall be deemed to be guilty of professional misconduct, if the member – "discloses information acquired in the course of professional engagement to any person other than the Auditee so engaging him, without the consent of the Auditee, or otherwise than as required by any law for the time being in force."

The word 'information' here implies any information which is not available in public domain.

During the course of audit, Auditor receives, verifies and inspects various audit documents, evidence, representation etc. to form an opinion or to give a report. These may be confidential and privileged information that remain in possession of the Auditor and shall not be disclosed without the express authority of the Auditee.

Herein the term proper and specific authority implies the Appointing Authority or any other person or committee as may be entrusted by the Appointing Authority to look after the conduct of Audit. It is the inherent duty of the Auditor to maintain the confidentiality of any information about the Auditee or his business that came to his knowledge as a result of performing the audit work. However, if permitted by the Auditee, Auditor may disclose or share such information with any other person as may be specifically allowed by Auditee. Since there may be different types of Auditee, the authority to give such permission to the Auditor may be different in each case. For example, in case of a company, the Secretarial Auditor is appointed by the Board and therefore it may be authorised by the Board whether the Auditor can disclose any confidential information to anyone. In another case, it may be possible that the Board has authorised a director in this regard to give such authorities and permissions to the Auditor and therefore that director will become the specific authority. Likewise in case of an LLP, it may be a designated partner or any other person as may be authorised by the LLP in this regard.

An Auditor shall maintain confidentiality even in a social environment. The Auditor shall be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a relative or friends etc.

However, if the Auditor gives any reference of the audit evidence or documents while forming the opinion in the audit report, it will be deemed to be the disclosure of information under the legal obligation or in the performance of the duty.

If during the course of audit and forming opinion, the Auditor uses the decisions of the judicial authority, it will not be treated as use or sharing of confidential information.

The Auditor shall educate his employees, staff and other team members about the importance of the confidentiality of the information available to them during the course of audit. The Auditor shall ensure that reasonable procedures have been followed to maintain the confidentiality of the information. The Auditor shall also take a duly signed Non Disclosure Agreement (NDA) from such personnel who may have access to such confidential information.

The Auditor shall also ensure that reasonable procedures and safeguards are being followed to prevent unauthorised access to such confidential information.

SPECIAL NOTE: ALL ABOVE: ILLUSTRATION TAKEN FROM ICSI MODULE

CHAPTER-33

AUDIT PRINCIPLES AND TECHNIQUES

INTRODUCTION

The auditing principles defines governing an Audit and includes the professional responsibilities, which should be observed by the auditor while carrying out any audit assignments.

RESPONSIBILITIES OBSERVED BY THE AUDITOR

Integrity objectivity and independence: An auditor should be honest, sincere, impartial and free from bias. He should be a man of high integrity and objectivity.

Confidentiality: The auditor should respect confidentiality of information acquired during the course of his work and should not disclose the information without the prior permission of the client, unless there is a legal duty to disclose.

Skill and competence: The auditor must acquire adequate training and experience. He should be competent, skillful and keep himself abreast of the latest developments including various pronouncements.

Work performed by others: If the auditor delegates some work to others and uses work performed by others including that of an expert, he continues to be responsible for forming and expressing his opinion on the financial information.

Documentation: The auditor should document matters which are important in providing evidence to ensure that the audit was carried out in accordance with the basic principles.

Planning: The auditor should plan his work to enable him to conduct the audit in an effective, efficient and timely manner. He should acquire knowledge of client's accounting system, the extent of reliance that could be placed on internal control and coordinate the work to be performed.

Audit evidence: The auditor should obtain sufficient appropriate evidences through the performance of compliance and other substantive procedures to enable him to draw reasonable conclusions to form an opinion on the financial information

Accounting System and Internal Control: The management is responsible for maintaining an adequate accounting system incorporating various internal controls appropriate to the size and nature of business. The auditor should assure himself that the Company's Internal control system is adequate and all the information which should be recorded has been recorded.

Audit conclusions and reporting: On the basis of the audit evidence, the Auditor should review and assess the audit conclusions.

AUDITING TECHNIQUES

An auditor can apply various techniques of auditing which may be applied by the auditor under different circumstances of audit

1. INSPECTION OF THE DOCUMENTS AND RECORDS:

While verifying various transactions, the auditor examines the supporting documents and records. This technique is otherwise called **vouching**. The purpose of examining the documents and records is to confirm the authenticity (genuineness) of the transaction

While the scrutiny of documents, the auditor comes across the various records and documents and if he comes across any unusual transactions, he verifies the same thoroughly. This is called scanning of records, which requires experience and expertise.

One can classify the documents into 4 major categories according to their origin and availability

1. Documents which have their origin in the hands of the third party and held by them **Most reliable evidence.**
2. Documents which have their origin in the hands of the third party and held by the organization **More reliable.**
3. Documents which have their origin in the hands of the organization and held by the third party **Reliable.**
4. Documents which have the origin in the hands of the organization and held by the organization **Reliable only if the internal control is effective**.

2. Observation

The auditor observes a particular procedure being carried by the organization. Examples are observation of the internal control measures that are adopted in transactions involving cash, procedures followed on receipt or issue of material, etc. The auditor makes his observations to evaluate the efficiency and effectiveness of the system followed by the organization.

3. Inquiry and Confirmation

Inquiry: Seeking information from persons belonging to the organization or from outside organization is called inquiry.

Confirmation: Confirming the information available with the records of the organization or with the persons mostly from outside the organization through an inquiry is confirmation. Inquiry and confirmation can take place either orally or in writing.

4. Computation

An auditor makes appropriate calculations and verifies the accuracy of the accounting records. For example, the auditor computes the depreciation to be charged for the year, by taking into consideration. the value of the asset (cost), the date of purchase, the rate of depreciation, etc., to verify the accuracy of the depreciation charged by the organization. The auditor also traces a particular transaction from the origin to check the book keeping procedure.

5. Analytical Procedures

The purpose of analysis is to ensure consistency of accounting methods and also to evaluate the efficiency of the management by comparing the results of several years. The several analytical procedures are Reconciliation, Ratio Analysis; and Variance Analysis. The auditor also applies the analytical procedures to help the management in decision making. Such analytical techniques are Marginal Costing, Standard costing etc.

AUDIT PLANNING

The Audit plan, describes the **processes and activities** that are to be carried out in connection with a particular audit and for the improving the quality of audit. Accordingly, an auditor should plan an audit so that it is performed in an effective manner within the defined scope. The audit planning should also include overall audit strategy for the audit.

While framing the audit plan, it is required to focus on the availability of **skilled audit staff**, the time frame for audit performance and completion, the nature and complexities involved, risk assessments and the audit tests to address to those risks.

ESSENTIALS OF AUDIT PLANNING

• The Audit should be planned in such manner, which ensures the high quality of audit in economic, efficient, and effective way and in a timely manner.
• The Audit plan should be documented and should be kept with the audit working papers.
• The Inter related steps and events should be clubbed together.
• The elements of an audit plan may be similar for different auditee entities.
• The audit plan should be flexible enough to accommodate modifications which may be necessary and should be carried out with the approval of team leader.
• Auditing involves the collection and analysis of facts and data sufficient to reach reliable and valid conclusions about the subject of the audit.
• The Auditing staff should be made familiar of the quality control policies and procedures of the firm.

COLLECTION OF INFORMATION/RECORDS OF AUDITEE

Before going for the audit planning, it is necessary for an auditor to have thorough understanding of the auditee entity and its operations, which helps in designing an efficient and effective audit

approach so that the audit resources are focused on the areas of greatest risk and audit methods which meet audit objectives at minimum cost are adopted in obtaining competent, relevant and reasonable evidence to support the audit judgement and conclusions.

THE AUDIT TEAM SHOULD

1.	Familiarize itself with the operations and organisation of the auditee entity, the financial statement, the regulatory Framework and the general legal framework governing the entity operations
2.	Understand the accounting processes and the degree of the technology involvement
3.	Access the overall control environment and in particular the control to prevent irregularity, illegality and fraud;
4.	Perform preliminary analytical procedures
5.	Analyze the financial statement in to account areas.

RISK ASSESSMENT

Auditing risk means that an auditor accepts / presumes some level of uncertainty in performing the audit work, which means that the auditor accepts the risk that the audit opinion given by the auditor might be wrong. Only a very small degree of audit risk would be acceptable as otherwise the audit process may lose its purpose.

THE AUDIT RISK HAS THREE COMPONENTS:

Inherent Risk: Inherent risk is the susceptibility of a class of transaction to misstatement that could be material, individually or when aggregated with misstatements in other transaction, assuming that there were no related internal controls. For example, Genuineness of the related party transactions.

Control Risk: Control Risk is the risk that a misstatement that could occur in a class of transactions and that could be material individually or when aggregated with misstatement on other transaction, will not be prevented or detected and corrected on a timely basis by the internal control systems. For example, delay in the filing of forms.

Detection Risk*:* Detection Risk is the risk that an auditor's substantive audit procedures will not detect a misstatement that exist in class of transactions that could be material, individually or when aggregated with misstatement on other transaction.

PREPARATION OF AUDIT CHECKLIST

The audit checklist assists auditors in conducting a thorough, systematic and consistent audit. The checklists are used to guide and help the auditor to assess whether evidence meets audit criteria.

The audit checklists support the audit process in identification of the various compliance requirements and have their own benefits for the performance of the audit. Though for all organization a uniform checklist can be considered but same need to be customized as per the organization and the scope of the Audit.

The benefits of the Audit checklists are as under:

a)	Promote planning for the audit.
b)	Ensure a consistent audit approach.
c)	Serve as a memory aid.
d)	Audit checklists provide assistance to the audit process
e)	Checklists assist an auditor to perform better during the audit process.
f)	A completed checklist provides objective evidence that the audit was performed.
g)	A checklist provide a record.
h)	Checklists can be used as an information base for planning future audits.
i)	Checklists can be provided to the auditee ahead of the onsite audit.

SELECTION OF AUDIT TECHNIQUES

The Auditors while the framing audit plan, design and apply appropriate audit tool, methods or procedures to obtain sufficient and appropriate audit evidence in order to form a conclusion or opinion.

In the **planning phase**, auditor reviews the **internal controls** and **institutional arrangements** established by the auditable entity to prevent, detect, and rectify instances of noncompliance. Based on this review auditors identify control risks and other risks and keep these in consideration while they start gathering audit evidence.

The audit procedures to be applied would depend on the particular subject matter and criteria and auditors' professional judgment. When the risks of non-compliance are significant and auditors plan to rely on the controls in place, such controls are required to be tested.

When controls are not considered reliable, auditors plan and perform substantive procedures to respond to the identified risks. Auditors perform additional substantive procedures when there are significant risks of non-compliance.

GATHERING AND EVALUATING EVIDENCE

The evidence gathering and evaluation is a simultaneous, systematic and an iterative process and involves:

a)	Gathering evidence by performing appropriate audit procedures.
b)	Evaluating the evidence obtained as to its sufficiency (quantity) and appropriateness.
c)	Re-assessing risk and gathering further evidence as necessary.

The evidence gathering and evaluation process should continue until the auditor is satisfied that sufficient and appropriate evidence exists to provide a basis for the auditors' conclusion.

Audit evidence is gathered using a variety of techniques such as the following:

Documents/Records scrutiny

This is predominant mode of obtaining audit evidence and involves scrutiny of a wide variety of documents e.g. board resolutions, agenda and minutes, notices, registers, cash books and accounting records, procedure manuals, reports etc. When auditing, it is often not possible, due to limited resources, to check every document or record. The auditor may choose to sample a statistical representative number of documented results, such as monitoring data or incident reports. An appropriate sampling method will manage any uncertainty to an acceptable level.

Testing, Interviews and Analysis

The auditor should determine whether the controls identified during the preliminary review are operating properly and in manner described by the company. Fieldwork typically consists of interviewing the staff of the company whether formally or informally, reviewing procedure manuals, processes, testing and analyzing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings which the auditor may bear in mind while preparing the audit report.

Questionnaires

This involves seeking information from relevant persons within the auditable entity through issue of a formal questionnaire to elicit further information and gather relevant audit evidence.

Confirmation

Confirmation is a type of inquiry and involves obtaining, independently of the auditable entity, a reply from a third party with regard to some particular information – for example confirmation of balances from the banks.

Analytical procedures

Analytical procedures involve comparing data, or investigating fluctuations or relationships that appear inconsistent. Data analytical tools, or analytical tools, statistical techniques or other mathematical models could also be used in comparing actual with expected results.

Evaluation of Evidence

Audit evidence collected through above mentioned audit procedures, is to be evaluated against the relevant, already identified criteria. This involves consideration of evidence collected vis-a-vis the subject matter information as well as the written responses obtained from responsible officers of the auditable entity against the applicable criteria.

What constitutes material non-compliance is a matter of professional judgment and includes consideration of the circumstances, quantitative and qualitative aspect of the transactions or the issues concerned. Auditors consider a number of factors in applying professional judgement to determine whether or not the noncompliance is material. Such factors may include the following:

• Extent and importance of amounts involved, which include both monetary values and other quantitative measures;
• Nature of the non-compliance;
• Cause leading to the non-compliance;
• Possible effects and consequences of the non-compliance;
• Needs and expectations of the legislature, public and other users of audit reports

After evaluating the evidence and considering its materiality, the auditor should decide how best to conclude in the light of the evidence collected, which would be the supporting key documents and arrive at audit conclusions.

SAMPLING

Auditor draws conclusions about the large volume of data (population) by selecting a sample out of such data. The sample size determines the quantum of risk that the auditor is ready to accept. There are no set rules for defining the sample size. Sample size depends upon the experience and professional judgment of the auditor and is also based on "Audit risk" factor.

AUDIT SAMPLING:

Application of audit procedures to less than 100% of the population of documents/items relevant for audit such that all sampling units have a chance for selection (for applying audit procedure thereon) so as to provide the auditor a reasonable basis on which conclusion about the entire population can be drawn.

Sample design, size & selection of items for testing should meet the following:

• Purpose of the audit procedure and population characteristics shall be considered for designing an audit sample.

• Sample size shall be so chosen as to reduce sampling risk to an acceptable low value.
• Random sampling, whenever practicable, shall be considered so that each sampling unit shall have reasonable chance of selection.
• For sampling, use of stratification and value-weighted selection will increase audit efficiency.

COMPLIANCE TEST OF INTERNAL CONTROL SYSTEM

The Compliance test of the internal compliance and control system is conducted by performing regular reviews of internal controls, operation of the risk management framework and the quality management system of the company. Generally, the Audit and Risk Management Committee is responsible for reviewing and analysing the effectiveness of the risk management framework, the internal compliance and control systems and should report on the same to the Board, not less than annually or at such intervals as determined by the Board.

An auditor should go through the records of the company to conclude that the company's existing procedures or mechanisms adhere to regulatory requirements, industry practices or corporate policies and function as intended and are commensurate with the size and the operations of the company. An audit compliance test may cover operational risks, technology systems, financial controls or regulatory guidelines.

SUBSTANTIVE CHECKING

Substantive checking is the technique use by auditor to obtain the audit evidence in order to support auditor opinion. Substantive checking is part of substantive audit approach and it is performing at the execution stage of audit. It is different to test of control. The number of sample in substantive checking is depending on many factors.

Substantive testing is also called as detailed testing where the main objective are to verify the Compliances, transactions, and disclosures relating to non -financial statements. It is different from control test.

DEPENDENCE ON OTHER EXPERT

In case where the auditor is planning to use the work of an expert, the auditor should evaluate the professional competence of the expert. This will involve considering the expert’s Professional certification or licensing by, or membership in, an appropriate professional body and Experience and reputation in the field in which the auditor is seeking audit evidence like for building structure related compliance, a civil engineer is considered as the expert, for aviation related compliance, the aeronautical engineer is considered as expert and so on.

The auditor should evaluate the objectivity of the expert. The risk that an expert’s objectivity will be impaired increases when the expert is employed by the entity; or is related in some other manner to the entity.

EXTERNAL EXPERTS' OPINION

An auditor may take external expert's opinion on various technical matters which forms the audit evidence. The auditor has to place reliance on the opinion expressed by the external expert considering his reliability, competency, consistency with data & information and independence.

In case of an external expert it shall be ensured that the interests and relationship of the external expert does not constitute a threat to that expert's objectivity. The auditor shall evaluate adequacy of expert's work having regard to the following:

1.	Relevance and reasonableness of expert's findings/conclusions and consistency thereof with other audit evidence.
2.	Relevance and reasonableness of assumptions and methods used in the expert's work.
3.	Relevance, reasonableness, accuracy and completeness of source data (if any) used in the expert's work provided, such data are significant for the expert's Work.
4.	Agreement with the expert on the nature and extent of further work by the expert in case expert's work is found to be inadequate for audit purpose.
5.	Performance of additional, appropriate audit procedures in case expert's work is found to be inadequate for audit purpose.

Reference of Expert's opinion in Audit Report

If the auditor's opinion remains unmodified by the work of an expert, such work shall not be mentioned in Report unless required by law or regulation. Even when such reference is required by law/regulation, the Auditor shall specify in the Report that such reference to expert's Work does not reduce responsibility for the opinion.

If the auditor's opinion is modified by the work of an Auditor's expert, such work may be referred to in the Audit Report to have an understanding of the modification of opinion, provided, the Auditor shall specify in the Audit Report that such reference to expert's work does not reduce auditor's responsibility for the auditor's opinion.

External Confirmation

External confirmation means Audit evidence obtained as a direct written response to the auditor from a third party (confirming party) on paper or electronic media or in any other form.

External confirmation seeking steps are:

(a) Determine information to be confirmed / requested.
(b) Select appropriate confirming party.
(c) Design/format confirmation request.
(d) Send the request with follow up.

COLLECTION OF AUDIT EVIDENCES

Audit evidence means information collected and used by the auditor in arriving at the conclusions on the basis of which his opinion is based.

An auditor need to plan & perform his audit tasks which enable him to obtain sufficient and appropriate audit evidence on the basis of which he can draw audit conclusions to express his opinion. When designing and performing audit procedures the auditor shall consider the relevance and reliability of the information to be used as audit evidence. The audit evidence may contain information provided and produced by the auditee itself or by management expert of the auditee or during the performance of the audit. Auditor needs to evaluate the accuracy and completeness of such audit evidence.

Absence of information e.g. inability or refusal of the management to provide information sought by the auditor also constitutes audit evidence. Audit evidence includes inspection, observation, confirmation, recalculation, reperformance and analytical procedures, often in some combination, in addition to inquiry. An auditor may be confronted with the situations such as contradictory audit evidence, questionable reliability of the information and documents collected and circumstances that may suggest misappropriations or frauds etc. under such situations, auditor should show professional skepticism and more rigorous audit steps are called for.

When the auditor doubts the reliability of information to be used for audit evidence or, audit evidence obtained from one source is inconsistent with that of another source, the auditor shall determine necessary modification or additions to audit procedure necessary to resolve the matter.

Audit evidence is more reliable when it is obtained from independent sources outside the entity, directly by the auditor and in documentary form. External confirmation should be obtained as a direct written response to the auditor, in documentary form which is considered as qualitative audit evidence. Written representations by the management are audit evidence. Such written representations may not be considered as sufficient and appropriate audit evidence on their own and an auditor must also obtain other audit evidence regarding fulfillment of management responsibilities.

CREATION OF AUDIT TRAILS/WORKING PAPERS

The auditor should prepare and maintain working papers, the form and content of which should be designed to meet the circumstances of a particular engagement. The information contained in working papers constitutes the principal record of the work that the auditor has done and the conclusions that he has reached concerning significant matters. Working papers serve mainly to

1.	Provide the principal support for the auditor's report, including his representation regarding observance of the standards of field work, which is implicit in the reference in his report to generally, accepted auditing standards.
2.	Aid the auditor in the conduct and supervision of the audit.

Working papers are records kept by the auditor of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement. Examples of

working papers are audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the auditor. Working papers also may be in the form of data stored on tapes, films, or other media.

MATERIALITY

- Material means important and essential. The disclosure of important matters helps the users in taking business decisions. There should be neither suppression of vital facts nor mis-statements.
- The concept of the materiality draw the whole process of the audit, the user of the audit report does not require the absolute accuracy to make informed decision, accordingly a matter is considered material if its omission or misstatement would reasonably influence the decision of an intended under of the audit report.
- The concept of materiality should be considered by the auditor while determining the nature, timing and extent of audit procedures and evaluating the effect of the misstatements.
- The concept of materiality is used both at the planning stage of the audit, when deciding what and how much work need to be done and in evaluating the result of the audit, which is generally known as planning materiality and reporting materiality.
- The Auditor has to report the errors which he judges to be material, the audit work can be planned in the knowledge that it need to detect errors that are material.
- In accessing materiality, the prime consideration is the total value of the error, However, the values is not the sole consideration, the nature of the error or the context in which the transaction occurs are sometimes more important and the auditor must always consider these factors, as well as the value when deciding whether an error is material.
- Materiality consists of both quantitative and qualitative factors. Materiality is often considered in terms of monetary value but the inherent nature or characteristics of an item or group of items may also render a matter material. Materiality is a matter of professional judgment and depends on the auditor's interpretation of the users' needs. A matter can be judged material if knowledge of it is likely to influence the decisions of the intended users.

RECORD KEEPING

Audit documentation is one of the fundamental building blocks on which the integrity of audits will rest. Quality and integrity of an audit depends on the existence of a complete and understandable record of the work the auditor performed, the conclusions the auditor reached, and the evidence the auditor obtained that supports those conclusions.

Clear and comprehensive audit documentation is essential to enhance the quality of the audit. Audit documentation must be assembled for retention within a reasonable period of time after the auditor's report is released.

Auditing firm should establish policies and procedures for retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation.

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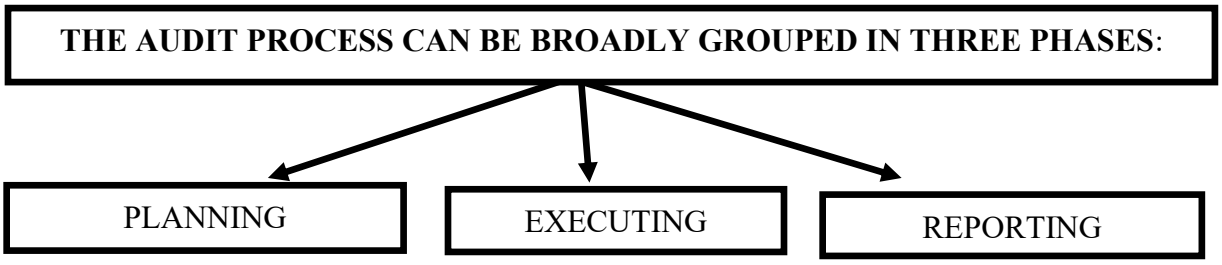
AUDIT PROCESS AND DOCUMENTATION

AUDIT PROCESS



a. **AUDIT PLANNING**: For an effective audit, a timely, well thought out and well executed planning efforts is essential. The Auditor should obtain and update his understanding of the company, its activities, operation's and control environment in the company. The Audit planning consists of the following actions:

1. Understanding the company
2. Establishing audit objectives and scope
3. Determining Materiality
4. Assessment of Risk
5. Preparation of Audit plan
6. Preparation of detailed audit programme

b. **EXECUTION OF AUDIT:** The effective Audit Execution is based on the Audit plan and the efficiency of the Audit team. However, the Execution of the audit covers the following actions:

1. Sampling of various transactions or items
2. Sampling for testing of controls
3. Identification of events
4. Performing controls testing procedures
5. Performing analytical procedures
6. Sampling for substantive test of details
7. Performing substantive test of details
8. Review of working papers
9. Management Discussion on Draft Report

c. **REPORTING**: In the reporting phase, the auditor covers evaluation of audit results, deriving conclusion, forming of opinion and prepare the audit report

PRELIMINARY PREPARATION

In the preliminary preparation of audit process, information from the company has been obtained and the in-house work is performed by the audit team for preparation of audit manual and before the execution of the audit.

The list of the activities covered under the preliminary preparation is as under:

A. A brief outline of the company's activities and financial circumstances, cross referenced to more detailed information if appropriate
B. The effect of the regularity framework on the audit, cross referenced to a summary of primary and secondary legislation.
C. Details of any significant facts, events or changes which have taken or may take place; their likely effect on the company operations or environment and on the audit/.
D. A description of the scope of the audit and the authority under which it is conducted and the type of audit, the form of opinion required and another reporting requirement. This should highlight any additional work required.
E. The sources of funding, financial targets and a brief assessment of the Company's financial position.
F. Planning materiality, cross referenced to documentation setting out the reasons and basis on which it was calculated
G. A brief assessment of general control environment and mitigating controls and whether they are to be relied on.
H. A brief overview of the audit approach to be adopted, this is to say the degree of the compliance and substantive procedures.
I. Audit proposal for dealing with multi locations
J. Details of the nature and extent of use to be made of the work to be carried out by internal audit other auditors and specialists
K. A summary of the key team members and the total planned days / hours.
L. Respective responsibilities of the auditor and the auditee entity; and
M. Liaison schedule with auditee entity.

After the preparation of the **audit manual** the detailed **audit programme** should be prepared by the audit team, the **audit programme** should contain the role of team members in the performance of the chosen audit procedures.

INTERACTION THROUGH INTERVIEWS

The interview techniques can be gainfully used in a structured or unstructured manner to elicit information form the entity both in the planning as well as execution phase. The Auditor can use the interview mode to obtain both qualitative and quantitative information.

The main purposes for an interview in context of an audit are orientation, examination and confirmation. An interview can have one or two of these purposes, but normally not all three at the same time.

1. ***Orientation*** is normally part of the audit team's learning process during the planning phase. It aims at exploring and giving an overview of a specific area or function, e.g., by asking for presentations of activities, explanations of formal or informal networks or interpretation of documents (reports, instructions or, budgets). The objective could be to identify possible audit subjects or to find out about other available sources of information, such as key persons or documentation.

2. ***Examination*** aims at more specific issues with a view to establishing new information, often to be used as audit evidence. In some cases, such information has not been previously recorded at all but is embodied in the interviewee through personal experiences, particular references, opinions, etc. In other cases, the knowledge can be retrieved for example by (joint) interpretation of internal documents, reports or records. It should be noted that evidence obtained from interviews often needs to be corroborated, i.e. supported by evidence from other data collection methods

3. ***Confirmation***, finally, often goes together with either orientation or examination, but deserves to be mentioned as a separate purpose because of its fundamental importance. Confirmation, by definition, is typically based on information that has already been gathered. However, in this context the information can also be gathered and confirmed simultaneously.

AUDIT PROGRAMME

Audit programme contains step by step instructions to be carried out by team members i.e. it is simply a list of audit procedures to be executed by team members. Even though audit programme sets out the whole agenda for every member of the team but the main users are the audit executives for whom it acts as a direction to be followed. The main purpose of audit programme is that every material area has been audited appropriately and sufficient appropriate audit evidence has been obtained in respect of every important areas of audit.

Audit programmes may be laid down in advance for the whole year for some aspects of the audit which auditor expects to be audited after regular intervals of time or when needed. For understandability and convenience, audit programmes are written for each audit area separately and then assigned to specific team members.

Difference between Audit Plan and Audit Programme

Audit Plan	Audit Programme
Audit Plan lays down the audit strategies to be followed for conducting an audit such as identifying the areas where special audit consideration and skills may be necessary, obtain the knowledge of business etc.	Audit programme is an outline of how the audit is to be done, who is to do what work and within what time It lays down the following audit procedure to be followed: • Evaluation process

Plans should be made to cover the following among other things: **A.** Acquiring knowledge of accounting systems, policies and internal control procedures **B.** Establishing the expected degree of reliance to be paced on the internal control **C.** Determining the nature, timing and extent of the audit procedures to be performed **D.** Co-ordinating the work to be done	• Ascertaining accuracy • Verification of Document • Scrutiny of supporting Documents • Checking of overall disclosure and presentation of all items in the audit completion. • Preparation and submission of audit report.

IDENTIFICATION OF APPLICABLE LAWS

In India, every mode of business needs to obey various laws, rules, regulations, orders etc. depending on the manner of doing business, business activities and areas of doing business. Sometimes, this may include laws from multiple countries and sometimes such laws have conflicting requirements on each other. In such situations, the best approach is to work with legal team or with an expert to create an outline of all the regulations and contractual obligations. Identify which requirements may impact the organization and discuss the results with management to determine and development of suitable measures which are sufficient for compliance.

Further, the identification of the compliance requirements under applicable laws is just one part of the auditor, but for the management of the company it is necessary to make sure there is sufficient evidence that the company is compliant with each and every one of them.

FOR ENSURING THE COMPLIANCE OF THE APPLICABLE LAWS THE COMPANY:

• should have a documented inventory of every applicable law, regulation, contractual obligation and any other form of compliance requirement which needs to comply;
• should publish its compliance policy which should be supported by standards, procedures, and guidelines;
• should Exchange emails with Legal\Compliance team, Functional heads, compliance officers and others with information on compliance obligations and skills (e.g. Privacy, Procurement, HR, Finance, IT) concerning compliance matters in the information security context;
• should Share related Agendas, minutes or notes of meetings with those people on related matters;
• should place Internal reports concerning applicable compliance obligations, ideally with evidence that management is actively engaged in assessing the extent to which compliance is needed and aware of the risks of noncompliance;
• should conduct Compliance assessment\review\audit reports, noting the content, form, distribution, status.

For an auditor and the company it is required to Identify the applicable legal requirement of Act, Regulation but should also identify the sections applicable under such regulation.

Further, the legal compliance for a holding company/ Subsidiary company/ Join venture company with diverse operations, the compliance requirement will vary from operation to operation based on the nature of the operations and the locations of the different operation and also based on the applicable legal instruments, and the applicable sections of the relevant laws referred in those legal instruments. The diverse operation and different geographical location may create a complexity in compliance.

CREATION OF MASTER CHECKLIST

The Audit is not a process of the collecting data and checking the checkbox, it is the postmortem of the affairs of the company, the data and evidence collected during the execution of the audit shall be independently reviewed by the auditor and submit its report to the shareholders. Unless the auditor independently reviews the facts & data, the auditor is not able to give his independent opinion.

The truth is that collecting data and checking the box is just not good enough. The mere existence of a control chart doesn't ensure the compliance and equate to sustained, significant process improvement and complete the audit.

In general, an audit checklist can be divided in to the following headings according to their significance in the audit scope.

A. Entity operation and organizations: This checklist contains matters relating to:

- Product manufactured/ service delivered/ operation performed by the company.
- Statutory status basis for these operations.
- Objects of the Company as per the memorandum of Association
- Capital structure of the company and funding status.
- Details of the promoters and directors of the company
- Details of Subsidiaries, Joint ventures and Associate companies
- Transactions with the related parties.
- Material Changes took place during the audit period.
- Recipient of the products/Services of the company
- Details of the key managerial personnel.
- Details of the functional head responsible for audit
- Details of the audit committee and its term of References
- Details of the geographical location where the company operates
- Audit observations of the previous year's etc.

B. Financial & Non-financial Reporting Requirement

The company's Financial Statement, Directors' report, Annual Return, Websites, Filing with the regulators are the primary source of information about the company. The financial statements are the focus of financial audit, the audit team should familiarize itself with the format of financial statement which needs to the submitted to the regulators. This checklist generally covers the points

relating to changes in laws, regulations, accounting standards, accounting rules or accounting policies since the last audit, new heads of accounts introduced since the last audit, changes in the format of accounts or any such item which require exercising of judgement or estimation. The auditor should check the limits, eligibility, criteria etc. on the various dates to understand the compliance requirement

C. Legal and regulatory requirement

The legal and regulatory requirement of every company differs according to the nature and status of the company, its business activity, area of operation, geographical location etc. depending on the relevant central, state and local laws, rules & regulations. It is the most important for the auditor to have the detailed compliance requirement applicable to the company and such checklist should cover the section wise compliance requirement highlighting the amendment during the audit period.

D. Matter of Shareholder & public interest

The Audit team should identify the extent of the shareholder and public interest in the company's activities and the financial statement. The factors which might indicate such interest includes the public deposit, loan and advances dividend, Corporate Social Responsibility, Small shareholders' interest, high level of comment in media etc.

WORKING PAPERS AND MAINTENANCE OF WORK SHEET

Working Papers

The working paper file contains the documents relating to the work performed by the auditor. The working papers serve as the connecting link in between the audit assignment, the auditor's fieldwork and the final report. Working papers contain the records of planning and preliminary surveys, the audit program, audit procedures, fieldwork, fact findings and other documents relating to the audit. In the working papers document the auditor's conclusions and the reasons as to why those conclusions were reached should be documented. The disposition of each audit finding identified during the audit and its related corrective action should be documented. Working papers should be completed throughout the audit and Working papers should be economical to prepare and to review. It is easy to include every scrap of information and every form into the working papers. However, the working papers then become a confused mixture of data that is difficult to assimilate and use.

THE WORKING PAPERS MAY INCLUDE:

(a) Planning documents and audit programs.
(b) Internal control questionnaires, flowcharts, checklists and narratives.
(c) Notes and minutes resulting from interviews.
(d) Organizational data, such as charts with job descriptions, process chart.
(e) Copies of important documents.
(f) Information about operating and financial policies.
(g) Results of control evaluations.
(h) Letters of confirmation and representation.

Scanned Documents as working papers

Scanned documents should include a reference to the source and the purpose of the document which is relevant to understand or appreciating the actual audit work performed. Such information needs to be included only when it is not provided elsewhere in the working papers.

Tick marks

Tick marks do not need to be standardized throughout the set of working papers, but must be consistent throughout a particular work paper. Tick mark explanations must be a part of the working paper or included in a separate tick mark legend work paper.

Cross Referencing

Working papers should be prepared using the appropriate cross referencing. A cross reference from the Audit Procedures to the primary working paper provides a reference to where the work was performed. It is not necessary to cross refer all work papers to the Audit Procedures

TYPES OF WORKING PAPERS

THE AUDITORS WORKING PAPERS ARE DIVIDED INTO TWO PARTS

PERMANENT FILE

The permanent file usually contains documents and matters of continuing importance of clients' business which will be required for more than one audit. Data in this file can include the following:

A. Statutory Documents
B. MOA/AOA/Registered office address
C. Letter of engagement and Board Resolution for appointment of the auditor
D. Royalty Agreement
E. An organization chart -Details of all departments and sub-divisions thereof showing hierarchy of management.
F. Analysis of significant ratios and trends.
G. The business structure within a group and associated companies - List of all holding, subsidiary and associate companies.
H. A list of the company's advisors such as bankers, merchant bankers, stockbrokers, solicitors, valuers, insurance brokers etc.

CURRENT AUDIT FILE

These files contain information relating to the audit of the current period. Information included in the current file should be information for the period under audit. The indicative list of current file can be as follows:

A. Appointment letter for the Current Year, along with the defined scope of Audit
B. Extracts of important board/management meetings
C. List of responsible persons with their designation and contact details
D. Secretarial Audit Report/Financial Audit Report for Current year as well as previous year
E. Audit Plan/Audit Program
F. Current year's Secretarial Records
G. Letters of representations, confirmations received from company

AUDIT TRAIL

Audit Trail is a repository of administrative and operational documentation relating to audit process. It is established and maintained to aid in audit planning and to centralize available documentation and information not included in the individual audit files. Information included in the permanent files should only be information that cannot be feasibly included in the working papers due to volume or format or because the information will be applicable on an ongoing basis to the current audit or future audits. Permanent files should be filed with all audit and follow-up working papers supporting the audit. The contents of permanent files are dependent on the needs of the audit. An index should be developed and placed in the front of the permanent file indicating the documents contained, date included in file and auditor's initials.

Working paper Review

The auditor should review all working papers to determine whether they are relevant and have a useful purpose, evidence the audit work performed and sufficiently support the audit findings. In addition, the auditor should ensure the conclusions reached were reasonable and valid, and that the Office working paper standards were followed. The auditor should review all audit review notes to be certain that all notes have been resolved within the working papers. Documentation obtained and not relevant to the audit should be returned/destroyed upon the completion of the audit.

THE REVIEW WILL CONSIST OF:

(a) Determining compliance with working paper guidelines.
(b) Reviewing the audit program that outlines the major objectives of the audit, and ensure that the procedures accomplish the objective(s).
(c) Reviewing the audit procedures and the referenced working papers to ensure the working papers support the procedures performed and all procedures have been completed.
(d) Determine that the working papers adequately document the conclusions reached in the report.
(e) Ensuring that all findings prepared have been discussed with the appropriate member of management, and that the disposition of the audit concerned is documented.
(f) Documenting review notes.

Filing and Protection of Working papers

All working papers that are considered confidential, are the property of the Auditor, and are to be kept under adequate control. Working papers often contain sensitive information or data that must be protected from unauthorized use or review.

Working papers in process also need to be controlled by the Auditor. While conducting field work away from the Auditor's office, the auditors should control the working papers to ensure that information is neither removed, nor substituted nor altered.

Retention Policy

All working papers pertaining to an audit belong to the Auditor. All such data is to be kept by the Auditor and is subject to the retention requirements as required by law.

Computer-Assisted Audit Technique (CAAT)

The CAAT method of testing is often used to analyze large volumes of data or a sample of compiled data. Using special software, CAAT testing runs a script over a ledger, spreadsheet, or an entire database, to spot trends, irregularities, and potentially fraudulent entries.

TESTS OF INTERNAL CONTROLS

Internal controls are rules and procedures established by a company to ensure business continuity, prevent fraud, and preserve the integrity and accuracy of financial reporting. A test of internal controls is an evaluation of the existing controls, either as part of an official audit or in preparation for an audit, to see if the controls are in place and identify weaknesses.

The purpose of internal controls testing is to see if the controls are properly detecting or preventing material errors or purposeful misstatement in financial reports.

Although control audits cannot completely detect all fraud, auditors can use controls testing to test operational controls for gaps, which can significantly reduce risk. Testing reveals what situation the company is in:

If controls are found to be effective, control risk is low.

If controls are identified as vulnerable or ineffective, control risk is high. Auditors may need to perform additional tests or take further actions, as specified by the relevant regulation or compliance standard.

Purpose of Internal Controls Testing

There are two primary purposes for internal controls testing:

1. Shortening the audit process – if a controls test shows that internal controls are effective, and are able to prevent errors or fraud in financial statements, this can eliminate the need for additional audit actions.

2. Providing additional audit evidence to demonstrate compliance, in situations where individual substantive procedures cannot provide sufficient evidence on their own.

Types of Audit Tests of Internal Controls

As discussed earlier about testing methods used during audit procedures. There are below types of internal control tests, each one is progressive and more comprehensive:

1. Inquiry—auditors ask managers and employees about the controls they are implementing. This is usually combined with more reliable testing methods—controls objectives or criteria should never rely only on an inquiry.

2. Observation—auditors observe activities and operations to see how controls are implemented. This is useful in cases where there is no documentation on how to operate the control unit. For example, if there is no formal procedure to ensure security cameras are installed, the auditor can simply observe if there are security cameras at the facility.

3. Examination or inspection—auditors determine if controls are really operational, using existing documentation and logs. For example, a test of controls can involve visiting a secured facility and ensuring that doors are locked and equipped with access control devices.

4. Re-performance—the previous three methods cannot fully guarantee the effective operation of the control. Re-performance involves the auditors actually trying to perform the control to see if it is effective. For example, the audit can run backups and try to restore the system to normal operation, or manually perform a financial calculation to ensure it is correct.

5. Computer-aided audit tools (CAAT)—auditors use technology to analyze large amounts of data automatically. A simple CAAT can be a spreadsheet, but there are specialized tools available that can test various types of internal controls. Most CAAT solutions are focused on export based, point in time sample testing across a complete inventory of all transactions.

SUBSTANTIVE TESTING

Substantive testing is an auditing technique that checks for any errors or material misstatements in a company's accounts, financial statements or supporting documents. When a company claims that their financial records are accurate, complete and valid, substantive testing supports this claim as evidence that there are no errors. This traditional auditing method also helps an auditor to form an overall opinion about the company's financial statements. Substantive testing includes a wide variety of different auditing procedures and tests that an auditor can use depending on the situation.

Who does substantive testing?

Either a company's internal audit staff or hired external auditors can conduct substantive testing for a company. Using the company's internal audit staff may provide confirmation for whether their internal record systems are performing correctly. If the internal record systems are not performing properly, the internal audit staff can improve the system or eliminate the problem, so the company performs better in the next audit. Internal auditors typically conduct substantive testing at regular intervals throughout the year. External auditors often get hired to conduct substantive testing once a year, usually at the end of the year.

How do substantive tests work?

Here are the steps elucidating how substantive auditing works:

1. A company makes assertions

A company's management team makes implicit or explicit claims about their financial situation, and these auditing assertions get presented to an auditor. There are five general categories of assertions that companies make during audits, which are:

Occurrence or existence: This assertion states that financial statements listing assets, liabilities and shareholder equity exist when the accounting period is over.

Disclosure and presentation: This is an assertion that the financial statements will include and present all financial information and financial disclosures in a clear manner that auditors can easily understand.

Obligations and rights: This assertion states that the company has usage rights or ownership of all the assets listed in the financial statements and that all liabilities belong to the company, not a third party.

Accuracy or valuation: This assertion states that all the calculations in the financial statements are accurate, classified appropriately and based on a proper valuation of balances, liabilities and assets.

Completeness: An assertion that the financial statements include and present all the required items, transactions and inventory, including third parties with temporary possession.

2. The auditor creates a plan

The auditor creates a structured audit plan for the company based on the assertions. The auditor identifies which auditing processes, including substantive tests, will best determine any errors or misstatements in the assertions. Categories of auditing processes that auditors can choose include analytical procedures, inquiry and confirmation, inspection, observation and recalculation. For example, to evaluate fixed assets, an auditor could observe a procedure and then analyze the paper records for accuracy.

There are three general activities that an auditor includes in their audit plan for substantive testing, which are:

- Examine physical adjustments and journal entries the company made while the company prepared the financial statements.
- Match the underlying accounting records with the company's financial statements and their supporting documents.
- Test the different classes of account balances, transactions and disclosures.

3. An auditor shares audit results with a company

The auditor writes an official report listing any errors or material misstatements that the audit found, shares the report with management and requests further audit testing if it's warranted. The auditor also provides their overall opinion about the company's financial statements.

What happens when substantive testing finds an error?

If an auditor finds any errors in a company's financial statements or the supporting documents, the auditor may require the company to do further audit testing. The auditor writes a management letter with a summary of the errors they found and shares the letter with the company and the audit committee. Usually, there are only errors or misstatements if:

- External auditors don't detect an error during audit procedures, which is called detection risk.
- Internal auditors or the internal record systems don't identify or fix an error, which is called control risk.
- The company or auditor doesn't detect initial errors when the financial process and reporting begin.

Examples of substantive testing

Each substantive procedure should have enough documentation that it allows for collection, review and repetition. The documentation should be thorough enough that more than one auditor can independently test for accuracy and come to the same conclusion. Here is a list of common substantive auditing procedures and tests that auditors do:

- Verify that approved dividends exist by reviewing board minutes from the board of directors;
- Confirm that the balances in accounts payable are correct by contacting suppliers;
- Confirm that the balances in accounts receivable are correct by contacting customers;
- Check that assets obtained from a business combination have fair values assigned to them by confirming with experts;
- Watch the physical inventory count as it happens for each ending period;
- Test ending cash balances by issuing a bank confirmation;
- Contact lenders to confirm that loan balances are correct;
- Take fixed asset records and physically match them to fixed assets;
- Use inventory valuation calculations to confirm if inventory is valid;
- Recalculate the calculations that were already made by the client;
- Re-perform a company's procedures to make sure they perform as planned;
- Confirm loan balances are correct by contacting lenders;
- Test end cash balances by getting bank confirmation.

CSAS-2 Auditing Standard on Audit Process and Documentation

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit under any statute. The Standard deals with responsibilities and duties of the Auditor with respect to Audit Process in conducting audit and maintaining proper audit records.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to prescribe principles for an Auditor:

1. to conduct audit as per the specified audit process;
2. to maintain documentation that provide:
    - sufficient and appropriate record to form the basis for the Auditor's Report; and
    - evidence that the audit was planned and performed in accordance with the applicable Auditing Standards and statutory requirements.

Definitions

(1) "Audit Documentation" means the working papers prepared or records obtained by the Auditor in connection with the audit.

(2) "Audit Evidence" refers to relevant information and documents gathered in the course of the audit for arriving at the conclusion on which the Auditor's opinion is based.

Audit Planning

1. The Auditor shall make audit plan to conduct audit as per the terms of Audit Engagement.
2. Audit planning means establishing and developing an overall audit process, including but not limited to:
   - **a.** Identification of broad audit areas;
   - **b.** Seeking previous audit findings and observations from the Management and the Predecessor or Previous Auditor, in case of change of Auditor;
   - **c.** Determination of subject matters/audit areas requiring special attention, when considered necessary;
   - **d.** Risk Assessment and Materiality;
   - **e.** Audit technique;
   - **f.** Allocation of audit resources for the audit; and
   - **g.** Preparation of audit schedule.
3. The audit shall be planned in a manner which ensures that qualitative audit is carried out in an efficient, effective and timely manner. Audit planning shall ensure that appropriate attention is accorded to crucial areas of audit and significant issues are identified in a timely manner.
4. The Auditor shall plan the audit with professional skepticism so that it is possible to exercise professional judgment in an objective manner.
5. The Auditor shall adhere to the audit plan. The audit plan may be modified, if circumstances so warrant.

Risk Assessment

1. Risk assessment of the Auditee with respect to and connected/relevant to the Audit Engagement shall be done considering industrial & business environment, organizational structure and compliance requirements.
2. The Auditor shall evaluate high risk areas/activities of the Auditee relating to:
   - **a.** Internal control systems and processes of the Auditee for adherence to the constitutional documents, applicable laws, rules, regulations and standards;
   - **b.** Transparency, prudence and probity; and
   - **c.** Changes/Attrition in the compliance team and frequency of such changes and attrition.

Information about the Auditee

The Auditor shall obtain sufficient information about the Auditee that is relevant for conduct of audit and forming an opinion and its expression.

Audit Check-lists

The Auditor shall use systematic and comprehensive audit check-lists for carrying out the audit and to verify the compliance requirements.

Collection and Verification of Audit Evidence

The Auditor shall verify compliance with applicable laws, rules, regulations and standards. The deviation if any shall be recorded.

The Auditor shall obtain complete, relevant and necessary evidence to support the opinion.

The process of gathering and evaluating evidence shall continue until the Auditor is satisfied that sufficient and appropriate evidence exists to provide a basis for formation of the Audit Opinion.

Third Party Confirmation

The Auditor shall obtain confirmations from third party(ies), wherever required, with respect to information which is related to such party(ies).

Analysis of Audit Evidence

1. The Auditor shall evaluate the Audit Evidence to arrive at the conclusion.
2. While evaluating evidence, if the Auditor finds that Audit Evidence is conflicting, the Auditor shall assess the extent and credibility of conflicting evidence in order to reach a conclusion or collect more evidence to resolve the conflict.

Documentation

1. The Auditor shall adequately document the Audit Evidence in working papers, including the basis and extent of planning, work performed and the findings of audit.
2. The Audit Documentation shall contain sufficient information to enable an Auditor, having no previous connection with the audit, to ascertain from such documentation, the significant findings and conclusions of the Auditor.
3. Audit Documentation shall take place throughout the audit process. Working papers shall be complete and appropriately detailed to provide a clear trail of the audit.
4. Audit Documentation shall be properly indexed, referenced with and supplemented by the set of working papers.
5. The Auditor shall also document discussions with the Management with respect to significant matters in respect of which written record is not available.

Record Keeping and Retention

1. The Auditor shall establish policies and procedures for retention of Audit Documentation.
2. The Audit Documentation shall be collated for records within a period of 45 days from the date of signing of Auditor's Report.

CHAPTER-35
FORMING AN OPINION AND REPORTING

INTRODUCTION TO PROCESS OF FORMING AN OPINION

The audit is performed by an Auditor who is independent to the company which is being audited and the critical part in Auditing is the forming of Opinion i.e. views of the Auditors, which shall be based on the fact, records verifications made by him during the performance of the audit. This requires auditors to have knowledge of the basic principles of forming an audit opinion and should have expertise in application of knowledge while forming opinion.

However, the content of the opinion should clearly indicate whether it is unmodified or modified and if modified, whether it is modified as adverse or disclaimer of opinion. The auditor should form his opinion on considering all material respects, in accordance with the applicable reporting framework and the requirement of the audit.

In particular, the auditor shall evaluate whether, in view of the requirements of the applicable reporting framework:

(a) The Company has adequately disclose information about its affairs;
(b) The Company has followed the all procedure as required under the applicable laws;
(c) The Company is in compliance with the applicable laws;
(d) The Company is consistent with the applicable reporting framework;
(e) The information presented by the company is relevant, reliable, comparable, and understandable; and
(f) The company has provided adequate disclosures to enable the intended users to understand the effect of material transactions and events on the information.

FORMS OF OPINION

A. UNQUALIFIED / UNMODIFIED OPINION

An unqualified opinion is also known as a **clean opinion**. The auditor reports an unqualified opinion if the affairs of the company are presumed to be free from material misstatements.

An unqualified opinion contains no reservations concerning the company. This is also known as a "clean" opinion, meaning that the affairs of the company are presented fairly.

The Auditor should express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- there is due compliance with the applicable law in terms of timelines and process; and
- the records as relevant for the audit verified by him as a whole are free from misstatement and maintained in accordance with applicable laws.

- the auditor should express an unmodified opinion when the auditor concludes that the information on the affairs of the company in all material respects, are in accordance with the applicable reporting framework.

B. MODIFIED OPINION

The Auditor should express modified opinion when the Auditor concludes that:

- based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines and process; or
- based on the Audit Evidence obtained, the records as a whole are not free from misstatement; or are not maintained in accordance with applicable laws; or
- he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- When the auditor has reasons to believe that the affairs of the company are not free from material misstatement or
- When the auditor is not able to obtain sufficient appropriate audit evidence.

The modification on Opinion can be in the following **three categories** depending upon the nature and severity/extremity of the matter under consideration:

QUALIFIED OPINION

An Opinion can be considered as a qualified opinion when the auditor specifically provides the additional paragraph or points out the specific instances where the company has failed to do compliance as required under the law, or provides reasons for the not issuing the unqualified report on the affairs of the company

ADVERSE OPINION

An Opinion can be considered as an adverse opinion, which is considered as the Out of track Opinion, wherein the auditor concluded that the affairs of the company are not in line with its objectives, government rules, and the company has neglected and grossly misstated its records.

An adverse opinion is an indicator of fraud, and public entities that receive an adverse opinion are forced to take corrective measures.

DISCLAIMER OF OPINION

Instances, where the auditor is unable to access the records of the company on any grounds such as geographical reasons, regulatory, natural calamity or could not complete the audit due to absence of requisite records or insufficient cooperation from management, the auditor issues a disclaimer of opinion.

Such opinion is an indication that no opinion was formed by the auditors and the Auditor was not able to conclude that the affairs of the company are conducted in true and fair manner, such disclaimer of opinion is not considered as an opinion itself.

EMPHASIS OF MATTER

Emphasis of matter (EOM) is included in the audit report to seek the attention of the reader, to make the reader aware about the specific instances which are not in the general course of business. Such matters can have the positive as well as negative impact on the affairs of the company in future. The **purpose of an EOM** paragraph is to draw the users' attention to a matter already disclosed but the auditor believes that, it is fundamental to their understanding and should be a part of the report.

The following are examples of the matters which should be considered as emphasis of matter:

- an uncertainty relating to the future outcome of exceptional litigation or regulatory action;
- when there is uncertainty about exceptional future events, pending litigations
- early adoption of new accounting standards
- adoption of new technology
- recent changes in the regulatory environment
- when a major catastrophe has had a major effect on the financial position.
- a major catastrophe that has had, or continues to have, a significant effect on the entity's financial position.

Ideally, such matters should be the part of the Directors' Report or the Management Discussion and Analysis report prepared by the company. If the same is not disclosed by the company in the Directors' report or in Management Discussion and Analysis Report, the auditor may opt for placing the same in the Auditor's Report.

MATERIALITY

Materiality is a concept or convention within auditing and accounting relating to the importance/significance of an amount, transaction, or discrepancy in the records of the company. The objective of an audit of financial statements is to enable the auditor to express an opinion whether the financial statements are prepared, in all material respects, in conformity with an identified financial reporting framework such as Generally Accepted Accounting Principles (GAAP).

The assessment of what is material is a matter of professional judgment. Materiality can be defined as the magnitude of an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

The auditor has to ensure that material items are properly and distinctly disclosed by the company. It is very important for the auditor who has constantly to judge whether a particular item is material or not. There is an inverse relationship between materiality and the degree of audit risk. The higher the materiality level, the lower the audit risk and vice versa. For example, the risk that a particular

account balance or class of transactions could be misstated by an extremely large amount might be very low but the risk that it could be misstated by an extremely small amount might be very high.

Materiality is the threshold above which missing or incorrect information is considered to have an impact on the decision making of the Auditor. Information is considered as material if its omission or misstatement could influence the opinion of the Auditor. Materiality can also be construed in terms of net impact.

The Auditor shall consider materiality while forming his opinion and adhere to:

• The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
• The principle of objectivity that requires the Auditor to apply professional judgment and skepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner;
• The principle of timeliness that implies preparing the report in due time; and
• The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

THIRD PARTY REPORT OR OPINION

In the age of composite regulatory environment it is the need of the business to engage experts for the assignment, which is cost effective and provide a time bound result to the company. Same in the case of the auditor, the auditor engages specialized talent for the part of audit work for which in-house talent is not available. This will help auditor to give a complete audit requirement in one go.

Further, as every action has its own reaction, so engaging the third party also provides an additional risk like reputational, control, compliance, privacy, financial, operational and information security risks, even loss of client etc. The Third-party reporting may be based on the Assurance based or the factual information.

The Auditor should adhere to the following while forming an opinion based on third party reports or opinions:

a.	The Auditor should indicate the fact of use of third party report or opinion and should also record the circumstances necessitating the use of third party report or opinion;
b.	The Auditor should indicate the fact if third party report or opinion is provided by the Auditee;
c.	The Auditor should consider the important findings/observation of third party;
d.	The Auditor should, if necessary and feasible, carry out a supplemental test to check veracity of the third party report or opinion.

MANAGEMENT REPRESENTATION LETTER

The auditor may obtain a management representation letter from the auditee company. The letter may be signed by Managing Director/ Company Secretary/Senior Management who would normally have authority to issue the same. The format may be adopted with changes, depending on the circumstances and facts governing every audit. The Auditor can use this letter of representation as part of his audit evidence.

However, it is advised to exercise all possible care, reasonable skill & due diligence. Adequate enquiries should be made in respect of matters which are capable of direct verification. Mere getting certification from management may defeat the purpose of the audit.

OPINION OBTAINED BY MANAGEMENT

In the certain situations, upon the remarks of the auditors the management of the company may submit its replies which are supported by the opinion provided by the third party. In such cases the reliance on such opinion should be made by the auditor on his professional judgment and the company may provide the explanation such qualifications in the Directors' report.

In case where the information produced by the company as audit evidence, the auditor should evaluate whether the information is sufficient and appropriate for purposes of the audit by performing procedures to:

a.	Test the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information; and
b.	Evaluate whether the information is sufficiently precise and detailed for the purposes of the audit.

EXIT CONFERENCE

While concluding the audit, the auditor should conduct a meeting with the management of the company or with the group supervisory officers. The audit observations should preferably be shared with such official beforehand for providing the opportunity to discuss the audit finding and to clarify any point relating to audit and audit observations.

EVALUATION OF AUDIT EVIDENCE AND FORMING OPINION

The Audit evidence plays a significant role in forming of Opinion. Based on such evidence the auditors form his opinion in the report, accordingly the auditor should obtain competent, relevant and reasonable evidence to support his judgement and conclusions.

The competent evidence is information which is quantitatively sufficient and appropriate to achieve the auditing results and is qualitatively impartial to inspire confidence and reliability.

The Reliable audit evidence is evidence that is impartial, the reliability of audit evidence is dependent upon its nature, its source and the method used to obtain it.
While collecting the audit evidence the auditor should consider that

- Documentary evidence is more reliable than oral evidence
- Evidence of which the auditor has direct personal knowledge is the most reliable evidence
- Independent evidence obtained for external sources is more reliable than internal evidence, if that evidence is truly Independent and complete.
- Visual evidence is highly reliable for conforming the existence of assets, but not their ownership value.
- Drawing conclusions solely through examining relationship between figures in the account (analytics Review) is less reliable evidence
- Oral evidence must be considered as the least reliable, whenever feasible .auditor should attempt to obtain documentary confirmation of oral evidence.
- The reliability of information generated within the auditee entity is a function of the reliability of internal control systems within the entity.
- Photocopies are less reliable than the originals, the source of photocopies should be identified by noting the source as far as possible the photocopies should be certified
- Evidence, which is accepted by the auditee entity, is always reliable
- The auditor may gain increased assurance when audit evidence obtained from different source is consistent.

Sharing Draft Report with Management with Category of Risk involved with each Remark and Qualification

After the exit meeting and the completion of the audit procedures, the auditor should prepare an Executive summary of audit findings. The summary explains the key audit issues, the category of risk, their resolution, agreed adjustments. After discussing the executive summary the audit certificate should be signed by the auditor and by the management or person authorized by the management of the company.
The executive summary is a high-level summary, which explains audit findings, while it is a concise document; it should contain sufficient information to stand alone as a summary of the evidence which supports audit team's conclusion on the appropriate form of audit certificate.

THE EXECUTIVE SUMMARY SHOULD INCLUDE:

• a summary of the auditee's operations and purpose;
• a summary of the regularly framework within which the auditee operates;
• an explanation of the audit approach and the balance between test of controls and substantive procedures;
• a summary of the key risk identified;
• a commentary on key balances;
• a commentary on the accounting policies and significant account areas;
• a summary of the result of audit procedures;
• details of areas where difficult questions of principle or judgement were involved;
• matters brought forward from previous year audit;
• a summary of other important matters for attention;

• outstanding matters, for example, outstanding reappointment orders or letter authorising agreed amendment s to the financial statement;
• a summary of matters carried forward to the next years audit; and
• a conclusion on the appropriate form of audit certificate.

The report should clearly mention the process name; significant and findings with respect to the criteria; analysis of the consequences of the findings; and recommendations of the auditor. Each observation should be supported by a set of facts and each recommendation to the management should be supported by a business reasons for implementation.

Further, the replies on the auditor's observations and recommendation /comments of the management of the Auditee's company should be obtained and should be recorded in the audit file. Also in case where the auditor opinion is other than the unmodified opinion, the full rationale should be given in the executive summary.

DIFFERENT STAGES OF COMMUNICATION AND DISCUSSION SHOULD BE AS UNDER:

1. **Preliminary Draft:** At the conclusion of fieldwork, the auditor should draft the report and present it to the entity's management for auditee's comments.
2. **Exit Meeting:** The auditor should discuss with the management the findings, observations, recommendations, and text of draft and obtain their comment on the draft, achieve consensus and reach an agreement on the audit findings.
3. **Formal Draft:** The auditor should prepare a formal draft, in view of the outcome of the exit meeting and other discussions. Upon review of such changes by the auditor and the management, the final report should be issued.
4. **Final Report:** The report should be submitted to the appointing authority or such members of management, as directed.

AUDITOR'S RESPONSIBILITY

The Auditor's Report should include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express the opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standard, if any. The Auditor's Report shall also explain that those Standards require that the Auditor should comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of records.

Auditor's Report should state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

FORMAT OF REPORT

The report shall be addressed to the Appointing Authority unless otherwise specified in Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats (like MR-3 for Secretarial Audit Report) are prescribed, those formats shall be followed for reporting. If any information cannot be conveniently captured within the paragraphs of the report, it shall be given in the form of annexure(s).

Signature block shall mention the name of the audit firm, the name of the Auditor, along with certificate of practice number, the membership number of the Auditor specifying whether associate or fellow member.

The Auditor shall clearly mention date and place of signing the report. In case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

LIMITATION

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation. If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence. If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the auditor shall determine the implications as follows:

a.	If the Auditor concludes that the possible effects of unavailable Audit Evidence could be nonmaterial, the Auditor shall qualify the opinion; or
b.	If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

PRE-REQUISITE FOR THE REPORTING:

- **Accurate** -Free from errors and distortions and faithful to the underlying facts.
- **Objective** - Fair, impartial, and unbiased and is a result of a fair minded and balanced assessment of all relevant facts and circumstances.
- **Clear** - Easily understood and logical, avoiding unnecessary technical language and providing all significant and relevant information.
- **Concise** -To the point, avoid unnecessary elaboration, superfluous detail, redundancy, repetitiveness and wordiness.
- **Constructive** -Helpful to the engagement client and the organization and leads to improvements where needed.
- **Complete** -Lacking nothing that is essential to the target audience and includes all significant and relevant information and observations to support recommendations and conclusions.
- **Timely**-Opportune and expedient, depending on the significance of the issue, allowing management to take appropriate corrective action.

SUBMISSION OF AUDIT REPORT

After considering the clarifications/replies of the management, the auditor should prepare the audit report in prescribed format. Sometimes the report is addressed to the members but is to be submitted to the Board.

The report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out / not carrying out due compliances of the applicable provisions of the various laws. The report shall be provided with or without qualifications.

SIGNING OF AUDIT REPORT

The auditor's signature is either in the name of the audit firm, the personal name of the auditor or both, as appropriate for the particular jurisdiction. In addition to the auditor's signature, in certain jurisdictions, the auditor may be required to declare in the auditor's report the auditor's professional accountancy designation or the fact that the auditor or firm, as appropriate, has been recognized by the appropriate licensing authority in that jurisdiction.

However, in case of Secretarial Audit Report the report should be signed by the secretarial auditor who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ ACS number along with Certificate of Practice Number issued by the Institute of Company Secretaries of India.

In case of PCS firm, the secretarial audit report may be signed by the partner who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ACS number along with his Certificate of Practice number. The secretarial audit report cannot be signed by an employee of the PCS firm even if he/she may be a member of the ICSI holding Certificate of Practice number.

REPORTING WITH QUALIFICATION

1. A qualification, reservation or adverse remarks, if any, should be stated by the Auditor at the relevant places in his report in bold type or in italics.
2. If the Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons therefor.
3. If the scope of work required to be performed is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books or papers being in the custody of another person who is not available or a Government Authority), the Report should indicate such limitations.
4. If such limitations are so material that the Auditor is unable to express any opinion, the Auditor should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to such areas by the Company.

Further, the Board of Directors, in its report prepared under section 134(3) of the Companies Act, 2013, shall provide and explanation in full on any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.

CSAS-3 Auditing Standard on Forming of Opinion

Scope

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit under any statute. The Standard deals with basis and manner for forming Auditor's opinion on subject matter of the audit.

Effective Date

The Standard is effective and recommendatory for Audit Engagements accepted by the Auditor on or after 1st July, 2019 and mandatory for Audit Engagements accepted by the Auditor on or after 1st April, 2020.

Objective

The objective of the Standard is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

Definitions

(1) "Misstatement" means any information or statement which is false, incorrect, incomplete, misleading, misrepresents or omits or suppresses a material fact.

(2) "Materiality" is the threshold above which missing or incorrect information is considered to have an impact on the decision making of the Auditor. Information is considered as material if its omission or misstatement could influence the opinion of the Auditor.

(3) "Records" include:

- Memorandum and Articles of Association, byelaws or any other constitutional documents;
- Minutes, returns, forms, indexes and Registers;
- Books and papers including books of accounts, deeds, vouchers;
- Agreements, Memorandum of Understanding;
- Other documents maintained by the Auditee either in physical or electronic form; and
- Correspondence.

(4) "Third Party" means any person who does not have a direct connection with the audit but whose inputs or opinion might influence the audit conclusion and includes an expert.

Process for forming of opinion

1. The Auditor shall consider Materiality while forming his opinion and adhere to:

(a) The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;

(b) The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner;

(c) The principle of timeliness that implies preparing the report in due time; and

(d) The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

2. The Auditor may consider various judgments, clarifications, opinion, conflicting interpretations while framing the opinion to the best of his professional acumen.

Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

(a) The Auditor shall indicate the fact of use of Third-Party report or opinion and shall also record the circumstances necessitating the use of third-party report or opinion;

(b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;

(c) The Auditor shall consider the important findings/ observation of Third Party;

(d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third-Party report or opinion.

Form of an Opinion and Qualification

1. Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

(a) there is due compliance with the applicable laws in terms of timelines and process; and

(b) the records as relevant for the audit verified by him as a whole are free from misstatement and maintained in accordance with the applicable laws.

2. Modified Opinion

The Auditor shall express modified opinion when the Auditor concludes that:

(a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines and process; or

(b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or

(c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or

(d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

3. Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

4. Limitation

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

5. If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

6. If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

(a) If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall qualify the opinion; or

(b) If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

7. **Auditor's Responsibility**

The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards. The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of records.

Auditor's Report shall state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some material misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

8. **Format of Report**

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law.

The report shall be detailed enough to serve its intended purpose. Where specific formats (like MR-3 for Secretarial Audit Report) are prescribed, those formats shall be followed for reporting. If any information cannot be conveniently captured within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable.

The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

CASE STUDY

ABC Ltd. is a listed company on BSE India. The company has appointed M/s YY & Associates as secretarial auditor for the FY 2021-2022. M/s YY & Associates had issued audit report in Form MR-3. The audit report stated observations as below:

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above except to the extent as mentioned below:

S.No	Relevant Provision for Compliance Requirement	Observations
1.	Regulation 17 read with Regulation 25 of Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015 and Section 149(3) of the Companies Act, 2013 read with The Companies (Appointment and Qualification of directors) Rules, 2014	The Composition of the Board of Directors was not in compliance with the regulations from 27.12.2021 till 15.03.2022. The Company has rectified the Non-Compliance w.e.f. 16.03.2022.
2.	Regulation 18 of Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015	The Composition of the Audit Committee was not in pursuance to the Regulations and the same has been rectified on 15.10.2021.
3.	Regulation 21 of Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015	The Risk Management Committee of the company comprised of 50% of the members who were board of directors of the company which was not in pursuance to the Regulations however the same had been rectified on 01.10.2021.
4.	Section 203 of The Companies Act, 2013 read with The Companies (Appointment and Remuneration) Rules, 2014	The Company had Group Chief Financial Officer, however did not have Chief Financial Officer (CFO) of the company till 31.05.2021. The Appointment of Chief Financial Officer (CFO) was made w.e.f. 01.06.2021

(b) based on the Audit Evidence obtained, the records as a whole are not free from misstatement; or are not maintained in accordance with applicable laws; or

(c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or

(d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the records as a whole are free from misstatement; or are maintained in accordance with applicable laws.

CASE STUDY

Adjudication Order in respect of CHD Developers Ltd. and 3 others in the matter of CHD Developers Ltd. (**Adjudication Order: Order/MC/VS/2021-22/13557-13560**), in this matter SEBI initiated adjudication proceedings against CHD Developers Ltd for violations of the SEBI LODR Regulations in respect of disclosure of material false information under the LODR Regulations in relation to the opinion of its Auditor.

Based on audit procedures performed and management explanations provided, the Auditors had submitted a qualified opinion in their Report to the financial statements of the company and did not receive any explanation or evidence from the Company with respect to progress on the qualification made. Instead, the report issued on June 29, 2019 had declared that the Auditors had given an unmodified opinion.

It was observed that as the company failed to disclose its audited financial results as well as the statement of impact of audit qualifications (for audit report with modified opinion) within the stipulated period of 60 days from the end of the financial year, it has violated the provisions of SEBI LODR Regulations. Taking into account the facts and circumstances of this matter, the AO imposed penalty to the company and its officers.

If the information prepared in accordance with the requirements of a fair presentation framework is not sufficient and relevant enough so as to allow achieving of a fair presentation, the auditor should discuss the matter with management and, depending on the requirements of the applicable reporting framework and how the matter is resolved, should determine whether it is necessary to modify the opinion in the auditor's report. In case the auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

CASE STUDY

ABC Ltd. is a listed company on BSE India. The company has appointed M/s YY & Associates as secretarial auditor for the FY 2021-2022. M/s YY & Associates had issued audit report in Form MR-3. The audit report stated observations. Consequently, directors also furnished explanations to the remarks as below:

Secretarial auditors' observation(s) in secretarial audit report and directors' explanation thereto –

i. In respect of observation that the composition of the board of directors was not in compliance with Regulation 17 and 25 of the Listing Regulations and Section 149(3) of the Companies Act, 2013 and that the composition of Audit Committee was not in compliance with Regulation 18 of the Listing Regulations.

It is clarified that considering the stressed situation of the Company, it was difficult to find suitable persons as Independent Directors and with the appointment of new independent directors (including one-woman independent director), the Company is compliant with Regulation 17 and

25 of the Listing Regulations and Section 149(3) of the Companies Act, 2013 with effect from March 16, 2022. Further, due to resignation of two independent directors who were also Audit Committee members, the composition of Audit Committee was not in compliance of Regulation 18 of the Listing Regulations for a period from September 27, 2021 till October 14, 2021. With reconstitution of Audit Committee w.e.f. October 15, 2021, this non-compliance has been rectified.

ii. In respect of observation that the Risk Management Committee of the Company comprised of 50% of the members who were directors of the Company which was not in compliance of Regulation 21 of the Listing Regulations.

It is clarified that 50% of the members were directors only, however as a stricter compliance, the composition of the Risk Management Committee further stands rectified w.e.f October 1, 2021.

iii. In respect of observation pertaining to non-appointment of Chief Financial Officer (CFO) in compliance with Section 203(4) of the Companies Act, 2013.

It is clarified that the Company all along had a Group Chief Financial Officer. The Company appointed CFO w.e.f. June 1, 2021 and accordingly the same stands rectified.

Threats to objectivity

Threats to objectivity can arise in a number of ways, some general in nature and some related to the specific circumstances of an assignment or role. Auditor should identify the threats and consider them in the light of the environment in which he is working; he should also take into account the safeguards which assist them to withstand threats and risks to their objectivity.

The easiest way of avoiding such threats would be for Auditor to decline to act in any circumstances where the slightest threat to objectivity might exist.

Threats to objectivity might include the following:

Self-interest threat - A threat to the Auditor's objectivity stemming from a financial or other self-interest conflict. This could arise, for example, from a direct or indirect interest in Auditee or from a fear of losing an audit work.

Self-review threat - The apparent difficulty of maintaining objectivity and conducting what is effectively a selfreview, if any product or judgement of a previous audit assignment or a non-audit assignment needs to be challenged or re-evaluated in reaching audit conclusions.

Advocacy threat - There is an apparent threat to the Auditor's objectivity, if he becomes an advocate for (or against) the Auditee's position in any adversarial proceedings or situations. Whenever the Auditor takes a strongly proactive stance on the Auditee's behalf, this may appear to be incompatible with the special objectivity that audit requires.

Familiarity or trust threat - A threat that the Auditor may become over-influenced by the personality and qualities of the Directors and Management, and consequently too sympathetic to their interest.

Alternatively, the Auditor may become too trusting of Management representations so as to be inadequately rigorous in his testing of them - because he knows the Auditee too well or the issue too well or for some similar reason.

Intimidation threat - The possibility that the Auditor may become intimidated by threat, by dominating personality, or by other pressures, actual or feared, by a director or manager or by some other party.

Each of the above threats may arise either in relation to the Auditor's own person or in relation to a connected person such as a member of his family or a partner or a person who is close to him for some other reason, such as past or present association or obligation or indebtedness.

Auditors should always consider the use of safeguards and procedures which may negate or reduce threats.

An exhaustive list of countervailing factors is not possible, but Auditors should strive to develop the following characteristics in their audit firms, wherever possible to provide safeguards against these threats:

- Auditors should behave with integrity in all their professional and business relationships and to strive for objectivity in all professional and business judgements. These factors rank highly in the qualities that Auditors have to demonstrate the same. They should therefore be well used to setting personal views and inclinations aside.
- Within every audit firm there should be strong peer pressure towards integrity. Reliance on one another's integrity should be the essential force which permits partners to entrust their public reputation and personal liability to each other.
- Audit Firms of all sizes should establish strong internal procedures and controls over the work of individual Auditors, so that difficult and sensitive judgements are reinforced by the collective views of other Auditors, thereby also reducing the possibility of litigation.

(c) The principle of timeliness that implies preparing the report in due time;

Auditor must adhere to timeline agreed at the time of engagement for issuing the report and milestones to be achieved, if any. Deviations, from agreed timeline must be recorded with reason for such deviation.

(d) The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

1. Judgement, Clarification and Conflicting Interpretation

While forming an Audit opinion the Auditor may consider or refer the decided case laws or judgements, clarifications issued, opinions formed in similar type of audits while framing the final audit opinion.

Judgements

For example, while interpreting the issue of loans given by the Auditee company in terms of Section 185, the Auditor may refer to the decided case laws in this respect, e.g in Dr. Fredie Ardeshir Mehta v. Union of India, the terms "indirectly" and "loans", has been explained as below

- The word **"indirectly"** means providing loan through agencies or any other medium but does not include converting anything which does not qualify to be loan or loan represented by book debt or security or guarantee into loan, any loan represented by book debt or guarantee or security.
- The word **"Loan"** was defined by the court as a thing lent; something the use of which is allowed for a time, on the understanding that it shall be returned or an equivalent given; esp., a sum of money lent on these conditions and usually with interest. The essential requirement of a loan is the advance of money (or of some article) upon the understanding that it shall be returned, and it may or may not carry interest.
- The phrase **"any loan represented by book debt"** is inserted in order to plug the loophole used in the case of "Dr. Fredie Ardeshir Mehta v. Union of India" where court took the view that book debt can't be treated as loan and since the earlier Section 295 of Companies Act, 1956 does not explicitly include the phrase "any loan represented by book debt" hence any kind of credit facility extended by company to directors will not cover under the "Loan to director".

Therefore, while auditing, the Auditor may refer to the interpreted words given in court judgements so as to interpret the meaning of the legal terms correctly and in their true sense and can frame the opinion accordingly and accurately.

Clarifications in respect of forming the audit opinion implies that in case the true or clear sense of law cannot be interpreted by the Auditor or if it was so interpreted, then contradictory interpretations amongst various Auditors or professionals seem to exist; in such a case Auditor may refer to the clarifications issued by various authorities e.g. Ministry of Corporate Affairs, Institute of Company Secretaries of India, CBDT, or any other Govt. body etc., to frame a reliable and accurate opinion.

Opinions formed by other Auditors,in similar types of Audits may also be referred by the Auditor to form a judgement and frame its opinion. Similar type of Audit may also depend on nature of business, transactions occurred and operation of scale of Auditee, etc.

Conflicting Interpretations may be sorted out by again referring to the decided judgements, clarifications issued by the Govt. Authorities, Regulators, etc.

2. Role of Precedence and Practices

Precedence and Practice in context of Auditing implies that Auditor shall evaluate on the basis of general or ongoing practices or procedures that whether the Records maintained, statements prepared in all material respects, in accordance with the requirements of the applicable laws, rules and regulations. This evaluation shall include consideration of the qualitative aspects of the

Auditee's compliance practices, including indicators of possible bias in Management's judgements.

The Practices and precedence used by Auditor for forming the Audit opinion may be as per the historical perspective i.e., methods used hitherto or generally used methods or practices or procedures be implemented for framing the opinion. Like, one of the method involves selecting a sample size of total work and activities of a firm for conducting the audit process, which simultaneously depends upon the firm's size, operation of work and no. of branches, etc., or another practice includes having an unbiased approach while conducting the audit process in order to frame the honest and unbiased opinion.

LIMITATION

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the Audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

(a) If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall modify the opinion; or

(b) If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

Limitation on the scope of audit means when the Auditor appointed for performing the Audit will not be able to obtain appropriate or complete Audit Evidences due to the restrictions or limitations imposed on the process of Audit which ultimately affects the Auditor's opinion.

The Auditor's inability to obtain sufficient and appropriate Audit Evidence (also referred to as a limitation on the scope of the audit) may arise from:

(a) Circumstances beyond the control of the Auditee;

(b) Circumstances relating to the nature or timing of the Auditor's work;

(c) Limitations imposed by Management.

An inability to perform a specific procedure does not constitute a scope limitation if the Auditor can obtain sufficient appropriate Audit Evidence by performing alternative procedures. Limitations imposed by Management may have other implications for the Audit, e.g. for the Auditor's assessment of fraud risks.

If after obtaining the Audit engagement, the Appointing Authority imposes a limitation on the scope of Audit, which is likely to affect the Auditor's opinion, the Auditor shall request the Authority to remove the limitation. If Management refuses the Auditor's request to remove a limitation that Management has imposed on the scope of the audit, the Auditor should communicate the matter with those charged with governance. When a limitation on the scope of the audit imposed by Management is not removed, the Auditor should determine whether it is possible to perform alternative procedures to obtain sufficient appropriate Audit Evidence on which to base an unmodified opinion. If the Auditor is unable to obtain sufficient appropriate Audit Evidence, the Auditor should determine the implications as follows:

- if the possible effects of the scope limitation are material but not pervasive to the business procedures, documents, or underlying transactions, the Auditor should modify the opinion;
- if the possible effects of the scope limitation are both material and pervasive to the compliance of laws, rules and regulations or underlying transactions or other business procedures/activities so that a qualification of the opinion would be inadequate to communicate the gravity of the situation, the Auditor should disclaim an opinion.

CHAPTER-36

SECRETARIAL AUDIT - FRAUD DETECTION AND REPORTING

INTRODUCTION

In general, the term **FRAUD** can be defined as 'dishonestly obtaining a benefit, or causing a loss, by deception or other means.

More specifically, **FRAUD** is defined by ***Black's Law Dictionary*** as:

- A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.
- A misrepresentation made recklessly without belief in its truth to induce another person to act.
- A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment.

Consequently, fraud includes any intentional or deliberate act to deprive another's property or money by guile, deception, or other unfair means.

Frauds under explanation to section 447 defined as under:

• "fraud" in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
• "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
• "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

TYPES OF FRAUD

Fraud against a company can be committed either internally by employees, managers, officers, or owners of the company, or externally by customers, vendors, and other parties. Accordingly, the fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.

The financial & accounting fraud include the fraud relating to the financial statement by Overstating revenue, earnings and assets - along with understating liabilities (or just plain concealing them) are the most common activities found with this type of fraud.

The **asset misappropriation** is also a most susceptible fraud in the companies which are closely held.

The **tampering**, accounts receivable skimming, fake billing schemes, payroll schemes, fake or duplicate expense reimbursement schemes and inventory schemes are also the part of the financial and accounting fraud.

Also the **misuse of company assets** is one of the problematic and serious kinds of fraud, as the unauthorized use of company assets, significant open up the company to liability.

Also under the growing technology and easy exchange of information and technology, the chances of the theft of intellectual property and trade secrets are increased and such fraud damage the position of the company in the market and the Research activities.

In case of the **Non-financial fraud**, the fraud includes the false or misleading information, inadequate disclosure produced by the Company to the public or regulatory bodies, false reporting of governance norms and doing business surpassing the regulatory requirement and approvals from the shareholders.

DUTY TO REPORT FRAUD

A very significant duty has been cast on the Company Secretary in Practice under section 143 of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving the prescribed amount is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government, or to the Audit Committee or the Board.

Duty of Report Fraud to Central Government

The **section 143(12)** read with the Companies (Audit and Auditors) Rules, 2014provides that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employee, the auditor shall report the matter to the Central Government.

Duty of Report Fraud to Audit Committee/ Board

In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following

- Nature of Fraud with description;
- Approximate amount involved; and
- Parties involved.

Disclosures in the Board's Report

The following details of each of the fraud reported to the Audit Committee or the Board during the year to be disclosed in the Board's Report

- Nature of Fraud with description;
- Approximate Amount involved;
- Parties involved, if remedial action not taken; and
- Remedial actions taken.

Consequence on failure in Reporting of fraud

In case, company secretary in practice does not comply with the provisions of section 143(12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees. Further, section 143(13) provides that no duty to which an auditor of a company is subject to shall be regarded as having been contravened by reason of his reporting the matter(fraud) if it is done in good faith.

PROCEDURE FOR REPORTING OF FRAUD

REPORTING OF FRAUDS BY AUDITOR INVOLVING AMOUNT MORE THAN '1 CRORE

If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees

one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government. Auditor should report such frauds as soon as possible but not later than 62 days of his knowledge about the frauds:

STEP-I - Report to Board & Audit Committee

Auditor shall forward his report to the Board of Directors or the Audit Committee, as the case maybe, within 2 days of his knowledge of the fraud, seeking their reply or observations within 45 (forty-five) days;

STEP-II - Report to Central Government after reply of board

On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 fifteen days of receipt of such reply or observations;

STEP-IIA - Report to Central Government if no reply received

In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45(forty-five days), he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

REPORTING OF FRAUDS BY AUDITOR INVOLVING AMOUNT LESS THAN *'1* CRORE

As per the Sub-rule (3) of Rule 13 of the Companies (Audit and Auditors) Rules, 2014 in case of fraud involving an amount less than ' 1 Crore, the auditor shall report the matter of fraud to the Audit Committee or to the Board within 2 days of his knowledge of the fraud.

The report should specify the nature of the fraud with description, approximate amount of the fraud and parties involved in the fraud.

In such case, as per Sub-rule (4), the Board shall disclose in its report (Board's Report) the nature of fraud with description, approximate amount of the fraud, parties involved in the fraud and remedial action taken. Name of parties should be disclosed only when the Board or Audit Committee has not taken any remedial action against the fraud.

Fraud detection and reporting requires the Practicing Company Secretary to focus beyond compliance

In the matter of **Globe Motors Limited v. Mehta Teja Singh & Company** the Delhi High court observed that although an agreement in which a director was interested could not said to be invalid in view of compliance with the requirements of the Act, yet it is only a formal aspect of compliance with the statutory provisions; the basic question is as to the conduct of the director and whether it satisfies the test considering their fiduciary relationship to the company. Justice Sachar further observed that the directors are expected to display utmost good faith towards the company in their dealings with the company or on behalf of the company; they should not use the company's money

or other property or information or other matters in their possession in order to gain any advantage to themselves. Therefore a practicing company secretary should not be satisfied only with compliance during secretarial audit. He needs to look beyond and satisfy himself that the transactions which have taken place during audit period do not contain any fraud element.

"Fraud" in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any factor abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

On perusal explanation under section 447 of the Companies Act 2013 the fraud covers:

- Any act committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any omission committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any act committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- Any act committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any omission committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- Any omission committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- Any abuse of position committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.

- Any abuse of position committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.

During the performance of the Secretarial Audit, the Practicing Company Secretary should examine the various transactions during the period of audit to identify whether any element in the transaction may result to a fraud in the Company.

Transaction which may involve the fraud

In the past "Fraud" has been noticed in many cases of scams in the following kinds of transactions:

- Related Party Transactions
- Excessive Managerial remuneration
- Insider Trading
- Inter Company transactions
- Mergers/demergers/acquisitions
- IPO frauds

Other means of Corporate fraud are the Inadequate Disclosures, false or misleading information, theft of assets, false expenses, corruption, theft in formation, fraudulent applications, misuse of assets, dishonest business partners, Fraudulent billing.

These areas are not exhaustive but only some examples are given so as to guide fraud detection.

Who is considered as an Auditor for Fraud Reporting

The Auditor includes the

1. Statutory Auditors of the company appointed under section 139 of the Companies Act, 2013,
2. Company Secretary in practice conducting Secretarial Audit under section 204 of the Companies Act, 2013,
3. Cost Accountant in practice conducting cost audit under section 148 of the Companies Act, 2013 and the
4. Branch Auditors appointed under section 139 of the Companies Act.2013.

However, the Internal Auditor or such other professionals appointed under any other statutes rendering other services to the company such as a tax auditor appointed under Income tax act, GST auditors appointed under the respective GST legislations are not covered under section 143 of the Companies Act, 2013.

Reporting of Fraud already reported by the management

The frauds which are already identified by the management should also be considered by the Secretarial Auditors and should review the impact of such fraud on the company in line with his scope of Audit engagements.

The Auditor should also review the steps taken by the management. On dissatisfaction, the auditor may state reasons and request the management to perform additional procedures. If additional procedures are not performed within 45 days of request, consider reporting the matter to the Central Government.

Reporting of Fraud by Secretarial Auditor already reported by other auditors

The Companies Act, 2013 has provided the duties and responsibilities of the each of the auditors such as for Accounting/ Financial related fraud the statutory auditors shall report, while in case of Non-financial fraud the Secretarial Auditor and in case of the fraud relating to the costing Fraud it needs to be reported by the Cost accountant in practice.

Instances may appear of a fraud in which the impact of such fraud is extending to area covered by all the auditors. In such cases, all the auditors should report such fraud in the manner prescribed under the act.

FRAUD V/S NON-COMPLIANCE

The term **fraud** can be defined as act or course of deception, an intentional concealment, omission, or perversion of truth, to

(1) gain unlawful or unfair advantage,

(2) induce another to part with some valuable item or surrender a legal right, or

(3) inflict injury in some manner.

Willful fraud is a criminal offense which calls for severe penalties, and its prosecution and punishment. However, incompetence or negligence in managing a business or even a reckless waste of firm's assets (for example by speculating on the stock market) does not normally constitute a fraud.

Non-Compliance: the term non-compliance refers to failure to comply with the laws, rules regulations etc., the term non-compliance is commonly used in regard to a failure to meet the compliance requirements or failure to doing compliance be it the failure in following procedures, filing of information, eligibility conditions, reporting etc.

The relationship between the Fraud and the non-compliance can be constructed as the non- compliance in the company may lead to a fraud however it may also be noted that the fraud can also be made in the compliant company.

SPECULATION

The term Speculation is defined as act of trading in an asset or conducting a financial transaction that has a significant risk of losing most or all of the initial outlay with the expectation of a substantial gain.

With speculation, the risk of loss is more than offset by the possibility of a huge gain, otherwise there would be very little motivation to speculate.

It may sometimes be difficult to distinguish between speculation and investment, and whether an activity qualifies as speculative or investing can depend on a number of factors, including the nature of the asset, the expected duration of the holding period, and the amount of leverage.

Such as the Foreign Exchange Market, Bond Market, Stock Market and Specially the derivatives segment which comprises of futures and options contracts which is typically used by brokerages and high net worth individuals to bet on the direction of the markets.

Due to this the Indian capital markets have tilted towards speculative instruments having implications of a high level of speculative trading activity compared to investment activity.

SUSPICION

Suspicion is the positive tendency to doubt the trustworthiness of appearances and therefore to believe that one has detected possibilities of something unreliable, unfavorable.

By a Secretarial Auditor, the following transactions relating to Company Formation and Management may be considered as the suspicious transactions which may or may not be with the group companies, where the detailed audit is need to be performed are

o subsidiaries which have no apparent purpose;
o companies which continuously make substantial losses;
o complex group structures without cause;
o uneconomic group structures for tax purposes;
o frequent changes in shareholders and directors;
o unexplained transfers of significant sums through several bank accounts;
o use of bank accounts in several currencies without reason;
o purchase of companies which have no obvious commercial purpose;
o sales invoice totals exceeding known value of goods;
o makes unusually large cash payments in relation to business activities which would normally be paid by cheques, banker's drafts etc; and
o transferring large sums of money to or from overseas locations with instructions for payment in cash;

DETECTION OF FRAUD

The Auditor shall exercise professional judgment and maintain professional scepticism throughout the planning and performance of the audit to detect and report the fraud envisaged under the provisions of section 143 (12) of the Companies Act, 2013 read with Companies (Audit and Auditors) Rules, 2014.

The Auditor may communicate directly with the internal auditors and statutory auditors to verify whether they have suspected/identified any fraud during the course of their audit.

During the course of the audit, if the Auditor suspects any commission of fraud, he shall endeavour to collect further evidence for the same. The suspicion may arise on perusal of internal control systems, complaint under whistle blower mechanism, and reports of the other auditors, etc. The Auditor should ensure to collect sufficient evidence which substantiates his suspicion of the commission of the fraud against the Auditee by its employees and officers.

PROFESSIONAL RESPONSIBILITY AND PENALTY FOR INCORRECT AUDIT REPORT

Section 448 of Companies Act, 2013 deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made thereunder, **any person** makes a statement, -

• which is false in any material particulars, knowing it to be false; or
• which omits any material fact, knowing it to be material, he shall be liable under section 447.

It is pertinent to note that section 448 applies to "**any person**". In view of this, a company secretary in practice, who is an independent professional, will be attracting the punishment, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

Section 204(4) of the Companies Act, 2013 provides that if company secretary in practice contravenes the provisions of section 204, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Besides, the Company Secretary in Practice shall be liable for professional or other misconduct mentioned in First or Second Schedule or in both the Schedules to the Company Secretaries Act, 1980 and where held guilty, be liable for the following actions:

1. **where found guilty of professional or other misconduct mentioned in the First Schedule:**

- reprimand;
- removal of name from the Register of members Upto a period of three months;
- fine which may extend to one lakh rupees.

2. **where found guilty of professional or other misconduct mentioned in the Second Schedule:**

- reprimand;
- removal of name from the Register of members permanently or such period as may be thought fit by the Disciplinary Committee;
- fine which may extend to five lakh rupees.

EARLY WARNING SIGNALS OF FRAUDS DETECTIONS

The auditors may take some clues from the Reserve Bank of India (Frauds classification and reporting by commercial banks and select FIs) directions, 2016 along with the other reasons which provides an Early Warning Signals (EWS) for to be alert that some of the wrong doing in the company which are as under:

- Default in undisputed payment to the statutory bodies as declared in the Annual report.
- Bouncing of high value cheques
- Frequent change in the scope of the project to be undertaken by the borrower
- Delay observed in payment of outstanding dues.
- Under insured or over insured inventory
- Invoices devoid of TAN and other details.
- Dispute on title of collateral securities.
- Funding of the interest by sanctioning additional facilities.
- Concealment of certain vital documents like master agreement, insurance coverage.
- Floating front / associate companies by investing borrowed money
- Critical issues highlighted in the stock audit report.
- Substantial related party transactions
- Material discrepancies in the annual report
- Significant inconsistencies within the annual report (between various sections)
- Raid by Income tax /sales tax/ central excise duty officials
- Resignation of the key personnel and frequent changes in the management

- Delayed filing of statutory returns
- Frequent resignation of Auditors
- Frequent changes in the Independent Directors

INVESTIGATION OF FRAUD BY SFIO

Serious Fraud Investigation Office (SFIO) has been established through the Government of India vide Notification NO. S.O.2005 (E) dated 21.07.2015.

It is a multi- disciplinary organization under the Ministry of Corporate Affairs, of experts in the field of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation etc. for detecting and prosecuting or recommending for prosecution while collar crimes/frauds.

SFIO is headed by a Director as Head of Department in the rank of Joint Secretary to the Government of India. The Director is assisted by Additional Directors, Joint Directors, and Deputy Directors, Senior Assistant Directors, Assistant Directors, Prosecutors and other secretarial staff. The Headquarter of **SFIO** is at New Delhi, with five Regional Offices at Mumbai, New Delhi, Chennai, Hyderabad & Kolkata.

Investigation into the affairs of a company is assigned to **SFIO**, where Government is of the opinion that it is necessary to investigate into the affairs of a company -

• on receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013;
• on intimation of a special resolution passed by a company that its affairs are required to be investigated;
• in the public interest; or
• on request from any department of the Central Government or a State Government

The powers and duties of the officers and employees **SFIO** is a multi-disciplinary investigation office having experts from various fields viz. financial sector, capital market, accountancy, forensic audit, taxation, law, information technology etc.

By **virtue of Companies Act, 2013**, SFIO has been accorded statutory status and the scope of reference to SFIO for investigation into the affairs of a corporate by Central Government has been enlarged to include cases involving 'Public Interest" and also on request from any Department of Central/State Government.

CHAPTER-37 QUALITY REVIEW

PEER REVIEW - DEFINITION

The dictionary meaning of the term "peer" is, a person of the same legal status or a person who is equal to another in abilities, qualifications, age, background, etc. "Review" means to look back upon (a period of time, sequence of events, etc.) Thus, "peer review" is a self-improvement process and is a method of evaluation of a person's work or performance by a group of people in the same occupation, profession, or industry.

Professional peer review focuses on the performance of professionals, with a view to improving quality, upholding standards, or providing certification.

Peer review for Company Secretaries

Peer review contemplates examination of the systems and approach of a Practice Unit (PU) by another member of the Institute with the objective of identifying the areas, where the practising member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards.

A Peer Review examines whether a Practice Unit has adequate policies and procedures in place to comply with the Technical Standards of ICSI and other legal requirements.

Authority for Peer Review

With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council has issued guidelines for Peer Review of Attestation Services by Practising Company Secretaries. The guidelines serve as a mechanism intended to further enhance the quality of professional work of practising Company Secretaries (PCS) over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

Benefits of Peer Review

1) A successful Peer Review will provide comfort to the P.U. that he has adhered to various statutory, documentary and other regulatory requirements.
2) If deficiencies are noticed and corrective measures suggested, the P.U. will have an opportunity to correct the deficiencies and thereby enhance his professional competence.
3) If a Peer Review Certificate is issued in favour of the P.U. it enhances his credibility in the eyes of the general public.
4) Since a Chinese Wall exists between the Peer Review Process and the Disciplinary Proceedings, the P.U. will benefit from Peer Review without any apprehension of any disciplinary proceedings being initiated against him for any deficiencies noticed on his part.
5) Clients of the P.U. will benefit from knowing that their P.U. is periodically reviewed by the ICSI

SCOPE OF PEER REVIEW

Under the scope of Peer review, the following attestation services are covered:

a) Signing of Annual Return pursuant to proviso to sub-section (1) of section 92 of the Companies Act, 2013 in form MGT -7.
b) Certification of Annual Return pursuant to sub-section (2) of section 92 of the Companies Act, 2013 in Form MGT- 8.
c) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
d) Issuance of Certificate of Securities Transfers in Compliance with Regulation 40(9) of the SEBI LODR Regulations.
e) Certificate of reconciliation of share capital Audit, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002.
f) Conduct of Internal Audit of Operations of the Depository Participants.
g) Compliance Certificate regarding compliance of conditions of Corporate Governance to be annexed with the Director Reports prescribed under Schedule V of the SEBI (LODR) Regulations.

However, the Council and the Peer Review Board may include attestation services necessitate certification in other areas also in due course under the scope of Peer Review from time to time due to the change in laws or by the regulatory prescriptions.

Qualifications for Peer Reviewer

The eligibility for become a Peer Reviewer need to be a Member of the Institute who should—

a) Possess at least 10 years of post-membership experience
b) Be currently in whole time practice as a Company Secretary.

The Reviewer's Approach

The approach of the Reviewer should be courteous, professional and helpful throughout the review process. He should be appreciative of good practices while suggesting areas of improvement and should adopt a collaborative approach with the P.U. during the review process and should ensure minimum disruption to the P.U. during the peer review.
The peer reviewer should able to provide practical and insightful comments in a discussion mode as a Peer during the review process and should provide value addition to P. U. and not merely adopt a tick box approach.

Expected Qualities of Reviewer

- Be well acquainted with the technical aspects of the attestation services.
- Know the provisions of Code of Conduct of ICSI.
- Have studied various cases decided on Code of Conduct of ICSI.
- Get himself/herself acquainted with decisions of various courts on 'cases relating to deficiency in service'.
- Be aware of relevant provisions of CS Act 1980, Consumer Protection Act, Evidence Act, IPC, etc.
- Have studied the technical standards like Secretarial Standards, Guidance Notes, Notifications and Guidelines issued by Council of ICSI.
- Be aware of evolving standards and best practices in the field.
- Be good at drafting, written and spoken English.
- Display professional and courteous behavior while on peer review visit.
- Understand his limitations.
- Be clear about what is outside the scope of Peer Review.

PEER REVIEW PROCESS

Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review.

The Review shall focus on:

- Compliance with Technical Standards.
- Quality of Reporting or Attestation services.
- Office systems and procedures with regard to compliance of services including appropriate infrastructure.
- Training and capacity building Programs for staff (particularly, the Apprentice Trainees)

Applicability of the Guidelines on Peer Review

The guidelines on Peer Review shall apply to all or any of the following cases:

(a) Whenever a peer review is mandated
(b) Whenever a peer review is requested
(c) Whenever a peer review is conducted.

A Peer Review is said to be mandated when the Council of the Institute or any legislative amendment to law requires a Peer Review to be conducted. A Peer Review is said to be requested when a Practice Unit (PU) requests the Peer Review Board to have itself Peer Reviewed on a voluntary basis. A Peer Review is said to be conducted when a Peer Review is undertaken based on random selection initiated by the Peer Review Board Peer Review Process

EMPANELMENT OF PEER REVIEWERS

1. The Peer Review Board has been empowered to maintain a panel of Reviewers. Peer review Guidelines provides for the qualifications of the reviewer. Accordingly, an individual serving as a reviewer shall: - (a) Be a member; (b) Possess at least ten years' experience; and (c) Be currently a Company Secretary in Practice.

2. The requirement of at least ten years' experience as a member does not necessarily entail his/her experience as a Practicing Company Secretary.

3. The Board has prescribed a format for inviting applications from members fulfilling the above criteria who are willing to be empanelled as Reviewers.

4. A copy of the application format for empanelment of Reviewer is may be downloaded from the webpage of the Peer Review Board at the ICSI portal www.icsi.edu.

Statement of Confidentiality

The process of Peer Review requires high level of integrity on the part of the Peer Reviewer and any Authorised Assistant who may assist him during the Review. The Board has prescribed a Statement of Confidentiality for this purpose. Before accepting to undertake a Peer Review, the Reviewer and any other Authorised Assistant who may assist him in the Peer Review, are required to sign this Statement of Confidentiality and shall send the same to the Peer Review Board. This statement of Confidentiality should be renewed every year.

METHODOLOGY TO BE FOLLOWED BY REVIEWER

OFFSITE REVIEW

This contemplates studying the information given by the PU in the Questionnaire and based on the same make his own observations about possible areas where improvement is possible and to note other aspects to be discussed in personal meeting with PU.

ONSITE REVIEW

- Verification of information given by the PU.
- Test checks in respect of attestation assignments handled by the PU.
- Interaction with the staff & trainees of PU should be a part of the peer review.

- Calling for the records in respect of the client maintained by the PU to verify whether proper systems and procedures have been followed.

COMPLIANCE WITH PEER REVIEW GUIDELINES

Practice units are required to comply with the provisions of the Peer Review guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in this regard from time to time and as intimated to the members.

COST OF PEER REVIEW

The cost of Peer Review for the reviewer and his qualified assistant(s) is decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct a second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered as a separate unit for the purpose of payment of cost of Peer Review. If a company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

OBLIGATIONS OF THE PRACTICE UNIT

1. The Practice Unit under review shall provide access to any record or document as may be asked for by the reviewer. For these purposes
2. Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.
3. The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.
4. A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

PERIODICITY OF PEER REVIEW

The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer review for such a practice unit can be conducted at shorter intervals.

REPORTING

It has been provided that at the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.

In arriving at this conclusion, the Reviewer shall be expected to examine the materiality of the non-compliance or deficiency, the number of occasions when such non-compliance was noticed and its overall impact on the quality of attestation service rendered by the P.U.

QUESTIONNAIRE FOR PRACTICE UNITS

The Peer Review process requires each Practice Unit (PU) to provide some basic information about the PU to the Reviewer in the questionnaire specifically designed by the Board for the purpose.

Most of the questions are of objective type which can be answered in simple YES or NO. Some of the questions may require a little explanation from the PU.

In case any question is not relevant to a particular PU, it may be replied by writing "Not Applicable" as the answer, with reasons for the same.

All the responses to the questionnaire would be kept strictly confidential by the reviewer and his team and no information contained therein would be shared with any third party.

REVIEW PROCESS

1. PREPARATION

A practice unit will be notified in writing about an impending peer review and will be sent a **Questionnaire** for completion, the PU is required to send the duly filled in Questionnaire to the Board. Return of completed Questionnaire

The **practice unit** shall have to complete and return the Questionnaire **within 15 days** of the notification. The information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services clients for the year in respect of which the review is being done.

The Board will send a **panel of three suggested** names of reviewers, along with their brief profiles. The practice unit will have to give its choice of reviewer within a **period of 15 days** from the day of receipt of the panel sent by the Board.

On acceptance of the peer review by the selected reviewer, the **PU will be notified**.

2. CONFIRMATION OF VISIT

In consultation with the practice unit, date(s) will be set for the **on-site review** to be carried out. Flexibility will be permitted to ensure that practice units are not inconvenienced at especially busy periods. The **on-site review date(s)** will be arranged by mutual consent such that the review is concluded **within sixty days** of notification.

EXECUTION

On site review

Peer review visits will be conducted at the practice unit's head office or other officially noted/ recorded place of office. The complete on-site review of a practice unit may take one or two full days depending upon the size of the practice unit and scope of the peer review. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend **beyond three working days.**

Initial meeting

- An initial meeting will be held between the reviewer and the sole proprietor/ a partner of the practice unit designated to deal with the review (designated partner).
- The primary purpose of this meeting is to discuss the agenda of the peer visit and confirm the accuracy of the responses given in the Questionnaire.
- The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information.
- The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.
- During the meeting, a decision can also be taken on the evaluation method and the person(s) in the office of the PU to be interviewed and who will be able to assist the Reviewer in completing the Peer Review Process during his/her visit.

Compliance Review-General Controls

(a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:
  - Independence
  - Maintenance of Professional Skills and standards
  - Outside Consultation
  - Staff Supervision and Development
  - Office Administration

(b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the controls that are expected to be maintained, are installed and operated within practice units.

(c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of its size, nature and type of its practice. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(d) The Reviewer should evaluate these general controls to understand the functioning of the office of the Practice Unit.

Selection of attestation services engagements to be reviewed

a. The number of attestation services engagements to be reviewed depends upon:

• The number of practicing members involved in attestation services engagements in the practice unit;
• The degree of reliance placed, if any, on general quality controls; and
• The total number of attestation services engagements undertaken by the practice units for the period under review.

b. The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list. complete attestation services client list.

c. The Reviewer should not undertake Peer Review of attestation engagements which have been the subject matter of disciplinary proceedings nor should the Practice Unit influence the Reviewer to select such engagements for Peer Review.

REVIEW OF RECORDS

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

Compliance approach - Attestation services engagements	Substantive approach - Attestation services Engagements
• The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards. • Practice units should have procedures and documentation sufficient to cover each of the key areas. If Members in smaller practices find some of the documentation too elaborate for their clients and they tailor their attestation services documentation to suit their particular circumstances with justification for doing should be provided to the reviewer. • If the size of the Practice Unit is small or medium (a matter left to the judgement of the Reviewer), the Compliance Approach may not be appropriate. In such a case, the Reviewer may choose the Substantive Approach for conduct of Review.	A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's general controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory or not appropriate in the case of a specific Practice Unit selected for Peer Review. This approach requires a review of the attestation working papers in order to establish whether the attestation work has been carried out as per norms of Technical Standards. The reference material related to Technical Standards is provided as Appendix V of this Manual.

REPORTING

Preliminary Report of Reviewer

It has been provided that at the **end of an on-site review**, the Reviewer shall, before making his report to the Board, communicate a **Preliminary Report** to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be insufficient or deficient or where any non-compliance has come to his notice with reference to any matter.

Response to the Preliminary Report

The practice unit shall, **within 21 days** beginning the day after the day the Preliminary Report is received by the practice unit from the Reviewer, make any submissions or representations, in writing concerning the Preliminary Report to the Reviewer.

Interim Report of Reviewer

(a) In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall submit his Interim Report to the Board.

(b) On receiving such a report from a reviewer in terms of these Guidelines, the Board, having regard to the Report and any submissions or representations attached to it, may make recommendations to the practice unit.

(c) The Board may instruct the reviewer to again carry out the review **after six months** to verify that systems and procedures have been streamlined and /or modified as instructed by the Board and accordingly, on satisfying himself that the Practice Unit has streamlined or modified its systems and procedures as instructed by the Board, the **Peer Reviewer** shall submit a Final Report to the Board.

Final Report of Reviewer

(a) The reviewer will prepare the Final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

(b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, issue Peer Review Certificate to the practice unit.

OFFICE SYSTEMS AND PROCEDURES

Under the Guidelines for Peer Review of Attestation Services by Practising Company Secretaries, the Peer Review is expected to examine the Office systems and procedures with regard to compliance of attestation services.

The Reviewer shall verify whether the Practice Unit has adequate office systems and procedures in place. However, the extent and scale of these systems may vary from one practice unit to another, depending upon the size and scale of practice of the Practice Unit.

The Reviewer shall particularly examine the following aspects, besides forming his own judgment during the Review:

1. Whether the Practice Unit has a document management system which should ideally include the filing system, record storage and retrieval system (whether in hard copy or soft copy),

2. Whether allocation of attestation assignments among the Trainees are commensurate with the capability of the staff, whether the assignments are properly carried out and the attestation services are verified by the Proprietor or Partner of the Practice Unit or a Qualified Assistant in the office of the Practice Unit before authentication.

Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

Proper training and capacity development of the Apprentice Trainee(s) and other staff in the office of the Practice Unit is very essential to maintain the quality of attestation services. As it may become difficult for the Practice Unit to attend to every attestation service, most Practice Units generally rely on the Trainees for execution of the attestation services. In this context, the Peer Reviewer may examine whether:

1. The Apprentice Trainees are maintaining a Training Diary to record the work done every day and whether the Dairy is being examined by the Proprietor/Partner/Qualified Assistant of the Practice Unit periodically.
2. Whether any Staff Induction Process is in place.
3. Whether the Staff are periodically encouraged to attend any Training Program or any other Capacity Building Programme, including any in-house mechanism for their professional development.
4. Whether the office of the Practice Unit is equipped with a library or reference material relating to professional services.
5. Whether the overall décor/appearance of the office of the Practice Unit is satisfactory.

The list furnished above is only illustrative. The Peer Reviewer may like to examine any other matters also. However, in doing so, the Peer Reviewer shall keep in mind the size of the Practice Unit and its scale of operations.

QUALITY REVIEW BOARD

1.	Quality Review Board (QRB) has been constituted by Government of India in exercise of the powers conferred by Section 29 A of the Company Secretaries Act, 1980
2.	The Board has been set up to review and enhance the quality of the services rendered by the members of the ICSI. The Board aims to standardize the practices followed by the Company Secretaries and enhance the quality of the services rendered by the members of ICSI on continuous basis.
3.	The Company Secretaries Act, 1980 provides for the regulation of the profession of Company Secretaries in India. The Act was amended in the year 2006 and sections 29A to 29D were inserted making provision for the establishment of Quality Review Board (QRB).

The Company Secretaries (Amendment) Act, 2006

Establishment of Quality Review Board SECTION 29A

1. The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.
2. The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.
3. Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

FUNCTIONS OF BOARD SECTION 29B

1. to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;
2. to review the quality of services provided by the members of the Institute including secretarial Audit services; and
3. to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

PROCEDURE OF BOARD SECTION 29C

The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS OF BOARD AND ITS EXPENDITURE SECTION 29D

1. The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.
2. The expenditure of the Board shall be borne by the Council.

GUIDANCE MANUAL ON QUALITY OF AUDIT AND ATTESTATION SERVICE

Objective of Guidance Manual:

The objective of the Manual is

1. To guide the Company Secretaries to establish policies, procedures & systems to maintain the highest standards of quality in the assignments undertaken by them
2. To establish and maintain a system of quality control to provide it with reasonable assurance that the reports or certificates issued by the firm or engagement partners are appropriate in the circumstances.

QUALITY MANAGEMENT SYSTEM

It is important to understand the meanings of Quality Assurance (QA) and Quality Control (QC) as both terms are the integral part of the quality management systems. For an effective operation, it is important to relies the differences between these terms.

An Effective Quality Management Systems (QMS) contribute enormously to the success of an Practicing Unit, whereas when it is poorly understood, the QMS are likely to be weak and ineffective in ensuring the timely delivery and in competent in satisfies the customer's requirements.

QUALITY ASSURANCE INCLUDES GUIDELINE FOR PRACTICE AND PREVENTION

Quality Assurance is focused on planning, documenting and agreeing on a set of guidelines that are necessary to assure quality which are issued by the various regulators on time to time. One of the example for quality assurance is instruction kit of various e-forms, whereas the purpose of the Instruction kit is to provide guidance on the requirement of the form and to have correct record in place.

Normally the QA guideline provides DO's and Don'ts, Instructions, verification methodology, possible errors and defect along with the remedial action required for the same.

The purpose of QA is to prevent defects from entering into system and In other words, QA is a pro-active management practice that is used to assure a stated level of quality in place.

The quality assurance could also be considered as a tool of risk mitigation However the effective communication between the Company, its directors KMP's, officers is very important to take informed decision and to take support and guidance from experts before taking and corporate Action, which may cause a risk to the company, its directors KMP;s Officers and Other stakeholders.

QUALITY CONTROL INCLUDES STRATEGY OF DETECTION AND IMPROVEMENT

Quality Control can be referred as the examination of Output, Review of the work and assignment already taken place, on the various parameter like time involved, number of resubmission, deficiency, cost, manpower, expertise engaged etc. QC involves verification of output conformance to desired quality levels.

ICSI GUIDANCE MANUAL ON QUALITY MANAGEMENT SYSTEMS

LEADERSHIP RESPONSIBILITIES

1. The firm should assign responsibility for each assignment to one of its partners or the team leader who shall be responsible for overall quality of such assignment.
2. The proprietor of the entity/partners of the firm shall be responsible for quality maintenance and quality improvement of which recommended features are:

• Communication of the quality control policies and procedures to all team members / relevant personnel. The methods for communication, scope and frequency thereof should be established.
• Establishing a process that encourages personnel to communicate their views or concerns on quality control matters.
• Clearly establishing responsibilities of the proprietor of the entity / partners of the firm and other senior personnel for quality control.
• Promotion of an internal culture of quality and provision of related practical guidance including coverage in professional development programs.
• Demonstration of firm's overriding commitment to quality, above commercial considerations through the firm's policies and procedures.
• Addressing performance evaluation, compensation and promotion; and devotion of sufficient resources for the development, documentation and support of quality control policies and procedures.
• Ensuring possession of appropriate qualifications, experience, ability and authority of those to whom responsibilities for quality control and performance are assigned.

3. The firm shall keep and preserve the above documents for prescribed period (unless prescribed by any statute, rules or authority, the firm shall decide and document the period of preservation which should not be less than three years). However, putting those policy documents in public domain is optional.

ETHICAL REQUIREMENTS

1. The firm, its partner or the team leader responsible for the assignment should ensure whether members of the audit team have complied with relevant ethical requirements.

2. Ethical requirements include:
   (a) independence;
   (b) Integrity;
   (c) Objectivity;
   (d) Professional competence and due care;
   (e) Confidentiality;
   (f) Professional conduct; and
   (g) Technical standards

3. The firm, its partner or the team leader responsible for the assignment should assess the independence requirements which apply an assignment. In this regard, the independence policy issues are:

(a) Policies and procedures should be in place to provide reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements, maintain independence where required to do so.
(b) Communication to, and education of, partners and professional staff, including non-audit personnel, to ensure that they understand the independence policies that relate to their activities.
(c) Policies and procedures to identify and evaluate circumstances and relationships that create threats to independence so that appropriate action may be taken to eliminate or reduce the threat to an acceptable level by applying safeguards or, if considered appropriate, by withdrawing from the engagement.
(d) Policies and procedures required to ensure compliance with the auditor's independence requirements of the relevant laws &rules.
(e) Requirements for engagement partners to provide the firm with relevant information about client engagements, including the scope of services, to enable it to evaluate the overall impact, if any, on independence requirements of accepting or continuing with an engagement.
(f) Maintenance of adequate records to identify, communicate, and monitor compliance with, specific independence requirements (e.g., prohibited investment lists) so that appropriate action can be taken regarding identified threats to independence.
(g) Policies and procedures to provide the firm with reasonable assurance that it is notified of breaches of independence requirements so that it may take appropriate action to resolve such situations.
(h) Periodic written (or electronic) confirmation (at least annually) of compliance with firm policies on independence by all personnel required to be independent.
(i) Processes in place to evaluate the appropriateness of undertaking non- assurance services for audit clients.

FAMILIARITY THREAT

1. A familiarity threat arises when, by virtue of a close or long-term relationship with a client, its directors, officers or employees, the firm or person on an engagement team may become too sympathetic to the client's interests compromising the independence of the auditor/firm.

2. Rotation requirement - deploying the same principal auditor on an audit or assignments from the firm over a prolonged period of time may create a familiarity threat. This threat is particularly relevant in the context of the audit/assignments of listed entities and safeguards should be applied in such circumstances to reduce such threat to an acceptable level.

INTEGRITY

1. While carrying out the assignments, firm should ascertain the integrity aspects of the client. This is particularly applicable in case of new clients though such periodical assessment may also be carried in case of existing clients.

2. Integrity is associated with soundness or moral principles and character in dealings with others. For assessing and evaluating the integrity the following aspects of the client may be considered:

• The identity, business reputation and attitude of the owners and key management personnel and related parties.
• The nature of the client's operations, including its business practices.
• Attitude of the management towards compliance of various statutory requirements including implementation of Secretarial Standards, the internal control systems, internal audit etc.
• Limitations suggested / imposed on the scope of work.
• The reasons for the proposed appointment of the firm and non-reappointment of the previous firm.

PROFESSIONAL COMPETENCE AND DUE CARE

- Firm should take due care in reporting and authenticating documents and statements applying his professional skills and maintaining objectivity and integrity. While exercising due care and reflecting professional competence, firm should possess:

  (a) An understanding of Secretarial Standards applicable to fulfill the responsibilities;
  (b) special skills (for example, industry specific knowledge) necessary to perform the work on the non- financial information of the particular component; and
  (c) an understanding of the applicable cost/financial reporting framework that is sufficient to fulfill the responsibilities.

CONFIDENTIALITY

1. Confidentiality is the spirit of company secretarial profession and as a professional, complete confidentiality of information obtained during assignment is the basic requirement.

2. Relevant ethical requirements establish an obligation for the firm's personnel to observe at all times the confidentiality of information contained in engagement documentation, unless specific client authority has been given to disclose information, or there is a legal or professional duty to do so.

PROFESSIONAL CONDUCT

1. Company Secretaries are looked upon as trustworthy guardians caring for consumer protection, investor protection, guides to corporate world in secretarial leadership. As corollary their professional conduct must also be illustrative and aboveboard.

2. The members of the Institute of Company Secretaries of India are bound by a code of conduct. This code stipulates and binds Company Secretaries to the highest level of care, duty and responsibility to their employers and clients, the public and their fellow professionals.

PERFORMANCE EVALUATION

1. Performance Evaluation is necessary for developing and maintaining competence and commitment to ethical principles which include;

(a) Making personnel aware of the Firm's expectations regarding performance;
(b) Providing personnel with evaluation of performance;
(c) Helping personnel understand that advancement to provisions of greater responsibility depends, among other things, upon performance quality; and
(d) Explaining personnel in clear terms that the failure to comply with the firm's policies and procedures may result in disciplinary action.

2. In order to evaluate the performance, maintenance of the documents, containing following aspects is recommended:

(a) Overall quality on each assignment and the responsibility of the engagement partner.
(b) Engagement quality and consistency through use of Manuals and/or software tools or other forms of standardized documentation and industry or subject matter-specific guidance.
(c) Supervision, quality control and documentation of work during the engagement.
(d) Review by more experienced personnel, including the engagement partner, of work performed by less experienced team members prior to issuing the report.
(e) Policies and procedures for the assembly of final engagement files on a timely basis after the engagement reports have been finalised.

REPORTING & CORRECTIVE MEASURES

1. For reporting the firm's findings to the appropriate management levels, for monitoring actions taken or planned, and for overall review of the firm's quality control system. The steps are:

(a) Discuss general findings with appropriate management personnel.
(b) Discuss findings on selected engagements with engagement management personnel.
(c) Report both, general and selected engagement findings and recommendations to firm's Management together with corrective actions taken or planned.
(d) Determine that planned corrective actions were taken.
(e) Determine need for modification of quality control policies and procedures in view of results of monitoring activities and other relevant matters.

EVALUATING CLIENT INFORMATION

- Designate an individual or group, at appropriate management levels, to evaluate the information obtained regarding the prospective client and to make the acceptance decision.

- Evaluate clients upon the occurrence of specified events to determine whether the relationships ought to be continued.

PRECONDITIONS OF ACCEPTING/CONTINUING ANY PROFESSIONAL ENGAGEMENT

Prior to acceptance of any engagement, the firm, in order to establish whether the preconditions for a professional assignment are present, shall:

(a) Determine whether the reporting framework to be applied in the preparation, audit, review of the secretarial/ non-financial statements is acceptable; and
(b) Obtain the agreement of management that it acknowledges and understands its responsibility:
(c) To provide the firm with access to all information of which management is aware that is relevant to the preparation/audit/review etc. of the secretarial/ non- financial statements such as records, documentation and other matters; Additional information that the firm may request from management for the relevant purpose; and Unrestricted access to persons within the entity from whom the auditor determines it necessary to obtain audit evidence.

LIMITATION ON SCOPE PRIOR TO ENGAGEMENT ACCEPTANCE

If management or those charged with governance impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the Secretarial/non-financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

OTHER FACTORS AFFECTING ENGAGEMENT ACCEPTANCE

If the preconditions for an audit/professional assignment are not present, the auditor shall discuss the matter with management. Unless required by law or regulation to do so, the auditor shall not accept the proposed audit engagement:

(a) If the auditor assesses that the reporting framework to be applied in the preparation of the secretarial/non-financial statements is unacceptable, or
(b) If the agreement has not been concluded.

AGREEMENT ON ENGAGEMENT TERMS

- The Firm shall agree upon the terms of engagement with the management or those charged with governance, as appropriate. The agreed terms of the engagement shall be recorded in an engagement letter or other suitable form of written agreement and shall include:

(a) The objective and scope of engagement;
(b) The responsibilities of the firm;
(c) The responsibilities of management;
(d) Identification of the applicable financial reporting framework; and
(e) Reference to the expected form and content of any reports and a statement that there may be circumstances in which a report may differ from its expected form and content.

- If law or regulation prescribes in sufficient detail the terms of the engagement referred to above, the firm need not record them in a written agreement, except for the fact that such law or regulation applies and that management acknowledges and understands its responsibilities.

- Decision to accept or continue any professional engagement and the need for disclosure of any content of the report or view of the individual firm, to appropriate authorities other than the clients (Regulator, Government or other authorities), if any, shall be based on above considerations subject to paragraphs 41 & 42 above.

CRITERIA FOR DECLINING, AND WITHDRAWING FROM AN ENGAGEMENT

Based on the evaluation of client information and the following factors, the firm will determine and document the boundary conditions beyond which it would be prudent to decline, or withdraw from an engagement:

(a) Client's status/information that is likely to impact adversely on the independence of the firm.
(b) Ability of the firm to provide appropriate service to the client, considering needs for technical skills, knowledge of the industry and personnel.
(c) Consider circumstances which would cause the firm to regard the engagement as one requiring special attention or presenting unusual risks.

INTEGRITY OF CLIENT AND ETHICAL REQUIREMENTS ON THE PART OF THE FIRM

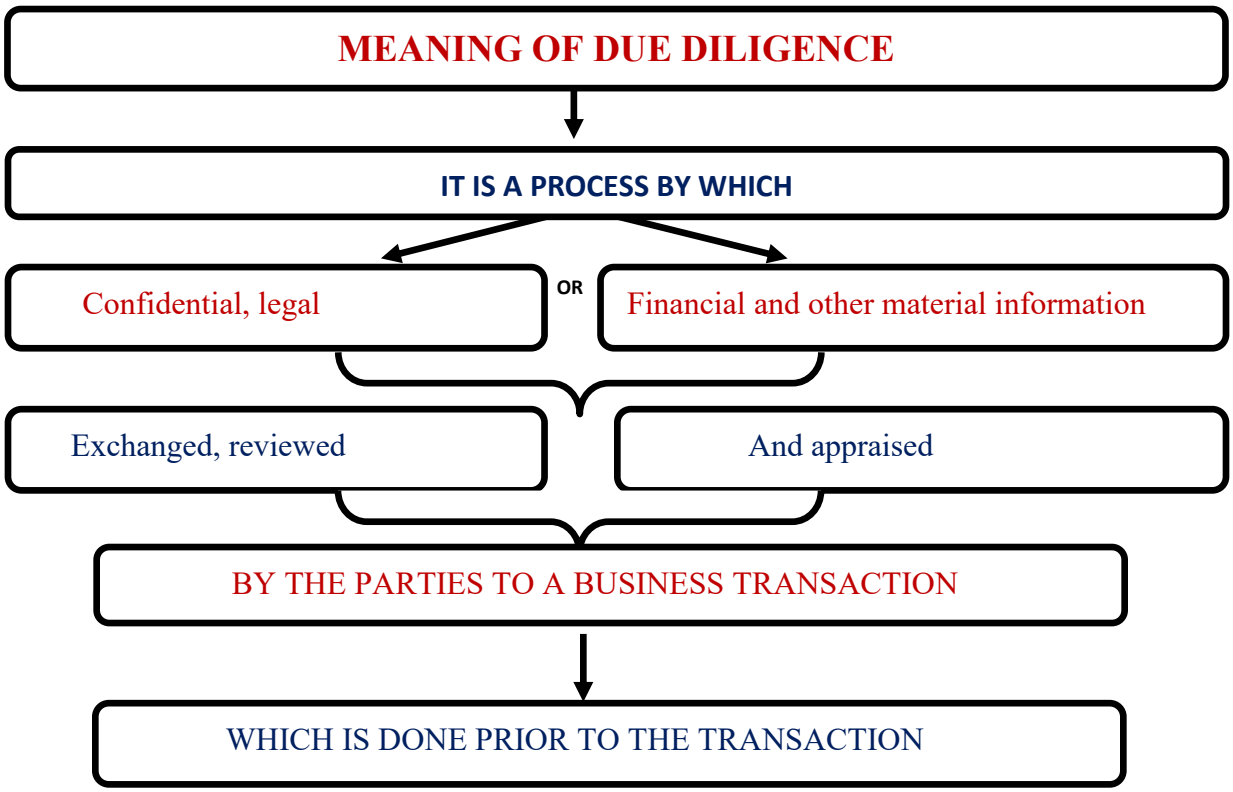
In this context, the following policies and procedures are needed:

(a) Procedures for the validation of the integrity and reputation of the client or potential client, including key members of management and those charged with governance.
(b) Procedures to determine the competence of the firm or practitioner to perform the engagement and availability of resources and adequate time to do so.
(c) Ability to meet the ethical and independence requirements.
(d) Policies and procedures where information is obtained subsequent to an engagement acceptance or continuation which, if the information had been obtained earlier, would have caused the engagement to be declined.

CHAPTER -38 DUE DILIGENCE AN INTRODUCTION

DUE DILIGENCE

1. Due diligence is an analysis and risk assessment of an impending business transaction.
2. It is basically a "background check" to make sure that the parties to the transaction have the required information they need, to proceed with the transaction.
3. To uncovered Misrepresentations and fraudulent dealings in a major business transaction it is required to have a proper due diligence.

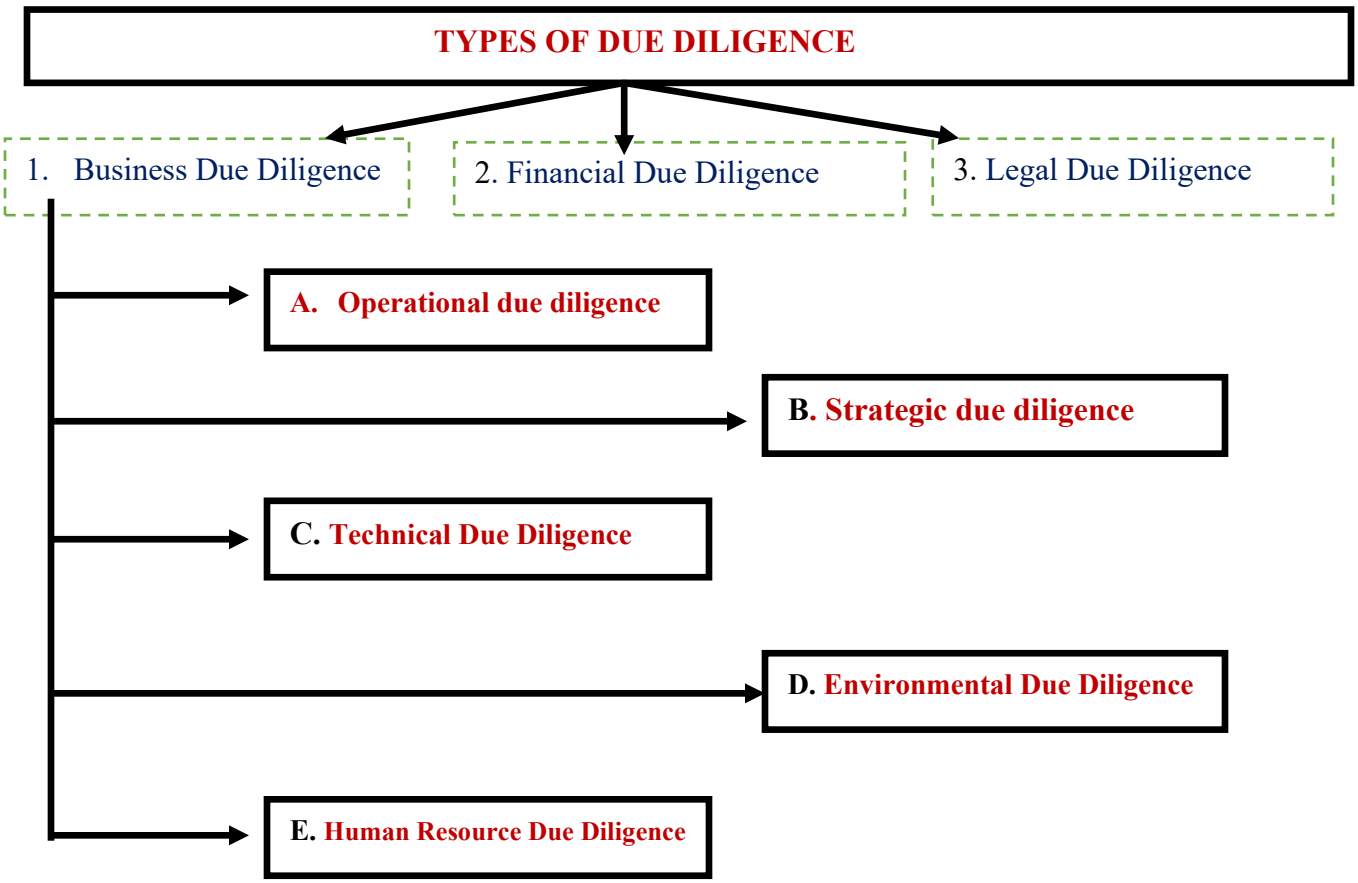


THE OBJECTIVE OF DUE DILIGENCE

1. Collect material of information from the target company.
2. Conduct a SWOT analysis to identify the strength and to uncover threats and weaknesses.
3. For improving the bargaining position depending on SWOT analysis.
4. To take an informed decision about an investment.
5. Identification of areas where representations and warranties are required.
6. To provide a desired comfort level in a transaction.
7. To ensure complete and accurate disclosure.
8. Bridge the gap between the existing and expected.

DUE DILIGENCE AND STATUTORY AUDIT

AUDIT	DUE DILIGENCE
Limited to financial analysis	Includes not only analysis of financial statements, but also business plan, sustainability of business, future aspects, corporate and managements structure, legal issues etc.
Based on historical data	Covers future growth prospects in addition to historical data.
Mandatory	Mandatory based on the transaction
Positive assurance i.e. true and fairness of the financial statements	Negative assurance i.e. identification of risks if any
Post mortem analysis	It is required for future decision
Always uniform	Varies according to the nature of transaction
Recurring event	Occasional event



TYPES OF DUE DILIGENCE

S.NO.	PARTICULARS	PROVISIONS
1	**BUSINESS DUE DILIGENCE** Business due diligence involves looking at quality of parties to a transaction, business prospects and quality of investment. It involves-	
A	**Operational due diligence**	Operational due diligence aims at the assessment of the functional operations of the target company, connectivity between operations, technological up gradation in operational process, financial impact on operational efficiency etc.
B	**Strategic due diligence**	Strategic due diligence tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the targeted value would be realized. It considers factors such as value creation opportunities, competitive position, critical capabilities.
C	**Information security due diligence**	Information security due diligence is often undertaken during the information technology procurement process to ensure that risks are uncovered. However, the regular review internal information security system helps to identifying security gaps, as well as ensure that the company is acting with an acceptable standard of care elevate existing information security management system. The information security due diligence covers the following: • Information Security Measure • Data Protection/ sharing policy • Network and System design • Wireless and Remote Access facility • Incident management and data recovery
D	**Environmental due diligence**	Environmental due diligence analyses environmental risks and liabilities associated with an organisation. This investigation is usually undertaken before a merger, acquisition, management buy-out, corporate restructure etc. Environmental due diligence provides the acquirer with a detailed assessment of the historic, current and potential future environmental risks associated with the target organisation's sites and operations.
E	**Human resource due diligence**	Human Resource Due Diligence aims at people or related issues. Key managers and scarce talent leave unexpectedly. Valuable operating synergies gets disturbed, when cultural differences between companies aren't understood or are simply ignored. It's crucial to consider cultural and employees issues upfront, for success of any venture.
	Technical Due Diligence	Technical due diligence can be classified in to (i) intellectual property due diligence; and (ii) technology due diligence.

		Intellectual Property Due Diligence Few of the items that need to be seen while conducting due diligence is: o Schedule of patents and its application o Schedule of copyrights, trademarks and brand names o Pending patents clearance documents o Any pending claims case by or against the company in violation of intellectual property **Technology Due Diligence** Technology due diligence help organizations in the decision-making process when acquiring new technologies or lines of business, or when they need a simple evaluation of how their current technology is functioning. Technology due diligence considers aspects such as current level of technology, company's existing technology, further investments required etc. Technology is a key component of merger and acquisition activities; it's imperative to look at IT considerations.
2	**FINANCIAL DUE DILIGENCE** Financial due diligence provides peace of mind to both corporate and financial buyers, by analysing and validating all the financial, commercial, operational and strategic assumptions being made. Financial Due Diligence includes review of accounting policies, review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures, examination of information systems to establish the reliability of financial information, internal control systems etc.	
3	**LEGAL DUE DILIGENCE** A legal due diligence covers the legal aspects of a business transaction, liabilities of the target company, potential legal pitfalls and other related issues. Legal due diligence covers intra-corporate and intercorporate transactions. It includes preparation of regulatory checklists meeting with personnel, independent check with regulatory authorities etc. apart from document verification.	

DIFFERENCE BETWEEN OPERATIONAL DUE DILIGENCE AND STRATEGIC DUE DILIGENCE

(a) Operational due diligence: Operational due diligence aims at the assessment of the functional operations of the target company, connectivity between operations, technological up gradation in operational process, financial impact on operational efficiency etc. It also uncovers aspects on operational weakness, inadequacy of control mechanisms etc.

(b) Strategic due diligence: Strategic due diligence tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the targeted value would be realized. It considers factors such as value creation opportunities, competitive position and critical capabilities

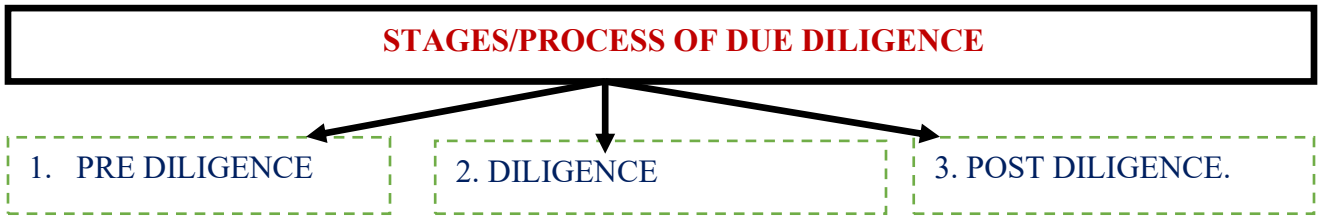
Factors to Be Kept In Mind While Conducting Due Diligence

1. Be clear about your expectations in terms of revenues, profits and the probability of the target company to provide you the same.
2. Consider whether you have resources to make the business succeed and whether you are willing to put in all the hard work, which is required for any new venture.
3. Consider whether the business gives you the opportunity to put your skills and experience to good use.
4. Learn as much as you can about the industry you are interested in from media reports, journals and people in the industry.

DOCUMENTS TO BE CHECKED IN DUE DILIGENCE PROCESS

The following are the few types of information or documents to be checked, during the process of due diligence.

1. Basic information
2. Financial Data
3. Important business Agreements
4. Litigation aspects
5. IPR Details
6. Marketing information
7. Internal control system
8. Taxation aspects
9. Insurance coverage
10. Human resources aspects
11. Environmental impact
12. Cultural aspects



1. PRE DILIGENCE

A pre diligence is primarily the activity of management of paper, files and people.

- Investor is to sign the Letter of Intent (underlines the various terms on which the proposed deal is to be concluded) and the Non-Disclosure Agreement with Target Company.
- Receipt of documents from the company and review of the same with the checklist of documents already supplied to the company.
- Identifying the issues.
- Organising the papers required for a diligence.
- Creating a data room.

2. DILIGENCE

After the diligence, is conducted, the professionals submit a report, which is common parlance is called **the DD report**.

These reports can be of various kinds

- A summary report
- A detailed report

THE OUTCOME OF THESE REPORTS

Deal Breakers: In this report the findings can be very glaring and may expose various non-compliance that may arise – any criminal proceedings or known liabilities.

Deal Diluters: The findings arising out a diligence may contain violations which may have an impact in the form of quantifiable penalties and in turn may result in diminishing the value of company.

Deal Cautioners: It covers those findings in a diligence which may not impact the financials, but there exist certain non-compliances which though rectifiable, require the investor to tread a cautious path.

Deal Makers: Which are very hard to come by and may not be a reality in the strict sense, are those reports wherein the diligence team have not been able to come across any violations, leading them to submit what is called a 'clean report'.

3. POST DILIGENCE

Post diligence sometimes result in rectification of non-compliances found during the course of due diligence. There can be interesting assignments arising out of the diligence made by the team of professionals. It can range from making applications/filing of petition for compounding of various offences or negotiating the shareholders' agreement, since the investors will be on a strong wicket and may negotiate the price very hard.

TECHNIQUES OF DUE DILIGENCE AND RISK ASSESSMENT

Due diligence and risk assessment and control represent separate and distinct processes that take place prior to the commencement, and throughout the duration, of a commercial agreement respectively.

The Due diligence and risk assessment and control processes are central to good business practice. These processes are particularly important in the taking leadership in the market and charge premium rate services, where services are delivered to clients through Associates, which can, on occasion, include many different parties, the professional should prior to contracting with such party, write down the expectation from such party in the process of due diligence.

All parties in the Due diligence team to be confident that the established team is for good positive business and industry-wide growth. Such processes are built on the following four cornerstones:

Know your client all businesses have risks, and these can vary significantly dependent on the nature of the company and the services being operated. It is important to know your client so you can properly identify the risks involved and assess how to manage them. This is not to limit or prevent commercial relationships forming, but to ensure they are properly managed whether an issue ultimately arises or not.

Properly identify the risks – this goes beyond listing risks, or simply identifying larger more obvious risks that may affect any commercial dealings. It involves proper consideration of the range and types of risks associated with particular clients and the services they provide, taking into account all the circumstances. This allows for effective management of the commercial relationship and careful preparation for handling of any problems that may arise.

Actions taken to control any risks – once risks are identified, industry members must make a proper assessment of the issues that would arise if incidents occur. , and take proportionate steps to minimise the likelihood of such issues resulting in consumer harm. Steps taken need not involve significant resources in advance. Good process planning and/or staff training may have a positive impact on a company's ability to respond effectively when incidents do occur. Even matters that are perceived to be unlikely or appear minor can pose long term difficulties if businesses are under prepared to respond to matters that do arise.

DATA ROOM IN DUE DILIGENCE

1. A data room discloses confidential data which is not available for public and may relate to business process, trade secret, technology information etc
2. A data room provides all important business documents/information which may be on financial, regulatory, IPR, marketing, press report or any important material aspect pertaining to a business transaction.
3. It provides for a common place where all records of important business information are kept for the review by a potential buyer.
4. The access to data room is made after signing of Non-Disclosure Agreement.

Need for Data Room

1. Removes ambiguity in the minds of buyer about the profitability, growth prospectus and sustainability of business that a proposed to be bought.
2. Provides material information that helps in doing a SWOT analysis.
3. It enables the buyer to do a better bargain through the analysis of the data.
4. May expose the weakness of the seller.
5. Provides data that helps in better valuation of business for both buyer and seller.

INFORMATION PROVIDED UNDER A DATA ROOM

1. Financial documents such as Annual Reports, Financial statements
2. Documents such as certificate of incorporation, Memorandum and Articles of Association.
3. HR information
5. Information relating to sales, marketing etc
6. Compliance related information
7. Information published in media.
8. IPR details
9. Information on litigation

TRANSACTIONS REQUIRE CREATION OF DATA ROOM.

1. Mergers, amalgamations and Acquisitions
2. Strategic Alliances
3. Partnering agreement
4. Business Coalitions
5. Outsourcing agreement
6. Technology or Product Licensing
7. Joint Ventures through technical or financial collaboration
8. Venture Capital investment
9. Public Issue

PHYSICAL DATA ROOM AND VIRTUAL DATA ROOM

Particulars	**Physical Data Room**	**Virtual Data Room**
Form of document	Papers, files, boxes or any tangible thing	Electronic or soft copies of documents including video or audio
Time required for creation of data room	Longer time required	Shorter time required
Cost	High cost	Low cost
Convenience	Less convenient	More convenient
Accessibility to data room	Restricted time	Any time

Facility to restrict access of document access	Not there	Access can be restricted
Ability to copy documents	Possible	Not possible

TRANSACTIONS REQUIRING DUE DILIGENCE

S.NO.	HEADING	PROVISONS
1	**Mergers, amalgamations and Acquisitions**	Due diligence investigations are generally for corporate acquisitions and mergers– i.e., investigation of the company being acquired or merged. These are also generally the most thorough types of due diligence investigations. The buyer or transferee company wants to make sure it knows what it is buying. Partnerships are another time when parties investigate each other in conjunction with negotiations
2	**Joint venture and collaborations**	Before entering into a major commercial agreement like a joint venture or other collaboration with a company, a collaboration partner will want to carry out a certain amount of due diligence. This is particularly likely to be the case where a large company is forming a relationship for the first time with a relatively small start-up company. The due diligence may not to be as extensive as in an acquisition, but the larger company will be seeking comfort that its investment will be secure and the small company has the systems personnel, expertise and resources to perform its obligations.
3	**Venture Capital Investment**	Before making an investment in any company, venture capitalizes will conduct business due diligence, which generally includes aspects such as a review of the market for the product of the company, background check on the founders and key management team, competition for the company, discussions with key customers of the company, analysis of financial projections for the business, review of any weakness/differences in the management team, minutes and consents of the board of directors and shareholders, corporate charter and bylaws, documents on litigations, patents and copyrights, and other intellectual property-related documents etc.
4	**Public Offer**	Public issue due diligence spans the entire public issue process. The steps involved may be **A.** Decisions on public issue. B. Business due diligence. C. Legal and financial due diligence. D. Disclosures in prospectus.

DUE DILIGENCE FOR MERGER & AMALGAMATION

a.	In case of the mergers and amalgamation of the companies, due diligence is a critical process which cannot be overlooked by the management as well as by the shareholders of the company while giving consent for the amalgamation.
b.	Due diligence in mergers not only requires the assessment of the financial, legal, and regulatory exposures, but also requires insights into the target company's structure, operations, culture, human resources, supplier and customer relationships, competitive positioning, and future outlook.
c.	The due diligence provide an assurance in taking decisions considering the factors which may be a potential deal- killers/shapers and provide assurances that the acquisition is the right decision at the right price.
d.	Due diligence also provides management an insights, holistic view of the target company that which helps in the easy integration of the target's people and business.
e.	Merger with an existing company will, generally, have the same features as an acquisition of an existing company. However, identifying the right candidate for a merger or acquisition is an art, which requires sufficient care and calibre.
f.	Once an organization has identified the various strategic possibilities, it has to make a selection amongst them. There are several factors financial/non-financial/ open/hidden factors that influence the ultimate choice of strategy. The process of analysis of strategic choices on various aspects for merger is done through due diligence process.

Information/Documents that may be required by the Regional Director, Ministry of Corporate Affairs, in Connection With Amalgamation.

- Balance sheets for last five years of the transferee company.
- Balance sheets for last five years of the transferor company.
- Two copies of the valuation report of the chartered accountants.
- List of top shareholders of the transferee company.
- List of top shareholders of the transferor company.
- List of directors of the transferor company and their other directorships.
- List of directors of the transferee company and their other directorships.
- Number and percentage of NRI and foreign holding in the transferee and transferor companies.

DUE DILIGENCE FOR TAKE OVERS

For any business, doing takeover of a business company is not an easy task. Moreover, it is an important financial investment that implies a number of risks, some of which can run the entire process aground. Which make the takeover due diligence as one of the prerequisites for takeover of a business.

The following Compliances are required to be checked under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

a.	Whether any acquisition/transfer has triggered open offer?
b.	Ensure that a merchant banker of Category I has been appointed who is not an associate of or group of acquirer or the target company.
c.	Ensure that an escrow account has been opened with the required deposit.

d.	A public announcement of an open offer to the shareholder of the target company has been given and detailed public statement has been published as per the prescribed timeline in case of Acquirer acquires the shares or voting rights of the target company in excess of the limits prescribed under Regulation 3 and 4 of these regulations.
e.	The public announcement has been sent to all the stock exchanges on which the shares of the target company are listed, to SEBI and to the target company at its registered office within one working day of the date of the public announcement.
f.	A detailed public statement has been published by the acquirer through the Manager to the Open Offer within maximum 5 working days from the date of public announcement as provided in regulation 13(4).
g.	The acquirer through the manager to the offer has filed a draft letter of offer along with the fee as prescribed in regulation 16, with SEBI for its observations within 5 working days of publication of Detailed Public Statement.
h.	The offer price is not less than the price as calculated under regulation 8 for frequently or infrequently traded shares
i.	The acquirer has made complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.
j.	Ensure that any person, who along with PACs crosses the threshold limit of 5% of shares or voting rights, has disclosed his aggregate shareholding and voting rights to the Target Company at its registered office and to every Stock Exchange where the shares of the Target Company are listed within 2 working days of acquisition or the disposal as per the format specified by SEBI. (Regulation 29(1) read with Regulation 29(3))
k.	Ensure that any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, has disclosed the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified. (Regulation 29(2) read with Regulation 29(3))
l.	Continual disclosures of aggregate shareholding has been made within 7 days of financial year ending on March 31 to the target company at its registered office and every stock exchange where the shares of the Target Company are listed by:
m.	The promoter (along with PACs) of the target company has disclosed details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event.

FEMA DUE DILIGENCE

Foreign Exchange Management Act (FEMA) is the legislation which governs the foreign currency in India. The main aim of FEMA is to facilitate external trade, balance the payments, promote the orderly development, and maintain the foreign exchange market in India. Doing Compliance for

cross border transactions in India is a big challenge for most of the companies covered in the FEMA.

The FEMA Due diligence covers all types of cross border transactions - import, export, debt funding, equity capital infusion, transfer of shares etc.

THE FOLLOWING ARE COVERED UNDER THE FEMA DUE DILIGENCE:

- Capital Accounts transactions
- Current account transaction
- Currency Transactions
- Regulations, Master Directions and Circulars issued by RBI
- FDI Policy, approvals

FCRA DUE DILIGENCE

The Foreign Currency (Regulations) Act, 2010, the FCRA Rules, 2011, and FCRA Amendment Rules, 2015 were respectively enacted to regulate the inflow of foreign funds received by NGOs. The FCRA, 2010 replaces the erstwhile Foreign Contribution (Regulation) Act of 1976.

The FCRA legislation state that an organization cannot receive funding from a foreign source, unless it is registered under the Foreign Currency (Regulations) Act, 2010 or has obtained special government approval for a specific project. Also the registered NGOs need to comply with various post-registration requirements, as detailed in the provisions of the Act and its rules of enforcement.

NGOs in India are categorized under three legal categories: society, trust, and a limited company. These may be founded for a specific cultural, economic, educational, religious, or social purpose. These organizations are heavily regulated by respective state and government agencies.

However, at the state level, an NGO can be registered as any of the following:

• Society under the Registrar of Societies;
• Public trust through the execution of a trust deed; or,
• Limited company under Section 8 of the Companies Act, 2013.

The Income Tax Department (IT Department) and Ministry of Home Affairs regulate registration, and require all NGOs to file annual tax returns and submit audited account statements to their respective agencies. All types of NGOs are treated equally under the Income Tax Act of 1961.

In order to be eligible for tax exemption status, an NGO must be founded for a charitable purpose. As defined in India law, 'charitable purposes' include relief for the poor, education, medical relief, and the advancement of any other object of general public utility. Once this status is established, charitable organizations can apply for an 80G certificate to enable donors to claim tax rebates against their donations.

HUMAN RESOURCE DUE DILIGENCE

Human Resource Due Diligence aims at people or related issues. Key managers and scarce talent leave unexpectedly. Valuable operating synergies get disturbed, when cultural differences between companies aren't understood or are simply ignored. It's crucial to consider cultural and employees issues upfront, for success of any venture.

HUMAN RESOURCE DUE DILIGENCE INCLUDES:

1. Analysis of total employees, including current positions, vacancy, due for retirement and serving notice period.
2. Analysis of current salaries, bonuses paid during last three years, and years of service.
3. All employment contracts with nondisclosure, non-solicitation and non-competition agreements between the company and its employees. In case there are a few irregularities regarding the general contracts, focus must be given.
4. HR policies regarding annual leave, sick leave and other forms of leave.
5. Analysis of employee problems for alleged wrongful termination, harassment, discrimination and any legal case pending about the same.
6. In case there are labor disputes, requests for arbitration, or grievance procedures currently pending, its financial impact needs to be seen.
7. A list and description of all employee health benefits and welfare insurance policies or self-funded arrangements.
8. Employee Benefit Schemes and schedule of grants of such scheme.

LABOUR LAWS DUE DILIGENCE

The purpose of a labour due diligence is to conduct a comprehensive review. The compliance from a labour law perspective in order to identify gaps before an authority audit any non-compliances relating to the inappropriate application of labour law regulations and to allow company to correct errors and deficiencies. The labour law due diligence is identify gaps and minimize labour law and payroll deficiencies before any regulatory action.

However, the Labour Law due diligence is important in case of the merger and acquisitions, takeovers, IPOs, joint ventures and winding up / liquidation of the companies. The scope of the labour law due diligence extend to the all labour & employment related central, state and local laws, rules and regulations applicable to the company.

During the payroll and labour due diligence the auditor should examine and review the following areas:

- Labour law regulations and agreements;
- Employment contracts, amendments to employment contracts;
- Information, job descriptions;
- Legal declarations/agreements regarding termination of employment;
- Maintenance of records
- Verification of compliance by contractor engaged by the company

INFORMATION SECURITY DUE DILIGENCE

Information security due diligence is often undertaken during the information technology procurement process to ensure that risks are uncovered. However the regular review internal information security system helps to identifying security gaps, as well as ensure that the company is acting with an acceptable standard of care elevate existing information security management system. The information security due diligence covers the following:

- Information Security Measure
- Data Protection/ sharing policy
- Network and System design

NON-DISCLOSURE AGREEMENT (NDA)

NDAs are common in business, as it provide a safe guard to protect trade secrets and other confidential information which are meant to be kept under wraps. Information commonly protected by NDAs might include research & development activities, innovations for a new product, client information, sales and marketing plans, or a unique manufacturing process. The nondisclosure agreement ensure that the business secrets will stay underground, and in case of any failure, the company is eligible to have legal recourse and to sue for damages.

The agreement explicitly spell out that the person receiving the information need to keep the same as secret and have limited use for the purpose it has been provided by the company. This means it will be considered as breach of agreement, when it encourages others to breach it, or allow others to access the confidential information through improper or unconventional methods.

a nondisclosure agreement is defined as a legally enforceable contract that creates a confidential relationship between a person who holds some kind of trade secret and a person to whom the secret will be disclosed.

The Confidentiality agreements typically serve three key functions:

To protect sensitive information. By signing an NDA, participants promise to not divulge or release information shared with them by the other people involved. If the information is leaked, the injured person can claim breach of contract.

In the case of new product or concept development, a confidentiality agreement can help the inventor keep patent rights. In many cases, public disclosure of a new invention can void patent rights. A properly drafted NDA can help the original creator hold onto the rights to a product or idea.

Confidentiality agreements and NDAs expressly outline what information is private and what's fair game. In many cases, the agreement serves as a document that classifies exclusive and confidential information.

CONTENT OF THE NON-DISCLOSURE AGREEMENTS

Definitions and exclusions of confidential information;

Definitions of confidential information spell out the categories or types of information covered by the agreement. This specific element serves to establish the rules-or subject/consideration-of the contract without actually releasing the precise information.

Obligations from all involved people or parties; and time periods.

At the same time, nondisclosure agreements often exclude some information from protection. Exclusions might comprise information already considered common knowledge or data collected before the agreement was signed.

Additionally, Time periods are also commonly addressed in NDAs and usually require that the party receiving the information stays mum for a number of years. This specific information is usually up for negotiation.

Chapter 16

Due Diligence

CASE STUDY

In 1998, a German company Daimler Benz merged with Chrysler Group for a value of $36 billion. However, the merger was not successful and the value of Chrysler fell to $7.4 billion after a couple of years. According to various experts, Daimler failed to conduct a proper due diligence process which resulted in over-valuation of the target company.

CASE STUDY

Amazon began due diligence to buy MX Player

In March 2023, Amazon.com Inc. made advanced talks to acquire MX Player, the video streaming platform owned by Times Internet. Amazon owns the subscription streaming service Prime Video and an ad-supported MiniTV service in India. Amazon launched the free MiniTV service in May 2021 within the Amazon shopping app for phone users.

In 2018, Bennett Coleman & Co Ltd (BCCL)-owned Times Internet, acquired MX Player for `1,000 crore (around $140 million at that time) to mark its entry into video streaming.

The US e-commerce giant has hired one of the Big Four accounting firms to carry out due diligence of MX Player exclusively, and the process is expected to take 30-40 days. As per the anticipations of experts, a deal could happen within two months if all goes well.

Earlier, Times Internet was asking for over $100 million for MX Player, while Amazon's internal team valued it at around `500 crore ($60 million). The deal is likely to be in the range of `600-900 crore.

CASE STUDY

In September 2008, UAE based Etisalat acquired 45% stake in the Indian telecom operator Swan Telecom (renamed as Etisalat DB) for $900 million. A year later, the Supreme Court of India revoked 2G licences awarded to Swan Telecom due to impropriety in obtaining the licences. The due diligence process carried out by Etisalat failed to detect any impropriety in obtaining telecom licenses. Etisalat faced significant financial losses of upto 827 million dollars and later took an exit from the company. Thereafter, Etisalat issued legal proceedings against the promoters of Swan Telecom (renamed as Etisalat DB) on the grounds of fraud and misrepresentation.

CASE STUDIES

PhonePe's due diligence on ZestMoney was unsatisfactory

Recently, in April 2023 the Walmart-backed PhonePe has called off its deal with Zest Money over due diligence concerns. The due diligence that PhonePe carried for nearly six months while evaluating the muchanticipated acquisition of ZestMoney did not meet its bar.

ZestMoney facilitates Buy Now Pay Later (BNPL) loans by disbursing the purchase amount from the lending partner directly to the merchant, allowing the customer to repay the lender in installments. PhonePe initiated talks to acquire ZestMoney to bolster its digital lending forays.

Hindustan Motors, European partner complete due diligence for EV project

In October 2022, Hindustan Motors Ltd and its European partner have completed due diligence for the proposed electric two-wheeler project. The Joint Venture (JV) is likely to launch the electric vehicles in the next financial year at Hindustan Motors' Uttarpara plant in West Bengal.

According to the company's statement, after the formation of JV, around six months are required to start a pilot run. The structure of the JV is being finalised, including the proportion of equity to be held by the partners.

CASE STUDIES

1. Bharti – Zain Deal

Airtel acquired Zain a Kuwait based telecom company's assets in Africa's 15 countries. The company suffered low EBITDA even after 5 years. Various reasons like Africa's economy contributed to the failure of the acquisition. The due diligence of Bharti lacked somewhere to appreciate and identify the risks of failure in this acquisition. A comprehensive and complete due diligence could have placed Bharti Airtel in a better position.

2. In Satyam Fraud case, Accounting regulator ICAI's probe panel has hit out at banks for not doing due diligence on Satyam Computer Services before giving loans. The banks that gave loans to Satyam during 2000-08, despite the company claiming huge surpluses, were HDFC Bank (Rs 530 crore), Citibank (Rs 223.87 crore) Citicorp Finance (Rs 222.28 crore), ICICI Bank (Rs 40 crore) and BNP Paribas (Rs 20 crore), totalling Rs 1,221.16 crore.

SEBI Penalised 5 Ex-directors of Bombay Dyeing, Others over Alleged Due Diligence Lapses

The Securities and Exchange Board of India (SEBI) has penalised five former independent directors of Bombay Dyeing and Manufacturing Company (BDMCL) with a total fine of Rs59 lakh for alleged failure to carry out adequate due diligence and exercise independent judgement as members of the audit committee.

Silicon Valley Case Study

Silicon Valley has gained a reputation for being home to numerous "unicorn" companies, startups valued at over $1 billion. While these companies may appear to be the future of tech innovation, they often have inflated valuations that are not supported by their financial performance. This is partly due to a lack of due diligence from investors who are eager to get in on the ground floor of the next big thing.

Due diligence is the process of conducting a thorough investigation into a company's financial, legal, and operational status before investing in it. It helps investors assess the risks and potential returns of a potential investment, as well as identify any red flags that may indicate fraud or mismanagement. Despite its importance, many investors in Silicon Valley have been criticized for neglecting due diligence in their eagerness to invest in the next "unicorn" startup.

Through this case the importance of due diligence is re-iterated. Proper due diligence can help investors make informed decisions and avoid costly mistakes, leading to more sustainable growth and long-term success.

CASE STUDY

1. Zee Entertainment – Sony India Merger

Zee Entertainment Enterprises Limited (ZEEL) and Sony Pictures Networks India (SPNI), two of India's biggest media conglomerates, have taken the first steps towards a multibillion-dollar merger. The Zee board of directors approved the merger between the two companies. The agreement has the potential to make the newly created company one of the country's largest and most sought after.

Sony Pictures Entertainment would invest $1.575 billion in the newly consolidated firm as part of the acquisition. On September 22nd, Zee's board of directors gave in-principle permission for the execution of a non-binding term sheet with SPNI. In addition, the two parties will sign a non-compete agreement.

According to R Gopalan, chairman of Zee Entertainment, "ZEEL continues to chart a strong growth trajectory and the board firmly believes that this merger will further benefit ZEEL,", "The value of the merged entity and the immense synergies drawn between both the conglomerates will not only boost business growth but will also enable shareholders to benefit from its future successes."

Results:

With the Zee-Sony merger, viewers of the Sony network in India will gain access to over 260,000 hours of Zee television content and also its film library with rights to more than 4,800 movie titles across languages. On the cost front, too, the merged entity will have an advantage. In terms of content offering, Sony is strong in General Entertainment and Sports and Zee has an edge in regional content. With this merger Zee has gained access to Sony's 10 sports channels. Although the deal is not executed yet.

2. ABC Limited (manufacturing company in food segment) is considering merging with a smaller food manufacturer company (DEF Limited), with the aim to absorb their operations. After agreeing in principle, the ABC Limited enters the due diligence phase and performs in-depth research on the company they are considering to acquire i.e. DEF Limited. During this step, the ABC Limited asks the DEF Limited, for extensive financial information.

After completing its thorough financial diligence of the DEF Limited, the ABC Limited directs the research team to evaluate the value of the IP assets, namely their brands and logos. This entire process brought positive reactions from all involved. The ABC Limited was content because it had bigger plans with this merger and its objectives combined. This becomes a positive opportunity for both to expand into a larger company.

CERTAIN OTHER TYPES OF DUE DILIGENCE

Ethical Due Diligence

Ethical Due Diligence measures ethical character of the company and identify the possibilities of ethical risks, which is a non-financial risk. It may relate to reputation, governance, ethical values etc. It helps an organization to decide whether the partner is ethically viable. This is an effective reputation management tool for any type of business decisions.

Ethical due diligence of management of a company involves assessing employees in terms of their fit with the ethical culture and values of the organization. Ethical performance assessment is also used as one of the parameter of the career development and promotion within the organization.

Carrying out the assessment of a company's ethics as part of a due diligence can add considerably to the depth of insight into the target company. For an ethics assessment to add this value, it is crucial that it is an accurate and reliable assessment.

Strategic Due Diligence

Strategic due diligence tests the strategic rationale behind a proposed transaction and analyses whether the deal is commercially viable, whether the targeted value would be realized. It considers factors such as value creation opportunities, competitive position, and critical capabilities. Strategic due diligence focuses on determining how much adequate, realistic, and attainable is a deal's value. Strategic due diligence is broader and considers micro and macro-environmental factors of a business, connecting the legal and financial consideration with a long-term focus. Essentially strategic due diligence determines the question, "Whether a business plan can hold up to the market realities?"

CASE STUDY

A manufacturing firm that builds components for lithium batteries wants to develop and manufacture entire battery systems autonomously. They are looking at merging with a mid-sized firm that is into manufacturing battery cases and would be interested in conducting strategic diligence to identify firms that align with the vision of the company, and who can enable their manufacturing objectives. They find the best fit for the company and observe that a proper diligence on the human resources of the firm is crucially fundamental, as the operations of the manufacturer are labour intensive.

To understand if the work culture can align with their objectives, the executives from the former firm conduct diligence on the HR policies in place. The results were favourable, as the policies in place were conducive to the merger. They further conduct thorough diligence on the employee demographics for a better understanding of the salaries, tenure, specific skill sets, work hours put in, the average age and the bonuses drawn. There is a thorough assessment of any pending litigations or claims regarding breach of contracts, pensions, and employee's compensation to ensure everything is in order before proceeding with the merger documentation.

SOME IMPORTANT QUESTIONS AND ANSWERS

Examine and comment on the SWOT analysis of target business is carried out as part of due diligence.

Answer:

The SWOT analysis of the target business carried out as a part of due diligence has to reveal the strengths and weaknesses of not only the financials but also intangibles.

To do this effectively, the potential buyer needs to be clear about the goals and motives for acquiring the target company, as well as the value the buyer is attempting to create with the purchase. For example, if there is a legal risk, such as an outstanding lawsuit, that will not only jeopardize the financial stability of the company but also the loyalty of existing customers, This will erode the target company's market of customers by a new and stronger competitor. The target company's talent is the asset desired, and much of this depends on employee relations and accordingly cultural issues has to be addressed in time.

During the diligence process, care should be taken to adhere to certain hospitality issues. Comment

Answer

During the diligence process, case should be taken to adhere to certain hospitality issues like:

a) Be warm and respective to the professionals who are conducting diligence.
b) Enquire on the Due Diligence team.
c) Join them for lunch.
d) Ensure good supply of refreshments.
e) In case of any corrections – admit and rectify.

As regards the process of diligence, as a professional care should be taken to scrutinize every document that is made available and ask for details and clarifications, though generally the time provided to conduct the diligence may not be too long and though things have to be wrapped up at the earliest. The company may be provided an opportunity to clear the various issues that may arise out of the diligence.

Write notes on the Documents to be checked in due diligence process

ANSWER: Refer chapter 38

Write notes on the Requirement of data room for due diligence

ANSWER: Refer chapter 38

Write notes on the "Due diligence" and "audit"

ANSWER: Refer chapter 38

Distinguish between "Operational due diligence" and "Strategic due diligence"

ANSWER: Refer chapter 38

Distinguish between the "Technical due diligence" and "Financial due diligence"

ANSWER: Refer chapter 38

Write a note on "intellectual property due diligence

ANSWER: Refer chapter 38

Explain the following terms used in due diligence report

- **Deal breakers**
- **Deal diluters**.

ANSWER: Refer chapter 38

Critically examine and comment on the objective of due diligence is to allow the investigator to consider the various options, considering the fact found in the course of due diligence.

ANSWER: Refer chapter 38

Critically examine and comment on the concept of data room and its need in due diligences.

ANSWER: Refer chapter 38

CHAPTER -39 LEGAL DUE DILIGENCE

MEANING OF LEGAL DUE DILIGENCE

IT IS A PROCESS OF SCRUTINY OF

ALL

SPECIFIC PARTS

OF THE LEGAL AFFAIRS OF THE TARGET COMPANY

With a view of uncovering any legal risks and provide the buyer with an extensive insight into the company's legal matters.

OBJECTIVES OF LEGAL DUE DILIGENCE

1. Gathering of information from the target company.
2. Uncovering of the risks of Target Company through a SWOT analysis.
3. Improving the bargaining position.
4. Cost benefit analysis
5. Effect of risk and liability on the cost of the transaction.
6. Mapping of compliance requirements of the target company and the actual status.
7. It ensures that necessary precautions are taken in relation to the transaction proposed.

Distinguish between the following: 'Legal due diligence' and 'financial due diligence

LEGAL DUE DILIGENCE	FINANCIAL DUE DILIGENCE
Legal Due Diligence covers the legal aspects of a business transaction, liabilities of the target company, potential legal pitfalls and other related issues. Legal due diligence covers intra-corporate and inter corporate transactions. It includes preparation of regulatory checklists, meeting with personnel, independent check with regulatory authorities etc. apart from document verification.	Financial Due Diligence includes review of accounting policies, review of internal audit procedures, quality and sustainability of earnings and cash flow, condition and value of assets, potential liabilities, tax implications of deal structures, examination of information systems to establish the reliability of financial information, internal control systems etc.

Need of Legal Due Diligence

Legal due diligence is a precautionary operation through which one can know the strengths and weaknesses of the company through the maximum possible information available. This process reduces future problems and ensures safety.

TRANSACTIONS THAT REQUIRE LEGAL DUE DILIGENCE

- Mergers/Acquisitions
- Corporate Restructuring
- Corporate Governance related matters
- IPOs/FPOs
- Private Equity
- General Compliance requirement.
- Commercial agreements
- Leveraged buy-outs
- Joint Ventures etc

SCOPE OF LEGAL DUE DILIGENCE

1. Regulatory Compliance

It would include compliance requirements of the company under various applicable laws such as Companies Act, Income Tax, SEBI Act rules and regulations, employee related laws, other business related laws such as pollution control laws, patent laws, applicable laws in the country where the target company is situated.

2. Contractual Compliance

It would include the compliance by the company under various material contracts by the company with suppliers, customers, employees etc. and to verify whether the company has complied with the terms and conditions of different contracts.

3. Compliance Under Intra-Corporate Aspects

It would include the compliance by the company under the intra company documents such as Memorandum and Articles of Association, Corporate policies, procedures, code of conduct etc.

4. Financial Aspects

It includes thorough reading of the balance sheet to identify the financial obligations of the company, penalties paid for violations of laws in the past etc.

5. Cultural Aspects

Especially in case of cross border transactions, compatibility and adaptability of corporate cultures are to be analysed to eliminate the problems that may arise out of cultural differences.

Legal Due Diligence Process

- Entering of Memorandum of Understanding between the transacting parties along with confidentiality agreement
- Determination of scope of Legal Due Diligence
- Calculation of time frame
- Drafting of various questionnaire and checklists Obtaining of access to records and data room agreement
- Interaction with management and key managerial persons with the questionnaire and checklists and for other material information
- Interaction with regulatory authorities for independent check
- Checking of regulatory and contractual compliance
- Analysis of financial and non-financial information
- Collation with financial due diligence for confirmation of representations, warranties and liabilities
- Investigation of material issues
- Drafting of preliminary report
- Discussions with the management of the target company
- Finalisation of the Report

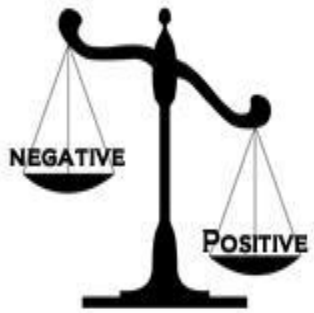
Possible Hurdles in Carrying Out a Legal Due Diligence And Remedial Actions

- Non availability of information
- Unwillingness of target company's personnel in providing the complete information
- Providing of incorrect information
- Complex tax policies and hidden liabilities
- Multiple Regulations and its applicability
- Process in providing data
- Absence of proper Management Information System.

Actions to break hurdles in due diligence

- Focus follow up questions.
- Ask several people the same questions and utilise appropriate professional skepticism.
- Polite persistence may help to overcome this attitude.
- Independent check with regulatory authorities.
- Insert the necessary disclaimer clauses in the due diligence report.

Role of Company Secretaries in Legal Due Diligence



1. Company Secretary is a competent professional who comes in existence after exhaustive exposure provided by the Institute of Company Secretaries of India (ICSI) through compulsory coaching, examinations, rigorous training and continuing education programmes.
2. Security Laws and an exclusive paper on 'Due Diligence and Corporate Compliance Management'. Company Secretary, thus, has vast theoretical knowledge base and practical experience and exposure in various laws and financial aspects.
3. As a Compliance Management specialist, a company secretary is competent to discharge the Legal Due diligence process efficiently.
4. Company Secretary while carrying out due diligence has to maintain confidentiality. Certain activities conducted during due diligence may breach confidentiality that a transaction is being contemplated.

SOME IMPORTANT QUESTIONS AND ANSWERS

1. Write notes Legal due diligence

ANSWER: Refer chapter 39

2. Distinguish between the following legal due diligence and financial due diligence

ANSWER: Refer chapter 39

3. As a practicing company secretary you have been asked to carry out the due diligence of XYZ Ltd. For a possible acquisition of the controlling interest from the owners of the said company. Explain briefly the possible hurdles that may occur while carrying out the due diligence and the steps needed to overcome such hurdles.

ANSWER: Refer chapter 39

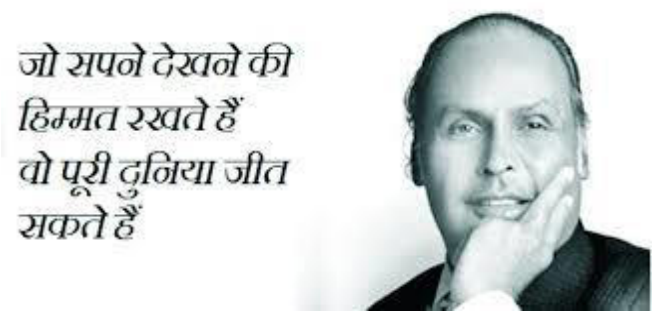
4. The legal due diligence process varies depending upon the scope of work dictated by the client, the focus, special areas of weakness. Comment

ANSWER: Refer chapter 39

5. Mention the possible hurdles in carrying out a legal due diligence

ANSWER: Refer chapter 39

THANKS FOR READING



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